

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge

Case No. 2015-CP-10-03038

RECEIVED
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SC Court of Appeals

Barry Clarke,

Respondent/Appellant,

v.

Fine Housing, Inc. and RRJR, LLC,

Defendants,

Of which Fine Housing, Inc. is the

Appellant/Respondent.

RECORD ON APPEAL – VOLUME 1 OF 2

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-3038

Barry Clarke
PLAINTIFF(S)Fine Housing, Inc. and RRJR, Inc.
DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion to Reconsider filed on October 13, 2017, is respectfully denied without a rehearing.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

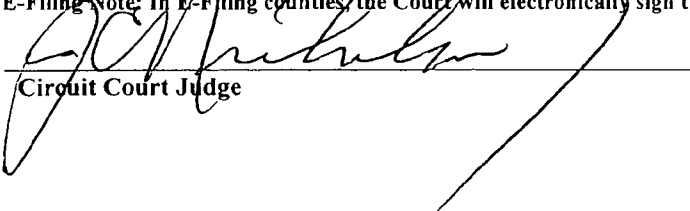
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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

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

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

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


Circuit Court Judge

 2117
Judge Code

 10/18/2017
Date

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: ~~2016~~-CP-10-03038

2015

Barry Clarke,)
)
Plaintiff,)
vs.)
)
Fine Housing, Inc. and)
RRJR, L.L.C.,)
)
Defendants.)
_____)

ORDER OF JUDGMENT

FILED
2017 SEP 28 PM 4:30
JULIE A. HORTON
CLERK OF COURT
BY _____

Date of trial: July 26, 2017
Plaintiff's attorneys: Ashley Andrews, Thomas R. Goldstein
Defendant's attorneys: Cliff Moore, Charles Altman (Mr. Altman was not counsel of record)
Court Reporter: M. Rebecca Hill

Procedural Background

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This interesting real estate case came before the Court for trial on the merits on July 26, 2015. The plaintiff filed a complaint seeking specific performance on May 28, 2015, alleging that the defendant, RRJR, L.L.C., conveyed a parcel of real estate without notifying the plaintiff of his opportunity to purchase the property under a recorded right of first refusal. The plaintiff alleged that the defendant, Fine Housing, Inc., took title to the parcel subject to the plaintiff's right of first refusal and should be compelled to deed it to the plaintiff upon receipt of the purchase amount. The defendant, R.R.J.R., never answered the complaint, and the plaintiff filed an affidavit of default on August 3, 2015. The defendant, Fine Housing, answered the complaint on September 2, 2015, setting up the following defenses (the Court disregards the defense of statute of limitations, which defendant did not pursue):

General denial.

Denial based on vagueness of the right of first refusal.

Waiver.

Laches.

Estoppel.

Prior to trial, the parties filed cross motions for summary judgment, which, after considering the parties' memorandums, affidavits, and argument of counsel, the Court denied. Thereafter, the plaintiff moved for an Order of the Court appointing a receiver to collect the rents on the disputed parcel until the Court ruled. However, prior to issuing a ruling, the parties announced that they resolved that motion by consent and will submit a separate Consent Order disposing of that issue.



At the trial on the merits, the plaintiff called three witnesses, Vincent DeStaso, the principal of Fine Housing, Inc., William Sloan, the closing attorney who handled the transaction from RRJR to Fine Housing, Inc., and the plaintiff, Barry Clarke. The plaintiff also subpoenaed a fourth witness, William Swope, attorney for RRJR, who the Court excused due to a death in the family. In the face of Mr. Swope's absence, and to avoid re-calling him to the stand, the parties stipulated as to the purpose for calling him; to wit, that John and Robin Robinson were the shareholders of Group Investment Co. and the members of RRJR, L.L.C., which stipulation obviated to leave the record open.

After the plaintiff's case, both sides made the appropriate motions under Rules 41(b) and 50 of the *South Carolina Rules of Civil Procedure*. (Plaintiff called the defendant's principal, Vincent DeStaso, sole member of Fine Housing, Inc., in his case in chief. After the plaintiff

rested, the defendant called no additional witnesses, thereby making the plaintiff's and the defendant's motions timely at the close of the plaintiff's case.) After the Court denied the competing motions, the defendant chose not to call additional witnesses, which made the case ripe for disposition on the merits.

Factual Background



The dispute in this case involves a parcel of real estate commonly referred to as 2028 Pittsburgh Avenue. 2028 Pittsburgh Avenue is unusual in that the center of the Pittsburgh Avenue is the boundary line between the City of Charleston and Charleston County. On the south side of the street is a properly licensed adult business, 2015 Pittsburgh Avenue, currently owned and operated by the plaintiff. On the north side of the street, 2028 Pittsburgh Avenue, is the parcel at issue in this case. It also houses an adult business currently owned and operated by the defendant's, Fine Housing, Inc.'s, tenant. (It is the collection of rents from Fine Housing's tenant that are the subject matter of the plaintiff's motion for appointment of receiver that the parties resolved and which will be addressed in a separate Consent Order.) Both parties agree that the greatest share of the value of the 2028 Pittsburgh Avenue property is its availability as lawfully licensed sexually oriented business because both the City of Charleston and Charleston County have adult use zoning and licensing ordinances that restrict the location and licensing requirements for such businesses. These ordinances limit the number of available parcels that can support an adult business.

Clarke's adult business at 2015 Pittsburgh Avenue opened first, having been started by the plaintiff and later operated for many years by John Robinson, whose lease with the plaintiff

Clarke is the subject of this action. The plaintiff testified that many years ago, his friend, John Robinson, approached him and solicited his advice about getting into the “club” business. Even though the plaintiff advised Robinson against it, Robinson did enter the “club” business and ultimately opened and operated a well-known and successful adult business known as “Diamonds” out of Barry Clarke’s property at 2015 Pittsburgh Avenue. This is the property in the City of Charleston. Clarke testified that one of his main purposes of the parties’ 1999 lease was to allow customers of either establishment to park at either site.



Years later, John Robinson moved across the street to 2028 Pittsburgh Avenue, the parcel in the County of Charleston, and Robinson and Clarke became competitors, each running an adult business on the north and south sides of the same street. By all accounts, both were successful. In 2009, John Robinson died, and his surviving spouse, Robin Robinson, assumed responsibility for running the business. (John Robinson is the “JR” of the defaulting defendant “RRJR.” His surviving spouse, Robin Robinson, is the “RR,” hence “RRJR, L.L.C.”) Barry Clarke testified that he started an adult business at 2015 Pittsburgh Avenue many years ago, and testified he helped his deceased friend, John Robinson, get his start in the “club” business both against the advice and under the tutelage of the plaintiff, Barry Clarke. Over the years, John Robinson was both Barry Clarke’s tenant at 2015 Pittsburgh Avenue operating an adult business known as “Diamonds,” and also his competitor when he moved “Diamonds” from 2015 Pittsburgh Avenue to 2028 Pittsburgh Avenue. The evidence reveals that the two men enjoyed not only a close relationship but also a competitive one.

The friendly competition between the two gave rise to a lease (Plaintiff’s Exhibit 1) between Barry Clarke and Group Investment Company, Inc. dated January 8, 1999, and recorded

in the R.M.C. Office for Charleston County on January 8, 1999 at Book C319 at Page 791. Group Investment Company, Inc. was the forerunner of RRJR, L.L.C.—see plaintiff's Exhibits 31, Secretary of State Report for Group Investment Company, 32 Secretary of State Report for RRJR, and 33, Deed from Group Investment Company to RRJR dated April 25, 2007, for the consideration of \$5.00, and stipulation of William Swope.

This lease is the central issue in this case.

According to plaintiff's testimony, Robinson and Clarke jointly met with a local lawyer, who drafted and recorded the lease (Plaintiff's Exhibit 1). Plaintiff testified there were negotiations between the two, and that the recorded lease represented the terms to which Plaintiff agreed—including the right of first refusal in Article V, as may be seen by their signatures on the lease. (Robin Robinson signed the lease for RRJR, L.L.C.—see Plaintiff's Exhibit 1, page 10.)

After Clarke and Robinson signed the lease, the lawyer who drafted it sent it to the Register of Mesne Conveyance for Charleston County where the R.M.C. recorded it on January 17, 1999, at Book C 319 at Page 791. The lease contains Article V, which is the heart of the dispute now before the Court. Article V reads as follows:

Article V

Section 5.1: Option to renew: There are no options to renew.

Section 5.2: Right of first refusal: Lessor grant Lessee the right of first refusal should it wish to sell.

After recording the lease in 1999, Robinson and Clarke continued their relationship that varied between friendly and competitive. Barry Clarke testified that his motivation for the lease

was to allow each man's customers the right to park on one another's property, the idea being that it benefitted both to allow patrons to visit both clubs without having to move a car. According to the plaintiff, when they signed the lease, adult business located on both 2015 Pittsburgh Avenue and 2029 Pittsburgh Avenue, and because there was an adult business across the street from one another, it made sense to allow parking for either business on either lot. Plaintiff also testified that his purpose of the right of first refusal was to secure adequate parking for his property and to ensure that Robinson always had at least two purchasers in the event he decided to sell his parcel.

After John Robinson died in 2009, his surviving spouse, Robin, assumed the duties of running the business. As the run-up to the transaction with Fine Housing demonstrates, she found herself in financial trouble, facing imminent foreclosure on her home, unsatisfied judgments, and tax liens. (See Plaintiff's Exhibit 4, December 2, 2013 Settlement Statement.)

gcn As the settlement statement shows, her financial troubles required her to secure financing from non-traditional sources, first through a mortgage on her residence and later through Fine Housing. Through financial missteps—as delineated on the settlement statement and the testimony of William Sloan—she ultimately found herself facing the loss of her waterfront home located on Sol Legare Road on James Island. Because of her financial missteps over the years, conventional lending institutions were unavailable to Ms. Robinson and relief through bankruptcy was unavailable, and thus, when faced with the loss of her home, she searched for additional nontraditional sources of financing, which led her to Fine Housing. The testimony of the witnesses at trial revealed that Ms. Robinson's lawyer, William Swope, reached out to financial brokers to find a source of financing for Mrs. Robinson. Mr. DeStaso testified that he

was unwilling to loan Ms. Robinson money, but his lawyer testified until shortly before the closing, he thought he was preparing a closing for a refinance. (As discussed more fully below, whether the transaction started out as a loan and matured into a sale, or whether it was a sale from the beginning does not change the legal analysis.) Mr. DeStaso testified he flew to Charleston shortly before Thanksgiving, 2013, inspected Mrs. Robinson's home and the business, and literally on the eve of the foreclosure sale scheduled for 11:00 a.m. on Tuesday, December 3, 2013, he "purchased," through his corporation, Fine Housing, Inc., the two properties from her for the sum of \$850,000.00. (The closing statement, Plaintiff's Exhibit 4, and Mr. DeStaso's testimony reveals that he wired \$815,000.00 to close the transaction. As discussed more fully below, whether the transaction was a straight purchase or a hybrid transaction as suggested by the lease-back and buy-back provisions does not change the legal analysis.)



The testimony and evidence is uncontracted that Fine Housing Inc, through its principal, Vincent DeStaso, traveled to Charleston shortly before Thanksgiving, 2013, interviewed Mrs. Robinson and toured the Sol Legare property and the club on Pittsburgh Avenue. This visit occurred a short time prior to her home being offered for sale on the courthouse steps to satisfy an unpaid mortgage to another lender. Ultimately, a few days before Thanksgiving 2013, DeStaso committed either to loaning to Mrs. Robinson the sum of \$850,000.00 in exchange for deeds to both the Sol Legare property and the Pittsburgh Avenue property or committed to purchasing the properties with a lease-back and buy-back provisions so that Mrs. Robinson could avoid the foreclosure sale of her home scheduled for Tuesday, December 3, 2013, at 11:00 a.m. on the courthouse steps. (In 2013, Thanksgiving fell on November 28th.) Both the settlement

statement and Mr. DeStaso's testimony reveal that Fine Housing actually transferred \$815,000.00 because he retained the sum of \$35,000.00, and as Plaintiff's Exhibit 4 demonstrates, he sent other sums to entities affiliated with Vincent DeStaso. (See Plaintiff's Exhibit 4, testimony of Vincent DeStaso.) There was considerable testimony—none of which is contradicted—about the rush imposed on Fine Housing's closing attorney, who closed the transaction. Thanksgiving fell on the 28th; the Master's Office scheduled the sale for Tuesday, December 3rd. The closing attorney, William Sloan, testified he originally thought DeStaso's instructions were to prepare a closing for a refinance, and he learned only shortly before the closing to prepare the documents for a "sale." (Plaintiff argues forcefully that the lease-back and buy-back provisions demonstrate it was a hybrid loan/sale, not a pure sale, and Defendant argues just as forcefully that it was a pure sale. As stated throughout, this Court concludes that the law requires the same outcome regardless of whether the transaction was a hybrid or a pure sale.) As discussed more fully below, Mr. Sloan testified he initially thought he was preparing a refinance closing, and only days before the date for closing, discovered it was a "sale." It was this last-minute rush that contributed to his failure to examine thoroughly the chain of title that, in turn, gives rise to this dispute. (The defendant, Fine Housing, Inc. currently has a claim pending against his closing attorney, alleging negligence for failing to discover the Clarke lease.)

As the testimony of Vincent DeStaso and the exhibits (Plaintiff's Exhibits 4, December 2, 2013 settlement statement and Exhibits 10 and 11, leases and option to repurchase) establish—Mrs. Robinson agreed to deed both properties, her Sol Legare home and the 2028 Pittsburgh Avenue property, to Fine Housing, and in exchange, Fine Housing agreed to lease both properties back to Mrs. Robinson and gave her a written option to repurchase both properties for the agreed

upon repayment sum of 1.15 million dollars. In short, under the terms of the agreement, Mrs. Robinson signed deeds, agreed to pay monthly rent for 24 months and then repay principal and interest to Mr. DeStaso. Had Mrs. Robinson conformed to the payment schedule, she had the right to reclaim both properties at a fixed price. However, Mrs. Robinson did not make the payments. She did, however, file a lawsuit against Fine Housing Inc. on February 19, 2014, two months after the closing, at Case Number 2014-CP-10-01035, in which she alleged Fine Housing defrauded her. In essence, she alleged that the transaction was a loan, not a sale. However, that case ended in favor of Fine Housing Inc. on January 9, 2015, when the parties entered a stipulation of dismissal with prejudice. (See plaintiff's Exhibits 14 and 15.)

At no time before, during, or after the December 3, 2013, closing did anyone provide notice to the plaintiff of the proposed sale of the property. (See Plaintiff's Exhibit 13, November 19, 2016 Request To Admit.) The parties stipulated that neither Robin Robinson nor Fine Housing (or anyone acting on their behalf) gave notice to the plaintiff of the defendant's intention to purchase the property.

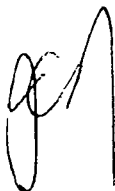
Discussion of the issues

A. South Carolina Recording Statute

The plaintiff's complaint sounds in specific performance. The defendant's defenses are both legal and equitable. Neither party requested a jury trial. The Court evaluates this case as a case brought in equity. "An action for specific performance is one in equity." *Fesmire v. Digh*, 385 S.C. 296, 303, 683 S.E.2d 803, 807 (Ct. App. 2009),

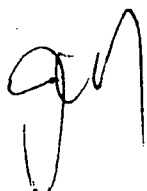
There are two broad principles of law invoked in this case. (The defendant's affirmative

defenses are separately analyzed below.) The first is the application of the South Carolina Recording Statute, § 30-7-10, S. C. Code, Ann. “Validity of conveyances, liens, and other transactions as to subsequent purchasers and creditors.” Every purchaser or mortgagee is regarded as having notice of documents properly recorded. Any properly recorded interest is valid as to subsequent purchasers without notice. *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 662 S.E.2d 452 (S. C. App. 2008); *In Re Davis*, 490 Bkrcty. Rpts. 221 (D.S.C. 2013).



Here, the defendant does not contest the applicability of the recording statute or dispute that the parties' lease, containing the contested right of first refusal, is on file in the R.M.C. Office and constitutes notice to the defendant of its existence. On the stand, Fine Housing's closing attorney, William Sloan, was candid about missing it (see plaintiff's Exhibit 12), although his testimony makes clear that he was not originally clear about Fine Housing's intentions—whether the transaction was a loan or a sale, and by the time Sloan knew what Fine Housing's intentions were, it provided Sloan only a couple of days in order to review the title and prepare the closing documents for a December 3rd closing in time to avoid the foreclosure sale of Mrs. Robinson's Sol Legare home. Also contributing to the confusion and undue pressure was the fact that the foreclosing creditor refused to grant additional time, and, in fact, made Mr. Sloan's job even more difficult by refusing to accept his trust account check, thereby placing additional pressure on him to leave his office, obtain certified funds, and transmit those by hand delivery to the foreclosing creditor. Such pressure in combination with a failure to provide an adequate period to investigate the status of title created a recipe for disaster with the closing attorney. Sloan testified that he understood from Swope that he was charged with preparing a sales transaction on the Tuesday before Thanksgiving to prevent a December 3rd foreclosure sale.

In 2013, Thanksgiving fell on November 28th. The Master's Office scheduled the foreclosure sale for Tuesday, December 3rd. The evidence demonstrates that the short period of time afforded to Sloan to get the transaction ready for closing accounts for the misstep. Mr. Sloan testified that because time was so short, he had no choice but to rely on background title provided by Mrs. Robinson's attorney, William Swope, which contained no mention of the Clarke Lease that is the subject of this action. (See Plaintiff's Exhibit 12.) In fact, Mr. Sloan testified that he found the Clarke lease almost immediately **after** closing, when he had time to examine the chain of title more closely. Sloan was not so much negligent as prevented from having a reasonable opportunity to examine title because of the time constraints placed on him.



At trial, the defendant concedes that it is on notice of the Clarke Lease, but argues that the right of first refusal is invalid for vagueness and for waiver, estoppel, and laches. Thus, it is not disputed that the South Carolina Recording Statute gave notice to the defendant of the plaintiff's lease, containing a right of first refusal, and neither Robin Robinson nor Fine Housing, Inc., placed the plaintiff on notice of their intent to close prior to the closing on December 3, 2013.

B. Vagueness or Ambiguity

The heart of defendant's defense is that the right of first refusal is not enforceable because it is too vague or ambiguous to be enforced. Through cogent, well-researched, well-written and forcibly argued legal presentations, the defendant argues that the right of first refusal is not enforceable because it constitutes a "restraint on alienation" and the Court must, therefore, apply it narrowly. The defendant also urges the Court to ignore Article V because it does not contain a

mechanism for its operation, including a time for performance, set price, or method of determining price. To support its position, the defense handed up an unpublished opinion called *Page v. Page*, issued by the Court of Appeals on February 24, 2004, at Opinion No. 2004-UP-110.

At the outset, when the Court of Appeals issues an unpublished opinion, it releases it with all capital, boldface disclaimer at the top saying: **“THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.”** See Appellate Court Rule 268(d)(2): “Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved.” This rule must mean something.

gm However, in an abundance of caution, and to avoid overlooking controlling principles of law, the Court thoroughly reviewed *Page v. Page*, including the cases cited therein, and finds that it is not applicable in this case for the very reason asserted by the defendant who is relying on it: the right of first refusal in *Page* was a deed restriction inserted in the granting clause of a deed in an effort to cut down on a fee simple conveyance:

M.K. Page and Maude Page conveyed a parcel of real estate to S. M. Page, in fee simple absolute, reserving a life estate unto themselves. In the deed, M. K. and Maud placed a restriction on S. M. Page’s right to dispose of the property. The restriction created a right of first refusal as follows:

In the event S. M. Page decides to sell all or any portion of this property, it shall first be offered to Betsy Page Flinn, Carolyn Page Eaton, and Samuel D. Page under the same terms and conditions as the proposed sale. This restriction, on transfer, shall also apply to any heirs of S. M. Page.

gm
As the Court of Appeals explained in *Page*, it found the right of first refusal invalid because it represented an effort “to cut down a fee simple estate contained in the granting clause.” *Page* at page 3. The reason the Court of Appeals’ opinion is unpublished is because it is relying entirely on the published *Stylecraft, Inc. v. Thomas*, 250 S.C. 495, 498, 159 S.E.2d 46, 47 (1968). *Stylecraft* has caused more than a few real estate lawyers sleepless nights. Only a few cases in South Carolina law have: (1) generated as much comment or (2) caused as much anguish for real estate lawyers as *Stylecraft*. There, the Supreme Court held that any efforts to impose restrictions in a deed that are contained in granting clauses of deeds are ineffective to prevent the conveyance of an unrestricted fee simple transfer. Thus, the defendant is correct: when a granting clause in a deed attempts to impose a reversion of title in a deed, it is, under *Stylecraft*, ineffectual to cut down the grant of a fee simple estate for the very reason defendant advocates: it represents a restraint on alienation. As the Court of Appeals notes in *Page*, such a limitation “runs counter to the commonly acknowledged concept in this state that one of the attributes of fee simple ownership is the ability to freely convey it with few if any restrictions.” Thus, under *Page*—and more importantly under *Stylecraft*—this Court would not hesitate to invalidate a right of first refusal if it were ineffectively expressed in the granting clause of a deed of conveyance. *Stylecraft* requires it.

However, unlike *Page*, but more importantly, unlike *Stylecraft*, this case does **not** present a *Stylecraft* issue of whether a restriction in the granting clause of a deed of conveyance is or is not effective. There is no question that Group Investment Company and/or RRJR, L.L.C. had fee simple title and the right to sell the property to any person in the world for the highest obtainable price. The Clarke lease in no way attempts to cut down the fee simple ownership. Here, the

issue is whether a recorded lease—which the parties agree is: (1) of record, and (2) in full force and effect—does or does not contain a valid right of first refusal. Thus, the present case is more akin to a case of a missed mortgage or a missed judgment or a missed mechanic's lien. A properly recorded mechanic's lien is a "restraint on alienation" in one sense because whoever purchases the property, purchases it subject to the lien. This Court is not called upon to decide if a limiting reversion in the granting clause in a deed does or does not effectively cut down the fee simple ownership of the grantee—especially because *Stylecraft* laid that issue to rest. Rather, the issue here is whether the defendant took title to the property subject to the plaintiff's lease. Since the defendant concedes he took title subject to the plaintiff's lease, the question distills down to whether the right of first refusal is or is not valid. Contrary to the defendant's argument, had RRJR, L.L.C. notified Clarke of its intent to sell, then it could have maximized its return instead of accepting what Fine Housing was willing to pay. Not to put too fine a point on it, but RRJR's haste deprived it of an opportunity to drive up the bidding. This is the opposite of a restraint on alienation.

The cardinal rule of contract interpretation is to ascertain and give effect to the intention of the parties and, in determining that intention, the court looks to the language of the contract. If the language is clear and unambiguous, the language alone determines the contract's force and effect. *United Dominion Realty Trust, Inc. v. Wal-Mart Stores, Inc.*, 307 S.C. 102, 413 S.E.2d 866 (Ct. App. 1992). *Sphere Drake Ins. Co. v. Litchfield*, 313 S.C. 471, 438 S.E.2d 275 (1993). On the issue of whether the right of first refusal is or is not too ambiguous to enforce is an issue analyzed by the Court of Appeals in 1996 in the so-called "Grease Monkey" case, *Minter v. GOCT, Inc.*, 322 S. C. 525, 473 S.E.2d 67 (1996). There the plaintiff brought a breach of

contract action, alleging that the defendant had failed to live up to its contractual obligation to allow the plaintiff the right of first refusal to own and operate any "Grease Monkey" franchise in Richland or Lexington counties. The plaintiff alleged the agreement contained a provision giving Carolina Properties a "first right of refusal on any other Grease Monkey sites developed by GOCT [322 S.C. 527] in Richland or Lexington County South Carolina." The plaintiff sued when the defendant built another facility on Rabon Road in Richland County without offering it first to the plaintiff. The trial court granted a directed verdict for the defendant on the breach of contract claim, and the Court of Appeals reversed. In sending the case back for trial on damages, the Court of Appeals quoted the plaintiff's testimony as follows: "According to William S. Minter, III, the right of first refusal was a negotiated part of the agreement because he was in the real estate development business and the parties contemplated a chain of oil change facilities."

gcn
The testimony of William S. Minter in the *Grease Monkey* case and the testimony of the plaintiff here is almost identical. Here the plaintiff testified at length about his friendship with John Robinson, the negotiations leading up the lease, and the fact of its recording, and the purpose for the right of first refusal. As the plaintiff testified, the right of first refusal is the opposite of a restraint of alienation because it guarantees the seller will always have at least two bidders for his property in the event he wishes to sell. Nothing in the lease prevents the owner from selling; in fact, it guarantees there will always be two bidders.

In construing a similar right of first refusal contract between two equal parties, the Court of Appeals said:

"In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties." *Southern Atl. Fin. Servs., Inc. v. Middleton*, 349 S.C. 77, 80-81, 562 S.E.2d 482, 484-85 (Ct. App.2002); accord *D.A. Davis Constr. Co., Inc. v. Palmetto Props., Inc.*,

281 S.C. 415, 418, 315 S.E.2d 370, 372 (1984); *Williams v. Teran, Inc.*, 266 S.C. 55, 59, 221 S.E.2d 526, 528 (1976); *RentCo., a Div. of Fruehauf Corp. v. Tamway Corp.*, 283 S.C. 265, 267, 321 S.E.2d 199, 201 (Ct.App.1984). "Contracts should be liberally construed so as to give them effect and carry out the intention of the parties." *Mishoe v. Gen. Motors Acceptance Corp.*, 234 S.C. 182, 188, 107 S.E.2d 43, 47 (1958).

The parties' intention must, in the first instance, be derived from the language of the contract. *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003); *C.A.N. Enters., Inc. v. S.C. Health & Human Services Fin. Comm'n.*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988) ("In construing terms in contracts, this Court must first look at the language of the contract to determine the intentions of the parties."); *Jacobs v. Service Merch. Co.*, 297 S.C. 123, 375 S.E.2d 1 (Ct.App.1988). To discover the intention of a contract, the court must first look to its language-if the language is perfectly plain and capable of legal construction, it alone determines the document's force and effect. *Superior Auto. Ins. Co. v. Maners*, 261 S.C. 257, 263, 199 S.E.2d 719, 722 (1973). "Parties are governed by their outward expressions and the court is not at liberty to consider their secret intentions." *Blakeley v. Rabon*, 266 S.C. 68, 73, 221 [649 S.E.2d 502] S.E.2d 767, 769 (1976); *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93-94, 594 S.E.2d 485, 493-94 (Ct.App.2004); *accord Kable v. Simmons*, 217 S.C. 161, 166, 60 S.E.2d 79, 81 (1950).

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The parties' intention must be gathered from the contents of the entire agreement and not from any particular clause thereof. *Thomas-McCain, Inc. v. Siter*, 268 S.C. 193, 197, 232 S.E.2d 728, 729 (1977); *see also Barnacle Broad., Inc. v. Baker Broad., Inc.*, 343 S.C. 140, 147, 538 S.E.2d 672, 675 (Ct.App.2000) ("The primary test as to the character of a contract is the intention of the parties, such intention to be gathered from the whole scope and effect of the language used."). "Documents will be interpreted so as to give effect to all of their provisions, if practical." *Reyhani v. Stone Creek Cove Condominium II Horizontal Property Regime*, 329 S.C. 206, 212, 494 S.E.2d 465, 468 (Ct.App.1997) (citing 17A Am.Jur.2d *Contracts* § 385 (1991)). In ascertaining intent, the court will strive to discover the situation of the parties, along with their purposes at the time the contract was entered. *Klutts Resort Realty, Inc. v. Down'Round Development Corp.*, 268 S.C. 80, 89, 232 S.E.2d 20, 25 (1977); *Bruce v. Blalock*, 241 S.C. 155, 161, 127 S.E.2d 439, 442 (1962); *Mattox v. Cassady*, 289 S.C. 57, 61, 344 S.E.2d 620, 622 (Ct.App.1986).

In *Brady v. Brady*, 222 S.C. 242, 72 S.E.2d 193 (1952) the South Carolina Supreme Court asseverated:

It is fundamental that in the construction of the language of a [contract], it is proper to read together the different provisions therein dealing with the same subject matter, and where possible, all the language used should be given a reasonable meaning.

Agreements should be liberally construed so as to give them effect and carry out the intention of the parties. In arriving at the intention of the parties to a lease, the subject matter, the surrounding circumstances, the situation of the parties, and the object in view and intended to be accomplished by the parties at the time, are to be regarded, and the lease construed as a whole. Different provisions dealing with the same subject matter are to be read together.

Id. at 246-47, 72 S.E.2d at 195.

gm
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* at 72, 221 S.E.2d at 769. "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* at 93, 594 S.E.2d at 493 (quoting *Heins v. Heins*, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct. App. 2001)). However, where an agreement is ambiguous, the court should seek to determine the parties' intent. *Smith-Cooper v. Cooper*, 344 S.C. 289, 295, 543 S.E.2d 271, 274 (Ct.App.2001); *Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship*, 331 S.C. 385, 390, 503 S.E.2d 184, 187 (Ct.App.1998).

Ecclesiastes Production Ministries v. Outparcel Associates, LLC., 374 S.C. 483, 649 S.E.2d 494 (Ct. App. 2007) (Court of Appeals reversed grant of directed verdict when plaintiff sought to enforce lease with right of first refusal.)

Finally, the defendant contends the right of first refusal is too ambiguous and indefinite to be enforced because it does not contain a time for performance or a method of determining price. As to the time for performance, every contract in South Carolina contains within it implied terms of good faith and reasonableness. In a contract for the sale of land, where a contract does not contain a "time is of the essence" clause, the Court supplies the time for performance as being "reasonable":

It is well established in this state that time is not of the essence of a contract to convey land unless made so by its terms expressly or by implication from the nature of the subject matter, the object of the contract or the situation or conduct of the parties. When the contract does not include a provision that time is of the essence, the law implies that it is to be done within a reasonable time; and the failure to incorporate in the memorandum such a statement does not render it insufficient. *Speed v. Speed*, 213 S.C. 401, 49 S.E.2d 588 (1948).

Hobgood v. Pennington, 300 S.C. 309, 387 S.E.2d 690 (Ct. App. 1989)

As for defendant's suggestion that the right of first refusal fails to set the price, the Court is persuaded not only by the lease itself, but also by the testimony of the plaintiff, Clarke, that the price is controlled by the property owner and set by the owner's acceptance of any price from any purchaser whose offer is acceptable to the owner, after which the plaintiff, as the holder of the right, can either match the price or waive the right to exercise it. Such a process is the opposite of a "restraint" on alienation. Instead of being a "restraint," it is a facilitator. However, (as discussed below) a holder of a right of first refusal cannot waive the right to exercise it when the seller and the purchaser—who are on notice of the right—keep the holder of the right of first refusal in the dark and deprive him of an opportunity to exercise it. Such conduct is inequitable. Therefore, under well-established principles of South Carolina jurisprudence, the right of first refusal here is at least as definite as the right enforced by the Court of Appeals in the *Grease Monkey* case, and the intention of the parties is clear and unmistakable under the holding of *Ecclesiastes Production Ministries*: "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."

C. Waiver, Estoppel and Laches

The final defenses asserted by the defendant are both legal and equitable. "By waiver is meant the intentional relinquishment of a known right, or such conduct as warrants an inference of the relinquishment of such a right. Therefore, to establish waiver, the person against whom the waiver is claimed must have full knowledge of his rights and of facts which will enable him to take effectual action for the enforcement of such right." *Sims v. Ham*, 275 S.C. 369, 271 S.E.2d 316 (1980). "Where an implied waiver is involved, the distinction between waiver and estoppel is close, and sometimes the doctrines merge into each other with almost imperceptible gradations, so that it is difficult to determine the exact point where one doctrine ends and the other begins." *Id.* Whether a party is barred by estoppel or waiver can only be determined in light of the circumstances of each case. *Janasik v. Fairways Oaks Villas*, 307 S.C. 339, 415 S.E.2d 384 (1992) Likewise, "Laches is 'neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done. Whether a claim is barred by laches is to be determined in light of the facts of each case, taking into consideration whether the delay has worked injury, prejudice, or disadvantage to the other party.'" *Whitehead v. State*, 352 S.C. 215, 574 S.E.2d 200 (2002), citing *Hallums v. Hallums*, 296 S.C. 195, 198-199, 371 S.E.2d 525, 527 (1988). *Bray v. State*, 366 S.C. 137, 620 S.E.2d 743 (2005)

The evidence in this case does not support either theory. The defendant contends that the plaintiff "waived" his right to first refusal in 2007, (Plaintiff's Exhibit 33, June 13, 2007, Deed from Group Investment Co. to RRJR, L.L.C.) when Group Investment Company, Inc. transferred

its interest in the 2028 Pittsburgh Avenue property to RRJR, and the plaintiff failed to exercise his right at the time of that conveyance. The evidence does not support such a theory. First, the record shows that the transfer was a name change only, going from a corporation owned and operated by John Robinson and Robin Robinson to a limited liability company owned and operated by John Robinson and Robin Robinson for the consideration of five (\$5.00) dollars. (See plaintiff's Exhibits 31, 32, and 33, Stipulation of William Swope, and testimony.) Second, the consideration for the 2007 transfer is five dollars (\$5.00), and the affidavit of true consideration demonstrates that it is a name change only. Third, the plaintiff testified he was aware of the name change and knew it was not a sale to a third party. The defendant failed to produce evidence otherwise. Estoppel and waiver are protective only, and are to be invoked as shields, and not as offensive weapons. Their operation in all cases should be limited to saving harmless or making whole the party in whose favor they arise and should not, in any case, be made the instruments of gain or profit. See *Herring v. Volume Merchandise, Inc.*, 252 N.C. 450, 113 S.E.2d 814 (1960); 28 *Am.Jur.2d Estoppel and Waiver* § 33 (1966). See also *Ott v. Ott*, 182 S.C. 135, 188 S.E. 789 (1936). While the doctrine of waiver or equitable estoppel may be invoked as affirmative defenses to counterclaims, they may not be asserted in a complaint as offensive weapons. *Janasik v. Fairway Oaks Villas*, 307 S.C. 339, 415 S.E.2d 384 (2002)

Likewise, the defendant asserts that the plaintiff waived his right to enforce his right of first refusal because of his inaction upon the transfer to Fine Housing, Inc. There is no evidence in this record to support any theory based on plaintiff's alleged inaction. Fine Housing, Inc. acquired title on December 3, 2013. Two months later Robin Robinson filed suit against Fine Housing, seeking to unwind the transaction. Fine Housing admits it never gave notice of the

transfer to Clarke. RRJR, L.L.C. is in default and has walked away from the entire dispute. Mr. Clarke testified he received a late-night visit from "Terry and Terry" sometime in March 2014, telling him that "something was up with the club." Mr. Clarke then testified he contacted Mr. DeStaso, informed him of his right to purchase the property, and Mr. DeStaso promised to call him back within two weeks. When DeStaso failed to call Clarke back, Clarke testified he called him a second time, and DeStaso told Clarke "he forgot." It was at that point, Clarke testified, that he turned the matter over to his lawyers, and on April 10, 2014, Clarke's lawyer sent to DeStaso a proposed purchase agreement. (Plaintiff's Exhibit 16.) When DeStaso failed to respond, Clarke's lawyer sent to DeStaso a second letter, Plaintiff's Exhibit 17, dated April 21, 2014, reminding him that Clarke was "ready, willing, and able" to purchase: "Barry wanted me to convey to you that he is ready, willing, and able to purchase the property without owner financing and only mentioned that as an option if you were interested in it." In fact, it was not until January 9, 2015, there was certainty as to who held title. (See order of dismissal in *RRJR vs. Fine Housing, Inc.*, plaintiff's Exhibit 15.) Under these facts, the defendant has failed to establish by a preponderance of the evidence that the plaintiff failed to act in a timely manner or took such action as would equitably estop him from claiming the right to enforce his lease.

In summary, there is no evidence in this record to support a theory of either waiver or estoppel.

As to the affirmative defense of laches, the record is likewise devoid of evidence supporting defendant's affirmative defense. The defendant stipulated it never notified the plaintiff of his acquisition, and the defendant, RRJR, never notified anyone of anything. The plaintiff testified that he heard a "rumor" that a third party had "taken over the club" after he

received a late-night visit in March, 2014, at his home from "Terry and Terry." The plaintiff testified that when he heard rumors about the putative sale of the club, he immediately contacted Ashley Andrews and undertook an investigation to, as he put it, find out what was going on. This led to a telephone call to Vincent DeStaso. Plaintiff testified he offered DeStaso a sum of money to exercise his right to the club, and DeStaso promised to call him back. Plaintiff testified he heard nothing back and therefore placed a second call to DeStaso a month later, who informed plaintiff that "he forgot." Plaintiff testified that he knew then he could not rely on DeStaso's representations and turned the matter entirely over to his attorneys.

The documentary evidentiary record corroborates the plaintiff's testimony. The evidentiary record demonstrates that the transfer of the property occurred on December 3, 2013. (Plaintiff's Exhibit 4) The evidentiary record demonstrates that no one gave notice of this transfer to plaintiff. (Plaintiff's Exhibit 13) The evidentiary record demonstrates that less than two months after closing, on February 19, 2014, Robin Robinson filed a lawsuit at case number 2014-CP-10-01035, seeking to rescind the closing. (Plaintiff's Exhibit 14) The evidentiary record demonstrates that this action terminated in Fine Housing's favor on January 9, 2015. (Plaintiff's Exhibit 15) The evidentiary record demonstrates that the plaintiff's first written expression of his attempt to exercise his right of first refusal occurred on April 10, 2014. (Plaintiff's Exhibit 16) On April 17, 2014, plaintiff renewed his effort to exercise his right of first refusal, emphasizing that he was "ready, willing, and able" to complete the transaction. Under these sequences of events, it is impossible to find evidence to support a defense of laches. (The defendant abandoned the defense of statute of limitations.)

Therefore, based on the totality of the evidence, which includes evaluating the witnesses'

testimony for credibility and believability, the documentary evidence, and the arguments of counsel and their written memoranda, the Court makes the following

FINDINGS OF FACT

- 
1. The plaintiff recorded a lease allowing shared parking of the property commonly referred to as 2028 Pittsburgh Avenue.
 2. The defendant, Fine Housing, Inc., had notice of the lease by virtue of it being recorded and properly indexed upon the rolls of the Register of Mesne Conveyance for Charleston County.
 3. The lease contains Article V, which grants to the plaintiff the right of first refusal in the event the owner offers the property for sale.
 4. The lease contains an exact legal description of the property so encumbered by the lease and the right of first refusal.
 5. Neither seller nor purchaser provided the plaintiff with notice or with an opportunity to exercise his right of first refusal prior to the sale or afterwards.
 6. Fine Housing Inc. acquired title to the property on December 3, 2013, for the stated consideration of \$150,000.00.
 7. Robin Robinson challenged the sale on February 19, 2014, by filing a summons and complaint at Case Number 2014-CP-10-01035. This lawsuit ended in Fine Housing's favor on January 9, 2015.
 8. The first notice of any kind to the plaintiff occurred on or about March 21, 2014 when he received a late-night visit from "the two Terry's" telling him the club was in

the hands of a new person.

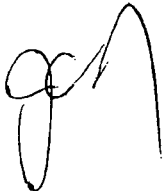
9. The plaintiff first attempted to exercise his right of first refusal on April 10, 2014, when his lawyer conveyed an offer to purchase to the defendant.
10. The right of first refusal contained in Article V of the lease between Group Housing, Inc. and Barry Clarke contains sufficient terms to be enforceable.
11. The right of first refusal contains an exact legal description of the property encumbered.
12. The lease containing the right of first refusal is properly indexed in the Register of Mesne Conveyance for Charleston County.
13. The defendant failed to produce sufficient evidence to establish by a preponderance of the evidence the defenses of waiver, laches, or estoppel. (The defendant abandoned the other defenses.)
14. The right of first refusal is sufficiently articulated to be enforceable.

Based on these facts, the Court makes the following

CONCLUSIONS OF LAW

1. The Court has subject matter jurisdiction and jurisdiction over the parties.
2. The plaintiff personally served the defendant, RRJR, L.L.C., who failed to appear and is adjudged to be in default.
3. The plaintiff has established by a preponderance of the evidence that he has a valid right of first refusal that identifies the property with sufficient particularity to be enforced.
4. The defendants failed to give the plaintiff notice of the purported sale to Fine Housing.

5. The plaintiff acted timely after receiving notice of the transfer on or about March 21, 2014.
6. Fine Housing's Agreement was to purchase both properties (Sol Legare property and the 2028 Pittsburgh Avenue property) for \$850,000.00.
7. Fine Housing allocated \$700,000.00 of the purchase price for the acquisition of the Sol Legare property and \$150,000.00 of the purchase price for the acquisition of the 2028 Pittsburgh Avenue property.
8. Fine Housing sold the Sol Leagare property for \$500,000.00 on December 5, 2016.
9. Fine Housing is entitled to receive \$200,000.00 + \$150,000.00 for a total of \$350,000.00 in order to be made whole on the right of first refusal.
10. The right of first refusal contains an implied condition of timeliness, and sixty (60) days is a reasonable time for performance.



It is therefore **ORDERED**:

That the plaintiff has proven by a preponderance of the evidence that he is entitled to specific performance of his right of first refusal, and it is further

ORDERED that the sum of \$350,000.00 is an equitable sum to be paid to Fine Housing, Inc. in satisfaction of the plaintiff's right of first refusal, and it is further

ORDERED that the plaintiff shall have sixty (60) days from the date of receipt of a copy of this signed and filed Order (or such Final Order as may be entered by the Court of final appellate authority) to consummate his acquisition of the property defined by the legal description contained in the right of first refusal, and it is further

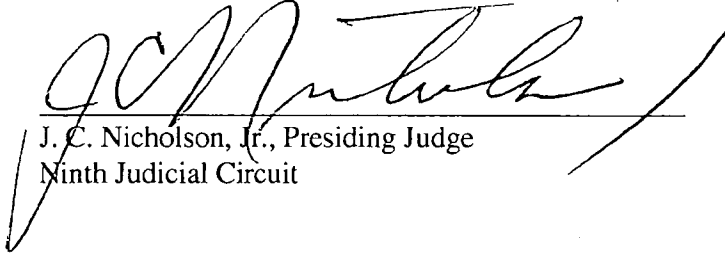
ORDERED that if the plaintiff does not perform under the terms of this Order within sixty

(60) days from the date of receipt of this signed and filed Order (unless the date for performance be postponed by judicial review of this Order), the plaintiff shall immediately file a release of the right of first refusal in recordable form with the Register of Mesne Conveyance. In such case, the remainder of the lease will remain in full force and effect. It is further

ORDERED that upon receipt of the amount of \$350,000.00 within sixty (60) days from receipt of this signed and filed Order—unless postponed by timely petition for judicial review—the defendant shall execute a limited warranty deed in favor of the plaintiff for the consideration set forth here. In the event the defendant refuses to execute such deed, then the plaintiff will notify the Court of the defendant's refusal, and the Court will issue such supplemental Order as is necessary in order to put into effect the intent of this Order to convey title to the plaintiff upon payment of the consideration required here.

AND IT IS SO ORDERED!

Sept. 26, 2017
August 26, 2017
Charleston, S. C.


J. C. Nicholson, Jr., Presiding Judge
Ninth Judicial Circuit

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-3038

Barry Clarke

Fine Housing Inc.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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), SCRPC; ☐ Rule 41, SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Plaintiff's Motion for Summary Judgment filed on 6/20/2016 is **denied**, viewing the evidence in favor of the non-moving party and finding a scintilla of evidence exists giving rise to a genuine issue of material fact.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

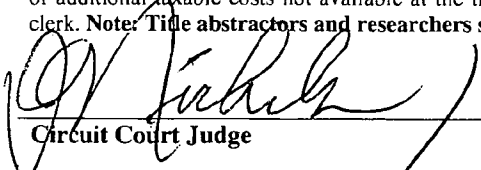
INFORMATION FOR THE PUBLIC INDEX

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)
N/A		\$

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

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

2117
Judge Code

8/26/16
Date

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-3038

Barry Clarke

Fine Housing Inc.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **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: Defendant's Motion for Summary Judgment filed on 5/5/2016 is **denied**, viewing the evidence in favor of the non-moving party and finding a scintilla of evidence exists giving rise to a genuine issue of material fact.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

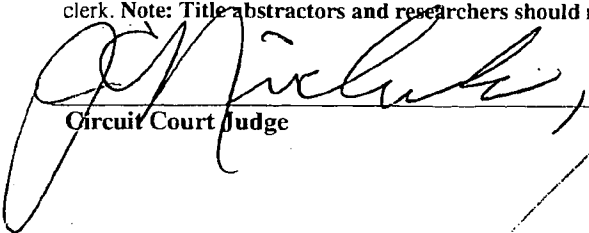
INFORMATION FOR THE PUBLIC INDEX

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)
N/A		\$

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

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

2117
Judge Code

8/26/16
Date

5/28/15 2:53PM

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	Case No.: 2015-CP-10- 3038
Barry Clarke,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	Lis Pendens
	)	
Fine Housing, Inc., and	)	
RRJR, LLC,	)	
	)	
Defendants.	)	

FILED
2015 MAY 28 PM 2:48
JULIE J. ARMSTRONG
CLERK OF COURT

NOTICE IS HEREBY GIVEN that an action has been commenced and is pending in the above Court upon a complaint of the Plaintiff, Barry Clarke and said Plaintiff alleging an interest in the below-described property claiming betterments on the property. The premises affected by said action is at the time of filing of this notice is described as follows:

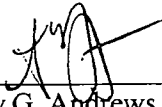
ALL that piece, parcel or tract of land, situate, lying and being in Charleston County, South Carolina, known and designated as "Tract A, 1.610 Acres, Property of Group Investment Company, Inc., TMS 466-16-00-011" on a plat entitled "Plat Showing TMS 466-16-00-011, being subdivided into tracts 'AB' and 'AB.1', property of Group Investment Company, Inc., located North Charleston Public Service District, Charleston County, SC," made by David & Floyd, Inc., dated January 19, 1989 and recorded in the RMC Office for Charleston County in Plat Book CE, Page 116; said tract having such size, shape, dimensions, buttings and boundings as will be referenced to said plat more fully and at large appear.

BEING the same property conveyed to the RRJR, LLC by deed of Group Investment Company, Inc., dated February 19, 2007, and recorded April 25, 2007 in the RMC Office for Charleston County at Book H623, Page 181, and thereafter On December 2, 2013, Robin Robinson, as sole member of RRJR, L.L.C., executed a deed to Fine Housing, Inc., recorded December 9, 2013, in the R.M.C. Office for Charleston County at Deed Book 0377 at Page 843.

TMS # 466-16-00-011

Property Address: 2028 Pittsburgh Avenue, Charleston, S.C. 29405

May 26, 2015



Ashley G. Andrews, I.D. # 76667
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ATTORNEYS FOR THE PLAINTIFF

2015-CP-10-3038

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

CASE NO.: ~~08-CP-10-4249~~

Barry Clarke)
Plaintiff,)

vs.)

Fine Housing, Inc. and)
RRJR, L.L.C.,)

Defendants.)

COMPLAINT

(Breach of Lease-non-jury trial demanded)

FILED
2015 MAY 28 PM 2:17
JULIE J. ARMSTRONG
CLERK OF COURT

1. The plaintiff is a citizen and resident of the State of South Carolina, County of Charleston.
2. The defendant, Fine Housing, Inc., is a corporation organized and existing pursuant to the laws of the State of New York, but transacting business in Charleston County, South Carolina and is the title holder to the real estate that is the subject of this lawsuit. The defendant, RRJR, L.L.C., is a limited liability company, organized and existing pursuant to the laws of the State of South Carolina with its principle place of business in Charleston County.
3. The real estate that is the subject of this suit is located in Charleston County and is commonly referred to as 2028 Pittsburgh Avenue.
4. The Court has jurisdiction over the parties hereto and the matters herein.

CAUSE OF ACTION
Breach of Lease—Right of First Refusal

5. The defendant, Fine Housing, Inc., currently holds title to the parcel of real estate commonly referred to as 2028 Pittsburgh Avenue, North Charleston, South Carolina. Prior to the conveyance of the real estate to defendant, Fine Housing, Inc., the defendant's predecessor in title, Group Investment Company Inc., entered into a written

"Lease and Agreement" with Barry Clarke on January 8, 1999. Robin Robinson as president executed the Lease, which is recorded in the R.M.C. Office for Charleston County on January 27, 1999, at Deed Book C 319 at Page 791. A copy of this recorded Lease and Agreement is attached to this complaint and incorporated by this reference.

6. The Lease contains Article 5, which states in full:

Section 5.1: Option to Renew. There are no options to renew.

Section 5.2: Right of First Refusal: Lessor grants the Lessee the right of first refusal should it wish to sell.

7. On February 19, 2007, for the consideration of five dollars, Group Investment Company conveyed the subject property to RRJR, LLC by deed recorded in the R.M.C. Office for Charleston County on April 26, 2007, at deed book H 623 at Page 181. This conveyance was a change in name only. The plaintiff is informed and believes that John Robinson and Robin Robison held all of the shares of Group Investment Company, Inc., and both John Robinson and Robin Robinson served as president of the corporation from time to time. John Robinson and Robin Robinson were the sole members of RRJR, L.L.C. The Robinsons did not give notice to the plaintiff of this conveyance, and the plaintiff continued to pay the lease payments to the Robinsons as required by the Lease and Agreement.

8. John Robinson died in 2008. His Estate is filed at Case Number 2008-ES-10-001816. Upon Mr. Robinson's death the property was managed by his surviving spouse, Robin Robinson, who was the personal representative of the Estate of John Robison, filed in the Charleston County Probate Court at case No.: 2008-ES-10-001816

9. After John Robinson died in 2008, his surviving spouse encountered financial difficulty, and in December, 2013, she entered into a loan arrangement with the defendant, Fine Housing, Inc., by which the defendant loaned Ms. Robinson a sum of money secured by two parcels of real estate, one parcel being 2028 Pittsburgh Avenue, North Charleston, S. C. On December 2, 2013, Robin Robinson, as sole member of RRJR, L.L.C., executed a deed to Fine Housing, Inc., recorded December 9, 2013, in the R.M.C. Office for Charleston County at Deed Book 0377 at Page 843. The parties to the transaction provided no notice to the plaintiff of the transfer.

10. The grantor, Robin Robinson, as sole member of RRJR, L.L.C., contended that the document recorded at Book 0377 at Page 843 on December 2, 2013, was intended as security for a loan as may be seen by reference to the action to set aside the deed filed by the defendant's grantor on February 19, 2014, at Case Number 2014-CP-10-01035.

11. On January 9, 2015, the parties ended case number 2014-CP-10-01035 by a stipulation of dismissal. Since that time, neither grantor nor grantee advised the plaintiff of the transfer and permitted him to exercise the right of first refusal to acquire the property.

12. As successor to Group Investment Company, Inc./RRJR, LLC, the defendant has refused and continues to refuse to allow the plaintiff to acquire the subject property in conformity with Article V of the Lease.

13. At all times the plaintiff has paid all amounts called for under the lease.

14. The plaintiff has demanded that the defendant tender the property for an amount in excess of the alleged purchase price. As may be seen by reference to the lawsuit mentioned above, 2014-CP-10-01035, the defendant's grantor asserted that there was

no transfer of the property, but that the defendant held title merely as a creditor to insure compliance with the terms of repayment. This allegation was resolved against the defendant's successor as may be seen by the Stipulation of Dismissal filed January 9, 2015., a copy of which is attached.

15. The plaintiff stands ready, willing and able to convey an amount greater than the purchase price as required by Article V of the recorded lease, but the defendants refuse to comply.

16. The plaintiff has no adequate remedy at law because the subject matter of the contract is a parcel of real estate.

17. The plaintiff is informed and believes that he is entitled to an Order of the Court directing the defendant, Fine Housing, Inc., to execute a deed, or if he refuses, for an Order authorizing the Clerk of Court to execute a deed in his stead in exchange for the purchase price required by Article V of the parties' lease.

Wherefore, having fully set forth his complaint, the plaintiff prays an Order of the Court:

A) Compelling the defendant, Fine Housing, Inc., to execute a deed in recordable form in exchange for the purchase price plus an additional amount as required by Article V of the parties' Lease;

B) Authorizing the Clerk of Court to execute a deed in the event the defendant refuses to do so as required by Article V of the parties' Lease in exchange for the purchase price as required by Article V of the parties' Lease;

C) For costs of this action, and for such other and further relief as the Court deems just as proper.

May 26, 2015



Ashley G. Andrews, I.D. # 76667
LAFOND LAW GROUP, P.A.
544 Savannah Highway
Charleston, South Carolina 29407
(843) 762-3554
Andrews@lafondlaw.com
ATTORNEYS FOR PLAINTIFF

May 26, 2015



Thomas R. Goldstein I.D.# 2186
Belk, Cobb, Infinger & Goldstein, P.A.
2344 Cosgrove Avenue
P. O. Box 71121
N. Charleston, S. C. 29415-1121
(843) 554-4291
(843) 554-5566 (fax)
tgoldstein@cobblaw.net
ATTORNEYS FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

LEASE AND AGREEMENT

THIS LEASE AND AGREEMENT made this 8TH day of JANUARY
¹⁹⁹⁹~~1998~~, by and between GROUP INVESTMENT COMPANY, INC., (hereinafter referred to
as "Lessor"), and BARRY CLARKE, (hereinafter referred to as "Lessee").

WITNESSETH:

In consideration of the mutual covenants hereinafter set forth and the
premises, the parties hereto agree and covenant as follows:

ARTICLE I

Demise of the Premises and Warranties

With Respect Thereto

Section 1.1: Demises: Subject to and upon the terms, conditions, covenants
and undertakings hereinafter set forth, Lessor hereby leases and permits the use to
Lessee, and Lessee hereby leases from Lessor the property generally described in Exhibit
"A" attached hereto, located in the County of Charleston, State of South Carolina
(hereinafter referred to as "the premises").

Section 1.2: Warranties: The Lessor hereby warrants and covenants that it
is a valid South Carolina corporation presently in good standing. All necessary meetings
have been held to authorize the officers of the Lessor to lease the said premisses to the
Lessee. The Lessor further warrants and covenants that it has a good and marketable fee

simple title to the subject property and there are no liens or encumbrances against the property that would prevent the leasing hereof.

ARTICLE II

Improvements

Section 2.1: Delivery of Existing Improvements: The improvements are delivered "as is" and in such condition as on the date of this lease. The premises is unimproved property to be used as a parking lot by both the Lessor and the Lessee.

Section 2.2: Future Improvements: All future improvements made on the premises shall be made at the sole cost and expense of Lessor to provide suitable parking.

ARTICLE III

Term and Commencement Date

Section 3.1: Term: ~~The term of this lease is for ninety nine (99) years.~~ The lease shall commence on the 8th day of January, 1999 and terminate on the ~~last day of 2097~~ 6th YEAR ANNIVERSARY OF LESSEE'S (BARRY CLARK'S) DEATH.

ARTICLE IV

Rent

Section 4.1: Rent: Lessee agrees to pay as rental to the Lessor the yearly sum of one thousand and No/100 (\$1000.00) Dollars; payable monthly, in the amount of _____ per month.

Section 4.2: Payment of Utilities: Lessor shall pay all charges for sewerage, water, gas, electricity, and other public utilities now in existence or hereafter added if needed for parking.

Section 4.3: Taxes: Lessor shall pay and be responsible for all county

property taxes on the premises.

ARTICLE V

Section 5.1: Option to Renew: There are no options to renew.

Section 5.2: Right of First Refusal: Lessor grants the Lessee the right of first refusal should it wish to sell.

ARTICLE VI

Surrender Upon Termination or Cancellation

No Holding Over

Section 6.1: Surrender: Upon the expiration of this Lease, Lessee shall quietly and peaceably surrender possession of the premises.

Section 6.2: Holding Over: There shall not be any holding over by Lessee or any assigned beyond the expiration or sooner termination of this lease.

ARTICLE VII

Use of the Premises: Lessor's Covenant

of Quiet Enjoyment: Right of Entry and

Inspection

Section 7.1: Use: Lessee shall use and occupy the premises jointly with the Lessor for his purposes. The Lessee and Lessor shall be entitled to use of one half (1/2) of the spaces contained in the parking lot [which encumbrances all of the property described in Exhibit A]. However, in the event either parties' spaces are not used then the other party may use the said unused spaces.

Section 7.2: Quiet Enjoyment: Lessee shall permit Lessor or Lessor's duly authorized agents, employees or representatives to enter upon the premises at all reasonable times for the purpose of inspecting the same. It shall be the responsibility of the Lessor to maintain the premises and to make such repairs as may be necessary to maintain the premises for a parking lot.

ARTICLE VIII

Repair and Maintenance; Indemnification of Lessor

Liability Insurance

Section 8.1: Liens: Lessor shall, during the term of this lease, promptly remove or release, by the posting of a bond as either required or permitted by law, any lien against the premises or any portion thereof arising by reason of any fault or omission on the part of the Lessor, and shall save and hold Lessee harmless from or against any such lien. In the event any such lien does attach against the premises, and shall not be released as aforescribed within fifteen (15) days after notice thereof, Lessee, in Lessee's sole discretion, may pay and discharge the same and relieve the premises therefrom; thereafter, Lessee may deduct from any rent such sum paid (including attorneys' fees) by Lessee in discharging such lien, which sum shall include interest at the rate of one (5%) per cent above the prime lending rate as established by the Wall Street Journal per annum from the date such lien is paid by Lessee until the date Lessee is reimbursed by Lessor. Notwithstanding the foregoing, Lessor may contest any such lien or claim of lien upon furnishing Lessee with a valid and sufficient bond issued by a reputable bonding or surety company legally qualified to do business in the State of South

Carolina, indemnifying Lessee against any loss, liability or damage on account thereof.

Section 8.2: Indemnification: Lessor hereby indemnifies and agrees to hold Lessee harmless from and against any and all injuries sustained on the premises while occupied by the Lessee or Lessor, and any and all actions, claims and demands arising out of the use, occupancy, or non-use of the premises as herein provided, including, but without limitation of the foregoing; any carelessness, negligence, improper conduct or breach of this lease by Lessor or its agents, employees, patrons, suppliers, or assigns, and all costs, expenses and fees, including attorneys' fees, incurred by Lessor incident thereto.

Section 8.3: Insurance: To further protect Lessee and assure compliance by Lessor with the foregoing provisions of this agreement, Lessor shall obtain and maintain at all times during the term hereof, with a responsible insurer, for the benefit of Lessor and Lessee as their respective interests may appear, comprehensive general liability insurance against any loss or liability for damages and any expense of defendant against any claim for damages which might result from the use or occupation or condition of the premises and those premises of the Lessor used for ingress and egress by the Lessee, its agents, employees, customers, suppliers, or assigns, in such amount or amounts as shall not be less than is customary and usual for operations of the type, character and scope to be carried on by Lessee on the premises, but in no event in amounts affording protection of less than One Million and No/100 (\$1,000,000.00) Dollars in respect to any injury to or death of one person, One Million and No/100 (\$1,000,000.00) Dollars in respect of personal injuries or death occurring as a result or arising out of one accident or event, and Fifty Thousand and No/100 (\$50,000.00) Dollars in respect of property damages. Lessor shall furnish a copy of such insurance policy and renewals thereof to Lessee.

ARTICLE IX

Personal Property on the Premises:

Lessee's Rights Therein

Section 9.1: Personal Property: Lessee, at its sole costs and expense, may place or install such fixtures, equipment and other personal property on the premises as Lessee shall deem necessary for the efficient conduct of the business to be carried on thereon or therefrom. Lessee may also, at its sole cost and expense, (1) place a sign or signs on the premises announcing the business to be carried on therein or therefrom; the size and shape of said sign and (2) place such sign or signs on the premises as may establish a definite landmark for said business or appropriately advertise the same.

Section 9.2: Lessee's Rights: All of the aforementioned personal property shall at all times be and remain the personal property of Lessee, regardless of the manner in which any or all of the said personal property may be affixed or attached to the premises. Accordingly, in the event any such personal property purchased by Lessee shall at the time of or as a result of said purchase be subject to a purchase money security interest or other security interest, Lessor's rights in such personal property, if any, shall be subject and subordinate thereto. The foregoing provisions for the subordination of Lessor's interest is intended to be self-operative; nevertheless, at Lessee's request, Lessor shall execute such document or documents as may further evidence the subordination of Lessor's interest.

ARTICLE X

Assignment and Subletting

Section 10.1: Assignment: The Lessee shall have the right to assign its interest in this lease, or any part thereof, to any person, corporation, partnership, association or other entity.

Section 10.2: Subletting: The Lessee shall have the right to sublet the premises.

ARTICLE XI

Default: Lessor's Remedies

Section 11.1: Default: It shall be an event of default by Lessee hereunder if Lessee shall fail to pay the rent within 60 days after notice.

ARTICLE XII

Subrogation

Section 12.1: Lessor and Lessee, to the maximum extent permitted by insurance policies owned by lessor or which may be acquired by lessee, do waive for the benefit of each other all rights of subrogation which any insurer of either may otherwise have.

ARTICLE XIII

Binding Effect: Successors and Assigns

Section 13.1: This lease shall be binding upon, and inure to the benefit of, the parties hereto, Lessee's successors and assigns and Lessor's successors and assigns.

ARTICLE XIV

Notice: payments

Section 14.1: Notices: Any and all notices, requests or demands required hereunder shall be in writing and shall be delivered in person or sent by United States certified or registered mail (return receipt requested), addressed as follows:

If to Lessor:

2347 SOL LEGARE ROAD

CHARLESTON, SC 29412

If to Lessee:

2162 Westriver Drive
Charleston, SC 29412-2091

Any such notice, request or demand shall be effective as of the date the same is received. The address of either party hereinabove set forth may be changed from time to time by giving written notice in that regard.

Section 14.2: Payments: All payments required to be made hereunder shall be made at the appropriate address hereinabove set forth or to such other address as either of the parties may from time to time specify in writing.

ARTICLE XV

Entire Agreement Herein

or Changes Waivers

Section 15.1: This lease shall be deemed to include the entire agreement between the parties hereto and no waiver of any right, agreement or condition hereof and no modification hereof shall be binding upon either of the parties hereto unless in writing

and signed by the party to be charged therewith. Any waiver agreed upon shall be limited to the particular instance and shall not be deemed to waive any other breaches of such right, agreement or condition herein contained.

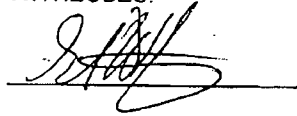
ARTICLE XVI

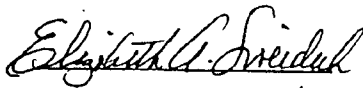
Headings

Section 16.1: The headings as to the contents of particular Articles and Sections herein are inserted only for convenience and are in no way to be construed as part of this lease or as a limitation on the scope of the particular Articles or Section to which they refer.

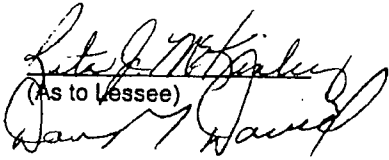
IN WITNESS WHEREOF, the parties hereto have executed this Lease and Agreement at Charleston, South Carolina, the day and year first above written.

WITNESSES:





(As to Lessor)

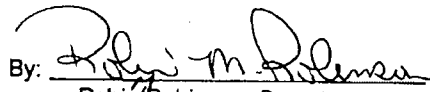


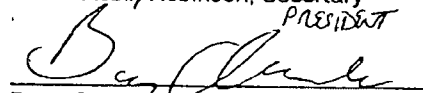
(As to Lessee)

GROUP INVESTMENT COMPANY, INC.
Lessor

By: 

By: 
John Robinson, President

By: 
Robin Robinson, Secretary
PRESIDENT


Barry Clarke, Lessee

BK C 319PG801

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGEMENT

I hereby acknowledge that Robin M. Robinson, as President of Group Investment Company, Inc., and Barry Clarke personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

SWORN to before me this

2th day of January, 1999.

Rita J. McKelvey (SEAL)
Notary Public for South Carolina
My Commission Expires: 9/22/2007

Exhibit A

ALL that piece, parcel or tract of land, situate, lying and being in Charleston County, South Carolina, known and designated as "Tract "AB", 1.610 Acres, Property of Group Investment Company, Inc., TMS 466-16-00-0011" on a plat entitled "Plat Showing TMS 466-16-00-011, being subdivided into Tracts "AB" and AB.1", Property of Group Investment Company, Inc., Located North Charleston public Service District, Charleston County, SC", made by Davis & Floyd, Inc., dated January 19, 1989 and recorded in the RMC Office for Charleston County in Plat Book CE, page 116, said tract having such size, shape, dimensions, buttings and boundings as will reference to said plat more fully and at large appear.

Being the same premises conveyed to Group Investment Company, Inc., by deed of Cheryl Robinson, dba C. R. Intermodel, recorded in the RMC Office for Charleston County on February 18, 1997 in Book D280, Page 27.

Dan David

BK C 319PG803

~~g~~
w

FILED

C319-791

99 JAN 27 PM 12:07

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

18.0
4

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
Ninth Judicial Circuit

ROBIN M. ROBINSON and RRJR, LLC,
Plaintiffs,

C/A No.: 2014-CP-10-1035

v.

FINE HOUSING, INC.,

Defendant/Third Party
Plaintiff,

v.

ANTHONY FOGLE a/k/a ANTHONY LEE
FOGLE, DANIEL DEHAVEN and THE
UNITED STATES OF AMERICA acting
through the INTERNAL REVENUE
SERVICE and THE SOUTH CAROLINA
DEPARTMENT OF REVENUE

Third Party Defendants.

FILED
2015 JAN -9 PM 3:24
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

STIPULATION OF DISMISSAL

PURSUANT to Rule 41(a) SCRPC, the undersigned Plaintiffs, Robin M. Robinson and RRJR, LLC, and the undersigned as attorneys for Defendant / Third Party Plaintiff, Fine Housing, Inc., and Third Party Defendants Anthony Fogle a/k/a Anthony Lee Fogle, Daniel Dehaven, The United States of America acting through the Internal Revenue Service, and The South Carolina Department of Revenue, hereby stipulate the captioned matter is dismissed with prejudice, pursuant to S.C. Code Ann. § 15-11-40.

WE SO STIPULATE:

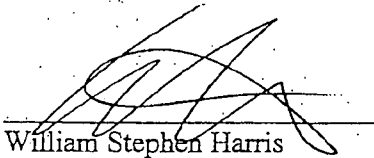

Robin M. Robinson, *Pro Se*

Robinson

Civil Action Number: 2014-CP-10-1035

Page 2 of 7

WE SO STIPULATE:

A handwritten signature in black ink, appearing to read 'William Stephen Harris', is written over a horizontal line.

William Stephen Harris

Harris & Huge, LLC

180 Spring Street

Charleston, SC 29403

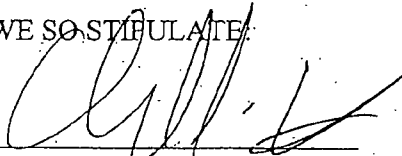
Attorney for RRJR, LLC

Robinson

Civil Action Number: 2014-CP-10-1035

Page 3 of 7

WE SO STIPULATE:

A handwritten signature in black ink, appearing to read 'C. Altman', written over a horizontal line.

Charles S. Altman

Altman & Coker, LLC

575 King Street, Suite A

Charleston, South Carolina 29403

Attorney for Fine Housing, Inc.

Robinson, et al, v. Fine Housing, et al.
Civil Action Number: 2014-CP-10-1035
Page 4 of 8

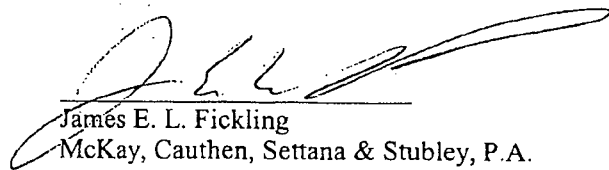
WE SO STIPULATE:

*NO SIGNATURE NECESSARY AS NO ANSWER
WAS FILED ON BEHALF OF ANTHONY FOGLE
AND HE WAS THEREFORE DISMISSED FROM
THE ACTION PURSUANT TO SCRCP 41(a)(1)*

Anthony Fogle a/k/a
Anthony Lee Fogle a/k/a
Anthony Fogler, *Pro Se*

Robinson, et al, v. Fine Housing, et al.
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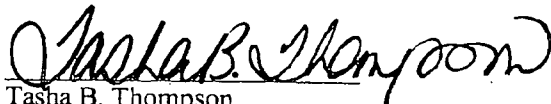
WE SO STIPULATE:



James E. L. Fickling
McKay, Cauthen, Settana & Stublely, P.A.
1303 Blanding Street
Columbia, SC 29201
Attorney for Daniel DeHaven

Robinson, et al, v. Fine Housing, et al.
Civil Action Number: 2014-CP-10-1035
Page 6 of 7

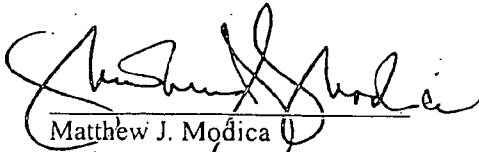
WE SO STIPULATE:

A handwritten signature in black ink, reading "Tasha B. Thompson". The signature is written in a cursive style with a large, stylized "T" and "H".

Tasha B. Thompson
Office of General Counsel for Litigation
PO Box 12265
Columbia, SC 29211
Attorney for S.C. Department of Revenue

Robinson, et al, v. Fine Housing, et al.
Civil Action Number: 2014-CP-10-1035
Page 7 of 7

WE SO STIPULATE:

A handwritten signature in black ink, appearing to read "Matthew J. Modica", written over a horizontal line.

Matthew J. Modica
Assistant United States Attorney
151 Meeting Street, Suite 200
Charleston, SC 29402
Attorney for US IRS

J. Al Cannon, Jr., Esq.
Sheriff, Charleston County



Special Operations Department
100 Broad Street
Charleston, SC 29401-2206

3038

Attorney or Party Without Attorney: BELK COBB INFINGER & GOLDSTEIN PA PO BOX 71121 CHARLESTON, SC 29415-1121 Att For: CLARKE, BARRY		Telephone No. 843-554-4291	Court Use Only JULIE J. ARMSTRONG CLERK OF COURT 2015 JUL -6 PM 2:21 FILED
Name and Address of Court: CHARLESTON COUNTY COURT OF COMMON PLEAS		SHERIFF NO. CIOT-15006414-001	
Plaintiff: BARRY CLARKE			
Defendant: FINE HOUSING, INC AND RRJR, LLC			
PROOF OF SERVICE (CIVIL OTHER)	Hearing Date 0/00/00	Time	Case Number 2015CP103038

I, J. AL CANNON, JR., ESQ., SHERIFF in and for said County and State, do hereby certify that I have received the annexed:

CIVIL OTHER: LIS PENDENS; SUMMONS; COMPLAINT; LEASE AND AGREEMENT;
ACKNOWLEDGEMENT; EXHIBITS; STIPULATION OF DISMISSAL

on the 3rd day of JUNE, 2015, and that I served the same on the 24th day of JUNE, 2015, at the hour of 12:10 PM within the County of CHARLESTON, State of SOUTH CAROLINA, as follows on:

PARTY TO SERVE: FINE HOUSING, INC
PERSON SERVED: C/O REG. AGENT CHARLESS. ALTMAN

BY DELIVERING TO THE DEFENDANT(S) OR PERSON(S) NAMED ABOVE, A COPY.

Address Served: 575 KING STREET APT: A
CHARLESTON, SC 29403

Service By GREEN, B.

SHERIFF'S FEES	Charges
SERVICE FEE	15.00
*** TOTALS ***	15.00

I am a SOUTH CAROLINA SHERIFF,
and I certify that the foregoing
is true and correct.

ATTEST OF CERTIFIED TRUE COPY

J. AL CANNON, JR., ESQ., SHERIFF
COUNTY OF CHARLESTON
STATE OF SOUTH CAROLINA

NOTARY PUBLIC SOUTH CAROLINA

DATE: 6/26/15

MY COMMISSION EXPIRES: 10/29/17

BY: *Beth*

AFFIDAVIT OF SERVICE

State of South Carolina

County of Charleston

Common Pleas Court

Case Number: 2015-CP-10-3038

Plaintiff:

BARRY CLARKE

vs.

Defendant:

FINE HOUSING, INC AND RRJR, LLC

For:

Thomas R. Goldstein, Esq.

Belk, Cobb, Infinger & Goldstein

P. O. Box 71121

Charleston, SC 29415-1121

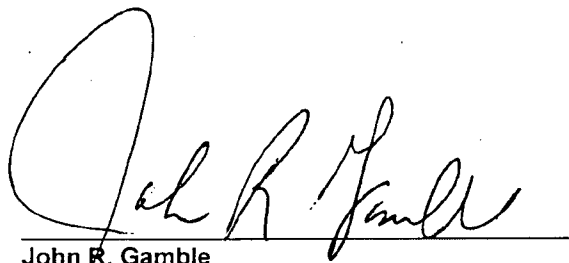
FILED
2015 JUL -6 PM 2:21
JULIE J. ARMSTRONG
CLERK OF COURT

Received by PROCESS SERVICE, INC. to be served on FINE HOUSING INC, 575 KING ST. SUITE A, CHARLESTON, SC 29403.

I, John R. Gamble, being duly sworn, depose and say that on the **25th day of June, 2015** at 12:05 pm, I:

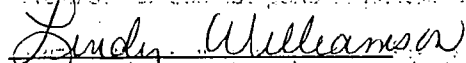
SERVED the within named CORPORATION by delivering a true copy of the **LIS PENDENS (TMS# 466-16-00-011); SUMMONS; COMPLAINT; LEASE AND AGREEMENT; STIPULATION OF DISMISSAL (C/A nO: 2014-CP-10-1035) HARRIS,ALTMAN, FOGEL,FICKLING,THOMPSON, MODICA** with the date and hour of service endorsed hereon by me to **CHARLES S ALTMAN, REGISTERED AGENT FOR SERVICE OF PROCESS** for **FINE HOUSING INC at FINE HOUSING , INC., 575 KING ST. SUITE A, CHARLESTON, SC 29403**

I, am over eighteen and have no interest in the above action.



John R. Gamble
PROCESS SERVER

Subscribed and Sworn to before me on the 26th day of June, 2015 by the affiant who is personally known to me



NOTARY PUBLIC

Commission Expires: 5-6-19

PROCESS SERVICE, INC.
P.O. Box 20097
Charleston, SC 29413
(843) 577-2355

Our Job Serial Number: LEX-2015001548

AFFIDAVIT OF SERVICE

State of South Carolina

County of Charleston

Common Pleas Court

Case Number: 2015-CP-10-3038

Plaintiff:

BARRY CLARKE

vs.

Defendant:

FINE HOUSING, INC AND RRJR, LLC

For:

Thomas R. Goldstein, Esq.
Belk, Cobb, Infinger & Goldstein
P. O. Box 71121
Charleston, SC 29415-1121

Received by PROCESS SERVICE, INC. to be served on RRJR, LLC, 2905 BARRINGTON LANE, CHARLESTON, SC 29414.

I, Doug Wells, being duly sworn, depose and say that on the 29th day of June, 2015 at 11:55 am, I:

PERSONALLY served by delivering a true copy of the LIS PENDENS (TMS# 466-16-00-011); SUMMONS; COMPLAINT; LEASE AND AGREEMENT; STIPULATION OF DISMISSAL (C/A nO: 2014-CP-10-1035) HARRIS, ALTMAN, FOGEL, FICKLING, THOMPSON, MODICA with the date and hour of service endorsed thereon by me, to: **ROBIN ROBINSON** at the address of: **PARKING LOT EAST SHORE ATHLETIC CLUB, 466 SAVANNAH HIGHWAY, CHARLESTON, SC 29407**, and informed said person of the contents therein.

I am over eighteen and have no interest in the above action.

Subscribed and Sworn to before me on the 29th day of June, 2015 by the affiant who is personally known to me.

Linda Williamson
NOTARY PUBLIC

Commission Expires: 5-6-19

Doug Wells
Doug Wells
Process Server

PROCESS SERVICE, INC.
P.O. Box 20097
Charleston, SC 29413
(843) 577-2355

Our Job Serial Number: LEX-2015001547

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Case No.: 2015-CP-10-3038

Barry Clarke,)

Plaintiffs,)

vs.)

Affidavit of Default

Fine Housing, Inc., and)
RRJR, LLC,)

Defendants.)

FILED
2015 AUG -3 PM 2:08
JULIE J. ARMSTRONG
CLERK OF COURT

PERSONALLY APPEARED before me, Thomas R. Goldstein, who being duly sworn, deposes and says:

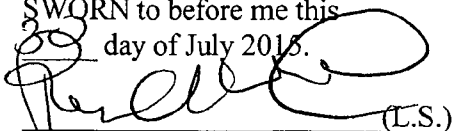
1. That he represents the Plaintiff in the within action and is familiar with all of the proceedings herein.
2. That Defendant, RRJR, LLC was served a copy of the Summons and Complaint and Lis Pendens on June 29, 2015, by reference of affidavit of service attached hereto.
3. That more than thirty (30) days have elapsed since the service of the Summons and Complaint and Lis Pendens and the Defendant, has failed to answer said Summons and Complaint.

July 30, 2015



Thomas R. Goldstein, Esq.
BELK COBB INFINGER & GOLDSTEIN P.A.
Post Office Box 71121
Charleston, South Carolina 29415-1121
(843) 554-4291 (843) 554-5566 fax
ATTORNEYS FOR PLAINTIFF

SWORN to before me this
29 day of July 2015.



(L.S.)

Notary Public for South Carolina

My Commission Expires: 10/30/2016

AFFIDAVIT OF SERVICE

State of South Carolina

County of Charleston

Common Pleas Court

Case Number: 2015-CP-10-3038

Plaintiff:

BARRY CLARKE

vs.

Defendant:

FINE HOUSING, INC AND RRJR, LLC

For:

Thomas R. Goldstein, Esq.
Belk, Cobb, Infinger & Goldstein
P. O. Box 71121
Charleston, SC 29415-1121

Received by PROCESS SERVICE, INC. to be served on RRJR, LLC, 2905 BARRINGTON LANE, CHARLESTON, SC 29414.

I, Doug Wells, being duly sworn, depose and say that on the 29th day of June, 2015 at 11:55 am, I:

PERSONALLY served by delivering a true copy of the **LIS PENDENS (TMS# 466-16-00-011); SUMMONS; COMPLAINT; LEASE AND AGREEMENT; STIPULATION OF DISMISSAL (C/A nO: 2014-CP-10-1035) HARRIS,ALTMAN, FOGEL,FICKLING,THOMPSON, MODICA** with the date and hour of service endorsed thereon by me, to: **ROBIN ROBINSON** at the address of: **PARKING LOT EAST SHORE ATHLETIC CLUB, 466 SAVANNAH HIGHWAY, CHARLESTON, SC 29407**, and informed said person of the contents therein.

I am over eighteen and have no interest in the above action.

Subscribed and Sworn to before me on the 29th day of June, 2015 by the affiant who is personally known to me.

Linda Williamson
NOTARY PUBLIC
Commission Expires: 5-6-19

Doug Wells
Doug Wells
Process Server

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P.O. Box 20097
Charleston, SC 29413
(843) 577-2355

Our Job Serial Number: LEX-2015001547

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Barry Clarke,

Plaintiff,

v.

Fine Housing, Inc. and RRJR, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2015-CP-10-03038

ANSWER OF FINE HOUSING, INC.

FILED
2015 SEP -2 PM 1:07
JULIE J. ARMSTRONG
CLERK OF COURT
BY

The Defendant Fine Housing, Inc. ("Fine Housing"), answering the Complaint of the Plaintiff Barry Clarke ("Plaintiff"), provides as follows:

FOR A FIRST DEFENSE TO ALL CAUSES OF ACTION

1. Each and every allegation contained in the Plaintiff's Complaint not specifically admitted, qualified, or explained is hereby denied.
2. References to paragraphs contained in this Answer are references to the paragraphs in the Plaintiff's Complaint unless specifically stated otherwise.
3. Fine Housing is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained in Paragraph 1 and therefore denies them.
4. As to the allegations contained in Paragraph 2, Fine Housing admits the allegations as they relate to Fine Housing; but, is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations as they relate to Defendant RRJR, LLC and therefore denies them.
5. Fine Housing admits the allegations contained in Paragraph 3.
6. Fine Housing admits the allegations contained in Paragraph 4.
7. Fine Housing admits the allegations contained in Paragraph 5.
8. As to the allegations related to the terms and conditions of the Lease contained in Paragraph 6, Fine Housing makes reference to the terms and conditions of the Lease and denies any allegations inconsistent with those terms.

9. As to the allegations contained in Paragraph 7, Fine Housing makes reference to the deed recorded in the R.M.C. Office for Charleston County recorded April 26, 2007 in deed Book H 623 at Page 181 and denies any allegations inconsistent with the deed; denies the allegation that the deed conveyance was a change in name only.

10. Further responding to the allegations contained in Paragraph 7, Fine Housing provides that it is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations relating to John Robinson's or Robin Robinson's interest and/or role in Group Investment Company, Inc. and therefore denies them

11. Further responding to the allegations contained in Paragraph 7, Fine Housing provides that it is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations that the Robinsons did not give notice to the Plaintiff of the conveyance of the subject property to Fine Housing, and therefore denies them.

12. Further responding to the allegations contained in Paragraph 7, Fine Housing provides that it is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations that the Plaintiff continued to pay the lease payments to the Robinsons, and therefore denies them.

13. Fine Housing is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained in Paragraph 8 and therefore denies them.

14. As to the allegations contained in Paragraph 9, Fine Housing is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations that Ms. Robinson encountered financial difficulty following John Robinson's death and therefore denies them.

15. Further responding to the allegations contained in Paragraph 9, Fine Housing denies the allegations that Ms. Robinson and Fine Housing entered into a loan arrangement in which Fine Housing loaned Ms. Robinson money secured by two parcels of real estate.

16. Further responding to the allegations contained in Paragraph 9, Fine Housing admits that on December 2, 2013, Robin Robinson executed a deed to Fine

Housing, Inc., recorded December 9, 2013, in the R.M.C. Office for Charleston County at Deed Book 0377 at Page 843.

17. Further responding to the allegations contained in Paragraph 9, Fine Housing does not have sufficient information or knowledge to form a belief as to whether or not the Plaintiff received notice of the deed from RRJR, LLC to Fine Housing, Inc. and therefore denies the portion of Paragraph 9 that asserts lack of notice of that deed.

18. As to Robin Robinson's contentions related to the facts in the case bearing docket number 2014-CP-10-01035 as alleged in Paragraph 10, Fine Housing makes reference to the records in those proceedings and denies any allegations inconsistent with those records.

19. As to the allegations contained in Paragraph 11, Fine Housing admits that the case bearing docket number 2014-CP-10-01035 was ended by stipulation of dismissal; but denies the balance of allegations contained in Paragraph 11.

20. Further responding to Paragraph 11, Fine Housing affirmatively alleges that the Plaintiff was aware of the December 2, 2013 transfer of the property from RRJR, LLC to Fine Housing, Inc. in April of 2014, or earlier; but made no claim until April 2015 under the alleged right of first refusal.

21. Fine Housing denies the allegations contained in Paragraph 12.

22. Fine Housing is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained in Paragraph 13 and therefore denies them.

23. As to the allegations contained in Paragraph 14, Fine Housing admits that the Plaintiff has made offers to purchase the real property that is the subject of this action; but, as to the balance of the allegations contained in Paragraph 14, Fine Housing advances that the allegations are too uncertain to frame a response and Fine Housing, therefore, denies them.

24. Fine Housing is without sufficient information or knowledge upon which to form a belief as to the truth of the allegations contained in Paragraph 15 and therefore denies them.

25. Fine Housing denies the allegations contained in Paragraph 16 and affirmatively alleges that the Plaintiff is not entitled to relief, at law or in equity, against Fine Housing.

26. Fine Housing denies the allegations contained in Paragraph 17.

FOR A SECOND DEFENSE

27. Each and every allegation above consistent with this defense is hereby re-alleged as if fully set forth herein verbatim.

27. The Plaintiff fails to state facts sufficient to constitute a cause of action.

FOR A THIRD DEFENSE

29. Each and every allegation above consistent with this defense is hereby re-alleged as if fully set forth herein verbatim.

30. The terms of the contract that the Plaintiff seeks to enforce are too uncertain and indefinite to be enforced.

FOR A FOURTH DEFENSE

31. Each and every allegation above consistent with this defense is hereby re-alleged as if fully set forth herein verbatim.

32. The Plaintiff's claims are barred by the doctrine of waiver.

FOR A FIFTH DEFENSE

33. Each and every allegation above consistent with this defense is hereby re-alleged as if fully set forth herein verbatim.

34. The Plaintiff's claims are barred by the doctrine of laches.

FOR A SIXTH DEFENSE

35. Each and every allegation above consistent with this defense is hereby re-alleged as if fully set forth herein verbatim.

36. The Plaintiff's claims are barred by the doctrine of estoppel.

FOR A SEVENTH DEFENSE

37. Each and every allegation above consistent with this defense is hereby re-alleged as if fully set forth herein verbatim.

38. Any breach of the alleged lease was preceded by a breach by the Plaintiff.

39. The breach of the lease by the Plaintiff excuses any alleged breach by either of the Defendants.

FOR AN EIGHTH DEFENSE

40. Each and every allegation above consistent with this defense is hereby re-alleged as if fully set forth herein verbatim.

41. The Plaintiff's claim is barred by the applicable Statute of Limitations.

WHEREFORE, having fully answered the Plaintiff's Complaint, the Defendant Fine Housing, Inc. prays that the Court dismiss the Plaintiff's Complaint and direct that the Plaintiff pay the costs of this action.



W. Cliff Moore, III (SC Bar No. 4067)

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Attorney for Defendant Fine Housing, Inc.

August 31, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Barry Clarke,

Plaintiff,

v.

Fine Housing, Inc. and RRJR, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2015-CP-10-03038

NOTICE OF MOTION AND MOTION
FOR SUMMARY JUDGMENT OF
DEFENDANT FINE HOUSING, INC.

FILED
2016 MAR 25 PM 2:21
JULIA H. STRONG
CLERK OF COURT

**TO: THOMAS R. GOLDSTEIN AND ASHLEY G. ANDREWS, ATTORNEYS
FOR PLAINTIFF:**

YOU WILL PLEASE TAKE NOTICE that ten (10) days after the service of this Notice, or as soon thereafter as counsel may be heard, Fine Housing, Inc. (hereinafter "Fine Housing") will move pursuant to Rule 56, SCRCP, for an Order granting it Summary Judgment. Fine Housing requests Summary Judgment for the reason that the right of first refusal that the Plaintiff seeks to enforce is an unreasonable restraint on the power of alienation of the real property affected by it. As such, the alleged right violates the public policy of the State of South Carolina and has no force and effect. Since the right the Plaintiff advances has no force and effect, it is unenforceable. Accordingly, there is no genuine issue as to any material fact in this matter and that Fine Housing is entitled to judgment in its favor as a matter of law.

This matter is an action by Mr. Clarke to require Fine Housing to transfer to him real property commonly known as 2028 Pittsburgh Avenue, Charleston, SC (the "Property"). Mr. Clark claims that he is entitled to purchase the property from Fine Housing on payment of "an amount greater than the purchase price as required by Article V of the recorded lease¹" (Complaint, ¶ 15) pursuant to the terms and conditions of a Lease between Mr. Clarke and Group Investment Company, Inc., Fine Housing's predecessor in title to the Property. The provision of the Lease on which Mr. Clark seeks performance simply states:

¹ No purchase price is mentioned in Article V of the recorded lease.

Section 5.2: Right of First Refusal: Lessor grants the Lessee the right of first refusal should it wish to sell.

There is no more. That is the entire right that Mr. Clarke seeks to enforce.

Assuming, for purposes of this argument only, that the Lease provisions encumber the Property, the offered Right of First Refusal is an unenforceable restraint on alienation. Fine Housing is therefore entitled to Summary Judgment on the claims advanced by Mr. Clarke in his Complaint.

A right of first refusal on real property is a pre-emptive right and pre-emptive rights are subject to rules against restraints on alienation. Page v. Page, No. 2004-UP-110 (Ct. App. 2004 Unpublished Opinion), *citing* Webb v. Reames, 326 SC 444, 446, 485 S.E.2d 306, 308 (1982) and 61 Am.Jur. 2d Perpetuities and Restraints on Alienation §110 (2002). “A right of first refusal ... is not a restraint on alienation, as long as both the price that the designated person must pay, and the time allowed for the exercise of the right of first refusal are reasonable.” Page, at 2, *citing* 61 Am.Jur. 2d Perpetuities and Restraints on Alienation §110 (2002). Conversely, “any restraint on alienation in the form of a right of first refusal that is not specific in all required elements – legitimacy of purpose, price, and detailed procedures” is an “unreasonable limitation upon the power of alienation”. Page, at 2. Such restraints violate public policy and are unenforceable. Id., *citing* McCravey v. Otts, 90 S.C. 447, 74 S.E. 142 (1912) and Wise v. Poston, 281 S.C. 574, 316 E.E. 2d 412 (Ct.App. 1984).

In Page, the Court found that (1) there was testimony of a legitimate purpose – assuring that property remained in the family – and (2) the language creating the right identified the price to be paid by the person exercising the right. However the Page Court found that the document that created the right did not describe the procedure for exercising the right. Because of that single omission, the Court found that the offered right of first refusal was an unenforceable restraint on alienation.

Here the offered Right of First Refusal does not mention the price that Mr. Clarke must pay on exercise of the right. It does not identify any procedure for notifying Mr. Clarke of the intent to sell or for Mr. Clarke to exercise the claimed right. Finally, it identifies no purpose for the right, legitimate or otherwise. Assuming, for argument

purposes only, that Mr. Clarke could offer testimony as to a legitimate purpose for the grant of the right, the failure of the Lease to state the price and the procedures for notification and exercising the right is fatal. The Right of First Refusal advanced by Mr. Clarke is unenforceable.

Without the Right of First Refusal identified in his Complaint, Mr. Clarke has no claim to the Property and Fine Housing is therefore entitled to Summary Judgment.

The Motion of Fine Housing is based on applicable common and statutory law, the Lease, the pleadings filed in this action and the deposition of Mr. Clarke.



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Attorney for Defendant Fine Housing, Inc.

May 2, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Barry Clarke,

Plaintiff,

v.

Fine Housing, Inc. and RRJR, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2015-CP-10-03038

**MEMORANDUM IN SUPPORT OF
THE MOTION FOR SUMMARY
JUDGMENT BY THE DEFENDANT
FINE HOUSING, INC.**

AND

**OPPOSING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

FILED
JUL 15 PM 3:02
CLERK OF COURT
BY

OVERVIEW

The Defendant Fine Housing, Inc. ("Fine Housing") filed its Motion for Summary Judgment on May 5, 2016. The Plaintiff ("Clarke") served his Motion for Summary Judgment by mail on June 17, 2016.

Fine Housing believes that, as a matter of law, the one sentence of the contract that Clarke asks the Court to enforce - **Lessor grants the Lessee the right of first refusal should it wish to sell** - is unenforceable as a matter of law.

Clarke argues that Fine Housing is not entitled to summary judgment, suggesting that legal authority weighs against Fine Housing's request. Alternatively, Clarke suggests that he is entitled to Summary Judgment and supports his argument with contested facts, no legal authority, and confusing arguments that seem to work against the relief requested.

The length of this Memorandum, alone, may suggest that there are questions of fact that need to be decided. That is not Fine Housing's message. The length of this memorandum is necessary to show the Court, point by point, that the confusing arguments advanced by Clarke are intended to cloud the simple issue that Fine Housing puts before the Court.

BACKGROUND

This matter involves Clarke's efforts to enforce a right of first refusal (the "Right"). Clarke alleges that the Right is contained in a Lease for one-half (1/2) of the parking spaces on real property located at 2028 Pittsburg Avenue, Charleston, South Carolina (the "Lease"). Clarke is the tenant under the Lease. The landlord on the Lease

is Group Investment Company, Inc. Fine Housing currently owns 2028 Pittsburg Avenue. It acquired that property from RRJR, LLC who had acquired it from Group Investment Company, the landlord listed in the Lease.

Clarke owns property near 2028 Pittsburg Avenue and the customers of the establishment on the Clarke property use the leased parking spaces. Clarke maintains that, while the Lease is for only some of the parking spaces, the Right relates to the complete fee simple title to 2028 Pittsburg Avenue.

Fine Housing focuses on one point in its Summary Judgment Motion – the enforceability of the Right as stated in the Lease. Fine Housing succinctly states why the Right is an unenforceable restraint on alienation - it lacks the specificity required to be enforceable. Without an enforceable Right, Clarke is not entitled to the relief he requests in his Complaint.

Clarke also requests that Summary Judgment be entered in his favor. Clarke's Summary Judgment Motion asks the Court to enforce the Right by imposing terms not found in the Right or the Lease and adopting Clarke's understanding of how the Right should be enforced. To get to that conclusion, Clark offers contested facts, misstates Fine Housing's position, misrepresents legal authority, and makes arguments that, if believed, destroy his possibility of securing the relief he requests in his Complaint. There is no authority in law or fact that would allow Clarke the Summary Judgment relief requested.

ARGUMENT

Response to the Clarke's Challenges to Fine Housing's Summary Judgment Motion

The Plaintiff's Motion for Summary Judgment clearly states the factual and legal basis for Summary Judgment in its Motion. The following is why Clarke's challenges to Fine Housing's should not succeed.

1. The facts that Clarke offers are not needed to address Fine Housing's Motion.

In this action, Clarke's sole demand is for an Order of this Court to enforce the Right. The only fact relevant to Fine Housing's motion is the language of the right. It is one sentence - "Lessor grants the Lessee the right of first refusal should it wish to sell." Fine Housing's position is that this language is not enforceable because it does not state the price at which the Right is exercised, how the Right is exercised, and the purpose of

the Right. *Page v. Page*, No. 2004-P-110 (Ct.App. 2004 Unpublished Opinion); *Webb v. Reames*, 326 S.C. 444, 446, 485 S.E.2d 384, 385 (Ct.App. 1997). None of the facts suggested by Clarke would change this conclusion.

2. Clarke misrepresents the substance of the decisions offered to the Court in support of his position.

a. The cases cited by Clarke do not uphold rights of first refusal.

On page 8 of his Memorandum Clarke states “[i]n upholding a right of first refusal in a case similar to this one, the Court of Appeals said...” and follows that statement with a block cite that references 24 cases. None of these cases “uphold a right of first refusal” as represented by Clarke.¹ None of these cases is even similar to the matter before the Court.

¹ *Southern Atl. Fin. Servs., Inc. v. Middleton*, 349 S.C. 77, 562 S.E.2d 482 (Ct. App. 2002) is a mortgage foreclosure matter addressing whether a borrower is entitled to written notice of default and right to cure prior to acceleration on a note.

D.A. Davis Const. Co., Inc. v. Palmetto Props., Inc., 281 S.C. 415, 315 S.E. 2d 370 (1984) is a mechanic's lien foreclosure case that addresses the issue of whether contract cost overruns are recoverable.

Williams v. Teran, Inc., 266 S.C. 55, 221 S.E.2d 526 (1976) is a mortgage foreclosure action on a motel that decides on the proper construction of a guaranty agreement.

RentCo., a Div. of Fruehauf Cor., v. Tamway Corp., 283 S.C. 265, 321 S.E.2d 199 (Ct.App. 1984) concerns damages to a leased vehicle and enforceability of the terms of a parole agreement concerning insurance.

Mishoe v. Gen. Motors Acceptance Corp., 234 S.C. 182, 107 S.E.2d 43 (1958) involves the interpretation of a conditional sales contract on an automobile.

Schulmeyer v. State Farm Fire & Cas. Co., 353 S.C. 491, 579 S.E.2d 132 (2003) is the S.C. Supreme Court response to certified questions from the U.S. District Court on the interpretation of terms of an automobile insurance policy.

C.A.N. Enterprises, Inc. v. S.C. Health & Human Services Fin. Comm'n., 296 S.C. 373, 373 S.E.2d 584 (1988) is a decision on the interpretation of a contract between the S.C. Health and Human Services Financial Commission and Oakmont Nursing Centers as the contract relates to overpayment of Medicaid Funds.

Jacobs v. Service Merch. Co., 297 S.C. 123, 375 S.E.2d 1 (Ct. App. 1988), concerns the interpretation of an easement agreement to determine who is entitled to use the easement.

Superior Auto. Ins. Co. v. Maners, 261 S.C. 257, 199 S.E.2d 719 (1973) addresses the priority of the liens of a mortgage and a judgment creditor in a foreclosure action.

Blakeley v. Rabon, 266 S.C. 68, 221 S.E.2d 767 (1976) involves the construction of an indemnity clause in a contract for the sale of a partnership interest.

Ellie Inc. v. Miccichi, 358 S.C. 78, 594 S.E.2d 485 (Ct.App.2004) addresses the interpretation of a lease of a bar and an agreement concerning revenues from gaming machines.

Kable v. Simmons, 217 S.C. 161, 60 S.E.2d 79 (1950) is a decision on the interpretation of letters exchanged in an effort to settle a partition action.

Thomas-McCain, Inc. v. Siter, 268 S.C. 193, 232 S.E.2d 728 (1977) is a case that involves a contract for a commission due to a real estate broker.

Barnacle Broadcasting, Inc. v. Baker Broadcasting, Inc., 343 S.C. 140, 538 S.E.2d 672 (Ct. App. 2000) is a decision on the interpretation of a contract for the sale of the assets of a radio station.

Of all the cases cited *Ecclesiastes Production Ministries* is the only case that mentions a right of first refusal in its fact pattern; but *Ecclesiastes Production Ministries* is not “factually similar to this case” as argued by Clarke. Clarke Memorandum, p.10. In that case, Ecclesiastes was a tenant of the property at issue and had a right of first refusal on the leased property. The landlord sold the property to a third party, ignoring Ecclesiastes’ right of first refusal. Ecclesiastes settled with the third party and in the settlement agreement released the third party on the promise to share the proceeds of the recovery against the landlord with that third party. At trial, the landlord received a directed verdict, successfully arguing that the release of the third party was a release of the landlord. The agreement addressed by the Court was the settlement agreement. The issue on appeal was the effect of the settlement agreement on the landlord. The appellate court did not address the right of first refusal. The terms of the right of first refusal are not even found in the opinion. The “facts” in *Ecclesiastes Production Ministries* involved the settlement agreement, not the right of first refusal.

Reyhani v. Stone Creek Cove Condominium II Horizontal Property Regime, 329 S.C. 206, 494 S.E.2d 465 (Ct.App. 1997) is an appeal of a decision in a declaratory judgment action deciding the ownership of a tract of land.

Klutts Resort Realty, Inc. v. Down 'Round Development Corporation, 268 S.C. 80, 232 S.E.2d 20 (1977) addresses the liability of a party on a contract of sale of real estate who only signed the addendum to the contract.

Bruce v. Blalock, 241 S.C. 155, 127 S.E.2d 439 (1962) involves the pricing of water in a contract between a water district and a public works commissioner.

Mattox v. Cassidy, 289 S.C. 57, 344 S.E.2d 620 (Ct.App. 1986) concerns the interpretation of a settlement agreement in a domestic action.

Brady v. Brady, 222 S.C. 242, 72 S.E.2d 193 (1952) involves a lease dispute that resolves the rights reserved to a landlord’s heirs to graze livestock.

Jordan v. Security Group, Inc., 311, S.C. 227, 428 S.E.2d 705 (1993) involves the construction of a settlement agreement concerning the production of corporate financial statements to shareholders.

Heins v. Heins, 344 S.C. 146, 543 S.E. 2d 224 (Ct.App.2001) concerns a settlement agreement in a divorce action.

Smith-Cooper v. Cooper, 344 S.C. 289, 543 S.E.2d 271 (Ct.App 2001) is another divorce action concerning a spousal support agreement.

Prestwick Golf Club, Inc. v. Prestwick Limited Partnership 331 S.C. 385, 503 S.E.2d 184 (Ct.App. 1998) is an unfair trade practice case between a golf club and its members over tee-time schedules.

Ecclesiastes Production Ministries v. Outparcel Associates, LLC, 374 S.C. 483, 649 S.E.2d 494 (Ct. App. 2007) addresses whether a settlement agreement entered between a party and a tortfeasor extends to a joint tortfeasor.

b. The *Page* Decision.

Clarke also misstates the decision made by the Court of Appeals in *Page v. Page*, No. 2004-UP-110 (Ct.App. 2004 Unpublished Opinion).² Clarke argues that *Page* “has no bearing on this matter because the issue in *Page* was a conveyance that did not contain a properly drawn reservation in a deed.” Clarke’s argument only acknowledges half of the decision in *Page*. That decision clearly reads:

We adopt a rule of strict construction in this case for two basic reasons. The first is that South Carolina has a long line of cases strongly expressing disfavor for subsequent clauses in deeds that purport to cut down a fee simple estate contained in the granting clause ... (citations omitted)... The second is that any restraint on alienation in the form of a right of first refusal that is not specific in all required elements – legitimacy of purpose, price, and detailed procedures – runs counter to the commonly acknowledged concept in this state that one of the attributes of fee simple ownership is the ability to freely convey it with few if any restrictions. Having held that the right of first refusal in this case constitutes an unreasonable limitation upon the power of alienation, it is therefore violative of the public policy of this state and has no force and effect... (citations omitted) (emphasis added).

Clarke completely ignores the “second basic reason” for the Court’s decision and it is this “second basic reason” that supports Fine Housing’s request for Summary Judgment.

In *Page*, the Court states that it relies on two cases to support the “second basic reason” for its decision – *McCravey v. Otts*, 90 S.C. 447, 74 S.E. 142 (1912) and *Wise v. Poston*, 281 S.C. 574, 316 S.E.2d 412 (Ct.App. 1984). Clarke dismisses these cases as “Wills Cases” that have no application because they address “restraints” on alienation and argues that the Right that Clarke wants the Court to enforce actually “promotes” alienation. Clarke provides no authority for this semantics argument, but tries to enhance it by further arguing “any tenant who has a right of first refusal is motivated to be more mindful of her tenancy because she has an interest in the property over and above merely paying rent.”³

² As a preliminary matter, Clarke argues that reliance on *Page* is prohibited, citing Rule 268, SCACR. The cited appellate court rule applies to matters before the appellate court and states that unpublished opinions have no precedential value. This is not a matter before the appellate court and Fine Housing offers *Page* for its persuasive value. Fine Housing also recited and relies on the cases and other authority that the Court of Appeals considered in arriving at the conclusions stated in *Page*.

³ The last part of this argument seems misplaced since the state of mind of the tenant is not at issue in this litigation.

McCravey and *Wise* are both Will cases. They both involve an effort by a decedent to restrain the transferability of real property. In *McCravey*, the deceased, R. Miller Otts, devised certain real property to his wife and children jointly to hold until his youngest child attained the age of 21 and until his wife, children and sister agreed that it is time to sell. The Court determined that such a restriction on the sale of the property was an unreasonable limitation upon the power of alienation that violated public policy. In *Wise*, the Court did not determine that the facts created a restraint on alienation of real estate, but found that

Under South Carolina common law, any unreasonable limitation upon the power of alienation is against public policy and must be construed as having no force and effect. [McCravey]. An absolute restraint upon the free and unlimited power of alienation, annexed to a grant or devise in fee simple is void.....

Distinguishing these cases as “Will” cases is not a viable argument. These cases, like the *Page* case and the case at bar, concern attempts to place conditions on the transferability of property. Therefore, reliance on these cases as authority for the relief Fine Housing requests is well placed.

Clarke’s tortured analysis of *Page* also ignores the Court’s statement that “[a] right of first refusal ...is not a restraint on alienation, as long as both the price that the designated person must pay, and the time allowed for the exercise of the right of first refusal are reasonable.” *Page*, at p. 2, citing, *Webb v. Reames*, 326 S.C. 444, 446, 485 S.E.2d 384, 385 (Ct.App. 1997). In order to “promote” alienation and not be a restraint, as Clarke suggests, the Right must be specific, which the provision in the Lease is not. As written, the Right is an unreasonable restraint on alienation that violates public policy and has no force or effect.

3. Clarke misstates the basis for the Summary Judgment that Fine Housing has presented to the Court.

a. Rule against perpetuities.

Clarke states “[t]he defendant premises its motion for summary judgment on the application of the Rule Against Perpetuities.” Clarke Memorandum, page 6. Fine

Housing does not base any of its motion on the Rule Against Perpetuities. Fine Housing does not mention or in any way refer to the Rule Against Perpetuities in its Motion.

b. Collateral Estoppel

Clarke states "Fine Housing asserts that this case was concluded in its favor and therefore plaintiff is collaterally estopped from asserting the transaction was a loan." Clarke Memorandum, p.7. "This case" is a reference to prior litigation between RRJR, LLC and Fine Housing. Fine Housing does not make any such assertion in its request for Summary Judgment. Again, the only issue presented by Fine Housing's Motion is the enforceability of the Right as written.

Clarke's Motion for Summary Judgment.

Clarke's request for Summary Judgment is based on contested and unsupported facts that, if accepted, actually challenge the relief Clarke demands. Further, as noted above, there is no legal authority offered by Clarke that supports the Right as an appropriate restraint on alienation of real property. All of the authority referenced by Clarke relates to general contract interpretation and does not challenge or conflict with the authority offered by Fine Housing as controlling.

1. Clarke's Motion for Summary Judgment lists facts as "Undisputed" for which he provides no authority and others that are contested.

The first four (4) pages of Clarke's Memorandum purport to list Undisputed Facts. However, the entire Memorandum contains alleged facts interlaced with argument. Fine Housing has pulled the assertions of fact from Clark's Memorandum and provides the following list of facts for which there is no authority or which Fine Housing contests. The Affidavit of Mr. DeStaso, the record of this case, and this memorandum define the contest identified in the following list.

- a. The Lease is not for the premises located at 2028 Pittsburg Avenue. It is for one-half (1/2) of the parking spaces at 2028 Pittsburg Avenue. Lease, Section 1.1 ("Demises: (sic) Subject to and upon the terms, conditions, covenants and undertakings hereinafter set forth, Lessor hereby leases and permits the use to Lessee, and Lessee hereby leases from Lessor the property described in Exhibit 'A'(hereinafter referred to as 'the premises')"; Lease, Section 2.1 ("The premises is unimproved property to be used as a parking lot by both

the Lessor and the Lessee”); Lease, Section 7.1 (“Use: Lessee shall use and occupy the premises jointly with the lessor for his purposes. The Lessee and Lessor shall be entitled to use of one half (1/2) of the spaces contained in the parking lot....”)

- b. Fine Housing does not argue that the provisions of the Right violate the Rule Against Perpetuities. Notice of Motion and Motion for Summary Judgment of Defendant Fine Housing, Inc. filed in this matter on May 5, 2016.
- c. The transfer of 2028 Pittsburg Avenue from Group Investment Company, Inc. to RRJR, LLC was not a “change in name only.” It was a transfer of title from one entity to another. Secretary of State Records attached as Exhibit 1. (The Articles of Incorporation for Group Investment Company, Inc. were filed on May 26, 1987. Group Investment Company, Inc. was dissolved by forfeiture on February 22, 2000. RRJR, LLC was formed on March 29, 2007.)
- d. Clarke offers that at all times he made rent payments, but the documents produced by Clarke in discovery suggest that there was some disagreement as to the rent payment prior to conveyance to Fine Housing. Clarke documents bates stamp numbered Clarke 1 through Clarke 3 and Clarke 112 through Clarke 120 attached as Exhibit 2.
- e. Fine Housing does not believe the Lease is in full force and effect. At the very least, Fine Housing contests that the Right has any force or effect.
- f. When John Robinson died in 2013, Robin Robinson did not become the sole owner of Group Investment Company, Inc. That entity was dissolved by forfeiture on February 22, 2000. Exhibit 1.
- g. Fine Housing disputes that the transaction between Fine Housing and Robin Robinson and RRJR, LLC that was closed on December 2, 2013 was a loan transaction. Fine Housing acknowledges that RRJR, LLC and Robin Robinson made that claim in their action against Fine Housing, the records of which are preserved in Charleston County Court of Common Pleas, Case No. 2014-CP-10-1035, but those same records demonstrate that Fine Housing disputed the claim and the matter was ended with a Stipulation of Dismissal.

The deed from RRJR , LLC to Fine Housing of title to 2028 Pittsburg Avenue has not been disturbed.

- h. Fine Housing did not intend the December 2, 2013 transaction with Robin Robinson and RRJR, LLC to be a bond-for-title. Affidavit of Vince Destaso, Exhibit 3.
- i. There is nothing in the record to demonstrate that Fine Housing's closing attorney, William Sloan, overlooked the Right when conducting the title examination. Fine Housing believes that an attorney other than Mr. Sloan provided Mr. Sloan with the title examination and the records of the examination did not contain the Lease containing the Right.
- j. William Sloan did not "find" the Lease containing the Right until after the closing of the sale from RRJR, LLC to Fine Housing. Exhibit 4 to Clarke's Memorandum.
- k. There is no evidence offered to support the "fact" suggested by Clarke that William Sloan had the Lease and failed to read the Lease prior to the closing of the sale from RRJR, LLC to Fine Housing.
- l. There is no evidence offered to support the "fact" suggested by Clarke that Fine Housing had actual knowledge of the Lease prior to the December 2, 2013 transaction.
- m. There is no evidence offered to support Clarke's position that the Right is a "lien" on 2028 Pittsburg Avenue.
- n. The Right does not provide that Clarke must pay one dollar more than the price offered to exercise the Right. Lease, Section 5.2 ("Right of First Refusal: Lessor grants the Lessee the right of first refusal should it wish to sell."); Lease, Section 15.1 ("This lease shall be deemed to include the entire agreement between the parties hereto.....")
- o. In this action Fine Housing has not asserted that Clarke is collaterally estopped from characterizing the December 2, 2013 transaction as a loan because of the Stipulation of Dismissal entered in Case Number 2014-CP-10-1035. That has not been framed as an issue in this litigation. In fact, Clarke alleges that Fine Housing is the owner of the 2028 Pittsburg Avenue property

(Complaint, ¶ 5) and Fine Housing admits that allegation (Answer, ¶7). That allegation assumes that the December 2, 2013 transaction was a “sale” and not a “loan”. Awkwardly, Clarke is the party to this litigation that suggests that the Stipulation of Dismissal in Case No 2014-CP-10-1035 was dispositive as to the claims made by RRJR in that litigation regarding the characterization of the December 2, 2013 transaction was a loan, (Complaint, ¶ 14).

- p. The recitation of the Lease in the current lease of 2028 Pittsburg Avenue by Fine Housing to its tenant was to notify the current tenant of the claims made by Clarke under the Lease, not an admission that the Right is enforceable. Affidavit of Vince Destaso.

2. The facts presented by Clarke contradict his request for Summary Judgment.

- a. **If Fine Housing is not the owner of fee simple absolute title to 2028 Pittsburg Avenue, then Clarke is not entitled to Summary Judgment.**

Fine Housing purchased 2028 Pittsburg Avenue from RRJR, LLC. Clarke Memorandum, Exhibit 1. For unexplained reasons, Clarke argues that there is a question of fact as to whether or not RRJR, LLC sold the 2028 Pittsburg Avenue to Fine Housing.⁴ Clarke suggests that the transaction between Fine Housing and RRJR, LLC may have been a loan. These allegations are contrary to the allegations in Clarke’s Complaint (Complaint, ¶ 5). It follows that if there was not a sale by RRJR, LLC to Fine Housing,

⁴ “As evidenced by the pleadings filed in the Charleston County Court of Common Pleas at Case No. 2014-CP-10-1035, Robin Robinson claimed the transaction was loan [sic] secured by the deeds as bond-for-title, an allegation supported by the parties’ agreement that Ms. Robinson could repurchase the property.” Clarke’s Memorandum, p. 3.

“The dispute between the parties as to whether the \$850,000.00 was a loan or sale is a material disputed fact that would normally preclude the entry of summary judgment for either party. (It is clear the parties intended the transaction to be a bond-for-title because they signed a repurchase agreement the same day of closing.” Clarke Memorandum, p. 4.

“Fine Housing’s settlement statement shows that the defendant, Fine Housing, extended \$850,000.00 in credit to the defendant RRJR....” Clarke Memorandum, p.5.

“While there are many facts in dispute – notably whether the \$850,000.00 was a sale or a loan.....” Clarke Memorandum, p. 5.

“Moreover, if the defendant is relying on an unpublished case for its legal position, then it is not entitled to a summary judgment because there is a huge disagreement over whether the ‘sale’ to Fine Housing was or was not a sale. RRJR thought it was not a sale as may be seen by reference to its suit filed against Fine Housing at Case Number 2014-CP-10-1035. (Fine Housing asserts that this case was concluded in its favor and therefore plaintiff is collaterally estopped from asserting the transaction was a loan.....)” Clarke Memorandum, p. 7.

the event that Clarke alleges triggered the Right did not occur. As such, Clarke is not entitled to the relief that he requests in the Complaint, much less Summary Judgment.

b. Clarke's Memorandum offers two competing interpretations of the amount of the payment due by Clarke under the Right.

In his Memorandum Clarke states:

"[Fine Housing] bought the property for \$150,000.00 and thus the plaintiff is entitled, as a matter of law, to an Order setting aside the transfer to Fine Housing, Inc. upon the plaintiff's tender of \$150,001.00."

Clarke Memorandum, p. 5. Inconsistently, that same Memorandum also states:

[t]he purpose of a right of first refusal is to provide the landowner with a built-in bidding strategy guaranteed to maximize a sales price. If the landlord wishes to sell the leased property for \$100 and the tenant offers \$101, then the original purchaser has the right to offer \$102 and so on until the landowner has derived the maximum selling price.

Clarke Memorandum, pp. 6-7. This confusion as to the price at which he must exercise the Right, alone, is reason for denial of Clarke's request for Summary Judgment.

Clarke's confusion is also an explanation as to why, to be enforceable, a right of first refusal must be certain as to the price at which the Right can be exercised. The one sentence Right does not provide that the Right is exercised by paying one dollar (as Clarke suggests), one cent or one thousand dollars above the price offered by a bona fide purchaser. The one sentence Right does not describe the bidding process offered by Clarke in his Memorandum.

A right of first refusal is the general reference to a preemptive right to purchase property. It is not a reference to a specific set of invoked conditions of sale. *See eg. Page, No. 2004-P-110 (interpreting a right of first refusal that could be exercised "under the same terms and conditions as the proposed sale") and Webb, 485 S.E.2d at 385 (deciding on a right of first refusal that the seller retained giving the seller the "right to purchase the same at and for the same consideration" on which the purchaser purchased if purchaser ever decides to sell).* Requesting that the Court determine the price at which Clarke can exercise the Right demonstrates that the Right is not certain as to price and, as such, is unenforceable. *Page, No. 2004-P-110; Webb, 485 S.E.2d 384.*

CONCLUSION

Clarke asks this Court to enforce a right of first refusal in a lease that does not name a price at which the right can be exercised or language that states how that price can be determined. The language purportedly creating the right does not describe the mechanics for exercising the right as to the time or manner of exercise. The right of first refusal does not state the purpose for which it was given. These flaws direct that the right of first refusal at issue is an unenforceable restraint on alienation of real property that violates public policy. As such, the right has no force or effect. With that conclusion, this Court should award Fine Housing the requested Summary Judgment and deny the Summary Judgment relief requested by Clarke.



W. Cliff Moore, III (SC Bar No. 4067)

Adams and Reese LLP

PO Box 2285

Columbia, SC 29202

P: 803-254-4190

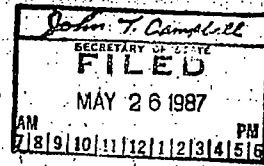
cliff.moore@arlaw.com

Attorney for Defendant Fine Housing, Inc.

July 12, 2016

Columbia, South Carolina

STATE OF SOUTH CAROLINA
SECRETARY OF STATE
ARTICLES OF INCORPORATION
OF



TIFIED TO BE A TRUE AND CORRECT COPY
TAKEN FROM AND COMPARED WITH THE ORIGINAL ON FILE IN THIS OFFICE

For use by
The Secretary of State
File No. _____
Fees paid _____
Mark [Signature]
SECRETARY OF STATE OF SOUTH CAROLINA

(File this Form in
Duplicate Originals)
(\$33-7-30 of 1976 Code)

This Space for Use
by
Secretary of State

JUL 01/02 4973
87-008516/87-008516 16:23:00 002
05-26-87 PMT: \$45.00
SECT OF STATE OF SOUTH CAROLINA

- The name of the proposed corporation is Group Investment Company, Inc.
- The initial registered office of the corporation is 1845 Harmon Street
City Charleston County Charleston S. C. 29405
and the initial registered agent at such address is G. S. Crosby, Sr.
- The period of duration of the corporation shall be perpetual (~~xxxxxxx years~~)
- The corporation is authorized to issue shares of stock as follows:

Class of Shares	Authorized No. of Each Class	Par Value
Common	1,000	\$1.00

If shares are divided into two or more classes or if any class of shares is divided into series within a class, the relative rights, preferences, and limitations of the shares of each class, and of each series within a class, are as follows:

- Total authorized capital stock is One Thousand Dollars
- The existence of the corporation shall begin as of the filing date with the Secretary of State ~~on the office~~
~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~
- The number of directors constituting the initial board of directors of the corporation is four (4), and the names and addresses of the persons who are to serve as directors until the first annual meeting of shareholders or until their successors be elected and qualify are as follows:

Name	Address
(a) William G. Tindall	7765 Wayfield Cr., N. Chas, SC 29418
(b) Charles E. Driggers	P. O. Box 70274, Charleston, SC 29415
(c) G. S. Crosby, Sr.	P. O. Box 6091, Charleston, SC 29415
(d) I. J. Bloom	104 Broad St., Charleston, SC 29401

- The general nature of the business for which the corporation is organized is as follows: (It is not necessary to set forth the powers enumerated in §33-3-10 of 1976 Code)

Real estate investment and any related act not specifically prohibited by law.

- Provisions which the incorporators elect to include in the articles of incorporation are as follows: (Attach additional sheet(s) if necessary)

KITCO

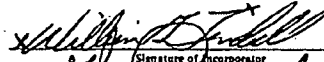
EXHIBIT

1

82

10. The name and address of each incorporator is as follows:

- | Name | Street & Box No. | City | County | State |
|------|--|------|--------|-------|
| (a) | William G. Tindall, 7765 Wayfield Circle, North Chas., Chas., SC | | | |
| (b) | G. S. Crosby, Sr., Post Office Box 6091, Charleston, Chas., SC | | | |
| (c) | | | | |
| (d) | | | | |

X 	William G. Tindall
Signature of Incorporator	Type or Print Name
X 	G. S. Crosby, Sr.
Signature of Incorporator	Type or Print Name
Signature of Incorporator	Type or Print Name
Signature of Incorporator	Type or Print Name

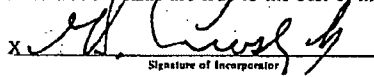
Date: May 21, 1987

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

The undersigned William G. Tindall and G. S. Crosby, Sr.

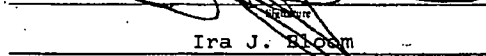
do hereby certify that they are the incorporators of Group Investment Company, Inc. Corporation and are authorized to execute this verification; that each of the undersigned does hereby certify that he or she has read the foregoing document, understands the meaning and purport of the statements therein contained and the same are true to the best of his or her information and belief.

X 	X 
Signature of Incorporator	Signature of Incorporator
Signature of Incorporator	Signature of Incorporator

CERTIFICATE OF ATTORNEY

I, Ira J. Bloom, an attorney licensed to practice in the State of South Carolina, certify that the corporation, to whose articles of incorporation this certificate is attached, has complied with the requirements of Chapter 7 of Title 33 of the Code of Laws of South Carolina (1976) relating to the organization of corporations, and that in my opinion, the corporation is organized for a lawful purpose.

Date: May 21, 1987


Ira J. Bloom
Type or Print Name
Post Office Box 250
Address
Charleston, SC 29402
City State Zip

SCHEDULE OF FEES

(Payable at time of filing Articles with Secretary of State)

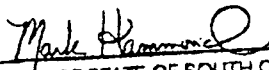
Fee for filing Articles	\$ 5.00
In addition to the above, \$.40 for each \$1,000.00 of the aggregate value of shares which the corporation is authorized to issue, but in no case less than nor more than	40.00 1,000.00

NOTE: THIS FORM MUST BE COMPLETED IN ITS ENTIRETY BEFORE IT WILL BE ACCEPTED FOR FILING. THIS FORM MUST BE ACCOMPANIED BY THE FIRST REPORT OF CORPORATIONS AND A CHECK IN THE AMOUNT OF \$10.00 PAYABLE TO THE SOUTH CAROLINA TAX COMMISSION.

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

JUN 30 2016

DEPARTMENT OF STATE
COLUMBIA, SOUTH CAROLINA


SECRETARY OF STATE OF SOUTH CAROLINA

DECLARATION OF DISSOLUTION BY FORFEITURE

Date of Dissolution FEB 22, 2000

GROUP INVESTMENT COMPANY INC
PO BOX 80160
CHARLESTON SC 29416

21104112-0

Whereas, Section 33-14-200, of the 1976 Code of Laws of S.C., as amended, provides for the dissolution of a corporation by forfeiture if the corporation has failed to:

- (1) File its annual report on or before the date on which such report is due, or
- (2) Pay its franchise tax or income tax on or before the date on which such tax is due and payable, or
- (3) Appoint and maintain a registered agent in this State, or
- (4) Notify the office of The Secretary of State of a change in its registered agent or registered office, or
- (5) The corporation's period of duration stated in its Articles of Incorporation expires.

AND WHEREAS, IT APPEARS FROM THE RECORDS IN THIS OFFICE, AFTER DUE NOTICE, THAT THE ABOVE NAMED CORPORATION HAS FAILED TO MEET REQUIREMENTS OF NOS. 1 AND/OR 2 ABOVE SET FORTH.

NOW THEREFORE, UNDER THE AUTHORITY OF SAID ACT, THE CHARTER IS HEREBY DECLARED FORFEITED AND DISSOLVED THIS DATE.

Inquiries concerning this administrative dissolution should be directed to the SC Department of Revenue, Corporate Section, Columbia, SC 29214-0100.

Jim Miles
Secretary of State

COPY

R.D. TXPCI016

SOS-2 (Rev. 6/98) 3119
35

00-007558AC

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

JUN 30 2016

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

ARTICLES OF ORGANIZATION
LIMITED LIABILITY COMPANY

TYPE OR PRINT CLEARLY IN BLACK INK

The undersigned delivers the following articles of organization to form a South Carolina limited liability company pursuant to Sections 33-44-202 and 33-44-203 of the 1976 South Carolina Code of Laws, as amended

1 The name of the limited liability company which complies with Section 33-44-105 of the South Carolina Code of 1976, as amended is RRJR, LLC

2 The address of the initial designated office of the Limited Liability Company in South Carolina is
2347 Sol Legare Road

Street Address

Charleston

29412

City

Zip Code

3 The initial agent for service of process of the Limited Liability Company is

John F. Martin

Name

[Signature]
Signature

and the street address in South Carolina for this initial agent for service of process is

113 Wappoo Creek Drive

Street Address

Charleston

29412

City

Zip Code

4 The name and address of each organizer is

(a) Robin M. Robinson

Name

2347 Sol Legare Road

Street Address

Charleston

City

South Carolina

State

29412

Zip Code

(b)

Name

Street Address

City

State

Zip Code

(Add additional lines if necessary)

5 ☐ Check this box only if the company is to be a term company. If so, provide the term specified

070330-0096
RRJR, LLC

Mark Hammond

FILED 03/29/2007

Filing Fee \$110.00 ORIG

South Carolina Secretary of State

RRJR, LLC

Name of Limited Liability Company

- 6 ☐ Check this box only if management of the limited liability company is vested in a manager or managers. If this company is to be managed by managers, specify the name and address of each initial manager.

(a) _____
Name

Street Address City

State Zip Code

(b) _____
Name

Street Address City

State Zip Code

(c) _____
Name

Street Address City

State Zip Code

(d) _____
Name

Street Address City

State Zip Code

(Add additional lines if necessary)

- 7 ☐ Check this box only if one or more of the members of the company are to be liable for its debts and obligations under section 33-44-303(c). If one or more members are so liable, specify which members, and for which debts, obligations or liabilities such members are liable in their capacity as members.

RRJR, LLC

Name of Limited Liability Company

- 8 Unless a delayed effective date is specified, these articles will be effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time.
- 9 Set forth any other provisions not inconsistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement.

- 10 Signature of each organizer

Robert Johnson

Date

03/28/03

(Add Additional lines if necessary)

FILING INSTRUCTIONS

- 1 File two copies of this form, the original and either a duplicate original or a conformed copy.
- 2 If space on this form is not sufficient, please attach additional sheets containing a reference to the appropriate paragraph in this form, or prepare this using a computer disk which will allow for expansion of the space on the form.
- 3 This form must be accompanied by the filing fee of \$110.00 payable to the Secretary of State.

Return to Secretary of State
P O Box 11350
Columbia, SC 29211

NOTE

THE FILING OF THIS DOCUMENT DOES NOT, IN AND OF ITSELF, PROVIDE AN EXCLUSIVE RIGHT TO USE THIS CORPORATE NAME OR IN CONNECTION WITH ANY PRODUCT OR SERVICE. USE OF A NAME AS A TRADEMARK OR SERVICE MARK WILL REQUIRE FURTHER CLEARANCE AND REGISTRATION AND BE AFFECTED BY PRIOR USE OF THE MARK. FOR MORE INFORMATION, CONTACT THE TRADEMARKS DIVISION OF THE SECRETARY OF STATE'S OFFICE AT (803) 734-1728.

Form Revised by South Carolina
Secretary of State, January 2000

CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

JUN 30 2016

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

Mark Hammond

SECRETARY OF STATE OF SOUTH CAROLINA

RESIGNATION OF AGENT FOR SERVICE OF PROCESS
OF A SOUTH CAROLINA OR FOREIGN
LIMITED LIABILITY COMPANY

TYPE OR PRINT CLEARLY IN BLACK INK

Pursuant to Section 33-44-110 of the 1976 South Carolina Code of Laws, as amended, the undersigned agent for service of process of the Limited Liability Company submits the following statement of registration.

1. The name of the Limited Liability Company that is affected by this document is:

RRJR, LLC

2. That the undersigned resigns as the registered agent of the above named Limited Liability Company effective the 31st day after this statement of resignation is filed in the Office of the Secretary of State.

Date

10/22/13

John F. Martin

Signature of Agent

John F. Martin

Type or Print Name

FILING INSTRUCTIONS

1. File three copies of this form, the original and either two duplicate original or conformed copies. (The Secretary of State shall mail a copy of this statement to the designated office and also to the principal office.
2. This form must be accompanied by the filing fee of \$10.00 payable to the Secretary of State.

Return to: Secretary of State
1205 Pendleton Street, Suite 525
Columbia, SC 29201

LLC-RESIGNATION OF AGENT FOR SERVICE OF PROCESS OF A SC OR FRN LLC.doc

Form Revised by South Carolina
Secretary of State, May 2011

131031-0106
RRJR, LLC

FILED: 10/23/2013

Filing Fee: \$10.00 ORIG

Mark Hammond

South Carolina Secretary of State

JUL 0 1 2016

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

SECRETARY OF STATE OF SOUTH CAROLINA

ARTICLES OF ORGANIZATION
LIMITED LIABILITY COMPANY

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Name

Signature

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Name

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Charleston

City

South Carolina

State

29412

Zip Code

(b)

Name

Street Address

City

State

Zip Code

(Add additional lines if necessary)

5 ☐ Check this box only if the company is to be a term company. If so, provide the term specified

070330-0096
RRJR, LLC

Mark Hammond

FILED 03/29/2007

Filing Fee \$110.00 ORIG

South Carolina Secretary of State

RRJR, LLC

Name of Limited Liability Company

- 6 ☐ Check this box only if management of the limited liability company is vested in a manager or managers. If this company is to be managed by managers, specify the name and address of each initial manager.

(a) _____
Name

Street Address City

State Zip Code

(b) _____
Name

Street Address City

State Zip Code

(c) _____
Name

Street Address City

State Zip Code

(d) _____
Name

Street Address City

State Zip Code

(Add additional lines if necessary)

- 7 ☐ Check this box only if one or more of the members of the company are to be liable for its debts and obligations under section 33-44-303(c). If one or more members are so liable, specify which members, and for which debts, obligations or liabilities such members are liable in their capacity as members.

RRJR, LLC

Name of Limited Liability Company

- 8 Unless a delayed effective date is specified, these articles will be effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time.

- 9 Set forth any other provisions not inconsistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement.

- 10 Signature of each organizer

Robert R. Jensen

Date

03/28/03

(Add Additional lines if necessary)

FILING INSTRUCTIONS

- 1 File two copies of this form, the original and either a duplicate original or a conformed copy.
- 2 If space on this form is not sufficient, please attach additional sheets containing a reference to the appropriate paragraph in this form, or prepare this using a computer disk which will allow for expansion of the space on the form.
- 3 This form must be accompanied by the filing fee of \$110.00 payable to the Secretary of State.

Return to Secretary of State
P O Box 11350
Columbia, SC 29211

NOTE

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Form Revised by South Carolina
Secretary of State, January 2000

08-4249

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT OF BARRY CLARKE

BY

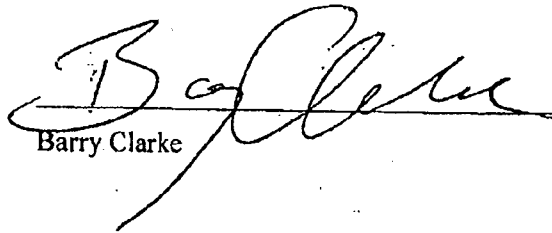
JULIE ARMSTRONG
CLERK OF COURT

2010 NOV 23 PM 4:24

FILED

Personally appeared before me, being duly sworn, does depose and say that:

I am the tenant for a parking lot for which I entered into a written lease with the Defendant on January 8, 1999. Thereafter, the Defendant and I developed a disagreement, stemming from our inability to come to terms on another lease for premises located at 2015 Pittsburgh Avenue. When we could not come to terms on the 2015 Pittsburgh Avenue lease, the defendant retaliated by refusing to accept my rent payments for the parking lot and took the position that I had failed to pay the rent. In fact I have always paid the rent on time as copies of the attached checks show. Every month I would bring rent payment to Terry Hill, as manager of Diamonds, located at 2015 Pittsburgh Avenue for approximately 5 years. Always accepted and cashed payments every month though his manager, Terry Hill, until the \$1,000.00 payment in full for the year was paid up front and then the defendant went to great lengths to refuse to accept the rent payments and finally stopped cashing the rent checks. I have always paid the rent on time and have never been in arrearage. The only reason an arrearage exists is because the Defendant has refused to either accept the tender or to cash the check when tendered. Further your deponent sayeth not.


Barry Clarke

Sworn to before me this 19
November 2010

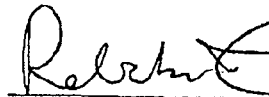
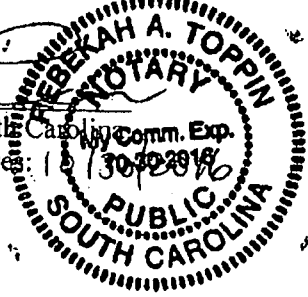

Notary Public for South Carolina
My Commission expires: 10/30/2016


EXHIBIT
2

08-4249

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT OF TERRY J. HILL

Personally appeared before me, Terry Hill, who being duly sworn, does depose and say that:

I previously worked for John Robinson as a general manager for approximately 13.5 years. I did a variety of tasks for John, some of which included assisting him in running Diamonds located at 2015 Pittsburgh Avenue in North Charleston, which is a building owned by Barry Clarke and previously leased to John Robinson. I knew that Barry and John had a long relationship in which John rented the building from Barry, and Barry rented a parking lot from John. For years, Barry would see me each month to pick up the rent for 2015 Pittsburgh Avenue. I understand that there is some allegation that Barry failed to pay the rent for the parking lot. I left my employment with John Robinson on January 2, 2007, and I cannot speak to the times thereafter. However, I do know for years prior to my leaving for a new position, when I was a general manager for John Robinson, Barry always paid the rent in person on time and in the correct amount.

At the time John vacated 2015 Pittsburgh Avenue, he removed the fixed sign and relocated it to a building he owned across the street at 2028 Pittsburgh Avenue.

Further your deponent saith not.

Terry Hill
Terry Hill

Sworn to before me this

2nd day of July 2010

U. R. Hill

Notary Public for South Carolina

My Commission expires: 12/16/2020

FILED
2010 NOV 24 PM 3:00
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

AFFIDAVIT OF BONUM S. WILSON III

Personally appeared before me, being duly sworn, Bonum S. Wilson, III does depose and say that:

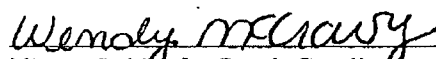
1. Wilson & Heyward previously represented Barry Clarke, and I personally was aware that there was a dispute between Mr. Clarke and John Robinson regarding the lease of a building next to a parking lot.
2. On one occasion, I personally hand delivered a One Thousand Dollar (\$1,000.00) check to Mr. Robinson's residence at 2347 Sol Legare Road on behalf of Mr. Clarke, as he resides not far from my home. When I pulled into the driveway, the dogs at the Robinson residence prevented me from getting out of the car, but a woman who came to the window, then to the door instructed me to leave the rent check outside my car, and leave the premises. I did so and personally observed her go towards the envelope as I backed out of the premises. She did not identify herself, but I asked that she give that check to Mr. Robinson and inform him that it was hand delivered. She indicated she would do so.

Further your deponent sayeth not


 Bonum S. Wilson, III

Sworn to before me this

16 day of April 2010


 Wendy McCraw
 Notary Public for South Carolina
 My Commission expires: May 20, 2014



BONUM S. WILSON III, ESQ.
E. JEANNETTE HEYWARD, ESQ.

WILSON & HEYWARD LLC

MARGARET M. FANNING ESQ.

February 15, 2007

John B. Robinson
2347 Sol Legare Rd
Charleston SC 29412

Dear Mr. Robinson:

Mr. Clarke noticed that the check previously sent for \$1000.00 has not been cashed yet.
He would appreciate your negotiating this check at your earliest convenience.

With best regards, I remain.

Very truly yours,

WILSON & HEYWARD LLC

Margaret M. Fanning

MMF/cbb
Enclosure
cc: Mr. Barry Clarke

BONUM S. WILSON III, Esq.
E. JEANNETTE HEYWARD, Esq.

WILSON & HEYWARD LLC

Pegal vs. Clarke
3324
MARGARET M. FANNING Esq.

March 14, 2007

John F. Martin, Esquire
Martin Law Firm
113 Wappoo Creek Drive
Charleston, SC 29412

Re: \$1,000 check

Dear Mr. Skip:

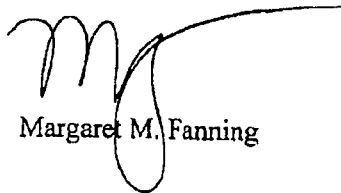
I received your correspondence of February 26 relative to the \$1,000 check delivered to Mr. Robinson. The check was hand delivered by Bo Wilson, Esquire to Mr. Robinson's home at 2347 Sol Legare Rd. He gave the check, in an envelope, to the woman who resides at that address, who is, I suppose, Mrs. Robinson.

Feel free to give me a call if you have any further questions relative to this.

With best regards, I remain,

Very truly yours,

WILSON & HEYWARD LLC


Margaret M. Fanning

MMF/cbb
Enclosure
cc: Mr. Barry Clarke

BONUM S. WILSON III, Esq.
E. JEANNETTE HEYWARD, Esq.

WILSON & HEYWARD LLC

MARGARET M. FANNING Esq.

April 3, 2007

John F. Martin, Esquire
Martin Law Firm
113 Wappoo Creek Drive
Charleston, SC 29412

Re: \$1,000 check

Dear Skip:

Late in the afternoon on January 3, 2007 I drove to personally deliver the check to 2347 Sol Legare Rd.. The gate was open and I pulled in and stayed in the car because of two dogs, one large, one not so large. I honked my horn, and an attractive young woman perhaps in her late 20s or 30s with blonde hair saw me from the 2nd floor window and came out the front door and asked what I wanted. I asked if she was Ms. Robinson, as I had to deliver the envelope to that address as per the lease. She did not deny being Mrs. Robinson and asked I mail it. When I explained I was required to deliver it by this day to this address, she instructed me to place it on the ground and leave, as she refused to come to the car. I placed it on the ground and backed out, and she picked it up.

With best regards, I remain,

Very truly yours,

WILSON & HEYWARD LLC



Bonum S. Wilson, III, Esquire

BSWIII/lsm

Enclosure

cc: Barry Clarke



ONUM S. WILSON III, Esq.
JEANNETTE HEYWARD, Esq.

WILSON & HEYWARD LLC

MARGARET M. FANNING Esq.

April 9, 2007

John F. Martin, Esquire
Martin Law Firm
113 Wappoo Creek Drive
Charleston, SC 29412

Re: \$1,000 check

Dear Skip:

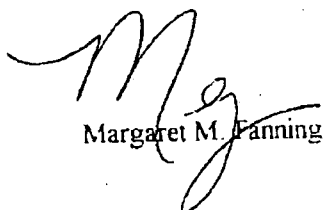
Enclosed please find the check for \$1,000 to replace the one that was previously delivered to Mr. Robinson but he stated has never received. I trust you will deliver and acknowledge that Mr. Robinson has now received the check.

Feel free to give me a call if you have any further questions relative to this.

With best regards, I remain,

Very truly yours,

WILSON & HEYWARD LLC


Margaret M. Fanning

MMF/cbb
Enclosure
cc: Mr. Barry Clarke

BARRY CLARKE

67-776/532

10620

EZShield[®] Check
Fraud Protection

DATE 3/30/07

PAY TO THE ORDER OF GROUP INCUBATOR CO INC \$ 1000.00

One Thousand & 00/100 DOLLARS

WACHOVIA BANK, N.A.
CHARLESTON, SC 29402

TO: ROBINSON CHECK DATA
10456 1/3/07
FOR: Therese H. and Willie Parkin

Barry Clarke

⑆053207766⑆ ⑆000500000334⑆ 0620

P.O. Box 13177, CHARLESTON, SC

Clarke 00011899

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobb@law.cobblaw.com

Peggy M. Infinger
pmfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

November 26, 2007

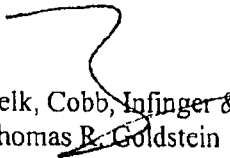
Mr. John F. Martin
Martin Law Firm
113 Wappoo Creek Drive
Charleston, S. C. 29412

Re: 2008 Annual payment

Dear Skip,

As you know, Barry Clarke has a lease with your client dated January 8, 1999 by which he leases the parking lot across the street from Emerald City. I enclose the rent for the entire year for 2008, which I am mailing to you as attorney for Mr. Robinson. As you probably know from the lease, (and if you do not, I enclose one for your review), it states that all notices shall be mailed to 2347 Sol Legre Road, Charleston, SC 29412, which is your client's home address. Because he is represented by counsel, however, I am sending the rent directly to you. If for any reason you contend that the rent has to be tendered to him at his home address, please let me know and return the check to me, and I will in turn forward it to your client at his home address. I know this may sound like a trivial point, but last time Barry tried to tender rent in advance to your client, Bo Wilson personally delivered it to your client's home and had an unpleasant encounter while there. For that reason, I thought that it was more prudent to send the check directly to you. With kind regards, I am

Very truly yours,


Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

enclosure: check
cc: Barry Clarke

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobb@att.net

Peggy M. Infinger
pinfinger@att.net

Thomas R. Goldstein
tgoldstein@att.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

February 29, 2012

Mr. John F. Martin, Esq.
Martin Law Firm
113 Wappoo Creek Drive
Charleston, S. C. 29412

Re: Barry Clarke vs. Estate of John Robinson, et. al.,
Case No.: 2008-CP-10-4249

Dear Skip,

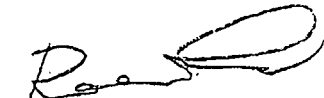
I enclose Barry's check in the amount of \$1,000.00 for rent payment on the disputed parking lot lease. I have been carrying this check around with me for some time because we were supposed to get together on this case and the Philip Rawlins case. (It is my fault we did not.)

As to the Phil Rawlins case, I am assuming that either you have resolved that case to his satisfaction or he got other counsel. I strongly recommended that he return to you and allow you to finish the case, and I am assuming that he took my advice.

As to the Barry Clarke matter, I seem to recall that you made a settlement offer, and I cannot remember now if I conveyed it or not. Let me know if you want to get together and talk about the Clarke case or if you want to repeat your settlement offer in writing so I will not be so forgetful. Even though we are tendering this check to you, your client has never cashed any of the past checks for payment, and I anticipate that she will take the same position with the enclosed. With kind regards, I am

Very truly yours,

Belk, Cobb, Infinger & Goldstein, P.A.



Thomas R. Goldstein

TRG/rt
enclosure: as stated, check #15202

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobb@att.net

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

December 12, 2013

Mr. John F. Martin, Esq.
Martin Law Firm
113 Wappoo Creek Drive
Charleston, S. C. 29412

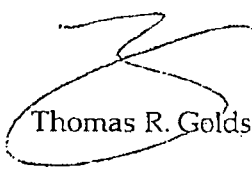
Re: Barry Clarke vs. Estate of John Robinson, et. al.,
Case No.: 2008-CP-10-4249

Dear Skip,

I enclose Barry's check in the amount of \$1,000.00 for rent payment on the
disputed parking lot lease. With kind regards, I am

Very truly yours,

Belk, Cobb, Infinger & Goldstein, P.A.



Thomas R. Goldstein

TRG/rt
enclosure: as stated, check #17922
cc: Barry Clarke

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobbblaw@hotmail.com

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

April 7, 2014

Mr. Vincent Desaso
102 Lake Road
Congers, New York 10920

RE: Lease 2028 Pittsburgh

Dear Vincent,

Thank you for taking the time to talk to us about the lease on the property you acquired from RRJR. At the time we sent the lease payment to the former owner, we were not aware that you held title. Therefore, I will write to Ms. Robinson's lawyer and ask him to return the payment we made in December 2013. I am assuming Ms. Robinson did not pass along this payment to you, and if my assumption is correct, I enclose my client's check, #18487, in the amount of \$1,000.00 representing the 2014 annual rent for the parking lot. If, on the other hand, she did pass along our payment, please return this check to us. As I promised in our telephone call, I enclose a copy of the lease, recorded in the Charleston County R.M.C. Office on January 27, 1999, at Deed Book C 319 at Page 791. Please let me know if you have any questions or concerns. With kind regards, I am

Very truly yours,

BARRY CLARKE		18487
Date <u>4/7/14</u>		67-776-532
Pay to the order of <u>Fine Housing, FNC</u>	<u>\$1000⁰⁰</u>	
<u>ONE Thousand</u>	<u>00</u> <u>100</u>	Dollars
120		
WELLS FARGO BANK, N.A. WELLSFARGO.COM		

... AM. J. H. A. R. P. A. ...

Clarke 000120
103

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Barry Clarke,

Plaintiff,

v.

Fine Housing, Inc. and RRJR, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2015-CP-10-03038

AFFIDAVIT OF VINCE DESTASO

PERSONALLY APPEARED BEFORE ME, Vince DeStaso who, after being
duly sworn, deposes and states that:

1. He is the President and sole shareholder of Fine Housing, Inc.
2. On December 2, 2013 Fine Housing purchased real property in Charleston County, South Carolina, commonly known as 2028 Pittsburg Avenue (the "Property"), from RRJR, LLC to Fine Housing, Inc. (the "Sale")
3. It was the intention of Fine Housing, Inc. to purchase the Property at the Sale.
4. It was not the intention of Fine Housing, Inc. to give RRJR a bond-for-title or other type of loan transaction on December 2, 2013 when it purchased the Property at the Sale.
5. William Sloan is an attorney who is licensed to practice law in the State of South Carolina and William Sloan represented Fine Housing, Inc. at the Sale.
6. Prior to the Sale he was not aware of the Lease And Agreement entered between Group Investment Company, Inc. and Barry Clarke dated January 8, 1999 and recorded in the Office of the Register of Deeds for Charleston County on January 27, 1999 in Book C319 at page 791 (the "Lease").
7. He was first aware of the Lease on or about March 21, 2014 when he was contacted by William Sloan and was advised of the existence of the Lease as reflected in the email attached to this Affidavit as Exhibit 1.

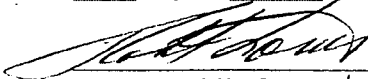


8. On January 28, 2015 Fine Housing, Inc. and Heavy Man SC, LLC entered a Commercial Real Estate Lease With Option To Purchase concerning the Property (the "Heavy Man Lease"), a copy of which is attached to this Affidavit as Exhibit 2.
9. In Addendum "A" to the Heavy Man Lease there is a statement that provides that the Heavy Man Lease is subject to the Lease. This provision is contained in the Heavy Man Lease because of the claims made by Barry Clarke under the Lease



Vince DeStaso

Sworn to before me this
30 day of June, 2016



Notary Public for New York Rockaway
My commission expires: 8/2/2016

ROBERT STORMS
Notary Public, State of New York
No. 01ST6113633
Qualified in Rockland County
Commission Expires August 2, 2016

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-10-03038

Barry Clarke,)
Plaintiff,)
vs.)
Fine Housing, Inc. and)
RRJR, L.L.C.,)
Defendants.)

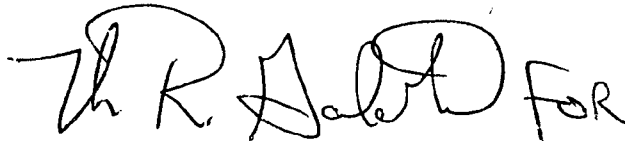
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

FILED
2016 JUN 20 PM 12:53
CLERK OF COURT

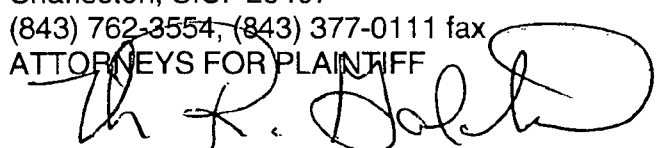
To: The Defendant, Fine Housing, Inc., (the defendant, RRJR, L.L.C. is in default) above named:

The Plaintiff will move ten days after notice hereof, or as soon thereafter as counsel may be heard, for an order granting judgment for the Plaintiff. This motion is based on the fact that there is no genuine issue of material fact as may be seen by reference to the pleadings, the attached documents in support of this motion and the attached memorandum of law and the affidavit of Barry Clarke filed in support of this motion with the Court.

June 17, 2016

 FOR

Ashley Andrews, S.C. Bar #
LAFOND LAW GROUP, P.A.
544 Savannah Highway
Charleston, S.C. 29407
(843) 762-3554, (843) 377-0111 fax
ATTORNEYS FOR PLAINTIFF


Thomas R. Goldstein, S.C. Bar #2186
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
Post Office Box 71121
Charleston, SC 29415-1121
(803) 554-4291, (843) 554-5566 fax
ATTORNEYS FOR PLAINTIFF

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-10-03038

Barry Clarke,)
Plaintiff,)
vs.)
Fine Housing, Inc. and)
RRJR, L.L.C.,)
Defendants.)

PLAINTIFF'S MEMORANDUM OF LAW
IN SUPPORT OF SUMMARY JUDGMENT

FILED
2016 JUN 20 PM 12:53
JULIE J. HARRINGTON
CLERK OF COURT

UNDISPUTED FACTS

It is an undisputed fact that the plaintiff entered into a written lease with Fine Housing, Inc.'s predecessor in title. The written lease is dated January 8, 1999, and it is recorded in the R.M.C. office for Charleston County on January 27, 1999, at Book C 319 at Page 791. The lease is attached to the complaint. The defendant's predecessor in title, Group Investment Company, Inc., agreed to lease to the plaintiff, Clarke, the premises located at 2028 Pittsburgh Avenue (TMS 466-16-00-0011) and with the uses set forth in Section 7.1 of the lease. This section permits the plaintiff to use up to ½ of the parking spaces. The term of the lease is the plaintiff's lifetime plus six additional years, and the agreed upon rent is \$1,000.00 per year (\$83.50 per month) payable on or before January 1st of each year. (In its motion for summary judgment, the defendant argues that the provision violates the Rule Against Perpetuities. Clearly

it does not because the Rule Against Perpetuities applies only when the period for performance is more than any life in being plus 21 years. Since this Lease clearly does not implicate the Rule Against Perpetuities, the plaintiff addresses this assertion below.)

Article V of the Lease provides that Clarke possesses the right of first refusal should the landowner decide to sell the property. In 2007, Group Investment Company, Inc. transferred the subject property to RRJR, L.L.C. for nominal consideration. The same principals (John and Robin Robinson) operated Group Investment Company, Inc. and RRJR, L.L.C., and the change was a change in name only. The Robinson's wholly owned and controlled both entities. In 2013, John Robinson died, and his widow, Robin became the sole owner of the entities. It is undisputed that at all times the plaintiff made rent payments and it is also undisputed that the Lease is in full force and effect.

On December 9, 2013, Robin Robinson, on behalf of RRJR, negotiated a loan transaction with the defendant, Fine Housing, Inc. ("Fine Housing") The agreement between Robin Robinson and Fine Housing resulted in the recording of two deeds along with a "repurchase agreement" and Fine Housing's transfer of \$850,000.00 to Ms. Robinson. (Exhibits 1 and 2, deeds, and 3, repurchase agreement) According to the deeds recorded in the R.M.C. office (Exhibits 1 and 2), Fine Housing's consideration for the subject property was \$150,000.00. This is discussed in more detail below. As evidenced by the pleadings filed in the Charleston County Court of Common Pleas at Case No. 2014-CP-10-1035, Robin Robinson claimed the transaction was loan secured by the deeds as bond-for-title, an allegation supported by the parties' agreement that Ms. Robinson could repurchase the property (Exhibit 3). Fine Housing disputed Ms.

Robinson's allegations and asserted the transaction was a sale. On January 9, 2015, the parties ended the case with a Stipulation of Dismissal, and the plaintiff filed this action four months later on May 28, 2015. It is undisputed that neither Ms. Robinson nor Fine Housing ever contacted the plaintiff before the transaction took place, and neither party provided plaintiff with an opportunity to exercise his right.

The dispute between the parties as to whether the \$850,000.00 was a loan or a sale is a material disputed fact that would normally preclude the entry of summary judgment for either party. (It is clear the parties intended the transaction to be a bond-for-title because they signed a repurchase agreement the same day of closing; see Exhibit 3 attached here.) However, the existence and notice of the plaintiff's lease and his right of first refusal is undisputed, and it is likewise undisputed that Fine Housing, Inc. was on notice of the recorded lease. Fine Housing's closing attorney acknowledged in written communications that the parties overlooked the right of first refusal when conducting the title examination. See William Sloan's e-mail correspondence dated March 21, 2014, attached hereto as Exhibit 4. (The correspondence erroneously refers to the property as the "Sol Legare Property." Mr. Sloan made this mistake because Robin Robinson was encumbering two parcels of real estate on the same date: the "Sol Legare property" and the "Pittsburgh Avenue" property.) Not to put too fine a point on it, the record demonstrates that Fine Housing knew of the plaintiff's recorded document because it is recorded at the courthouse and because his attorney found it. Exhibit 4 lays this issue to rest. However, even though Fine Housing noted the existence of the recorded lease, it failed to read it to ascertain what terms it contained prior to loaning Ms. Robinson

\$850,000.00, secured by the property. Every purchaser or mortgagee is regarded as having notice of documents properly recorded. See § 30-7-10, S. C. Code, ann., "Validity of conveyances, liens, and other transactions as to subsequent purchasers and creditors." Any properly recorded interest is valid as to subsequent purchasers without notice. *Murrells Inlet Corp. v. Ward*, 378 S.C. 225, 662 S.E.2d 452 (S. C. App. 2008); In *Re Davis*, 490 Bkrtcy. Rpts. 221 (D.S.C. 2013).

Thus it is undisputed that the defendant, Fine Housing, knew of plaintiff's lien and made no effort to extinguish it prior to purchasing the property. It bought the property for \$150,000.00 and thus the plaintiff is entitled, as a matter of law, to an Order setting aside the transfer to Fine Housing, Inc. upon plaintiff's tender of \$150,001.00. See Fine Housing's settlement statement dated December 2, 2013, attached here as Exhibit 5 and the two deeds, attached as Exhibits 1 and 2. Fine Housing's settlement statement shows that the defendant, Fine Housing, extended \$850,000.00 in credit to the defendant RRJR, which it allocated as \$650,000.00 to RRJR's property on James Island and \$150,000.00 to the property that is the subject of this lawsuit. (An additional \$49,000.00 went to William Swope, presumably for brokering the deal.)

Thus the plaintiff's motion for summary judgment is premised entirely on undisputed facts. While there are many facts in dispute—notably whether the \$850,000.00 was a sale or a loan—the undisputed facts of the contract and the application of South Carolina's recording statute compel summary judgment to the plaintiff.

Rule Against Perpetuities

The defendant premises its motion for summary judgment on the application of the Rule Against Perpetuities. First, the Rule Against Perpetuities has no application to this case. The term of the right of first refusal is the plaintiff's life plus six years. Since the Rule Against Perpetuities applies only to executory contracts in which the term cannot be measured by a life in being plus 21 years, the Rule has no application in this case. ("Principle that no interest in property is good unless it must vest, if at all, not later than 21 years, plus period of gestation, after some life or lives in being at the time of creation of interest." *Black's Law Dictionary*, 5th Ed.)

In support of its claim that the plaintiff's right of first refusal is unenforceable, Fine Housing cites: (1) an unpublished opinion that has no precedential value, and (2) a 1984 Will case, which in turn relies upon a 1912 Will case in which the Supreme Court of South Carolina decided that the words "until such time as they may all agree with my sister," constituted an impermissible restraint on alienation: "Therefore [the words] must be construed as having no force and effect. Not only are they without force and effect by reason of the statute, but they are, under the common law, an unreasonable limitation upon the power of alienation, and therefore against public policy." (The "statute" referred to in the Court's opinion is the statute that allows partition of real estate.) *McCravey, et. al. v. Otts, et. al.*, 90 S.C. 447, 74 S.E. 142 (1912), page 143 This case has no applicability to the present situation, because a right of first refusal **promotes** alienation. The purpose of a right of first refusal is to provide the landowner with a built-in bidding strategy guaranteed to maximize a sales price. If the landlord wishes to sell the leased property for \$100 and the tenant offers \$101, then the original purchaser has the right to

offer \$102 and so on until the landowner has derived the maximum selling price. Likewise, any tenant who has a right of first refusal is motivated to be more mindful of her tenancy because she has an interest in the property over and above merely paying rent.

As regards defendant's reliance on *Page v. Page*, the *South Carolina Rules of Appellate Procedure* prohibit the use of unpublished cases as legal authority. "Memorandum opinions and unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved." Rule 268(d)(2), *South Carolina Appellate Court Rules*. Even if *Page* could be cited for authority, it has no bearing on this matter because the issue in *Page* was a conveyance that did not contain a properly drawn reservation in a deed. *Page* followed the undisputed law in South Carolina that efforts to cut down on a fee cannot be effective unless contained in the granting clause. This rule is commonly referred to as the "*Stylecraft*" rule after *Stylecraft, Inc. v. Thomas*, 250 S.C. 495, 159 S.E.2d 46 (1968), and there is not a real estate lawyer practicing who does not know the *Stylecraft* rule. Moreover, if the defendant is relying on an unpublished case for its legal position, then it is not entitled to a summary judgment because there is a huge disagreement over whether the "sale" to Fine Housing was or was not a sale. RRJR thought it was not a sale as may be seen by reference to its suit against Fine Housing at Case Number 2014-CP-10-1035. (Fine Housing asserts that this case was concluded in its favor and therefore plaintiff is collaterally estopped from asserting the transaction was a loan. As discussed below, the decision in 2014-CP-10-1035 is not dispositive of the issue. See *Ecclesiastes Production Ministries v. Outparcel Associates, LLC.*, 374 S.C. 483, 649 S.E.2d 494 (2007).)

The question here is not whether the property can or cannot be partitioned or whether the deed from RRJR to Fine Housing did or did not cut down the granting clause in a manner forbidden by *StyleCraft*. The question here is whether the defendant, Fine Housing, did or did not take title subject to the recorded lease that contains the plaintiff's right of first refusal. If Fine Housing's legal position is correct, then recording and chains of title mean nothing. Just as a landowner cannot convey unclouded title by ignoring a recorded mortgage, likewise, a landowner cannot convey unclouded titled by ignoring a recorded lease. The issue is not whether RRJR did or did not properly draw a deed under *Stylecraft*; the issue is whether RRJR and Fine Housing can ignore a recorded lease that contains a right of first refusal.

A right of first refusal is nothing more than an executory contract, and any contract for the sale of land is enforceable so long as it identifies the thing being sold, the amount of the sale, and the time when it shall be sold. In upholding a right of first refusal in a case similar to this one, the Court of Appeals said:

"In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties." *Southern Atl. Fin. Servs., Inc. v. Middleton*, 349 S.C. 77, 80-81, 562 S.E.2d 482, 484-85 (Ct. App.2002); accord *D.A. Davis Constr. Co., Inc. v. Palmetto Props., Inc.*, 281 S.C. 415, 418, 315 S.E.2d 370, 372 (1984); *Williams v. Teran, Inc.*, 266 S.C. 55, 59, 221 S.E.2d 526, 528 (1976); *RentCo., a Div. of Fruehauf Corp. v. Tamway Corp.*, 283 S.C. 265, 267, 321 S.E.2d 199, 201 (Ct.App.1984). "Contracts should be liberally construed so as to give them effect and carry out the intention of the parties." *Mishoe v. Gen. Motors Acceptance Corp.*, 234 S.C. 182, 188, 107 S.E.2d 43, 47 (1958).

The parties' intention must, in the first instance, be derived from the language of the contract. *Schulmeyer v. State Farm Fire & Cas. Co.*, 353 S.C. 491, 495, 579 S.E.2d 132, 134 (2003); *C.A.N. Enters., Inc. v. S.C. Health & Human Services Fin. Comm'n.*,

296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988) ("In construing terms in contracts, this Court must first look at the language of the contract to determine the intentions of the parties."); *Jacobs v. Service Merch. Co.*, 297 S.C. 123, 375 S.E.2d 1 (Ct.App.1988). To discover the intention of a contract, the court must first look to its language-if the language is perfectly plain and capable of legal construction, it alone determines the document's force and effect. *Superior Auto. Ins. Co. v. Maners*, 261 S.C. 257, 263, 199 S.E.2d 719, 722 (1973). "Parties are governed by their outward expressions and the court is not at liberty to consider their secret intentions." *Blakeley v. Rabon*, 266 S.C. 68, 73, 221 [649 S.E.2d 502] S.E.2d 767, 769 (1976); *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93-94, 594 S.E.2d 485, 493-94 (Ct.App.2004); *accord Kable v. Simmons*, 217 S.C. 161, 166, 60 S.E.2d 79, 81 (1950).

The parties' intention must be gathered from the contents of the entire agreement and not from any particular clause thereof. *Thomas-McCain, Inc. v. Siter*, 268 S.C. 193, 197, 232 S.E.2d 728, 729 (1977); *see also Barnacle Broad., Inc. v. Baker Broad., Inc.*, 343 S.C. 140, 147, 538 S.E.2d 672, 675 (Ct.App.2000) ("The primary test as to the character of a contract is the intention of the parties, such intention to be gathered from the whole scope and effect of the language used."). "Documents will be interpreted so as to give effect to all of their provisions, if practical." *Reyhani v. Stone Creek Cove Condominium II Horizontal Property Regime*, 329 S.C. 206, 212, 494 S.E.2d 465, 468 (Ct.App.1997) (citing 17A Am.Jur.2d *Contracts* § 385 (1991)). In ascertaining intent, the court will strive to discover the situation of the parties, along with their purposes at the time the contract was entered. *Klutts Resort Realty, Inc. v. Down'Round Development Corp.*, 268 S.C. 80, 89, 232 S.E.2d 20, 25 (1977); *Bruce v. Blalock*, 241 S.C. 155, 161, 127 S.E.2d 439, 442 (1962); *Mattox v. Cassady*, 289 S.C. 57, 61, 344 S.E.2d 620, 622 (Ct.App.1986).

In *Brady v. Brady*, 222 S.C. 242, 72 S.E.2d 193 (1952) the South Carolina Supreme Court asseverated:

It is fundamental that in the construction of the language of a [contract], it is proper to read together the different provisions therein dealing with the same subject matter, and where possible, all the language used should be given a reasonable meaning.

Agreements should be liberally construed so as to give them effect and carry out the intention of the parties. In arriving at the intention of the parties to a lease, the

subject matter, the surrounding circumstances, the situation of the parties, and the object in view and intended to be accomplished by the parties at the time, are to be regarded, and the lease construed as a whole. Different provisions dealing with the same subject matter are to be read together.

Id. at 246-47, 72 S.E.2d at 195.

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* at 72, 221 S.E.2d at 769. "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* at 93, 594 S.E.2d at 493 (quoting *Heins v. Heins*, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct.App. 2001)). However, where an agreement is ambiguous, the court should seek to determine the parties' intent. *Smith-Cooper v. Cooper*, 344 S.C. 289, 295, 543 S.E.2d 271, 274 (Ct.App.2001); *Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship*, 331 S.C. 385, 390, 503 S.E.2d 184, 187 (Ct.App.1998).

Ecclesiastes Production Ministries v. Outparcel Associates, LLC., 374 S.C. 483, 649 S.E.2d 494 (Ct. App. 2007) (Court of Appeals reversed grant of directed verdict when plaintiff sought to enforce lease with right of first refusal.)

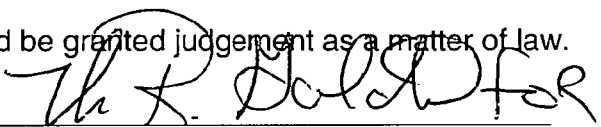
Ecclesiastes Production is factually similar to this case. The only difference is that in *Ecclesiastes*, the landowner settled with a joint tortfeasor over its allegation that the two tortfeasors conspired to deprive it of its right of first refusal. After *Ecclesiastes* settled with the purchaser, Outparcel Associates convinced the trial judge to grant a directed verdict on the theory that settlement with one is settlement with all. The trial judge accepted this argument and granted Outparcel's motion. The Court of Appeals reversed, holding that there was a trial issue of fact and that the settlement with one is not a settlement with all. The present case is much stronger than *Ecclesiastes Production* because here, the

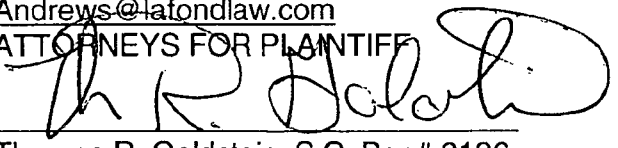
evidence shows that Fine Housing noted the existence of the lease, but failed to read it to discover its terms. Fine Housing learned from its mistake, and when it entered into its January 28, 2015, lease with its current tenant, Heavy Man, SC, it was careful to note in its lease: "This lease and option is subject to a lease agreement between Group Investment Company, Inc as Lessor and Barry Clarke as Lessee dated January 8, 1999." (Exhibit 6) When this Court compares Fine Housing's title work (Exhibit 4) with Fine Housing's own lease to its tenant (Exhibit 6) and applies South Carolina's recording statute to the facts of this case, the only conclusion possible is that the plaintiff is entitled to judgment as a matter of law.

Conclusion

Therefore, because there are no genuine issues of material fact regarding the undisputed facts of the recording and the application of the recording statutes to these undisputed facts, the plaintiff should be granted judgement as a matter of law.

June 17, 2016

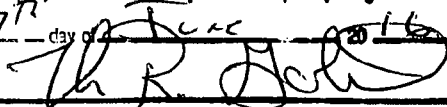

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(843) 554-4291
(843) 554-5566 (fax)
tgoldstein@cobbblaw.net

CERTIFICATE OF SERVICE

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

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

This 17th day of JUNE 2016
BY 

EXHIBITS

- 1 Deed Pittsburgh Avenue O 377 Page 843
- 2 Deed Sol Legare O 377 Page 842
- 3 Option to Purchase December 3, 2013
4. William Sloan's e-mail correspondence dated March 21, 2014
- 5 Settlement Statement
- 6 Lease January 28, 2015

EXHIBIT 1



BP0377843

#PGS:

5

STATE OF SOUTH CAROLINA)

)

TITLE TO REAL ESTATE

COUNTY OF CHARLESTON)

)

KNOW ALL MEN BY THESE PRESENTS, that RRJR, LLC, in the State and County aforesaid, for and in consideration of the sum of ONE HUNDRED FIFTY THOUSAND and NO/100 (\$150,000.00) DOLLARS, to me in hand paid at and before the sealing of these presents by Fine Housing, Inc., in the State and County aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do hereby grant, bargain, sell and release unto the said Fine Housing, Inc., its successors and assigns, all my right, title and interest in the following described property to-wit:

SEE EXHIBIT "A" ATTACHED HERETO

THIS CONVEYANCE IS MADE SUBJECT TO all covenants, restrictions, conditions, easements and rights of way of record.

Grantee's Address: 102 Lake Road
Congers, NY 10920

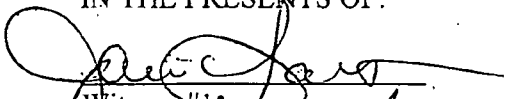
TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, an interest in the said Premises before mentioned unto the said Fine Housing, Inc., its successors and assigns forever.

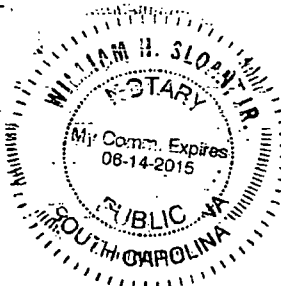
AND RRJR, LLC does hereby bind itself and its Successors and Assigns to warrant and forever defend, all and singular, the said Premises unto the said Grantee, its successors and assigns, against RRJR, LLC and its Successors and Assigns, and all persons whomsoever so lawfully claiming, or to claim the same or any part thereof.

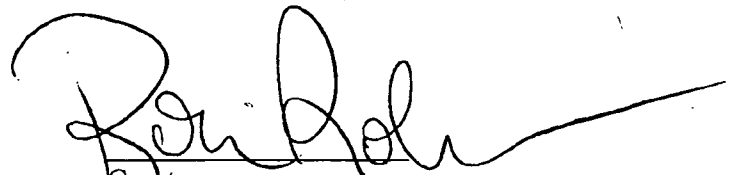
WITNESS our Hands and Seals this 22 day of December, in the year of our Lord Two Thousand and Thirteen.

SIGNED, SEALED AND DELIVERED
IN THE PRESENTS OF:


Witness #1

Notary Public as Witness #2



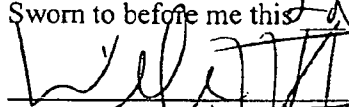

Grantor

THE STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

PERSONALLY appeared before me the first witness and made oath that s/he saw the within named RRJR, LLC sign, seal and as its act and deed, deliver the within written Deed, that s/he with the other witness witnessed the execution thereof.



Sworn to before me this 21 day of December, 2013.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: 6/14/2015

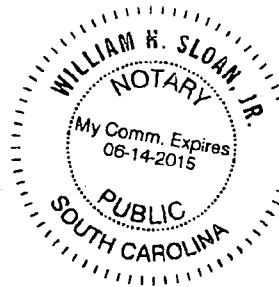


Exhibit A

ALL that piece, parcel or tract of land situate, lying and being in Charleston County, South Carolina, known and designated as "Tract A, 1.610 Acres, Property of Group Investment Company, Inc., TMS 466-16-00-011" on a plat entitle "Plat Showing TMS 466-16-00-011, being subdivided into tracts 'AB' and 'AB.1', property of Group Investment Company, Inc., located North Charleston Public Service District, Charleston County, SC," made by David & Floyd, Inc., dated January 19, 1989 and recorded in the RMC Office for Charleston County in Plat Book CE, Page 116; said tract having such size, shape, dimensions, buttings and boundings as will be referenced to said plat more fully and at large appear.

BEING the same property conveyed to RRJR, LLC by deed of Group Investment Company, Inc. dated February 19, 2007 and recorded April 25, 2007 ib the RMC Office for Charleston County at Book H623, Page 181

TMS# 466-16-00-011

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

AFFIDAVIT

Date of Transfer of Title
Closing Date: 12/2/13

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 is being transferred on: 12/2/13
by: RRJR, LLC
to: Fine Housing, Inc..
3. Check one of the following. The Deed is:
(A) X 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 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 distribution to a trust beneficiary.
(C) _____ EXEMPT from deed recording fee because: Exemption #
Explanation if required. Transfer to Family Trust
(If exempt, please skip items 4-6, and go to item 7 of this Affidavit).
4. Check one of the following if either item 3(a) or 3(b) above has been checked.
(A) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$150,000.00
(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 X 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 transfer. If "YES" the amount of the outstanding balance of this lien or encumbrance is \$_____.
6. The Deed Recording Fee is computed as follows:
(A) 150,000.00 the amount listed in item 4 above.
(B) 0 the amount listed in item 5 above (no amount, place zero)
(C) 150,000.00 subtract line 6(b) from line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney
8. Check if property other than real property is being transferred on this Deed:
(A) _____ Mobile Home (B) _____ Other
9. _____ DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT: Estate of _____ deceased, Case Number _____. Personally appeared before me the undersigned attorney who, being duly sworn, certifies that s/he is licensed to practice law in the State of South Carolina; that s/he has prepared the Deed of Distribution for the Personal Rep in the Estate of _____ deceased, and that the grantee(s) therein are correct and conform to the estate file for the above-referenced decedent.
10. 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 but not more than one thousand dollars or imprisoned not more than one year, or both.

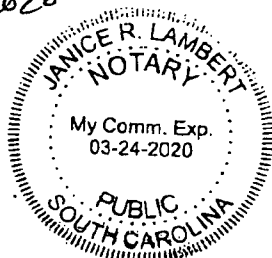
SWORN this 2nd day of December, 2013

Notary Public for South Carolina

My Commission Expires: 3-24-2020

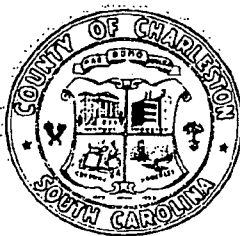
THE SLOAN LAW FIRM, P.A.

William H. Sloan, Jr.



RECORDER'S PAGE

KH
NOTE: This page **MUST** remain
with the original document



cm
Filed By:

SLOAN LAW FIRM PA
1055 N. MAIN STREET SUITE F
PO BOX 85
SUMMERVILLE SC 29484-0085

MAKER:

RRJR LLC

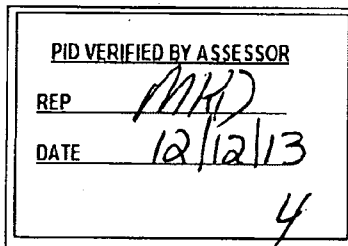
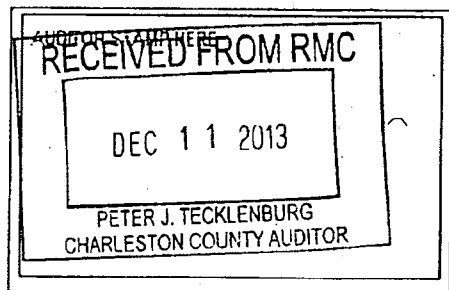
RECIPIENT:

FINE HOUSING INC

Note:

Original Book:

Original Page:



RECORDED

Date: December 9, 2013

Time: 4:32:18 PM

Book

Page

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0377

843

Deed

Charlie Lybrand, Register
Charleston County, SC

of Pages: 5

Recording Fee \$ 10.00

State Fee \$ 390.00

County Fee \$ 165.00

Extra Pages \$ -

Postage \$ -

Chattel \$ -

TOTAL \$ 565.00

DRAWER Drawer 3

CLERK ECP



0377
Book



843
Page



12/09/2013
Recorded Date



5
Pgs



Original Book



Original Page



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Recorded Time

EXHIBIT 2



PGS:

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BP0377842

STATE OF SOUTH CAROLINA)

)

TITLE TO REAL ESTATE

COUNTY OF CHARLESTON)

)

KNOW ALL MEN BY THESE PRESENTS, that I, Robin M. Robinson, in the State and County aforesaid, for and in consideration of the sum of SEVEN HUNDRED THOUSAND and NO/100 (\$700,000.00) DOLLARS, to me in hand paid at and before the sealing of these presents by Fine Housing, Inc., in the State and County aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do hereby grant, bargain, sell and release unto the said Fine Housing, Inc., its successors and assigns, all my right, title and interest in the following described property to-wit:

SEE EXHIBIT "A" ATTACHED HERETO

THIS CONVEYANCE IS MADE SUBJECT TO all covenants, restrictions, conditions, easements and rights of way of record.

Grantee's Address: 102 Lake Road
Congers, NY 10920

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, an interest in the said Premises before mentioned unto the said Fine Housing, Inc., its successors and assigns forever.

AND I do hereby bind myself and my Heirs, Executors and Administrators to warrant and forever defend, all and singular, the said Premises unto the said Grantee, its successors and assigns, against me and my Heirs, and all persons whomsoever so lawfully claiming, or to claim the same or any part thereof.

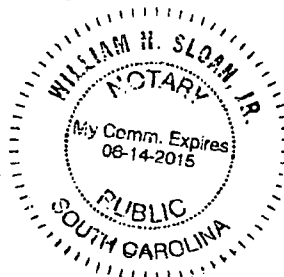
WITNESS our Hands and Seals this 16 day of December, in the year of our Lord Two Thousand and Thirteen.

SIGNED, SEALED AND DELIVERED
IN THE PRESENTS OF:

Witness #1

Notary Public as Witness #2

Robin M. Robinson

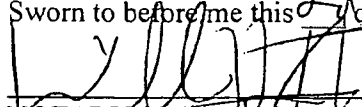


THE STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

PERSONALLY appeared before me the first witness and made oath that s/he saw the within named. Robin M. Robinson, sign, seal and as his/her act and deed, deliver the within written Deed, that s/he with the other witness witnessed the execution thereof.



Sworn to before me this 21 day of December, 2013.



NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission expires: 6/14/2015

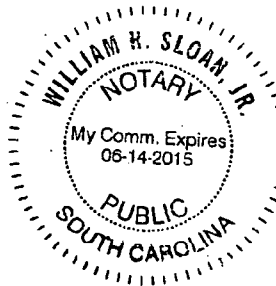


Exhibit A

ALL those pieces, parcels or tracts of land, situate, lying and being on James Island, Charleston County, South Carolina, known in the present street numbering as 2347 Sol Legare Road, one of said tracts being lettered X containing 0.20 acres, the other tract containing 3.18 acres, all as is more fully shown on a plat entitled "PLAT OF GENERAL SURVEY OF NO. 2347 SOL LEGARE ROAD AND PARCEL X OWNED BY ADOLPH G. HOLLINGS JAMES ISLAND 3.38 Ac. TOTAL T.M.S. 330-08-00-007," which plat was made by W. L. Gaillard, dated September 1, 1993, revised February 24, 1994 and is recorded in the RMC Office for Charleston County in Book M239 at Page 141

ALSO

ALL of the Seller's right, title and interest (title to which is not warranted by Seller) in and to that certain marsh shown on said plat containing 2.00 acres, the eastern boundary line of said marsh measuring 275' and having the following metes: S 33 degrees 24'50", the western boundary line of said marsh measuring 180' and having the following metes: N 00 degrees 15'00" E.

BEING the same property conveyed to Robin M. Robinson by deed of Adolph Gervert Hollings, III, as Personal Representative of the estate of A.G. Hollings, said deed dated August 23, ~~1999~~ and recorded August 25, 2000 in the RMC Office for Charleston County in Book S353 at Page 854. ~~2000~~ 2000

TMS# 330-08-00-007

Date of Transfer of Title
Closing Date: 12/2/13

PERSONALLY appeared before me the undersigned, who, being duly sworn, deposes and says:

- I have read the information on this Affidavit and I understand such information.
- The property is being transferred on: 12/2/13
by: Robin M. Robinson
to: Fine Housing, Inc..
- Check one of the following. The Deed is:
- (A) X 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 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 distribution to a trust beneficiary.
(C) _____ EXEMPT from deed recording fee because: Exemption #
Explanation if required. Transfer to Family Trust
(If exempt, please skip items 4-6, and go to item 7 of this Affidavit).
- Check one of the following if either item 3(a) or 3(b) above has been checked.
- (A) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$700,000.00
(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 **.
- Check: YES _____ or NO X 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 transfer. If "YES" the amount of the outstanding balance of this lien or encumbrance is \$_____.
- The Deed Recording Fee is computed as follows:
- (A) 700,000.00 the amount listed in item 4 above.
(B) 0 the amount listed in item 5 above (no amount, place zero)
(C) 700,000.00 subtract line 6(b) from line 6(a) and place the result.
- As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney
- Check if property other than real property is being transferred on this Deed:
(A) _____ Mobile Home (B) _____ Other
- DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT: Estate of _____ deceased, Case Number _____. Personally appeared before me the undersigned attorney who, being duly sworn, certifies that s/he is licensed to practice law in the State of South Carolina; that s/he has prepared the Deed of Distribution for the Personal Rep in the Estate of _____ deceased, and that the grantee(s) therein are correct and conform to the estate file for the above-referenced decedent.
- 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 but not more than one thousand dollars or imprisoned not more than one year, or both.

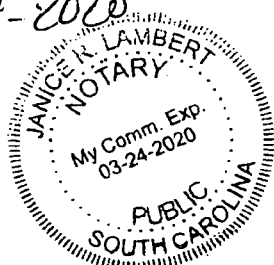
SWORN this 2nd day of December, 2013

THE SLOAN, LAW FIRM, P.A.

Notary Public for South Carolina

My Commission Expires:

William H. Sloan, Jr.



RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



Filed By:

SLOAN LAW FIRM-PA
1055 N. MAIN STREET SUITE F
PO BOX 85
SUMMERVILLE SC 29484-0085

MAKER:

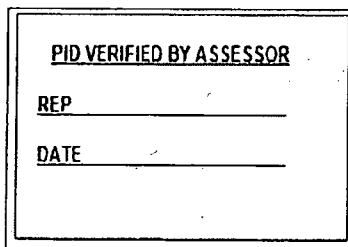
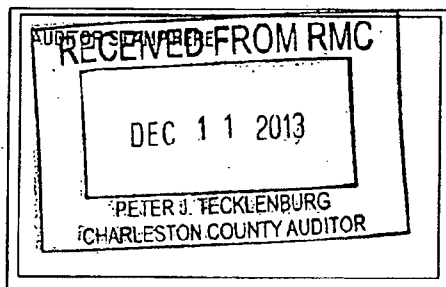
ROBINSON ROBIN M

RECIPIENT:

FINE HOUSING INC

Original Book:

Original Page:



TO Mapping

RECORDED

Date: December 9, 2013

Time: 4:31:22 PM

Book	Page	DocType
0377	842	Deed

Charlie Lybrand, Register
Charleston County, SC

of Pages: 5

Recording Fee	\$ 10.00
State Fee	\$ 1,820.00
County Fee	\$ 770.00
Extra Pages	\$ -
Postage	\$ -
Chattel	\$ -
TOTAL	\$ 2,600.00

DRAWER: Drawer 3
CLERK: ECP



0377
Book



842
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Recorded Date



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Original Book



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EXHIBIT 3

OPTION TO PURCHASE REAL ESTATE AGREEMENT

This Lease to Purchase Option Agreement ("Option to Purchase Agreement") is made on December 2, 2013 between RRJR, LLC and Robin M. Robinson (the "Buyers-Tenants") and Fine Housing, Inc. (Sellers-Landlords)

WHEREAS, Seller/Landlord is/are the fee owner of certain real property being, lying and situated in Charleston County, South Carolina, such real properties having addresses of 2470 Sol Legare Road, Charleston, SC 29412 and 2028 Pittsburgh Ave., North Charleston, SC 29405. And TMS Nos. of 3300800007 (Sol Legare) and 4661600011 (Pittsburgh)

WHEREAS, Seller/Landlord and Buyer/Tenant have together executed a prior lease agreement, the subject of which is the aforementioned Property (the "Lease Agreement").

NOW, THEREFORE, for and in consideration of the covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller/Landlord hereby grants to Buyer/Tenant an exclusive option to purchase the aforementioned "Property." The parties hereto hereby agree as follows:

1. OPTION TERM. The option to purchase period commences on December 2, 2013 and expires at 11:59 PM November 30, 2016. The option to purchase must be exercised and the transaction completed on or before the above date. Buyer must give notice in form of certified letter to Seller at his address.

2. NOTICE REQUIRED TO EXERCISE OPTION. To exercise the Option to Purchase, the Buyer/Tenant must deliver to the Seller/Landlord written notice of Buyer/Tenant's intent to purchase. In addition, the written notice must specify a valid closing date. The closing date must occur before the original expiration date of the Lease Agreement, or the date of the expiration of the Option to Purchase Agreement designated in paragraph 1, whichever occurs later.

3. OPTION CONSIDERATION. As consideration for this Option to Purchase Agreement, the Buyer/Tenant shall pay the Seller/Landlord a non-refundable fee of \$5.00, FIVE DOLLARS, receipt of which is hereby acknowledged by the Seller/Landlord. This amount shall be credited to the purchase price at closing. If Buyer fails to purchase this property within the time allowed, this entire deposit shall be treated as a security deposit and MAY be refunded minus the amount of damage Buyer leaves, save normal wear and tear.

4. PURCHASE PRICE. The total purchase price for the Property is \$ONE MILLION ONE HUNDRED FIFTY THOUSAND DOLLARS (\$1,150,000.00) The total price must be paid to purchase both properties. The Seller will not sell just one of the two properties. ~~None of the lease payments of 12,750 each month shall go to the purchase price listed here.~~

5. EXCLUSIVITY OF OPTION. This Option to Purchase Agreement is exclusive and non-assignable and exists solely for the benefit of the named parties above. Should Buyer/Tenant attempt to assign, convey, delegate, or transfer this option to purchase without the Seller/Landlord's express written permission, any such attempt shall be deemed null and void.

6. CLOSING AND SETTLEMENT. Buyer shall determine the attorney's office at which settlement shall occur and shall inform Buyer/Tenant of this location in writing. Buyer/Tenant agrees that closing costs in their entirety, including any points, fees, and other charges required by the third-party lender, shall be the sole responsibility of Buyer/Tenant, exclusive of the previous sentence. The only expense related to closing costs apportioned to Seller/Landlord shall be the pro-rated share of the ad valorem taxes due at the time of closing, for which Seller/Landlord is solely

responsible. Seller will also pay deed stamps and deed preparation. Seller will provide a tax-proration for the tax bill of the year that Buyer purchases the property.

7. FINANCING AVAILABILITY. SELLER/LANDLORD MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE AVAILABILITY OF FINANCING REGARDING THIS OPTION TO PURCHASE. BUYER/TENANT IS SOLELY RESPONSIBLE FOR OBTAINING FINANCING IN ORDER TO EXERCISE THIS OPTION. FAILURE OF BUYER TO OBTAIN FINANCING IN SPITE OF DILLIGENT EFFORTS TO DO SO DOES NOT ABSOLVE THE BUYER OF ANY RESPONSIBILITES OR DUTIES IN THIS CONTRACT.

8. FINANCING DISCLAIMER. The parties acknowledge that it is impossible to predict the availability of obtaining financing towards the purchase of this Property. Obtaining financing shall not be held as a condition of performance of this Option to Purchase Agreement. The parties further agree that this Option to Purchase Agreement is not entered into in reliance upon any representation or warranty made by either party.

9. REMEDIES UPON DEFAULT. If Buyer/Tenant defaults under this Option to Purchase Agreement or the Lease Agreement, then in addition to any other remedies available to Seller/Landlord at law or in equity, Seller/Landlord may terminate this Option to Purchase by giving written notice of the termination. If terminated, the Buyer/Tenant shall lose entitlement to any refund of rent or option consideration. For this Option to Purchase Agreement to be enforceable and effective, the Buyer/Tenant must comply with all terms and conditions of the Lease Agreement.

10. COMMISSION. No real estate commissions or any other commissions shall be paid in connection with this transaction.

11. RECORDING OF AGREEMENT. Buyer/Tenant shall not record this Option to Purchase Agreement on the Public Records of any public office without the express and written consent of Seller/Landlord. If this agreement is recorded, it will be null and void on December 1, 2015 and any title searcher may ignore same as void if the property has not been sold to Buyers.

12. ACKNOWLEDGMENTS. The parties are executing this Option to Purchase Agreement voluntarily and without any duress or undue influence. The parties have carefully read this Option to Purchase Agreement and have asked any questions needed to understand its terms, consequences, and binding effect and fully understand them and have been given an executed copy. The parties have sought the advice of an attorney of their respective choice if so desired prior to signing this Option to Purchase Agreement.

13. TIMING. Time is of the essence in this Option to Purchase Agreement. This option to purchase is complete and totally void if Buyer fails to close and fund its loan to purchase this property by November 30, 2015.

14. GOVERNING LAW AND VENUE. This Option to Purchase Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of South Carolina. The parties further agree that the venue for any and all disputes related to this Option to Purchase shall be Dorchester County, South Carolina.

15. OPTION TO PURCHASE CONTROLLING. In the event a conflict arises between the terms and conditions of the Lease Agreement and the Option to Purchase Agreement, the Option to Purchase Agreement shall control.

16. ENTIRE AGREEMENT; MODIFICATION. This document sets forth the entire agreement and understanding between the parties relating to the subject matter herein and supersedes all prior

discussions between the parties. No modification of or amendment to this Option to Purchase Agreement, nor any waiver of any rights under this Option to Purchase Agreement, will be effective unless in writing signed by the party to be charged.

SELLER/LANDLORD:

[Signature]

[Signature]

12/3/13

FINE HOUSING, LLC

BY: VINCENT DOSTALO

Its: pres.

Before me personally appeared the undersigned witness and made oath that he-she saw the within named Seller-Landlord sign, seal and as his act and deed deliver the within document and that he-she with the other witness witnessed the execution thereto.

Joseph Kowalchuk Sr.

Notary Name Printed

[Signature]

Notary Signature

[Signature] 12/3/13

Witness Signature

Commission expires: 12/2/14

Joseph Kowalchuk Sr
Notary Public State of New York
Qualified in Westchester County
My Commission Expires 12/2/14

BUYER/TENANT:

Jaice Labet
Willth

P. R.
RBJR, LLC

BY:

Its:

Before me personally appeared the undersigned witness and made oath that he-she saw the within named Buyer-Tenant sign, seal and as his act and deed deliver the within document and that he-she with the other witness witnessed the execution thereto.

Willth

Notary Name Printed

William H. Sloan, Jr.

Willth

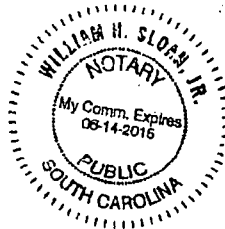
Notary Signature

Jaice Labet

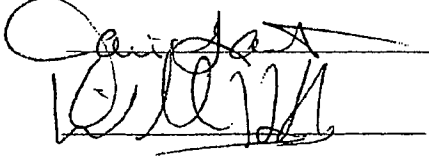
Witness Signature

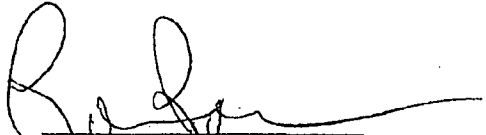
Commission expires:

6/14/2015



BUYER/TENANT:

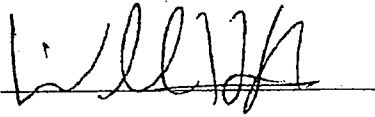



ROBIN M. ROBINSON

BY: Robi

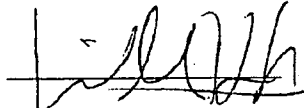
Its:

Before me personally appeared the undersigned witness and made oath that he-she saw the within named Buyer-Tenant sign, seal and as his act and deed deliver the within document and that he-she with the other witness witnessed the execution thereto.

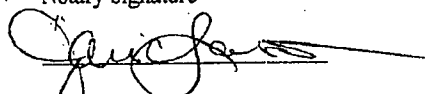


Notary Name Printed

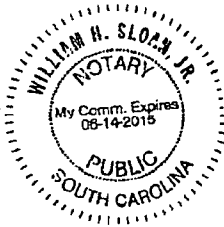
William H Sloan



Notary Signature


Witness Signature

Commission expires: 6/14/2015



Legal Description A

All that piece, parcel or lot of land, together with the buildings and improvements thereon, situate, and lying and being in Charleston County, James Island, known in the present street numbering as 2347 Sol Legare Road, one of said tracts being lettered X containing .20 acres, the other tract containing 3.18 acres, all as is more fully shown on a plat named, "PLAT OF GENERAL SURVEY OF NO. 23447 SOL LEGARE ROAD AND PARCEL x OWNED BY ADOLPH G HOLLINGS, JAMES ISLAND 3.38 ACRES TOTAL TMS 330-08-00-07" WHICH plat is recorded in the RMC Office for Charleston County Book M-239, Page 141. The plat was written by W.L. Gaillard dated September 1, 1993, revised February 24, 1994.

Also, all of the Seller's rights (title not insured) in and to that certain marsh shown on said plat containing 2.00 acres, the eastern boundary line of said marsh measuring 275' and having the following metes S33 degrees, 24'50" the western boundary line of said marsh measuring 180' and having the metes N00 degrees, 15'00" E.

Being the same premises conveyed to Fine Housing, Inc. by deed of RRJR, LLC, dated December 2, 2013 and recorded simultaneously herewith at the RMC Office for Charleston County.

TMS No. 3300800007

Property Address 2470 Sol Legare Road, Charleston, SC 29412

Legal Description B

All that piece, parcel or lot of land, together with the buildings and improvements thereon, situate, lying and being in Charleston County and being designated as "Tract A, 1.610 acres, Property of Group Investment Company, Inc. TMS No. 466-16-00-011 on a plat entitled "Plat Showing TMS 466-16-00-011" being subdivided into Tracts AB and AB1, property of Group Investments Company, Inc., located North Charleston Public Service District, Charleston County, SC" made by David and Floyd, Inc., dated January 19, 1989, and recorded in the RMC Office for Charleston County in Plat Book CE, Page 116; said tract having such size, shape, dimensions, buttings, boundings and borders as will be referenced to said plat more fully and at large appear.

Being the same premises conveyed to Fine Housing, Inc. by deed of RRJR, LLC, dated December 2, 2013 and recorded simultaneously herewith at the RMC Office for Charleston County.

TMS NO. 4661600011

Property Address: 2028 Pittsburgh Ave., North Charleston, SC 29405

EXHIBIT 4

-----Original Message-----

From: Bill Sloan <sloanlawfirm@yahoo.com>

To: Charlie Altman <CAltman@altmancoker.com>; Vin Destaso <vindestaso@aol.com>

Sent: Fri, Mar 21, 2014 12:43 pm

Subject: Re: Fine Housing, Inc. & Vincent Destaso / Robinson [141-352916];

Charlie and Vince: Enclosed please find a copy of the lease for the Sol Legare Property in favor of Barry Clarke which is for 1,000 a month and ends six years after his death. This was NOT picked up in the title search that Will sent me. Further, Will never advised me about this lease verbally and neither did Mrs. Robinson.

Mr. Clark's no. is 843-762-0866

Tommy Goldstein is Mr. Clark's attorney. I had a brief call with Mr. Goldstein and Mr. Clark and I did not gather who Mr. Clark is paying. There is a right of refusal to sell.

William H. Sloan
Sloan Law Firm PA
Post Office Box 85
Summerville, SC 29484
843-873-7531
Fax 843-873-7527

This e-mail is subject to attorney-client privilege. Destroy this e-mail if received in error.

From:

EXHIBIT 5

**A. Settlement Statement (HUD-1)****B. Type of Loan**

1. ☐ FHA 2. ☐ RHS 3. ☐ Conv. Unins.		6. File Number: 13-284	7. Loan Number:	8. Mortgage Insurance Case Number:
4. ☐ VA 5. ☐ Conv. Ins.				
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 "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.				
D. Name and Address of Borrower: Fire Housing Inc 2028 Pittsburg Ave/2470 Sol Legare RD Charleston, SC 29405		E. Name and Address of Seller: Robin M. Robinson and RRJR, LLC		F. Name and Address of Lender:
G. Property Location: 2028 Pittsburg Ave/2470 Sol Legare RD Charleston, SC 29405 Charleston County, South Carolina		H. Settlement Agent: Sloan Law Firm 1055 N Main St Suite F Summerville, SC 29483 Ph. (843)873-7531 Place of Settlement: 1055 N Main St Suite F Summerville, SC 29483		I. Settlement Date: December 2, 2013
J. Summary of Borrower's transaction				
100. Gross Amount Due from Borrower:				
101. Contract sales price		850,000.00		
102. Personal property				
103. Settlement Charges to Borrower (Line 1400)				
104.				
105.				
Adjustments for items paid by Seller in advance				
106. City/Town Taxes	to			
107. County Taxes	to			
108. Assessments	to			
109.				
110.				
111.				
112.				
120. Gross Amount Due from Borrower		850,000.00		
200. Amounts Paid by or In Behalf of Borrower				
201. Deposit or earnest money				
202. Principal amount of new loan(s)				
203. Existing loan(s) taken subject to				
204.				
205.				
206.				
207.				
208. Closing Cost Credit				
209. December's Rent and deposit				
Adjustments for items unpaid by Seller				
210. City/Town Taxes	to			
211. County Taxes	to			
212. Assessments	to			
213. Credit		35,000.00		
214.				
215.				
216.				
217.				
218.				
219.				
220. Total Paid by/for Borrower		35,000.00		
300. Cash at Settlement from/to Borrower				
301. Gross amount due from Borrower (line 120)		850,000.00		
302. Less amount paid by/for Borrower (line 220)		(35,000.00)		
303. Cash	☒ From ☐ To Borrower	815,000.00		
K. Summary of Seller's transaction				
400. Gross Amount Due to Seller:				
401. Contract sales price		850,000.00		
402. Personal property				
403.				
404.				
405.				
Adjustments for items paid by Seller in advance				
406. City/Town Taxes	to			
407. County Taxes	to			
408. Assessments	to			
409.				
410.				
411.				
412.				
420. Gross Amount Due to Seller		850,000.00		
500. Reductions in Amount Due Seller:				
501. Excess deposit (see instructions)				
502. Settlement charges to Seller (Line 1400)		187,456.13		
503. Existing loan(s) taken subject to				
504. Payoff First Mortgage to Capital One		381,644.72		
505. Payoff Second Mortgage to Charleston Capital One		29,982.31		
506.				
507. Federal Tax Lien to IRS				
508. Closing Cost Credit				
509. December's Rent and deposit				
Adjustments for items unpaid by Seller				
510. City/Town Taxes	to			
511. County Taxes	to			
512. Assessments	to			
513. Credit		35,000.00		
514.				
515. Federal Tax Lien		104,000.00		
516. Federal Tax Lien		39,000.00		
517. State Tax Lien to IRS		5,539.04		
518. to IRS				
519. 2012 & 2013 Taxes		60,320.00		
520. Total Reduction Amount Due Seller		839,942.20		
600. Cash at settlement to/from Seller				
601. Gross amount due to Seller (line 420)		850,000.00		
602. Less reductions due Seller (line 520)		(839,942.20)		
603. Cash	☒ To ☐ From Seller	10,057.80		

The undersigned hereby acknowledge receipt of a completed copy of this statement & any attachments referred to herein

Borrower

Fire Housing Inc

Seller

Robin M. Robinson

RRJR, LLC

Authorized member of
RRJR, LLC

700. Total Real Estate Broker Fees				Paid From Borrower's Funds at Settlement	Paid From Seller's Funds at Settlement
Division of commission (line 700) as follows:					
701. \$	to				
702. \$	to				
703. Commission paid at settlement					
704.					
705.					
800. Items Payable in Connection with Loan					
801. Our origination charge		\$	(from GFE #1)		
802. Your credit or charge (points) for the specific interest rate chosen		\$	(from GFE #2)		
803. Your adjusted origination charges			(from GFE #A)		
804. Appraisal fee	to		(from GFE #3)		
805. Credit Report	to		(from GFE #3)		
806. Tax service	to		(from GFE #3)		
807. Flood certification	to		(from GFE #3)		
808.			(from GFE #3)		
809.			(from GFE #3)		
810.			(from GFE #3)		
811.			(from GFE #3)		
900. Items Required by Lender to Be Paid in Advance					
901. Daily interest charges from	to	@ \$/day	(from GFE #10)		
902. MIP Tot lra. for Life of Loan	months to		(from GFE #3)		
903. Homeowner's insurance for	years to		(from GFE #11)		
904.			(from GFE #11)		
905.			(from GFE #11)		
1000. Reserves Deposited with Lender					
1001. Initial deposit for your escrow account			(from GFE #9)		
1002. Homeowner's insurance	months @ \$	per month	\$		
1003. Mortgage insurance	months @ \$	per month	\$		
1004. Property taxes			\$		
1005.			\$		
1006.	months @ \$	per month	\$		
1007.	months @ \$	per month	\$		
1008.			\$		
1009.			\$		
1100. Title Charges					
1101. Title services and lender's title insurance			(from GFE #4)		100.00
1102. Settlement or closing fee	to Sloan Law Firm		\$		3,000.00
1103. Owner's title insurance to S			(from GFE #5)		1,600.00
1104. Lender's title insurance to S			\$		
1105. Lender's title policy limit	\$				
1106. Owner's title policy limit	\$ 850,000.00				
1107. Agent's portion of the total title insurance premium	to Sloan Law Firm	\$	1,080.00		
1108. Underwriter's portion of the total title insurance premium	to S	\$	720.00		
1109. Binder Title	to Donlan Title Agency				100.00
1110.	Sloan Law Firm				
1111.					
1112. Atty Fee	to Will Swope				49,000.00
1113. Atty Fee	to Joseph Scaumato				3,500.00
1200. Government Recording and Transfer Charges					
1201. Government recording charges			(from GFE #7)		
1202. Deed \$	Mortgage \$	Releases \$	Other \$		
1203. Transfer taxes			(from GFE #8)		
1204. City/County tax/stamps	\$	\$			3,145.00
1205. State tax/stamps	\$	\$			20.00
1206. Inspection Fee	to AAA				5,500.00
1207. Broker Fee	to John Watssis				8,500.00
1300. Additional Settlement Charges					
1301. Required services that you can shop for			(from GFE #6)		
1302. Fees	to Charleston County				15,748.80
1303. pay/Judgment Xiphias Holdings	to Xiphias Holdings				72,866.39
1304. Federal Tax Lien					
1305. Pay	to SCDOR				24,175.94
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)					187,496.13

By signing page 1 of this statement, the signatories acknowledge receipt of a completed copy of page 2 & 3 of this three page statement.

Sloan Law Firm, Settlement Agent

EXHIBIT 6

2028
lease
with Scott Vincent

Commercial Real Estate Lease With Option To Purchase

This Lease Agreement (this "Lease") is dated as of January 28, 2015, by and between Fine Housing, Inc ("Landlord"), and Heavy Man SC, LLC ("Tenant"). The parties agree as follows:

PREMISES. Landlord, in consideration of the lease payments provided in this Lease, leases to Tenant an approximately 9000 square foot stand alone building currently be operated as and to be operated as a adult entertainment establishment (the "Premises") located at 2028 Pittsburgh Avenue, Charleston, South Carolina 29405.

TERM. The lease term will begin on January 27, 2015 and will terminate on January 26, 2016.

DEPOSIT AMOUNT. At the time of the signing of this Lease, Tenant shall pay to Landlord, in trust, a deposit of \$20,000.00.

The deposit shall be applied as follows:

Security Deposit: \$20,000.00 to be held and disbursed for Tenant damages to the Premises or other defaults under this Agreement (if any) as provided by law.

Refundable Option Consideration: \$100,000.00 to be deposited within 2 business days of execution of this agreement into a mutually agreed upon escrow agents account. The \$100,000.00 becomes nonrefundable 60 days after any title deficiencies are cured, but will be applied to the purchase price of \$1,500,000.00 if option to purchase is exercised. Seller or Sellers's counsel will notify in writing when those title issues are resolved.

LEASE PAYMENTS. Tenant shall pay to Landlord monthly installments of \$20,000.00, payable in advance on the 27th business day of each month, for a total lease payment of \$240,000.00. Lease payments shall be made to the Landlord at 14 WESTERLY DRIVE, New York, New York 10956, which address may be changed from time to time by the Landlord.

POSSESSION. Tenant shall be entitled to possession on the first day of the term of this Lease, and shall yield possession to Landlord on the last day of the term of this Lease, unless otherwise agreed by both parties in writing. At the expiration of the term, Tenant shall remove its goods and effects and peaceably yield up the Premises to Landlord in as good a condition as when delivered to Tenant, ordinary wear and tear excepted.

PARKING. Tenant shall be entitled to use of the entire parking lot for the parking of the Tenant's customers'/guests' motor vehicle(s).

PROPERTY INSURANCE. Landlord and Tenant shall each maintain appropriate insurance for their respective interests in the Premises and property located on the Premises. Landlord shall be named as an additional insured in such policies. Tenant shall deliver appropriate evidence to

Landlord as proof that adequate insurance is in force issued by companies reasonably satisfactory to Landlord. Landlord shall receive advance written notice from the insurer prior to any termination of such insurance policies. Tenant shall also maintain any other insurance which Landlord may reasonably require for the protection of Landlord's interest in the Premises. Tenant is responsible for maintaining casualty insurance on its own property.

LIABILITY INSURANCE. Tenant shall maintain liability insurance on the Premises in a total aggregate sum of at least \$1,000,000.00 and at least \$500,000.000 for each individual incident. Additionally, DRAM SHOP coverage will be required. Tenant shall deliver appropriate evidence to Landlord as proof that adequate insurance is in force issued by companies reasonably satisfactory to Landlord. Landlord shall receive advance written notice from the insurer prior to any termination of such insurance policies.

MAINTENANCE. Tenant shall have the responsibility to maintain the Premises in good repair at all times during the term of this Lease.

UTILITIES AND SERVICES. Tenant shall be responsible for all utilities and services incurred in connection with the Premises.

TAXES. Taxes attributable to the Premises or the use of the Premises shall be allocated as follows:

REAL ESTATE TAXES. Tenant shall pay all real estate taxes and assessments which are assessed against the Premises during the time of this Lease. Any previous or back taxes from former tenant(s) will be the responsibility of the Landlord.

PERSONAL TAXES. Tenant shall pay all personal taxes and any other charges which may be levied against the Premises and which are attributable to Tenant's use of the Premises, along with all sales and/or use taxes (if any) that may be due in connection with lease payments.

LANDLORD'S INABILITY TO SUPPLY OR DELAY IN SUPPLYING SERVICE OR REPAIR TO TENANT. The obligation of Tenant to pay rent hereunder and to perform all other covenants shall not be excused because Landlord is unable to supply, or is delayed in supplying, any service or repair to be supplied by Landlord under the terms of this Lease, when such inability or delay shall be due to accident, or to the extensiveness of the alterations or repairs desirable or necessary to be made, or to Landlord's inability or difficulty in securing supplies or labor for the provision of such service, or to some other cause, rather than gross negligence on the part of Landlord. No diminution or abatement of rent, or other compensation, shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the building.

EMINENT DOMAIN. If the whole or any part of the leased premises shall be taken by eminent domain, the term of this Lease shall terminate from the date title vests in the governmental authority. Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease. No part of any award shall belong to Tenant

DEFAULTS. Tenant shall be in default of this Lease if Tenant fails to fulfill any lease obligation or term by which Tenant is bound. Subject to any governing provisions of law to the contrary, if Tenant fails to cure any financial obligation within 10 days (or any other obligation within 30 days) after written notice of such default is provided by Landlord to Tenant, Landlord may take possession of the Premises without further notice (to the extent permitted by law), and without prejudicing Landlord's rights to damages. In the alternative, Landlord may elect to cure any default and the cost of such action shall be added to Tenant's financial obligations under this Lease. Tenant shall pay all costs, damages, and expenses (including reasonable attorney fees and expenses) suffered by Landlord by reason of Tenant's defaults. All sums of money or charges required to be paid by Tenant under this Lease shall be additional rent, whether or not such sums or charges are designated as "additional rent". The rights provided by this paragraph are cumulative in nature and are in addition to any other rights afforded by law.

LATE PAYMENTS. For each payment that is not paid within 10 days after its due date, Tenant shall pay a late fee equal to 3 % of the required payment.

CUMULATIVE RIGHTS. The rights of the parties under this Lease are cumulative, and shall not be construed as exclusive unless otherwise required by law.

REMODELING OR STRUCTURAL IMPROVEMENTS. Tenant shall have the obligation to conduct any construction or remodeling (at Tenant's expense) that may be required to use the Premises as specified above. Tenant may also construct such fixtures on the Premises (at Tenant's expense) that appropriately facilitate its use for such purposes. Such construction shall be undertaken and such fixtures may be erected only with the prior written consent of the Landlord which shall not be unreasonably withheld. Tenant shall not install awnings or advertisements on any part of the Premises without Landlord's prior written consent.

ACCESS BY LANDLORD TO PREMISES. Subject to Tenant's consent (which shall not be unreasonably withheld), Landlord shall have the right to enter the Premises to make inspections, provide necessary services, or show the unit to prospective buyers, mortgagees, tenants or workers. However, Landlord does not assume any liability for the care or supervision of the Premises. As provided by law, in the case of an emergency, Landlord may enter the Premises without Tenant's consent.

INDEMNITY REGARDING USE OF PREMISES. To the extent permitted by law, Tenant agrees to indemnify, hold harmless, and defend Landlord from and against any and all losses, claims, liabilities, and expenses, including reasonable attorney fees, if any, which Landlord may suffer or incur in connection with Tenant's possession, use or misuse of the Premises, except Landlord's act or negligence.

DANGEROUS MATERIALS. Tenant shall not keep or have on the Premises any article or thing of a dangerous, flammable, or explosive character that might substantially increase the danger of fire on the Premises, or that might be considered hazardous by a responsible insurance company, unless the prior written consent of Landlord is obtained and proof of adequate insurance protection is provided by Tenant to Landlord.

COMPLIANCE WITH REGULATIONS. Tenant shall promptly comply with all laws, ordinances, requirements and regulations of the federal, state, county, municipal and other authorities, and the fire insurance underwriters. However, Tenant shall not by this provision be required to make alterations to the exterior of the building or alterations of a structural nature.

ARBITRATION. Any controversy or claim relating to this contract, including the construction or application of this contract, will be settled by binding arbitration under the rules of the American Arbitration Association, and any judgment granted by the arbitrator(s) may be enforced in any court of proper jurisdiction.

RELATIONSHIP OF PARTIES. Landlord and Tenant shall not be considered or deemed to be joint venturers or partners and neither shall have the power to bind or obligate the other except as set forth herein.

ASSIGNABILITY/SUBLETTING. Tenant may not assign or sublease any interest in the Premises, nor effect a change in the majority ownership of the Tenant (from the ownership existing at the inception of this lease), nor assign, mortgage or pledge this Lease, without the prior written consent of Landlord, which shall not be unreasonably withheld.

OPTION TO PURCHASE. Tenant, upon satisfactory performance of this lease, shall have the option to purchase the real property described herein for a purchase price of \$1,500,000.00, provided that the Tenant timely executes the option to purchase and is not in default of the Lease Agreement. Thereafter, each of the parties shall promptly execute any and all further instructions or other documents including a Sale Agreement which may be reasonably required, for purchase of the real property.

NOTICE REQUIRED TO EXERCISE OPTION. To exercise the Option to Purchase, the Tenant must deliver to the Landlord, a written notice of Tenant's intent to purchase. In addition, the written notice must specify a valid closing date. The closing date must occur before the original expiration date of the Lease Agreement.

OPTION CONSIDERATION. Nonrefundable option consideration paid by the Tenant as consideration for this Option to Purchase Agreement, shall be credited towards the purchase price at closing if the Tenant timely exercises the option to purchase.

EXCLUSIVITY OF OPTION. This Option to Purchase Agreement is exclusive and non-assignable and exists solely for the benefit of the named parties above. Should Tenant attempt to assign, convey, delegate, or transfer this option to purchase without the Landlord's express written permission, any such attempt shall be deemed null and void.

CLOSING AND SETTLEMENT. Tenant agrees that closing costs in their entirety, including any points, fees, and other charges required by the third-party lender, shall be the sole responsibility of Tenant. The only expense related to closing costs apportioned to Landlord shall be the pro-rated share of the ad valorem taxes due at the time of closing, for which Landlord is solely responsible.

REMEDIES UPON DEFAULT. If Tenant defaults under this Option to Purchase Agreement or the Lease Agreement, then in addition to any other remedies available to Landlord at law or in equity, Landlord may terminate this Option to Purchase by giving written notice of the termination. If terminated, the Tenant shall lose entitlement to any refund of rent or option consideration. For this Option to Purchase Agreement to be enforceable and effective, the Tenant must comply with all terms and conditions of the Lease Agreement.

RECORDING OF AGREEMENT. Tenant shall not record this Option to Purchase Agreement on the Public Records of any public office without the express and written consent of Landlord.

ACKNOWLEDGMENTS. The parties are executing this Option to Purchase Agreement voluntarily and without any duress or undue influence. The parties have carefully read this Option to Purchase Agreement and have asked any questions needed to understand its terms, consequences, and binding effect and fully understand them and have been given an executed copy.

GOVERNING LAW. This Lease shall be construed in accordance with the laws of the State of South Carolina.

ENTIRE AGREEMENT/AMENDMENT. This Lease Agreement contains the entire agreement of the parties and there are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Lease. This Lease may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

SEVERABILITY. If any portion of this Lease shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Lease is invalid or unenforceable, but that by limiting such provision, it would become valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

WAIVER. The failure of either party to enforce any provisions of this Lease shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Lease.

BINDING EFFECT. The provisions of this Lease shall be binding upon and inure to the benefit of both parties and their respective legal representatives, successors and assigns.

Addendum "A"

This lease and option is subject to a lease agreement between Group Investment Company, Inc as Lessor and Barry Clarke as Lessee dated January 8, 1999.

Lessee accepts as in its AS-IS, WHERE-IS condition. Lessor is not responsible for any repairs to maintenance related to the Premises.

Lessee agrees to furnish to the Lessor proof of funds to close the sale within 30 days after written notice of cure of any title deficiencies other than the named lease previously disclosed between Group Investment Company, Inc. and Barry Clarke.

LANDLORD:
Fine Housing, Inc

By: _____ Date: January 27, 2015
VINCENT DESTASO,
CEO

TENANT:
Heavy Man SC, LLC

By: _____ Date: January 27, 2015
John F. Bailey
Member

By: _____ Date: January 27, 2015
Scott Hendrix
Managing Partner

SIGNATURES AND NOTICE. This Lease shall be signed by the following parties. No notice under this Lease shall be deemed valid unless given or served in writing and forwarded by mail, postage prepaid, addressed to the parties below:

LANDLORD:

Fine Housing, Inc
CEO
14 WESTERLY DRIVE
New York, New York 10956

TENANT:

Heavy Man SC, LLC
Managing Partner
3535 Saint Johns Bluff Road S
Jacksonville, FL 32224

Such addresses may be changed from time to time by either party by providing notice as set forth above. Notices mailed in accordance with the above provisions shall be deemed received on the third day after posting.

LANDLORD:

Fine Housing, Inc

By: _____ Date: January 27, 2015
VINCENT DESTASO,
CEO

TENANT:

Heavy Man SC, LLC

By: _____ Date: January 27, 2015
John F. Bailey
Member

By: _____ Date: January 27, 2015
Scott Hendrix
Managing Partner

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2016-CP-10-03038

2015

Barry Clarke,)
Plaintiff,)
vs.)
Fine Housing, Inc. and)
RRJR, L.L.C.,)
Defendants.)

PLAINTIFF'S REPLY TO DEFENDANT'S
MEMORANDUM OF LAW

2016 JUL 13 PM 1:07
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

On July 12, 2016, the defendant, Fine Housing, filed with the Court a return to the plaintiff's motion for summary judgment and supporting memorandum. The memorandum takes a page out of Cicero and says, in essence, that plaintiff does not understand the issues raised in this case: "Clarke . . . supports his argument with contested facts, no legal authority, and confusing arguments that seem to work against the relief requested." (Defendant's Memorandum at page 1) (*In hominem dicendum est igitur, quum oratio argumentationem non habet. Cicero, Pro Flacco, § 10*)

As to the first allegation, rather than accusing opposing party of not understanding the issues, there is a more plausible, alternative explanation to the assertion that plaintiff's counsel is dim; to wit, that opposing counsel disagree over which principles of law control the outcome when applied to essentially undisputed facts. It is common in an adversarial system of justice for combatants to disagree which legal principles control the outcome of a dispute.

RIGHT OF FIRST REFUSAL

The defendant casts this case as determined by common law holdings from South Carolina case law the protecting free alienation of property: "Fine Housing succinctly states why the Right is unenforceable restraint on alienation—it lacks the specificity required to be enforceable." (Defendant's memorandum at page 2) The second prong of defendant's argument is that the right of first refusal is too ambiguous to be enforced.

As for the first argument, plaintiff's June 20th brief demonstrates why a right of first refusal is never a restraint on alienation. (See pages 6—7.) Rights of first refusal promote a land owner's maximum return on investment because they insure that any offer to purchase always invites a greater bid:

The purpose of a right of first refusal is not to allow the holder to compel the property owners to sell the property at designated price, as may be the case with the existence of an option; rather, the purpose is to allow the holder of the right to be notified when the owner intends to sell or has accepted an offer, which, in most cases, will be presumptively the fair market value of the property and to allow the holder to purchase the property under identical terms. A right-of-first-refusal provision is designed to afford the holder of the right protection against a sale to others and is only effective if, in the event the owner has elected to sell the property, the holder, has a realistic opportunity to meet the offer the owner has elected to accept.

77 Am. Jur.2d, "Vendor and Purchaser," § 34.

Thus, the defendant's argument is premised on a misunderstanding of the purpose (and effect) of a right of first refusal because a right of first refusal benefits the seller, Robinson, by promoting competition. (In his February 19, 2016, deposition, the plaintiff explained how the right came about because John Robinson and plaintiff were friends and colleagues in the club business. John Robison owned and operated two

adult clubs, one at 2028 Pittsburgh on property he owned—Thee Southern Belle—and one at 2015 Pittsburgh on property leased from the plaintiff—Diamonds. John Robinson owned 2028 Pittsburgh and leased 2015 Pittsburgh from the plaintiff. See deposition page 26. Thus, Robinson's intent was to lock up the street and control both businesses.) On page 11 of defendant's well-written brief, the defendant takes another swipe at plaintiff's obtuseness: "Clarke's confusion is also an explanation as to why, to be enforceable, a right of first refusal must be certain as to the price at which the Right can be exercised." (Brief at page 11) Rather than call the defendant obtuse, the plaintiff replies that the parties have a disagreement a right-of-first-refusal as distinguished from an option-to-purchase. Defendant contends that a right of first refusal without a purchase price is unenforceable. Plaintiff replies that a price in a right-of-first-refusal is necessarily determined by the seller's receipt of a *bona fide* offer. Instead of name calling, the plaintiff says only that the parties have a disagreement over the law and look to the Court to resolve this impasse. Plaintiff respectfully asserts that a right-of-first-refusal with a stated purchase price is not a right-of-first-refusal. Rather it is an option, which is a similar legal instrument. "In general, an option to purchase property requires: (1) an agreement conferring a right to buy; (2) a certain described property; (3) a fixed period of time; and (4) a stated price." 77 *Am. Jur2d Vendor and Purchaser*, § 28, "Elements of option to purchase."

THE COURT'S FUNCTION IN ENFORCING A CONTRACT

The defendant's second prong of its argument is that the right of first refusal is

too vague to be enforced. The defendant does not explain how it is vague; rather, it relies on an assertion that the right is expressed in few words even though brevity is a universally admired trait, especially in law: "It is better to brief than tedious." *Richard III*, Act I, Sc. 4, l. 88. Though the right be brief, it defines the property being sold; it establishes a price; and it must be performed at the time selected by the defendant. In short, it meets all of the requirements for a written contract. When enforcing a contract, the Court is required to enforce the document as a whole and read the parts in harmony, not in isolation, in order to ascertain the parties' intent. See plaintiff's June 20, 2016 brief at pages 8-10 for a full discussion of this principle. In *Minter v. GOCT, Inc., d/b/a Grease Monkey*, 322, S.C. 525, 473 S.E.2d 67 (1996), the Court of Appeals reversed a trial court when it granted a directed verdict against a plaintiff who asserted a right of first refusal far more vague than the one in this case. In *Minter*, the Court of Appeals described the right-of-first-refusal thus:

In their complaint, the Minters alleged their predecessor in interest, Carolina Properties Inc., entered into a contract with GOCT in October of 1986 in which Carolina Properties agreed to build a quick oil change facility on Broad River Road which would be leased by GOCT. They alleged the agreement contained a provision giving Carolina Properties a "first right of refusal on any other Grease Monkey sites developed by GOCT [322 S.C. 527] in Richland or Lexington County, South Carolina." Carolina Properties subsequently assigned the contract to the Minters. According to the complaint, another Grease Monkey facility was built on Rabon Road in Richland County without the Minters being offered the right of first refusal. They brought this action alleging breach of contract and breach of contract accompanied by a fraudulent act.

The description in *Minter* is less specific than the one here. It does not define the location, the time for performance, or the price. As discussed in plaintiff's June 20th

brief, the plaintiff's citation to *Ecclesiastes* was to state the obvious: that Courts exist to give force to the intent of the parties in drafting contracts.

Moreover, the resolution of the question of ambiguity is, like logic, binary. (This is not to say that science does not derive tremendous insights from inferences. The war between John Wallis and Thomas Hobbes for the soul of science laid this issue to rest in favor of the egalitarian Wallis, the result of which was to make the modern world possible.) Either the right-of-first-refusal here is ambiguous or it is not. If it is ambiguous, then neither party gets summary judgment because the Court will have to admit parol evidence to give a corporeal body to the parties' intent. If the right is not ambiguous—as plaintiff asserts—then the plaintiff is entitled to summary judgment. The plaintiff respectfully submits that the right-of-first-refusal, while succinct, is not the least ambiguous, which means the seller, RRJR, and the buyer, Fine Housing, breached the recorded lease by failing to notify the plaintiff of the “sale” and allowing him an opportunity to exercise his option.

Finally, even if the right-of-first-refusal were ambiguous—as the defendant asserts—then in attempting to ascertain the intent of the parties, the Court would have to construe the ambiguity against the Landlord/Vendor who was in the better position to describe his grant of the right-of-first-refusal. See *Ward v. West Oil Company, Inc.*, 379 S.C. 225, 665 S.E.2d 618 (S. C. App. 2003)

Ambiguous language in a contract should be construed liberally and most strongly in favor of the party who did not write or prepare the contract and is not responsible for the ambiguity; and any ambiguity in a contract, doubt, or uncertainty as to its meaning

should be resolved against the party who prepared the contract or is responsible for the verbiage.

Myrtle Beach Lumber Co. v. Willoughby, 276 S.C. 3, 8, 274 S.E.2d 423, 426 (1981); see also *Columbia East Assocs. v. Bi-Lo, Inc.*, 299 S.C. 515, 519-20, 386 S.E.2d 259, 261-62 (Ct.App.1989) ("Where the contract is susceptible of more than one interpretation, the ambiguity will be resolved against the party who prepared the contract.").

Here, the seller is the one granting the right to the plaintiff for a benefit to the seller. Having breached the plaintiff's right-of-first-refusal the seller, and its purchaser, seek to profit from their wrongdoing. The seller, RRJR, knew about the recorded lease. The purchaser knew about the recorded lease. (See *Spence v. Spence* cited below at page 9.) These two facts are beyond any dispute. Yet, neither one made an effort to advise the plaintiff here of the imminent "sale." In his deposition taken February 10, 2016, the plaintiff testified he heard a rumor about a possible sale, tracked down the defendant, and tried to negotiate with him to avoid this controversy. See February 1, 2016, deposition of Barry Clarke, page 47:

Q. Now, you've made some demands on Fine Housing, concerning this right of first refusal, correct?

A. I don't know they were demands. I spoke to them a couple of times.

Q. You spoke to—

A. --Vince.

Q. Tell me the first time you spoke to Vince. Do you remember when that was?

A. When?

Q. Yes.

A. I don't. I'd have to look that up.

Q. Generally, do you recall when it was?

A. Several years ago. I think it was within a month or so.

Q. December of 23013 is when there was the transfer of property from RRJR, LLC to Fine Housing.

A. It was approximately that time. Approximately.

Q. Approximately December of 2013?

A. I don't know the dates, sir.

Q. Okay. I'm just telling you that's when it was.

A. Yes, sir.

Q. And you're saying approximately that time. That's your testimony.

A. Around—that's my memory.

Q. And why did you talk with him about it —

A. Because—

Q. --around that time.

A. They were—people were coming to me, and they were saying something about the property. And I wanted to find out about it. I believe that's what happened. That's several years ago. I don't remember exactly the conversation.

The plaintiff's case is grounded upon South Carolina statutory law and general principles of contract law. The parties have a disagreement over the law, but few facts are in disagreement. The defendant's list of "facts" on page 7—10 are nothing more than exclamation points on the parties' disagreement about the law. For example, on page 9, under § I. the defendant asserts: "There is no evidence offered to support the 'fact' that Fine Housing had actual knowledge of the Lease prior to the December 2, 2013 transaction." It may be, as defendant asserts, that the plaintiff's lawyer is too dull to discern the real issues in the case, in which event, the Court can clarify the issues for the plaintiff and give him an opportunity to address them, but the inescapable fact is that the parties have a disagreement over the application and effect of the South Carolina recording statute. Of course, "actual" knowledge is irrelevant as the defendant is charged with the knowledge of the recorded lease. Not only is it in his chain of title (see plaintiff's June 20th brief page 5 for discussion of § 30-7-10), but also his title examiner found the lease and missed the right-of-first refusal. See plaintiff's Exhibit 4 attached to June 20th brief:

Charlie and Vince: Enclosed please find a copy of the lease for the Sol Legare Property [sic] in favor of Barry Clarke which is for \$1,000 a month [sic.] and ends six years after his death. This was NOT picked up in the title search that Will sent me. Further, Will never advised me about this lease verbally and neither did Mrs. Robinson.

/s/ William H. Sloan [email] March 21, 2014

Compare this undisputed fact with the fact that the "seller," RRJR has a right to redeem the property that runs until November of this year! (See Exhibit 3 to Plaintiff's June 20,

2016, brief.)

In short, the plaintiff respectfully submits that the outcome of this dispute is controlled by the South Carolina recording statute and the application of basic principles of contract law. See *Spence v. Spence*, 388 S.C. 106, 628 S.E.2d 868 (2006):

However, constructive or inquiry notice in the context of a real estate transaction often is grounded in an examination of the public record because it is the proper recording of documents asserting an interest or claim in real property which gives constructive notice to the world. The recording of a document alerts all future grantees of the rights of the recorder because the law assumes the grantee will search the index and discover the interest or claim. *Epps*, 139 S.C. at 499, 138 S.E. at 303 (“recording amounts to notice, whether known or unknown, because the means of information are at hand.”); *Franklin Bank, N.A. v. Bowling*, 74 P.3d 308, 313 (Colo. 2003) (en banc) (constructive notice in real estate transaction essential is record notice).

. . . .

Constructive or inquiry notice in the context of a real estate transaction also may arise when a party becomes aware or should have become aware of certain facts which, if investigated, would reveal the claim of another. The party will be charged by operation of law with all knowledge that an investigation by a reason cautious and prudent purchaser would have revealed. As this Court has explained in a case involving the transfer of real property, if there are circumstances sufficient to put a party upon the inquiry, he is held to have notice of everything which that inquiry, properly conducted, would certainly disclose; but constructive notice goes not further. It stands upon the principle that the party is bound to the exercise of due diligence would lead him; but he is not held to have notice of matter which lies beyond the range of that inquiry and which that diligence might not disclose. There must appear to be, in the nature of the case, such a connection between the facts disclosed and the further facts to be discovered, that the former could justly be viewed as furnishing a clue to the latter.

CONCLUSION

In closing, the controlling—and undisputed—facts are that the plaintiff possesses a valid and enforceable right-of-first-refusal. The plaintiff asserts that it meets all the requirements for a right-of-first-refusal and that it is not ambiguous. For these reasons,

the plaintiff asserts that he is entitled to a judgment as a matter of law.

July 13, 2016



Thomas R. Goldstein, S.C. Bar #2186
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Charleston, SC 29415-1121
(803) 554-4291, (843) 554-5566 fax
ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

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

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

This 13TH day of July 2016
BY T. R. Goldstein

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Barry Clarke,

Plaintiff,

v.

Fine Housing, Inc. and RRJR, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2015-CP-10-03038

NOTICE OF MOTION AND MOTION
TO RECONSIDER PURSUANT TO
RULE 59(e), SCRPC

FILED
OCT 13 PM 2:20
CLERK OF COURT

Pursuant to Rule 59(e), SCRPC, the Defendant Fine Housing, Inc. ("Fine Housing") moves for an amendment of the Order of Judgment entered in this matter on September 28, 2017 (the "Order") as follows:

A. To include rulings on the following matters presented by Fine Housing at trial that were not addressed in the Order:

1. The Order does not explain the Court's conclusion that the right of first refusal extends to a parcel that includes more property than the Plaintiff leased. The testimony revealed that the Lease was for only an unidentified one half (½) of the identified parking spaces of the Pittsburg Avenue property, but the Court ruled that the right of first refusal pertained to the entire tract, including all improvements. Finding of Fact number 4 erroneously states that the legal description of the property encumbered by the lease is the same as the property encumbered by the right of first refusal. Finding of Fact number 11 states that the right of first refusal contains an exact legal description of the property encumbered. In fact, there is no property description in the right of first refusal paragraph of the Lease. Fine Housing argued that the discrepancy

between the property subject to the leasehold and the property purportedly covered by the right of first refusal that is contained in the lease renders the right of first refusal unenforceable.

2. The Order erroneously states that Fine Housing relied on the unpublished opinion *Page v. Page*, 2004-UP-110 (Ct. App. 2004). In fact, Fine Housing based its argument on the published authorities cited in *Page* and offered *Page* to the Court as a summary of those authorities. Fine Housing offered copies of those underlying cases and other authorities to the Court at trial. The Order failed to address all of Fine Housing's arguments outlined in the entire decision of *Page*, not just the portion identified in the Order. The Order incorrectly states that Fine Housing relies solely upon an analysis under *Stylecraft, Inc. v. Thomas*, 250 S.C. 495, 159 S.E.2d 46 (1968). The *Stylecraft* analysis was only one reason given for the decision in *Page* and is not the support for the position advanced by Fine Housing. Fine Housing relied upon and argued the second reason – "restraint on alienation in the form of a right of first refusal that is not specific in all required elements – legitimacy of purpose, price, and detailed procedures – runs counter to the commonly acknowledged concept in this state that one of the attributes of fee simple ownership is the ability to freely convey it with few if any restrictions." The Order does not address this position.

B. To correct the following misstatements of the record and the law:

1. The Order incorrectly states that Fine Housing's argument is that "the right of first refusal is not enforceable because it constitutes a 'restraint on alienation'

and the Court must, therefore apply it narrowly.” Fine Housing’s argument is that the right of first refusal is not valid because it is not specific in all required elements and therefore is an unreasonable limitation on the power of alienation that violates the public policy of the State of South Carolina, rendering it without force or effect.

2. The Order relies on the case of *Minter v. GOCT, Inc.*, 322 S.C. 525, 473 S.E2d 67 (1996) that applies contract interpretation principles to resolve a dispute between parties to a contract. In this case Fine Housing and the Plaintiff are not in contractual privity. Rather, the Plaintiff seeks to enforce a purported interest in real estate because of public record notice to Fine Housing.
3. The Order erroneously characterizes *Ecclesiastes Production Ministries v. Outparcel Associate, LLC*, 374 S.C. 483, 649 S.E.2d 494 (Ct. App. 2007) as a case “construing a similar right of first refusal contract.” *Ecclesiastes* did have a right of first refusal in its fact pattern, but the decision in that case addresses whether a settlement agreement entered between a party and a tortfeasor extends to a joint tortfeasor. None of the cases provided in the two (2) page *Ecclesiastes* cite contained in the Order involve a right of first refusal and are therefore inappropriate.
4. The Order erroneously includes statements and findings relating to the intention of the parties to the Lease. This is an action to enforce an interest in real estate; not an action to resolve a contractual dispute.

5. The Order erroneously includes statements and findings that the transfer of the real estate at issue from Group Development Company, Inc. to RRJR, LLC was a name change.
 6. The Order erroneously implies that Fine Housing used the defenses of waiver and estoppel as “offensive weapons”. Fine Housing raised waiver and estoppel as affirmative defenses in this action.
 7. The Plaintiff and Fine Housing stipulated that John Robinson and Robin Robinson were both shareholders of Group Investment Company, Inc. and members of RRJR, LLC. They did not stipulate that they were the only shareholders/members. The Order misstates the stipulation.
 8. The Order attributes the conduct of an entity to an individual. For instance, but not as a limitation, the Order states that Mr. DeStaso purchased property through Fine Housing. This statement ignores well settled principles of property and agency law.
 9. The Order describes Group Investment Company, Inc. as the “forerunner” of RRJR, LLC. This characterization has no basis in corporate law or the record before the Court.
- C. To remove the following matters that are not in the record:
1. Information concerning Robin Robinson’s “financial troubles,” including but not limited to findings of “financial missteps,” unavailability of financing from conventional sources, and the availability of bankruptcy relief.
 2. The management of RRJR, LLC following Mr. Robinson’s death.

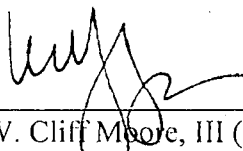
3. Any suggestion that Fine Housing or Vince DeStaso offered or committed to loaning money to Robin Robinson and/or RRJR, LLC.

D. To exclude the following extraneous and irrelevant information:

1. Discussions and factual determinations concerning the conduct of Attorney William Sloan relating to the closing of the sale by RRJR, LLC to Fine Housing. As the Court notes, those matters are the subject of a separate pending case and comment, findings and determinations relating to that conduct are not only irrelevant to the matters at issue in this action, but they are also not before this Court and are therefore inappropriate.
2. Discussions and factual determinations concerning the characterization of the transaction between RRJR, LLC and Fine Housing as a sale or a loan. At several points in the Order, the Court states that the transaction is a sale and that the characterization of the transaction does not affect the ultimate decision by the Court.
3. The inference that the standard for examination of the title of real estate for a sale is different from the standard for examination of the title of real estate to be used as collateral for a loan.
4. Discussions and factual determinations relating to the history, use and ordinances affecting the property at issue.
5. Discussions and factual determinations as to what led RRJR, LLC to sell the property at issue to Fine Housing.
6. Discussions and factual determinations as to how Robin Robinson managed RRJR, LLC.

7. Discussions and factual determinations concerning the closing of the sale of the property by RRJR, LCC to Fine Housing, other than (a) that the Lease containing the right of first refusal language was of record at the time of the transaction, and (b) that no one advised the Plaintiff of the sale by RRJR, LLC to Fine Housing at the time of the sale, two facts that are admitted by Fine Housing.
8. Discussions and factual determinations based on testimony by Mr. Clarke of statements, communications, and transactions of John Robinson precluded by the Dead Man Statute, SC Code Ann. §19-11-20 (2104).

Fine Housing's Motion is based on the record of this action. The undersigned certifies that he first received notice of the entry of the Order on October 6, 2017 when he received a copy of Mr. Goldstein's letter dated October 2, 2017, a copy of which is attached to this Motion.



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Columbia, South Carolina

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October 2, 2017

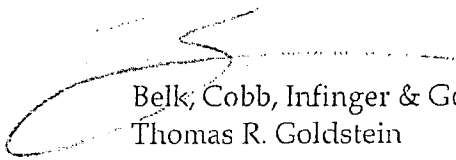
Mr. W. Cliff Moore, III
Adams and Reese, L.L.P.
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Re: Clarke vs. Fine Housing, Inc.; 2015-CP-10-3038

Dear Cliff,

I am inclosing a copy of Judge Nicholson's filed Order in this case. For some reason, the Court sent it to Ashley, but not to me. Please let me know if you have any questions or concerns. With kind regards, I am

Very truly yours,


Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

TRG/
enclosure: Order filed September 28, 2017
cc: Ashley Andrews (without enclosure)
Barry Clarke (with enclosure)

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF CHARLESTON) CASE NO.: 2016-CP-10-03038

BARRY CLARKE,)
)
) PLAINTIFF,)
)
) v.) TRANSCRIPT OF RECORD
)
FINE HOUSING, INC.)
) and)
RRJR, LLC)
)

JULY 26TH, 2017
COMMENCING AT
CHARLESTON, SOUTH CAROLINA
BEFORE THE HONORABLE JUDGE J. C. NICHOLSON

APPEARANCES:

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Official Court Reporter

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EXHIBITS

<u>NO.</u>	<u>DESCRIPTION</u>
1.	LEASE
2	PLAT
3.	DEED
4.	SETTLEMENT STATEMENT
9.	NEW YORK DEPT. OF STATE
10.	LEASE
11.	OPTION TO PURCHASE
12.	E-MAIL
13.	LAINTIFF REQ TO ADMIT
14.	COMPLAINT
15.	ORDER OF DISMISSAL
16 .	ANDREWS
17.	ANDREWS
22.	LETTER 4-7-14
23.	LETTER 12-11-14
24.	ALTMAN CORRESP 4-15-14
25.	GOLDSTEIN LETTER 12-22-14
26.	DEED FINE HOUSING, INC.
31.	SECY OF STATE REPORT -GROUP INV. CO.
32.	SECY OF STATE REPORT RRJR
33.	DEEDS GIC TO RRJR
34.	E-MAIL TO JIM HAMILTON
35.	AGREEMENT OF RRJR AND DESTASO
36	RECONCILIATION

DEFENSE EXHIBITS

- 1 E-MAIL 5-15-14
- 2 E-MAIL 6-17-14
- 3 E-MAIL 7-18-14
- 4 AGREEMENT FOR SALE OF REAL PROPERTY
- 5 AGREEMENT FOR SALE OF REAL PROPERTY
- 6 LETTER TO CHARLES ALTMAN 4-13-15

1 THE COURT: Who is here representing who for the
2 record?

3 MR. GOLDSTEIN: Tommy Goldstein and Ashley Andrews for
4 the plaintiff.

5 MR. MOORE: Your Honor, Cliff Moore here for the
6 defendant, Fine Housing, Inc.

7 THE COURT: Okay.

8 MR. ALTMAN: Your Honor, Charles Altman. I am not on
9 the case. I am counsel for Fine Housing, and generally, Mr.
10 Moore's assistant in this case.

11 THE COURT: So you're not on this case or you're just
12 here?

13 MR. ALTMAN: I am Mr. Moore's assistant in this case.

14 THE COURT: Okay. I was reading y'all's pre-trial
15 memorandums. I was going to ask after reading them, y'all
16 talk about which facts are in dispute, is there any way of
17 getting on the record what facts y'all do stipulate to that
18 are not in dispute without having to go through all these
19 exhibits?

20 MR. GOLDSTEIN: Your Honor, I can only speak for our
21 side of the case, but I suspect there are very few facts
22 which are in dispute, and Mr. Moore and I have not had that
23 specific conversation. If you want to give us 10 minutes to
24 see if we can reach a stipulation.

25 THE COURT: I think it may shorten things down if y'all

1 can stipulate to some facts and identify what's in dispute,
2 factually. I'm not talking about legally; I'm talking about
3 factually.

4 MR. MOORE: Yes, sir. And Tommy gave me his exhibit
5 list and we've gone through -- if we could have a few more
6 minutes we could certainly go through those.

7 THE COURT: I'd be happy to give you a few more
8 minutes, because I think it would shorten the trial
9 tremendously if y'all can do that. If you can't, that's
10 fine, too. I just want to give you that opportunity.

11 MR. GOLDSTEIN: I'm happy to state for the record in
12 open Court right now without consultation with opposing
13 counsel as to what I believe the ---

14 THE COURT: Well, why don't y'all talk about it and see
15 if y'all can reach an agreeable stipulation as to facts you
16 admit to and ones you disagree about. Take about 10 or 15
17 minutes and talk if you would, please.

18 MR. GOLDSTEIN: Yes, sir.

19 MR. MOORE: Yes, sir.

20 (Off the Record, briefly.)

21 THE COURT: All right. What have y'all agreed to?

22 MR. GOLDSTEIN: To save the Court some time, we're
23 prepared to stipulate that the plaintiff in this case
24 reported a lease at the Charleston County RMC Office at Book
25 C, 319 at 793, on January 27th, 1999.

1 The parties are prepared to stipulate that the lease
2 contains language in Article 5 that may or may not be an
3 effective right of first refusal. They contest -- they say
4 it's not effective because it's vague on the lack of terms
5 and that we've waived our rights. They've stipulated that
6 it's on record, on file, at the Clerk of Court's office.

7 We're prepared to stipulate that there was a closing on
8 December 2nd, 2013, and at that closing, the defendant in
9 this case obtained a title and the deed was recorded at the
10 RMC office, and I don't have the book and page number in
11 front of me, but we stipulate that the deed was recorded at
12 the RMC office on December 2nd ---

13 THE COURT: And that was from RRJR, LLC?

14 MR. GOLDSTEIN: Correct.

15 THE COURT: That was from RRJR, LLC to Fine Housing,
16 right?

17 MR. GOLDSTEIN: That is correct, Judge.

18 THE COURT: All right.

19 MR. GOLDSTEIN: That was recorded at the RMC office at
20 book ---

21 THE COURT: What was the purchase price?

22 MR. GOLDSTEIN: It was \$150,000.

23 THE COURT: Is that stipulated to also?

24 MR. GOLDSTEIN: It is.

25 MR. MOORE: We will stipulate that that's what the deed

1 says, Your Honor.

2 THE COURT: Well, if that's what the deed says, that's
3 what the deed says.

4 MR. MOORE: It's also Exhibit Number Three.

5 THE COURT: All right. The deed says \$650,000?

6 MR. MOORE: Yes, Your Honor.

7 THE COURT: Go ahead.

8 MR. GOLDSTEIN: It was recorded December 9th, 2013, at
9 Deed Book 0377, page 843. The parties are prepared to
10 stipulate that following that, and there will be testimony
11 from both sides to flush out these conversations, but the
12 parties will testify that in March of 2014 there was oral
13 communication from Mr. Sloan to my office, and from Mr.
14 Sloan to the defendant in this case, regarding the alleged
15 right of first refusal, which was then followed up by my co-
16 counsel, Ashley Andrews, on April 10th, 2014, extending an
17 offer to purchase to the defendant from the plaintiff in
18 this case, and that there was a second permutation of that
19 offer, but the consideration of both was \$650,000; and that
20 there were other e-mail communications.

21 Mr. Moore is going to rise now and read you the numbers
22 of the exhibits that we are admitting into evidence by
23 agreement that contain all of the dates, and of course, the
24 communications to which we are stipulating.

25 THE COURT: All right. Go ahead, Mr. Moore.

1 MR. MOORE: Thank you, Your Honor. On the plaintiff's
2 exhibit list that was handed up this morning, many of them
3 are exhibits that we had also marked.

4 We have agreed to admit into evidence exhibits: number
5 one, two, three, ten, eleven, twelve, thirteen, fourteen,
6 fifteen, sixteen, seventeen, twenty-two, twenty-three,
7 twenty-four, twenty-five, thirty-one, thirty-two, and
8 thirty-three.

9 THE COURT: Okay.

10 MR. MOORE: In addition to that, we have exhibits that
11 have not been marked yet that are exhibits in addition to
12 those that I would like to -- if I could just go ahead and
13 pre-mark those.

14 THE COURT: That's fine. Let's go ahead and pre-mark
15 those. Those are by agreement admitted also, right?

16 MR. MOORE: Exhibits One through Six.

17 MR. GOLDSTEIN: That's right, Your Honor, we've reviewed
18 them and we have no objection.

19 THE COURT: Exhibits one through six. Let's get those
20 marked.

21 (Court reporter marks the exhibits.)

22 THE COURT: All right. Anything else, Mr. Moore?

23 MR. MOORE: No, Your Honor.

24 THE COURT: Mr. Goldstein, anything else on that issue?

25 MR. GOLDSTEIN: No, Your Honor.

1 THE COURT: All right. Plaintiff's Exhibits One, two
2 and three are admitted without objection. Ten through
3 seventeen are admitted without objection. Twenty-two
4 through twenty-five are admitted without objection. Thirty-
5 one through thirty-three are admitted without objection.
6 Defendant's Exhibits One through Six are admitted without
7 objection. Does that cover the documents, Mr. Goldstein?

8 MR. GOLDSTEIN: Yes, sir.

9 THE COURT: All right. Anything else before we get
10 started in the trial?

11 MR. GOLDSTEIN: Nothing from the plaintiff, Your Honor.

12 THE COURT: As far as Mr. Swope is concerned, you're
13 not planning on calling him on your case in chief and
14 reading his e-mails, you may need him on your reply; is that
15 correct?

16 MR. GOLDSTEIN: That is correct.

17 THE COURT: Is he here?

18 MR. GOLDSTEIN: He was.

19 THE COURT: He was here.

20 MR. GOLDSTEIN: I know. He must have stepped out. Mr.
21 Moore, do you plan on calling him in your case?

22 MR. MOORE: No, Your Honor.

23 THE COURT: All right. You don't know if you're going
24 to need him on reply or not, so rather than call him and
25 guessing about the reply, what I'm going to do is leave the

1 record open, because I believe his uncle died and he's going
2 to be leaving town and I will afford him that right. I will
3 excuse him and leave the record open. If you want to reply
4 with his testimony, I will leave the record open and you can
5 do it by deposition. Or we can reconvene the hearing,
6 whichever the parties want to do. Okay?

7 MR. GOLDSTEIN: Yes, Your Honor.

8 THE COURT: If you decide you want to do it. I'm not
9 trying to prejudge that you want to, and if you don't need
10 him, that's fine. Is that okay with you, Mr. Moore?

11 MR. MOORE: Yes, Your Honor.

12 (The Court excuses witness for uncle's funeral.)

13 THE COURT: From the plaintiff and defendant's
14 standpoint, please make a very brief opening statement and
15 then you can call your first witness.

16 MR. GOLDSTEIN: Your Honor, I'll be very brief. This
17 issue before you is a very narrow legal issue. This case is
18 brought to the Court. It is a Court of equity on the
19 specific form, and the allegation is that the plaintiff in
20 this case recorded a lease on the subject property.

21 THE COURT: Okay. You asked on your Brief -- I haven't
22 specifically read the complaint, but I understand it's a
23 breach of contract, and you're asking for specific
24 performance; is that correct?

25 MR. GOLDSTEIN: That's correct. The specific

1 performance arises out of a recorded lease. My client had a
2 recorded lease on the subject property that, if it pleases
3 the Court, we will refer to it as 2028 Pittsburgh Avenue,
4 and let's just go ahead and get this out of the way, Judge,
5 because it's going to come up, and we are all adults, and
6 it's a lawfully licensed business. In the colloquial, it's a
7 strip club. So let's just ---

8 THE COURT: Well, that doesn't have anything to do with
9 it.

10 MR. GOLDSTEIN: It doesn't have anything to do with it;
11 I'm just jumping in the water.

12 THE COURT: Okay. That's fine.

13 MR. GOLDSTEIN: So this club operates at 2028
14 Pittsburgh Avenue. It belonged to the plaintiff's close
15 friend, John Robinson, who operated it for many years.
16 Before his death, John Robinson actually rented my client's
17 property, 2015 Pittsburgh, which is across the street. You
18 know, if you're going to build a Burger King, you're going
19 to build it across the street from McDonalds; so that was
20 the theory.

21 Pittsburgh Avenue has sort of been the adult
22 destination in Charleston for as long as I can remember.

23 Interestingly, it has nothing to do with this case, but
24 interestingly, 2015 Pittsburgh is in the city of Charleston
25 and 2028 Pittsburgh is in the county of Charleston; so it's

1 just kind of an interesting thing.

2 My client's relationship with John was close and
3 mercurial, but they worked together and relied on one
4 another to run successful businesses.

5 John died in 2008, and his wife, Robin, took over.
6 Robin lacked the organizational skills of her husband, who
7 was a highly successful businessman and ran a number of
8 businesses in Charleston, and got in tremendous financial
9 difficulty.

10 Mr. Martin represented Robin Robinson for years and Mr.
11 Swope stepped into his shoes. And as the financial burdens
12 from mismanagement began to mount, she got further and
13 further into debt. In an effort to save the business, Mr.
14 Swope began to cast about for non-conventional financing
15 because of the lack of proper business records, tax returns,
16 tax liens, et cetera. The source to conventional financing
17 was closed.

18 Through a series of brokers, and the testimony may be
19 at some variances as to who called whom and when, but at any
20 rate, Robin Robinson landed on Mr. Destaso. Mr. Destaso is,
21 and I -- we all have duties to our client, and I take no
22 pleasure in saying this, but he is a predatory lender and he
23 came to Charleston and he realized the weak position that
24 Robin Robinson was in facing imminent foreclosure, oddly
25 enough, it's a small world, being handled by Mr. Altman, and

1 was facing a foreclosure date of December 3rd.

2 On December the 2nd, Mr. Destaso lent Ms. Robinson a
3 sum of money at extortionary rates in excess of 50 percent,
4 and there will be testimony about the closing itself, which
5 has all the earmarks of classic predatory lending.

6 But be that as it may, the parties have stipulated, and
7 there is a recordance entered into evidence without
8 objection, a recorded request for admission. The defendant
9 concedes at the time of closing on December 2nd, 2013, no
10 one notified my client, Barry Clarke. It's a stipulated
11 fact.

12 THE COURT: Nobody notified your client of the transfer
13 of the property?

14 MR. GOLDSTEIN: That is correct.

15 THE COURT: Okay.

16 MR. GOLDSTEIN: So in March of 2014, rumors were on the
17 street, because as Your Honor probably knows, adult
18 businesses have very few locations in which they may
19 operate. They are highly regulated and so it's a small
20 closed world. So word began circulating that Robin was no
21 longer in control of the club; Mr. Destaso was. And it is
22 stipulated that in March of 2014, Mr. Destaso, through his
23 lawyer, Mr. Sloan, reached out to me to inquire about the
24 status of Mr. Clarke's lease. At that point, for lack of a
25 better expression and to use a colloquial, the cat was out

1 of the bag. The title had been transferred.

2 My client, being highly attuned and attentive to his
3 business, he let no moss grow on his stone, and on April
4 10th ---

5 THE COURT: What year are we talking about?

6 MR. GOLDSTEIN: Closing was December 2nd, 2013.

7 THE COURT: Okay.

8 MR. GOLDSTEIN: It is undisputed and the evidence is in
9 record that Mr. Destaso reached out to me through his
10 lawyer, Bill Sloan, on March 10th, 2014. On April 10th,
11 2014, Ashley Andrews, who is seated to my left, conveys a
12 written offer to Mr. Destaso to purchase the property;
13 again, that's undisputed and that e-mail is in evidence
14 without objection.

15 There was a second modification of the proposal for
16 purchase for \$650,000 and that, too, is in the record -- and
17 I'm doing this from memory, but I think that e-mail is in
18 the record by agreement was April 21st, 2014.

19 The parties were unable to arrive at an acquisition
20 price for Mr. Clarke. Meanwhile, on February 9th -- and I
21 hate to do this to the Court; I'm now skipping back a month.
22 On February 9th, 2014, Mr. Swope filed a suit on behalf of
23 Robin Robinson to rescind the deal alleging that it was not
24 a conveyance, that it was, in fact, a loan.

25 That matter was handled by counsel for Mr. Destaso,

1 Charlie Altman. That matter was resolved in September of
2 2015. So during that time, there was a lot of back and
3 forth about whether Mr. Clarke did or did not have an
4 enforceable right of first refusal.

5 THE COURT: How was that resolved?

6 MR. GOLDSTEIN: Robin Robinson's lawyer was William
7 Swope. William Swope moved to be relieved as counsel due to
8 the fact that he was an obvious witness. The Court entered
9 an Order relieving Mr. Swope, I forget the date, but we have
10 it, and Ms. Robinson never secured additional counsel, and
11 that matter was therefore resolved by stipulation of
12 dismissal signed by Robin Robinson.

13 THE COURT: Okay. So it was dismissed?

14 MR. GOLDSTEIN: Dismissed.

15 THE COURT: All right. Go ahead.

16 MR. GOLDSTEIN: It's in the record as -- the Order of
17 Dismissal, Robinson v. Fine Housing, Case number 2014-CP-10-
18 01035 was January 9th, 2015; that case was dismissed.

19 THE COURT: Okay.

20 MR. GOLDSTEIN: The question the Court is called to
21 answer is does the plaintiff have an enforceable right of
22 first refusal? If he does not, the inquiry stops and the
23 case is resolved in favor of the defendant. If he does,
24 then the next question the Court is called upon to answer is
25 whether he waived that right or whether he is precluded from

1 exercising it by failing to act in a timely manner, which
2 would be laches or estoppel. So those are the legal issues
3 before the Court. Unless the Court has any questions, I
4 will conclude there.

5 THE COURT: Okay. Mr. Moore?

6 MR. MOORE: Thank you, Your Honor. Just as a start,
7 because I know certain things get in people's minds once
8 they're said. There were a couple of things that were said
9 there in the presentation that I think illustrate the issues
10 that are before the Court today. But let me just go and
11 correct a couple of things.

12 First, the transaction whereby RRJR, LLC, transferred
13 the property to Fine Housing, Inc., is a deed. It was
14 referred to by Mr. Goldstein as a loan and we don't think
15 it's a loan.

16 THE COURT: I think he said that it could possibly be a
17 loan. He may have said it's a deed, maybe I misheard him.
18 I know he said your position was that it was a loan.

19 MR. MOORE: No, sir, our position is that it was a
20 purchase.

21 THE COURT: A purchase. Okay. Let me ask you, since
22 you brought it up, as far as whether the first right of
23 refusal or not, whether it was exercised or whether it was
24 your obligation to notify them to exercise it, what
25 difference does it make whether it's a loan or a deed? Is

1 the deed recorded? So from my perspective, I will assume,
2 my gut reaction, I'm going to go by what's recorded and say
3 a deed. So what difference does it make whether it's a loan
4 or a deed as far as determining whether or not first refusal
5 was violated in breach of contract?

6 MR. MOORE: That's our position, Your Honor. I think
7 there was a transaction that triggered that right of way.

8 THE COURT: And whether or not it was a transaction, a
9 deed or a lien, the first refusal would still be there.

10 MR. MOORE: Right.

11 THE COURT: So what difference does it make? I guess
12 that's my question to you.

13 MR. MOORE: I don't think it makes a difference.
14 That's Mr. Goldstein's position. He has characterized the
15 transaction as a loan.

16 THE COURT: Okay. Go ahead.

17 MR. MOORE: Your Honor, also, just a technicality, but
18 this is on the record, a stipulation that -- or an admission
19 that we made was that no one from Fine Housing provided
20 notice. We didn't -- we don't know if notice was given by
21 RRJR or anyone else.

22 THE COURT: Let me ask you this up front before we go
23 any further, and Mr. Goldstein can respond to it if he feels
24 it is appropriate. When you have a first right of refusal
25 and another offer comes on to buy the property, whose

1 obligation is it to notify the person who owns the first
2 right of refusal? The person selling it or is the person
3 who owns the first right of refusal obligated to follow the
4 transaction throughout and keep up with it? Is there any
5 law on that issue? Y'all haven't even brought that issue
6 up, but that's one question that I have in my mind. If
7 you've got a piece of property and I've got a first right of
8 refusal and you go and sell it to Mr. Goldstein for
9 \$100,000, is it your obligation to come to me and say, "Hey,
10 Mr. Goldstein has offered a hundred, are you going to pay
11 the hundred? Or is it my obligation to keep up with what's
12 going on with your property, legally, whose obligation?

13 MR. MOORE: I understand your question, Your Honor.
14 That's our whole case. Because an enforceable right of
15 first refusal has all those terms in it. It says what
16 happens in the instance.

17 THE COURT: I'm not talking about the contract. Are
18 there any cases that say who has the obligation, is my
19 question.

20 MR. MOORE: No, the cases all say look to what the
21 agreement says and you follow the agreement.

22 THE COURT: Okay. All right. Go ahead.

23 MR. MOORE: Your Honor, Mr. Goldstein also stated that
24 in that conversation or that communication from Mr. Destaso
25 to Barry Clarke was initiated by Mr. Destaso in March of

1 2014 and I don't think that's what the record shows. I
2 think it's exactly the opposite. I think Mr. Clarke
3 discovered that the property had been transferred and he
4 reached out to Mr. who in turn reached out to Mr. Destaso,
5 and Mr. Destaso reached back to Mr. Clarke. And the
6 evidence will show that that's what the e-mail that's in
7 evidence shows.

8 Your Honor, we think this is a simple case. It's hard
9 to decide what's a simple case. It's an action by Mr.
10 Clarke to have this Court enter an Order requiring specific
11 performance of a contract. We've got one piece of property
12 and we've got competing interests.

13 Right now, Fine Housing, Inc., is the owner of record
14 of that property. Mr. Clarke claims that he can require
15 Fine Housing, Inc., to convey that property to him because
16 of this lease term. So what the Court is called on to do is
17 consider the precise rules that we have in South Carolina
18 concerning creations of interest in real estate and
19 enforcing those rights; that's what this case is about.
20 What property right, if any, does Mr. Clarke have in this
21 piece of property? The interest that he has is the right of
22 first refusal, and the law in South Carolina is that rights
23 of first refusal are restraints on alienation. And to be
24 valid, there must be a writing. It must be specific in all
25 required elements. They've got to have the price, an

1 adequate description of the property, the procedures for
2 invoking or exercising the right, when it needs to be
3 exercised, the time, and it must state a legitimate purpose.
4 If it's not specific in all of those requirements, our law
5 is that it's an unreasonable limitation on alienation in
6 filing public policy and should not enforced. Our evidence
7 is going to show today that none of the required elements
8 are there.

9 THE COURT: What do you think the elements are?

10 MR. MOORE: Yes, sir. And for purposes of today,
11 because we keep referring to it, I've blown up -- and I've
12 shown Tommy this. That's the right of first refusal.

13 THE COURT: You're going to have to bring it up closer
14 than that if you want me to see it. I don't have a
15 magnifying glass or binoculars in this courtroom, but go
16 ahead.

17 MR. MOORE: So this is the right of first refusal. The
18 words that I have outlined are highlighted in yellow,
19 "Lesser grants the lessee the right of first refusal should
20 it wish to sell." In order for it to be an enforceable
21 restraint on alienation, it needed to have a price. There
22 is no price there.

23 THE COURT: On a first refusal, you don't know what the
24 price is. That's why I said before, I offered to sell it
25 for \$100,000; that's the price. That offer establishes it.

1 Then, you go to the person who holds the refusal and say,
2 "Hey, I got an offer of 100, are you going to pay me 100?
3 So the price is never established in a first right of
4 refusal, I wouldn't think; maybe I'm wrong.

5 MR. MOORE: Well, the case law suggests that you have
6 to have a price there.

7 THE COURT: You have to have a means of determining
8 price, I would agree with that now.

9 MR. MOORE: Right.

10 THE COURT: But how are you going to say -- so you're
11 saying -- are you telling me you have to establish a hard
12 and fast price for the first refusal or you have to have a
13 means of determining the price?

14 MR. MOORE: A means of establishing the price.

15 THE COURT: I'll buy that, but I don't buy you got to
16 put a dollar figure in it.

17 MR. MOORE: No, sir. And then the evidence is going to
18 show that there have been three suggestions as to how that
19 price is determined. One, and this is all coming from the
20 plaintiff. The first one was meet the price, which you
21 suggested. The other one, the one they have in their
22 pleadings, is pay a dollar more. Then, the one they argue
23 to this Court on summary judgment is that the right of first
24 refusal creates a bidding war. Then, you go back and forth
25 and whoever ends up on top is the winner and that's the

1 price of the property. And I think that points to the fact
2 that you need some decided method of determining what the
3 price is and you don't leave it to chance.

4 THE COURT: And this context that we're talking about,
5 wouldn't the price -- I'm not saying I'm going to say that
6 it's a valid right of refusal, so please don't think I am
7 with this question, okay? Because I don't have a clue at
8 this point in time until I listen to testimony.

9 I would assume under normal circumstances that the
10 consideration on the deed would be the price that the first
11 refusal should have been -- under normal circumstances. I
12 understand in this case, \$850,000 allocated so much to a
13 house somewhere and so much to this property, so that was
14 the consideration on the deed. Well, under normal
15 circumstances, I would assume the price of the first refusal
16 would be the price on the consideration when you didn't --
17 assuming you had a valid right of first refusal. Is that
18 right or is that wrong?

19 MR. MOORE: In a normal situation, I don't think there
20 would have been a deed. I think there would have been a
21 contract offer to purchase at a certain price and that would
22 have been presented to Mr. Clarke ---

23 THE COURT: All right. Well, then that would identify
24 the price you can sell the property for, but the deed does
25 the same thing. It's called consideration.

1 MR. MOORE: Right.

2 THE COURT: So I mean, why wouldn't the consideration
3 on the deed show the price that the first refusal should
4 have paid for the property?

5 MR. MOORE: Because the agreement could have said pay a
6 dollar more, but the agreement could have said pay \$100
7 more.

8 THE COURT: Well, in this case, you don't have that.

9 MR. MOORE: But we have a suggestion from the plaintiff
10 that there are three different ways for computing what was
11 owed.

12 THE COURT: Well, I don't know, but go ahead.

13 MR. MOORE: All right. Your Honor, there has to be
14 required that the procedures for exercising that right of
15 first refusal need to be set out, and procedures such as who
16 gives notice, when they give notice, how that notice is
17 given, and then the time, which can be also a part of the
18 procedures. How long does he have to exercise this right of
19 first refusal? Can he wait a month? Can he wait a year?
20 Can he wait three years?

21 THE COURT: In this particular case, from an equitable
22 standpoint, from what Mr. Goldstein said on that point is
23 when he found out about it -- I don't remember exact dates,
24 but it was just within a month or two before they started
25 trying to make an offer. Is that right or wrong? So it

1 wasn't a big time lapse there once he says he found out
2 about it. Assuming that's correct. I'm not saying he did.
3 I've got to listen to testimony. So the time lapse in this
4 case is not great; is that right or wrong, factually?

5 MR. MOORE: We disagree on the timelines.

6 THE COURT: Well, was it 30 days, 60 days, 90 days or
7 what?

8 MR. MOORE: We believe it was one year and 24 days.

9 THE COURT: One year and 24 days?

10 MR. MOORE: Yes, sir.

11 THE COURT: Okay. So you think it was one year and 24
12 days?

13 MR. MOORE: Right. I think what the Court is doing with
14 its questioning is its looking at this situation and saying
15 in this context is there an enforceable right of first
16 refusal?

17 THE COURT: Right, I understand.

18 MR. MOORE: And I think what you have

19 THE COURT: That's why I'm asking some of these
20 questions.

21 MR. MOORE: I think you have to look back at this
22 document as it's recorded without any consideration and what
23 happened to Fine Housing.

24 THE COURT: I understand that, but I'm also asking
25 these other questions in case I do say the document is

1 valid, okay?

2 MR. MOORE: Yes, sir.

3 THE COURT: Mr. Goldstein, what's your position on when
4 you first started establishing a price, whether it was by
5 bidding war or whatever?

6 MR. GOLDSTEIN: The testimony will be that the first
7 conversation between the owner of the right of first refusal
8 and the putative owner of the property occurred in March of
9 2014. The stipulated evidence already in the record will
10 reflect that on April 10th, 2014, Ms. Andrews conveyed to
11 the putative owner of the ---

12 THE COURT: And the deed was recorded when?

13 MR. GOLDSTEIN: December 9th, 2013.

14 THE COURT: So thereagain, we're talking about three or
15 four months?

16 MR. GOLDSTEIN: Correct.

17 THE COURT: All right. Go ahead, Mr. Moore.

18 MR. MOORE: Your Honor, we think the evidence is going
19 to show that this is not ---

20 THE COURT: Well, your position is it's not a valid
21 contract to begin with, okay, because it's ambiguous and
22 probably not a lease requirement of the statute and terms of
23 a first right of refusal. That's your obligation and I
24 understand that.

25 MR. MOORE: I believe it's a valid contract; I just

1 don't think it creates the interest in real estate that they
2 are claiming.

3 THE COURT: All right. So you think it's a valid
4 contract, you just don't think it creates interest?

5 MR. MOORE: It's a lease. This is one provision of a
6 lease. What I'm saying, this does not create an enforceable
7 right of first refusal that can be enforced against a third
8 party. I think the Court needs to remember that we're
9 dealing with Fine Housing that's a third party to this
10 transaction, not the party that gave this right of first
11 refusal.

12 THE COURT: Well, I understand, but the lease was
13 recorded and he had constructive notice. Because his
14 attorney didn't find it, that's his problem. He should have
15 had notice of it when he purchased it, but I don't think
16 that's the problem because it's third party. I understand
17 what you're saying about the contract itself, okay? I mean,
18 the fact that he just didn't know about it and his attorney
19 not picking it up on the title examination, that's that
20 attorney's problem.

21 MR. MOORE: Your Honor, if you find that this is an
22 enforceable interest in real estate, enforceable against
23 Fine Housing, we think that Mr. Clarke walked away from
24 this.

25 THE COURT: Okay.

1 MR. MOORE: Mr. Clarke as I indicated to the Court, the
2 evidence will show that Mr. Clarke and his attorney, Mr.
3 Goldstein, called Mr. Sloan, the attorney who closed the
4 transaction when Fine Housing purchased the property, and
5 asked Mr. Sloan what went on. Why were we left out? Mr.
6 Sloan then went and looked at the record, found the lease,
7 found the right of first refusal and sent it to Mr. Destaso
8 and Mr. Altman.

9 THE COURT: That's the first time Mr. Destaso knew
10 about it, right?

11 MR. MOORE: Right. And that's the first time I believe
12 Mr. Sloan will tell you he knew about it.

13 THE COURT: Okay.

14 MR. MOORE: The evidence is going to show that Mr.
15 Sloan relied on title work from Mr. Swope that didn't have
16 this lease in it. So Mr. Destaso then calls Mr. Clarke and
17 they discuss purchasing the property. At no time did Mr.
18 Clarke raise the right of first refusal until the following
19 year, until April 13th, 2015. During that period of time,
20 from when they had that conversation on March 21st, 2014, to
21 April 13th, 2015, Mr. Clarke, through his attorney, paid two
22 lease payments to Fine Housing.

23 THE COURT: Did he make the lease payments after the
24 negotiations to purchase had failed or before?

25 MR. MOORE: One before and one after.

1 THE COURT: All right.

2 MR. MOORE: I'd say immediately after that telephone
3 conversation, a check comes for \$1,000 year rental to Fine
4 Housing.

5 THE COURT: Since you said that, let me back up and ask
6 you this, is your position that the entire lease is invalid
7 or just the provision of the first right of refusal is
8 invalid in that lease?

9 MR. MOORE: The right of first refusal.

10 THE COURT: But you do acknowledge that it's a valid
11 lease?

12 MR. MOORE: Yes.

13 THE COURT: Okay. All right. Go ahead.

14 MR. MOORE: So during that period of time that we just
15 talked about, that was from March 21st, 2014 to April 13th,
16 2015, they send one lease payment. Then for four months,
17 they negotiate for the purchase of this property. Ms.
18 Andrews prepares two contracts, both for \$650,000, offering
19 the purchase of this property to Fine Housing for that
20 amount. Nowhere in those contracts and nowhere in those
21 conversations is the right of first refusal mentioned. When
22 he paid that first lease payment, right of first refusal was
23 not mentioned.

24 THE COURT: You've already told me that, but go ahead.

25 MR. MOORE: Then, there is another lease payment in

1 December of 2014 for all of 2015 to Fine Housing and there
2 is no mention of the right of first refusal.

3 The first mention of right of first refusal that we
4 found in the record before the Court is not until April
5 13th, 2015. We think those facts show that Mr. Clarke
6 waived his right to enforce this right of first refusal if
7 it is valid. He's estopped from asserting it, because the
8 evidence is going to show that all of this time Fine Housing
9 is investing and improving this property to its jeopardy on
10 reliance on the non-exercise of the right of first refusal.

11 We also think they are barred by the doctrine of
12 laches. We think that one year and 24 days is delayed and
13 constitutes laches. So because of those delayed offenses,
14 well, first we believe that it's unenforceable. Second, we
15 believe it's waived, and think that after the Court
16 considers all of the evidence, we hope it finds in favor of
17 Fine Housing. It is the owner of this property and it is
18 not encumbered by this right.

19 THE COURT: Okay. Anything else?

20 MR. MOORE: No, Your Honor.

21 THE COURT: Okay. Thank you, Mr. Moore. Call your
22 first witness.

23 MR. GOLDSTEIN: Well, in light of the opening
24 statements, I think I want to throw Mr. Moore a curve and
25 call Mr. Destaso as my first witness.

1 THE COURT: It's your trial.

2 (Whereupon, Mr. Destaso is duly sworn by the Clerk.)

3 CLERK: Take a seat up on the stand. If you would,
4 please, state your full name and spell your last name.

5 MR. DESTASSO: VINCENT DESTASSO, D-E-S-T-A-S-S-O.

6 MR. GOLDSTEIN: May it please the Court?

7 THE COURT: Yes, sir.

8 DIRECT EXAMINATION

9 BY MR. GOLDSTEIN:

10 Q Mr. Destaso, this is the first time that you and I have
11 met. My name is Tommy Goldstein and I represent the
12 plaintiff in this case, Barry Clarke. You are from
13 Congress, New York; is that correct?

14 A Yes.

15 Q Okay. And your business is that you own a gas station
16 up there, correct?

17 A I do own a gas station, yes.

18 Q In Congress, New York?

19 A Yes.

20 Q And you also own a company named Tamara Lane, Inc.; is
21 that correct?

22 A Yes.

23 Q Am I pronouncing that incorrectly?

24 A I don't know.

25 Q And Tamara Lane is also in the business of making real

1 estate loans, is that correct?

2 A It predominantly owns property.

3 Q It's in property management?

4 A It's an owner of property.

5 Q Okay. I don't want to embarrass you, because you're
6 very youthful looking, but if you don't mind me asking, how
7 old are you?

8 A Forty-seven.

9 Q Forty-seven. And you're an experienced real estate --
10 I don't know what word I want to use, not developer, but
11 investor, correct?

12 A I'm not sure.

13 Q Okay. It's not uncommon for you to make an investment
14 in real estate? That's your business?

15 A Well, like you said, I own a gas station and I develop
16 portable housing for seniors in the State of New York.

17 Q Okay. And you also make loans. In some of your
18 depositions you said you made a loan in some property in New
19 Jersey, is that correct?

20 A Yes, I have in the past.

21 Q All right. You also made some loans in property in New
22 York; is that also correct?

23 A When you say me personally, I'm not sure.

24 Q With your dad?

25 A No, never with my dad.

1 Q I'm sorry?

2 A No, never with my dad.

3 Q These cases that came out of New York, Vincent Destaso
4 versus -- and I can't pronounce the defendant's name. I'll
5 spell it for the court reporter, B-O-T-T-I-G-L-I-E-R-I,
6 Peter A. Bottiglieri, that was your father's name? That was
7 your father's company or your company?

8 A I don't know that there was any company involved.

9 Q Okay. The case is called Vincent Destaso v. Peter
10 Bottiglieri, are you familiar with that case?

11 A Yes.

12 Q And that was a case in which some loans were set aside
13 as being usurious; is that correct?

14 A I don't fully understand what happened there.

15 Q Okay. Do you know who Vincent Destaso, the plaintiff,
16 was in the case against Peter Bottiglieri?

17 A It was my dad that lent him money.

18 Q Okay. And those loans were set aside as being
19 usurious; is that correct?

20 MR. MOORE: Objection, Your Honor. Irrelevance. He's
21 asking him questions about a lawsuit in which he's not aware
22 ---

23 THE COURT: What's your legal objection?

24 MR. MOORE: Irrelevance.

25 THE COURT: Overruled. Go ahead.

1 Q You knew about your dad being involved in this,
2 correct?

3 A Yes.

4 Q Okay. And so you're generally familiar with New York
5 having a usury statute and that kind of thing, correct?

6 A I don't fully understand it, no.

7 Q Okay. You're aware that when you lend money, you have
8 to conform to rules and regulations of lending money,
9 correct?

10 A Yes.

11 Q All right. And you're not licensed to do business in
12 South Carolina, except through Fine Housing, Inc., is that
13 correct?

14 A Am I personally?

15 Q Right.

16 A No.

17 Q All right. And the only reason Fine Housing, Inc.,
18 exists was to enter into this transaction with Robin
19 Robinson, correct?

20 A No.

21 Q What else does Fine Housing do?

22 A It owned a small piece of property prior to purchasing
23 the property from Robinson.

24 Q Where is that piece of property?

25 A Well, it was in Walden, New York.

1 Q And you sold that?

2 A Yes.

3 Q Okay. And you first learned about -- what do you want
4 to call the property over there on Pittsburgh Avenue? Do
5 you want to call it "The Club" or "2028 Pittsburgh"? What's
6 your term for the property?

7 A Pittsburgh Avenue.

8 Q Pittsburgh Avenue, okay. You first heard about
9 Pittsburgh Avenue when you received a call from a broker
10 soliciting a loan, correct?

11 A Correct.

12 Q All right. And the pitch to you was were you or were
13 you not willing to loan money to Robin Robinson in
14 Charleston, South Carolina, correct?

15 A No.

16 Q All right. Do you recall having a conversation with
17 Mr. Swope in March of 2013?

18 A No.

19 Q All right. Do you recall having one telephone call
20 with Mr. Swope in 2013?

21 A Yes.

22 Q I think in your previous deposition you testified that
23 he got angry and hung up on you; is that correct?

24 A Correct.

25 Q All right. And the purpose of that phone call was to

1 solicit your willingness to make a loan to Robin Robinson,
2 is that correct?

3 A No.

4 Q What was the purpose of that phone call?

5 A Initially, I was contacted by a broker out of New York.
6 He said that he had a real estate deal. He didn't specify
7 what it was, but that he would get me in contact with a
8 person in South Carolina.

9 Q And the person you got in contact with was William
10 Swope?

11 A Eventually, William Swope called me, yes.

12 Q And the conversation you had was whether your were or
13 were not willing to loan Robin Robinson some money, correct?

14 A Well, he was on the phone for some time and he
15 described the situation and then he described what he was
16 looking for, and I told him I would not be interested in
17 lending anyone money in South Carolina, but I would consider
18 buying the property.

19 Q Okay. And he asked you if you would be willing to make
20 a loan at 14 percent, 16 percent and then 18 percent, and
21 you said no, correct?

22 A I don't recall him making a discussion about interest
23 rates.

24 Q Okay. But at any rate, the phone call ended without
25 any resolution and he hung up the phone on you?

- 1 A Yes.
- 2 Q And you never heard from him again?
- 3 A I don't think so.
- 4 Q And then the broker called you back and you told the
5 broker you knew they would be back because they were
6 desperate, isn't that right?
- 7 A No.
- 8 Q Do you recall giving a deposition in a case called Fine
9 Housing, Inc., v. William H. Sloan?
- 10 A Yes.
- 11 Q Okay. That's Mr. Sloan seated there?
- 12 A Yes.
- 13 Q And you're suing Mr. Sloan because he didn't pick up
14 Barry Clarke's lease in the title examination; is that
15 correct?
- 16 A I believe there are several causes of action there.
- 17 Q Okay. But the basis of it is you're suing him because
18 he didn't tell you about Barry Clarke's lease, correct?
- 19 A I would not say that.
- 20 Q Okay. Then, why are you suing him?
- 21 A Again, there are several reasons. I wasn't aware of
22 tax liens on the property. I wasn't aware of the lease on
23 the property. Problems after the closing. An inability to
24 draw up the lease. There were several reasons.
- 25 Q Okay. But you gave a deposition in that case, correct?

1 A Yes.

2 Q Okay. And Mark Alfredo -- you testified in that case
3 that Mark Alfredo called you back and said that you made Mr.
4 Swope unhappy, is that correct?

5 A Correct.

6 Q All right. And he said, "And you told Mr. Alfredo, 'I
7 think they'll be coming back around'", is that true?

8 A That's true. You said I knew they would be coming
9 back.

10 Q Okay. You said, "And I think they'll be coming back
11 around," "Is that true?" and your answer was, "Yes." Is
12 that correct?

13 A Is that a question?

14 Q Yes.

15 A Yes.

16 Q All right. Because you knew that Robin Robinson was
17 desperate and you knew that it was a good opportunity for
18 you.

19 A Not exactly. I was told that they were unable to find
20 anybody to invest given the problems that were there.

21 Q That's right. And to be fair to you, high risk, high
22 reward, correct?

23 A I don't know the answer to that.

24 Q Well, I mean, Robin Robinson didn't represent a normal
25 kind of debtor, did she? She didn't have tax returns, isn't

1 that right?

2 A I don't recall if she had tax returns or not.

3 Q Okay. Didn't you ask to look at her tax returns?

4 A I ask for everything that the brokers can provide to
5 me, yes.

6 Q Well, let's just -- we'll come back to the minutia of
7 it, but the fact is as a result of those negotiations, you
8 ultimately hired Mr. Sloan to do a title search to handle
9 the closing for your acquisition of the property, correct?

10 A I did hire Mr. Sloan.

11 Q Okay. And when did hire Mr. Sloan?

12 A At the end of November 2013.

13 Q And when was the closing? December 2nd, wasn't it?

14 A December 2nd, 2013.

15 Q Okay. And did you think that was fair to Mr. Sloan to
16 ask him to do a closing and get that ready over the
17 Thanksgiving holiday and be ready on December 2nd?

18 A Yes.

19 Q You did think that was fair?

20 A I don't understand why it would not be fair.

21 Q Okay. Have you ever conducted a title examination?

22 A Where I'm from, the title company has a person that
23 does the search. I didn't know for a year after the
24 purchase that the attorney actually did the search.

25 Q Okay. But anyway, y'all had the closing on December

1 2nd. You came down?
2 A No.
3 Q Oh, you did it through Mr. Sloan? You just wired the
4 money?
5 A Correct.
6 Q And how much did you tell Robin Robinson that you would
7 lend her for this closing on December 2nd, 2013?
8 A Zero.
9 Q Okay. How much did you tell her you would pay her for
10 the acquisition of the property?
11 A \$850,000.
12 Q You didn't wire \$850,000, though, did you?
13 A I did not.
14 Q Because you're a predatory lender, aren't you?
15 MR. MOORE: Objection, Your Honor.
16 THE COURT: I'll sustain the objection.
17 Q Well, let's talk about the closing. You told her you
18 would pay 850 to acquire title to the property, correct?
19 A Correct.
20 Q But you didn't wire 850, did you?
21 A No.
22 Q You wired \$815?
23 A Correct.
24 Q Okay. You kept \$35,000 back, isn't that correct?
25 A Yes.

1 Q You paid 3500 to Tamara Lane; is that correct?

2 A Correct.

3 Q That's you. You're Tamara Lane?

4 A It's myself and I have a partner.

5 Q Okay. And in your deposition in Mr. Sloan's case, you
6 told them that you were sending the money to AAA Inspection
7 Services for inspecting the paperwork, isn't that what you
8 told them?

9 A I don't recall saying that, no.

10 Q Okay. Well, Mr. Sloan initially wrote a check to AAA
11 for \$3500 and then voided it and sent a check for \$3500 to
12 Tamara Lane, correct?

13 A It's possible; I don't recall.

14 Q Okay. But that was you squeezing the transaction to
15 get another \$3500 bucks out of it.

16 MR. MOORE: Objection, Your Honor.

17 THE COURT: Overruled. Go ahead.

18 Q That was you squeezing Robin Robinson for an extra
19 \$5500; isn't that correct?

20 A I don't remember 5500. I know it was a payment that
21 went to another person, not to me.

22 Q It went to Tamara Lane, Inc.

23 A It went to Tamara Lane, Inc., yes.

24 Q And you're the registered agent of Tamara Lane, Inc.?

25 A That is correct, but I have an associate that acts as a

1 broker.

2 Q And Tamara Lane, Inc.'s office address, according to
3 the New York Secretary of State, is your home address, isn't
4 that correct? 14 Weatherly or something like that?

5 A That's not correct.

6 Q Oh, well, who's address is that?

7 A It's the address for Tamara Lane, Incorporated.

8 Q Okay. That's a residence, isn't it?

9 A It's a residence, yes.

10 Q You also had \$3500 go to Joe Scarmato for drafting a
11 lease for Robin Robinson, didn't you?

12 A Correct.

13 Q He didn't draft the lease for Robin Robinson, did he?

14 A I believe he did.

15 Q And a lease is a handwritten form with just Tamara Lane
16 scratched out and Robin Robinson written in over it; isn't
17 that right?

18 A I don't recall.

19 Q Okay. Well, I'm going to show you those documents in a
20 minute. Now, the \$35,000 you held back, if I'm doing the
21 math right, 850 minus 815, that's 35, right? I'm not good
22 at math.

23 A Correct.

24 Q That was for you to hold as security to make sure Robin
25 paid rent, isn't that right?

1 MR. MOORE: Objection, Your Honor. This whole line of
2 questioning is getting into something that's not relevant
3 here.

4 THE COURT: Your objection is to relevancy?

5 MR. MOORE: Yes, sir.

6 THE COURT: Okay. Overruled. Go ahead.

7 Q The 35 was for you to hold back to make sure she
8 conformed to the lease and the buyback, correct?

9 A I had an agreement with Robin Robinson that the
10 security deposit would be three months of the rent.

11 Q That's right. And the following month, you commenced
12 an ejectment proceeding against her, isn't that true?

13 A I think it was a little bit longer than a month.

14 Q It was January of 2014, wasn't it?

15 A I don't recall the exact date, but I think it was more
16 than a month..

17 Q All right. Well, I'll show you the document. But
18 according to your testimony in Mr. Sloan's case, she
19 defaulted on day one; that was your exact quote, right? Am
20 I quoting that correctly?

21 A She defaulted on day one, that's correct.

22 Q All right. Now, do you realize why we're here?

23 A I think so.

24 Q Okay. Explain to me your understanding of why we're
25 here.

1 A Can you give me a little more specific ---

2 Q Sure. Are you unable to explain in your own words what
3 the subject matter of this dispute is about? And if you
4 are, that's fine. I'm not suggesting that you -- it's not a
5 trick question. If you're not, I will walk you through it.

6 A Barry Clarke is claiming that he has a right of first
7 refusal.

8 Q That's correct, okay. And you're claiming that he does
9 not, is that right?

10 A Correct.

11 Q And you have the right to rely on counsel, of course.
12 We all agree on that, right?

13 A Sure.

14 Q And you're represented by one of the lions of the South
15 Carolina Bar, Cliff Moore, correct?

16 A I've never heard that characterization.

17 Q Okay. Well, take my word for it, he's a well-respected
18 member of the bar. You don't have any complaints with his
19 representation?

20 A Well, he yelled at me a little yesterday.

21 Q Well, I won't ask you about that, but lawyers tend to
22 do that sometimes. But the issue is as you've defined it,
23 you say Mr. Clarke does not have a right of first refusal,
24 or if he does, he's waived it; is that correct? Is that
25 your position?

1 A Correct.

2 Q Now, in evaluating this testimony, the Court evaluates
3 your believability and credibility, and judges need just as
4 well, the Court can judge me as to whether I'm being fair
5 just as much as the Court judges your testimony, so we are
6 all being judged fairly and equally, do you understand that?

7 A I think so.

8 Q All right. So now, since we're all on an equal playing
9 field now, to be fair to the Court, to be fair to Mr.
10 Clarke, to be fair to you, this transaction was a loan in
11 the guise of a bond for title. You were going to hold title
12 as security that she perform the terms of the financing
13 agreement; is that correct?

14 MR. MOORE: Objection to the extent that it calls for a
15 legal conclusion, Your Honor.

16 THE COURT: Overruled.

17 A Absolutely not.

18 Q Okay. Well, let's bring it down or as they say on
19 television these days, which I don't understand, let's
20 unpack that. I have no idea what that means. Your
21 agreement and the transaction that was closed on December
22 2nd, 2013, was you would acquire title, correct?

23 A My -- I ---

24 Q When I say you, I mean Fine Housing.

25 A Well, that Fine Housing would buy the property, obtain

1 a deed, and own the property.

2 Q Correct. And Robin Robinson would have the right to

3 lease it for two years, right?

4 A Robin Robinson negotiated to be a tenant, yes.

5 Q Okay. And she signed a lease?

6 A Yes.

7 Q And you also negotiated and signed an option buy-back

8 agreement where if she performed the lease, she could

9 purchase the property at the agreed upon price?

10 A Correct.

11 Q Okay. And the lease called for her to make monthly

12 lease payments of \$15,000 a month, correct?

13 A No.

14 Q Oh, I'm sorry, how much, \$12,500?

15 A I think it was 12 or 12,200, or something.

16 Q All right.

17 A For both properties.

18 Q All right. Well, I may be misremembering the number.

19 Some amount in excess of \$12,000, correct?

20 A It may have just been 12; I'm not sure.

21 Q Okay, 12. Let's say it was 12 in this conversation.

22 Your agreement was if she made the 24 monthly payments at

23 \$12,000, then she had the right to reacquire title for the

24 sum of one million, one hundred and fifty thousand dollars,

25 correct?

1 A Yeah, we had an option agreement that she could buy the
2 property.

3 Q All right. And under the agreement that you negotiated
4 and executed through your lawyer, William Sloan, you signed
5 all of those documents, correct? I mean, that's the deal.

6 A I signed what documents?

7 Q The lease and the buyback and all of those documents.

8 A Correct.

9 Q Okay. However, in January of 2014, you started an
10 ejectment proceeding against Robin Robinson, is that not
11 correct?

12 A I believe it was on or about sometime in January.

13 Q Okay. Well, I have the exact date if you want it. So
14 you started an ejectment proceeding against her literally
15 days after the closing even though you had three months of
16 rent in your pocket, correct?

17 A Incorrect.

18 Q You had \$35,000 you held back.

19 A A security deposit is not to be used for rent, ever.

20 Q Okay. Now, we have your lease and we will go over it
21 in a little bit. In your lease, there is no provision in
22 your lease for security deposit, isn't that correct?

23 A I don't know if the lease ever got finalized once it
24 got down to South Carolina.

25 Q Okay. Well, whether it did or didn't, would you agree

1 with me, I mean, being fair to everybody, this sounds like
2 predatory lending, doesn't it?

3 A Absolutely not.

4 Q Okay. Well, if she had paid back -- if she had stayed
5 in compliance with the lease -- let me show you -- well,
6 these are my copies.

7 MR. GOLDSTEIN: Your Honor, may I approach the court
8 reporter?

9 THE COURT: Yes, sir.

10 Q Let me show you what's been marked Plaintiff's Exhibit
11 10. That's the lease that you negotiated with Robin
12 Robinson, correct?

13 A I really need my glasses, but I think yes.

14 Q Okay. And just so the Court is clear, that's the lease
15 that you held back \$3500 for your lawyer in New York for
16 drafting, is that not correct?

17 A I believe that is correct.

18 Q Okay. Come on, a lawyer didn't draft that lease.

19 A Yes, he did.

20 Q Well, whose handwriting is that on the lease?

21 A I think it's Mr. Sloan.

22 Q So somebody just took a form, a Tamara Lane form and
23 just struck through it and wrote in Fine Housing, Inc.,
24 correct?

25 A Again, I think it was my attorney.

1 Q And you charged Robin Robinson \$3500 for that?

2 A I didn't charge Robin Robinson anything.

3 Q Well, yeah, you did. We're going to the HUD I in a
4 little bit. You held back \$3500 for Exhibit 10, did you
5 not?

6 A Again, I did not.

7 Q Okay. Well, we will talk about that in a minute.

8 Paragraph 4.2 says, "There shall be no security required for
9 the term of this lease," do you see that?

10 A Again, I can't read it.

11 Q Okay.

12 MR. GOLDSTEIN: Well, Your Honor, I'm offering
13 Plaintiff's Exhibit 10 into evidence at this time.

14 THE COURT: Ten is already in.

15 MR. GOLDSTEIN: Oh, I apologize, Judge. I went through
16 all of that for nothing. Your Honor, since the witness says
17 he can't read the ---

18 MR. DESTASSO: I have my glasses.

19 MR. GOLDSTEIN: Okay.

20 Q Okay, 4.2 says, "There shall be no security for the
21 term of this lease," does it not?

22 A That's what it says, correct.

23 Q Okay. So your previous answer was incorrect then, we
24 now know from the lease, the lease controls, correct?

25 A No, incorrect. Again, this was sent down and meant to

1 be changed as needed. The negotiations went on that day
2 until about 7 pm. It was supposed to be corrected and added
3 in there; it was not. We negotiated with Robin Robinson and
4 we agreed upon three months security deposit.

5 Q Okay. So your asking the Court to -- or you're not
6 asking the Court anything. That was a terrible question.
7 Your testimony is don't rely on what the document says, just
8 rely on what I'm telling you the deal was, right?

9 A Absolutely. I negotiated the deal and I didn't see the
10 lease until a week after the closing.

11 Q All right. So we can't rely on this lease at all?

12 A In fact, it was thrown out and had to be completely
13 redone.

14 Q All right. So is your analysis of the lease the same
15 analysis that you apply to Mr. Clarke's recorded lease that
16 was recorded at the RMC office and we just can't rely on it?
17 It wasn't what the parties agreed to?

18 A That's kind of a vague statement. Is there a specific
19 question?

20 Q Yeah, I'll rephrase it. When parties enter into a
21 written agreement, sign it, and record it at the courthouse,
22 that's what controls, right?

23 MR. MOORE: Objection, to the extent that it calls for
24 a legal conclusion, Your Honor.

25 THE COURT: Overruled.

1 A I don't know the answer to that.

2 Q Okay. So if you and I entered into a written agreement
3 that you were going to buy my bicycle for \$100, that we both
4 signed it and it was recorded at the courthouse, and you
5 came to pick up the bicycle and you tendered the \$100 to me,
6 and I said, "Oh, no, that wasn't our deal. Our deal was
7 \$250." You would say, "Oh, okay." You would give me the
8 250?

9 A No, if you and I had made an agreement, of course.

10 Q Yeah, you'd stick to the agreement. So we can move on
11 then. Now, the closing was on December 2nd, correct?

12 A Correct.

13 Q And on January 9th, I think -- well, let me give you
14 the date rather than guess, how about that? That's more
15 fair to you. On Monday, December 23rd, 2013, at 2:39 p.m.,
16 you sent an e-mail from you to a real estate agent named
17 Jim, which you wrote, and I quote, "We do have an agreement
18 to get a deed. We just ran into a title issue and we will
19 be done in two weeks, then we can list. We were thinking
20 990K. What's your opinion on the price? Do you remember
21 that? Jim Hamilton?

22 A I don't recall that exact e-mail, no.

23 Q Okay. That's fair enough. That's really not fair to
24 you. I show you what's been marked as Plaintiff's Exhibit
25 34. Can you identify that?

1 A Yes.

2 Q That's the e-mail you sent to Jim Hamilton?

3 A Correct.

4 Q And your telling him that you were thinking about

5 asking 990 for Robin Robinson's house on Sol Legare?

6 A Yes.

7 Q Okay. And that was -- two from twenty-three, that's

8 what? Twenty-one? Twenty-one days after the closing?

9 A Correct.

10 Q You're already looking to sell her house for \$990,000?

11 A No, not exactly.

12 Q All right. You did ultimately selling the house,

13 though?

14 A Correct.

15 Q For \$500,000?

16 A Correct.

17 Q All right. Well, let's go back to the closing on

18 December 2nd. You signed a HUD I on that day, correct? Do

19 you know what a HUD I is?

20 A I believe so.

21 Q All right. This one is not in evidence, so I'm going

22 to have to walk you through this one. I show you what's

23 been marked as Plaintiff's Exhibit Four and ask if you can

24 identify that.

25 A Settlement Statement HUD I.

1 Q Okay. Now, when you ---

2 MR. MOORE: Your Honor, we're objecting to this
3 document on relevancy and res judicata grounds.

4 THE COURT: What does res judicata got to do with
5 admissibility of something in evidence?

6 MR. MOORE: Well, Your Honor, because it goes to the
7 relevancy, because what he's trying to do is he's trying to
8 ---

9 THE COURT: I don't know what he's trying to do, but
10 why do you think it's not relevant?

11 MR. MOORE: Because he is trying to use this to
12 establish that this was a lease or a loan and not a sale,
13 and that's already been decided. That's the purpose of the
14 res judicata. The Order that was entered in the action
15 where Ms. Robinson sued Fine Housing ---

16 THE COURT: Well, that action is dismissed, right? It
17 was not brought to final conclusion, right?

18 MR. MOORE: With prejudice.

19 THE COURT: How could it possibly be res judicata with
20 voluntary dismissal, is what I was told.

21 MR. MOORE: With prejudice, Your Honor.

22 THE COURT: Well, I mean, there was no Court ruling in
23 that case, was it?

24 MR. MOORE: No, sir.

25 THE COURT: As far as res judicata, that's denied. Talk

1 to me about relevancy in this particular case. Apparently,
2 he's got a selective memory. He's been admitting to some
3 things and not admitting to other things, so I assume he is
4 offering this to possibly show bias or prejudice on the true
5 actions of what transpired at the loan closing. I assume
6 that. So to me, from that standpoint, it is relevant.

7 MR. MOORE: Thank you, Your Honor.

8 THE COURT: Okay. So the motion is denied. Please
9 proceed.

10 Q Exhibit Four is the closing statement from December
11 2nd, correct?

12 A I believe so, yes.

13 Q And that established what you ---

14 THE COURT: First of all, I don't now if he's going to
15 offer it, okay? Are you going to offer it?

16 MR. GOLDSTEIN: Yes, sir, Your Honor.

17 THE COURT: I mean, he's objected to the offering of
18 the document, but he hasn't offered before you made the
19 objection.

20 MR. MOORE: I understand, Your Honor, but he was
21 starting to testify.

22 THE COURT: I understand, but he can testify to it and
23 still not offer it.

24 MR. MOORE: Yes, sir.

25 THE COURT: Are you offering it?

1 MR. GOLDSTEIN: I am going to offer it. I was getting
2 there.

3 THE COURT: All right. Do you have an objection to
4 offering of Plaintiff's Exhibit Number Four?

5 MR. MOORE: Relevancy, Your Honor.

6 THE COURT: All right. Denied, admitted with
7 objection.

8 MR. GOLDSTEIN: Well, in that case, Your Honor, I can
9 -- if I may -- well, I've got my own copy. In that case,
10 Your Honor, may I publish the Four since it's in evidence
11 now?

12 THE COURT: Yes.

13 Q The HUD I shows the alleged purchase price as \$850,000,
14 correct?

15 A Yes.

16 Q Well, you've already told us you didn't wire 850, you
17 wired 805, correct?

18 THE COURT: Is this -- on what property? Is this the
19 James Island Property or is this the Pittman Street -- is it
20 Pittman Street?

21 MR. GOLDSTEIN: That was going to be my next series of
22 questions. So let me leap ahead.

23 THE COURT: Please tell me what property we're talking
24 about.

25 MR. GOLDSTEIN: The defendant in this case allocated

1 \$150,000.

2 THE COURT: I understand that.

3 MR. GOLDSTEIN: Right, so the rest of the money was
4 allocated to the acquisition of the Sol Legare property.

5 THE COURT: All right. The HUD statement is for what
6 closing on what property?

7 MR. GOLDSTEIN: They were both purchased ---

8 THE COURT: That same day.

9 MR. GOLDSTEIN: That same day.

10 THE COURT: Okay. The HUD is for both properties?

11 MR. GOLDSTEIN: Correct.

12 THE COURT: They didn't have a separate HUD for each
13 one?

14 MR. GOLDSTEIN: No, sir.

15 THE COURT: Okay. Go ahead.

16 Q Okay, you already told us that the alleged purchase
17 price for the two properties, Sol Legare and 2028 Pittsburgh
18 was \$850,000, correct?

19 A Correct.

20 Q You already told us you didn't wire 850, you wired 815?

21 A Correct.

22 Q And you already told us the reason you held back 35 was
23 because it was a "security deposit" for Robin Robinson's
24 lease on 2028?

25 A Correct.

1 Q You knew on the day of closing that there was a
2 critical time deadline because Mr. Altman was fixing to take
3 the Sol Legare property to a foreclosure sale on December
4 3rd; you knew that, correct?

5 A Correct.

6 Q Okay. So that's why poor Mr. Sloan back here was put
7 in a jam because his marching orders came in a couple days
8 before Thanksgiving and so he had to scramble from a couple
9 days before Thanksgiving to December 2nd to get all of this
10 ready, correct?

11 A I guess.

12 Q Okay. Well, as a sophisticated investor, you knew that
13 was a hard thing to ask him to do, isn't that right?

14 A I don't think so, no.

15 Q Okay. Not that it has anything to do with this, but do
16 you think that was fair to Mr. Sloan?

17 A Yes. If he didn't want to do it, he could say no.

18 Q Okay. Now, the HUD statement we've already been over;
19 it's already in evidence. It shows that you held back
20 \$5500, according to the HUD, to AAA, correct? You want me
21 to give you the line number?

22 A (NO RESPONSE.)

23 Q Well, I can publish it. It's line 1206, my eagle-eye
24 co-counsel is informing me. And that's for an inspection
25 fee. That line is \$5,500.

1 A Yes, I don't think that amount ever was dispersed.

2 Q Oh, really? Well, that's interesting. Let me show you
3 what has been marked as Plaintiff's Exhibit Number Seven and
4 Eight. Do you recognize those?

5 A I don't recognize the check from AAA and the one for
6 Tamara Lane is for \$5500; that is correct.

7 Q Correct. So Tamara Lane, which is you, got \$5500?

8 A Again, it went to another broker. It did not go to me.

9 Q Okay.

10 MR. GOLDSTEIN: Your Honor, I'd like to offer
11 Plaintiff's Seven and Eight into evidence.

12 MR. MOORE: And our objection is to relevance, Your
13 Honor.

14 THE COURT: What's the relevance? We've got the HUD
15 closing statement. Why do we need the checks? I mean,
16 doesn't the statement show the checks?

17 MR. GOLDSTEIN: It absolutely does.

18 THE COURT: So why do we need the checks?

19 MR. GOLDSTEIN: It is cumulative, but it shows the
20 predatory
21 nature of this loan and the next question is going to tie it
22 up just a little bit more, because the next question is
23 about the insurance premium.

24 THE COURT: Well, then, tie it up. For now, I will
25 sustain the objection.

1 Q Let me show you what's been marked as Plaintiff's
2 Exhibit Five. Do you recognize that?

3 A That was for the FEMA flood insurance on the
4 residential property.

5 Q That's right. And so you're making Robin Robinson pay
6 for the flood insurance on property that you claim that you
7 own; is that correct?

8 A That was our agreement, yes.

9 Q Okay. So that is more of an inditia of a loan than a
10 purchase, don't you agree?

11 A I do not agree, no.

12 Q So is it your normal practice as a real estate investor
13 that when you purchase a piece of real estate, it remains
14 the seller's obligation to insure it?

15 A For most of my transactions, yes.

16 MR. GOLDSTEIN: Your Honor, I offer Plaintiff's Exhibit
17 Five into evidence.

18 MR. MOORE: Your Honor, foundation. He asked him
19 questions about it, but this is a check that Mr. Sloan's
20 office wrote. It's reflected on the HUD Settlement
21 Statement. I don't think he had any testimony that this
22 witness knows anything about this document, other than he
23 read what it was.

24 MR. GOLDSTEIN: He said he knew what it was.

25 THE COURT: All right. I'll sustain the objection;

1 five, six, seven, eight and nine, about the checks. They
2 are reflected on the HUD statement.

3 Q Now, let me show you what's been marked as Plaintiff's
4 Exhibit Number Nine. Is that the Secretary of State report,
5 the State of New York for Tamara Lane, Inc.?

6 A Yes, it is.

7 Q And it shows you, Vincent Destaso, 102 Lake Road,
8 Congress, New York, as the Chief Executive Officer?

9 A That's correct.

10 MR. GOLDSTEIN: Your Honor, I offer Plaintiff's Exhibit
11 Number Nine into evidence.

12 THE COURT: Any objection?

13 MR. MOORE: Other than relevance.

14 THE COURT: Nine is admitted without objection.

15 Q Now, you came down to South Carolina to look at 2028
16 Pittsburgh Avenue for yourself, correct?

17 A Yes.

18 Q And you formed an opinion as to what it was worth?

19 A Yeah, I contacted a broker.

20 Q You did your due diligence. And you reached an opinion
21 that you were thinking it was worth 300 on the low end and
22 650 on the high end, correct?

23 A Something in that area.

24 Q Now, do you know how a right of first refusal works?

25 A I have a general idea.

1 Q Okay. What's your general idea of how a right of first
2 refusal works?

3 A Well ---

4 Q Want to see if I can help you out? If I have the right
5 of first refusal on your property -- if Mr. Moore offers you
6 \$100,000, then I have the right to buy it for \$100,000 plus
7 one, correct?

8 A Well, I would think the seller would need to contact
9 the person who has the option and see if they wanted to make
10 a better purchase price.

11 Q Exactly. I couldn't agree with you more. That didn't
12 happen in this case, did it?

13 A I don't believe it happened, no.

14 Q So in your view, there are two innocent parties in your
15 view, correct? You and Mr. Clarke?

16 A I don't look at it that way, no.

17 Q Okay. Prior to going to the closing on December 2nd,
18 did you contact us or ask him if his foreclosing client
19 would sell you the paper?

20 A Yes.

21 Q Okay. And he refused, correct?

22 A Correct.

23 Q But you explored that?

24 A Yes.

25 Q Okay. And in your view, you could have foreclosed on

1 the property and simply taken it, stepped into the shoes of
2 Mr. Altman's foreclosing client, correct?

3 A No, that was not the idea as I think we all understand.
4 There was a time pressure element involved and I was being
5 asked to try and help give more time for the closing.

6 Q Now, you did have conversations with Barry Clarke, who
7 is seated to my left, you did have conversations with him in
8 March of 2014 about him purchasing the property, correct?

9 A Correct.

10 Q Okay. He just didn't offer enough money, right?

11 A No, we agreed upon a price.

12 Q You did agree upon a price?

13 A Yes.

14 Q Oh, do you mind telling us what that was?

15 A It was \$650,000.

16 Q So if Mr. Clarke tenders \$650,000 to you today, we're
17 done?

18 A No, we're not done at all. Today and the situation of
19 the property and in March of 2014 are two totally different
20 things.

21 Q Are you telling us that you would have taken \$650,000
22 in 2014?

23 A At the time when we were speaking, we had an agreed
24 upon a price, but when the contract came in, it was
25 completely different than what we had spoken about.

1 Q What was different about it?

2 A Well, the contract had several provisions in there for
3 a lengthy inspection period. He wanted me to cure
4 violations on the property. It was very important to him
5 that I evict Robin Robinson because he didn't want anything
6 to do with her. He was not buying the property the way I
7 bought the property with the problems and all.

8 Q Since that time, you've been collecting rent on the
9 property, though, correct?

10 A It was a period of almost a year and a half where I
11 collected no rent.

12 Q It was fully occupied, wasn't it?

13 A It was.

14 Q But are you telling the Court you had a tenant in
15 there, but they didn't pay rent and you let them stay?

16 A No, we moved to evict Robin Robinson.

17 Q Oh, Robin Robinson.

18 A Eventually, we did, but that was part of the
19 complication with Barry purchasing the property.

20 Q But she's been out for a long time, right?

21 A I believe since January of 2015.

22 Q All right. You have a new tenant in there, Heavy Man,
23 LLC?

24 A Heavy Man is no longer in there.

25 Q Okay. Who is in there now?

1 A A gentleman named Frankie Woods and Scott Hendrix.

2 Q Okay. Same people, just different name?

3 A No.

4 Q But you've been collecting rent since the new tenant
5 came in at what, \$15,000 a month, 20?

6 A Incorrect. Initially, I had to give up 20 or 30, over
7 \$30,000 because of issues with the building and improvements
8 that were needed. Since then, our new current lease is for
9 \$15,000 a month.

10 Q Okay. And you've been collecting that rent?

11 A Well, that lease commenced just January of this year.

12 Q Okay. So you've had the property since 2013, correct?

13 A December 2nd, 2013 is when I bought the property.

14 Q Okay. You sold Sol Legare for \$500,000?

15 A Yes.

16 Q You've collected rent on 2028 Pittsburgh in some amount
17 of money?

18 A Yes.

19 Q Okay. And Mr. Clarke's offer to you was unacceptable
20 because it contained conditions that you wouldn't agree to,
21 is that your testimony?

22 A Well, again, at the time when I purchased the property,
23 there were multiple problems that were there that I
24 eventually was able to correct and get rid of the non-paying
25 tenant and put a paying tenant in there and maintain the

1 licensing, which is where the value is. When I spoke to Mr.
2 Clarke, he said he was interested in buying it, but when I
3 received the contract, there were too many conditions in
4 there. In fact, at one point, he wanted to lease the
5 property for a very, very low number and that was
6 unacceptable.

7 Q I asked you earlier, I didn't have the date in front of
8 me and now I do, you started the eviction proceedings
9 against Robin on December 16th, 2014, in case number 2014-
10 CV-10-10-502241. You don't know the case number, I'm sure.

11 A I don't know the case number, but I don't think it was
12 December.

13 Q Okay. Who was the lawyer handling that case for you?

14 A It was a gentleman named Van out of Charlie Altman's
15 office.

16 Q Okay.

17 THE COURT: Mr. Goldstein, while you are collecting
18 your thoughts, we are going to take about a 15 to 20 minute
19 break.

20 MR. GOLDSTEIN: Yes, sir.

21 THE COURT: We're going to take a short break. During
22 the break, don't discuss the case with anyone, okay?

23 (Off the record, briefly.)

24 THE COURT: Mr. Goldstein, you may continue.

25 MR. GOLDSTEIN: Thank you for that break. My co-

1 counsel got my thoughts focused, so I only have three more
2 questions.

3 THE COURT: Good.

4 MR. GOLDSTEIN: So you can give Ms. Andrews all the
5 credit for my brevity.

6 THE COURT: Okay. We are gonna count them. You said
7 three. I bet there will be six.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. GOLDSTEIN:

10 Q I show you what's been marked Plaintiff's Exhibit 26.
11 Is that the sale of the Sol Legare property that you
12 previously testified about?

13 A Yes.

14 Q And is that the deed of that transaction?

15 A Yes.

16 MR. GOLDSTEIN: Your Honor, I offer Plaintiff's Exhibit
17 Number Twenty-six into evidence.

18 THE COURT: Any objection?

19 MR. MOORE: Relevancy, Your Honor.

20 THE COURT: What's your relevancy?

21 MR. GOLDSTEIN: Well, even if it were irrelevant, it's
22 very relevant because it shows that this transaction was
23 more of a loan than a sale, but he already testified about
24 it, so the door is wide open as to irrelevancy.

25 THE COURT: All right. I'll let it in without

1 objection. Go ahead.

2 Q Okay. Last question, I was rummaging around,
3 unfocused, and doing a poor job of locating exhibits, but it
4 turns out they are Defendant's Exhibits Four and Five, which
5 are already in evidence. These are the two documents you
6 were testifying about earlier about Barry Clarke for the
7 purchase of the property, is that right?

8 A I believe so, yes.

9 Q And you testified that one of the reasons these
10 agreements are not satisfactory to you is because it
11 required you to get Robin Robinson out, correct?

12 A That was a comment that Barry had said to me verbally
13 that was in the contract.

14 Q Oh, okay. It's not in the contract, is it?

15 A That issue is not in the contract, but others are in
16 the contract.

17 Q Okay.

18 MR. GOLDSTEIN: No further questions, Your Honor.

19 Thank you.

20 THE COURT: Do you want to do cross or do you want to
21 wait until you call your case?

22 MR. MOORE: We will do cross, Your Honor.

23 THE COURT: Okay.

24 CROSS-EXAMINATION

25 BY MR. MOORE:

1 Q Mr. Destaso, can you tell me what your relationship, if
2 any, to Fine Housing is?

3 A I'm a shareholder.

4 Q Okay. You're here today testifying on its behalf?

5 A Correct.

6 Q In responses to questions that Mr. Goldstein asked you,
7 you talked about the property after you had closed on it,
8 after you had purchased the property. Were there issues
9 concerning the property that you had to deal with after you
10 purchased it?

11 A Yes.

12 Q What were those issues?

13 A There were many. Generally, there was a mess.

14 THE COURT: Can I ask for clarification. Are we
15 talking about Pittsburgh Avenue or the James Island
16 property?

17 MR. MOORE: Pittsburgh Avenue, Your Honor.

18 THE COURT: All right. Because he's been lumping them
19 together, so I'd like to know which property we're talking
20 about.

21 Q So Mr. Destaso, my questions are about the Pittsburgh
22 Avenue property.

23 A Okay.

24 Q What issues required your attention at that property
25 after you purchased it?

1 A There were unpaid tax loans. We had a tenant that was
2 very problematic, and recently, they lost the license to do
3 business at the site. There were many building code
4 violations and issue from the municipality with the
5 property. Eventually, we had to do the eviction. There was
6 a pending suit, also, that I was unaware of from former
7 employees that encumbered the property.

8 Q How did that encumber the property?

9 A They filed a lawsuit and a lis pendens.

10 Q All of those things that you've discussed and
11 identified, have those been resolved?

12 A I believe almost everything has been resolved.

13 Q How were the tax liens resolved?

14 A Eventually, I hired an additional attorney, Mr. Altman,
15 and through the litigation he was able to get payoffs and
16 secure transactions and paid off the tax liens.

17 Q The problems you had with the tenant, how were they
18 resolved?

19 A The problems were almost immediate after the closing.
20 The main tenant refused to communicate. Her boyfriend
21 started calling me incessantly and saying they were not
22 going to pay rent and that they had lost their license. We
23 filed, initially, for an eviction and then I think we
24 stopped and had to refile for an eviction. We eventually
25 had a settlement with them where they acknowledged that this

1 was, in fact, a sale and I had to pay her some money to get
2 her to vacate the premises.

3 Q How much did you pay her?

4 A I don't recall. We waived the majority of back rent,
5 which was over \$100,000, and then we paid her additionally
6 to move and we gave her more time to live in the house; so
7 there were a lot of concessions that had to be made.

8 Q All right. The permit and licensing issues, were those
9 resolved?

10 A For the most part, yes.

11 Q What did you do to resolve those?

12 A My understanding, and I'm not exactly clear on the
13 licensing and how it works, but there was one portion of the
14 license that was never resolved. Then, one that came back
15 into compliance because we paid South Carolina Department of
16 Revenue and had to cure some issues with the town and the
17 building department and problems of that nature.

18 Q Okay. What about the litigation with former employees
19 and the lis pendens, was that resolved?

20 A Eventually, we had resolved that as well, yeah.

21 Q How did you resolve that?

22 A Eventually, there was a settlement of \$102,000, I
23 believe.

24 Q You paid the 102,000?

25 A I paid 50 and I believe my title insurance company paid

1 52, I believe.

2 Q Have you made any improvements to the property since
3 you purchased it?

4 A We've corrected -- there were a majority of violations,
5 as I mentioned, on the property. There was apparently a
6 structure that was built illegally sometime in the past. I
7 was able to communicate with the town, or the city, I'm not
8 sure, or the county, and come up with a solution. I also
9 had to give rent abatements to the new tenant that
10 eventually moved in for them to do some new improvements to
11 the space that I lease to the tenants.

12 Q Do you recall how much the rent abatement was?

13 A Over \$30,000.

14 Q So the property that you acquired or purchased from
15 RRJR, LLC, back on December 2nd, 2013, is it the same
16 property that is there today?

17 A No.

18 Q It's a different property?

19 A Yes. One main thing is the former owner that became a
20 tenant was a disaster, and they were, again, losing their
21 license and having problems, so we were able to clear that
22 up. I was able to obtain a survey to the property and
23 correct some of the issues that were pending. We have a
24 stable tenant now and he is paying rent, licensing has been
25 cleared up, back liens and taxes have been paid. Of course,

1 the real estate market has improved over the past three
2 years, so that has helped. So yes, it is a completely
3 different animal than it once was.

4 Q All right. When you purchased this property on
5 Pittsburgh Avenue on December 2nd, 2013, did you know that
6 Barry Clarke had a lease on that property?

7 A No.

8 Q When did you discover that Barry Clarke had a lease on
9 that property?

10 A March 21st, 2014.

11 Q And how did you learn of that?

12 A My closing attorney advised me.

13 Q You were contacted by your closing attorney?

14 A Yes.

15 Q And that is -- what's his name?

16 A William Sloan.

17 Q Did he call you, e-mail you, visit you? How did you
18 communicate?

19 A He e-mailed me and we also had a telephone
20 conversation.

21 Q I'm going to hand you what's been marked and admitted
22 into evidence as Plaintiff's Exhibit Number 12.

23 A Okay.

24 Q Is that the e-mail that you are referring to?

25 A Yes.

1 Q That's your first notification that there was a lease?

2 A Correct.

3 Q And your attorney in that e-mail also told you that
4 there was a right in that. -- how does he refer to it in the
5 e-mail?

6 A Yeah, there was some confusion. He said there was a
7 right of refusal to sell.

8 Q So was that the first time that you became aware of the
9 language in the lease that we are here today about and Mr.
10 Clarke is suggesting is a right of first refusal?

11 A Yes, again, there was some confusion but this was my
12 first notification of anything existing at all.

13 Q What did you do once you received that e-mail?

14 A I contacted Mr. Clarke and we had a conversation.

15 Q And Mr. Clarke's number was provided to you in that e-
16 mail?

17 A Yes.

18 Q Had you ever talked to Barry Clarke before the
19 telephone call and after you received this e-mail?

20 A No.

21 Q So the first telephone conversation or the first
22 communication you ever had with Barry Clarke was after you
23 received this e-mail from your attorney?

24 A Yes.

25 Q Was it the same day?

1 A I believe it was the same day.

2 Q All right. You called Mr. Clarke. What was the
3 substance of your communication with Mr. Clarke when you
4 called him?

5 A It was a fairly long conversation, very friendly. Mr.
6 Clarke was quite talkative. He discussed his life in
7 Charleston and that he owned the property across the street,
8 and he knew John Robinson who had passed away. He discussed
9 that at one time in the past they had contemplated sharing
10 the parking lot and he had a lease for every other parking
11 lot and that he had -- he expressed hatred toward Robin. He
12 had many problems with her.

13 Q Did he describe the problems to you?

14 A They were general in terms, but there was quite a lot
15 of negative commentary on Robin Robinson.

16 Q Did he express any interest in purchasing the property
17 during that conversation?

18 A Not during the first conversation, no.

19 Q During that first conversation that you had with him,
20 did he tell you he had a right of first refusal on this
21 property?

22 A No.

23 Q Was the right of first refusal ever discussed during
24 that first conversation?

25 A No, it was not ever discussed.

1 Q Did you have subsequent telephone conversations with
2 Mr. Clarke?

3 A Yes.

4 Q When was the next one?

5 A Within the next few days, we spoke again.

6 Q All right. And what was the substance of that next
7 call that you had with Mr. Clarke?

8 A Well, we had discussed the problems with the property.
9 He had indicated that he thought he could help me navigate
10 some of the issues that were there and eventually he said he
11 might be interested in purchasing the property.

12 Q Did you discuss price?

13 A Eventually, we discussed price.

14 Q During that second telephone conversation that you had
15 with him?

16 A It might have been the third, but somewhere shortly
17 thereafter, yes.

18 Q And did you agree on a price with Mr. Clarke?

19 A Well, eventually, you know, we were having problems
20 with the property and I wasn't sure how some of the issues
21 were going to be resolved, but basically we agreed that if
22 he were able to step in my shoes and pay 650, taking the
23 property the way I took it, he could have it.

24 Q All right. So you were going to sign a deed and he was
25 going to give you 650?

1 A We discussed some different possibilities, as well as
2 him buying Fine Housing.

3 Q Explain that. He was going to buy Fine Housing?

4 A It was his idea to instead of signing a deed, buying
5 the shares in the company. It was one of several different
6 proposals that he had made.

7 Q Okay. After the telephone conversation during which
8 you discussed price and you agreed upon the \$650,000 figure,
9 what happened next in your communications with Mr. Clarke
10 concerning this property?

11 A Eventually, I received an e-mail with a contract and
12 then there were several calls and conference calls, and then
13 an additional contract came in.

14 Q Okay. And who were those with? Were those with Mr.
15 Clarke?

16 A Yes.

17 Q Did you have any conversation with anyone else other
18 than Mr. Clarke or communication with anyone else other than
19 Mr. Clarke?

20 A I believe Ashley Andrews.

21 Q I am going to show you what's been admitted into
22 evidence as Plaintiff's Exhibits 16 and 17 and Defendant's
23 Exhibits One, Two and Three.

24 THE COURT: Mr. Moore, tell me briefly what Defendant's
25 One is.

1 MR. MOORE: Defendant's One is the lease, Your Honor.

2 THE COURT: What is Two?

3 MR. MOORE: It's a survey.

4 THE COURT: All right. And three?

5 MR. MOORE: Three is the deed from RRJR to Fine
6 Housing.

7 THE COURT: And Four, do you have that available?

8 MR. MOORE: I don't see it. Maybe it's over here.
9 Four is the settlement statement, Your Honor.

10 THE COURT: Okay. Settlement statement for what?

11 MR. MOORE: The settlement statement where RRJR ---

12 THE COURT: So it's from RRJR to Fine Housing?

13 MR. MOORE: Well, it's from RRJR and Robin Robinson,
14 because Robin Robinson owned the title to the property on
15 James Island.

16 THE COURT: Okay. So it was the James Island and the
17 Pittsburgh property?

18 MR. MOORE: Yes, sir.

19 THE COURT: Has the HUD statement already been
20 admitted?

21 MR. MOORE: Yes, sir.

22 THE COURT: Okay. So it's in twice, right?

23 MR. MOORE: I think four is he -- I don't think we
24 agreed on that one. I thought Four was -- maybe we did, but
25 I think Your Honor ---

1 THE COURT: I think we've admitted One through Six. I
2 was just trying to get you to tell me what they were, that's
3 all.

4 MR. MOORE: Yes, Your Honor.

5 THE COURT: Four is a HUD statement?

6 MR. MOORE: Yes, sir.

7 THE COURT: All right. What's Five?

8 MR. MOORE: Let me check my notes.

9 THE COURT: Or you can hand them to me, and I'll look
10 at them myself. Whichever one you want to do.

11 MR. MOORE: That was a check, 1762, but my notes
12 reflect that that one was not in.

13 MR. GOLDSTEIN: If I may help opposing counsel? He's
14 asking about your exhibits.

15 THE COURT: I'm talking about Defendant's exhibits.

16 MR. MOORE: Oh, I'm sorry, Your Honor.

17 THE COURT: I'm asking about what your exhibits are.

18 MR. MOORE: All right.

19 THE COURT: I have a list of the plaintiffs.

20 MR. MOORE: And I have a list, but we used him and then
21 I added mine in. All right, so let's start back.

22 THE COURT: Give me the documents and I'll figure it
23 out myself. Either way, I want to know what One through Six
24 are.

25 MR. MOORE: All right. Your Honor, One, Two, and Three

1 are e-mails from Ashley Andrews to Mr. Destaso. Number Four
2 is the contract for \$650,000. Number Five is another
3 iteration of that contract.

4 THE COURT: Okay.

5 MR. MOORE: And number six is a letter from Mr.
6 Goldstein to Mr. Altman dated April 13th, 2015.

7 THE COURT: Okay. Thank you very much. I'm sorry for
8 the confusion.

9 MR. MOORE: I'm sorry, Judge.

10 THE COURT: All right. Go ahead.

11 Q I'm handing you Plaintiff's Exhibits number 16 and 17
12 and Defendant's Exhibits Number One, Two and Three. Look at
13 those for a minute for me, please.

14 A Okay.

15 Q What are those?

16 A They are e-mails from Ashley Andrews.

17 Q And what timeframe do those e-mails expand? What
18 expanse of time do those e-mails cover?

19 A I believe they are commencing on April 10th, 2014 to
20 July 8th, 2014.

21 Q And that's roughly the period that you were negotiating
22 with Mr. Clarke and Ms. Andrews for the sale of this
23 property?

24 A Yeah, it actually went on a little bit longer, but yes.

25 Q Okay. In any of those communications that you are

1 looking at, is the right of first refusal that Mr. Clarke
2 now claims mentioned?

3 A No, never.

4 Q In any of the communications that you had with Mr.
5 Clarke on the telephone or with Ms. Andrews on the
6 telephone, was the right of first refusal that Mr. Clarke
7 now claims mentioned?

8 A No, never.

9 Q Did you discuss or propose a number other than
10 \$650,000?

11 A Well, Mr. Clarke kept coming up with different
12 scenarios and kind of changing the situation and I was
13 becoming concerned. And at one point towards the end, we
14 started talking about higher numbers.

15 Q And what was the range of the numbers that you were
16 discussing towards the end?

17 A Towards the end, we were talking about a million
18 dollars. You know, if I was going to have to clear up
19 problems and things like that.

20 Q But there was never an agreement on price?

21 A Eventually, we never agreed, no.

22 Q All right. I'm going to hand you Defendant's Exhibits
23 Four and Five, which are in evidence. Are those proposed
24 contracts that were submitted to you by Ashley Andrews as
25 Mr. Clarke's attorney?

1 A Yes.

2 Q Were either of those contracts ever signed?

3 A No.

4 Q What is the difference between the two contracts?

5 A One is the first one that was sent. The other was sent

6 ---

7 Q What exhibit is that?

8 A The first one is Defendant Exhibit Number Four. I
9 believe that was the first one that was sent. And again,
10 the deal kept changing, and the second one was sent and
11 there was one paragraph that was changed and there was an
12 addition of a lease.

13 Q All right. What was the change to that second
14 iteration of the contract?

15 A (NO RESPONSE.)

16 Q You don't have to quote specifically the language, but
17 can you tell me what the change -- do you recall what the
18 change involved?

19 A One was there was a paragraph in the second one that
20 had a purchaser's option to lease and I think it was going
21 out for like two years and he wanted to tie up the property
22 without buying it.

23 Q Is that something that you discussed with Mr. Clarke?

24 A It was something that he suggested and I said no, I
25 didn't want to tie up the property.