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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master in Equity

Case No. 2020-CP-23-02076

Jerry Powers, ...Appellant

v.

Rizan Properties, LLC, Anthony Pearson, and Tiesha Dash, ...Defendants

Of which Rizan Properties, LLC is the Respondent

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) THIRTEENTH JUDICIAL CIRCUIT

Jerry Powers,) C.A. No.: 2020-CP-23-02076

Plaintiff,)

-vs-)

ORDER

Rizan Properties, LLC, Anthony Pearson)
And Tiesha Dash,)

Defendants.)

This is an action involving a Lease and Option relating to real property located in Greenville County, South Carolina. The case was referred to the undersigned by consent of the parties.

For the most part, the underlying facts in the present action are not in dispute. The parties entered into a Lease in 2011. Thereafter, the parties entered into a Lease and an Option in 2013. It is the 2013 agreements that are the substance of the controversy herein.

Both parties have moved for summary judgment maintaining that, for the most part, the facts are not in controversy and that the issues involve interpretation that can be done without necessity of a trial. Counsel for both parties have thoroughly researched and briefed the issues. Further, during the arguments for summary judgment, both counsel were well prepared and presented clear and persuasive arguments on behalf of their clients.

As relates to the Lease and the Option, Plaintiff contends that even if he had breached the Lease, the breach did not void the Option to purchase because the parties' Option agreement did not so provide. In other words, Plaintiff argues that any Lease terms that he may have violated,

to the extent they may have occurred, the violations or breaches did not necessarily void the Option. Plaintiff further contends that neither the Lease nor the Option makes full compliance with the Lease a condition precedent to Plaintiff's exercising the Option to purchase the real property. And, since the same was not provided for in the Option drafted by Rizan Properties' attorney, the Court may not now rewrite the agreement. See, Jackson v. Rogers, 96 S.E. 962 (SC 1918).

Defendant Rizan contends that the Lease and the Option are all part of the same transaction and must necessarily be read and interpreted together. And, that only as long as all Lease payments were made in full, would the Option remain valid and exercisable. See, Café Assocs., LTD v. Gerngross, 206 S.E.2d 162 (SC 1991). Rizan Properties argues that Plaintiff made no rent payment under the Lease from November of 2018 until such time as Plaintiff's attorney attempted to exercise the Option on October 15, 2019.¹ Rizan contends that Plaintiff had breached the Lease agreement and abandoned any and all rights he may have had under both the Lease and the Option.²

Upon a full review of the record, the Court feels compelled to find that the Lease and the Option must necessarily be read together. Without one, the other cannot stand alone. In light of this ruling, the Court finds that the last rent paid by Plaintiff was November 2018. Thereafter, and while there was some disagreement as to the reasons to vacate, Plaintiff and Jackie Pearson vacated the property, returned the keys to Rizan Properties and moved into and started paying

¹ There may be some disagreement as to whether Plaintiff made his last rent payment in November 2018 or in January 2019. In light of the many months of default and the other factors noted herein, the actual date does not alter the Court's ruling.

² The Court notes that the 2013 Lease and Option were in the name of and executed by Jackie Pearson, Plaintiff and Rizan Properties, LLC. Thereafter Jackie Pearson died. No issue has been raised relating to Plaintiff being able to seek enforcement of the Option as to the entire property. The Court is advised that Anthony Pearson and Tiesha Dash are the only heirs of Pearson and that both are in default in the present action.

rent at a completely different location. While Plaintiff did, for some period of time, maintain yardwork on the property involved herein, this fact alone is not enough to overcome the fact that Plaintiff had breached the Lease by nonpayment of rent for over eleven (11) months, had vacated the premises and had turned over the keys to agents of Rizan Properties, LLC.

In light of the above, and finding that the Lease and the Option necessarily refer to and are part of the same transaction, the Court finds that there was no Option to purchase the property still in existence at the time the Plaintiff attempted to exercise the same through his attorney on October 15, 2019.

Based on the above, it is hereby ordered, adjudged and decreed that Defendant Rizan Properties, LLC motion for summary judgment is granted and that Plaintiff, Anthony Pearson and Tiesha Dash have no further rights regarding the property located at 39 2nd Avenue, Greenville, South Carolina.

Further, all counterclaims of Rizan Properties, LLC have either been dismissed by Rizan or are denied by the Court for lack of sufficient evidence.

AND IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

Case Caption: Jerry Powers vs. Rizan Properties LLC , defendant, et al

Case Number: 2020CP2302076

Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

Electronically signed on 2021-01-26 15:14:04 page 4 of 4

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	THIRTEENTH JUDICIAL CIRCUIT
COUNTY OF GREENVILLE	)	
Jerry Powers,	)	
	)	C.A. No.: 2020-CP-23-02076
Plaintiff,	)	
	)	
-vs-	)	
	)	ORDER
Rizan Properties, LLC, and Anthony	)	
Pearson and Tiesha Dash,	)	
	)	
Defendant.	)	
	)	

The matter is before the Court pursuant to Plaintiff's and Defendant Rizan Properties, LLC Motions to Reconsider, both filed February 4, 2021.

The Court held a conference call with the attorneys on February 9, 2021. Both attorneys presented cogent and zealous arguments on behalf of their respective clients.

In substance, Plaintiff contends that the Order entered January 27, 2021 improperly addressed and dealt with the 2013 Option by not finding that it was a stand-alone, independent agreement. And, further, that the Court erred in disposing of the issues pursuant the cross motions for summary judgment in that there are factual issues regarding the parties' intentions arising out of the 2013 agreements.

The Court has reviewed the record and the Order filed January 27, 2021. The 2013 Lease and the 2013 Option were drafted by an attorney, discussed between the parties, were simultaneously executed, arose out of the same transaction, and related to the same purpose; that being the real property located at 39 2nd Avenue, Greenville, South Carolina. The Court is of the opinion that its Order of January 27, 2021 properly resolved the issues and that in light of the

uncontroverted facts presented to the Court, Plaintiff breached the agreement, as well as waived and abandoned any and all rights he may have had under the Option.

As relates to Rizan Properties, LLC's motion, the Court affirms its findings and conclusions in the January 27, 2021 Order except for the fact that the Court erred in granting summary judgment as to Rizan's breach of contract counterclaim in that Plaintiff acknowledges that he did not move for summary judgment regarding the breach of contract cause of action. That cause of action shall be addressed at a later date.

Notwithstanding the above, implicit in the Court's ruling herein and in the Order filed January 27, 2021, the Lis Pendens filed by Plaintiff in this matter is necessarily dissolved and shall be canceled of record.

AND IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

Case Caption: Jerry Powers vs. Rizan Properties LLC , defendant, et al

Case Number: 2020CP2302076

Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

Electronically signed on 2021-02-11 08:36:11 page 3 of 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Jerry Powers,	)	
	)	CASE NO. 2020-CP-23-02076
Plaintiff,	)	
	)	
v.	)	CONSENT ORDER OF REFERENCE
	)	
Rizan Properties LLC, Anthony Pearson,	)	
and Tiesha Dash,	)	
	)	
Defendant(s)	)	
	)	
	)	

Pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure, Jerry Powers and Rizan Properties, LLC, consent to refer this case to the Honorable Charles B. Simmons, Jr., Master in Equity for Greenville County, to fully dispose of all issues in the case and to render a final judgment. Defendants Anthony Pearson and Tiesha Dash are in default.

Therefore, upon the motion of Jerry Powers and with the consent of Rizan Properties, LLC, IT IS HEREBY ORDERED, that this action is referred to the Honorable Charles B. Simmons, Jr., as Master in Equity for Greenville County, to take testimony, make findings of fact and conclusions of law, to enter a final judgment in this action under Rule 53, SCRCF, and to address all matters arising from or reasonably related to this action. After entry of a final order, the Master in Equity shall retain jurisdiction to perform all necessary acts incident to this action. Any appeal from an order or judgment issued by the Master in Equity shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

I SO MOVE:

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JUDICIAL SIGNATURE PAGE TO FOLLOW



Greenville Common Pleas

Case Caption: Jerry Powers vs. Rizan Properties LLC , defendant, et al

Case Number: 2020CP2302076

Type: Order/Referred to Master or Special Referee

It is so Ordered

s/Paul B. Wickensimer, Clerk of Court

Electronically signed on 2020-11-04 16:09:04 page 2 of 2

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Jerry Powers,	)	
	)	CASE NO. 2020-CP-23-_____
Plaintiff,	)	
	)	
v.	)	COMPLAINT
	)	
Rizan Properties LLC, Anthony Pearson,	)	
and Tiesha Dash,	)	
	)	
Defendant(s)	)	
	)	
	)	

The Plaintiff Jerry Powers (hereinafter, "Powers" or the "Plaintiff") would respectfully show unto the Court as follows:

1. The Plaintiff brings this action to seek specific performance of an option contract to purchase real property entered into between Jerry Powers and Jackie Pearson and Rizan Properties, LLC as more fully described below.

2. The real property which is the subject of this action (hereinafter, the "Property") is more fully described in **Exhibit A** attached hereto and incorporated herein by reference.

3. Venue of this action properly lies in this Court pursuant to S.C. Code Ann. § 15-7-10 as the Property lies in Greenville County.

4. The Plaintiff is a resident of Laurens County in the State of South Carolina.

5. Jurisdiction lies with the Circuit Court pursuant to S.C. Const. art. V, § 11. Plaintiff originally filed this action in the Probate Court based on his reading of S.C. Code. § 62-1-302(a)(1) since the case involved an LLC owned by a deceased individual, Lukas Lavette Rigdon and whose estate is being administered in the Greenville County Probate Court (file no. 2019ES2300823).

The Probate Court found that S.C. Code. § 62-1-302 did not grant it subject matter jurisdiction to hear a contract dispute involving the decedent's LLC and dismissed the action on April 8, 2020.

6. Upon information and belief, Defendant Anthony Pearson, a/k/a Shacko Pearson, is a resident and citizen of the State of South Carolina and is named herein because he is a son of Jackie Pearson according to that obituary filed in Estate no. 2019ES2301630.

7. Upon information and belief, Defendant Tiesha Dash is a resident and citizen of the State of New York and is named herein because she is a daughter of Jackie Pearson according to the obituary filed in Estate no. 2019ES2301630.

FACTUAL ALLEGATIONS

8. On or about May 1, 2013, Plaintiff, Jackie Pearson, and Rizan Properties entered into two contracts with respect to the Property. One was a Lease Agreement, the other an Option to Purchase.

9. Pursuant to the terms of the Lease Agreement, Plaintiff and Ms. Pearson agreed to lease the Property for 8 years and to pay \$52,800 as consideration for the lease, paying \$550 a month beginning May 1, 2013.

10. In consideration of \$550, the Option to Purchase gave Plaintiff and Ms. Pearson the option to purchase the Property for eight years from May 1, 2013. Upon exercising the option Rizan Properties agreed to enter into a purchase agreement for an amount calculated as follows: \$52,800 minus \$550 minus \$550 for each month paid as rent.

11. On or about December 3, 2018, Lukas Rigdon, as member and/or manager of Rizan Properties, sent Plaintiff and Ms. Pearson a letter in which he purports to terminate the "contract to own the home" for alleged past due rent of \$1,401. It also claimed late fees totaling \$2750, and it directed Plaintiff and Ms. Pearson to vacate the property.

12. Nothing in either the Lease Agreement or the Option Contract says that the Option Contract will end if the Lease Agreement is breached or terminated.

13. Attached to the December 3rd letter was a payment history prepared by Mr. Rigdon purporting to show payments from May 1, 2013 to November 1, 2018. That history shows, at minimum, payments totaling \$35,449.

14. Ms. Pearson signed the December 3rd letter saying she would vacate the Property. Mr. Powers did not. Mr. Powers made another payment to Mr. Rigdon in January 2019, which Mr. Rigdon accepted.

15. On January 3, 2019, the undersigned attorney for Mr. Powers spoke with Mr. Rigdon during which phone call he stated Mr. Powers' position that (1) the Lease was not terminated and (2) even if it was, that nothing in the Option Contract says that it can be terminated due to a breach of the Lease Agreement and he stated Mr. Powers' position the Option Contract remained valid and enforceable. Mr. Rigdon said he would look at the contracts and get back to Plaintiff's attorney.

16. A tragic sequence of events played out next. Between December 2018 and April 2019, Mr. Powers was hospitalized several times. Mr. Powers is no longer occupying the Property, but he had been taking steps to maintain the Property.

17. On March 21, 2019, Mr. Rigdon passed away according to his obituary. Mr. Powers was unaware of this until he found out about this from Mr. Rigdon's mother in or about July 2019.

18. Furthermore, on July 1, 2019, Ms. Pearson passed away. Mr. Powers and Ms. Pearson had been in a relationship for twelve years.

19. On October 15, 2019, well within the eight-year period provided for in the Option Contract, Mr. Powers, through counsel, formally notified the Estate's counsel in writing of his intent to exercise the Option.

20. At that time the Estate of Lukas Lavette Rigdon was the sole member and/or manager of Rizan Properties, LLC.

21. On October 28, 2019, counsel for the Estate responded stating that Mr. Powers has no interest in the Property and informed him that it had contacted the Greenville County Sheriff's Department to put Mr. Powers on trespass. The response did not address Mr. Powers's election to exercise the Option Contract.

22. On November 1st, Mr. Powers, again through counsel, sent another letter asking the Estate to specifically comply with the Option Contract.

23. On November 7th Estate's counsel asked Plaintiff's counsel for proof of payment via an emailed letter.

24. On November 12th, Plaintiff's counsel emailed Estate's counsel a copy of the payment history that Mr. Rigdon had created and attached to his December 3rd letter.

25. On December 2nd, Plaintiff's counsel emailed Estate's counsel asking for the Estate's position on whether it will consummate the Option Contract. To date, Plaintiff's counsel has received no response.

26. On December 20th, Plaintiff filed an action with the Greenville County Probate Court seeking specific performance of the Option Contract. Defendant Rizan Properties LLC moved to dismiss that action on multiple grounds. On April 8, 2020, the Probate Court dismissed the action finding that it had no subject matter jurisdiction over the dispute.

CAUSES OF ACTION
Breach of Contract

27. Plaintiff incorporates each of the foregoing paragraphs as if fully realleged herein.

28. Plaintiff had a contract with Rizan Properties as described above, specifically the Option Contract.

29. Plaintiff elected to exercise the option in writing as required by the Option Contract and the Rizan Properties has refused to comply with its obligation to enter into a purchase contract.

30. Plaintiff has joined Anthony Pearson and Tiesha Dash as defendants because they are the children of Jackie Pearson and may have some interest in the Option Contract. Plaintiff has communicated with Ms. Dash and confirmed that she gives up any right to exercise the Option jointly with Mr. Powers.

31. Paragraph 4 of the Option provides for exercising the Option in writing, and it states that this provision is binding upon the heirs, successors, and assigns of the parties. Upon information and belief, neither Ms. Dash nor Mr. Pearson have provided written notice to Rizan Properties of any intent to exercise the Option. Therefore, Plaintiff believes that he should be able to exercise the Option as the only person who has elected to do so pursuant to the terms of the Option and take full title to the Property.

32. In the event that Mr. Pearson or Ms. Dash elect to exercise the Option in writing as required by the Option Contract, Plaintiff requests that they, or either of them so electing, be required to bring their/his/her portion of the payoff owed under the Option or their/his/her interest be barred and Plaintiff be permitted to payoff the remaining balance and take title in his own name.

33. Plaintiff stands ready, willing, and able to complete the payoff of the Option Contract.

34. Plaintiff also has been damaged by having to pay rent elsewhere to live after Rizan refused to consummate the Option and he seeks recovery for these special damages in addition to specific performance under *White v. Felkel*, 225 S.C. 453 (1954).

WHEREFORE, Plaintiff prays that the Court:

A. Require the Estate as the sole member manager of Rizan Properties, LLC, fully comply with the terms of the Option Contract;

B. Award Plaintiff special damages as contemplated by *White v. Felkel*, 225 S.C. 453 (1954) for rent he has had to pay after Rizan refused to consummate the Option;

C. If the Court refuses to award specific performance, then award Plaintiff legal damages;

D. Order the Estate to pay any costs Mr. Powers incurs as a result of this action,

E. Find that Ms. Dash has given up any interest in or right to exercise the Option Contract;

F. Find that since Mr. Powers is the only person to have exercised the Option, he is entitled to pay off the Option and take full title to the Property;

G. Alternatively, require Mr. Pearson and/or Ms. Dash to pay their/his/her portion of the payoff as a condition to jointly exercising the Option with Plaintiff or be barred from exercising it; and

H. For such other and further relief as may be just and proper.

April 10, 2020
Greenville, South Carolina

SOUTH CAROLINA LEGAL SERVICES

s/ Mark Fessler

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Attorney for Plaintiff

EXHIBIT A

ALL that certain piece, parcel or lot of land, with all improvements thereon, situate, lying and being in the County of Greenville, State of South Carolina, being known and designated as Lot No. 82 of VILLAGE HOUSES of F. W. POE MFG. CO., Section No. 1, as shown on the plat thereof prepared by Dalton & Neves, dated July 1950 and recorded in the Office of the Register of Deeds for Greenville County, SC in Plat Book Y at Pages 26-31, said property being further shown and designated on a more recent plat of survey prepared for Butler Lee Sprouse and Thelma M. Sprouse by W. R. Williams, Jr., dated March 22, 1993 and recorded in the Office of the Register of Deeds for Greenville County, SC in Plat Book 24-U at Page 53, reference being hereby made to said latter plat of survey for a complete metes and bounds description of the property.

TMS # 0150.00-11-007.00

Property Address: 39 2nd Avenue
Greenville, SC 29601

This being the same property conveyed to Rizan Properties, LLC by that deed from Lukas Lavette Rigdon AKA Lukas Rigdon dated November 7, 2011 and recorded on November 7, 2011 in Deed Book 2396 at Page 2892, in the Office of the Register of Deeds of Greenville County, South Carolina.

0150.00-11-007.00

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Jerry Powers,	)	C.A. No.: 2020-CP-23-02076
	)	
Plaintiff,	)	
	)	
Rizan Properties, LLC, Anthony Pearson	)	AMENDED ANSWER
and Tiesha Dash	)	
	)	
Defendants.	)	
	)	

Defendant Rizan Properties, LLC amending its answer to the allegations of plaintiff's complaint, would allege and show unto the court as follows:

FOR A FIRST DEFENSE

1. All allegations of the complaint not hereinafter specifically admitted, qualified or explained, are denied.
2. Answering the allegations of paragraph 1 of the complaint, defendant admits plaintiff brings an action seeking specific performance of an option contract to purchase real property, however, defendant denies plaintiff is entitled to specific performance or any performance of the alleged contract at issue.
3. Defendant admits, upon information and belief, the allegations of paragraphs 2 and 3 of the complaint.
4. Answering the allegations of paragraph 4 of the complaint, this defendant is without sufficient information with which to admit or deny the truth or falsity of such allegations, therefore the same are denied and strict proof demanded.

5. Answering the allegations of paragraph 5 of the complaint, this defendant admits that plaintiff originally filed an action in probate court and that the probate court denied subject matter jurisdiction and dismissed plaintiff's action.
6. Defendant is without sufficient information with which to admit or deny the truth or falsity of allegations of paragraphs 6 and 7 of the complaint, therefore, the same are denied and strict proof demanded.
7. Answering the allegations of 8, 9 and 10 of the complaint, this defendant denies such allegations as stated. Further answering, this defendant would crave reference to the actual agreements executed between the parties for all of their specific terms, conditions and limitations.
8. Answering the allegations of paragraph 11 of the complaint, defendant admits upon information and belief, that on or about December 3, 2018 Lukas Rigdon sent plaintiff and Jackie Pearson a letter. Defendant denies the remaining allegations of paragraph 11 as stated. Further answering, defendant would crave reference to the actual letter for all of its specific terms, conditions and limitations.
9. Defendant denies the allegations of paragraph 12 of the complaint as stated. Further answering, defendant would crave reference to the actual agreements and contracts for all of their specific terms, conditions and limitations.
10. Answering the allegations of paragraph 13 of the complaint, defendant is without sufficient information with which to admit or deny the truth or falsity of such allegations, therefore, the same are denied and strict proof demanded.
11. Answering the allegations of paragraph 14 of the complaint, this defendant admits that Ms. Pearson signed the December 3rd letter saying she would vacate the property and that Mr.

Powers did not, at least as far as this defendant is aware. With regard to the allegation that Powers made an additional payment to Mr. Rigdon on January 2019, defendant is without sufficient information with which to admit or deny the truth or falsity of such allegation, therefore, the same are denied and strict proof demanded.

12. Answering the allegations of paragraph 15 of the complaint, this defendant is without sufficient information with which to admit or deny what the plaintiff's attorney spoke to Mr. Rigdon about nor what the plaintiff's attorney or Mr. Rigdon discussed during the remainder of their call. Upon information and belief, the only person with knowledge of this communication would be the plaintiff's attorney Mr. Mark Fessler.
13. Answering the allegations of paragraph 16 of the complaint, this defendant is without sufficient information with which to admit or deny the truth or falsity of such allegations as to Mr. Powers being hospitalized, therefore, the same are denied and strict proof demanded. Further answering, this defendant admits Mr. Powers is no longer occupying the property and has not occupied the property since he vacated the same. Defendant denies Mr. Powers has taken steps to maintain the property.
14. Answering the allegations of paragraph 17 of the complaint, this defendant admits that Mr. Rigdon passed away on or about March 21, 2019. This defendant is without sufficient information with which to admit or deny the truth or falsity of the remaining allegations of paragraph 17, therefore, the same are denied and strict proof demanded.
15. Answering the allegations of paragraph 18 of the complaint, this defendant is without sufficient information with which to admit or deny such allegations, therefore, the same are denied and strict proof demanded.

16. Answering the allegations of paragraph 19 of the complaint, defendant denies the allegations as stated. Further answering, this defendant would crave reference to the underlying correspondence referenced in paragraph 19 for all of its specific terms and conditions.
17. Answering the allegations of paragraph 20 of the complaint, such allegations appear to be legal conclusions to which no response would be required of this defendant. To the extent such allegations are factual, the same are denied and strict proof demanded.
18. Answering the allegations of paragraphs 21, 22, 23, 24 and 25 of the complaint, this defendant denies the allegations as stated. Further answering, defendant would crave reference to the specifically denoted letters in the foregoing paragraphs for all of the specific representations, terms and conditions of such letters.
19. Defendant admits the allegations of paragraph 26 of the complaint.
20. Answering the allegations of paragraph 27 of the complaint, defendant restates and incorporates by reference the contents of paragraphs 1 through 19 above, as fully as if repeated herein.
21. Defendant denies the allegations of paragraphs 28 and 29 of the complaint.
22. Answering the allegations of paragraph 30 of the complaint, this defendant is without sufficient information with which to admit or deny the reason that plaintiff joined additional defendants to this action, therefore, the same are denied and strict proof demanded. Further answering, this defendant is without sufficient information with which to admit or deny the allegation that plaintiff has communicated with Ms. Dash, therefore, the same are denied and strict proof demanded.

23. Answering the allegations of paragraph 31 of the complaint, this defendant denies the allegations as stated. Further answering, defendant would crave reference to the contracts and other writings for all of their specific terms, conditions and limitations. Further answering, this defendant admits that neither Ms. Dash nor Mr. Pearson have provided written notice to Rizan Properties relative to any alleged option. With regard to so much of the allegation of paragraph 31 as to what plaintiff believes, this defendant denies such allegations.
24. Answering the allegations of paragraph 32 of the complaint, this defendant does not understand the allegations asserted and therefore denies the same and demands strict proof thereof.
25. Answering the allegations of paragraph 33 of the complaint, defendant admits that plaintiff alleges that he stands ready, willing and able to undertake certain actions, but deny plaintiff is entitled to the actions he allegedly asserts.
26. Defendant denies the allegations of paragraph 34 of the complaint.

FOR A SECOND DEFENSE

27. Defendant restates and incorporates by reference the contents of paragraphs 1 through 26 above, as if fully repeated herein.
28. Further answering the complaint and as a second defense thereto, defendant would state plaintiff's complaint fails to state facts sufficient to constitute a cause of action against it, therefore, the same should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A THIRD DEFENSE
(Waiver)

29. Defendant restates and incorporates by reference the contents of paragraphs 1 through 28

above, as if fully repeated herein.

30. Further answering the complaint and as a third defense thereto, defendant would state that by virtue of his actions and inactions, including vacating the property after his breaches of the lease and having no contact with nor payments to the landlord, plaintiff has waived the claims he asserts in the present action.

FOR A FOURTH DEFENSE
(Estoppel)

31. Defendant restates and incorporates by reference the contents of paragraphs 1 through 30 above, as if fully repeated herein.
32. Further answering the complaint and as a fourth defense thereto, this defendant would state that plaintiff's conduct was completely inconsistent with his current contention that he is in possession of an option to purchase property.
33. By vacating the property, failing to maintain it as required under the Lease, failing to pay rent and other breaches, all of the while never asserting any entitlement to the relief he seeks in this action, this defendant reasonably relied on the conduct of the plaintiff and rightfully assumed that the property was free and clear of any claims so that it could be sold and the proceeds paid, ultimately, to the children of Lukas Rigdon who are without a father.
34. Based on the foregoing, defendant is informed and believes that plaintiff is estopped from asserting the claims in the present action.

FOR A FIFTH DEFENSE
(Unclean Hands)

35. Defendant restates and incorporates by reference the contents of paragraphs 1 through 34 above, as if fully repeated herein.
36. Further answering the complaint and as a fifth defense thereto, this defendant would state

that plaintiff comes to this court with unclean hands and as such, plaintiff's claims should be barred pursuant to the doctrine of unclean hands.

FOR A FIFTH DEFENSE
(Laches)

37. Defendant restates and incorporates by reference the contents of paragraphs 1 through 36 above, as if fully repeated herein.
38. Further answering the complaint and as a sixth defense thereto, this defendant would state plaintiff was negligent and grossly negligent in failing and refusing to assert any claims that he was entitled to or possessed a valid option concerning the property at issue.
39. Plaintiff's conduct constituted an unreasonable delay in asserting the rights he asserts in this action and such unreasonable delay resulted in this defendant rightfully assuming plaintiff had no claims to the property and this defendant would be materially prejudiced by the assertion, at this late date, of the claims made by the plaintiff.
40. Based on the foregoing, this defendant is informed and believes that the plaintiff's complaint and all relief sought therein are barred by the equitable doctrine of laches.

FOR A FIRST COUNTERCLAIM
(Breach of Contract)

41. Defendant restates and incorporates by reference the contents of paragraphs 1 through 40 above, as if fully repeated herein and insofar as the same are not inconsistent with this counterclaim.
42. Further answering the complaint and as a first counterclaim thereto, defendant would state that plaintiff has no claims in nor rights to the property at issue. During the time in which plaintiff was leasing the premises, he failed and refused to timely comply with his lease obligations including, but not limited to, failing to pay rent, paying rent late, and failing to maintain the property.

43. By virtue of plaintiff's breaches of his lease obligations, plaintiff has caused injury and damages to this defendant and this defendant is informed and believes it is entitled to recover from plaintiff all of its damages so incurred.

44. Further, upon information and belief, plaintiff's actions were willful and wanton in allowing the property to fall into disrepair and/or failing to protect the property from damage by others, thus entitling this plaintiff to the recovery of punitive damages as well.

FOR A SIXTH DEFENSE AND SECOND
COUNTERCLAIM
(Fraud)

45. Defendant restates and incorporates by reference the contents of paragraphs 1 through 44 above, as if fully repeated herein and insofar as the same is not inconsistent with this counterclaim.

46. Plaintiff Jerry Powers represented to defendant in his initial rental application that he was married to Jacqueline Pearson.

47. The representations of plaintiff were false and were material to this defendant's decision to engage in business with plaintiff and lease a residence to him and his wife.

48. Plaintiff knew of the falsity of his representations or made such representations with reckless disregard for their truth or falsity.

49. Plaintiff intended that defendant rely upon his representations and this defendant had a right to rely and did in fact rely on such representations to this defendant's detriment. Had defendant been aware of the misrepresentations of plaintiff Jerry Powers, it would not have entered into any agreement with Mr. Powers, including the original rental agreement regarding the property he was renting.

50. Based on the foregoing, this defendant is informed and believes it is entitled to judgment against plaintiff for all of its actual damages, consequential damages, incidental damages

as well as punitive damages.

WHEREFORE, having fully answered plaintiff's complaint and asserted its counterclaims against plaintiff, this defendant prays that the complaint against it be dismissed, that it be awarded the costs of this action and such other and further relief as the court may deem just and proper.

**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC**

s/Knox L. Haynsworth, III
Knox L. Haynsworth, III
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Attorney for defendant Rizan Properties, LLC

Greenville, South Carolina
August 10, 2020

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Jerry Powers,	)	
	)	CASE NO. 2020-CP-23-02076
Plaintiff,	)	
	)	
v.	)	REPLY
	)	
Rizan Properties LLC, Anthony Pearson,	)	
and Tiesha Dash,	)	
	)	
Defendant(s)	)	
	)	
	)	
	)	

Responding to the affirmative defenses and counterclaims asserted by Rizan Properties, LLC (“Defendant”), the Plaintiff Jerry Powers (“Plaintiff”) would respectfully show unto the Court as follows:

1. Any allegation of the Amended Answer not expressly admitted, qualified, or denied is denied.

FIRST DEFENSE

2. Paragraphs 1-26 respond to Plaintiff’s Complaint and require no response. To the extent one is required, they are denied to the extent they are inconsistent with the allegations of the Complaint.

REPLY TO DEFENDANT’S AFFIRMATIVE DEFENSES

3. Responding to paragraph 27, Plaintiff restates herein all prior allegations in full.
4. Paragraph 28 asserts that Plaintiff has failed to state a claim under Rule 12(b)(6). It is denied.
5. Responding to paragraph 29, Plaintiff restates herein all prior allegations in full.

6. Paragraph 30 asserts that Plaintiff has waived his claims. To the contrary, Plaintiff has insisted on his contractual rights and has not waived them. The allegations are denied.
7. Responding to paragraph 31, Plaintiff restates herein all prior allegations in full.
8. Paragraphs 32-34 assert that Plaintiff should be estopped from claiming possession of an option to purchase. They are denied.
9. Responding to paragraph 35, Plaintiff restates herein all prior allegations in full.
10. Paragraph 36 asserts that Plaintiff has somehow acted with unclean hands. To the contrary, Defendant is unjustly refusing to consummate a clear contract. The allegations are denied.
11. Responding to paragraph 37, Plaintiff restates herein all prior allegations in full.
12. Paragraphs 38-40 assert that Plaintiff is guilty of laches. Plaintiff has and continues to assert his interest in the real estate and the Option Contract. Plaintiff timely filed a claim in the Probate Court prior to the claims bar date. Laches does not apply to this case. The allegations are denied.

REPLY TO DEFENDANT'S COUNTERCLAIMS

13. Responding to paragraph 41, Plaintiff restates herein all prior allegations in full.
14. Paragraph 42 asserts that Plaintiff breached the lease in various ways. Plaintiff denies the allegations and demands strict proof thereof.
15. Paragraph 43 asserts an unspecified injury from the alleged breach. Plaintiff denies that Defendant has been injured.
16. Paragraph 44 requests punitive damages based on an alleged "willful and wanton" breach. Plaintiff denies the allegations.
17. Responding to paragraph 45, Plaintiff restates herein all prior allegations in full.

18. Paragraph 46 asserts an alleged statement in a rental application. Plaintiff denies the allegation and furthermore asserts that the alleged document should be examined as to its specific content.
19. Paragraphs 47-50 summarily plead the remaining elements of fraud without stating any facts to support them. The allegations constitute conclusions, are not well-pled, and require no response. To the extent they do, they are denied.

SECOND DEFENSE

20. Defendant fails to state facts sufficient to constitute a cause of action for breach of contract with fraud, for punitive damages for breach of a contract, or for fraud and deceit. A willful breach of a contract cannot support a claim for punitive damages. And fraud must be pled with particularity, which Defendant has failed to do for either the first or second causes of action. These claims should be dismissed pursuant to Rules 9(b) and 12(b)(6), SCRCP and S.C. common law.

THIRD DEFENSE

21. Defendant has waived any of the alleged breaches, actions, or inactions of which it complains to the extent to which it was aware of them yet did nothing.

FOURTH DEFENSE

22. Defendant's claims are barred to the extent the statute of limitations for fraud or breach of contract have run.

FIFTH DEFENSE

23. Defendant's claim for damages for breach of the lease fails to the extent Defendant failed to comply with all conditions precedent for declaring a default.

WHEREFORE, Plaintiff prays that the Court:

- A. Deny the relief Defendant requests in the Amended Answer;
- B. Grant the relief Plaintiff requests in his Complaint; and
- C. Grant such other and further relief as may be just and proper.

August 26, 2020
Greenville, South Carolina

SOUTH CAROLINA LEGAL SERVICES

s/ Mark Fessler

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Attorney for Plaintiff

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Jerry Powers,	)	
	)	CASE NO. 2020-CP-23-02076
Plaintiff,	)	
	)	
v.	)	MOTION FOR
	)	PARTIAL SUMMARY JUDGMENT
Rizan Properties LLC, Anthony Pearson,	)	
and Tiesha Dash,	)	
	)	
Defendant(s)	)	
	)	
	)	

TO: RIZAN PROPERTIES, LLC, through its attorney Knox L. Haynsworth, III, Esq.

NOTICE IS HEREBY GIVEN that the Plaintiff Jerry Powers, by and through the undersigned counsel, will move before the Honorable Charles B. Simmons, Jr., the Master in Equity for Greenville County, on the tenth day after service or as soon as counsel may be heard, for an Order granting the relief requested below.

Pursuant to Rule 56, SCRPC, there is no genuine issue of material fact that the plaintiff does possess a valid option to purchase, that he validly exercised it, and that the defendant wrongfully refused to comply with the option contract. There also is no genuine issue of material fact with respect to the defendant's Sixth Defense and Second Counterclaim from its Amended Answer and Counterclaim filed August 10, 2020, in that the plaintiff did not commit fraud, there is no evidence to support each element of a fraud claim, facts have not been pled sufficient to support each element as required by Rule 12(b)(6), SCRPC, and the claim has not been pled with particularity as required by Rule 9(b), SCRPC. The plaintiff also seeks summary judgment with respect to the defendant's request for punitive damages in its First Counterclaim because, as a matter of law, even if

the plaintiff breached the lease agreement, and even if said breach was willful and wanton, that would not entitle the defendant to punitive damages.

This motion for relief is based on the all of the pleadings that have been filed in this case, all discovery responses that have been exchanged to date, the deposition of Jerry Powers, a memorandum of law to be submitted to the Court, all applicable law, and any other documents the Court may consider.

WHEREFORE, the plaintiff respectfully prays that the Court:

1. Find that the plaintiff possesses a valid option to purchase, that he validly exercised that option to purchase, and that the defendant wrongfully refused to comply with it;
2. Dismiss Rizan Properties, LLC's Sixth Defense and Second Counterclaim with prejudice;
3. Dismiss the Rizan Properties, LLC's request for punitive damages in its First Counterclaim; and
4. Make such order as the Court deems just and proper.

Respectfully submitted,

SOUTH CAROLINA LEGAL SERVICES

s/Mark Fessler

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Attorney for Jerry Powers

December 18, 2020

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Jerry Powers,

C.A. No.: 2020-CP-23-02076

Plaintiff,

Rizan Properties, LLC, Anthony Pearson
and Tiesha Dash

NOTICE OF MOTION AND
MOTION FOR SUMMARY JUDGMENT

Defendants.

TO: MARK P. FESSLER, ESQUIRE, ATTORNEY FOR PLAINTIFF

You will please take notice that defendant Rizan Properties, LLC will move on the tenth day following service hereof or as soon thereafter as counsel may be heard before the Master-in-Equity for Greenville County for an Order granting this defendant judgment in its favor as a matter of law pursuant to Rule 56 of the South Carolina Rules of Civil Procedure as to plaintiff's claims. The grounds for this motion are as follows: Plaintiff does not possess a valid option allowing him the right to purchase the subject property as such right was extinguished by his failure to abide by the terms of the lease relative to the property; Plaintiff waived his claims, is estopped to assert them and is barred by laches due to his vacating the premises and turning in his keys and not timely taking any affirmative action to assert his alleged rights; and by failure of consideration for the option. This motion is supported by the affidavit of John H. Heckman, III filed contemporaneously herewith and attached as Exhibit A, as well as the deposition of the plaintiff Jerry Powers. This motion is further supported by the pleadings on file, a memorandum of law to be submitted and such other and further materials as the court may consider.

Respectfully submitted,

**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC**

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Attorney for defendant Rizan Properties, LLC

Greenville, South Carolina
December 17, 2020

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

THIRTEENTH JUDICIAL CIRCUIT
COURT OF COMMON PLEAS

2020-CP-23-02076

Jerry Powers,

Plaintiff,

vs.

Rizan Properties LLC, Anthony Pearson, and
Tiesha Dash,

Defendant(s).

**MEMORANDUM OF LAW
SUPPORTING PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT AND
OPPOSING DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT**

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PLAINTIFF'S MEMORANDUM OF LAW

Jerry Powers (“Plaintiff” or “Mr. Powers”) submits the following Memorandum of Law in support of his motion for partial summary judgment and in opposition to Rizan Properties, LLC’s motion for summary judgment.

At its core, this case is about a straightforward option contract that Plaintiff exercised through counsel, and which Defendant Rizan Properties LLC (“Defendant”) refuses to honor. The Court should deny Defendant’s motion for summary judgment and grant Plaintiff’s.

FACTUAL BACKGROUND

Mr. Powers met Lukas Rigdon in 2011 while living in Laurens County. They discussed Mr. Powers and Jackie Pearson¹ renting 39 2nd Ave. in Greenville, SC (the “Property”). (Powers Depo. 10:22-12:3). Lukas Rigdon was the sole member of Rizan Properties, LLC, which owned the Property. (Exs. 1 and 2 (at ¶¶ 10, 13)). On or about August 3, 2011, Mr. Powers and Ms. Pearson entered into a lease agreement with Rizan Properties, LLC to rent the Property. (Ex. 3).

In 2013, Mr. Rigdon approached Mr. Powers to offer him the opportunity to buy the Property. (Powers Depo. 19:15-20). On or about May 1, 2013, Plaintiff and Ms. Pearson signed two documents with Rizan Properties, LLC, a Lease Agreement (“Lease”) and an Option to Purchase (“Option”). (Exs. 4 and 5). The two documents speak for themselves, but essentially, Mr. Powers and Ms. Pearson were to pay payments of \$550 per month under the eight-year Lease, and, during the following eight years, he also had the option to buy the Property. If he exercised the Option, all the payments of \$550 he had paid under the Lease plus the \$550 he paid for the Option would be credited against the purchase price of \$52,800. (Ex. 5). The Lease does not reference the Option except that it recites the same purchase price, which it calls rent, of \$52,800.

¹ Ms. Pearson was Mr. Powers’ significant other, and they remained together until Ms. Pearson’s unexpected death on July 1, 2019. (Ex. 12).

The Option does not reference the Lease except with respect to calculating the final payoff. Nowhere do either of the documents state that a breach or termination of the Lease voids the Option.

Plaintiff made payments under the Lease without complaint from Mr. Rigdon for over five years. (Powers Depo. 36:5-17; 67:24-68:9; 137:7-16). Towards the end of 2018, Mr. Rigdon came to Mr. Powers and told him that he would have to sell the Property. (Powers Depo 35:24-36:2). He told Mr. Powers that he was having financial trouble due to things such as child support. (Powers Depo 35:24-36:2; 100:2-19; 178:14-22-24). Mr. Rigdon, in fact, had recently been ordered to pay \$238 a month in child support, and the financial statement he submitted to the Greenville County Family Court on or about August 3, 2018 shows his expenses exceeding his net income by \$964.82. (Exs 6 and 7).

On November 19, 2018 Mr. Powers first visited SC Legal Services seeking assistance with respect to the Lease and Option on the Property. (Ex. 8). On December 3, 2020 Lukas Rigdon delivered a letter to Mr. Powers and Ms. Pearson titled Eviction Notice. (Ex. 9). Attached to it was a spreadsheet containing a payment history. (Ex 9). The alleged past due rent and number of late payments detailed in the payment history are set forth in the letter. (Ex. 9).

Ms. Pearson signed the letter and noted that she will be out of the Property by January 5, 2019. (Ex. 9). Mr. Powers refused to sign. (Powers Depo. 31:23-32:7; 35:11-22). Approximately two weeks later, Mr. Powers had a heart attack and was in the hospital from December 19, 2019 to December 21, 2019 (Ex. 10) (Powers Depo. 48:12-16). He also was admitted for heart attacks from February 8-10, 2019 and April 10-22, 2019 (Ex. 10). Mr. Powers asserts he last made a payment of \$550 to Mr. Rigdon on or about January 3, 2019, the last time they spoke. (Powers Depo. 49:1-5; 129:7-15).

Ms. Pearson moved out of the Property and began renting 300 Watkins Road in Greenville for \$1,000 a month. (Powers Dep. 75:24-76:2; 177:25-178:1). Ms. Pearson could not afford the rent on her own, so she asked Mr. Powers to move in with her to help share the rent burden. (Powers Depo. 177:22-178:7). He moved in with Ms. Pearson to help her cover her rent payments, never intending to relinquish his claim to the Property. (Powers Depo. 178:14-15). Additionally, Mr. Rigdon at some point asked Mr. Powers to give him back the keys to the Property. Mr. Powers at first refused, but later relented at the urging of Ms. Pearson. (Powers Depo. 68:14-69:17).

Plaintiff sought out financing to pay off the Option, consulting both with Luthi Mortgage and Bank of America (Powers Depo. 116:7-15; 183:24-184:3). Bank of America denied Mr. Powers due to his credit (Powers Depo. 184:2-3). No financing from Luthi Mortgage ever worked out either. (Powers Depo. 119:12-17).

Despite not residing at the Property, Mr. Powers had a friend, Rodney Pitts maintain the Property's exterior. (Powers Depo. 54:11-17; 84:8-9; 84:19-85:2; 115:14-22). He did not want it to appear uninhabited because he was concerned homeless individuals might try to live in the unoccupied house. (Powers Depo. 84:19-85:2). He paid Mr. Pitts, \$20-\$25 a week to watch over it and cut the grass regularly. (Powers Depo. 85:3-13). Mr. Powers could not do it because of he was recuperating from one or another of his heart attacks. (Powers Depo. 85:7-11). Mr. Pitts maintained the Property at Mr. Powers' behest until October 27, 2019. On that date, Meredith Rigdon called a police officer to the Property, who met Mr. Pitts and placed him on trespass notice. (Powers Depo. 86:16-87:2; 89:1-6; Ex. 11).

On March 21, 2019, Mr. Rigdon passed away. Meredith Ridgon opened an estate for him and became appointed as personal representative for his estate on April 25, 2019 (estate #

2019ES2300823). In July 2019, Mr. Powers found out about Mr. Rigdon's passing (Powers Depo. 105:20-106:10).

On October 15, 2019, Plaintiff, through counsel, wrote to Jacqueline Patterson, Esq., counsel for Meredith Rigdon, stating Plaintiff's intention to exercise the Option. Mrs. Rigdon was, and still is, the personal representative of Lukas Rigdon's estate and, as such, was the sole member manager of Rizan Properties, LLC. (Ex 13 pgs 5-14). On October 28, 2019, Ms. Patterson replied that Plaintiff had defaulted due to non-payment of rent, that the lease was terminated, and that Mr. Powers should no longer visit the Property. (Ex 13 pg 15). On November 1, 2019, Plaintiff's counsel replied, contending that the Option had not been cancelled and asking whether or not Defendant would consent to enter a purchase agreement as set forth in the Option. (Ex 13 pg 16). A reply on November 7th requested proof of payments made, to which Plaintiff's counsel replied via email attaching the payment history from the December 3, 2018 letter along with a description of how he arrived at the \$19,500 payoff figure. (Ex 13 pgs 17-21). Defendant's counsel made no further reply, causing Plaintiff to file this suit initially with the Probate Court for Greenville County. (Jerry Powers v. Rizan Properties LLC, et. al., # 2019-ES-23-00823). The Probate Court dismissed the case April 8, 2020, citing a lack of subject matter jurisdiction. Plaintiff filed this action two days later with the Circuit Court.

STANDARD OF REVIEW

Summary judgment may be granted when there is no genuine issue of material fact to be decided by a finder of fact. Rule 56(c), SCRPC. "When determining whether any triable issue of fact exists, the evidence and all inferences, which can reasonably be drawn from it, must be viewed in the light most favorable to the nonmoving party." *Fender v. Heirs at Law of Smashum*, 354

S.C. 504, 509 (Ct. App. 2003). However, a party who opposes a motion for summary judgment “may not rest on the mere allegations of his pleading to withstand summary judgment but must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.” Rule 56(e), SCRCP.

“Where a motion for summary judgment presents a question as to the construction of a written contract, the question is one of law if the language employed by the agreement is plain and unambiguous.” *First-Citizens Bank & Trust Co. v. Conway Nat’l Bank*, 282 S.C. 303, 305, 317 S.E.2d 776, 777 (Ct. App. 1984). “In such a case, summary judgment is proper and a trial unnecessary where the intention of the parties as to the legal effect of the contract may be gathered from the four corners of the instrument itself.” *Id.*

ARGUMENTS

I. If Mr. Powers did breach the Lease, the Option remained valid.

If Plaintiff breached the Lease, any such breach did not void the Option because the parties did not so provide. The Court can decide this matter on summary judgment because interpretation of the unambiguous Lease and Option agreements are matters of law. *Canal Ins. Co. v. Nat’l House Movers, LLC*, 414 S.C. 255, 260, 777 S.E.2d 418, 421 (Ct. App. 2015). Or, if any ambiguity exists in them, it must be construed against the drafter—Defendant. *Id.* 414 S.C. at, 265, 777 S.E.2d 418, 424.

A. The unambiguous Option is not contingent on the full compliance with the Lease

Documents executed at the same time or as part of the same transaction are construed together to understand the entire transaction. *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 92, 594 S.E.2d 485, 492 (Ct. App. 2004). But it does not follow that if one agreement is breached the other

agreement automatically fails as well. “‘Construing contemporaneous instruments together means simply that if there are any provisions in one instrument limiting, explaining, or otherwise affecting the provisions of another, they will be given effect between the parties so that the whole agreement as actually made may be effectuated.’” *Id.*, 358 S.C. at 92, 594 S.E.2d at 493 (citation omitted). “In construing a contract, the primary objective is to ascertain and give effect to the intention of the parties.” *Id.* 358 S.C. at 93, 594 S.E.2d at 493. “The court must enforce an unambiguous contract according to its terms, regardless of the contract’s wisdom or folly, or the parties’ failure to guard their rights carefully.” *Id.*, 358 S.C. at 92-93, 594 S.E.2d at 493.

With leases involving options to buy, the general rule is that, “the determining factor in deciding if an option is rendered void due to default under a lease is not whether the documents are construed as a single transaction or as separate documents, but, more important, whether the parties, *through their expression of intention, have chosen to make the exercise of the option conditional upon compliance with the terms of the lease.*” 49 *Am Jur 2d Landlord and Tenant* § 341 (2021) (emphasis added).

This is the rule in South Carolina. *Jackson v. Rogers*, the decision most on point with the current case, applies this general rule. 111 S.C. 49, 96 S.E. 692 (1918). Jackson sued Rogers to enforce an option to buy land. Their “Rent Contract” contained two lease paragraphs and one option paragraph. *Id.*, 111 S.C. at 57, 96 S.E. at 694. The Court referred to theses as “separable features of the contract.” *Id.*, 111 S.C. at 53, 96 S.E. at 692. At the time Jackson exercised the option, he had not paid the annual \$125 rent for 1915. The Court held that this did not prevent him from exercising the option because the parties had not made paying the rent a condition precedent to exercising the option. The Court stated, “The particular act of omission designated by Rogers is Jackson’s neglect and refusal to pay \$ 125 rent for 1915. *The parties to the contract*

did not agree therein that such omission should forfeit the right to buy.” Id. 111 S.C. at 54, 96 S.E. at 693 (emphasis added). Later the Court stated, “There is no justice to be served in the instant case by denying the plaintiff the relief he asks because he did not offer in 1915 to pay the rent for that year. The contract did not so provide, and the exigencies of the case as revealed by the testimony raised no such remedial right in the defendants.” Id. 111 S.C. at 54-55, 96 S.E. at 693 (emphasis added).

The *Jackson* Court applied black letter law by looking to the intent of the parties as expressed in their unambiguous contract. Applying those same principles to this case yields the same result—that a breach of the lease does not affect the Option’s validity. Therefore, it remains valid.

The clear purpose of the Lease and Option was to enable Plaintiff and Ms. Pearson to buy the Property at a purchase price of \$52,800. Plaintiff already had been leasing the Property from Defendant since 2011. Had the purpose been to continue leasing the Property, there was no reason to execute new documents. Mr. Rigdon approached Mr. Powers and described the new arrangement as him buying the Property. (Powers Depo. 19:18-20; 182:4-8). And the fact that the Lease and Option both recite the same purchase price demonstrates that the primary intent of the parties was for Mr. Powers and Ms. Pearson to purchase the Property. They could pay \$550 a month for eight years, or they could pay it off sooner. (Exs. 4 and 5). The Option called for the entire balance of each “rent” payment to be fully credited against the purchase price once exercised. The Lease and Option clearly express the parties’ central goal as being a sale of the Property.

Neither the Lease nor the Option makes full compliance with the Lease a condition precedent to exercising the Option. The only default provision under either document is Article

XVI of the Lease. It details the circumstances under which Defendant would have a right to terminate the Lease and re-enter the Property or retake possession by judicial process. Nowhere does it say that a breach of the Lease affects Plaintiff's Option rights. Defendant could have had his attorney place this term into the Lease but did not. Because "[t]he contract did not so provide" the Court may not write that term into the transaction. *Jackson*, 111 S.C. at 54-55, 96 S.E. at 693.

The Option and Lease are not ambiguous on the issue of whether breaching the Lease terminates the Option such that parol evidence on the question is admissible or would necessitate a trial. "A contract is ambiguous only when it may fairly and reasonably be understood in more ways than one." *Jordan v. Sec. Group*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993). "Where the language of a contract is plain and capable of legal construction, that language alone determines the instrument's force and effect." *Id.* "Extrinsic evidence giving the contract a different meaning from that indicated by its plain terms is inadmissible." *Gilstrap v. Culpepper*, 283 S.C. 83, 85-86, 320 S.E.2d 445, 447 (1984). "Courts are without authority to alter a contract by construction or to make new contracts for the parties." *Id.* (citation omitted).

The Lease and Option, drafted by Defendant's attorney, are plain and capable of only one reasonable construction. Plaintiff had eight years within which to pay off the Property by paying "rent," which, upon exercising the Option, would constitute payment of the purchase price. The Option and Lease express a complete agreement upon their face, and there is no material term lacking. *Carolina Nat. Bank v. Wilson*, 153 S.C. 251, 254, 150 S.E. 765, 766 (1929) (noting the rule that a writing that "imports to be a complete expression of the whole agreement, and contains thereon all that is necessary to constitute a contract, it is presumed that the parties have introduced into it every material item and term, and parol evidence is not admissible to add another term to the agreement . . ."). The purpose of the Lease and Option was to enable Plaintiff and Ms. Pearson

to acquire title to the Property upon payment of \$52,800. In light of that, there is nothing inconsistent or ambiguous about the notion that the Option would survive a mere breach of the Lease.

To the extent Defendant seeks to use Mr. Heckman's Affidavit to interject an ambiguity where one does not exist, such is plainly barred as parol evidence and not competent to vary or add to the language of either agreement.

Furthermore, even if the Court were to find an ambiguity in the Lease and Option as to this question, that ambiguity must be resolved against Defendant as the drafter of the documents. *Williams v. Teran, Inc.*, 266 S.C. 55, 60, 221 S.E.2d 526, 529 (1976) ("The rule of law is that where the contract is susceptible of more than one interpretation, a doubt shall be resolved against the party whose business it was to speak without ambiguity."). Thus, assuming that the Lease and Option are ambiguous on this point of the Option's ongoing validity, that issue must be resolved against Defendant as the drafter.

Whether the Court examines and applies the plain language of a fully expressed contract or finds an ambiguity that it must then construe against the drafter, the outcome is the same. The Option was valid at the time Plaintiff exercised it, and the Court should so find.

B. The parties should be held to their plain agreement under equitable principles

Equitable principles confirm that holding the parties to their bargain as expressed by the Lease and Option is the just outcome. Equity elevates substance over form. *Regions Bank v. Wingard Props., Inc.*, 394 S.C. 241, 250, 715 S.E.2d 348, 353 (Ct. App. 2011). Both parties understood the transaction as being for the purchase of the Property. Mr. Rigdon himself called the agreement a "Contract to own home" in his Eviction Notice, never mentioning the word

“lease.” (Ex. 9). The purpose of the Lease and Option was to ultimately transfer title of the Property, not merely to lease it. Thus, it is equitable and just to treat the transaction as such.

Courts of equity abhor forfeiture and will seize at slight evidence to prevent one. *Regions Bank v. Wingard Props., Inc.*, 394 S.C. 241, 257-58, 715 S.E.2d 348, 357 (Ct. App. 2011). Loss of the option due to a breach of the lease would be a forfeiture. *Kriti Ripley, LLC v. Emerald Invs., LLC*, 404 S.C. 367, 382, 746 S.E.2d 26, 34, (2013) (“We have defined a forfeiture as ‘that which is lost, or the right to which is alienated, by a crime, offense, neglect of duty, or breach of contract, . . .’”); *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 108, 531 S.E.2d 287, 292 (2000) (Nothing an option contract is a right to make a contract of purchase). No language in either agreement called for the forfeiture of that right in the event of a breach of the lease, and the Court should hold the parties to their agreement as expressed by the plain language of the contracts.

II. Plaintiff did not intentionally relinquish his right to the Option

Plaintiff did not waive his rights under the Option. To the contrary, he continued tending to the Property even after he left in order to protect it up until Defendant’s sole member-manager put an end to Plaintiff’s efforts.

“A waiver is a voluntary and intentional abandonment or relinquishment of a known right. . . . In order for a party to waive a right, the party must have known of the right and known that the right was being abandoned.” *King v. James*, 388 S.C. 16, 30, 694 S.E.2d 35, 42 (Ct. App. 2010).

There is no evidence that Plaintiff knowingly abandoned his rights under the Option by moving out of the Property. First, he moved out of the Property not to give up his claim to it but rather to help support Ms. Pearson. (Powers Depo. 177:22-178:7). There is no evidence of intent here. Second, he continued to have the Property maintained by Mr. Pitts up until October 27,

2019, when Mr. Pitts was placed on trespass notice by law enforcement at Mrs. Rigdon's request. (Ex. 11). In fact, Defendant assumed that the person tending to the Property on October 27th was in fact Mr. Powers. (Ex. 13 at pg. 15). Attorney Patterson wrote, in her October 28, 2019 letter, "[O]n Sunday, October 27, 2019, the Estate contacted the Greenville County Sheriff's Department regarding the trespass of Jerry Powers on the Property." There is no genuine issue of material fact that Mr. Powers did not waive his rights under the Option.

III. Estoppel does not apply

No genuine issue of fact justifies application of equitable estoppel.

The essential elements of an equitable estoppel as related to the party estopped are: (1) Conduct which amounts to a false representation or concealment of material facts, or, at least, which is calculated to convey the impression that the facts are otherwise than, and inconsistent with, those which the party subsequently attempts to assert; (2) intention, or at least expectation, that such conduct shall be acted upon by the other party; (3) knowledge, actual or constructive, of the real facts. As related to the party claiming the estoppel, they are: (1) Lack of knowledge and of the means of knowledge of the truth as to the facts in question; (2) reliance upon the conduct of the party estopped; and (3) action based thereon of such a character as to change his position prejudicially.

South Carolina Nat'l Bank v. Hammond, 260 S.C. 622, 630-31, 198 S.E.2d 123, 128 (1973).

While it is true that Mr. Powers vacated the property, there is no evidence to support the notion that he intended Mr. Rigdon to believe that he was walking away from the Option. Mr. Rigdon demanded that Mr. Powers vacate the Property, which Mr. Powers did after objecting to Mr. Rigdon's demand, not because of Mr. Rigdon's demand, but rather out of his affection and sense of responsibility to Ms. Pearson. He retained counsel to help him resolve the matter with Mr. Rigdon and thereafter continued to maintain the Property. There is no genuine issue of material fact as to Mr. Powers' intent.

Whatever other conduct Defendant might rely to support its claim of estoppel,² the elements of prejudice and reliance fully dispense with this defense. There is no factual allegation in the Amended Answer, nor in any other evidence that can be submitted to the Court, that demonstrates any prejudice that Rizan Properties would face if held to its bargain. Furthermore, there is no evidence that Mr. Ridgon, or his successor in interest, took any action in reliance on Mr. Powers' act in vacating the property. There is no evidence that it entered into another binding contract to sell such that it incurred competing contractual obligations. Nor is there any evidence of it investing money into the Property such as to make it inequitable to allow Mr. Powers to come back now and seek a more valuable item than the one he contracted to buy. *See Jackson v. Rogers*, 111 S.C. 49, 57, 96 S.E. 692, 694 (1918) (finding estoppel did not apply because "[t]here is no proof that Rogers has been misled, or that he has acted on what Jackson said or did to his hurt.").

To the contrary, the Property sat for months, being looked after by Mr. Powers. And at the point Plaintiff's attorney notified Ms. Patterson that he was exercising the Option, Defendant made no plea of prejudice or reliance. The only explanation for rejecting the Option was that it was void because Plaintiff had breached the lease. (Ex. 13 at p.15).

The only inference to be drawn from Defendant's refusal is not that it has encountered any legally cognizable prejudice.³ Rather Defendant appears to be more interested in retaining the

² In its Amended Answer, Defendant asserts that the following justifies application of equitable estoppel, "vacating the property, failing to maintain it as required under the Lease, failing to pay rent and other breaches, all of the while never asserting any entitlement to the relief." (Amended Ans. ¶ 33).

³ Defendant pleads in its Amended Answer that the proceeds of the sale would be paid over to Mr. Rigdon's children. With due respect and sympathy to Mr. Rigdon and his family, there are sympathies on both sides. Mr. Powers is has suffered three heart attacks within the last 13 months, lost a woman he loved deeply, and remains renting from his sister in his golden years when he should be living in his own house. The Court should weight the equities, not the sympathies of each side. *Craig v. Clearwater Mfg. Co*, 189 S.C. 176, 187, 200 S.E. 765, 770, (1938) ("[T]he Court may not let its sympathy for the wife and children of the worthy man who lost his life in the collision override its honest opinion of the applicable law. . .").

more than \$35,000 that Plaintiff had paid Defendant under Defendant's own accounting and also reselling the Property at fair market value. Essentially, Defendant seeks a windfall.

This is not the type of outcome that a court of equity will countenance. "The principle of estoppel in equity stands upon the very foundations of right and fair dealing. It considers and weighs the conduct of men in their dealings with each other, and gives that effect and meaning to their actions which common sense and justice dictate." *Palmer v. Sovereign Camp, Woodmen of the World*, 197 S.C. 379, 391, 15 S.E.2d 655, 661 (1941). There is no genuine issue of material fact that, if true, could support an estoppel in this case, and the Court should so find.

IV. Laches does not apply either

No genuine issue of fact in this case reasonably supports the application of laches.

The equitable doctrine of laches is defined as "neglect for an unreasonable and unexplained length of time, under circumstances affording opportunity for diligence, to do what in law should have been done." A mere delay in time does not constitute laches. Rather, the determination must be made in light of the specific facts of each case, taking into consideration whether the other party has been prejudiced by the delay.

Wall v. Huguenin, 305 S.C. 100, 102, 406 S.E.2d 347, 349 (1991). "The party asserting laches has the burden of showing negligence, the opportunity to act sooner, and material prejudice." *Richey v. Dickinson*, 359 S.C. 609, 612, 598 S.E.2d 307, 309 (Ct. App. 2004).

In *Wall*, the Supreme Court interpreted an option contract which stated that it could be exercised when "convenient" for the then appraised value of the property. Reversing the Court of Appeals, the Supreme Court held that a thirteen year delay in exercising the option did not constitute laches where there was good reason for the delay and where there was no prejudice to

the other party because the property would be purchased at the then current market value. *Id.*, 305 S.C. at 103, 406 S.E.2d at 349.

In this case there was approximately an eight- and one-half month gap between when Plaintiff vacated the Property around the end of January 2019 and October 15, 2019, when Plaintiff's attorney exercised the Option on his behalf. (Powers Depo. 54:11-17). The delay was occasioned by Plaintiff's inability to finance the payoff until family members stepped up to support him in paying off the house. (Powers Depo. 114:24-115:2; 184:4-8). *Wall*, 305 S.C. at 103, 406 S.E.2d at 349 (noting that Huguenins did not pay off the option for the remaining eight years of his life because he was a pauper). Defendant has not shown any fact upon which the Court could find that Plaintiff could have acted sooner than he did.

Furthermore, Defendant has not articulated, and indeed cannot demonstrate, any prejudice to permitting Plaintiff to exercise the Option as of October 15, 2019. Plaintiff and Defendant will get exactly what they bargained for. Defendant's motion should be denied, and the Court should find that Defendant cannot show laches as a matter of law.

V. Consideration supports the Option

As an initial matter, this issue is not properly before the Court. Failure of consideration, as a matter "constituting an avoidance" of the Option, is an affirmative defense but was not pled in either Defendant's Answer or Amended Answer as required by Rule 8(c), SCRCP. *See also C. G. Gunter, Inc. v. Hindman*, 175 S.C. 436, 446, 179 S.E. 494, 498 (1935) (noting the affirmative defense of failure of consideration) and *Continental Radio & Television Corp. v. Furman*, 193 S.C. 357, 363, 8 S.E.2d 902, 905 (1940) (same).

Should the Court find this issue properly before it, it still offers no basis for granting Defendant summary judgment because clearly the Option was supported by consideration.

“Valuable consideration to support a contract may consist of some right, interest, profit or benefit accruing to one party or some forbearance, detriment, loss or responsibility given, suffered or undertaken by the other.” *Prestwick Golf Club v. Prestwick Ltd. Pshp.*, 331 S.C. 385, 389, 503 S.E.2d 184, 187 (Ct. App. 1998). Without consideration, a contract is just a gratuitous promise. *Id.* The general rule is that where parties enter into a lease and an option to purchase, rent under the lease is consideration for the option. *Furse v. Timber Acquisition*, 303 S.C. 388, 389, 401 S.E.2d 155, 156, (1991).

Because the Option and Lease are considered together as part of one overall agreement, consideration supports the Option. Plaintiff has paid over \$35,000 according to Defendant’s own accounting. (Ex. 9). This is not a situation where a party made no rent payments under the lease yet still attempted to exercise the option, which likely would justify a finding of a failure of consideration for the option. *See, e.g., Helbig v. Bonsness*, 227 Wis. 52, 53-54, 277 N.W. 634, 634 (Wis. 1938) (option unsupported by consideration where tenant paid no rent and abandoned property without notice). Mr. Powers paid Defendant tens of thousands of dollars. There is no genuine issue of material fact that Defendant received a benefit sufficient to support the Option’s existence. Defendant’s motion on this question should be denied, and the Court should find that the Option is supported by consideration as a matter of law.

Even if the rule from *Furse* did not apply in this case, which it does, there still is a genuine issue of material fact as to whether Plaintiff paid the separate \$550 consideration recited in the Option. The Option itself recites consideration of \$550 “the receipt of which is hereby acknowledged.” (Ex. 5). This document was drafted by Defendant’s attorney and subscribed by Defendant under seal. There is no record of Defendant ever having notified Plaintiff that he did not pay the \$550.

PLAINTIFF’S MEMORANDUM OF LAW

The only reason payment of this separately stated \$550 recited in the Option is a question is because of the following exchange from Plaintiff's deposition:

Q. Okay. At the very top of it, of Exhibit 5, on the first page it says, "Known all men by these presents ,that Rizan Properties, LLC, in consideration of \$550."

A. Okay. Yes.

Q. So did you pay another \$550 to Lukas Rigdon?

A. Yeah, I paid -- I paid him for, you know, the deposit, the house wasn't ready. He was working on it. Then when we got ready to move in then we had to pay him again 550 before we moved in.

Q. Now, was that -- that 550 you paid him before you moved in that was the security deposit we --

A. Yes, sir.

Q. -- just talked about; right?

A. Yes.

Q. Okay.

A. And I paid 550 for the first month's rent maybe a month later after he got through with the house.

Q. Okay. And did you pay yet another 550 for this Option --

A. Yes.

Q. -- or was the 550 security deposit the same 550 that the Option talked about?

A. Yeah, the same 550. I only paid him twice. That first time and then when I moved in the house. I didn't pay him no more after that.

Q. Right. You paid him hold -- you paid him to hold the house, because it wasn't ready yet --

A. Yes, sir.

Q. -- and then you paid him a security deposit when you-all moved in?

A. Yes, sir.

Q. And you didn't pay him a separate \$550 for the Option?

A. No.

Q. That was covered by the security deposit?

A. No, sir.

Q. Did you pay another 550 for the Option?

A. No, sir. No, I didn't pay him -- no.

Q. Just the one 550 for the security deposit and the Option?

A. Well, no, I paid him 550 to hold the house and when I moved in I paid him another 550. So it was about 11 -- 1 1,100 total when we got through with everything.

Q. Okay. And that second 550 was the security deposit under the Lease when you--all moved in?

A. Yes, sir.

Q. Okay. So did you ever pay him a separate \$550 for this Option, Exhibit 5?

A. No, sir.

(Powers Depo. 28:10-30:7).

This confused exchange does not justify the conclusion that there is no genuine issue of material fact as to whether Plaintiff paid the \$550. Most importantly, it appears that Mr. Powers may not have been recalling the 2013 Lease and Option signing at all but rather the initial 2011 lease agreement. He kept referring to paying \$550 "when I moved in the house." (Powers Depo. 29:7-8). He spoke of paying "again \$550 before we moved in" and "\$550 for the first month's rent maybe a month later after he got through with the house." (Powers Depo. 28:18; 28:25-29:1).

This is the same testimony Mr. Powers gave when asked to explain how he met Mr. Rigdon. (Powers Depo. 10:22-12:3). He stated, in part, "I said, 'We're going to go ahead and pay you 550 deposit and when it gets ready we'll pay you the first month's rent.'" So a month later we end up

getting the house. You know he had to get finished with it, because he had tore the flooring out . . ." (Powers Depo. 11:22-12:1). Mr. Powers and Ms. Pearson already were living in the Property at the time of the 2013 Lease and Option, so it makes no sense for him to say that he moved in a month later unless, in his mind, he was recalling his initial lease with Defendant. The only rational explanation for Mr. Powers' statements is that he was recalling a different time and place entirely.

If he was recalling the 2013 Lease and Option transaction, Mr. Powers's testimony is equivocal at best. He said he recalled paying two payments of \$550, one for a security deposit and one for Mr. Rigdon to "hold the house" (Powers Depo. 29:22-30:1). The fact that Mr. Powers finally, after this tortured exchange, said "No" to the question of whether he paid \$550 for the Option does not conclude this factual question as a matter of law in Defendant's favor.⁴

Ultimately, whether Mr. Powers paid the \$550 mentioned in the Option is not relevant because, even if he did not, his rent payments were consideration for the Option. *Furse v. Timber Acquisition*, 303 S.C. 388, 389, 401 S.E.2d 155, 156, (1991). Defendant's motion on this issue should be denied, and the Court should find that the Option was supported by consideration and therefore valid.

VI. Defendant's fraud claim fails as a matter of law.

Defendant alleges that Plaintiff committed fraud because Plaintiff's rental application for the initial 2011 lease identifies Plaintiff as married to Jackie Pearson. (Amended Ans. ¶ 46; Ex. 3). Even if this statement was false when made, there is no other fact to support any other element

⁴ Furthermore, Mr. Rigdon never returned Mr. Powers' security deposit from the 2011 lease. (Powers Depo. 180:13-25). It is entirely likely, if he did not, in fact, pay an additional \$550 in 2013 as the Option says he did, that the parties intended the 2011 security deposit to function as that payment.

of a fraud claim, and it must be dismissed. Defendant has not pled any other circumstance from which fraud can be inferred as required by Rule 9(b), SCRCP. This claim should be dismissed.

To deny summary judgment, “the court must determine that a genuine issue of material fact exists for each essential element of the plaintiff's claim.” *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 358, 650 S.E.2d 68, 71 (2007). Defendant must put forward some evidence to support each element of the familiar formula of “(1) a representation; (2) its falsity; (3) its materiality; (4) either knowledge of its falsity or a reckless disregard of its truth or falsity; (5) intent that the representation be acted upon; (6) the hearer's ignorance of its falsity; (7) the hearer's reliance on its truth; (8) the hearer's right to rely thereon; (9) the hearer's consequent and proximate injury.” *M. B. Kahn Constr. Co. v. South Carolina Nat'l Bank*, 275 S.C. 381, 384, 271 S.E.2d 414, 415 (1980).

No evidence to supports any of these elements with respect to the Lease and Option transactions. The representation upon which Defendant relies is one that Plaintiff allegedly made in 2011 with respect to the 2011 lease agreement, not with respect to the 2013 Lease and Option. Thus, Defendant has not proven the first element, a representation that induced the transaction in question.

Even if the representation contained in the 2011 application can somehow form the basis for inducing Rizan Properties to enter into two other contracts approximately two years later, there is no evidence that Mr. Powers' marital status was actually material to Rizan Properties's decision to sell 39 2nd Ave. to Plaintiff and Ms. Pearson in 2013 via the Lease and Option. Nor is there any evidence that Rizan in fact relied on this statement from 2011 for any purpose related to the 2013 transaction.

And even if all other elements were supported by some evidence, which they are not, Defendant has not pled any damages stemming from this representation. The only damages noted in the Amended Answer are contractual damages. (Amended Ans. ¶ 44)(citing damage to the Property from it “fall[ing] into disrepair”). In short, Defendant has failed to put forward evidence on each element of fraud to create a genuine issue of material fact for trial. This claim should be dismissed.

VII. Punitive damages are not recoverable for a willful breach of a contract.

Defendant asserts that Plaintiff breached a contract willfully and should therefore be assessed punitive damages (Amended Ans. ¶ 44). The law does not permit such a remedy for a breached contract, and summary judgment is appropriate as to this remedy.

There is no legal basis under South Carolina law for awarding punitive damages for a contractual breach. *Williams v. Riedman*, 339 S.C. 251, 274, 529 S.E.2d 28, 40 (Ct. App. 2000) (“Under a breach of contract claim, a party's damages are limited to those under the contract, and no tort remedies are available, including punitive damages.”); *Floyd v. Country Squire Mobile Homes, Inc.*, 287 S.C. 51, 53, 336 S.E.2d 502, 503 (Ct. App. 1985) (“[M]ere breach of a contract, even if willful or with fraudulent purpose, is not sufficient to entitle a plaintiff to go to the jury on the issue of punitive damages.”).

Plaintiff has not pled a breach of contract accompanied by a fraudulent act. Thus, there is no genuine issue of material fact that Defendant is not entitled to punitive damages under its First Counterclaim (Amended Ans. ¶¶ 41-44).

CONCLUSION

For the foregoing reasons, the Court should grant partial summary judgement in favor of Plaintiff by finding that the Option represents a valid, binding contract between Plaintiff and Defendant, that Plaintiff exercised his right to purchase thereunder, and that Defendant must now uphold its end of the bargain. Further, the Court should deny Defendant's motion for summary judgment in its entirety.

Respectfully submitted,

SOUTH CAROLINA LEGAL SERVICES

Greenville, South Carolina
January 12, 2021

s/ Mark Fessler
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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Jerry Powers,	)	C.A. No.: 2020-CP-23-02076
	)	
Plaintiff,	)	
	)	
Rizan Properties, LLC, Anthony Pearson	)	DEFENDANT RIZAN PROPERTIES,
and Tiesha Dash	)	LLC'S MEMORANDUM IN SUPPORT
	)	OF MOTION FOR SUMMARY
Defendants.	)	JUDGEMENT
	)	

I. BACKGROUND

Defendant Rizan Properties, LLC was owned by Mr. Lukas Rigdon who committed suicide on March 21, 2019. Mr. Rigdon is survived by a son age 7 and a daughter age 12. Their mother, Meredith Rigdon, was appointed by the probate court as executor of Mr. Rigdon's estate. For all intents and purposes, the only assets of Lukas Rigdon's estate were the assets of Rizan Properties, LLC which consisted of three single family properties. The property at issue in this matter, is located at 39 2nd Avenue Greenville, South Carolina 29609.

In connection with attempting to settle Mr. Rigdon's estate and provide for the children he left behind, Meredith Rigdon filed various estate administration papers with the probate court for Greenville County. The plaintiff in this matter, Jerry Powers, initially filed a lawsuit in Probate Court for Greenville County contending that he had an option to purchase the property located at 39 2nd Avenue and that as such, he was the rightful owner as opposed to Rizan Properties, LLC or the estate of Lukas Rigdon. The probate court dismissed Mr. Powers' action for lack of jurisdiction. Thereafter, Mr. Powers instituted the present action in the circuit court for Greenville County and by consent, the matter was referred to the Master-in-Equity for Greenville County.

In his complaint Mr. Powers claims that on or about May 1, 2013 he, Jackie Pearson and Rizan Properties entered into two contracts with respect to property. One being a lease agreement

and the other being an option to purchase. (See complaint paragraph 8) According to the complaint, pursuant to the terms of the lease agreement the plaintiff and Ms. Pearson agreed to lease the property for eight years paying \$550.00 a month beginning May 1, 2013. (complaint paragraph 9) The complaint states "in consideration of the \$550.00, the Option to Purchase gave the Plaintiff and Ms. Pearson the option to purchase the Property for eight years from May 1, 2013". The complaint goes on to state that nothing in either the lease agreement or the option contract says that the option contract will end if the lease agreement is breached or terminated. (See complaint paragraph 12) By his first cause of action, Mr. Powers asserts a breach of contract claiming that he had a valid option contract with Rizan Properties, that he elected to exercise the option in writing and that Rizan refused to comply with its obligation to enter into a purchase contract and is thus in breach. He seeks specific performance.

Essentially, the plaintiff contends that he had and continues to have an 8 year option to purchase a house he was leasing without regard to the fact that he breached his lease by not paying rent, paid rent late, vacated the premises and turned in the keys to the landlord.

By way of answer, Rizan Properties denied the allegations of plaintiff's complaint and asserted various defenses as well as counterclaims against the plaintiff. Specifically, Rizan Properties contends the plaintiff's claims are barred by principles of estoppel, waiver, laches and unclean hands. Counterclaims were asserted for breach of contract and fraud.

While the plaintiff contends that neither the option contract nor the lease contained any penalty for failure to comply with their respective terms, the documents themselves tell a different story. Further, while the plaintiff alleges in his lawsuit that the option contract and the lease agreement were separate documents and the breach of one would not constitute a breach of the other, the undisputed facts when applied to the governing law establish otherwise.

Article VII of the lease provides that the maintenance of the structure of the house shall be the responsibility of lessee. The lease also provided via Article XVI, that if lessee shall continue in default for payment of any rent for a period of ten days after notice of such default has been given to the lessee or in the event that the premises are vacated before the expiration of the lease, the lessor shall have the right to terminate the lease. The lease also provided at Article XVIII "time is of the essence for each provision, covenant, and condition, herein contained and on the part of lessee or lessor to be done and performed." (A copy of the lease is attached and incorporated by reference as Exhibit 1; it was marked Exhibit 4 in plaintiff's deposition)

The Option to Purchase agreement (a copy of which is attached and incorporated by reference as Exhibit 2; it was marked Exhibit 5 in plaintiff's deposition) was executed on May 1, 2013, the same date as the lease. As noted by the affidavit of Jack Heckman, he was the attorney who prepared both the lease agreement and the option to purchase and who met with the plaintiff Jerry Powers, the deceased Lukas Rigdon and the other signatory to the lease and the option, deceased Jackie Pearson. As confirmed by Mr. Heckman, he explained that the lease and option were documents to be construed together and as long as all of the lease payments were made in full, the Option to Purchase would remain valid and could be exercised. As attorney Heckman also noted, he explained that in the event there was a default under the lease, the Option to Purchase would lapse.

In South Carolina, two contracts executed at different times relating to the same subject matter, entered into by the same parties, are to be construed as one contract and considered as a whole. *Café Assocs., Ltd. v. Gerngross*, 305 S.C. 6, 10 406 S.E. 2d 162, 164 (1991); *Moshtaghi v. Citadel*, 314 S.C. 316, 321, 443 S.E. 2d 915, 918 (Ct. App. 1994) (citing *Klutts Resort Realty Inc. v. Down'Round Dev. Corp.*, 268 S.C. 80, 88, 232 S.E.2d 20, 25 (1977)). "The date of the

writings constituting the transaction is not material." *Moshtaghi*, 314 S.C. at 321, 443 S.E.2d at 918 (citing *Cafe Assocs., Ltd. v. Gerngross*, 305 S.C. 6, 10, 406 S.E.2d 162, 164 (1991)); *Plaza Dev. Servs. v. Joe Harden Builder, Inc.*, 294 S.C. 430, 433-34, 365 S.E.2d 231, 233 (Ct.App.1988) ("Where instruments are entered into by the same parties at different times but relate to the same subject matter, the instruments will be construed together to determine the entire agreement between the parties."). Moreover, where one of the contracts explains, amplifies, or limits the other, those provisions will be given effect between the parties so that the whole agreement, as actually contracted by the parties, may be effectuated. *Moshtaghi*, 314 S.C. at 321, 443 S.E.2d at 918; *Edward Pinckney Assocs., Ltd. v. Carver*, 294 S.C. 351, 354, 364 S.E.2d 473, 474 (Ct.App.1987) ("Construing contemporaneous instruments together means simply that if there are any provisions in one instrument limiting, explaining, or otherwise affecting the provisions of another, they will be given effect between the parties so that the whole agreement as actually made may be effectuated."); See *Wilbur Smith & Assocs. v. Nat'l Bank of South Carolina*, 274 S.C. 296, 299, 263 S.E.2d 643, 645 (1980) (finding two instruments must be read together to determine the whole agreement and intent of the parties where the broker and property owner entered into two exclusive listing agreements, the first of which provided that the sale price was to be mutually agreed upon after completion of a feasibility study and provided that the contract was binding on heirs and assigns, and the second of which set the sale price but made no reference to heirs and assigns). One contract draws contractual sustenance from the other. *Edward Pinckney Assocs.*, 294 S.C. at 354, 364 S.E.2d at 474. This rule applies even where the parties are not the same, if the several instruments were known to all the parties and were delivered the same time to accomplish an agreed purpose. 17A Am. Jur.2d Contracts 388 (1991).

Q. Okay. And so to make sure I understand. So both documents, the one we marked as Exhibit 4 and the one we marked as Exhibit 5, you and Ms. Pearson sat down and signed both Exhibit 4 and 5 in attorney Heckman's office?

A. Yes sir.

Q. Okay. And the other witnesses you believe to be attorney Heckman's secretary or some assistant?

A. Yes, it was a lady there.

Q. Okay. Alright, what do you recall, if anything, attorney Heckman talking to you about as far as these two documents that were signing that day?

A. Well, he told us that we were signing papers that after eight years we will be - - like if we paid Lukas we'll be the owner of the house, you know, after paying eight year.

Q. Okay. That if you all made the payments to Lukas over the whole eight years at the end you'd own the house?

A. Yes, sir.

(Deposition of Jerry Powers Page 23 Line 21 through Page 24 Line 14)¹

II. PLAINTIFF DEFAULTED UNDER THE LEASE AND HAS NO REMAINING RIGHTS IN AND TO THE PROPERTY.

The provisions of the lease clearly establish that a default in payment of any rent or other breach of the lease, if not remedied within ten days after notice, allowed the lessor the right to terminate the lease. It is an undisputed fact in this case that Mr. Powers defaulted on his rent and other obligations and, in fact, vacated the premises.

As noted by Mr. Powers in his deposition:

Q. But the lease you signed provides for a late fee; doesn't it?

¹ All pages from plaintiff's deposition referenced are collectively attached as Exhibit 3.

A. Yeah. Yes, sir.

Q. Okay. And you were late on your rent a number of times based on the terms of the lease; correct?

A. That - - that - - yeah, that was the payments and, yes.

Q. I mean you don't dispute that you were late with your rent, do you?

A. No, I might have been late a few times.

(Deposition of Jerry Powers Page 37 line 17-25)

Q. Okay. Well, help explain that to me. He has the eviction notice, he comes to get you all to sign it December 3 of '18. When did he ask you for the keys if it wasn't on December 3 of '18?

A. Maybe - - maybe a week later he called me at (864)200-3488.

Q. Okay. He calls you up and says what?

A. "I need the keys."

Q. Okay. And what did you tell him?

A. I'm not giving them to him. Jackie said, "give him those keys."

Q. Okay.

A. That's what Jackie said, "give him the keys."

Q. And so you gave him your keys?

A. I left from up there and brought him the keys.

(Deposition of Jerry Powers Page 69 Line 3-16)

Q. Okay. Alright. And during these times you were hospitalized, at least the two dates in '19, your living over with Jackie in the new place; right?

A. Yes, sir.

Q. Okay. And when you're living over with Jackie in the new place are you sending rent checks to Lukas?

A. No, I didn't send no rent check to him.

(Deposition of Jerry Powers Page 120 Line 25 through Page 121 Line 6)

Q. And Ms. Pearson she was still alive at this point; right?

A. Yeah, she was still alive.

Q. Okay. And she wasn't paying him rent either?

A. No.

Q. In fact, she - - she had no intention of paying him rent because she - -

A. She was though with it. She didn't want to have nothing to do with.

Q. She walked away?

A. "I'm through with it."

Q. Okay. You walked, too, you just didn't sign the paper?

A. Right.

(Deposition of Jerry Powers Page 121 Line 16 through Page 122 Line 3)

Q. Now, you've told me that you've paid your rent for 2018 and what Mr. Rigdon wrote about verbal refusal to pay November rent that that's wrong? You told me you paid November rent.

A. Where did this \$100.00 come from?

Q. Okay. Well, that's what I want to ask you about because it appears to me, Mr. Powers, that the receipt you have provided that's dated 11/2/18 is you paying \$100.00 balance for October rent. That is what it says. The receipt that's dated November 2nd

when you paid the \$100.00 bucks is actually paying rent for October 1 through October 31 of 2018.

A. **Right.** (emphasis added)

(Deposition of Jerry Powers Page 47 Line 18 through Page 48 Line 5)

Q. **As we sit here today do you have any proof that you paid your November 2018 rent?**

A. **No.** (emphasis added)

(Deposition of Jerry Powers Page 48 Line 23 through Line 25)

Q. Yes, sir. That wasn't exactly my question. My question was whether you paid rent for January, not whether you made a payment in January.

A. I can't rightly remember.

Q. Okay. February of '19 did you pay for 39 Second Avenue?

A. In what year?

Q. Of 2019, February?

A. No, sir. No, sir.

Q. One month later?

A. No, sir.

Q. Okay. March of 2019 did you pay any rent for 39 Second Avenue?

A. No, sir.

Q. Where were you living in March of 2019?

A. 300 Watson Road, Greenville, South Carolina.

(Deposition of Jerry Powers Page 55 Line 15 through Page 56 Line 5)

Jerry Powers leased a house for several years from Lukas Rigdon paying \$550.00 per

month in rent. It is undisputed that Mr. Powers knew the terms of his lease including the requirements that rent be completely and timely paid. As confirmed by the preceding sworn deposition testimony from Mr. Powers, he did not in fact pay his rent in full thus breaching his contract. He readily admitted and his own paperwork confirmed that a payment made on November 2 of 2018 was actually catching up unpaid rent for October and no rent was paid for November of 2018. Further, Mr. Powers confirmed that he did not pay rent in December 2018, January of 2019, February of 2019 or March of 2019.

It is well settled in South Carolina that option contracts are strictly construed in favor of the optionor and against the optionee. E.g., *Southern Silica Mining & Manufacturing Company v. Hoefer*, 215 S.C., 480, 497, 56 S.E. 2d 321, 328 (1949) ('(the) argument by the defendant that the Courts do not favor forfeiture and therefore the option to renew must be granted, overlooks the facts that options because unilateral, are strictly construed against the party claiming the option'). It is also well settled in this state that if the option requires performance in a certain manner, time is of the essence and exact compliance with the terms of the option are required. E.g., *Pope v. Goethe*, 175 S.C. 394, 179 S.E. 319 (1935), *Edwards Lumber & Land Company v. Smith*, 191 N.C. 619, 132 S.E. 593, 594 (1926) ('(optioner) not bound by a mere notice of acceptance of his offer as contained in the option, unaccompanied by a tender of the purchase price'). See also 51C C.J.S. Landlord & Tenant §57 (mode of exercising extension or renewal contained in lease must be in accordance with that prescribed in the agreement and lessee must strictly adhere to the terms thereof).

Our courts have recognized that harsh results in option cases are necessary to further more compelling considerations of public policy. *Dargan v. Page*, 222 S.C. 520, 73 S.E. 2d 705 (1952). When an individual grants an option he ties up his rights and property for a specified period of

time without binding the other side. For this reason he is entitled to strict compliance with time limits and other terms of the option. Thus, if the optionee fails to comply with the terms of the option, even though he may have an excuse, he must bear the responsibility and not the optionor.

In this case, Mr. Powers is attempting to take the position that even though he did not comply with the terms of his lease, he did not pay the rent due during the lease term, vacated the premises, returned his keys to the landlord and moved into and paid rent for a completely different home on 300 Watson Road, he nevertheless has the absolute right to purchase the property.

III. FAILURE OF CONSIDERATION

In addition to the other reasons present in the record before this court, it is undisputed that the option contract itself fails for lack of consideration. The lease agreement, Exhibit 1, provided that the \$550.00 month rent was payable in advance. The lease also provided that a security deposit of \$550.00 shall be paid from lessee to the lessor. As such, at the inception of the lease agreement on May 1, 2013 two payments of \$550.00 would be required. A security deposit of \$550.00 as well as the first month's rent in the amount of \$550.00, payable in advance. The "Option to Purchase", Exhibit 2 states: "Know All Men By These Presents, that Rizan Properties, LLC, **in consideration of Five Hundred Fifty and no/100s (\$550.00) Dollars, ...**"(emphasis added) Thus, in addition to the consideration of \$550.00 for a security deposit and pre-payment of the first month's rent of \$550.00, the Option also required a consideration of \$550.00.

A review of the testimony of plaintiff conclusively establishes that no consideration was ever paid to support the option contract. According to Mr. Powers:

A. ...he said, "It wont be ready for a month or so." I said, "Okay." So we go and look at it. Well, she said, "I'm interested in it." So I said, "Well, okay, Lukas, we want to rent the house." He said, "Fine." I said, "We're going to go ahead and pay you

\$550.00 deposit and when it gets ready we will pay you the first month's rent." So a month later we end up getting the house.

(Deposition of Jerry Powers Page 11 Line 13 through Line 25)

Q. Okay. And so to make sure I understand. So both documents, the one we marked as Exhibit 4 and the one we marked as Exhibit 5, you and Ms. Pearson sat down and signed both Exhibit 4 and 5 in attorney Heckman's office?

A. Yes sir.

Q. Okay. And the other witnesses you believe to be attorney Heckman's secretary or some assistant?

A. Yes, it was a lady there.

Q. Okay. Alright, what do you recall, if anything, attorney Heckman talking to you about as far as these two documents that were signing that day?

A. Well, he told us that we were signing papers that after eight years we will be - - like if we paid Lukas we'll be the owner of the house, you know, after paying eight year.

Q. Okay. That if you all made the payments to Lukas over the whole eight years at the end you'd own the house?

A. Yes, sir.

(Deposition of Jerry Powers Page 23 Line 21 through Page 24 Line 14)

Q. Okay. And were both these documents signed sitting there with the same group of people; you, Mr. Rigdon, the lawyer, the lawyer's assistant, and Ms. Pearson?

A. Yes, sir. All of us sitting in the office.

(Deposition of Jerry Powers Page 27 Line 6 through Line 9)

Q. The last sentence of the paragraph says, "A security deposit of \$550.00 shall be paid from lessee to the lessor." Do you recall paying that \$550.00 security deposit?

A. Yes, sir.

Q. Okay. And would that money be one of the things that you would have gotten the receipt from Lukas Rigdon on it?

A. Yes.

Q. Okay. Exhibit 5, the Option.

A. Okay. Where would that be at? That's the one?

Q. Right.

A. Okay. I'm turning it over.

Q. Okay. So you've now got Exhibit 5?

A. Well, wait a minute. Hold on a minute. Okay. I got it now, yeah.

Q. Okay. At the very top of it, of Exhibit 5, on the first page it says, "Know All Men By These Presents, that Rizan Properties, LLC in consideration of \$550.00."

A. Okay. Yes.

Q. So did you pay another \$550.00 to Lukas Rigdon?

A. Yeah, I paid - - I paid him for, you know, the deposit, the house wasn't ready. He was working on it. Then when we got ready to move in then we had to pay him again \$550.00 before we moved in.

Q. Now, was that - - that \$550.00 you paid him before you moved in that was the security deposit we - -

A. Yes, sir.

Q. - - just talked about; right?

A. Yes.

Q. Okay.

A. And I paid \$550.00 for the first month's rent maybe a month later after he got through with the house.

(Deposition of Jerry Powers Page 27 Line 19 through Page 29 Line 1)

A. Yeah, the same \$550.00. I only paid him twice. That first time and then when I move in the house. I didn't pay him no more after that.

Q. Right. You paid him hold - - you paid him to hold the house, because it wasn't ready yet - -

A. Yes, sir.

Q. - - and then you paid him a security deposit when you all moved in?

A. Yes, sir.

Q. **And you didn't pay him a separate \$550.00 for the Option?**

A. **No.** (emphasis added)

Q. That was covered by the security deposit?

A. No, sir.

Q. **Did you pay another \$550.00 for the Option?**

A. **No, sir. No, I didn't pay him - - no.**

(emphasis added)

(Deposition of Jerry Powers Page 29 Line 7 through Line 21)

Q. **So did you ever pay him a separate \$550.00 for this Option, Exhibit 5?**

A. **No, sir.**

(emphasis added)

(Deposition of Jerry Powers Page 30 Line 5 through Line 7)

IV. CONCLUSION

As noted at the beginning of this memorandum, Lukas Rigdon left behind two children following his suicide, a son Luke age 7 and a daughter Reagan age 12. Their mother Meredith was appointed by the probate court as executor of Mr. Rigdon's estate and the only assets of that estate, for all intents and purposes, are three properties in Greenville, one of which is located at 39 2nd Avenue. While Ms. Rigdon continues to try and work through the devastation left by Mr. Rigdon's suicide, she has had that endeavor substantially crippled by the actions in the plaintiff in this matter, Jerry Powers. Through his litigation Mr. Powers has effectively stopped the estate's ability to marshal assets and end expenses for the benefit of the two children. Mr. Powers enjoyed the benefit of his bargain for a number of years and lived peaceably at 39 2nd Avenue pursuant to his lease. Mr. Powers chose to violate that lease and abandon the property. His continued efforts to try and maintain a legal claim to the property must come to an end and defendant Rizan Properties, LLC respectfully submits that based upon the record before this court, that end is here. There are no material issues of fact in dispute and Rizan Properties is entitled to judgment in its favor as a matter of law declaring that Jerry Powers has no interest in nor claim to the property at issue.

Respectfully submitted,

**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC**

s/Knox L. Haynsworth, III

Knox L. Haynsworth, III

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Attorney for defendant Rizan Properties, LLC

Greenville, South Carolina
January 12, 2021

STATE OF SOUTH CAROLINA	)	THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	THIRTEENTH JUDICIAL CIRCUIT
	)	
Jerry Powers,	)	
	)	CASE NO. 2020-CP-23-02076
Plaintiff,	)	
	)	
v.	)	MOTION TO ALTER, AMEND
	)	AND/OR RECONSIDER UNDER
Rizan Properties LLC, Anthony Pearson,	)	RULE 59(e)
and Tiesha Dash,	)	
	)	
Defendant(s)	)	
	)	
	)	

To: Rizan Properties, LLC, through its attorney Knox L. Haynsworth, III, Esq.

Plaintiff Jerry Powers (hereinafter "Plaintiff"), by and through the undersigned counsel and pursuant to the Rule 59(e), SCRCF, moves this Court to reconsider, alter, and/or amend that Order ("Order") granting Defendant's motion for summary judgment entered January 27, 2021 and holding that "Plaintiff has no further rights regarding the property located at 39 2nd Avenue, Greenville, South Carolina." (Order p. 3).

The bases for the motion are (1) that Plaintiff believes the legal principal relied upon by the Court—that multiple documents executed as part of the same transaction form one contract—does not justify the legal conclusion that a breach of the 2013 Lease made the 2013 Option unenforceable because there is precedent to the contrary; (2) that the parties did not intend for validity of the Option to depend upon full compliance with the Lease because they did not so provide; (2)(a) that as to this question, if the Court found the Lease and Option to be ambiguous, case law holds that summary judgment is not appropriate or, (2)(b) if the Court found the Lease and Option to be unambiguous, the Court must confine its analysis of the parties' intent to the four corners of the documents; (3) the record does not support the conclusion that without the Lease the Option cannot stand, or at least there is a genuine issue of material fact here; (4) regarding

Defendant's defense of waiver, the record does not support that Plaintiff knowingly relinquished his rights to the Option, or at a minimum there is a genuine issue of material fact about Plaintiff's intent when viewing the record in his favor.

The legal ground for granting judgment specified in the order were that the 2013 "Lease and the Option must necessarily be read together" and that one cannot stand without the other. (Order p. 2). The factual grounds given were that Plaintiff breached the Lease by nonpayment of rent for over eleven (11) months, vacated the premises and turned over the keys. (Order pp. 2-3).

Regarding the Court's legal conclusion that the Lease and Option must be read together, Plaintiff respectfully submits that the law in South Carolina is that the litmus test for whether an option agreement becomes unenforceable upon a breach of a corresponding lease is the parties' intent as expressed in their written agreement(s), not whether they must be read together as one contract or multiple contracts. The case relied upon, *Café Assocs., LTD v. Gerngross*, does not involve a lease and option to purchase real estate and does not hold to the contrary. 406 S.E.2d 162 (1991). *Gerngross* merely held that a 5-year time limitation in a non-compete clause in an Asset Purchase Agreement could be read into a corresponding Covenant Not to Compete agreement that did not, standing alone, include the durational limitation.

If the Lease agreement had said that compliance with the Lease was required to have rights under the Option but the Option had been silent on that issue, then this hypothetical statement in the Lease could be read into the Option. But neither the Lease nor the Option condition the Option's validity upon compliance with the Lease. The Court should not now write this provision into the Lease or Option.

Jackson v. Rogers, which did examine a lease and an option, answered this question decidedly against the notion that violating a lease necessarily voids a concomitant Option. 111

S.C. 49, 96 S.E. 692 (1918). In that case the S.C. Supreme Court held that the lease and option were “separable features of the contract.” *Id.*, 111 S.C. at 53, 96 S.E. at 692. And moreover, the Court held that the parties themselves did not provide that a failure to pay rent as provided in the lease provision would render the option unenforceable. *Id.* 111 S.C. at 54, 96 S.E. at 693. *Rogers* has never been overruled, and Plaintiff respectfully submits that it is precedential as far as the question concerned in this case about whether missed rent payments would render Plaintiff’s option unenforceable. Thus, to the extent that the Court finds that Plaintiff’s missed rent payments renders the option unenforceable, Supreme Court precedent holds contrary.

Belton v. Cincinnati Ins. Co. further supports Plaintiff’s statement about what the law is. 353 S.C. 363, 577 S.E.2d 487 (Ct. App. 2003). Plaintiff came across this decision after the summary judgment hearing, but it reinforces what *Jackson* already holds. *Belton* involved a lease and option to purchase. Belton had missed five months of rent payments. *Id.* 353 S.C. at 365-66, 577 S.E.2d at 488. The central question there was whether the option created an insurable interest in the real estate. In reaching the conclusion that Belton did have an insurable interest, the majority¹ noted that “the termination of the lease would not ipso facto terminate Belton’s option to purchase the property.” *Id.* 353 S.C. at 367, 577 S.E.2d at 489. The Court of Appeals held that the question of severability was a question of intent, a factual question for which summary judgment was inappropriate.

The Supreme Court reversed the central holding, that Belton had an insurable interest because of the option, because he had not built up sufficient equity in the property through his payments. *Belton v. Cincinnati Ins. Co.*, 360 S.C. 575, 579, 602 S.E.2d 389, 392 (2004). The

¹ The Dissent would have held that an unexercised option did not create an insurable interest. *Id.* 353 S.C. at 371, 577 S.E.2d at 491.

Supreme Court did not reverse or vacate the Court of Appeals' statement of the law regarding the effect of a lease termination on an option.²

Thus, the Court's focus on whether the Lease and Option should be read together or not does not go far enough to frame the legal inquiry, which ultimately is a question of intent, not just whether two documents should be construed together or not. *Ellie, Inc. v. Miccichi*, 358 S.C. 78, 93, 594 S.E.2d 485, 493 (Ct. App. 2004).

On the question of intent, a further decision must be made about whether the contract the in question is ambiguous or unambiguous. This determines whether a court may look beyond the contract to ascertain the parties' intent. *Id.* In this case the Order does not state whether the Court finds the Lease and Option to be ambiguous or not, and Plaintiff would ask the Court to clarify this point given the centrality of this question in determining the parties' intent.

If the contract is ambiguous, then the Court must "strive to discover the situation of the parties, along with their purposes at the time the contract was entered." *Ellie, Inc.*, 358 S.C. at 94, 594 S.E.2d at 493. The only facts recited in the Order—failure to pay rent, turning over keys, and vacating 39 2nd Ave.—do not shed light on the parties' intent at the time the Lease and Option were entered into. Furthermore, if a contract is ambiguous, summary judgment is not appropriate. *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241, 672 S.E.2d 799, 802 (Ct. App. 2009) ("Summary judgment is improper when there is an issue as to the construction of a written contract and the contract is ambiguous because the intent of the parties cannot be gathered from the four corners of the instrument.").

If the Lease and Option are not ambiguous, then analysis of the parties' intent must be confined to the four corners of the documents. *First-Citizens Bank & Trust Co. v. Conway Nat'l*

² The present case is even a step removed from *Belton* because the argument is not that the Lease terminated, thereby cancelling the Option, but that a mere breach of the Lease voided it.

Bank, 282 S.C. 303, 305, 317 S.E.2d 776, 777 (Ct. App. 1984). It appears from the Order that the Court's primarily relied on matters outside the four corners to find the Option unenforceable. If the Court found the relevant documents unambiguous, Plaintiff asks the Court to reconsider and alter its Order to find that they do not express an intent for the Option to become void if the Lease is breached.

Plaintiff also asks the Court to reconsider and alter its conclusion that "[w]ithout one, the other cannot stand." It is not clear from the Order why the Option would be unable to stand without the Lease. The Option states a purchase price, a consideration separate from the Lease, is under seal, provides for an offset for the amount paid under the Lease, establishes the time within which it must be exercised, specifies the method required to exercise it, is not conditioned upon compliance with the Lease, and discusses what will happen upon the Option being exercised. Plaintiff does not apprehend, from the Order or from any part of the record before the Court, why the Option cannot stand without the Lease the other when the Option appears to contain a clear, definite and complete statement of terms, none of which are contingent upon full compliance with the Lease.

Finally, the Order appears to grant summary judgment on the Defendant's waiver defense³ in that the Order recites that Mr. Powers vacated 39 2nd Ave. and turned over the keys. However, the reasons he did so do not indicate that he intentionally abandoned his right to exercise the Option, and at the very least there is a genuine issue of material fact here. The question of wavier goes to Mr. Powers' intent. *King v. James*, 388 S.C. 16, 30, 694 S.E.2d 35, 42 (Ct. App. 2010) (the person must have "known that the right was being abandoned."). "Summary judgment should be

³ Plaintiff also would ask the Court to specifically grant summary judgment Defendant's other defenses of laches and estoppel because Defendant did not argue any prejudice nor is there any prejudice in the record.

denied where the facts, although not in dispute, are nonetheless subject to conflicting inferences.”
Lyles v. BMI, Inc., 292 S.C. 153, 159, 355 S.E.2d 282, 285 (Ct. App. 1987).

Viewing the record in the light most favorable to Mr. Powers, he did not knowingly abandon his rights under the Option. The fact that he paid someone to maintain the yard until that person was told by police on October 27, 2019 not to return to the property demonstrates that he still considered the property to be his. No one would pay money to preserve property that he knew belonged to someone else. Additionally, he refused to sign the “Eviction Notice” that Defendant’s owner asked Plaintiff to sign on December 3, 2018, he testified that he paid Defendant \$550 in January 2019, which demonstrates that he had not intended to give up any right under the Option at that point, he sought out financing from Bank of America and Luthi Mortgage to be able to complete purchasing 39 2nd Ave., and the reason he moved out was to assist Ms. Pearson with paying her rent, not because he was intentionally walking away from 39 2nd Ave.

WHEREFORE, Plaintiff respectfully asks the Court to reconsider, alter and/or amend its Order to deny Defendant’s motion for summary judgment and grant Plaintiff’s motion for summary judgment. Alternatively, Plaintiff asks the Court to reconsider, alter and/or amend its Order by denying Defendant’s motion, granting Plaintiff’s motion on Defendant’s claim for fraud and punitive damages, which Defendant acknowledged are unsupported by evidence at the summary judgment hearing, and on Defendant’s defenses of estoppel and laches, for which Defendant produced no evidence of prejudice, and to allow the other issues in the case proceed to trial.

Respectfully submitted,

SOUTH CAROLINA LEGAL SERVICES

s/ Mark Fessler
Mark Fessler (Bar #77376)

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Attorney for Plaintiff

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT
)

Jerry Powers,

) C.A. No.: 2020-CP-23-02076
)

) Plaintiff,
)

) Rizan Properties, LLC, Anthony Pearson
) and Tiesha Dash
)

) NOTICE OF MOTION AND
) MOTION TO RECONSIDER
)

) Defendants.
)
)

TO: MARK P. FESSLER, ESQUIRE, ATTORNEY FOR PLAINTIFF

You will please take notice that defendant Rizan Properties, LLC hereby moves the court for an Order, pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, requesting the trial court reconsider and alter or amend its Order issued on January 27, 2021. Specifically, the court's Order states in its final sentence "Further, all counterclaims of Rizan Properties, LLC have either been dismissed by Rizan or are denied by the court for lack of sufficient evidence."

On December 17, 2020, Rizan Properties filed a motion for summary judgment seeking an Order granting it judgment in its favor as a matter of law as to plaintiff's claims. The specific grounds for the motion were that the plaintiff did not possess a valid option allowing him the right to purchase the subject property as such right was extinguished by his failure to abide by the terms of the lease relative to the property. In its motion Rizan additionally submitted that plaintiff had waived his claims, was estopped to assert them, was barred by laches due to his vacating the premises, turning in his keys and not taking any affirmative action to assert his alleged rights and finally, by failure of consideration for the option. Submitted in support were an affidavit of attorney John H. Heckman, III as well as the deposition of plaintiff along with a memorandum of law. On December 18, 2020 the plaintiff filed a motion for partial summary judgment. In

plaintiff's motion he asserted there was no genuine issue of material fact and that he did possess a valid option to purchase the property which was validly exercised and the defendant wrongfully refused to comply with the option contract. The motion also submitted there was no genuine issue of material fact with respect to defendant's Sixth Defense and Second Counterclaim from its Amended Answer and Counterclaim filed August 10, 2020. Specifically, the motion and supporting memo argued there was no evidence sufficient to support the necessary elements for a claim of fraud and defendant's request for punitive damages must fail because even if the plaintiff breached his lease agreement and even if such breach was willful and wanton, that would not entitle Rizan to the recovery of punitive damages.

Nowhere in defendant's motion for summary judgment nor the motion for summary judgment filed by the plaintiff was any contention made by either party that summary judgment was being sought regarding the defendant's counterclaim against plaintiff for plaintiff's breach of contract.

On January 14, 2021 the court conducted a summary judgment hearing via Zoom and at the beginning of the hearing the court inquired of counsel for both plaintiff and defendant Rizan whether there were disputed facts such that the court could not render a decision as to the pending motions. To the undersigned's recollection, the court was advised by both parties that the matters pending were ripe for decision. Significantly, no discussion took place concerning aspects of the case which were not being presented for summary adjudication at the hearing. While Rizan conceded during oral arguments that purely from a pleading standpoint the elements of fraud had not been plead and likewise conceded that punitive damages were not recoverable for breach of contract Rizan never intimated nor was it suggested by anyone that the counterclaim for damages was being dismissed or, for that matter, was sought to be dismissed by any party. Rather, the matters ripe for summary judgment were the matters submitted by the party's cross motions.

In connection with the present action, Mr. Powers filed on April 10, 2020 a lis pendens relative to the property at issue. As the court has now determined that Mr. Powers had no valid option and hence no rights in and to the property, Rizan respectfully request the court confirm via its Order that the related lis pendens is dissolved.

Based on the foregoing, Rizan respectfully submits that this court's Order dated January 27, 2021 should be amended to delete any reference to withdrawal or dismissal of Rizan's counterclaim for breach of contract, other than striking the request contained within the breach of contract cause of action for the recovery of punitive damages. Rizan further requests the Order be amended to affirmatively confirm the lis pendens relative to the property at issue is dissolved.

Respectfully submitted,

**BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC**

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Attorney for defendant Rizan Properties, LLC

Greenville, South Carolina
February 4, 2021

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
2020-CP-23-02076

Jerry Powers,

Plaintiff,

vs.

Rizan Properties, LLC, and Anthony)

Pearson and Tiesha Dash,)

Defendant(s).)

TRANSCRIPT OF TESTIMONY

January 14, 2021

Greenville, South Carolina

B E F O R E:

HONORABLE CHARLES B. SIMMONS, JR., MASTER IN EQUITY

A P P E A R A N C E S:

Mark Fessler, Esquire
Attorney for the Plaintiff

Knox Haynsworth, Esquire
Attorney for the Defendant

Danette P. Hanks, CCR
Court Reporter

1 THE COURT: For the record this is 2020-02076; in the
2 matter of Powers versus Rizan Properties and others. Here today
3 on cross motions for summary judgment.

4 And Mr. Fessler, let me start with you. If you will
5 identify yourself and who you're here on behalf of today.

6 MR. FESSLER: Yes, Your Honor, and good morning. Mark
7 Fessler on behalf of Jerry Powers, the Plaintiff.

8 THE COURT: All right. Mr. Haynsworth?

9 MR. HAYNSWORTH: Yes, Your Honor, I'm here
10 representing Rizan Properties, LLC and Meredith Rigdon is the PR
11 of the estate of the gentleman that owned the LLC. So she is the
12 representative of the party who is ---

13 THE COURT: Now, gentlemen, I've also noticed that
14 there are two other named parties, Anthony Pearson and Tiesha
15 Dash. What's their involvement?

16 MR. FESSLER: Your Honor, they are the children of the
17 co-optionor or co-lessor Jackie Pearson. My client and his
18 significant other, Jackie Pearson, entered into these
19 transactions. She passed away in 2019 and these are her
20 children. They were named in case they would claim any interest
21 in any of these matters.

22 THE COURT: And have they made a formal appearance?

23 MR. FESSLER: No. Ms. Dash has said that she wants
24 nothing to do with it. Mr. Pearson has not said that, but he has
25 not made an appearance in the case. He's been served and he's in

1 default.

2 THE COURT: And Mr. Haynsworth, just to make clear,
3 you're only here on behalf of Rizan Properties, LLC?

4 MR. HAYNSWORTH: That's correct, Your Honor. The co-
5 Defendants, as it were, had they -- had their mom been alive, she
6 would be a co-Plaintiff, I guess.

7 MR. FESSLER: Right.

8 THE COURT: All right. Well, let me ask because I've
9 got ten questions that I want to go through with you. And one of
10 my first questions is, because the lease and the contract were in
11 the name of Plaintiff and Ms. Pearson, and then Ms. Pearson, as
12 Mr. Fessler noted, passes away in July of 2019. Can Mr. Powers
13 assert the contract rights of Ms. Pearson or does he only have
14 the right to proceed with his part of the contract in the lease?
15 So, Mr. Fessler, let me hear from you on that.

16 MR. FESSLER: Yes, Your Honor. That question, while
17 it was not one of the central points of the arguments, I did come
18 across that question in researching this issue. I don't know if
19 there's any case law directly on point in South Carolina, and I'd
20 have to go back through my research notes to pull the case, but
21 there is legal authority for the proposition that one optionor
22 can exercise the option in the absence of another optionor and
23 that if the other optionor's successors-in-interest want to
24 participate in the transaction, they should be given that
25 opportunity, but that that -- but that their non-compliance and

1 their non-participation does not prohibit one optionor from
2 otherwise exercising the option. I'd be happy to pull that case
3 ---

4 THE COURT: I'm surely not trying to create issues,
5 but I want to have a clean record in the event this case ends up
6 down in Columbia.

7 So, Mr. Haynsworth, do you see that as an issue or am I
8 creating a non-issue?

9 MR. HAYNSWORTH: Well, Your Honor, let me answer that
10 in a lawyerly way. If that ---

11 THE COURT: A yes or no would be sufficient.

12 MR. HAYNSWORTH: If that issue falls in my favor, then
13 yes, I think it is an issue that the Court needs to address. You
14 know, Judge, I have not researched it. If Mark says there's case
15 -- I don't know one way or another, but it may well be an issue
16 if the law makes it one. I simply don't know. I haven't looked
17 into that.

18 THE COURT: All right. And I will note for the
19 record, it's not been raised by either side, but at the same time
20 the lease and contract are both clearly in the name of Jerry
21 Powers and Jackie Pearson. So we're going to -- just for the
22 record, I'm aware that may be an issue. But we're going to go
23 ahead and move on.

24 And I do want on the record, also, that in light of the
25 ongoing coronavirus issues and the Chief Justice's Order staying

1 all in-person Court that was issued, I believe it was last week,
2 we are proceeding under a Zoom format at the request of and with
3 the consent of counsel. And my court reporter is on this Zoom
4 call and making a record and the availability to transcribe the
5 proceedings.

6 All right. Let's see. There are -- there's a 2011 contract
7 and then there's a 2013 lease and option. Is the 2011 agreement,
8 is that relevant or impactful for the issues here on the cross-
9 motions? Mr. Fessler?

10 MR. FESSLER: Yes, Your Honor, I think it is. I think
11 it helps the Court -- the primary legal question the Court has to
12 answer is what was the parties' intent? And you know, for an
13 unambiguous contract the Court is supposed to look at the four
14 corners of the contract. The fact that the parties had been in a
15 lease for multiple years leading up to 2013 demonstrates that it
16 was the intent of the parties to change that relationship. So
17 the 2013 relationship, that transaction, was not a mere lease.
18 It was a purchase of the property. And that was the fundamental
19 goal, that was the fundamental bargain, that the parties struck
20 with each other. And so I think it is relevant to ascertaining
21 the intent if the Court finds there's any reason to look beyond
22 the four corners of the contract -- of the ---

23 THE COURT: All right, Mr. Haynsworth?

24 MR. HAYNSWORTH: Your Honor, I don't think that it --
25 I don't think it changes the analysis. It's simply a -- from my

1 perspective, at least, a recognition that Mr. Powers and Ms.
2 Pearson were aware of their obligations for things like paying
3 rent on time because they had been in a lease with this same
4 gentleman in the past. We can get into the ambiguity or lack
5 thereof in a little bit, because I do have some thoughts on that.
6 But for your purposes and for purposes of our cross motions, I
7 think it only provides background for the Court as opposed to the
8 resolution of any specific issue before the Court.

9 THE COURT: But until 2013 there's no option to
10 purchase; correct?

11 MR. HAYNSWORTH: Not that I'm aware of.

12 MR. FESSLER: That's correct, Your Honor.

13 THE COURT: Okay. All right. And then for whatever
14 reason, the documents do not refer to each other. Because one is
15 clearly called lease, one is clearly called option. So, Mr.
16 Fessler, do the documents -- should the 2013 documents be read
17 together or do they stand alone?

18 MR. FESSLER: Your Honor, case law holds that the
19 documents inform each other as to what the agreement is. But I
20 don't think -- the analysis is not if there's a breach of one the
21 other one automatically falls. That is not the rule.

22 THE COURT: Is that the *Jackson* case that you cite?

23 MR. FESSLER: Yes. In that case there's an American
24 Jurisprudence entry, Section 341, that talks about the Court
25 looking at the documents to ascertain the parties' intent. And

1 the *Jackson* case simply applies that otherwise black letter
2 contract principal. And so ---

3 THE COURT: How do you respond, because Mr. Haynsworth
4 has an opposite argument, he says that the case law is set out in
5 *Café Associates* and other cases say that when they're so
6 intertwined and interconnected that you can't pick and choose and
7 that they're all basically one agreement. So distinguish *Jackson*
8 and *Café Associates*.

9 MR. FESSLER: Well, Your Honor, I think *Jackson* is
10 directly on point here. In *Jackson* what you had is you had one
11 -- you didn't have two contracts like we do in this case. You
12 had one document. And in that document there were three
13 paragraphs, two lease provisions and one option provision. And
14 the Court in that case directly said that those provisions are
15 separable. The interpretation being that those agreements do not
16 depend on -- one on the other. So the fact that Mr. Jackson had
17 not paid rent for the third year in question under that lease did
18 not preclude, according to the parties' agreement, his right to
19 exercise the option as long as he tendered performance, which is
20 exactly what happened in this case. Ms. Patterson -- Mr. Powers,
21 through myself, wrote to Ms. Jacqueline Patterson, the estate's
22 attorney, Mr. Rigdon's estate attorney, to exercise the option
23 and he offered full performance, which would have included
24 payment of all the past due rent, payment of any of the late
25 fees. And of course, the rent in this case are the payments on

1 the purchase price, so he tendered full performance. And I think
2 Jackson clearly controls this case, Your Honor.

3 So the principal that documents ought to be construed as one
4 transaction does not mean that if a particular provision -- well,
5 in this case if the lease provision is breached the option
6 provision falls by the wayside.

7 THE COURT: Let me ask you, because the agreement, the
8 option says for a period of eight years. So it's an eight-year
9 option; correct?

10 MR. FESSLER: Yes, by its terms.

11 THE COURT: Okay. So let's say that Mr. Powers
12 doesn't make any payment whatsoever on this for six years. Can
13 he come in on the seventh year and say, you know, hey, I've got
14 this agreement. It gave me up to eight years. You haven't heard
15 from me in six years. I haven't paid anything in six years, but
16 I'm now exercising my right under this option.

17 MR. FESSLER: Under the terms of the option, that
18 would be permissible. Now there are questions whether additional
19 equitable principals ought to come into play. And the Defendant
20 has pled things like laches and estoppel. And so if there are
21 equitable reasons why the option ought not to be effective
22 according to its plain terms, that's entirely, that's entirely
23 possible.

24 Furthermore, there was a case out of Wisconsin that I found
25 citing the principal that if the tenant had paid zero in rent and

1 not paid a dime in rent, then that would be an utter failure of
2 consideration. And so the option would be unenforceable for that
3 reason.

4 THE COURT: And here, I'm thinking over thirty-five
5 thousand dollars has been paid; correct?

6 MR. FESSLER: That is correct, Your Honor.

7 THE COURT: All right. Mr. Haynsworth, let me ask
8 you. For whatever reason, the parties -- and from what I
9 understand it's not contested that your client had the agreements
10 drawn up -- has two separate agreements drawn up. They don't
11 refer to each other. And you have this standalone option to
12 purchase that says what it says. It says for eight years you
13 come pay me fifty-two thousand eight hundred dollars total, it's
14 your house. Why can't Mr. Powers now enforce what the parties
15 agreed to as drafted by your client?

16 MR. HAYNSWORTH: Well, a couple of thoughts on that,
17 Your Honor. And let me, let me refer you to a section of Mr.
18 Fessler's brief that speaks to part of what I would like to
19 illustrate. Bear with me for a second and let me -- it starts
20 out so well organized and then just crashes and burns seconds
21 later. Hold on, Judge. Sorry. Your Honor, for a second turn to
22 page 13 of 22 of Plaintiff's memorandum in support of their
23 motion in opposition to mine. And a little bit above the cite
24 from *Jackson v. Rogers*, there's a sentence that says, nor is
25 there any evidence of it -- talking about Rizan Properties --

1 investing money in the property such as to make it inequitable to
2 allow Mr. Powers to come back now and seek a more valuable item
3 than the one he contracted to buy. You know, it would fly in the
4 face of the obvious to suggest that the price of real estate in
5 Greenville, even in not particularly safe areas of Greenville,
6 has gone up dramatically since the first lease for this house was
7 done.

8 I think the case boils down, really, to the well-recognized
9 concept that option contracts involving real estate are treated
10 differently than other contracts. The law -- because the law of
11 options is unilateral -- and to use your example, if you use Mr.
12 Fessler's argument for five hundred dollars, assuming that was
13 ever paid, Mr. Powers would have the right at any time for the
14 next eight years to just come back and say, okay, let me pay the
15 rest and it's mine.

16 Obviously the intent of these parties was a rent-to-own. No
17 different than if you go down and rent to own a television. The
18 interest rate may be different, but the concept is the same. And
19 the concept comes up often, Judge, in the context of options.
20 Options that are related to a recurring payment, a lease
21 situation like what we had, they clearly have to be read
22 together. The undisputed testimony from Mr. Powers' deposition
23 and the affidavit of the attorney who sat down with everyone is,
24 they're all on the same page. They all know the things relate
25 together. Heck, if you look at the option in isolation and try

1 to take the position it's a standalone contract, what in the
2 world is the rent that the option is talking about, if not the
3 rent that's being made pursuant to the lease that was entered
4 into at the same time.

5 You know, I submit there's no way the option on its four
6 corners all by itself is not ambiguous as all get-out as to what
7 it means.

8 THE COURT: But yet that's what the parties chose and
9 that's the language and the format that your client chose?

10 MR. HAYNSWORTH: Well, Your Honor, I don't think that
11 that's what the documents show or -- again, my position is
12 they're ambiguous and you could consider extraneous evidence.
13 Well, if you consider the testimony of Mr. Powers and the
14 testimony of the closing attorney, and just the situation that
15 existed, again, it's -- it doesn't make sense to me that the
16 option and the lease are not to be read and construed together
17 because they relate to one another. It all related to the
18 mechanism by which these people would ultimately be able to buy
19 this house.

20 Now, we haven't gotten to, yet, the issue of specific
21 performance versus damages. But you know, Mr. Fessler's position
22 -- and to your point, Judge, you say that's what the parties
23 agreed to. I don't think they did. But it just makes no sense
24 to use your very extreme example that what that document means is
25 you could pay zero rent for eight years or seven years and just

1 pop up and go, I'm here, I'm ready to get a more valuable item
2 than the one I contracted to buy. Well, if he paid his rent, I
3 don't think -- we wouldn't be having this same discussion. I
4 wouldn't have the argument I've got.

5 But, Judge, you can't just bale, turn in your keys, go for
6 almost a year -- certainly eleven months -- with not a peep and
7 not a rent payment and then come back and go, I'm here to
8 exercise my option. I don't think the case law supports that. I
9 don't think the testimony supports that. And I don't think the
10 evidence before the Court supports that.

11 THE COURT: All right, Mr. Fessler, let me ask you.
12 Mr. Haynsworth says if you take the option to purchase, which is
13 a two-page document that was signed May 1, 2013, he says it can't
14 be a standalone agreement because there are too many ambiguities
15 and too many unknowns, too many uncertainties. How do you respond
16 to that? Can the option to purchase stand alone and be
17 interpreted by the Court?

18 MR. FESSLER: Your Honor, I think the correct frame of
19 reference for this is whether the right to buy -- the right to
20 buy and the right to lease are different rights. And the *Jackson*
21 Court acknowledged this. Does the right to buy disappear if the
22 right to lease is breached or if the provisions of the leasing
23 contract are breached? The *Jackson* Court clearly says no. So in
24 the sense that the option -- because the parties did not provide
25 -- if the parties wanted to provide that the option goes away

1 upon breach of the lease -- and plenty of options do. In
2 researching this, many of the cases cited by American
3 Jurisprudence involves contracts where the lease did say, you
4 know, you have to comply with the lease in order to get the
5 option. Or the option might say, you know, if you fully complied
6 with the lease then you get the option. This does not say that.
7 And so this is simply a matter of the Court holding the parties
8 to the bargain that they bought. And so in that sense the right
9 of the option is a standalone right, even if the contract -- the
10 two documents themselves inform each other to help understand
11 what the purpose is.

12 And then going back to the purpose of the contract, the
13 purpose was for Ms. Pearson and Mr. Powers to give Rizan
14 Properties fifty-two thousand eight hundred dollars. And in
15 exchange they would get this property to live in, to own. And
16 they had the right to do that over a period of eight years.
17 Under a different name, this is really a bond for title, but it
18 was constructed as a lease with option. So that's the deal that
19 Rizan struck in 2013. So the fact the property values may be
20 increasing has no relevance to whether Mr. Powers is getting a
21 more valuable deal than the one he struck. That's the ---

22 THE COURT: I agree with you on that. I agree with
23 you.

24 Mr. Fessler, let me ask you, when did Mr. Powers and/or Ms.
25 Pearson stop making the payments under the lease agreement?

1 MR. FESSLER: Mr. Powers' testimony is that his last
2 rent payment was in January of 2019. That would have been the
3 month after Mr. Rigdon came to them and delivered that what was
4 titled an eviction notice on December 3rd of 2018. So his
5 testimony is that Mr. Rigdon accepted another rent payment from
6 him in January and that that's the last time that he heard from
7 Mr. Rigdon. And then Mr. Rigdon passed away in March.

8 THE COURT: And then at what point did Mr. Powers
9 offer or propose to exercise the terms under the option?

10 MR. FESSLER: October 15th, Your Honor. And that was
11 after he had sought -- now, he was not just twiddling his thumbs.
12 He was trying to track down financing and he contacted Luthi
13 Mortgage about this, he contacted his bank, Bank of America,
14 about this, and neither -- Bank of America didn't approve him
15 because of credit. And the Luthi Mortgage transaction fell
16 through. Mr. Powers, during this time, had multiple heart
17 attacks in both February and April, so that, you know,
18 incapacitated him. And then he spoke to his sister about helping
19 him out and his sister said, yeah, I will front the money. And
20 at that time we were estimating, you know, nineteen to twenty
21 thousand dollars is what the payoff would be. It wasn't entirely
22 clear. And so that's where the nineteen five comes from and I
23 set out my calculation in an email to Ms. Pearson as our final
24 correspondence.

25 THE COURT: All right. And when did Mr. Powers turn

1 over the keys to the property?

2 MR. FESSLER: I believe his testimony was -- he wasn't
3 clear, but it was sometime in January. And the reason he turned
4 over the keys was not as an acknowledgement of abandoning the
5 property but because his co-optionor had decided to move out and
6 she needed help paying the rent. So he moved in with her. He
7 kept the keys at that point. Mr. Rigdon then comes back and
8 says, I need the keys. And Mr. Powers initially said no and then
9 Ms. Pearson said, go ahead and give him the keys. And so he
10 gives him the keys. But he still continues to pay somebody to
11 maintain the property. So Mr. Powers did not abandon, you know,
12 the pursuit of buying the property.

13 THE COURT: But he's not paying rent. He is paying
14 someone, I think was it twenty-five dollars a month or so ---

15 MR. FESSLER: Twenty to twenty-five dollars; yes.

16 THE COURT: --- to maintain the exterior so it
17 wouldn't become a crack house or so vagrants wouldn't move in, I
18 believe was his deposition testimony.

19 MR. FESSLER: That was it; yes.

20 THE COURT: All right. So, Mr. Haynsworth, -- well
21 let me ask you. Do you agree that the last rent was paid January
22 of 2019?

23 MR. HAYNSWORTH: I do not, Your Honor. And that's
24 where I'd like to focus on the evidence in the record versus what
25 I or Mr. Fessler are telling you the record should be.

1 Mr. Powers brought lots of documentation and receipts for
2 all his rent payments. And he tried initially to tell me that he
3 had paid his November of '18 rent. Turns out, when we went over
4 his documentation, that, no, that was catching up the remaining
5 rent due in October. I believe the evidence before the Court is
6 the last payment he made, Judge, -- January of '19 was certainly
7 not it. It was either October or November -- I think November --
8 of '18. And as you know from the documents before you, Mr.
9 Rigdon came, he presented them with a document illustrating late
10 rent.

11 And importantly, Judge, he also in that eviction notice, for
12 lack of a better word, pointed out that they had allowed twelve
13 to fifteen thousand dollars' worth of damage to the house. You
14 might have -- I don't know if we submitted the testimony to you
15 about the water leak. But in any event there was a lot of damage
16 to the house that was allowed to take place on Mr. Powers' and
17 Ms. Pearson's watch. So it wasn't just you're in breach of the
18 lease for not paying your rent. There were other breaches
19 outlined in the eviction notice. She signed it. Said I'll be
20 out by January 6th. He refused to sign it. Yet he was gone and
21 he turned back his keys by January, and we didn't have any rent
22 or any call or any peep until Mr. Fessler came into the picture
23 and contacted attorney Jackie Patterson who was handling the
24 estate and helping Mrs. Rigdon about a year -- eleven months
25 after the last rent payment.

1 THE COURT: All right. Then if be it ten months, be
2 it almost a year, the property is vacant. Your client is not
3 receiving any rent. Did they go in after they got the keys,
4 change the locks, try to release it, do anything that would
5 provide some amount of indicia that, hey, everything is over,
6 you've walked out, Mr. Powers. We're now in full possession and
7 control of the house, and we're going to do just like we're
8 entitled to do because we own it?

9 MR. HAYNSWORTH: Your Honor, I can answer part of that
10 and might have to allow Ms. Rigdon, if you want to know the full
11 story, to weigh in. I do know, because Mr. Fessler has provided
12 the documentation, that on behalf of Rizan Properties, Ms. Rigdon
13 got word there was someone over there and she sent the police,
14 assuming it was somebody trespassing. It wasn't Mr. Powers.

15 And as far as us going in and changing the locks and
16 releasing it, I think the answer to that question is yes. In
17 fact, I think Mr. Powers, in fact, and you don't have this before
18 you, Judge, but I don't think Mark will disagree with me, he
19 testified about some realtors coming into the house. He went
20 back over there for some reason and there were -- was someone
21 showing people around. And as I think about it, Judge, and I can
22 supplement the record with the deposition testimony, I think he
23 testified maybe even before they were gone that Lucas brought
24 somebody by for purposes of showing it.

25 But to answer more fully, Judge, I'd have to let Ms. Rigdon

1 speak to you because she -- I only know a little bit about what
2 was done after he was gone. She knows more about what was done.

3 THE COURT: And obviously on motions for summary
4 judgment, I'm not inclined to allow anyone to bring new testimony
5 or new evidence in.

6 MR. HAYNSWORTH: But I think the answer to your
7 question is yes. We did not just -- you know, again, as a
8 practical matter, her husband has committed suicide and they were
9 divorced. You know, there's a lot going on, just the logistics
10 of the estate and this being essentially the only asset of the
11 estate. But as far as I know we ran off someone that we
12 perceived to be a trespasser. We had people, realtors, coming in
13 to look at leasing the property. The property would need
14 substantial repairs because of the damage that happened to it.
15 But I do not think there's any indication we did not take the
16 position the lease was over, they were gone, it is our house, end
17 of story.

18 THE COURT: So, Mr. Fessler, let me hear from you on
19 that. Do you agree that they -- they being Rizan -- showed
20 exclusive rights once the keys were returned?

21 MR. FESSLER: No, Your Honor. There was some
22 testimony that Mr. Rigdon came to -- there was testimony that Mr.
23 Rigdon came to Mr. Powers after more than five years of Mr.
24 Powers paying, with no complaint about his payment history. All
25 of a sudden he shows up, he says, I need to sell the house

1 because I have child support and other bills. So the motivation
2 here is not to get Mr. Powers out because he's a bad tenant or
3 because he's not, you know, paying, but because he needs to sell
4 the house because he has financial concerns.

5 And in fact, documents that he submitted to the family court
6 which have been included as Plaintiff's Exhibit 7 support that.
7 It shows that he has a deficiency of over nine hundred dollars a
8 month. So he's coming here saying I need to sell this house, you
9 know, not because I'm taking back possession because you're a bad
10 tenant and you've breached the lease, but because I need money.
11 Oh, and by the way, here are all these breaches that I'm going to
12 hold against you. And the issue that Mr. Haynsworth pointed out
13 in the eviction notice about damage to the property, if the
14 property were so damaged, Mr. Powers is offering to buy it back
15 from them. You know, why would they object to conveying a
16 property that requires thirty, forty thousand dollars of repairs.
17 Frankly that's inaccurate. So then he hands the keys back over
18 to Mr. Rigdon. Don't know what happens to the property after the
19 keys get handed back to Mr. Rigdon except for that it sits.
20 Nobody does anything with it. There's no occupant re-leasing the
21 property. There's no sale of the property. You know, and if
22 Rizan had entered into a contractual obligation that would have
23 displaced inequity, the obligations and the rights under the
24 option, then that's an argument I would be happy to have. But
25 that's not this case, Your Honor. So whether or not Rizan hired

1 a realtor to come and look at the house because he was trying to
2 sell it because he needed money is not determinative of the case.

3 THE COURT: Let me ask -- it's time to start wrapping
4 up because I know this was only set for forty-five minutes and
5 I've got another matter I need to take up in a few minutes with a
6 different set of lawyers.

7 A lot of what's been discussed this morning are equitable
8 arguments, laches, estoppel, equitable claims that both lawyers
9 have talked about. Typically equitable claims be they asserted
10 affirmatively or defensively, are questions of fact. So why do
11 those not preclude the Court granting summary judgment?

12 Mr. Fessler, let me hear from you first.

13 MR. FESSLER: Yes, Your Honor. As to the issues of
14 estoppel and laches, there are elements. And on a motion for
15 summary judgment, the party imposing it has an obligation to
16 produce at least some, a scintilla of evidence, to support each
17 element of it to a claim or a defense. On the elements for
18 estoppel and for laches, there has been no evidence of any
19 prejudice that I've seen that would, if tried, allow the Court to
20 impose those or apply those doctrines.

21 This also applies to the fraud claim. We're asking the
22 Court to strike the fraud claim because there's no evidence to
23 support the elements, all the elements of a fraud cause of
24 action. But as to the equitable principals, where's the
25 evidence? I see nothing in the record that shows that Rizan

1 Properties would be prejudiced in any way by being held to its
2 bargain. Again, the bargain was, we give you fifty-two eight;
3 you give us title. That's exactly the offer that Mr. Powers had
4 made. That's exactly the legal right he has under the option
5 written by Mr. Rigdon's attorney. And it's not been disclaimed.
6 And I don't see how they get around the *Jackson* case, Your Honor.

7 So I would ask that the Court find that there is no evidence
8 as to all the elements of estoppel and laches, especially
9 reliance or prejudice, and strike those defenses, as well as the
10 fraud claim and the request for punitive damages under the breach
11 of the contract.

12 THE COURT: All right, Mr. Haynsworth, are there not
13 factual issues under the different equitable aspects we've talked
14 about that preclude the Court granting summary judgment at this
15 point?

16 MR. HAYNSWORTH: No, sir. To answer your question,
17 the legal issue is the Plaintiff breached his contract by failing
18 to pay rent and abandoning the property. And that breach of
19 contract extinguishes the Plaintiff's claim for specific
20 performance of the option.

21 Now, if we want to haggle on down the road about damages
22 that each other might claim against another, I suppose we can do
23 that. But for purposes of the Plaintiff's claim for specific
24 performance and the legal reason why my side is entitled to
25 summary judgment, it is because Mr. Powers did not comply with

1 his contractual obligations. The lease and the option are read
2 together as one document.

3 And that, it seems to me, Judge, is really what it all boils
4 down to on the legal side, is how do you view the documents? And
5 depending upon how you view them, at least my position is, if
6 they are viewed together as they should be, there was a breach.
7 And that breach is not excused and ended any ability now to come
8 back and ask this Court to order specific performance.

9 THE COURT: All right. Mr. Haynsworth, what evidence
10 in the record is there of fraud or any entitlement to punitive
11 damages?

12 MR. HAYNSWORTH: I will make this easy, Your Honor. I
13 would agree that the elements of fraud are not pled. And I will
14 agree that there is not a cause of action absent that presently
15 before the Court that was for punitive damages. That said -- and
16 I'm not going to ask you to allow me to amend my pleadings here
17 and getting it all out. But if you're going to throw them out, I
18 think they get thrown out not on summary judgments in the merits,
19 as it were, but on a motion to dismiss. If we keep fighting
20 there may be additional causes of action that come back. But I'm
21 not going to stand here and say, hey, let me show you the
22 elements of fraud and go over the nine elements. It's not in
23 there. So I will concede Mr. Fessler's point at this stage as to
24 punitive damages and fraud.

25 THE COURT: All right. Now, and I don't want to know

1 any numbers whatsoever, but are y'all anywhere near the same ball
2 park as far as having a resolution or settlement of this? Again,
3 don't want to know any numbers, but -- obviously I'm very
4 familiar with the case now. Dug into it. Y'all have done a very
5 fine job of presenting the issues. I'm still teetering, though,
6 whether this is a question of interpretation/law or whether there
7 are factual issues that require a trial. So I do understand I've
8 got cross motions that are dispositive, or potentially
9 dispositive. So let me circle back to my question. Are y'all
10 anywhere in the same ball park where another ten days or so may
11 get your closer to trying to resolve the matter?

12 MR. HAYNSWORTH: I don't think so, Judge.

13 THE COURT: All right. Mr. Fessler, do you agree with
14 that?

15 MR. FESSLER: Your Honor, the parties have not had any
16 settlement discussions.

17 THE COURT: Okay. All right. I want to look back at
18 these cases, being the *Jackson* and the *Café Associates*, after
19 I've had, you know, time with you two very fine lawyers. And I
20 know that both of the primary parties are involved in the Zoom
21 call. I've been doing this a lot of years. Settlement is always
22 a good thing. If the motion is granted to one side or the other,
23 there is no baby to split. It's either one side prevails
24 completely; the other side loses completely. So if y'all can
25 come up with some kind of middle ground, you've got maybe ten

1 days to fourteen days to do it if I've determined that the law
2 requires that I grant summary judgment to one side or the other.

3 If I determine that there are what's called factual issues,
4 that means the case will be set for a trial. And I would expect,
5 you know, knowing what all the issues are at least a full day,
6 maybe even more than that. And then we overlay on that the
7 wonderful world of COVID.

8 Anyway, I appreciate all of you being here. I appreciate,
9 again, the fine job done by the lawyers. And I'll be back in
10 touch within about ten days or so and let you know my decision
11 via contact from my court reporter or a conference call.

12 So thank you so much.

13 MR. HAYNSWORTH: Thank you, Judge.

14 MR. FESSLER: Thank you, Judge.

15 THE COURT: All right. Bye-bye.

16

17 -----END OF REQUESTED TRANSCRIPT OF RECORD-----

18

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

JERRY POWERS,)
 Plaintiff,)

v.)

CASE No.: 2020-CP-23-02076

RIZAN PROPERTIES, LLC,)
ANTHONY PEARSON, and)
TIESHA DASH,)
 Defendants.)

D E P O S I T I O N

WITNESS: JERRY POWERS

DATE: November 5, 2020

TIME: 10:02 a.m.

LOCATION: Via Zoom

REPORTED BY: Rachel H. Wood, Court Reporter

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1 medications today that would affect your ability to
2 understand and answer my questions?

3 A. No.

4 Q. Okay. All right. Well, let me get a little background
5 on you, Mr. Powers. Where did you grow up?

6 A. Laurens, South Carolina. I grew up on a farm.

7 Q. Okay. Did you go to high school in Laurens?

8 A. Yes.

9 Q. Okay. Where did you go?

10 A. Laurens District 5.

11 Q. Okay. Did you graduate?

12 A. I went to the 12th.

13 Q. Okay. But got a high school diploma?

14 A. Yes, sir. I got a high school GED.

15 Q. Okay. So you got a GED?

16 A. Yes.

17 Q. Okay. And any schooling after your GED?

18 A. No, sir.

19 Q. Okay. You would have been roughly what, 18 when you
20 got your GED?

21 A. About. Yes, sir, 18.

22 Q. Okay. After high school what was your first job that
23 you recall?

24 A. Well, I had a guy, a man, taught me how to cut trees.
25 So I mainly worked with pulpwood.

1 Q. Okay. And was there a particular pulpwood company that
2 you worked for?

3 A. No, I worked for an individual when I was a young boy.

4 Q. Okay. All right. And roughly when did you stop
5 working for the pulpwood fellow?

6 A. Probably about 20 years later when he passed away.

7 Q. Okay. So you worked for the pulpwood guy for about 20
8 years?

9 A. Yes, sir.

10 Q. Okay. All right. And what was that fellow's name?

11 A. Dickie Barksdale.

12 Q. B-a-r-k-s-d-a-l-e?

13 A. With a "B". Well, really his name was Floyd Barksdale.
14 I take it back. Floyd Barksdale.

15 Q. Okay. And was Mr. Barksdale, did he live down in
16 Laurens?

17 A. Right up the street from me, yes, sir.

18 Q. And what street would that have been?

19 A. It was on -- the first street I don't exactly remember.
20 I've been away from there for a while.

21 Q. Okay.

22 A. But it was South Harper Street. On South Harper Street
23 in Laurens, South Carolina.

24 Q. South Harper Street?

25 A. Yes.

1 Q. Okay. And so if you -- did you start going to work for
2 him when you were 18, so you would have been about
3 what, 38 when he passed away?

4 A. Yeah. Well, I started with him when I was about --
5 when was I out of school like 12 years old going with
6 him back and forward.

7 Q. Okay.

8 A. I think it was owned by his daddy. But I work with him
9 and a textile mill, too, though.

10 Q. Okay. After Mr. Barksdale passed away where did you go
11 to work after that?

12 A. J.P. Stevens.

13 Q. Okay. And did they have a plant in Laurens?

14 A. Yes, it was called Watts Mill. Watts Mill.

15 Q. And how long were you with J.P. Stevens?

16 A. About 15 year.

17 Q. All right. Did you work anywhere after J.P. Stevens?

18 A. Yeah, I worked at Clinton Mill.

19 Q. And about how long did you work with Clinton Mill?

20 A. I was there about 15 years, too.

21 Q. All right. Did you work anywhere after Clinton Mill?

22 A. No, I just started doing the tree work a little bit
23 myself after Mr. Barksdale passed away.

24 Q. Okay. Did you have a business that you were doing the
25 tree work under or were you just Jerry Powers?

1 name of it?

2 A. Yeah, Cameron Chapel. Cameron Chapel.

3 Q. Cameron Chapel.

4 A. Yes. On 101 in Gray Court.

5 Q. Okay. And do you attend there regularly?

6 A. Yes, sir.

7 Q. Okay. Other than the church are you a member of any
8 social groups? You know the Shriners or --

9 A. No, sir.

10 Q. -- anything like that?

11 A. No, sir.

12 Q. Okay. All right. And don't take this personally at
13 all, Mr. Powers. It's a standard lawyer question, but
14 have you ever been arrested?

15 A. A long time ago.

16 Q. Okay. What for?

17 A. About 20 something years. I think it was when I was
18 fighting when I was younger. Yes.

19 Q. Okay. All right. But other than being arrested for
20 fighting 20 something years ago no other arrest?

21 A. No. No, sir.

22 Q. Kind of walk me through how you met Lukas Rigdon.

23 A. Okay. Well, me and Jackie Pearson. I met Jackie over
24 here, because she was living in Greenville. And one of
25 my nieces introduced me to her. So I had a small house

1 in Laurens. She said she wanted a bigger house. So I
2 said let's go and I found a house for her down there
3 with Jeff Lynch. So we was living there. So one day I
4 was walking in that neighborhood. Lukas had a house
5 that he was working on. I didn't know him, now. And I
6 said, "How you doing, sir?" "Fine." And I said, "I do
7 trees." I said, "You need an old limb cut right
8 there," at the house down in Laurens. So he said,
9 "Yeah." I said, "well." Then he made a statement,
10 "I've got a house in Greenville I need some work done
11 at." I said, "Okay." And I said, "As a matter of
12 fact, Jackie is wanting to move to Greenville. Do you
13 have anything available?" He said, "Yeah, I got three
14 house." He said, "I'm working on another one in
15 Greenville on 39 2nd Avenue." I said, "Let me mention
16 it to Jackie that you have a house open." So I told
17 Jackie when she got off. She said, "well, we'll go
18 look at it." He said, "It won't be ready for a month
19 or so." I said, "Okay." So we go and look at it.
20 well, she said, "I'm interested in it." So I said,
21 "well, okay, Lukas, we want to rent the house." He
22 said, "Fine." I said, "We're going to go ahead and pay
23 you 550 deposit and when it gets ready we'll pay you
24 the first month's rent." So a month a later we end up
25 getting the house. You know he had to get finished

1 with it, because he had tore the flooring out, you
2 know, out of that house over here in Greenville. So we
3 moved from Laurens up here on 39 2nd Avenue.

4 Q. Okay. Let me get you to take a look at the document
5 that we marked as Exhibit 3.

6 (Introduction of two-page document
7 Rental Application as
8 Defendant's Exhibit Number 3.)

9 A. Yes, sir. Okay. All right. Go ahead.

10 MR. FESSLER:

11 Let me point him to that document.

12 THE WITNESS:

13 Okay.

14 A. All right. Yes, sir.

15 Q. Okay. Exhibit 3 appears to be a two-page Rental
16 Application, Mr. Powers. And if you look on the back
17 page under Applicant's Signature it looks like somebody
18 wrote Jerry Powers.

19 A. Yes, sir.

20 Q. Is that your -- is that your signature?

21 A. That's my signature.

22 Q. Okay. And if you look up a little bit from your
23 signature you'll see someone has written Bettie Briggs
24 in as an emergency contact?

25 A. That's my sister.

1 THE WITNESS:

2 Do you see that on there?

3 MR. FESSLER:

4 I'm showing him the location on the document. It's
5 right here.

6 THE WITNESS:

7 Okay.

8 A. All right. Go ahead.

9 Q. Okay. See it's got current employer self-employed tree
10 service?

11 A. Yes.

12 Q. Okay. That's the J.P. Tree Service that you were
13 telling me about?

14 A. Yes, sir.

15 Q. All right. Down below that it's got disability?

16 A. Yes, sir.

17 Q. What's that about, if you know?

18 A. Well, see, I was going through disability because of my
19 blindness with my eyes and stuff. Disability.

20 Q. Okay.

21 A. I applied for disability for, you know, my back and
22 eyes and stuff.

23 Q. When did you apply for disability?

24 A. Well, I really applied back in 2002 because I had
25 crushed my back at a plant and it came through about I

1 think 2010.

2 Q. So you applied because of a back injury in 2002?

3 A. It was my back. Yes, sir.

4 Q. All right. Did you apply later on for having to do
5 with your eyesight problem?

6 A. Yes, sir.

7 Q. Okay. When you got approved for Social Security
8 disability in 2010 what was your disability that got
9 approved?

10 A. For my back. For my back and stuff.

11 Q. Okay. All right. And so were you working, but just
12 had the application in when you filed out this Rental
13 Application?

14 A. I was doing my tree work, yes, sir.

15 Q. Okay. Doing your tree work, but you had applied for
16 disability?

17 A. Yes, sir.

18 Q. Okay. Did you tell the -- and was this the Social
19 Security Administration that you applied?

20 A. Yes. They said you can make so much money a year when
21 you're disabled.

22 Q. Okay.

23 A. You can make so much.

24 Q. So you -- you told Social Security even though you're
25 disabled that you still had this tree business?

1 Q. Yeah.

2 A. I don't got that one.

3 MR. FESSLER:

4 It's double-sided.

5 THE WITNESS:

6 Okay. Oh, right here.

7 A. All right.

8 Q. Under tenant it looks like someone has written Jerry
9 Powers?

10 A. Yes, sir, that's my handwriting.

11 Q. Okay. All right. So do you recall on or about August
12 3rd of 2011, signing this Lease that we've marked as
13 Exhibit 2?

14 A. Yes, sir.

15 Q. Okay. And was it going to be a 12-month Lease?

16 A. Yeah. Well, what it was we rented the first time from
17 him. We first rented from him a year. We rented the
18 house the first time. Then he came back to us after a
19 while and said, "well, you-all been paying good. I'm
20 going to give you-all the option to buy."

21 Q. Yes, sir, we're not there yet.

22 A. Okay. Yes, sir.

23 Q. We're just trying to establish that this document --

24 A. Okay.

25 Q. -- Exhibit 2 is a Lease that you signed to rent 39 2nd

1 Avenue from Rizan Properties?

2 A. Yes, sir.

3 Q. Okay. And the people that were going to be occupying
4 that house were going to be you, and Jacqueline
5 Pearson, and then a grandson age two?

6 A. Yes, sir.

7 Q. Whose grandson?

8 A. That's her grandson, but I raised him.

9 Q. Okay. And you and Ms. Pearson never got married, did
10 you?

11 A. No, sir.

12 Q. Okay. And your rent each month under this Lease we've
13 marked as Exhibit 2 was \$550 a month?

14 A. Yes, sir.

15 Q. Okay. And back when you signed this Lease and you were
16 renting for that initial year were you paying in cash?

17 A. Yes, sir.

18 Q. Okay. There are a number of receipts your lawyer has
19 given me that we'll talk about in a little while, but
20 were you getting receipts --

21 A. Yes, sir.

22 Q. -- for your cash payments back in 2011?

23 A. Yes, sir. Now, when we first started renting the house
24 from him, my money was going directly to the bank. He
25 had a little thing on his side that he would come to

1 me. He didn't have to come to me. He could draw it
2 straight out of my bank account. Like when my check go
3 in on the 3rd, he was able to pull it straight from the
4 bank.

5 Q. okay.

6 A. Because he got me connected to the Bank of America,
7 where I changed to that, because he said that was his
8 bank, so I could through them. So he got me and Jackie
9 to go up and fill out an account to let my money go
10 directly to Bank of America. He did that for a while.

11 Q. All right. well, back during this initial year on this
12 Lease we marked as Exhibit 2 were you paying him cash
13 or was he taking the money out of your bank account
14 during that period of time?

15 A. He took it out of my bank account for about six months
16 and then something happened and then I had to start
17 paying him cash.

18 Q. okay.

19 A. He would come to my house and I would give it to him
20 and he would write me a receipt.

21 Q. Okay. You'd give him however much money you was going
22 to give him. He'd do a receipt for the money you gave
23 him and give you the receipt?

24 A. Yes, sir.

25 Q. Okay. All right. Let me get you now, if you would, to

1 take a look at Exhibit 4.

2 (Introduction of seven-page document

3 Lease Agreement as

4 Defendant's Exhibit Number 4.)

5 MR. FESSLER:

6 That is Exhibit 4, Mr. Powers.

7 A. All right. Yes, sir.

8 Q. Okay. Now, it appears to me, Mr. Powers, that that
9 Lease we were just talking about in 2011, that you were
10 renting under that Lease for a couple of years?

11 A. Yes, sir.

12 Q. 2011 to 2013?

13 A. Yes, sir.

14 Q. Okay. And then when 2013 rolled around you signed this
15 Lease that we marked as Exhibit 4; is that right?

16 A. Yes, sir.

17 Q. Okay. So if you look on Exhibit 4 on the last page
18 there is the name Jerry Powers printed and someone has
19 written it and then Jackie Pearson and someone has
20 written about it?

21 A. Okay. Yeah. Okay. Yes, I see that.

22 Q. Is that your signature on the last page of Exhibit 4?

23 A. Yes, that's mine on the top, Jerry L. Powers.

24 Q. Okay. All right. And we're going to sort of jump back
25 and forth. Go ahead and get Exhibit 5 as well.

1 (Introduction of two-page document
2 Option to Purchase as
3 Defendant's Exhibit Number 5.)

4 MR. FESSLER:

5 All right. I'm handing Mr. Powers Exhibit 5.

6 THE WITNESS:

7 Okay.

8 Q. Yeah, look at the second page of Exhibit 5. I just
9 want to make sure that's your signature.

10 A. Yes, sir.

11 Q. Okay. And do you recognize that to be Ms. Pearson's
12 signature?

13 A. Yes, sir, because she had a real good handwriting.

14 Q. Okay. And the witnesses to you-all's signatures?

15 A. Well, I remember -- well, the witness was his lawyer
16 and his I guess secretary. It was me, Jackie, Lukas,
17 and whoever his witness was. All of us went to the
18 attorney office and we did this paperwork.

19 Q. And would that be Attorney Jack Heckman?

20 A. Yes, sir, that was him.

21 Q. Okay. And so to make sure I understand. So both
22 documents, the one we marked as Exhibit 4 and the one
23 we marked as Exhibit 5, you and Ms. Pearson sat down
24 and signed both Exhibit 4 and 5 in Attorney Heckman's
25 office?

1 A. Yes, sir.

2 Q. Okay. And the other witness you believe to be Attorney
3 Heckman's secretary or some assistant?

4 A. Yes, it was a lady there.

5 Q. Okay. All right. What do you recall, if anything,
6 Attorney Heckman talking to you about as far as these
7 two documents that you were signing that day?

8 A. Well, he told us that we were signing papers that after
9 eight years we will be -- like if we paid Lukas we'll
10 be the owner of the house, you know, after paying eight
11 year.

12 Q. Okay. That if you-all made the payments to Lukas over
13 the whole eight years at the end you'd own the house?

14 A. Yes, sir.

15 Q. Okay. All right. And do you recall Attorney Heckman
16 telling you anything else when you-all were all sitting
17 there that day about the documents you were signing?

18 A. No, he didn't tell us nothing else that I can remember.

19 Q. Okay. Well, let me ask you a couple more questions.
20 On the first page of Exhibit 4.

21 A. Okay.

22 Q. It says under Article II, it's right there in about the
23 middle where -- or excuse me. I'm sorry. Article III,
24 a little bit down from the middle on the very first
25 page of Exhibit 4, where it says Beginning Date of

1 Lease Term.

2 A. Wait a second. I have to find it. Let me find it.

3 Q. That's all right. It's the first page of Exhibit 4.

4 MR. FESSLER:

5 I'm going to show it to him.

6 MR. HAYNSWORTH:

7 Okay.

8 A. All right. Yes, sir, I've got it.

9 Q. Okay. Do you see Article III?

10 A. The Lease shall be paid -- is that the one you're
11 talking about? Where that gone be at? (Mumbles to
12 self.)

13 MR. FESSLER:

14 I'm pointing out Article III to him.

15 THE WITNESS:

16 Okay.

17 MR. FESSLER:

18 This section here.

19 A. All right. Yes, sir.

20 Q. Okay. And the second sentence of Article III says,
21 "The term of this Lease will begin at that date,"
22 meaning May 1st, 2013, "and will continue until eight
23 years from the beginning date herein." Can you tell me
24 anything about why the Lease was for eight years?

25 A. Well, he said -- well, we had to pay 58,300, so it was

1 financed for eight years. He did the finance himself,
2 yeah, for eight years.

3 Q. Okay. And so take a look over at Exhibit 5.

4 A. That will be the last one? Okay. Yes, sir.

5 Q. And do you see the paragraph 1 that starts, "The
6 Grantee"?

7 A. Oh, yes, sir.

8 Q. And reading a little further it says, "Grantee shall
9 have the option to purchase premises known as 39 2nd
10 Avenue, Greenville, SC 29609 for the period of eight
11 years from the date of this agreement."

12 A. Yes.

13 Q. Is the reason that it's eight years in the Option and
14 eight years in the Lease is because that's how long it
15 would take you if you made each of your monthly
16 payments on time, eight years later you would have paid
17 52,800?

18 A. Yes, sir. Well, there's not a reason I know of.

19 Q. Is there a reason both documents talk about eight
20 years?

21 A. Not -- no, not -- I'm not understanding this.

22 Q. Okay. Do you know why Exhibit 5 has eight years like
23 Exhibit 4 does? Was that something you-all talked
24 about?

25 A. No, sir, we didn't never talk about that.

1 Q. Okay. When you read that the -- that Exhibit 5 said it
2 would last for eight years, did you have any questions
3 of anyone about why eight years versus one year, versus
4 four years?

5 A. No, sir.

6 Q. Okay. And were both these documents signed sitting
7 there with the same group of people; you, Mr. Rigdon,
8 the lawyer, the lawyer's assistant, and Ms. Pearson?

9 A. Yes, sir. All of us sitting in the office.

10 Q. Were there any other documents beyond Exhibit 4 and 5
11 that you-all -- you recall you-all signed there that
12 day?

13 A. No, sir, not from what I have here.

14 Q. Okay. And, again, I told you I was going to sort of
15 switch back and forth. So on Exhibit 4, the Lease, if
16 you'll look in the middle of the first page under
17 Article II, Rent, Late Fee & Security Deposit?

18 A. Yes.

19 Q. The last sentence of that paragraph says, "A security
20 deposit of \$550 shall be paid from Lessee to the
21 Lessor." Do you recall paying that \$550 security
22 deposit?

23 A. Yes, sir.

24 Q. Okay. And would that money be one of the things that
25 you would have gotten the receipt from Lukas Rigdon on

- 1 it?
- 2 A. Yes.
- 3 Q. Okay. Exhibit 5, the Option.
- 4 A. Okay. Where would that be at? That's the one?
- 5 Q. Right.
- 6 A. Okay. I'm turning it over.
- 7 Q. Okay. So you've now got Exhibit 5?
- 8 A. Well, wait a minute. Hold on a minute. Okay. I got
- 9 it now, yeah.
- 10 Q. Okay. At the very top of it, of Exhibit 5, on the
- 11 first page it says, "Known all men by these presents,
- 12 that Rizan Properties, LLC, in consideration of \$550."
- 13 A. Okay. Yes.
- 14 Q. So did you pay another \$550 to Lukas Rigdon?
- 15 A. Yeah, I paid -- I paid him for, you know, the deposit,
- 16 the house wasn't ready. He was working on it. Then
- 17 when we got ready to move in then we had to pay him
- 18 again 550 before we moved in.
- 19 Q. Now, was that -- that 550 you paid him before you moved
- 20 in that was the security deposit we --
- 21 A. Yes, sir.
- 22 Q. -- just talked about; right?
- 23 A. Yes.
- 24 Q. Okay.
- 25 A. And I paid 550 for the first month's rent maybe a month

1 later after he got through with the house.

2 Q. Okay. And did you pay yet another 550 for this Option

3 --

4 A. Yes.

5 Q. -- or was the 550 security deposit the same 550 that
6 the Option talked about?

7 A. Yeah, the same 550. I only paid him twice. That first
8 time and then when I moved in the house. I didn't pay
9 him no more after that.

10 Q. Right. You paid him hold -- you paid him to hold the
11 house, because it wasn't ready yet --

12 A. Yes, sir.

13 Q. -- and then you paid him a security deposit when you-
14 all moved in?

15 A. Yes, sir.

16 Q. And you didn't pay him a separate \$550 for the Option?

17 A. No.

18 Q. That was covered by the security deposit?

19 A. No, sir.

20 Q. Did you pay another 550 for the Option?

21 A. No, sir. No, I didn't pay him -- no.

22 Q. Just the one 550 for the security deposit and the
23 Option?

24 A. Well, no, I paid him 550 to hold the house and when I
25 moved in I paid him another 550. So it was about 11 --

1 1,100 total when we got through with everything.

2 Q. Okay. And that second 550 was the security deposit
3 under the Lease when you-all moved in?

4 A. Yes, sir.

5 Q. Okay. So did you ever pay him a separate \$550 for this
6 option, Exhibit 5?

7 A. No, sir.

8 Q. Okay. All right, Mr. Powers. And I told you I was
9 going to bounce around some. I'm getting ready to
10 potentially do a little bounce. Oh, I'm sorry. I'm
11 getting ahead of myself. Disregard what I just said
12 about bouncing. Let me get you to take a look at what
13 we've premarked as Exhibit 10.

14 (Introduction of three-page document
15 Eviction Notice & Payment History as
16 Defendant's Exhibit Number 10.)

17 A. All right. I've got that.

18 Q. Okey-dokey. All right, Exhibit 10. I want to make
19 sure that -- I'm pretty sure I understand it. Exhibit
20 10 I've got as three pages. The first page at the top
21 has got written Eviction Notice and it's got a date of
22 12/3/18. And then the next two pages is almost like a
23 spreadsheet of what appears to be rent money.

24 A. Okay.

25 Q. And so I guess my initial question, Mr. Powers, is how

1 did you get a copy of what I marked as Defendant's
2 Exhibit 10?

3 MR. FESSLER:

4 Yeah, just answer his questions.

5 A. Okay. Go ahead, sir. I'm sorry.

6 Q. Yeah. How did you get a copy of the document that
7 we've marked as Exhibit 10?

8 A. I'm trying to think who did I get this copy from? I
9 got this copy here from -- I think I got it from him
10 (indicating Mr. Fessler).

11 Q. Well, no, I'm sorry. Bad question. I don't mean the
12 copy that you're looking at. I know that I sent that
13 to your lawyer.

14 A. Oh, oh, okay.

15 Q. I understood from your Interrogatory Answers, that's
16 where the lawyers ask each other questions.

17 A. Yes, sir.

18 Q. That this document had been given to both you and Ms.
19 Pearson by Mr. Powers --

20 A. Not Mr. Pearson, Mr. Rigdon.

21 Q. I'm sorry. Mr. Rigdon. I apologize.

22 A. Yeah.

23 Q. And Ms. Pearson signed it and agreed to be out, and you
24 refused to sign it?

25 A. Yes, sir.

- 1 Q. But my question is how did you get it? I mean did
2 Lukas hand it to you?
- 3 A. He came to -- he came to the house with this right
4 there.
- 5 Q. Okay.
- 6 A. And wanted us to sign it. And I said, "I'm not signing
7 that."
- 8 Q. Okay. And when he handed it to you was it just the
9 first page or did it have the back two pages as part of
10 it?
- 11 A. There wasn't no back page. It was just the front page.
12 Just that right there with her name on.
- 13 Q. Okay.
- 14 A. This a sheet of paper with her name on it. I mean wait
15 a minute. No, it was just -- it was just a paper,
16 that's this paper. Her name wasn't there.
- 17 Q. Okay. So the two pages if you look at Exhibit 10 and
18 flip over to the second and third pages.
- 19 A. All right.
- 20 Q. Those two pages were not given to you by Lukas when he
21 gave you page one?
- 22 A. No, sir.
- 23 Q. Okay. Do you know where the second and third page
24 behind the sticker that says Defendant's Exhibit 10
25 came from?

1 A. You're talking about -- you're talking about with all
2 the receipts and stuff?

3 Q. Yes, sir.

4 A. No, not really.

5 Q. Okay. Is that a document that you prepared?

6 A. No, he -- he prepared that. That's something he
7 prepared. Lukas prepared this here with all these
8 numbers on it. Well, I guess -- he prepared that.

9 Q. Okay. Do you know when he prepared it?

10 A. It had to be after he had spoken with us coming to my
11 house -- come to the house.

12 Q. Okay. Did he ever give you a copy of it?

13 A. He gave -- he gave -- no, I never got a copy of that,
14 but I got a copy of that was Jackie's, what he brought
15 with Jackie that Eviction Notice.

16 Q. Right. Yeah. You got of the one page that's actually
17 got the Defendant's Exhibit 10 sticker on it?

18 A. Yes.

19 Q. Yeah. He came and brought that to you and Jackie to
20 the house?

21 A. Yes. Yes, sir.

22 Q. But the two pages behind it that's got the stuff about
23 the receipts, he didn't bring that to the house that
24 day?

25 A. No, sir.

1 Q. Do you know did he ever bring you a copy of it at some
2 later point?

3 A. No, he never brought it later.

4 Q. Okay. Before I sent it to your lawyer, and we're
5 looking at it, you know, here today --

6 A. Yes, sir.

7 Q. -- when do you recall the first time you saw these two
8 pages that had this information about receipts?

9 A. When my lawyer presented it and showed it to me.

10 Q. Okay. So you'd never seen it before the lawsuit got
11 brought?

12 A. No, sir.

13 Q. Okay. And when you say that Lukas prepared these two
14 pages how is it that you know he prepared them?

15 MR. FESSLER:

16 I'm sorry. Can we go off the record for a bit? I
17 think Mr. Powers is entirely confused about his
18 testimony here. I need to refresh his memory with what
19 he produced to me.

20 MR. HAYNSWORTH:

21 well, I'd rather we not take a break in his sworn
22 testimony and have you refresh his recollection.

23 MR. FESSLER:

24 Okay. Well, I just want to ask some questions about
25 this line of questioning, you know.

1 MR. HAYNSWORTH:

2 If you have an objection, Mark, you can object to the
3 form of my question, but I'd rather you not make
4 speaking objections. When I'm finished if you want to
5 ask him some questions to clear up, you know, what you
6 perceive might need clearing up I've got no problem
7 with that.

8 MR. FESSLER:

9 Okay. All right.

10 EXAMINATION RESUMED BY MR. HAYNSWORTH:

11 Q. All right. So let's see here, Mr. Powers. So Lukas
12 comes to the house and hands you and Ms. Pearson this
13 document that's got Eviction Notice at the top that
14 we've marked as Exhibit 10. And did she sign it right
15 then and there while he was still at the house?

16 A. Yeah, she signed it.

17 Q. And gave it back to him?

18 A. Yeah.

19 Q. And you told him, "I'm not signing it"?

20 A. He asked me to sign and I said, "I'm not signing that."
21 And I asked him, "why do you want to put me out of my
22 house, put us out in the street?"

23 Q. Okay.

24 A. He made the statement that he was in trouble with his
25 alimony and child support. He's got to sell that house

1 so he can pay his alimony and child support. He had
2 been into a psychiatric place. He had to pay his bill.

3 Q. Okay.

4 A. He's got to sell the house.

5 Q. Okay. Take a look at the -- take a look at the
6 Eviction Notice itself. It's got at the top part,
7 "Rent past due of \$1,401"?

8 A. I see that.

9 Q. Okay. As of when he gave this to you on December 3rd,
10 2018, were you-all past due in your rent?

11 A. No, because he was still collecting my money every
12 month.

13 Q. Yes, sir. Were you past due for \$1,400?

14 A. Not to my knowledge.

15 Q. Were you past due in any amount?

16 A. No, because he never brought it up to me until then.
17 That's the first time I ever heard that.

18 Q. So you were completely current on all your rent
19 payments under the Lease as of December 3rd, 2018?

20 A. All I know is I got the receipts, the receipts that I
21 have.

22 Q. Yes, sir, I'm aware you've got receipts for being paid,
23 but some of your receipts don't reflect the full
24 monthly payment.

25 A. Yeah.

1 Q. So what I'm trying to pin down is did you owe any back
2 rent at all?

3 A. Not to my knowledge.

4 Q. Okay. Mr. Rigdon said you did owe back rent; right?

5 A. That's what this paper said.

6 Q. Okay. When he showed up that day did you dispute that
7 you owed back rent?

8 A. No, we didn't talk about that.

9 Q. Okay. It also says that were there 55 late fee
10 payments unpaid for a total of \$2,750; is that
11 accurate?

12 A. No, sir, he never explained that to me.

13 Q. Well, your Lease says, does it not, that if you don't
14 pay your rent on time there's a late payment?

15 A. Yes, sir, and he never charged me a late fee. Yes,
16 sir.

17 Q. But the Lease you signed provides for a late fee;
18 doesn't it?

19 A. Yeah. Yes, sir.

20 Q. Okay. And you were late on your rent a number of times
21 based on the terms of the Lease; correct?

22 A. That -- that -- yeah, that was the payments in, yes.

23 Q. I mean you don't dispute that you were late with your
24 rent, do you?

25 A. No, I might have been late a few times.

1 Q. Okay.

2 A. Because I was hospitalized and couldn't get to my
3 money.

4 Q. Yes, sir. Well, I'm sort of talking about December of
5 '18 backwards?

6 A. Yes.

7 Q. So do you agree that you had paid rent late, you just
8 disagree that you've done that 55 times?

9 A. No, sir, I didn't do no 55 times. I disagree with
10 that.

11 Q. Do you know how many times you were late?

12 A. No, sir, I can't really say.

13 Q. Okay. Would you agree that you owed some amount of
14 late fees?

15 A. It could have been a possibility, yeah.

16 Q. Okay. He's also got here, "Failure to maintain the
17 home. Water damage to roof, determine unsafe due to
18 rotting wood and mold." Under your Lease who was
19 supposed to take care of the house and maintain it?

20 A. Me.

21 Q. Okay. When you moved into that house what condition
22 was it in? You told me that he was fixing them up
23 before you-all moved in.

24 A. It was in good condition.

25 Q. Okay. And when you-all moved in there was a stove

1 there; correct?

2 A. Yes.

3 Q. A small refrigerator?

4 A. Yes.

5 Q. Okay. Did you and Ms. Pearson ever bring a washer and
6 dryer in?

7 A. Yes.

8 Q. Okay. So appliance-wise the landlord had a stove and a
9 little frig. You and Ms. Pearson supplied the washer
10 and dryer. I'm trying to think what other -- what
11 other utilities -- not utilities. I'm using the wrong
12 term. Okay.

13 A. A dishwasher.

14 Q. You-all bring the washer and dryer and he got the stove
15 and the frig?

16 A. Yes.

17 Q. Did you-all bring anything else appliance-wise?

18 A. No, sir.

19 Q. Okay. So when you move in the house is in good shape.
20 No water leaks, no buckling paint, appliances work --

21 A. Yes.

22 Q. -- utilities work?

23 A. Yes.

24 Q. Okay. So by the time we get to December of '18
25 according to Mr. Rigdon's Eviction Notice, there's some

1 water damage to the roof, and some rotting wood, and
2 some mold. What can you tell me about that?

3 A. If you can remember we had a storm come through, which
4 there was damage. And when they did the roof evidently
5 they left a hole in it and the water started leaking
6 through the roof. It messed the side of the wall up
7 here. I replaced the wall and I replaced the roof, put
8 a tin top on that roof. I did that personally.

9 Q. Let me back you up a little bit. So you move in and
10 start leasing from Mr. Rigdon. Let me get my date
11 straight. You-all would have moved in and started
12 renting May of '13. And so by the time we get to
13 December of '18 at that point there had been a storm
14 and some damage to the roof?

15 A. Yes, sir.

16 Q. What happened to -- before the storm damaged the roof
17 was the roof fine?

18 A. Yes, sir.

19 Q. All right. The storm comes through and a tree limb or
20 something hits the roof and knocks a hole in it; is
21 that right?

22 A. Whatever happened it just started leaking real bad.
23 Just was leaking, leaking. And I mentioned it to Mr.
24 Lukas. He told me, "I'm not responsible for that.
25 That's your responsible. I'm only responsible for the

1 air-conditioner. "After eight years if something
2 happened to it," he said I've got to fix it. "For
3 anything else you've got to fix it.

4 Q. All right.

5 A. So I had to tear that wall out. Replace that wall and
6 put a new top on the house where it was leaking. I put
7 a tin top on it. In fact, it's still on there now.

8 Q. When you say tin top you --

9 A. That new tin they come out with. You know they've got
10 the new tin now.

11 Q. What was the roof made of before? Was it a tin roof?

12 A. Shingle.

13 Q. Okay. So you took a shingle roof and patched a hole in
14 it with a piece of tin?

15 A. No, I did the whole thing all away across, because it
16 was like it tore up where the bathroom was at. That
17 new tin they come out with, I bought that tin and --
18 the tin and put -- did it with that.

19 Q. Okay. And how -- and when was this storm that caused
20 the roof to start leaking?

21 A. I'm going to say probably about -- I'm going to say
22 between '14 and '15.

23 Q. All right.

24 A. There was a bad storm come through Greenville.

25 Q. Okay. And so let's say it was '15 just to pick a year.

1 A. Yes, sir.

2 Q. How long after that storm before you started to notice
3 a water problem?

4 A. When we got a rain it started coming straight through
5 that. Just dropping. It was coming straight to the
6 floor.

7 Q. Okay. And so you went and talked to Lukas about it and
8 he reminded you that under the Lease you were
9 responsible for maintaining it?

10 A. Yes, sir.

11 Q. So about how long after you noticed the water problems
12 did you actually go put this piece of tin up there?

13 A. Oh, when it started raining that's when I noticed that
14 water was running down.

15 Q. All right.

16 A. I had to put a bucket down to catch the water.

17 Q. Okay.

18 A. Because it was so fast -- it was so bad.

19 Q. All right. Did you ever hire a roofing contractor or a
20 contractor of any sort --

21 A. No.

22 Q. -- to give you an estimate as to what needed to be done
23 to fix that roof?

24 A. No, sir.

25 Q. After you put this tin around the area -- so did you

1 take off the shingles and put the tin down?

2 A. Yeah, I pulled all the shingles off.

3 Q. Right.

4 A. Then I had to replace all the wood up under there.

5 Q. Right.

6 A. I had to replace all that.

7 Q. Right.

8 A. And then I come with the tin and put it into the joist
9 back there.

10 Q. Okay.

11 A. And I didn't have no more problem with that. So I had
12 to tear that wall out and replace the wall, because it
13 had rotted all that out.

14 Q. Okay. It got -- so it got so much water in through
15 that roof leak that it rotted a wall?

16 A. Yeah, the wall like -- it's in the side of the wall.
17 Yeah.

18 Q. Okay.

19 A. Because they had that presswood there.

20 Q. Okay. And so did you ever reshingle where you'd
21 removed old shingles?

22 A. I reshingled that when I put that wood there and then
23 come with the tin on it, on top of that.

24 Q. So you did replace the wood of the roof deck where it
25 had been damaged and it was leaking.

1 A. Yes, sir.

2 Q. And you put some tin over that and then you resingled
3 on top of the tin?

4 A. No, I didn't reshingle on top of the tin. The tin was
5 made to go up there.

6 Q. Okay. So the roof is substantially a shingle roof
7 except it's a tin roof in this area that you were
8 involved with?

9 A. Yes, sir.

10 Q. Okay. And after you did this repair with the tin did
11 you ever have any sort of roofing contractor or a home
12 inspector come look over your work to make sure it was
13 up to code and had been done properly?

14 A. No, sir.

15 Q. Okay. Did you ever have anyone come look to see if any
16 more wood had been rotted or damaged beyond that wall
17 that you tore out?

18 A. No, sir.

19 Q. Okay. Did you ever have anyone come by to inspect for
20 any mold that have been caused by the moisture coming
21 in through that roof?

22 A. No, sir. No, sir.

23 Q. Okay. Did you ever notice any mold? Mr. Rigdon says
24 in his Eviction Notice that there's a mold problem.
25 Did you ever see any mold at the house?

1 A. No, sir.

2 Q. Okay. Did you dispute -- when Mr. Rigdon handed you
3 that paper and it said that there was mold, did you
4 tell him that was wrong, there wasn't any mold?

5 A. No, he never did give me no paper telling me that.

6 Q. Well, I thought he handed you what we marked as Exhibit
7 10?

8 A. Yeah, he handed it to Jackie. He didn't hand it to me.

9 Q. Okay. Well, you told him you weren't going to sign it.
10 When he handed it to Jackie did you take a look at it?

11 A. No, sir, I didn't look at it.

12 Q. Whatever he handed Jackie you said you weren't going to
13 sign it?

14 A. I said, "I'm not signing that. I ain't -- I ain't
15 signing it."

16 Q. Okay. But you never looked at it to see what it was
17 you weren't going to sign; is that right?

18 A. No, sir.

19 Q. Okay.

20 A. She went on and signed it.

21 Q. Okay. Well, when he -- do you dispute there was mold
22 in that house as of December of 2018?

23 A. No, I don't think no mold was in there, not to my
24 knowledge.

25 Q. Okay. All right. Did you pay your rent in full for

1 November of 2018?

2 A. Yes, sir.

3 Q. Okay. well, according to this Eviction Notice it says,
4 "verbal refusal to pay rent for November 2018." so
5 that's wrong? You paid your rent for November of 2018?

6 A. Yes, sir.

7 Q. okay. All right. well, if that's the case then let me
8 get you to take a look at your receipts for a second,
9 Mr. Powers. We've marked those as Defendant's Exhibit
10 9.

11 (Introduction of 13-page document
12 Rent Receipts as
13 Defendant's Exhibit Number 9.)

14 A. Which one would that be?

15 Q. It's the grouping of receipts that your lawyer produced
16 to me.

17 A. Okay. I've got --

18 Q. And I've marked the whole batch of them as Exhibit 9.

19 A. Okay. (Mumbles to self.) How far will it be back?

20 Q. well, the Eviction Notice we were just looking at,
21 Exhibit 10, it would be the pages right before that. I
22 think you've got them there in your left hand. Are
23 those some receipts?

24 A. I got some receipts here.

25 Q. Okay. I've marked all of the receipts as a group as

1 Exhibit 9.

2 A. (Witness mumbles.) What am I looking up? I've got to
3 go on through there. Which one am I supposed to --

4 MR. FESSLER:

5 I think he's referring to all of them together.

6 A. Okay. Oh, the whole thing?

7 Q. Yeah. If you'll grab the group of receipts.

8 A. Okay. I got it right here. Yes, sir.

9 Q. Okay. All right. Take a look at the very last page of
10 Exhibit 9.

11 A. Okay. I'm looking at the last one. 9/4 -- wait a
12 minute. I'm looking at the last one.

13 Q. All right. On the last page if you look at the very
14 last receipt at the bottom.

15 A. 11 the 2nd.

16 Q. Right. That's November 2nd of 2018.

17 A. Yes.

18 Q. Now, you've told me that you paid your rent for 2018
19 and what Mr. Rigdon wrote about verbal refusal to pay
20 November rent that that's wrong? You told me you paid
21 November rent.

22 A. Where did this \$100 come from?

23 Q. Okay. Well, that's what I want to ask you about,
24 because it appears to me, Mr. Powers, that the receipt
25 you have provided that's dated 11/2/18 is you paying

1 \$100 balance for October rent. That is what it says.
2 The receipt that's dated November 2nd when you paid the
3 100 bucks is actually paying rent for October 1 through
4 October 31 of 2018.

5 A. Right.

6 Q. If you look at the receipt above it you paid 450 on
7 October 22nd and you paid the remaining 100 on November
8 the 2nd.

9 A. Right.

10 Q. Okay. Can you show me the receipt where you paid your
11 November rent that you just told me that you paid?

12 A. Well, see, I don't have it because I was in the
13 hospital at the time.

14 Q. You were in the hospital in November?

15 A. December. After this I went to the hospital in
16 December.

17 Q. Okay. You told me that you paid your November rent
18 though.

19 A. I don't have that November. I can't find it I don't
20 think.

21 Q. Okay.

22 A. These are the only ones that I have.

23 Q. As we sit here day do you have any proof that you paid
24 your November 2018 rent?

25 A. No.

1 Q. Mr. Rigdon says you verbally refused to pay it.

2 A. No, but I do recall paying him in January. After I
3 come out of the hospital he came to my house again and
4 I do recall paying him, because he came to my house.
5 And that's the last time I spoke with him.

6 Q. Right. And --

7 A. So I -- go ahead.

8 Q. So January of 2020 Mr. Rigdon came to your house?

9 A. Yes, sir.

10 MR. FESSLER:

11 Objection. I think you meant 2019.

12 A. Yeah, 2019 he came to my house.

13 Q. Okay. I thought you said January?

14 A. Of 2019.

15 Q. Well -- okay. All right. I gotcha. I gotcha. So
16 January 2019 Mr. Rigdon comes to your house and you
17 give him cash?

18 A. 550 cash. That's when he give Jackie that paperwork to
19 sign the Eviction Notice. We had to move, but I still
20 went on and paid him after I had came out of the
21 hospital.

22 Q. All right. I've gotten confused. So he comes to you-
23 all's house and he gives you-all this Eviction Notice.
24 It says you're behind in your rent and you refused to
25 pay November. You've got late fees. And there's

1 A. I don't have -- I didn't have that one available.

2 Q. Right. What I'm trying to establish, Mr. Powers, when
3 you gave him the cash, did he give a receipt --

4 A. He gave me a receipt.

5 Q. -- like he always did?

6 A. Yes, sir.

7 Q. Okay. And that receipt would have presumably told us
8 what that payment you made was for?

9 A. Yes.

10 Q. Whether that was for back rent, current rent, future
11 rent or what?

12 A. Yes, sir.

13 Q. Okay. So after Mr. Rigdon shows up and tells you-all
14 he wants you out and gives you-all this document we
15 marked as Exhibit 10, and you tell him you're not
16 signing it, and Ms. Pearson signs it. And she says
17 she'll be out by January 5th?

18 A. Yes, sir.

19 Q. Of 2019?

20 A. Yes, sir.

21 Q. Is she gone by then?

22 A. Yeah, she moved -- not right then. Right after that
23 she moved. We moved -- she moved into another house
24 that she couldn't afford, so I said, "Well, I'm going
25 to have to go with you, you need help, because I know

1 you can't afford to pay this."

2 Q. Okay. So when was she physically gone from 39 2nd
3 Avenue?

4 A. Probably the end -- probably about the end of --
5 somewhere around the end of January.

6 Q. Okay. So even though she said she'd be out by January
7 5th, which is what she wrote on Exhibit 10, your
8 recollection is she was not gone until towards the end
9 of January?

10 A. Right.

11 Q. Okay. And when she is gone, she goes and rents
12 somewhere else; is that right?

13 A. Yes. Yes.

14 Q. And then do you go live in the same place that she's
15 now renting and help her out --

16 A. Yes, sir.

17 Q. -- with the rent at that place?

18 A. Yes, sir.

19 Q. And where was it that she went, and then you went with
20 her, and you-all were both paying rent somewhere else?
21 where was that?

22 A. 300 Watkins Road, Greenville, South Carolina.

23 Q. Watson?

24 A. Watkins. W-a-t-t-I--s (sic). It's located in Berea.

25 Q. Okay. And did you sign -- had she signed a Lease for

1 that new place?

2 A. Yeah, she did -- she got that on her own.

3 Q. Okay. Did you ever sign that Lease?

4 A. No, sir.

5 Q. You just helped her out making the payments?

6 A. Yes, sir.

7 Q. And you lived there with her?

8 A. Yes, sir.

9 Q. And did her grandson live there with you-all?

10 A. Yes, sir. Me, her, and Messiah.

11 Q. Okay. So would I be correct to say that you were also
12 gone from 39 2nd Avenue by the end of January of 2019?

13 A. I was -- I was still maintaining the property and
14 stuff.

15 Q. Yes, sir. You were not living in that house after --

16 A. No, I wasn't living there. I wasn't living there, but
17 I maintained the property.

18 Q. Okay. You were living with Ms. Pearson in the new
19 place she was renting; correct?

20 A. Yes, sir.

21 Q. All right. Did you pay rent for December of 2018 for
22 39 2nd Avenue?

23 A. 2018? 2019.

24 Q. Yes, sir. December of 2018 did you pay any rent for
25 that house for the month of December?

- 1 A. I don't -- I rightly don't remember.
- 2 Q. Okay. Do you have any paper trail showing you paid
- 3 rent for December of 2018?
- 4 A. The only thing I have is where I made my withdrawal
- 5 from my bank.
- 6 Q. Okay. You don't have the receipt that you used to have
- 7 that would have showed --
- 8 A. No, sir.
- 9 Q. -- the payment? Okay. How about January of 2019, did
- 10 you --
- 11 A. I don't have that available either.
- 12 Q. Did you pay rent in the amount of \$550 for 39 2nd
- 13 Avenue --
- 14 A. My last one was in January for 550. I remember that.
- 15 Q. Yes, sir. That wasn't exactly my question. My
- 16 question was whether you paid rent for January, not
- 17 whether you made a payment in January.
- 18 A. I can't rightly remember.
- 19 Q. Okay. February of '19, did you pay rent for 39 2nd
- 20 Avenue?
- 21 A. In what year?
- 22 Q. Of 2019, February?
- 23 A. No, sir. No, sir.
- 24 Q. One month later?
- 25 A. No, sir.

1 Q. Okay. March of 2019, did you pay any rent for 39 2nd
2 Avenue?

3 A. No, sir.

4 Q. Where were you living in March of 2019?

5 A. 300 Watson Road, Greenville, South Carolina.

6 Q. Okay. April of '19 did you pay any rent for 39 2nd
7 Avenue?

8 A. I was hospitalized.

9 Q. Where were you living in March of '19?

10 A. 300 Watson Road.

11 Q. Okay. So can you tell me the last month that you would
12 have paid rent or for which you would have paid rent
13 for 39 2nd Avenue?

14 A. January the 3rd of 2019 is the last time I remember
15 paying him.

16 Q. Right. And, again, but my question was, Mr. Powers,
17 not when you actually made the payment, but for which
18 month did you last pay rent?

19 A. That had to be the month of December.

20 Q. The month of December?

21 A. Yes, sir.

22 Q. Okay. And you would have made that December rent
23 payment when?

24 A. January 3rd.

25 Q. Okay. So your recollection of making a payment January

1 of '19 was to pay the rent due for December?

2 A. Yes, sir.

3 Q. Okay. And you have no -- do you have a record of
4 paying in October or November of '18?

5 A. The only thing I have -- the only I have is just right
6 here that you see here.

7 Q. The receipts?

8 A. Yeah. The only record I have is where I made my
9 withdrawal from my bank.

10 Q. Okay. And you would have withdrawn cash; right?

11 A. Yes, sir.

12 Q. Because you always paid in cash?

13 A. Yes, sir.

14 Q. And you would have gotten the receipt, many of which
15 we've marked, and we're talking about?

16 A. Yes.

17 Q. Okay. Did you ever go back in the house after you left
18 in January of '19?

19 A. No.

20 Q. Okay.

21 A. I maintained -- I went and maintained the property
22 like, you know, outside and cleaning up and stuff.

23 Q. Right.

24 A. After they put an Eviction Notice on the guy I that I
25 had doing the work for me, cleaning up around.

1 A. When you come in the backdoor you walk straight into
2 the laundry room first.

3 Q. Okay.

4 A. That back, where the washer and dryer is.

5 Q. Right. Okay. And when you walked in was there a
6 washer and dryer there?

7 A. That was my washer and dryer. I had taken that with
8 me.

9 Q. Okay.

10 A. And the hot water heater was sitting in the corner.

11 Q. Right. All right. And tell me what the house looked
12 like when you walked in that day.

13 A. When I walked in I just -- he had the door open. I go,
14 "what's going on?" He said, "Lukas selling us this
15 house."

16 Q. Right.

17 A. He had done changed all the locks on the doors.

18 Q. Right.

19 A. All the locks -- as a matter of fact, like I said they
20 was laying on the counter top and they're probably
21 still there.

22 Q. Okay. So what did the house look like, Mr. Powers?
23 what did the carpet look like? what did the floor look
24 like? what did the walls look like?

25 A. Look, everything was nice. I was getting ready to

1 yard maintained.

2 Q. So you'd been over at the house several times between
3 when you left in January and when you saw this Tinsley
4 fellow there in February?

5 A. Yes, sir.

6 Q. You came back a number of times, but you never went
7 inside?

8 A. No, sir, I didn't have a key. They had done changed
9 locks.

10 Q. Well, I thought they didn't change the locks till you
11 saw the fellow in there in February?

12 A. He was changing all the -- I didn't have a key to the
13 house at the time.

14 Q. Why not?

15 A. Lukas got them. He asked for them.

16 Q. Well, wait a minute, Mr. Powers. Lukas told you you
17 were getting evicted and he wanted you to sign --

18 A. He didn't tell me. He told Jackie.

19 Q. Well, he told you and Jackie at the same time, but he
20 brought the paper there to you-all together; didn't he?

21 A. Yes, sir.

22 Q. And he wanted you to sign it and her to sign it; right?

23 A. Yes, sir.

24 Q. And he told you the reason is he -- is he was in
25 trouble moneywise, he needed to sell that house for

1 child support, and he hadn't bitched about you-all
2 being late until then?

3 A. He never said a word. Lukas was a good man. I can
4 tell you that.

5 Q. Right.

6 A. I mean that was a good guy.

7 Q. Right. And he didn't complain about you-all's slow
8 paying, or paying late, or anything like that?

9 A. No, sir. Never. Never.

10 Q. Okay. But when he came that day to put you-all out and
11 said -- and had that sheet of paper that he wanted you-
12 all both to sign you said, "I'm not signing it"?

13 A. That's right.

14 Q. All right. At that point in time you had keys to that
15 house because you were renting it; right?

16 A. Yes, sir.

17 Q. What happened to your keys to the house?

18 A. Lukas needed to get in the house. He didn't have no
19 keys. I handed the keys to Mr. Luka. I give him the
20 keys.

21 Q. Did Lukas ask you for the keys back?

22 A. Yes, sir. Yes, sir.

23 Q. And did he ask you when he came with this sheet of
24 paper, this Eviction Notice, that we marked as Exhibit
25 10?

1 A. He didn't ask me about the key. He brought the
2 Eviction Notice before he ever got the key.

3 Q. Okay. Well, help explain that to me. He has the
4 Eviction Notice, he comes to get you-all to sign it
5 December 3rd of '18. When did he ask you for the keys
6 if it wasn't on December 3rd of '18?

7 A. Maybe -- maybe a week later he called me at 864-200-
8 3488.

9 Q. Okay. He calls you up and says what?

10 A. "I need the keys."

11 Q. Okay. And what did you tell him?

12 A. I'm not giving them to him. Jackie said, "Give him
13 those keys."

14 Q. Okay.

15 A. That's what Jackie said, "Give him the keys."

16 Q. And so you gave him your keys?

17 A. I left from up there and brought him the keys.

18 Q. All right. And so now you no longer have a key --

19 A. No, sir.

20 Q. -- to get in that house?

21 A. No.

22 Q. Right?

23 A. Yes, sir.

24 Q. Because you gave it back to the landlord?

25 A. Yes, sir.

1 come? It was when he came and brought me the Eviction
2 Notice. He could see Mr. Mark's card out.

3 THE WITNESS:

4 Mark, I think they've gone out.

5 MR. FESSLER:

6 Did it go out?

7 THE WITNESS:

8 I don't know.

9 MR. FESSLER:

10 No, they're still there.

11 THE WITNESS:

12 Okay.

13 EXAMINATION RESUMED BY MR. HAYNSWORTH:

14 Q. So, Mr. Powers, the Eviction Notice that we marked as
15 Defendant's Exhibit 10, it is dated at the top December
16 3, 2018.

17 A. That's when he bought that -- okay. Go ahead.

18 Q. Okay. And it appears that Ms. Pearson signed it on
19 that same day.

20 A. Yes, sir.

21 Q. Okay. You told him you weren't going to sign that day?

22 A. That's right.

23 Q. Okay. Later on you believe in January Lukas called you
24 up --

25 A. About the key.

1 Q. -- about getting the key?

2 A. Yes, sir.

3 Q. Okay. And you gave him the key because Ms. Pearson
4 said to?

5 A. "Give him the key."

6 Q. Okay. Then you said something about you paid rent and
7 then you talked to a lawyer. And what I'm trying to
8 figure out is if he got in touch with you in January
9 and that's when you gave him the key back, you also
10 told me that in January you made him some sort of
11 payment; right?

12 A. I brought the December payment in January.

13 Q. Before or after you gave him back the key?

14 A. Before.

15 Q. Okay. He still asked you for the key and you give back
16 to him?

17 A. Yes, sir.

18 Q. Okay. Were you completely paid up in all your rent
19 when you gave him the money in January?

20 A. The only think I know is I got these receipts right
21 here.

22 Q. Which receipt right where?

23 A. These. All these we got here.

24 Q. Well, point to the one that you're talking about that
25 shows me this January payment you made?

1 Q. Were you behind in any sort of rent or payments --

2 A. Not to my knowledge. No, sir, not to my knowledge.

3 Q. Okay. All right. When he would give you these
4 receipts would you look at them and make sure they were
5 accurate?

6 A. Yeah.

7 Q. Okay. And if they weren't accurate I assume --

8 A. Out of the seven years I never had no problem with him.

9 Q. Okay.

10 A. We never had a problem. Never. Nothing.

11 Q. All right. When did -- well, let me back up. Hold on
12 a minute, Mr. Powers. Mr. Powers, and I realize that
13 the documents are lawyer documents, but tell me a
14 little bit about your lawsuit. Your lawsuit is you
15 believe you're entitled to pay some money and own that
16 house; is that right?

17 A. Yes, sir.

18 Q. Okay. And are you claiming any other money damages
19 from Rizan Properties?

20 A. Yeah, well, I'm having to pay rent for where I'm at
21 now.

22 Q. Okay.

23 A. I had to go find me somewhere to live --

24 Q. Okay.

25 A. -- which I'm renting from sister at 550 a month.

1 Q. Okay. And the rent that you were helping Ms. Pearson
2 pay over there at 300 Watkins Road, were you helping
3 her to pay rent there until she passed?

4 A. Yes.

5 Q. So you-all were living there at the time she passed?

6 A. Yes, sir.

7 Q. And when did she pass?

8 A. In July. July. Sometime in July. Right before the
9 4th of July.

10 Q. of 2000?

11 A. 2020.

12 Q. 2020. Okay.

13 A. 2020. Well, not last -- I'm confused. No, not this
14 year. The year before last year?

15 Q. '19?

16 A. It could have been '19 I think. I'm not for sure, but
17 it's been a year. She's been dead a year.

18 Q. Okay. Well, if she died in July and she's been dead a
19 year then this past July would have been the one year
20 anniversary?

21 A. Yes, sir.

22 Q. So she would have died July of '19?

23 A. Somewhere around in there. Around, yes.

24 Q. So would you have been living over at 300 Watkins Road
25 from roughly January of '19 through July of '19?

1 A. It was somewhere around in there, I think. I don't
2 remember.

3 Q. About six months that you and her would have lived over
4 there at Watkins Road --

5 A. Yes, sir.

6 Q. -- before she died?

7 A. Yes.

8 Q. Okay. The grandchild that was living with you-all
9 there, where does that grandchild live now?

10 A. He's with his father.

11 Q. Okay. Was he with you and Ms. Pearson at 300 Watkins
12 Road until she passed in July?

13 A. Yes, sir.

14 Q. And that was her grandson?

15 A. That was her grandson, but I had him since he was two.

16 Q. Okay. But you weren't related to him by blood?

17 A. No, sir.

18 Q. And I presume that's why he's now back with his father
19 instead of still with you?

20 A. Yes, sir.

21 Q. Okay. Did you have any type of insurance on that
22 house, Mr. Powers?

23 A. You talking about the one on 300 Watkins Road?

24 Q. No, no, sir. I'm sorry. The one that you were leasing
25 from Lukas?

1 I've got it's roughly 11:33. Let's say we come back at
2 a quarter till. That will give us about 12 minutes.

3 THE WITNESS:

4 All right. Yes, sir.

5 MR. HAYNSWORTH:

6 Will that be all right? Mark, that suit you?

7 MR. FESSLER:

8 Yeah, that's fine.

9 (Off the Record 11:32 p.m. -- 11:47 p.m.)

10 EXAMINATION RESUMED BY MR. HAYNSWORTH:

11 Q. Okay. Hey, Mr. Powers.

12 A. How you doing, sir? I'm doing fine.

13 Q. Good, good, good. Okay. All right. Well, thanks for
14 letting us take that little break, Mr. Powers.

15 A. Yes, sir.

16 Q. I'm not sure what I was talking about before we
17 stopped, but I'll find my way back to it. We were
18 talking to some extent about 300 Watkins Road. So you
19 were living over there with Ms. Pearson till July of
20 '19 when she passed; right?

21 A. Yes, sir.

22 Q. Okay. And between July of 2019 and May of 2020 when
23 you moved to 107 Stuart Street --

24 A. Yes.

25 Q. -- where were you living?

1 A. One, 2. That's 3 right here. Right here?

2 Q. Okay. And up towards --

3 A. Okay.

4 Q. -- up towards the top of page 3 you can see in bold
5 something that says Interrogatory Number 3?

6 A. Yes, sir.

7 Q. Okay. And then you see in bold it says, "Response:"
8 It starts off Rodney Pitts and has a phone number?

9 A. Yes, sir.

10 Q. Okay. The Interrogatory was basically me asking what
11 steps you had taken to maintain the property. And this
12 answer where you're talking about Mr. Pitts is your
13 answer to my question about what did you do to maintain
14 the property. Okay. So, Mr. Pitts he lives near the
15 2nd Avenue property?

16 A. Yes, sir.

17 Q. Okay. And have you known Mr. Pitts for a long time?

18 A. Yes, sir.

19 Q. Okay. This answer to Interrogatory Number 3 says, "Mr.
20 Pitts lived on Hammett Street near 2nd Avenue, and Mr.
21 Powers engaged him to watch over 39 2nd Avenue and
22 maintain the yard." When you say you engaged him what
23 do you mean?

24 A. I told him to keep the grass cut and watch the
25 property, because I hate to say this, there's a lot of

1 homeless people stay around there, and they'll break in
2 and try to live in the house.

3 Q. Okay. So you told him to watch over it and cut the
4 grass. Did you hire him to do that?

5 A. Yeah, I paid him.

6 Q. How often?

7 A. I was paying him maybe like once a week, because, see,
8 I'd just had my heart attack. I wasn't able to do
9 nothing. I hadn't been too long out of the hospital.

10 Q. Okay.

11 A. But he's been doing it for me since last April.

12 Q. Okay. So how much were you paying him?

13 A. Sometimes I pay him 20 to \$25.

14 Q. Was there any specific amount per week or per month
15 that you-all agreed?

16 A. No, just give him something and he be all right. Just
17 give him something.

18 Q. All right. And it goes on to say that, "He would daily
19 ride by or sit at the property." That's "he" being Mr.
20 Pitts?

21 A. Yes, sir.

22 Q. Then it goes on to say in the next sentence, "He also
23 would perform work on it as needed, including, for
24 example, mowing the yard, clipping hedges, and picking
25 up trash."

1 A. Yes, sir.

2 Q. Okay. All right. Was he doing anything to the inside
3 of the house?

4 A. No, he wasn't doing nothing inside.

5 Q. Okay. Because you'd given back your keys to Lukas;
6 right?

7 A. Right.

8 Q. So nobody had a key to get in that you could have given
9 to get in it?

10 A. No, I didn't have a key.

11 Q. Okay. Do you have any idea what was going on inside
12 the house during the time that you were having Mr.
13 Pitts ride by and check out the outside or on occasion
14 sit at the property?

15 A. No, sir.

16 Q. Okay. It says, "Mr. Pitts was last at the property on
17 October 27, 2019, when a female, who was on the phone
18 with a police officer, instructed the officer to turn
19 him away and put him on trespass notice." I assume
20 that's something Mr. Pitts relayed to you?

21 A. Yes, sir.

22 Q. Okay. What did he tell? What do you recall about
23 that?

24 A. He just called me and told that the police come by and
25 said that he -- he's not supposed to be on the

1 property. And he said that he told that Jerry gave him
2 permission. So they put a no trespass on him.

3 Q. All right. And did you get in touch with the police to
4 tell him that he had your permission to be there?

5 A. No, sir.

6 Q. Okay. Why not?

7 A. I was in the hospital at the time.

8 Q. So when did he call you to tell you about --

9 A. He called me later on. He called me later on that
10 evening and told me. I said, "Well, why didn't you
11 call me while they was there?" I told him that.

12 Q. Right.

13 A. And they had told him they hadn't been seeing him
14 around there he said. They said, "We hadn't been
15 seeing you." He said, "Yeah, I've been over here to
16 watch the property."

17 Q. All right. And so you called you and told you about
18 this conversation with the police?

19 A. Yes, sir.

20 Q. And when he called you you were in the hospital?

21 A. Yes, sir.

22 Q. So what date was this?

23 A. I don't remember the date. I don't remember the actual
24 date now.

25 Q. Do you remember the date you were in the hospital?

1 Q. Okay. All right. And when did this conversation take
2 place where Pitts told you about the police? I know it
3 was sometime after they talked to him, but roughly when
4 did he tell you about the police?

5 A. That same evening, but I don't know exactly what day it
6 was.

7 Q. Can you tell me the month?

8 A. I don't know the month. I don't remember all that.

9 Q. All right. All right. Let me get you to flip over --
10 oh, I'm sorry. Before we switch off Interrogatory
11 Number 13 (sic), we're back in your response. That
12 sentence I was reading about Mr. Pitts mowing the yard,
13 clipping hedges, picking up trash so as to keep the
14 property looking occupied and well kept. It then goes
15 on to say, "This would deter people who might want to
16 commit unwanted and/or criminal acts on or around
17 vacant property." Did I read that right?

18 A. I didn't -- I didn't understand.

19 Q. I'm sorry. I was trying your read Interrogatory
20 response.

21 A. Oh, okay.

22 Q. And this is the response to Interrogatory Number 3.

23 A. Uh-huh.

24 Q. On that page you should be on. Do you see the line
25 that says, "This would deter people who might want to

1 Q. Okay. Are you still driving?

2 A. No, I got a caretaker that takes me around.

3 Q. Okay. When did you stop driving?

4 A. When my sight went bad.

5 Q. Roughly what year did you last drive yourself?

6 A. It's been a while. A couple of years, two or three
7 years.

8 Q. So when you say you drove by this house to see this
9 notice --

10 A. My caretaker take me over there.

11 Q. -- you -- you -- you were not driving by; right? You
12 were riding by?

13 A. Riding by. Right. With my caretaker.

14 Q. What's your caretaker's name?

15 A. Jannet Thompson.

16 Q. Jannet Thompson?

17 A. "J". Jannet.

18 Q. Can you spell that for me?

19 A. With a "J". Jannet Thompson. Jannet.

20 Q. Jannet?

21 A. Yeah.

22 Q. J-a-n-n-e-t or J-a-n-e-t?

23 A. J-a-n-n-e-t, I think.

24 Q. And the last name is Thompson?

25 A. Yes.

1 A. She's just a friend.

2 Q. Just a friend. Okay. Were you able to drive say in
3 the first part of 2019 before --

4 A. Ms. Thompson?

5 Q. -- before Ms. Pearson had passed?

6 A. No, Ms. Pearson took me around.

7 Q. Okay. So you -- you couldn't drive even before you got
8 hooked up with Jannet Thompson?

9 A. No.

10 Q. You had Jackie Pearson drive around?

11 A. Ms. Pearson had to take me around to my doctors. When
12 she wouldn't take me I would call my -- my card. You
13 know like the transportation.

14 Q. Okay.

15 A. They will take me to the doctor and come back and get
16 me.

17 Q. Okay. All right. All right. I think I got it. Thank
18 you for that. Let me get you to flip over to page 4 of
19 the Interrogatories, Mr. Powers. That's the document
20 that we marked as Exhibit 5. It would be page 4 of
21 Exhibit 5. That document we were just looking at.
22 Just the next page.

23 A. All right. I'm ready.

24 Q. Okay. You see that bold response there starting on
25 page 4 and going over to page 5? It's the response to

1 Okay. Ahead. All right. We got.

2 Q. All right. I'm just reading along in there. But Mr.
3 Rigdon came to Mr. Powers and told he would have to
4 sell 39 2nd Avenue because he had gotten divorced and
5 he owed child support and other expenses. Tell me
6 about that, because I have some familiarity with --
7 with his child support. What did he tell you
8 specifically that you recall?

9 A. When he come up to me he asked -- okay. He walked up
10 and knocked on the door. And he said -- I'm telling
11 you he collected his rent that night in November. He
12 said, "I've got some bad news for you and Ms. Pearson."
13 Well, he said Jackie. He didn't say Ms. Pearson. He
14 said, "I'm going to have to sell this house," and
15 Jackie was like, "why?" He told her, "I'm behind in my
16 child support, alimony," and then he said, "I'm behind
17 on my --" I hate to say it where he at one of the
18 psychiatric place. He said, "I've got sell this house
19 and do it." And I was like, "Well, Lukas, why you
20 don't sell one of the other houses over by Greenville
21 Memorial Hospital?" He said, "I'm not going to sell
22 that one. I'm going to sell this one." Just like
23 that.

24 Q. Okay.

25 A. And he said, "But you-all been good to me." I mean he

1 Q. And tells you and Ms. Pearson that they're there to
2 look around the house because he's going to be selling
3 it?

4 A. Yes, sir.

5 Q. All right.

6 A. Sell it.

7 Q. And then after that is when he comes in December with
8 the sheet of paper, the Eviction Notice?

9 A. Yes, he came then.

10 Q. Okay. And that's when you told him you weren't going
11 to sign?

12 A. That paper.

13 Q. And she signed it and then -- and then you-all moved
14 out and you went over to help her pay the rent at the
15 other place?

16 A. Yes, sir.

17 Q. Okay. All right. I'm still -- I'm reading further
18 down in your answer to Interrogatory Number 6, Mr.
19 Powers. Okay. A little more than halfway down your
20 answer, it says about -- that you'll testify about how
21 you learned of Mr. Rigdon's death on or about July 20,
22 2019, when you called Mr. Rigdon's telephone to inform
23 him that Jackie Pearson had passed.

24 A. Yes.

25 Q. Do you see where I'm remember that anyway?

1 A. Yes. Yes, I can remember that anyway.

2 MR. FESSLER:

3 It starts right.

4 A. I remember what I called and told. I was calling to
5 tell him about Jackie's death. I called him his
6 number, which is 991-1719, and his mother answered the
7 phone. Like I said I wanted to kind of let Lukas know
8 that Jackie had passed, but I didn't know he had
9 passed. And then she said, "well, I've got bad news
10 for you." She said that Lukas had committed suicide.

11 Q. Okay.

12 A. I just had -- I hadn't been too long come out of the
13 hospital. So I said, "Um." I went like, "Oh, my."
14 Because I know his mother live in North Carolina
15 somewhere.

16 Q. Okay.

17 A. You know he informed me of that.

18 Q. Okay. So you call his phone and a person answers the
19 phone and identifies herself as his mother?

20 A. Right.

21 Q. And you told her, "I was calling to let Lukas know that
22 Jackie Pearson had passed"?

23 A. Right.

24 Q. And she said, "Oh, I've got bad news for you. Lukas
25 killed himself"?

1 Q. okay.

2 A. You know where I had to tear the wall out. I had to
3 tear the wall out and the water heater is sitting in
4 the corner, so it damaged them pipes, so I had to
5 replace them pipes on that water heater. Maybe that's
6 why I didn't put a new one in there.

7 Q. The pipes that you replaced on the water heater, the
8 water heater that was there when you started renting it
9 --

10 A. Yes, sir.

11 Q. -- why did you need to replace those pipes?

12 A. Because that water had damaged them pipes up there.

13 Q. Okay. What water? The water from the roof leak?

14 A. Yes, it was bad. That thing was kicking out five-
15 gallon buckets of water was dropping from that roof
16 down in there. Like literally like (indicating
17 downward motion) water was running.

18 Q. Okay.

19 A. That bucket I had to check the water. I had bucket,
20 bucket, bucket.

21 Q. All right. So there's tons of water getting in the
22 house through this roof leak and some of that water is
23 getting on the hot water heater. And is it rusting the
24 pipes; is that --

25 A. No, it was messing them up. The pipe was like

1 galvanized, those plastic pipe.

2 Q. Right.

3 A. But that top was like, you know, the top is iron or
4 whatever. And that water was settling in that thing.
5 You know settling on top of it.

6 Q. Okay. The water that was coming -- that was leaking
7 out of the roof?

8 A. That roof.

9 Q. Okay.

10 A. And that's probably why they replaced that hot water
11 heater or whatever.

12 Q. Okay. When you fixed it and replaced some of the pipes
13 was it still working --

14 A. Yes, it was. It worked.

15 Q. -- when you last used it when you last at the house?

16 A. When I last used it, it worked.

17 Q. Okay.

18 A. It worked.

19 Q. All right. So you never installed a new water heater,
20 you just fixed the old water heater?

21 A. No. No, they done put a new one in it.

22 Q. All right.

23 A. When I went in talking him there was a new one in
24 there.

25 Q. Okay. And you told me about you had to take down a

1 wall because water had gotten in it and damaged the
2 wood?

3 A. It damaged all of that presswood up through there. I
4 replaced all that, that whole back end. I had to
5 replace the whole back all the way from the top.
6 Replace it.

7 Q. All right. Did you have anybody come in and do a
8 moisture test to gauge the amount of moisture that may
9 have gotten in the wood behind the wall from all this
10 water?

11 A. I tore all that out, so it was new wood. Because I had
12 some -- what's that stuff they put? Insulation in that
13 wall. There was insulation in that wall.

14 Q. Right.

15 A. So when I tore that out I had tore all that insulation
16 out and I put new insulation in there because it had
17 wetted it up so bad.

18 Q. All right. So you tore out the Sheetrock and took out
19 the wet insulation; right?

20 A. Yeah. And I stuck it back in the wall, you know, the
21 insulation in the wall.

22 Q. All right. The wood in the wall itself, the two-by-
23 fours and the wall joist, presumably every 16 inches
24 you're going to have a two-by-four in the wall; right?

25 A. I tore them all out of there.

1 Q. You took all the wood out, too?

2 A. And put new ones in, brand new ones in. Yes, sir.

3 Yes. Yes. All the way back.

4 Q. How about the stringers at the top of the wall, did you
5 replace that wood, too?

6 A. No, because when it went up -- I had -- look, I had to
7 replace the top of that section. The top right here, I
8 had that boy take all of that out and put new up here.
9 I had to tear the joists right there that it run
10 against and, you know, where the two-by-four went down.

11 Q. All right.

12 A. I had to take them out to get that presswood back like
13 this and finding joists I'd need to nail against that.

14 Q. And you did all that yourself; right?

15 A. Well, I had a guy to help me. I mean some white guy
16 helped me. He was living up the street from me, he
17 kind of help. He knew a little bit of stuff.

18 Q. Do you know this white guy who lived up the street
19 name?

20 A. No. I'd probably never find him.

21 Q. Okay. So you and a white guy, who lived up the street,
22 did all these repairs to take care of this water damage
23 and --

24 A. Yes.

25 Q. -- the wood getting moisture in it and stuff like that;

1 right?

2 A. Yes, sir.

3 Q. Did you ever have anybody come and inspect the repairs
4 you-all did to see if it was done properly?

5 A. No.

6 Q. Okay.

7 A. I know a little bit about carpentering, a little bit.

8 Q. Okay. And you know a little bit about roofing, I
9 assume?

10 A. Yeah, that top -- I mean that top was nice. Of course,
11 my plan was to do the whole top in tin. You know run
12 the whole thing. You ever see them houses with a top
13 on, that blue and colors on top of there. I was
14 planning to do the whole thing eventually with that.
15 The whole roof like that, the whole roof.

16 Q. Okay. Alrighty. Let me get you to flip over to page 5
17 in the same document we're looking at.

18 A. The same one?

19 Q. Yes, sir.

20 A. Okay. I see 5.

21 Q. All right. Up at the top it's got Bettie Briggs.
22 That's your sister?

23 A. Yes, sir.

24 Q. Okay. And she was going to loan you the money to buy
25 -- to buy this house and she also knows about renting

1 you the Stuart Street property?

2 A. Yes, sir.

3 Q. Okay. Alrighty. I'm on page 5, about the middle of
4 the way down, it says Rodney Pitts can testify. Do you
5 see where I'm reading?

6 A. Yes. (Witness reviewing exhibit.) He did it several
7 times, because the porch is -- is concrete. Concrete.
8 And then after so long that paint it will peel off.

9 Q. Okay. So did he paint the concrete porch during the
10 time you were still renting and living there?

11 A. Yeah, he did it before that happened with Lukas anyway,
12 you know, paint the porch. And then he come in and did
13 most all that, yes, sir.

14 Q. Okay. Did he paint the porch any after you had left
15 and you were living over with Ms. Pearson in the new
16 place?

17 A. No, he just maintained the yard.

18 Q. Okay. So no porch painting went on after you had left?

19 A. No.

20 Q. Okay. Hedge clipping. Did that go on after you left?

21 A. Yeah, he did like the tree. I've got a little tree in
22 the front and trim and clean up (inaudible).

23 Q. Okay. And this answer goes on to say that he did that
24 at your request, both before and after December of '18
25 and during 2019, because Mr. Powers did not want anyone

1 to think that the property was not occupied. Did I
2 read that correctly?

3 A. Yes, sir.

4 Q. Okay. In fact, the property was not occupied, was it?

5 A. No.

6 Q. Okay. Okay. And then we talked about the policeman
7 talking to him. All right. You've got Kelly, the
8 person at Luthi Mortgage. So what did this Kelly
9 person talk to you? Tell me about you going to see
10 Luthi Mortgage, Mr. Powers, how did you choose to go
11 visit them?

12 A. I went to see them, because before this come between me
13 and Lukas, I asked them to borrow the money to pay the
14 house off, and they was going to do it for me. Pay the
15 house off and I had to pay them back.

16 Q. Okay. Let me back you up. So Lukas comes -- well, at
17 what point did you go to Luthi about getting the money
18 to buy the house? Was this before or after Lukas came
19 and gave you-all the Eviction Notice?

20 A. Before. Because me and Jackie went before she passed
21 and talked to Luthi Mortgage out on Wade Hampton. So
22 they was going to do a contract with me. You know like
23 pay the house, but.

24 Q. All right. You'd pay them instead of paying Lukas?

25 A. Right. They was going to pay off the remainder of the

1 house and I was going to pay them.

2 Q. Okay. And you and Jackie went over and met with them
3 to talk about that?

4 A. We went over there, but he wasn't there because he got
5 sick at the time. Mr. Morgan did. But we had went
6 over to their office. I had went myself several times
7 and they wanted me to bring Jackie with me, so I took
8 her over there one day.

9 Q. Okay. And who got sick?

10 A. Mr. Lukas Morgan -- not Lukas. Mr. Morgan that owned
11 the mortgage company on Wade Hampton.

12 Q. Oh, Mr. Luthi?

13 A. Yes, he got sick somewhere during the mix. I didn't
14 get to get with him, you know, at the time.

15 Q. So is Mr. Luthi getting sick why you didn't follow
16 through and borrow the money from them to buy the
17 house?

18 A. Right. They said he was in sick and in the hospital or
19 something, so I didn't get to get with him and get the
20 money from him.

21 Q. Okay. Well, the person that you talked to according to
22 this was somebody named Kelly?

23 A. That's his secretary, I guess.

24 Q. So did you ever talk to Mr. Luthi or did you just talk
25 with Kelly?

1 A. I talked with Kelly. She was giving me the information
2 where he had whatever.

3 Q. Okay. And there's also below Kelly's name, it's got
4 Perry Luthi. Did you talk to Perry Luthi?

5 A. It was two people, two people in that office when I
6 went. I went one day and she was in there and then I
7 called back and talked to I guess that lady here.

8 Q. All right. Is the Kelly person you talked to a male or
9 a female?

10 A. Female.

11 Q. Okay. And Perry Luthi that's a guy; right?

12 A. No, I think that's -- that's a woman, too. I didn't
13 see nothing but women in there. There wasn't no man in
14 there.

15 Q. I don't know. I mean this --

16 A. It was all women. There wasn't no man over there,
17 women were.

18 Q. Okay. So this thing at the bottom says, "Perry Luthi
19 can testify about a proposal he had and a conversation
20 he had --" Oh, I gotcha. You weren't part of that
21 conversation. Did you ever talk to Mr. Perry Luthi?

22 A. No.

23 Q. Okay. So you never had a conversation with Mr. Luthi,
24 Mr. Perry Luthi, about proposing --

25 A. The owner, no.

1 Q. Huh?

2 A. Not the owner. I didn't ever have a conversation with
3 him.

4 Q. Okay. The only person you talked to was Kelly and then
5 some other girl?

6 A. Right. Some other lady when I went in. One time I
7 went by myself --

8 Q. Right.

9 A. -- and she said bring Jackie back with me. Well, me
10 and Jackie went back, but he was -- he was in the
11 hospital or going to get something.

12 Q. Okay. And did you and Jackie ever go back after he got
13 out of the hospital?

14 A. No, we didn't go back. We didn't get to go back.

15 Q. Why not?

16 A. He was sick. And she said he will call me back and let
17 me know when he's available.

18 Q. All right. Did you ever talk to any other mortgage
19 companies after the Luthi fellow got sick to do --

20 A. No.

21 Q. -- the same thing with them?

22 A. No.

23 Q. Okay. Let me get you to flip over to page 6, if you
24 would, Mr. Powers.

25 A. (Mumbles to self.) Okay. I got it right now. All

1 hospitalized, at least the two dates in '19, you're
2 living over with Jackie in the new place; right?

3 A. Yes, sir.

4 Q. Okay. And when you're living over with Jackie in the
5 new place are you sending rent checks to Lukas?

6 A. No, I didn't send no rent check to him.

7 Q. Okay.

8 A. Because see I -- go ahead.

9 Q. I'm sorry.

10 A. I couldn't do nothing because I was down for about a
11 few months. I couldn't hardly move. I had to have my
12 nurses get me around, move me around. I could hardly
13 walk.

14 Q. Right.

15 A. This ain't nothing to play with.

16 Q. And Ms. Pearson she was still alive at this point;
17 right?

18 A. Yeah, she was still alive.

19 Q. Okay. And she wasn't paying him rent either?

20 A. No.

21 Q. In fact, she -- she had no intention of paying him rent
22 because she --

23 A. She was through with it. She didn't want to have
24 nothing to do with.

25 Q. She walked away?

1 A. "I'm threw with it."

2 Q. Okay. You walked, too, you just didn't sign the paper?

3 A. Right.

4 Q. Okay. Alrighty. Exhibit 7. I don't even need it
5 necessarily. You don't need to look at it if you don't
6 want to, Mr. Powers. It is the Rental Agreement
7 between you and James and Bettie Briggs, your sister
8 and her husband.

9 (Introduction of three-page document
10 Rental Agreement 107 Stuart Street as
11 Defendant's Exhibit Number 7.)

12 A. Right.

13 Q. For Stuart Street. And it's got under occupants, "Said
14 premises shall be occupied by no more than two adults
15 and one children." Or one child rather. When you were
16 living with your son, when your son took over the Lease
17 after Ms. Pearson died and you stayed over there for a
18 while, but he had too many kids, and you decided it was
19 better for you to rent a little quieter space and you
20 rent from your sister-in-law, how many people were in
21 your sister's house that you're renting?

22 A. I'm by myself.

23 Q. So this stuff about two adults and one child, there was
24 never any child there?

25 A. No, she said if I want to bring -- like Messiah come

1 Q. I understand --

2 A. And I said, "I'll you the rest when I get to the bank
3 on the 3rd."

4 Q. Right.

5 A. My money would come in like that.

6 Q. Right. Right.

7 A. Okay. Go ahead.

8 Q. Right. But in point of fact, you admit you were late
9 with some of your payments?

10 A. Yes, sir.

11 Q. And the receipts from your records show that?

12 A. Yes, sir.

13 Q. Okay. So it wasn't news to you and Ms. Pearson that
14 you had been late in payments before?

15 A. Right.

16 Q. You knew you had been late because you had the paper
17 trail?

18 A. Yes, sir.

19 Q. Okay. All right. Paragraph 14. The next one down.
20 "Ms. Pearson signed the December 3rd letter saying she
21 would vacate --"

22 A. Where you at?

23 Q. I'm sorry. Let me let you get with me.

24 MR. FESSLER:

25 Right here.

1 THE WITNESS:

2 okay.

3 A. All right. Go ahead. All right. Okay. I got.

4 Q. Okay. "Ms. Pearson signed the December 3rd letter
5 saying she would vacate property. Mr. Powers did not"
6 Now, I want to make sure I'm understanding what you did
7 not do. You did not sign the paper like she did, but
8 you did vacate the property?

9 A. Yes.

10 Q. Okay. Then it says, "Mr. Powers made another payment
11 to Mr. Rigdon in January of 2019, which Mr. Rigdon
12 accepted." That's the payment where you talked about
13 earlier you used to have the receipt, but don't have it
14 any longer?

15 A. Yes.

16 Q. Okay. And that payment you made in January of '19,
17 that you say he accepted, was for what month rent?

18 A. December.

19 Q. December of '18?

20 A. Yes.

21 Q. Okay. And you had actually stayed in the house, as had
22 Ms. Pearson, until into January of '19. You-all didn't
23 physically leave until about a month later I think you
24 told me?

25 A. Yes.

- 1 Q. Sometime in January of '19?
- 2 A. Sometime close to that in January.
- 3 Q. Would that be right?
- 4 A. Yeah, sometime in January.
- 5 Q. Okay. Then paragraph 15 talks about a conversation
- 6 that your lawyer had with Mr. Rigdon. Did you talk
- 7 yourself with Mr. Rigdon -- well, let me back up. In
- 8 paragraph 14 you say you made another payment to Rigdon
- 9 in January of '19. Your lawyer apparently talked to
- 10 Mr. Rigdon January 3rd. Do you know when you talked --
- 11 when you made the payment to him in January? Would it
- 12 have been the 1st or the 2nd?
- 13 A. It had to be around the 3rd, somewhere around in there.
- 14 It had to be because that's when I usually go to the
- 15 bank around the 3rd.
- 16 Q. Right. Well, apparently you'd already hired a lawyer
- 17 by January 3rd?
- 18 A. Yeah, I hired that lawyer I talked to him -- I mean Mr.
- 19 Mark, I spoke with him.
- 20 Q. Right. And he talked to Mr. Rigdon January 3rd. So
- 21 I'm trying to figure out what date in January did you
- 22 see Mr. Rigdon to give him this money you gave him in
- 23 January. Wouldn't it have to be before you hired a
- 24 lawyer?
- 25 A. No, I already had the lawyer. I already had the

1 MR. FESSLER:

2 That's it.

3 THE WITNESS:

4 All right. Let me see. Okay.

5 A. Okay. Yeah. Go ahead. Which one did you read out of?

6 Q. Look down in paragraph 32.

7 A. You said -- okay. I got it, kind of got it.

8 Q. Okay. The second sentence -- or excuse me, it's
9 actually part of the first sentence. "In the event
10 that Mr. Pearson or Ms. Dash elect to exercise the
11 option in writing as required by the Option Contract,
12 Plaintiff [which is you] requests that they, or either
13 of them so electing, be required to bring their/his/her
14 portion of the payoff owed." Do you see where I'm
15 reading.

16 A. Yes. Yes.

17 Q. And here's my question. What is the portion of the
18 payoff that Mr. Pearson or Ms. Dash may owe?

19 A. The whole payoff was 19,500. So we're going to split
20 it, but she didn't want to have nothing to do with it,
21 Ms. Dash. That's Jackie, Ms. Pearson, daughter.

22 Q. Okay.

23 A. She said she didn't want to have nothing to do with it.

24 Q. Okay. Mr. Powers, do you dispute when you vacated
25 that property, when you left and you gave Lukas back

1 the key, do you dispute that you owed money as of that
2 time?

3 A. I don't dispute that I owed, but he didn't never tell
4 me that I owed. That I owed money. He didn't never
5 say that to me.

6 Q. well, he told you when he came and gave you-all that
7 paper?

8 A. Yeah, that's the first time he ever come up with it
9 when he was trying to kick us out of it so he could
10 sell that house.

11 Q. Right.

12 A. He was trying to sell that house fast.

13 Q. Right.

14 A. Because of his stuff.

15 Q. And so I want to make sure I understand. So it's your
16 testimony that before he came there to give you-all the
17 Eviction Notice, that from the time you started renting
18 from him until he showed up with that Eviction Notice,
19 he never told you you were behind in your rent?

20 A. Never. At never. We had great conversations.

21 Q. Right.

22 A. I even conversate with him about his problems. You
23 know just said telling him to be careful because things
24 happen. Because he had started looking bad.

25 Q. Okay.

1 and Jackie Pearson, and the lawyer, and presumably the
2 lawyer's secretary?

3 A. Right.

4 Q. Okay. And you-all were at the table and you got those
5 two documents there in front of you, and you're talking
6 about them, and you and Ms. Pearson are getting ready
7 to sign them?

8 A. Right.

9 Q. As you-all are going through the documents I presume
10 that you understood that that Lease you were going to
11 sign you had to make your payments and you had to make
12 them on time; right?

13 A. Right.

14 Q. Okay. What did you think would happen if you just quit
15 making your rent payments?

16 A. I mean I never quit. I was paying him, because we'd
17 talk. There wasn't never because we told him, "we told
18 him we can't afford that." He said, Look, I'm going to
19 go to the bank and fix this up for you-all to pay." He
20 said, "You will be able to pay this house off." He
21 said, "You pay on the house 13 years it's yours."
22 After you pay off in eight years I mean. I'm thinking
23 about Messiah is eight. When Messiah got 13 it would
24 be paid for. You're paying on it eight years. He
25 said, "The only thing I'm going to be responsible is

1 this air-condition. Everything else you're responsible
2 to do in the house, fix whatever needs to be done. I'm
3 not responsible for nothing."

4 Q. okay.

5 A. And he told me the eight years, he said, "I've got pay
6 it. Everything else is your responsibility."

7 Q. So let me make sure I understand. So it's not that you
8 believe that if you quit paying your rent you still had
9 the option to buy the house, it's your position that
10 you never quit paying your rent?

11 A. I didn't quit. I mean he took my money up to all those
12 receipts. He was still taking my money.

13 Q. Right.

14 A. After that. I was still giving you money because you
15 was coming to me and getting it. He never complained
16 like you ain't stop for a year. You ain't stopped for
17 six months. You ain't stopped for three months. You
18 never stop. If I would give you 400 on a Friday, I'd
19 have the rest Monday. He would come by on Monday and
20 get the 150.

21 Q. Right.

22 A. That I owed. He'd come and get that that right there
23 because that check didn't come in on that Sunday. I
24 couldn't get it till Monday because the bank was
25 closed.

1 Q. Okay. The back page -- the two back pages when he
2 showed up with Exhibit 10, the Eviction Notice, and
3 that printout that you told me first thing this morning
4 you didn't think you'd ever seen before --

5 A. I never in my life seen that back then because,
6 "Jackie, where did this come from?"

7 Q. Right. Now, you recall seeing it when he showed up
8 December 3rd with this paper? You now recall seeing it
9 then; right?

10 A. Listen to me. Can I tell you something? Jackie said,
11 "Why are you putting us out?" He said, "You've been
12 late 52 times."

13 Q. Okay.

14 A. "If I've been late 52 times why am I still here seven
15 years You'd should have been said something about
16 that."

17 Q. Okay.

18 A. That's when -- that's when he made the statement.
19 "Well, you've been late 52 times." "Why are you just
20 now saying something?"

21 Q. Okay. So the two pages attached to the Eviction Notice
22 that earlier this morning you told me had never seen
23 until --

24 A. I don't exactly. I mean I might have seen it. Jackie
25 had it.

1 paper trail as reflected in these two pages attached to
2 Exhibit 10?

3 A. I'm not really understanding. I'm not understanding.

4 Q. well, as an example, the first page down at the bottom
5 for the entry January 1, 2018, there's an "X" and
6 according to the top column that "X" means it's a late
7 payment. So do you see where I'm looking 1/1/2018?

8 A. So you're saying I've been late with all these Xes?

9 Q. well, I'm just asking you about the one entry.

10 A. Oh.

11 Q. Right now for 1/1/18 it's an "X" by it, which suggests
12 that that was a late payment.

13 A. I can't remember that. It could have been like I said
14 -- like I said the 3rd could have rolled. I don't know
15 date that rolled on. It could have rolled through the
16 week like a Saturday or Sunday and I didn't pay you
17 till Monday.

18 Q. okay. well, as we sit here today do you have any
19 evidence to dispute that you were late with your
20 payment that was due --

21 A. No.

22 Q. -- on 1/1/18?

23 A. No, I don't have evidence.

24 Q. The same question for the payment right above it that
25 was due December 1, 2017?

1 A. No.

2 Q. The same one above that, November 1, '17?

3 A. No. But I'm saying how is all the xes is late? See
4 all them xes? So every one of them is late?

5 Q. well, no, apparently your payment October 1st of 2014
6 wasn't late. The one September 2014 wasn't late. The
7 1 August '14 wasn't late. Your 1 July was. June was.
8 May was. I mean I'm reading this to say that every
9 time there is an "X" that says late, you were late for
10 that month's rent. If you dispute that then that's
11 what I need to talk to you about. If you don't dispute
12 it that you were late on those months then I can move
13 on.

14 A. But I'm just saying there ain't no way I was late that
15 many times.

16 Q. Okay. Tell me the months that he says you were late
17 that you weren't?

18 A. He said I was late 52 times.

19 Q. I haven't added up to see if these are 52. I do not
20 think they are.

21 A. That's what he told me reading that. He wanted that --
22 well, that's the reason we had to move. Jackie and I
23 had to move, you been late 52 times. Why is he just
24 now saying something.

25 Q. Okay.

1 A. Then he come back and told me the reason why he said
2 it.

3 Q. Right. But let's talk about the document as opposed to
4 what he told you. I could go add them. They're not
5 near 52, but there are a number of late payments
6 between May 1 of 2013 and November 1 of 2018. And by
7 each of those due dates there's an "X" and for every
8 "X" supposedly that's a late payment. If you're
9 telling me this document is wrong, that you weren't
10 late on the payments that are reflected in these two
11 pages, then I'd like you to tell me which ones are
12 wrong.

13 A. I can't. That's something he made up. That's
14 something he did.

15 Q. Right. Do you have any proof that he's wrong in this
16 document?

17 A. No, I don't have no proof.

18 Q. Okay. When you would short pay -- well, let me back
19 up, Mr. Powers. Over the course of the time you were
20 renting were there any times that you would agree that
21 you may roll into a new month and still owe money on
22 the prior month's rent?

23 A. No, we never -- we never talked about nothing like
24 that.

25 Q. So you never got in a situation where you -- you may

1 Q. So it's your position you didn't owe any past due in
2 '17 for your 2015/2016 --

3 A. No, I can't see that. Because I know he only brought
4 this stuff up when it's time, that's something he
5 needed to get that house sold. All of sudden you bring
6 all this stuff up. What else?

7 Q. Mr. Powers, you're -- you're missing me. I'm not
8 arguing with you.

9 A. Oh, yes, I know.

10 Q. But about what point in time he brought the papers --
11 or what point in time that he pointed out you might
12 still owe rent from back in 2015/2016. My question was
13 --

14 A. I can't remember. I just don't remember nothing like
15 that.

16 Q. As we sit here today, do you have any evidence --

17 A. No.

18 Q. -- to dispute that you would have owed some money from
19 '15 and '16 --

20 A. No, I don't have no evidence.

21 Q. -- as of January of '17?

22 A. No, sir.

23 Q. Okay. And a similar question. Go up a little bit to
24 January 1 of 2016.

25 A. Where that at?

1 Q. Go up from where we were just reading.

2 MR. FESSLER:

3 It's this right here.

4 THE WITNESS:

5 What do that be? January the 1st?

6 MR. FESSLER:

7 January the 1st of 2016.

8 THE WITNESS:

9 Okay. Where it's saying minus 531 owed?

10 A. All right. Go ahead while I'm trying to get it
11 straight.

12 Q. Okay. You're with me. We're on the payment date
13 column 1/1/2016?

14 A. Yes. I'm kind of with you, yes.

15 Q. And there's an "X"? Do you see in the column where
16 it's late?

17 A. Yeah.

18 Q. Okay. As we sit here today, Mr. Powers, do you have
19 any evidence to dispute that your payment due on
20 1/1/2016 was late?

21 A. No, sir, I don't have any evidence.

22 Q. All right. Stay with me on that same date, but come
23 over with me on the column. You go to the right do you
24 see that minus 531 under amount past due?

25 A. Yeah.

1 Q. Like while you were still there paying rent?

2 A. Yeah, he would help me sometime.

3 Q. What all did he do to help you?

4 A. The same thing. Like keeping the grass and stuff.

5 He'd do just odds and ins. Make a few dollars to put
6 in his pocket.

7 Q. Okay. All right. Okay. The repairs that you did when
8 you and the white guy who helped you, you-all took out
9 a bunch of -- you took out a wall, all of the
10 sheetrock, you replaced all the wood in it. I think
11 you replaced a header up in the roof.

12 A. Yeah, all that. Yes.

13 Q. We talked about how you -- and you said you had a white
14 guy who lived down the road help you; right?

15 A. Yes.

16 Q. Okay. And you went and bought insulation?

17 A. I bought like a roll of insulation.

18 Q. You bought new lumber?

19 A. Yeah, new lumber. You know that tin up there. I mean
20 I know you -- you can go by and see where I replaced
21 it. It don't leak no more. I was there all the time
22 after that.

23 Q. You don't know whether your repair has leaked or not
24 since you moved out?

25 A. I think it took care of it, because the way Jackie

1 raised Cain I didn't have no other choice. I mean, you
2 know, she didn't play. You done it right or you ain't
3 going to do it.

4 Q. All right. But you've got no idea whether you've got a
5 leak in there now or not?

6 A. No, I ain't been there. No. I don't think it has,
7 because I put good stuff in there.

8 Q. All right. You didn't put shingles back on?

9 A. Yeah, I put the shingles on the top like the shingles
10 was on, but I put that tin down. I joined -- we joined
11 that tin up under there so if it did rain that water
12 would go off through a drop off like there.

13 Q. Well, the branch that hit the roof that caused the leak
14 to begin with from the storm back in '15 that you told
15 me about, when you went up to inspect the roof itself,
16 did you get up on a ladder, did you get up on the roof?

17 A. Yeah, I went up. We had to fix the house from the --
18 you know, you had to go on top of it to fix it.

19 Q. Okay. So you're up on the roof. It's a shingle roof.
20 Had the shingle got a hole knocked in it?

21 A. What it was, see, what happened after it rained and for
22 a while we didn't know. And it kept raining till it
23 make that hole like right here. That's when that water
24 started coming in there.

25 Q. Right. So once you went up on the roof you saw there

1 was noticeable hole?

2 A. Yeah, we tore all that out. But it had done damaged
3 all that stuff before I could get to that. You know
4 all that had done been damaged.

5 Q. About how long between when it got damaged and when you
6 got to it to fix it? How much time went by?

7 A. It was probably -- it was good while had went by,
8 because I noticed that thing that kept getting brown.
9 You know the top kept getting brown and brown. Like it
10 was getting bigger and bigger and bigger. I guess that
11 shingle warped -- you know, that wood busted through
12 there and the water started coming through there.

13 Q. Okay. When you say it was a pretty good while was it
14 weeks? Was it months?

15 A. I don't know. It probably had to be at least a month,
16 because that big storm come through one year.

17 Q. Right.

18 A. And you recall -- I don't know, when they was giving
19 them people all them free stamps and stuff out there
20 on, you know, Pleasantburg, that's when that happened.
21 And them people in line getting all that free food.
22 The free food stamps, that's when it happened. They
23 was paying people storm damage to their house.

24 Q. Okay.

25 A. A lot of people ripped the system off that didn't have

1 the damage.

2 Q. And was it a tree branch that did it?

3 A. Yeah, it was tree, because, you know, cutting that --
4 it was a tree on the side over there. And I cut
5 another big tree out for him.

6 Q. Okay.

7 A. A huge tree. But then there was another one over to
8 the right back there, a big one, that I cut down,
9 because it probably come from that big cedar tree. I
10 had to cut it down because it was sitting beside the
11 house back there.

12 Q. So --

13 A. That must have been the one that hit it.

14 Q. So I mean was there a branch or a tree actually laying
15 on the house after this storm?

16 A. A big limb.

17 Q. A big limb laying on the house?

18 A. A big limb had boom (indicating with hand). So it must
19 have knocked that -- it had to knock that hole in
20 there.

21 Q. Okay.

22 A. But I ended up cutting that tree down, but I never
23 charged him for that. That tree I didn't.

24 Q. Right.

25 A. And I was responsible -- I'm responsible for that.

1 Q. So how did the branch that hit the roof get off the
2 roof?

3 A. We took it off.

4 Q. Okay.

5 A. I had a chainsaw.

6 Q. All right. So you got a chainsaw and went up and cut
7 it and pulled it off the roof?

8 A. Cut it up, you know, like that and threw the pieces
9 off.

10 Q. Right. And looked at the roof. Didn't see any damage
11 then?

12 A. I didn't see no damage then. There wasn't no damage.
13 I mean you know.

14 Q. Right. And then you start noticing on the ceiling
15 browner and that spot was getting bigger and bigger and
16 bigger?

17 A. Yeah.

18 Q. Then finally it just the ceiling collapses?

19 A. Collapsed.

20 Q. Hits the floor?

21 A. By the time that -- by the time it corroded from that,
22 you know, that old presswood. You know what -- you
23 know what presswood is?

24 Q. Right.

25 A. That started to swell up.

1 Q. Right.

2 A. And then it had wet all that -- you know, the stuff I
3 told you about that I pulled out of there.

4 Q. Right. So enough water got in through that hole over a
5 long enough period of time where eventually the ceiling
6 just collapsed?

7 A. It just collapsed and tore all to pieces. But all of
8 it is new in there now.

9 Q. Right.

10 A. We busted all that out, the wall, and put the new tile
11 in the bathroom. I mean in that bathroom. It even
12 tore up the bathroom. That bathroom, it busted it out,
13 too.

14 Q. The limb did?

15 A. No, no, the water where come in. It busted the
16 bathroom. It busted all that bathroom tile out up
17 there like that. It busted that washroom out and tore
18 the wall up.

19 Q. Oh, so the -- so the water that came in from that limb
20 hitting the roof not only made the ceiling collapsed
21 ultimately in -- would that be the living room, the
22 den?

23 A. No, no, that's the washroom. The laundry room.

24 Q. Okay.

25 A. That's the laundry room and the bathroom. All that was

1 joined together.

2 Q. That same water leak caused damage in what area?

3 A. It caused a lot of damage.

4 Q. And what other room did it cause damage in, the laundry
5 room?

6 A. It did the laundry room and the bathroom. It didn't
7 bother like the kitchen or nothing like that.

8 Q. Okay. All right. And the big storm was in '15 and you
9 were telling me about people waiting for the food
10 stamps. Do you have any idea what month in '15 that
11 storm was?

12 A. No, I can't remember.

13 Q. Okay.

14 A. We had a bad storm come through Greenville. In other
15 words, it tore up a lot of stuff.

16 Q. Right. Okay. And, well, whenever it was in '15, the
17 repair that you did when you went up and put the tin on
18 the roof, and when was that repair done? Was that in
19 '16 or in late '15; do you remember?

20 A. I don't exactly remember.

21 Q. Okay. It was a while after the limb hit?

22 A. Yeah, it was a while after that. We might have waited
23 three or four months before when we got that rain when
24 it really started.

25 Q. Right. Right. And did you go up and fix the hole with

1 that piece of tin before that --

2 A. No.

3 Q. -- before or after the ceiling actually collapsed?

4 A. After. After.

5 Q. Okay.

6 A. We had to put new -- put new tin over the top there.

7 Q. Okay. And the work, you told me that you and the white
8 guy from down the road took out the old insulation and
9 replaced the wood and all. What about the damage in
10 the other rooms like in the laundry room and stuff?
11 Did -- did --

12 A. I did that whole -- I had to tear that wall out.

13 Q. Okay.

14 A. I had to tear that wall out in the laundry room. I
15 tore the wall out where you could see the whole room.
16 So I had to paint that whole wall.

17 Q. Right. And did you keep -- I guess you had to go buy
18 insulation, and by lumbar, and by that tin?

19 A. I had to buy everything. The lumber, the tile, like,
20 you know, the tile.

21 Q. Right.

22 A. The commode. The laundry room was so bad we go, "It
23 ain't really that big though."

24 Q. Right. And did you keep your receipts?

25 A. No.

1 A. Oh, yeah. Yeah. I ain't seen nothing since that, but
2 we had been there over a year. It didn't leak. It
3 wasn't leaking no more. I keep telling you.

4 Q. Right. And did you tell me earlier it was leaking so
5 much you had to have five-gallon buckets?

6 A. We had five-gallon buckets and had to sit them in the
7 floor to catch the water.

8 Q. Right. More than one bucket?

9 A. Yeah, I had more than one bucket. I had like them
10 five-gallon buckets, because the running water was so
11 bad.

12 Q. Right. But was the water just falling in one place?

13 A. No, it was coming like over from -- coming from there,
14 some from there, some from there.

15 Q. Okay. So how many different buckets did you have
16 catching water?

17 A. I had about four different buckets.

18 Q. Okay. So you had four different spots in the roof
19 where water was coming?

20 A. Right. One was in the bathroom was leaking, right here
21 by the washing machine back there. Yeah, I had to put
22 one on top of the washer. I put one in the corner.
23 That was leaking that hot water heater.

24 Q. Right.

25 A. I was scared of the hot water heater, because it's got

1 Q. okay. All right. And that fellow that helped you,
2 even though he knew what he was doing, as far as you
3 know he wasn't a licensed builder or a licensed
4 contractor?

5 A. No. No, he was just somebody that stayed up the
6 street. He needed to make some money.

7 Q. okay. And when you moved into that house do you know
8 how old the roof was?

9 A. He just had put a new roof on there.

10 Q. okay.

11 A. He had put a new roof on that house. Shingles, too.

12 Q. Okay. So when you and Jackie moved into it in May of
13 '13 --

14 A. Yeah.

15 Q. Or no.

16 A. Yeah, before that.

17 Q. Eleven.

18 A. Yeah.

19 Q. You did 11 for two years under the old Lease?

20 A. Right.

21 Q. Okay. So when you-all moved in in 2011 he'd just put a
22 new roof on it?

23 A. Yeah, he had put a new roof on it because they was
24 throwing it off.

25 Q. Okay.

1 A. You know put that new carpet and put that hardwood in
2 the living room and it might be in the kitchen.

3 Q. Okay. So when you-all moved in that carpet that you
4 said probably needed to be replaced that was new when
5 you-all moved in?

6 A. Yeah, but it was about that thin carpet (indicating).

7 Q. Right. And then the hardwood floors were new?

8 A. Yeah, the hardwood floor was new.

9 Q. A new roof?

10 A. Hardwood floor in the living room and I think the
11 kitchen.

12 Q. Okay. Okay. All right. How many total holes do you
13 think were in the ceiling? You told me you had four
14 leaks and four buckets. As far as the whole house, how
15 many total holes do you think were in the ceiling from
16 that water coming in?

17 A. I'll probably say about three or four I guess.

18 Q. Okay. The three or four that you had the buckets
19 under?

20 A. Yeah.

21 Q. And were all of those buckets in one room or other
22 rooms?

23 A. One in the bathroom. One was in the bathroom.

24 Q. Right.

25 A. I had one right there by the hot water heater and I had

1 one sitting on top of the washing machine.

2 Q. Okay.

3 A. And I had another one right there at the corner of the
4 door. And when they'd get full I'd have to throw them
5 out all the time it rained to much. You know throw the
6 water out.

7 Q. So enough water was coming into the house it was
8 filling up five-gallon buckets and you were having to
9 --

10 A. At that time it was filling them up fast.

11 Q. Okay.

12 A. And Jackie said, "You'd better go dump that water."
13 I'm trying to sleep.

14 Q. I guess you had to wake up in the middle of the night
15 to empty your bucket.

16 A. But, you know, that's the way I come up in the old
17 days. I could see the ceiling in our house. I got
18 eight brothers and eight sisters. I come up with
19 outdoor bathroom and no running water. I know you
20 probably didn't. So I'm used to that.

21 Q. You're tougher than me. I wouldn't -- I'd just as well
22 have had running water and a bathroom.

23 A. We didn't have no running water like that.

24 Q. Right.

25 A. I'm 73 and we never had running water. Our spigot was

1 on the outside.

2 Q. Gotcha. Okay. Well, Mr. Powers, I'm going to make a
3 loaded statement. Unless your lawyer asks you any
4 questions that prompt me to ask you any more I think I
5 am finished with my questions. And thank you for your
6 patience in answering them.

7 A. All right. And I appreciate it. I enjoyed it. You're
8 a nice man. I've never met you, but I know good people
9 when I see them.

10 Q. Well, thank you, Mr. Powers, I appreciate that.

11 A. When your tree fall call J.P. Tree Service. I ain't
12 hard to find.

13 Q. All right. You'd probably be a little cheaper than
14 Snyder's Tree Service, which is who my wife likes to
15 call.

16 A. You'd better call me.

17 Q. I know. If it were up to me I would call you.

18 A. I mean I deal with a lot of good people.

19 Q. All right.

20 EXAMINATION BY MR. FESSLER:

21 Q. All right. So I just have a some follow-up questions I
22 guess from that and I will just go ahead. So, Mr.
23 Powers, you were just talking about the leaks in the
24 roof. Can you tell me what were the rooms that were
25 affected by the water that came in?

1 you the sky from the inside of my bedroom where you
2 look where that big hole is. Not that the hole that I
3 fixed another one that going to have to be fixed.

4 Q. Okay. Did you ever talk to Mr. Rigdon about what the
5 nature of your relationship with Jackie Pearson was?

6 A. No, we never talked about that. She was my friend.
7 well, we was going to get married in August. I said,
8 "You're going to be my wife one day. My fiancé."

9 Q. Okay.

10 A. But we never, we never discussed about that.

11 Q. Okay. But did you ever mention who Jackie was to you
12 to Mr. Rigdon?

13 A. Just my friend. My girlfriend. Jackie was my
14 girlfriend.

15 Q. Okay.

16 A. We never discussed that, but later on I told her we was
17 going to get married.

18 Q. Okay. Did you and Jackie move out -- so in January of
19 2019 or thereabouts after Mr. Lukas -- after Mr. Rigdon
20 brought the Eviction Notice that is identified as
21 Defendant's Exhibit 10, after he brought this to you-
22 all, did you and Jackie move out together or did she
23 move out first and then you move?

24 A. She went and got the house, because I wasn't going to
25 move. Then she just came and said, "Jerry, this thing

1 is \$1,000 a month. I can't afford that." You know as
2 lovers I wasn't going to let her struggle like that.
3 I've been with you almost 12 years. I know you can't
4 afford that, so I'm not going to put you in that and
5 let you struggle, the person that took care of me.

6 Q. All right.

7 A. She helped through my sickness, all of it.

8 Q. All right. And let's talk about when you called Mr.
9 Rigdon's phone and you were connected to somebody
10 claiming to be his mother.

11 A. Right.

12 Q. And I think you said that happened in July of 2019?

13 A. Yes. Yeah.

14 Q. Okay. Had you given up on 39 2nd Avenue --

15 A. No. No. No, I hadn't give up. That's why I came to
16 got you, because I told him, I said, "Lukas, I'm going
17 to get me a lawyer and let them tunnel my way out." He
18 said, "You're going to do me like that?" I said,
19 "You're doing me like that. You put me in the street.
20 You put my family in the street. You don't care."

21 Q. Okay.

22 A. But he said, "I've got to do what I've got to do,
23 because I'm behind on my finances and child support and
24 alimony. And I owe the hospital."

25 Q. All right. And you said you first came to Legal

1 Q. You never got it back?

2 A. No.

3 Q. Okay. I'm showing you what was previously marked as --
4 it was marked as Defendant's Exhibit 5. This is the
5 Option to Purchase. Can you tell me what is your
6 understanding of an Option Contract? What is that?

7 A. My understanding was like after eight years I owned the
8 house if I could keep paying for that eight years.

9 Q. Okay. And was this agreement separate from -- was the
10 Option Contract separate from the Lease?

11 A. All of it was like, you know, stapled.

12 Q. Was it a separate contract?

13 A. Yeah. Let me see that. When I went to see the lawyer
14 and everything?

15 Q. Yes.

16 A. All of that was stapled in one paper. Like that.

17 Q. Right.

18 A. You know like this was all in one big sheet stack. All
19 of it was stapled together like this. Like together.

20 Q. Right.

21 A. That and this contract and everything.

22 Q. Did you understand that this contract was a separate
23 second contract --

24 A. No.

25 Q. -- in addition to the Lease Agreement?

- 1 A. No, I didn't understand.
- 2 Q. You didn't understand that?
- 3 A. No.
- 4 Q. Okay. But you thought you were buying the house?
- 5 A. Yeah.
- 6 Q. And why did you think you were buying the house?
- 7 A. He told me that "After eight years you pay that 58,200
- 8 it's your house. You've got to start paying your own
- 9 taxes after eight years." Because me and him, we
- 10 talked about it. I said, "I won't back out. I'll pay
- 11 you for it."
- 12 Q. Okay. And I think you testified that at the time that
- 13 you signed the Option to Purchase and the Lease
- 14 Agreement in May of 2013 that you had paid two
- 15 different payments of \$550?
- 16 A. Right. Yeah.
- 17 Q. You paid two different payments; is that correct?
- 18 A. Yes, sir.
- 19 Q. Okay. Okay. You said that Mr. Rigdon credited you a
- 20 month rent in December at one time. Did you ever do
- 21 any work for Mr. Rigdon?
- 22 A. Well, he did that -- gave us that for Christmas.
- 23 Q. Right. Did you ever do any work for him that he gave
- 24 you money?
- 25 A. Oh, yeah, I cut that tree down for him, that big old

1 tree.

2 Q. okay. Could you tell me about that?

3 A. He gave me -- look, I did that big, huge tree. It ran
4 like the length, it was that big. All the way to road
5 and back. I cut the tree out for \$1,200. He gave me
6 600 cash. I can call the guy right now and you can
7 listen to him. And then he took the other and put it
8 on the rent, because he was going credit to my rent. I
9 paid Darlington Briggs and another guy, Steven, did the
10 work because the tree was so big.

11 Q. You paid a Darlington Briggs?

12 A. His name is Darlington Briggs.

13 Q. And a Steven?

14 A. A guy named Steven. A little small, little white guy.
15 They did all of that.

16 Q. okay.

17 A. I paid them the 600 he give me to do that and the other
18 was credited toward my rent.

19 Q. There other 600?

20 A. Yeah.

21 Q. All right.

22 A. I mean I can call and let him tell you right on the
23 spot about that tree.

24 Q. In addition to going to Luthi Mortgage, did you go to
25 any other bank to try to get financing?

1 A. I went to Bank of America.

2 Q. You did. And what did Bank of America tell you?

3 A. Well, our credit didn't go through.

4 Q. Okay. And how do you plan to pay the Option off?

5 A. My brother would give me the money or my sister. I can
6 call them right now and they'll be right out. I can
7 call them right now and they'll give me the money to
8 pay it off, what I need to pay it off, which is 19,500.

9 Q. Okay. And do they have the financial ability?

10 A. It was \$20,000, but that 550 I gave Lukas that's --
11 that's what knocked it off to 19,500. It was 20, but
12 like I told you I gave him that check for that December
13 payment.

14 Q. Right.

15 A. That's where it knocked it down to 19,500.

16 Q. Okay.

17 MR. FESSLER:

18 I don't think I have any other questions for Mr.
19 Powers.

20 MR. HAYNSWORTH:

21 I have no more.

22 THE WITNESS:

23 I appreciate it, sir.

24 (THERE BEING NO FURTHER QUESTIONS, THIS DEPOSITION CONCLUDED
25 AT 2:07 P.M.)

THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

CASE NO. 2020-CP-23-02076

**PLAINTIFF'S RESPONSES TO THE
FIRST INTERROGOATORIES
OF RIZAN PROPERTIES LLC**

Rizan Properties LLC, Anthony Pearson,
and Tiesha Dash,

Defendant(s)

Plaintiff Jerry Powers, by and through the undersigned counsel and pursuant to Rule 33, SCRCF, responds to Rizan Properties, LLC's First Interrogatories as follows:

The Responses given below are made without waiving or intending to waive, but to the contrary, intending to preserve and preserving:

- (a) The right to object, on the grounds of competency, privilege, relevancy or materiality, or any other proper grounds, to the use of this information for any purpose, in whole or in part, in any subsequent proceeding in this action or in any other action;
- (b) The right to object, on any and all grounds, at any time, to other discovery procedures involving or relating to the subject matter of the Interrogatories and/or Requests to Produce to which the Defendants respond herein,
- (c) The rights, at any time, to revise, correct, add, or clarify any of the responses given herein.

Interrogatory No. 1:

Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

Response:

Jerry Powers 107 Stuart St. Laurens, SC 29360. Any written statement is protected by the attorney client privilege.

Bettie Briggs. 131 Miller St. Laurens, SC 29360. A written statement from Ms. Briggs has been provided.

Robert Adams. 5 Cheekwood Ct., Simpsonville, SC 29680. No written or recorded statement has been taken.

Anthony Pearson. 350 Fairforest Way, Apt. 8201, Greenville, SC 29607. No written or recorded statement has been taken.

Tiesha Dash. 3125 49th St., Woodside, NY 11377. No written or recorded statement has been taken.

Meredith Rigdon. 22 Gilray Dr., Greenville, SC 29617. No written or recorded statement has been taken.

Rodney Pitts. 547 Charlotte Rd., Clinton, SC 29325. No written or recorded statement has been taken.

Jack Heckman, Esq. 409 Pettigru St., Greenville, SC 29601. No written or recorded statement has been taken.

Kelly (last name not known) with Luthi Mortgage. 745 Wade Hampton Blvd. Greenville, SC 29609. No written or recorded statement has been taken.

Perry Luthi. 745 Wade Hampton Blvd. Greenville, SC 29609. No written or recorded statement has been taken.

Interrogatory No. 2:

Set forth a list of photographs, plats, sketches or other prepared documents in possession of the party that relate to the claim or defense in the case.

Response: A list of such documents is provided in conjunction with Plaintiff's Responses to Defendant's First Requests for Production of Documents. Left off of that list, yet still provided with the Responses, is Mr. Powers' lease for 107 Stuart St.

Interrogatory No. 3:

In paragraph 16 you contend that Mr. Powers had been "taking steps to maintain the property". With regard to that allegation please describe in detail the steps being taken or which were taken to maintain the property and identify any witnesses by name, address and phone number, who can discuss the steps taken to maintain the property. Please also provide each of the specific dates anyone was present on the property for purposes of maintaining.

Response:

Rodney Pitts. 864-230-9503. The mailing address Mr. Powers has for Mr. Pitts is 547 Charlotte Rd., Clinton, SC 29325.

Mr. Pitts lived on Hammett St. near 2nd Ave., and Mr. Powers engaged him to watch over 39 2nd Ave. and maintain the yard. He would daily ride by or sit at the property to monitor it for any unwanted or possibly criminal activity. He also would perform work on it as needed, including, for example, mowing the yard, clipping hedges, and picking up trash so as to keep the property looking occupied and well kept. This would deter people who might want to commit unwanted and/or criminal acts on or around vacant property or who might want to squat at vacant property. Mr. Pitts was last at the property on October 27, 2019, when a female, who was on the phone with the police officer, instructed the officer to turn him away and put him on trespass notice, which the officer did.

Interrogatory No. 4:

Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

Response:

\$500 for April 2020 and \$550 a month thereafter, which rent continues to accrue monthly, plus interest.

Interrogatory No. 5:

List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

Response:

Plaintiff has not retained an expert to use at the trial of this case. Plaintiff reserves the right to do so and will update this Response should he do so.

Interrogatory No. 6:

For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

Response:

The following summaries represent a good faith attempt to summarize the important facts known to the witnesses, to the best of the plaintiff's knowledge, but in no way are the summaries intended to be full accounts of all the potentially relevant facts known to the witness or function to limit the facts to which a witness might testify.

Jerry Powers can testify about his relationship with Jackie Pearson, about meeting Lukas Rigdon, about initially renting from him; about how Mr. Rigdon approached him with an offer to buy 39 2nd Ave.; about Mr. Powers and Ms. Pearson agreed to this; about the closing at the attorney's office; about payments towards purchasing 39 2nd Ave.; about Mr. Rigdon only complaining about Mr. Powers payments in late 2018 when Mr. Rigdon came to Mr. Powers and told him he would have to sell 39 2nd Ave. because he had gotten divorced and he owed child support and/or other expenses, as plaintiff recalls; about how Mr. Rigdon told Mr. Powers and Ms. Pearson to leave and how he was ready to put Mr. Powers and his family out on the street; how Ms. Pearson left but how Mr. Powers rejected this maneuver; how Mr. Powers ended up in the hospital multiple times between December 2018 and April 2019; how stayed with Ms. Pearson in order to help her with her rent; how he continued to have the yard at 39 2nd Ave. maintained and the house looked after until Mrs. Rigdon or someone acting on her behalf told the person who was looking after the property for Mr. Powers that he could not return or it would be considered a trespass; about how he learned of Mr. Rigdon's death in or about July 2019 when he called Mr. Rigdon's telephone to inform him that Jackie Pearson had passed and ended up speaking to someone claiming to be Mr. Rigdon's mother; how he sought out financing to complete the purchase of 39 2nd Ave. by going to Bank of America and then Luthi Mortgage; how he received commitments from family his sister and step-brother to complete the purchase; how Mr. Powers, through his attorney, exercised the Option Contract in writing through the attorney for the Estate of Lukas Lavette Rigdon, the sole member of Rizan Properties, LLC; how Rizan Properties, LLC wrongfully refused to enter into a purchase agreement as called for by the Option Contract; and how he has been damaged by having to rent elsewhere. He also can testify to the condition of 39 2nd Ave. and any work he did on the property, including installing a water heater, a commode, and redoing the back wall and putting on a tin top. He can testify about conversations with Ms. Dash and Mr. Pearson and Mr. Rigdon about the house.

Bettie Briggs can testify about committing to provide funds to Mr. Powers to enable him to pay the remaining balance on the Lease with Option Contract and about renting 107 Stuart St. to him.

Robert Adams to any conversations he has had with Mr. Powers about the case as well as his commitment to provide funds to Mr. Powers to enable him to pay the remaining balance on the Lease with Option Contract.

Anthony "Shacko" Pearson can testify about any conversations he has had with Mr. Powers or Mr. Powers' attorney about 39 2nd Ave. and the litigation surrounding it, including efforts to obtain a statement from him disclaiming any interest he might claim in the Option Contract, his initial consent and his later disagreement.

Tiesha Dash can testify about disclaiming any interest she might have claimed in the option contract to purchase 39 2nd Ave. She can testify about her observations of Mr. Powers and Ms. Pearson's relationship during the time she lived with them at 39 2nd Ave.

Rodney Pitts can testify that he performed various tasks for Mr. Powers (e.g. mowing the yard, painting the porch, clipping hedges, picking up trash) at Jerry Powers' request both before and after December 2018 and during 2019 because Mr. Powers did not want anyone to think that the property was not occupied. He also can testify about an interaction with a policeman in which he was put on trespass and told by police not to return to the property one time when he was over there tending to the property.

Kelly (last name not known) with Luthi Mortgage can testify about any conversations she had with the plaintiff or with the undersigned attorney for the plaintiff regarding Mr. Powers getting financing to pay off the Option Contract from approximately December 2018 through approximately the end of May 2019.

Perry Luthi can testify about a proposal he had and a conversation he had with the undersigned attorney for the plaintiff on December 17, 2018 to discuss proposing to Mr. Ridgon that he purchase the Lease with Option contract from Rizan Properties, LLC. Plaintiff does not know if Mr. Luthi and Mr. Ridgon ever spoke.

Plaintiff does not know what Meredith Ridgon knows about the affairs of Rizan Properties, LLC.

Interrogatory No. 7:

Please identify all social networking websites, internet groups, forums, organizations, or other entities of which plaintiff (or defendant) is a member, has an account or profile or otherwise participates. This interrogatory is intended to include all account or identifying information

concerning internet websites such as, but not limited to, Facebook, MySpace, Twitter, Linked In, etc.

Response:

Plaintiff has a Facebook profile.

Interrogatory #8:

Please identify any information, material, writings, posts, updates, correspondence, photographs, email and other items that have been deleted from any account or profile identified above after the date of the incident giving rise to this lawsuit.

Response:

Plaintiff objects to this question as overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of any relevant matter.

Subject to this objection, Plaintiff has not posted on his Facebook account since 2017.

Interrogatory #9:

Please state the date that Jerry Powers last continuously occupied the property at issue.

Response:

Plaintiff recalls last occupying occupied 39 2nd Ave. on or about the end of January 2019 or early February 2020.

Interrogatory #10:

In your complaint at paragraph 16 you indicate Mr. Powers was hospitalized several times. With regard to those hospitalizations, please state the specific dates Mr. Powers was hospitalized, where he was hospitalized and the reason for his hospitalization.

Response:

Plaintiff was admitted at Bons Secours from 12/19-12/21/2018 for myocardial infarction. He was admitted again from 2/8-2/10/2019 at Bons Secours for acute coronary syndrome and/or myocardial infarction, and again from 4/10-4/22/2019 at Greenville Memorial for "Ischemic coronary artery disease status post acute anterior myocardial infarction requiring emergent percutaneous intervention."

See also, medical records produce in response to Rizan Properties, LLC's First Requests for Production of Documents.

Interrogatory #11:

In paragraph 30 of your complaint you indicate you have joined Anthony Pearson and Tiesha Dash because they are the children of Jackie Pearson. Paragraph 30 further alleges that plaintiff has communicated with Ms. Dash and confirms she gives up any right to exercise ... With regard to those allegations, please state when plaintiff communicated with Ms. Dash, how that communication was made and identify any documents relative to such communications, please also provide the address and phone number for Ms. Dash.

Response:

The phone number Plaintiff has for Ms. Dash is 929-955-6320. The address Plaintiff has for Ms. Dash is 3125 49th St., Apt. 6C, Woodside, NY 11377.

Plaintiff, with his attorney, called Ms. Dash on November 1, 2019. Plaintiff's counsel explained to Ms. Dash that Mr. Powers intended to complete the purchase of 39 2nd Ave. and asked whether she wanted to be involved in and contribute money to that purchase or whether she did not, in which case he asked her if she would disclaim and/or give up any interest she might have to purchase the property. She opted for the latter. She later signed a statement to that effect., which is produced in response to Rizan Properties, LLC's First Requests for Production of Documents.

Shortly prior to signing and returning the disclaimer, she called the plaintiff and told him that she lost the paper the plaintiff's attorney had sent her and asked him to have his attorney send another paper to her to sign.

Prior to this the plaintiff spoke to Ms. Dash about giving up any claim to 39 2nd Ave. and she said she would and to let her know what she needed to do.

Plaintiff does not know the exact dates on which he spoke with Ms. Dash.

Interrogatory #12:

In paragraph 34 of your complaint you indicate plaintiff has been damaged by having to pay rent elsewhere to live after Rizan refused to consummate the option....With regard to the foregoing allegation, please identify by name and address where plaintiff has paid rent, produce a copy of any rental agreement(s) relative to where plaintiff has been paying rent and identify to whom plaintiff pays rent and their contact information.

Response:

Plaintiff pays \$550 a month to James and Bettie Briggs at 131 Miller St. Laurens, SC 29360. He rents 107 Stuart St. in Laurens, SC.
The rental agreement is produced in response to Rizan Properties, LLC's First Requests for Production of Documents.

This the 13 day of October, 2020.



Mark Fessler
701 South Main St
Greenville, SC 29601
(864) 679-3254 (phone)
(864) 679-3260 (fax)

REQUESTS FOR ADMISSION

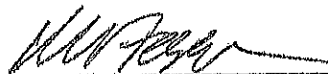
Please Admit or Deny the following:

1. That the documents attached hereto as Exhibit A are true and accurate copies of the correspondence between the undersigned attorney for Jerry Powers and Jacqueline Patterson, Esq. as attorney for the Estate of Lukas Lavette Rigdon.

Exhibit A consists of 17 pages and includes the following:

- (1) Letter dated October 15, 2019 with attachment;
- (2) Letter dated October 28, 2019;
- (3) Letter dated November 1, 2019;
- (4) Letter dated November 7, 2019;
- (5) Email dated November 12, 2019 with attachment.

Nov 19, 2020
Greenville, SC


Mark Fessler (#77376)
South Carolina Legal Services
701 S. Main Street
Greenville, SC 29601
Phone: 864-679-3254

Attorney for Plaintiff



South Carolina
Legal Services

701 South Main Street, Greenville South Carolina 29601
Phone: (864) 679-3232 Fax: (864) 679-3260
www.sclsgal.org / www.lawhelp.org/sc

October 15, 2019

Jacqueline H. Patterson, Esq.
1088 North Church St.
Greenville, SC 29601

Re: Jerry Powers and Rizan Properties LLC
Lease with Option to Purchase of 39 Second Ave., Greenville

Dear Ms. Patterson:

I am writing on behalf of my client, Jerry Powers as I understand you are representing Meredith Rigdon, the personal representative for Lukas Rigdon's estate. My client wants to pay off a lease with option to purchase contract that he and his fiancé, Jackie Pearson, had with Rizan Properties LLC. A copy of the contract is attached for reference. Ms. Pearson passed away on July 1, 2019 and no longer has an interest in the contract.

Mr. Powers wants to exercise the option to purchase and pay off the contract for \$19,500. I understand he will be able to provide cash at closing. Please let me know by October 29, 2019 if this is acceptable to your client so that we can move forward. If you have any questions or concerns about the matter, please do not hesitate to contact me at 679-3234 or by email at markfessler@sclegal.org. I look forward to hearing from you.

Sincerely,

Mark Fessler
Staff Attorney

cc: Jerry Powers



Carrington S.B. Wingard - Chairman; Regina Lewis - Vice-Chairman; William L. Byrd - 2nd Vice-Chairman; Marielorena Valentin - Secretary; Angela Deanne Rowe - Treasurer

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

LEASE AGREEMENT

THIS AGREEMENT entered into by and between Rizan Properties, LLC, hereinafter referred to as Lessor, and Jerry Powers and Jackie Pearson, hereinafter referred to as Lessee,

WITNESSETH

FOR AND IN CONSIDERATION of the mutual covenants hereinafter set forth, the parties hereto, for themselves, their successors and assigns, agree as follows:

ARTICLE I.
DESCRIPTION OF PREMISES

Lessor, for and in consideration of the rents, covenants and agreements hereinafter specified to be paid, kept and performed by the Lessee, leases the premises consisting of a house and lot designated as 39 2nd Ave., Greenville, SC 29609 (the "Demised Premises").

ARTICLE II.
RENT, LATE FEE & SECURITY DEPOSIT

Lessee shall pay to Lessor as rent for the Demised Premises the amount of Fifty two Thousand Eight Hundred and No/100s (\$52,800.00) Dollars. Rent shall be payable at the rate of Five Hundred Fifty and No/100s (\$550.00) Dollars per month in advance. Rent not received by the Lessee by the fifth (5th) day of each month shall be deemed late and the Lessee shall be charged a \$50.00 late fee. A Security Deposit of Five Hundred Fifty and No/100s (\$550.00) shall be paid from Lessee to the Lessor.

ARTICLE III.
BEGINNING DATE OF LEASE TERM

The beginning date of this Lease shall be May 1, 2013. The term of this Lease will begin at that date and will continue until eight years from the beginning date herein.

ARTICLE IV.
RENTER'S INSURANCE

Lessee covenants and agrees that it will at all times during the term of this Lease or any extension thereof at its own expense, maintain and keep in force comprehensive renter's insurance for damage to the Lessee's personal property. Lessor shall not be liable for damage to, or theft of Lessee's personal property.

ARTICLE V.
INSURANCE AND TAXES

Lessor shall maintain all expenses for taxes and insurance on this property for and during the term of this lease; if the Lessee, by reason of its use of the Leased Premises or any other use, causes an increase in the insurance rates of the Lessor, Lessee will compensate the Lessor by paying additional rent to equal the amount of the increase in the rate caused by the Lessee's use. This amount shall be due and payable to the Lessor on the first day of the month immediately following any such increase.

ARTICLE VI.
UTILITY CHARGES

The Lessee shall pay all charges for all utilities, including but not limited to, water, gas and electricity during the term of this lease.

ARTICLE VII.
MAINTENANCE AND REPAIRS

The Parties hereto do hereby agree that the maintenance of the structure of the house and the major systems (electrical, plumbing, heating and air) shall be the responsibility of the Lessee, except where the damage is due to the negligence of the Lessor or one of his/her agents. General cleanliness of the yard and the interior of the house shall also be the responsibility of the Lessee.

ARTICLE VIII.
REMOVAL OF IMPROVEMENTS BY LESSEE UPON TERMINATION OF LEASE

Upon expiration of the term of this Lease, or sooner termination if applicable, Lessee, at Lessee's expense, shall remove all property belonging to Lessee. Lessee shall repair all damage to the Premises caused by such removal, and restore the Premises to the condition they were in prior to removal of said property, normal wear and tear excepted. It is further expressly understood and agreed that the Premises are in good repair at the time of signing this Lease.

ARTICLE IX.
ASSIGNMENT AND SUBLLEASE

It is expressly understood by the Parties hereto that the Demised Premises shall not be sublet, or this lease assigned to any corporation, person or persons without the express written consent of the Lessor herein. It is further agreed by the Parties that the Premises shall be used as single family residential only, and shall be used for no other purpose without the written consent of the Lessor herein.

ARTICLE X.
EFFECT OF DAMAGE TO OR DESTRUCTION OF DEMISED PREMISES

If the Demised Premises are damaged or destroyed, in whole or in part, by fire or other casualty during the term of this Lease, Lessor, with due diligence, shall repair, restore, rebuild or replace the Premises or such portions that are destroyed or damaged so that the property shall be substantially the same as prior to such damage. If the destruction or damage shall be more than 50% of the insurance value of the Premises, Lessor, at Lessor's option, may cancel and terminate the Lease by giving written notice to Lessee within 30 days after the date such damage or destruction has occurred. In such event this Lease shall terminate on the date specified in such notice, and Lessor shall not be obligated to repair or rebuild. In the event repair of the building is required or elected by Lessor, rent shall be abated for the time during which the Demised Premises may not be used by Lessee. Lessee shall be entitled to receive a pro-rata refund out of any advancement paid by it for the period the Premises were unusable by reason of destruction or damage.

ARTICLE XI.
LESSOR'S RIGHT TO INSPECT

Lessee shall permit Lessor, its agents, or other representatives, to enter the Demised Premises, or any part thereof, upon receipt of 24 hours written or oral notice, to examine said Premises. Lessor shall be reasonable in its inspection requests and Lessee shall not withhold such permission unreasonably.

ARTICLE XII.
MANNER OF GIVING NOTICES

Any notice from either party to the other, pursuant to the provisions of this Lease or of any law, shall be given by Registered or Certified Mail, addressed to the party for whom it is intended at the address of the respective party as set forth on the signature page. The date of delivery as indicated on the Return Receipt shall be deemed to be the effective date of Notice for purposes of determining questions hereunder.

ARTICLE XIII.
LEASE SUBORDINATE TO ENCUMBRANCES

This Lease is subject and subordinate to any Mortgages now on or hereafter may be placed against the premises, and to all advances made or that may be made on account of the encumbrances, to the full extent of the principal sums secured thereby and interest thereon.

ARTICLE XIV.
LESSOR'S WRITTEN APPROVAL REQUIRED FOR ALTERATION

Except as expressly provided herein, Lessee shall not make any alterations, improvements or additions to the Premises without prior written consent of Lessor.

ARTICLE XV.
RIGHTS OF PAYMENT UPON DEFAULT

Lessee shall pay as rental, in addition to the rental herein reserved, any and all sums that may become due by reason of the failure of Lessee to comply with all of the covenants of this Lease, including any and all damages, costs and expenses the Lessor may suffer or incur by reason of any default of Lessee; or failure on Lessee's part to comply with the covenants of this Lease, and also, any and all damages to the Demised Premises cause by any act or neglect of the Lessee, its agents, employees, or invitees.

ARTICLE XVI.
DEFAULT

If Lessee shall continue in default for payment of any rent reserved hereunder for a period of ten (10) days after notice of such default has been given to Lessee, or if the Lessee shall default in the performance of any of the other terms, conditions or covenants in this Lease to be observed or performed by it, and Lessee does not remedy such default within ten (10) days after notice, or in the event that the Premises are vacated before the expiration of the Lease, or should the Lessee go into bankruptcy, voluntary or involuntary, or be placed in the hands of a receiver or make a general assignment of the property for the benefit of a creditor or file any petition involving the insolvency of the Lessee, then and in such event or events, the Lessor shall have the right to terminate this Lease. Lessor shall have the immediate right of re-entry and may remove all persons and property from the Demised Premises and such property may be removed and stored in a public warehouse, or elsewhere, at Lessee's expense, all without resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby. If Lessor should elect to re-enter as herein provided or take possession pursuant to legal proceedings, Lessor may either terminate this Lease, or from time to time without terminating this Lease may make such alterations and repairs as may be necessary in order to relet the Demised Premises, and relet said Demised Premises for such term and at such rentals and upon such other terms and conditions as Lessor may deem advisable. In the event of such reletting, all rentals received by Lessor shall be applied: First, to the payment of any indebtedness other than rent due hereunder from Lessee to Lessor; Second, to the payment of any costs and expenses of such reletting, including the expenses of alterations and repairs; and

Third, to the payment of rent due and unpaid hereunder, and the residue, if any, shall be held by Lessor and applied in payment of future rent due and unpaid hereunder. If such reletting shall yield rentals insufficient for any month to pay the rent due by the Lessee hereunder for that month, the Lessee shall be liable to Lessor for any deficiency and same shall be paid monthly. No such re-entry or taking possession of the leased building by the Lessor shall be construed as an election to terminate this Lease unless a written notice of such intention is given by the Lessor to Lessee at the time of such re-entry. Notwithstanding any such re-entry and reletting without termination, the lessor may at any time thereafter elect to terminate this Lease for such previous breach, including the cost of recovering the Demised Premises and the difference in value between the rent reserved hereunder for the remainder of the term and the reasonable rental value of the property for the remainder of the term.

ARTICLE XVII. QUIET ENJOYMENT

Lessor warrants that Lessee shall be granted peaceable and quiet enjoyment of the Demised Premises free from any eviction or interference by Lessor if Lessee pays the rent and other charges provided herein, and otherwise fully and punctually performs the terms and conditions imposed on Lessee.

ARTICLE XVIII. TIME OF THE ESSENCE

Time is of the essence for each provision, covenant, and condition herein contained, and on the part of Lessee or Lessor to be done and performed.

ARTICLE XIX. LEASE BINDING ON SUCCESSORS AND ASSIGNS

The within covenants and agreements shall be binding on the parties hereto, their respective successors, heirs, executors, administrators and assigns.

ARTICLE XX. HAZARDOUS MATERIAL

Lessee shall not use or permit to be brought into the Demised Premises or the real estate, any inflammatory or explosive substance or other article deemed hazardous to person or property, nor shall Lessee do or permit to be done any act or thing which will invalidate or be in conflict with fire or other insurance policies covering the Demised Premises, or any part thereof. Lessee shall not do or permit to be done anything in or upon the Demised Premises or bring to keep anything therein which shall not comply with all rules, orders, regulations or requirements

of the Board of Fire Underwriters or any similar organization (Lessee shall at all times comply with all such rules, orders, regulations or requirements), or which shall increase the insurance premiums or the rate of insurance on the Demised Premises, its appurtenances or contents. If by reason of the failure of Lessee to comply with the provisions of this Lease, or by reason of Lessee's use or occupancy of the Demised Premises, any insurance premium shall at any time be increased, Lessee shall reimburse Lessor for all such increase in premium; provided, however, that receipt of such reimbursement from Lessee shall not be deemed a waiver of Lessee's default under this paragraph, and Lessor shall not be estopped from enforcing his/her other remedies against Lessee on account of such default.

ARTICLE XXI
APPLICABLE LAW

This Lease shall be governed and construed under the Laws of the State of South Carolina.

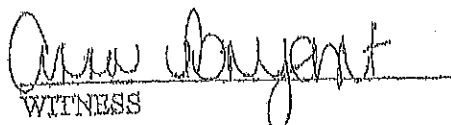
ARTICLE XXII
MISCELLANEOUS

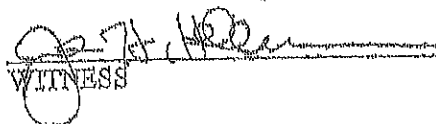
The Lessee covenants and agrees to hold harmless and indemnify the Lessor from and against all losses, liability or expenses that may be incurred or in any way growing out of the negligent use, misuse, or willful abuse of the premises hereby leased.

Other conditions/covenants:

IN WITNESS WHEREOF, the parties hereunto set their hands and seals as of this ____ day of April, 2013,

LESSOR:


WITNESS


WITNESS


RYAN PROPERTIES, LLC

LESSEE:

Ann Bryant
WITNESS

Gerry E. Powers
JERRY POWERS

Joe St. John
WITNESS

Jackie Pearson
JACKIE PEARSON

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

OPTION TO PURCHASE

KNOWN ALL MEN BY THESE PRESENTS, that Rizan Properties, LLC,

in consideration of Five Hundred Fifty and No/100s (\$550.00) Dollars,

the receipt of which is hereby acknowledged, have granted, bargained and delivered and by these presents do grant, bargain and deliver unto Jerry Powers and Jackie Pearson;

AN OPTION TO PURCHASE

1. The Grantee shall have the option to purchase premises known as 39 2nd Ave., Greenville, SC 29609 for the period of eight years from the date of this agreement for the price of Fifty Two Thousand Eight Hundred and No/100s (\$52,800.00) Dollars. The total consideration herein shall be payable as follows: 1) \$550.00 payable at the signing of this agreement; 2) \$52,300.00 payable upon closing. Should the Grantee exercise its right to purchase, the amount of \$550.00 plus \$550.00 of each month's rent paid shall be applied to the purchase price at closing. Should the Grantee fail to exercise his option to purchase all monies paid hereunder are considered forfeited as consideration for the option.

2. If the Grantee chooses to exercise his option to purchase, all expenses necessary for the consummation of the sale shall be paid as follows: 1) Seller shall pay for deed preparation, deed recording fees, costs associated with the mortgage payoff, state and county deed stamps and other customary Seller's expenses. 2) The Grantee shall pay all lenders charges in connection with financing, customary purchaser's attorney's fees, title insurance, recording fees and all other customary purchaser's expenses. If the Grantee chooses to exercise his option to purchase, the Seller agrees to deliver a proper statutory warranty deed free of all liens and encumbrances with all stamps affixed thereto. The Seller shall pay for deed stamps, document preparation and all expenses necessary to deliver clear, marketable and insurable title to the premises. The parties shall formally execute a purchase contract within ten (10) days of the purchaser's notification to the seller that he is exercising this option.

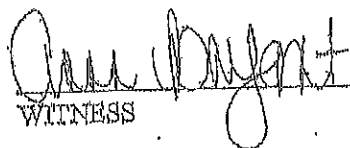
3. If the premises are damaged or destroyed, in whole or in part, by fire or other casualty during the term of this option, Grantor, with due diligence, shall repair, restore, rebuild or replace the premises or such portions of the premises that are damaged and/or destroyed so that the property shall be substantially the same as prior to such damage. If the destruction or damage shall include more than 50% of the insurance value of the premises, Grantor, at Grantor's option

may cancel and terminate the option to purchase by giving written notice to Grantee within thirty (30) days after the date such damage or destruction has occurred and returning all consideration paid for the option. In such an event, this option shall terminate on the date specified in such notice, and Grantor shall not be obligated to repair or rebuild the premises.

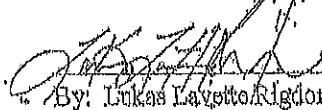
4. The closing will be conducted at the offices of The Heckman Law Firm, 409 Pettigru Street, Greenville, SC 29601 and the closing shall occur on or before date specified by the closing agent. If the Grantee wishes to exercise this option, it should notify the Grantor herein in writing and the parties shall execute a contract of sale incorporating the price and terms herein at that time. The terms of this provision shall be binding upon the heirs, successors and assigns of the parties.

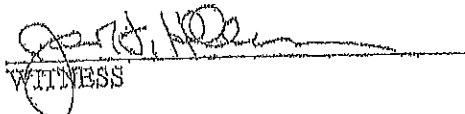
SIGNED, sealed and delivered
in the presence of:

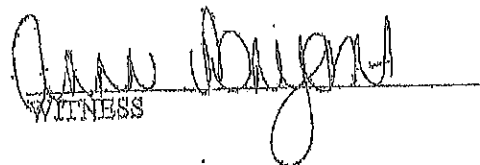
May 1, 2013

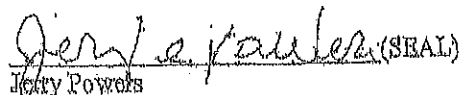

WITNESS

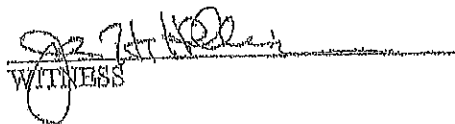
RIZAN PROPERTIES, LLC

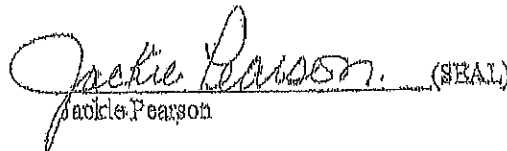
 (SEAL)
By: Lukas Lavette Rigdon, Member


WITNESS


WITNESS

 (SEAL)
Jerry Powers


WITNESS

 (SEAL)
Jackie Pearson

PATTERSON & ASSOCIATES, P. A.
ATTORNEY AND COUNSELOR AT LAW

JACQUELINE H. PATTERSON

October 28, 2019

SENT VIA U.S. FIRST CLASS MAIL & E-MAIL

South Carolina Legal Services
Attn: Mark Fessler
701 South Main Street
Greenville, SC 29601
markfessler@solegal.org

Re: Estate of Lukas Lavette Rigdon ("Estate"); Jackie Pearson & Jerry Powers
(collectively "Powers"); 39 Second Ave., Greenville, SC

Dear Mr. Fessler:

I am in receipt of your letter dated October 15, 2019 whereby your Client, Mr. Jerry Powers, claims an interest in 39 Second Avenue, Greenville, SC (the "Property").

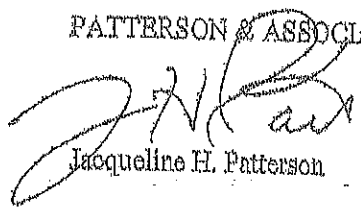
Powers was in default for non-payment of rent and any lease agreement was terminated. All this occurred prior to Lukas Rigdon's death on March 21, 2019. Additionally, please note Ms. Jackie Pearson's probate file indicates 300 Watkins Road, Greenville, SC 29617 as her address at the time of her death.

Further, on Sunday, October 27, 2019, the Estate contacted the Greenville County Sheriff's Department regarding the trespass of Jerry Powers on the Property. The Sheriff's Deputy instructed Mr. Powers to leave the Property and further informed Mr. Powers any return to the Property would result in service of a Trespass Notice upon him.

Please inform your Client he has no right to access the Property. Should Mr. Powers continue to knowingly trespass, the Estate will seek all available legal remedies.

Sincerely,

PATTERSON & ASSOCIATES, P.A.


Jacqueline H. Patterson

JHP/lp

cc: Client (via email)

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1088 NORTH CHURCH STREET • GREENVILLE, SC 29601
TELEPHONE: (864) 329-0548 • FACSIMILE: (864) 239-3816
WWW.PATTLAWFIRM.COM



South Carolina
Legal Services

701 South Main Street, Greenville South Carolina 29601
Phone: (864) 679-3232 Fax: (864) 679-3260
www.solegal.org / www.lawhelp.org/sc

November 1, 2019

Jacqueline H. Patterson, Esq.
VIA EMAIL to jpatterson@pattlawfirm.com

Re: Jerry Powers and 39 Second Ave., Greenville.

Dear Ms. Patterson:

I am responding to your letter of October 28, 2019. Your letter claims that the lease has been terminated and that Mr. Powers has been instructed not to re-enter the property. However, it fails to address the central point of the letter, which is the separate Option Contract that the parties signed. That contract does not reference or incorporate the lease agreement, states a separate consideration for that contract, and has never been terminated or cancelled. The Option Contract is an independent contract that Mr. Powers clearly has the right to enforce and is electing to enforce. Per that contract, your client now has an obligation to enter into a purchase agreement calculated pursuant to the formula set forth in the option contract.

Please let me know within ten days whether your client will honor its obligations under the option contract to enter into a purchase contract to sell 39 Second Ave. If not, my client intends to seek to enforcement of this contract through the Probate Court.

Sincerely,

Mark Fessler
Staff Attorney

cc: Jerry Powers



Carrington S.B. Wiggard -- Chairman; Regine Lente -- Vice-Chairman; William L. Byrd -- 2nd Vice-Chairman; Mercedes Paimin -- Secretary; Angela Dedina Rowe -- Treasurer

PATTERSON & ASSOCIATES, P. A.
ATTORNEY AND COUNSELOR AT LAW

JACQUELINE H. PATTERSON

November 7, 2019

SENT VIA E-MAIL

South Carolina Legal Services
Attn: Mark Fessler
701 South Main Street
Greenville, SC 29601
markfessler@sclegal.org

Re: Jerry Powers; 39 Second Ave., Greenville, SC

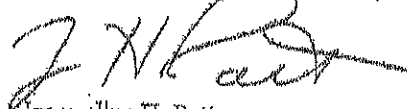
Dear Mr. Fessler:

Thank you for your letter of November 1, 2019 and for providing a copy of the Option to Purchase Agreement ("Agreement"). We would ask that Mr. Powers please provide to this office proof of all payments made as set forth under paragraph one (1) of the Agreement for which Mr. Powers believes he is owed a credit toward the option purchase price.

Thank you for your assistance in this matter.

Very truly yours,

PATTERSON & ASSOCIATES, P.A.


Jacqueline H. Patterson

JHP/lp

cc: Client (via email)

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1088 NORTH CHURCH STREET • GREENVILLE, SC 29601
TELEPHONE: (864) 329-0548 • FACSIMILE: (864) 239-3810
WWW.PATTLAWFIRM.COM

Mark Fessler

From: Mark Fessler
Sent: Tuesday, November 12, 2019 12:11 PM
To: Legal Assistant; Jackie Patterson
Subject: RE: Jerry Powers; 39 Second Ave., Greenville, SC
Attachments: Payment history from Lukas Rigdon.pdf

Dear Ms. Patterson,

Mr. Powers relies on the payment history Mr. Rigdon sent to at the end of 2018. It is attached.

When I look at that and compare it to the terms of the option contract, I get a total payoff of \$19,001 based on the following calculation:

I first determined the total that should have been paid through 11/1/2018 (the end of the payment history). I did that by adding the total option contract consideration plus monthly payments that should have been paid through 11/1/2018. This equals \$37,400 (\$36850 + \$550). Then I subtracted the amount of unpaid payments, per the payment history, of \$1401, leaving the total paid at \$35,999. Then, Mr. Powers informs me that he made another payment to Mr. Rigdon in January, so adding \$550 to \$35,999, you get a total amount that he has paid to date of \$36,549. Subtracting this figure from the purchase price of \$52,800 gives you a total remaining balance of \$16,251. Adding to that the late fees alleged of \$2750, you get \$19,001. I'll note here that I dispute how Mr. Rigdon appears to have counted late fees and whether late fees ought to be included in the payoff calculated under the option contract, but for the sake of getting this concluded, my client will waive opposition to that figure.

So my client's offer to pay \$19,500 to pay off the option contract is higher than required, but since he wants to get this finalized, he is willing to stay at \$19,500.

I hope this explanation is satisfactory and that our clients can move forward to consummate this sale. I look forward to hearing from you.

Sincerely,



Mark Fessler, Staff Attorney

701 South Main St., Greenville South Carolina 29601

Phone: (864) 679-3254 || Fax: (864) 679-3260

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From: Legal Assistant <legalassistant1@pattlawfirm.com>

Sent: Thursday, November 07, 2019 3:55 PM

To: Mark Fessler <markfessler@sclegal.org>

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Cc: Jackie Patterson <jpatterson@pattlawfirm.com>
Subject: Jerry Powers; 39 Second Ave., Greenville, SC

SENT ON BEHALF OF JACQUELINE H. PATTERSON:

Re: Jerry Powers; 39 Second Ave., Greenville, SC

Dear Mr. Fessler:

Attached please find correspondence from Ms. Patterson in connection with the above-referenced matter.

Thank you,
Laura

Patterson & Associates, P.A.
Laura Phillips
Legal Assistant
Legalassistant1@pattlawfirm.com

1088 North Church St.
Greenville, SC 29601
Direct dial (864) 370-4161
Fax: (864) 239-3816

www.pattlawfirm.com

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Payment date	X=late	Amount +/-	Amount past due	Notes
5/1/2013	x			
6/1/2013	x			
7/1/2013	x			
8/1/2013				Missing receipt
9/1/2013				Missing receipt
10/1/2013				Missing receipt
11/1/2013				Missing receipt
12/1/2013				Missing receipt
1/1/2014	x			
2/1/2014	x	-150		
3/1/2014	x	150		
4/1/2014	x	-50		
5/1/2014	x			
6/1/2014	x	-250		
7/1/2014	x			Missing Receipt
8/1/2014				Missing Receipt
9/1/2014				
10/1/2014				
11/1/2014	x			
12/1/2014				
1/1/2015	x	-550		
2/1/2015	x			
3/1/2015				Missing Receipt
4/1/2015				
5/1/2015				
6/1/2015	x	-550		
7/1/2015	x	550		Paid due owe \$490
8/1/2015	x			
9/1/2015	x			
10/1/2015	x			
11/1/2015	x	-25		
12/1/2015	x	-84		
1/1/2016	x		-531	Owes - \$531 from 2015
2/1/2016	x			
3/1/2016	x			
4/1/2016	x			
5/1/2016	x			
6/1/2016	x	-210	-781	
7/1/2016	x			
8/1/2016	x			
9/1/2016	x			
10/1/2016	x		-781	Was short \$150 then paid up \$150 in Oct.
11/1/2016	x	50	-681	
12/1/2016	x			
1/1/2017	x		-681	Still a debt of -681 from 2015-16
2/1/2017	x	-100	-781	
3/1/2017	x			
4/1/2017	x			
5/1/2017	x			
6/1/2017	x	-50	-831	
7/1/2017	x	50	-781	
8/1/2017	x			
9/1/2017	x			
10/1/2017	x			
11/1/2017	x			
12/1/2017	x			
1/1/2018	x		-781	owes \$781 from 2015-16
2/1/2018	x		-781	
3/1/2018	x		-781	

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4/1/2018	x		-781	
5/1/2018	x	-20	-801	Short \$20
6/1/2018	x			
7/1/2018	x	-150	-951	Short \$150
8/1/2018	x	-50	-1001	Short \$50
9/1/2018	x	150	-851	Paid up \$150
10/1/2018	x		-851	
11/1/2018	x	-550	-1401	Verbal refusal to pay rent for November. Total amount past due \$-1401.00
				55 late payments x \$50 late fee = \$2,750.00
				Total amount past due - \$4,151.00

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STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Jerry Powers,

Plaintiff,

v.

Rizan Properties LLC, Anthony Pearson,
and Tiesha Dash,

Defendant(s)

) THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT
)

) CASE NO. 2020-CP-23-02076
)

) DEFENDANT RIZAN PROPERTIES,
) LLC'S RESPONSES TO
) PLAINTIFF'S
) REQUESTS FOR ADMISSION
)
)
)
)
)
)

TO: MARK FESSLER, ESQUIRE ATTORNEY FOR PLAINTIFF

You will please take notice that defendants pursuant to Rule 36 of the South Carolina Rules of Civil Procedure, hereby responds to plaintiffs' Requests to Admit as follows:

Request #1:

That the documents attached hereto as Exhibit A are true and accurate copies of the correspondence between the undersigned attorney for Jerry Powers and Jacqueline Patterson, Esq. as attorney for the Estate of Lukas Lavette Rigdon.

Exhibit A consists of 17 pages and includes the following:

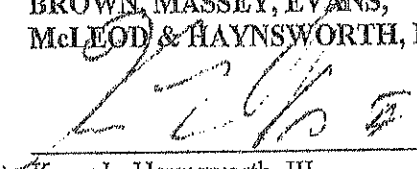
- (1) Letter dated October 15, 2019 with attachment;
- (2) Letter dated October 28, 2019;
- (3) Letter dated November 1, 2019;
- (4) Letter dated November 7, 2019;
- (5) Email dated November 12, 2019 with attachment.

Response:

Admitted.

Respectfully submitted.

BROWN, MASSEY, EVANS,
McLEOD & HAYNSWORTH, LLC



Knox L. Haynsworth, III
S.C. Bar #: 010275
Post Office Box 2464
Greenville, SC 29602
Telephone: (864) 271-7424
Attorney for Defendant Rizan Properties, LLC

Greenville, South Carolina
November 30, 2020

2011075800 DEED
6 PGS
Book DE 2396 Page 2892-2897
November 07, 2011 02:50 45 PM Cons \$1 00
Rec \$10 00 Cnty Tax EXEMPT State Tax EXEMPT
FILED IN GREENVILLE COUNTY, SC

NOTICE TO ASSESSOR: This is a non-assessable
Transfer of Interest pursuant to S.C. Code Section
12-37-3150 from the Member of an LLC to the LLC.

NO TITLE SEARCH OR OPINION
DEED PREPARATION ONLY

Grantee's Address: 30 Belle Terre Court
Greenville, SC 29609

SULLIVAN LAW FIRM, 101 West Antrim Drive, Greenville, S.C. 29607

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, THAT LUKAS LAVETTE RIGDON, AKA LUKAS RIGDON,

in consideration of ONE DOLLAR (\$1.00), the receipt of which is hereby acknowledged, subject to all matters set forth in this instrument, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto RIZAN PROPERTIES, LLC, its successors and assigns, forever, the following described property:

Property Described on Attached

EXHIBIT A

TMS # 0151.00-03-012.00 (Parcel One)

TMS # 0150.00-11-007.00 (Parcel Two)

TMS # 0112.00-13-010.00 (Parcel Three)

This conveyance is made subject to all easements, conditions, covenants, restrictions and rights-of-way which are a matter of public record and/or actually existing upon the grounds affecting the above-described property.

Together with all and singular the rights, members, hereditaments and appurtenances to said premises belonging or in anywise incident or appertaining; to have and to hold all and singular the premises before mentioned unto the Grantee and the Grantee's successors and assigns, forever. And, the Grantor does hereby bind the Grantor and the Grantor's heirs or successors and assigns, and personal representatives, to warrant and forever defend all and singular said premises unto the Grantee and the Grantee's successors and assigns against every person whomsoever lawfully claiming or to claim the same or any part thereof.

WITNESS the Grantor's hand and seal this 7th day of November, 2011.

SIGNED, sealed, and delivered
in the presence of:

Linda D Hudson
Witness

[Signature] (SEAL)
Lukas Lavette Rigdon, aka
Lukas Rigdon

[Signature]
Witness

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE) PROBATE

PERSONALLY appeared the undersigned witness and made oath that (s)he saw the within named Grantor, sign, seal and as the Grantor's act and deed, deliver the within written deed and that (s)he, with the other witness subscribed above, witnessed the execution thereof.

Linda D Hudson

SWORN to before me this
7th day of November, 2011.

[Signature]
Notary Public for South Carolina
My Commission Expires: 03/16/19

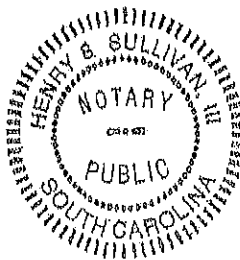


EXHIBIT A

PARCEL ONE

ALL that certain piece, parcel or lot of land, with all improvements thereon, situate, lying and being in the County of Greenville, State of South Carolina, 50 feet by 150 feet, being known and designated as Lot No. 4 of PARK PLACE, Block H, as shown on the plat thereof recorded in the Office of the Register of Deeds for Greenville County, SC in Plat Book A at Page 119, reference being hereby made to said plat for a complete metes and bounds description of the property.

TMS # 0151.00-03-012.00

Property Address: 302 Orders Street
Greenville, SC 29609

THIS BEING the same property conveyed to Lukas Rigdon by deed from William E. Alexander, dated May 20, 2011 and recorded in the Office of the Register of Deeds for Greenville County, SC in Deed Book 2388 at Page 4265 on May 20, 2011.

PARCEL TWO

ALL that certain piece, parcel or lot of land, with all improvements thereon, situate, lying and being in the County of Greenville, State of South Carolina, being known and designated as Lot No. 82 of VILLAGE HOUSES of F. W. POE MFG. CO., Section No. 1, as shown on the plat thereof prepared by Dalton & Neves, dated July 1950 and recorded in the Office of the Register of Deeds for Greenville County, SC in Plat Book Y at Pages 26-31, said property being further shown and designated on a more recent plat of survey prepared for Butler Lee Sprouse and Thelma M. Sprouse by W. R. Williams, Jr., dated March 22, 1993 and recorded in the Office of the Register of Deeds for Greenville County, SC in Plat Book 24-U at Page 53, reference being hereby made to said latter plat of survey for a complete metes and bounds description of the property.

TMS # 0150.00-11-007.00

Property Address: 39 2nd Avenue
Greenville, SC 29601

THIS BEING the same property conveyed to Lukas Rigdon by deed from Nathel Sherman, dated May 20, 2011 and recorded in the Office of the Register of Deeds for Greenville County, SC in Deed Book 2388 at Page 4268 on May 20, 2011.

PARCEL THREE

ALL that certain piece, parcel or lot of land, with all improvements thereon, situate, lying and being in the County of Greenville, State of South Carolina, being known and designated as Part of Lot 10 of STERLING ANNEX, Block B, as shown on the plat thereof recorded in the Office of the Register of Deeds for Greenville County, SC in Plat Book C at Page 81, and having, according to said plat, the following metes and bounds, to-wit:

BEGINNING at corner of lot conveyed by George D. James to Willie C. Norton (see Deed Book 21, Page 556) on Maloy Street; thence with Maloy Street N. 84-25 E. 50 feet; thence about parallel with Sterling Street, northwesterly to a point in line of Lot No. 11, 28.2 feet from Sterling Street, line runs as to give 50 feet as a rear line of lot conveyed; thence with line of Lot No. 11 S. 63-30 W. exactly 50 feet to Willie C. Norton's corner; thence with Norton's line southwesterly to the point of BEGINNING.

TMS # 0112.00-13-010.00

Property Address: 208 Maloy Street
Greenville, SC 29601

THIS BEING the same property conveyed to Lukas Lavette Rigdon by deed from Deborah E. Goldsmith, as Personal Representative of the Estate of Annie Mae Rosemond, dated July 6, 2011 and recorded in the Office of the Register of Deeds for Greenville County, SC in Deed Book 2391 at Page 3735 on July 22, 2011.

 COPY

STATE OF SOUTH CAROLINA)

IN THE PROBATE COURT

COUNTY OF GREENVILLE)

Case No. 2019-ES-23-00823

IN THE MATTER OF:

LUKAS LAVETTE RIGDON, Deceased

FILED

Meredith Rigdon, Personal Representative
of the Estate of Lukas Lavette Rigdon,

MAY 11 2020

Petitioner,

**GREENVILLE COUNTY
PROBATE COURT**

v.

**PETITION FOR SALE OF
REAL PROPERTY**

Meredith Rigdon, as Conservator for
Reagan Kalyra Rigdon; Meredith Rigdon,
as Conservator for Luke Michael Rigdon;
AscensionPoint Recovery Services, LLC;
VW Credit, Inc.; and Jerry Powers

Respondents.

Petitioner, Meredith Rigdon, as Personal Representative of the Estate of Lukas Lavette Rigdon, would respectfully show unto the Court as follows:

1. Lukas Lavette Rigdon ("Decedent") died intestate on March 21, 2019.
2. By Order of this Court dated April 25, 2019, Meredith Rigdon ("Petitioner") was appointed as Personal Representative of Decedent's Estate. Petitioner is a resident of Greenville County, South Carolina.
3. Reagan Kalyra Rigdon is the daughter of the Decedent. She is a resident of Greenville County, South Carolina and is a minor child. By Order of the Honorable Caroline M. Horlbeck dated November 6, 2019, Greenville County Case No. 2019GC2300044, Meredith Rigdon was appointed as Conservator for Reagan Kalyra Rigdon.
4. Luke Michael Rigdon is the son of the Decedent. He is a resident of Greenville County, South Carolina and is a minor child. By Order of the Honorable Caroline M. Horlbeck

dated November 6, 2019, Greenville County Case No. 2019GC2300045, Meredith Rigdon was appointed as Conservator for Luke Michael Rigdon.

5. Upon information and belief, Respondent AscensionPoint Recovery Services, LLC ("AscensionPoint") is an entity organized and existing under the laws of the State of Delaware. In accordance with S.C. Code Ann. § 62-3-1303, AscensionPoint is named as a party to this action because it has filed a creditor's claim against Decedent's Estate.

6. Upon information and belief, Respondent VW Credit, Inc. ("VW") is an entity organized and existing under the laws of the State of Delaware. In accordance with S.C. Code Ann. § 62-3-1303, VW is named as a party to this action because it has filed a creditor's claim against Decedent's Estate.

7. Upon information and belief, Respondent Jerry Powers ("Powers") is a resident of Greenville County, South Carolina and has reached the age of majority. In accordance with S.C. Code Ann. § 62-3-1303, Powers is named as a party to this action because he has filed a creditor's claim against Decedent's Estate.

8. At the time of his death, Decedent was a resident of Greenville County, South Carolina. As such, jurisdiction and venue are proper in this Court.

9. On or about July 15, 2019, Petitioner filed an Inventory and Appraisement with the Greenville County Probate Court identifying the assets of Decedent's Estate. A copy of the Inventory and Appraisement is attached hereto as Exhibit A and is incorporated herein by reference.

10. Decedent's estate includes a one hundred percent (100%) membership interest in that certain South Carolina limited liability company known as Rizan Properties, LLC ("Rizan Properties").

11. Rizan Properties holds a one hundred percent (100%) interest in certain real property and the improvements thereon located at 208 Maloy Street, Greenville, South Carolina and being more particularly identified as Greenville County Tax Map No. 0112.00-13-010.00 (the "Property"). For a more complete description of the Property, please see the legal description set forth on the Deed attached hereto as Exhibit B and incorporated herein by reference.

FOR A FIRST CAUSE OF ACTION
(Petition to Sell Property)

12. Petitioner herein incorporates by reference all previous and subsequent allegations consistent herewith.

13. Petitioner would allege and show Decedent, as sole member of Rizan Properties, owned a one hundred percent (100%) interest in the Property.

14. Petitioner is informed and believes the tax assessed value of the Property is Thirty-Eight Thousand, Three Hundred and NO/100 (\$38,300.00) Dollars. Such value is based upon the Greenville County Tax Assessor's Office records which are attached hereto as Exhibit C and incorporated herein by reference.

15. Petitioner would allege and show the fair market value of the Property is approximately Sixty Thousand and NO/100 (\$60,000.00) Dollars. This value is based upon the opinion of Tim Sterr, a licensed Realtor. A copy of his Market Analysis Report is attached hereto as Exhibit D and is incorporated herein by reference.

16. Petitioner would allege and show the Property is not encumbered by any liens or mortgages.

17. Petitioner has entered into a contract to sell the Property for the purchase price of Fifty-Five Thousand (\$55,000.00) Dollars (the "Contract") without the assistance of a real estate

agent. A copy of the Contract is attached hereto as Exhibit E and is incorporated herein by reference. The Contract is subject to this Court's approval.

18. Petitioner is informed and believes it is in the best interest of the Estate and its beneficiaries to sell Decedent's interest in the Property upon the terms and conditions set forth in the Contract. In support thereof, Petitioner is informed and believes it would be in the best interests of the beneficiaries to liquidate the Property in lieu of devising an interest to the Conservatorship for the benefit of the Estate's intestate heirs.

19. Petitioner would allege and show that the Property must be sold in order to (a) pay expenses of the Estate and (b) pay any valid creditors of Decedent's Estate. Petitioner also seeks to immediately sell the Property due to favorable market conditions.

20. In accordance with South Carolina Code Ann. § 62-3-711(b), Petitioner would allege and show Court approval is required to sell or otherwise transfer real property from an intestate estate.

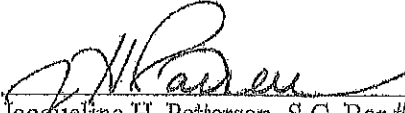
21. Petitioner requests that the Court affix a time and place of Hearing; that Notice be given to all interested parties as provided by law; and that after Notice and Hearing, the Court authorize Petitioner to do the following: (a) to retain the assistance of a broker in listing and selling the Property if necessary, (b) to sell Decedent's interest in the Property as set forth in the Contract, (c) to sell Decedent's interest in the Property for at least 85% of fair market value should the sale of the Property not occur as set forth in the Contract, (d) to pay expenses of the Estate and pay any valid creditors of Decedent's Estate from the proceeds of the sale of the Property, and (e) distribute Decedent's interest in the Property pursuant to the laws of South Carolina should the sale of the Property not occur.

WHEREFORE, Petitioner respectfully requests an Order of this Court authorizing Petitioner with the authority to perform any of the following relief:

- (i) To employ a broker to assist in listing and selling the Property, if necessary;
- (ii) To sell the Decedent's interest in the Property as set forth in the Contract;
- (iii) To sell the Decedent's interest in the Property for at least 85% of the fair market value, should the sale of the Property not occur as set forth in the Contract;
- (iv) To pay expenses of the Estate and pay any valid creditors of Decedent's Estate from the proceeds of the sale of the Property;
- (v) To distribute Decedent's interest in the Property pursuant to the laws of South Carolina should the sale of the Property not occur; and
- (vi) For such other and further relief as the Court deems just and proper.

Respectfully submitted,

PATTERSON & ASSOCIATES, P.A.


Jacqueline H. Patterson, S.C. Bar #12090
Attorney for Petitioner
1088 North Church Street
Greenville, SC 29601
(864) 329-0548
jpatterson@pattlawfirm.com

Greenville, SC
May 6, 2020

...provisions to SC Residential Landlord Tenant Act ("SCLTA") in Agreement.

...the Agreement.

...every situation, May need to include or delete provisions.

REEMENT

STATE OF SOUTH CAROLINA, COUNTY OF LANCASTER

☒ Apartment lease Other

Rental Agreement is entered into between RIZAN PROPERTIES, LLC

Owner, hereinafter known as LANDLORD, and

TENANT, this 3rd day of AUGUST 20 11 at 7:30pm, South Carolina.

of the rent to be paid by the Tenant to the Landlord, the parties agree as follows:

1. The property, which is the subject of this Rental Agreement, consists of the land and buildings located thereon and is known

39 2ND AVE GREENVILLE SC 29609

Occupants of the premises shall be limited to JERRY POWERS, THEQUENT PEARSON,
if MESSIAH (GRANDSON AGE 2)

and leases the premises to the Tenant, subject to the provisions of this Rental Agreement, for a term of

12 months
11

beginning SEPTEMBER 1, 20 11 and ending at midnight AUGUST 31

and to vacate the property on the ending date, leaving it clean and in good condition, free of Tenant's personal

and to return the keys to the Landlord. Notice requirements are specified in paragraphs 18 and 19.

for the term of this lease is 6,600.⁰⁰ and is payable in monthly installments of

550.⁰⁰

39 2ND AVE or at such other place as the Landlord may designate in writing.

AND RETURNED CHECKS. Rent is due in advance on the 1ST day of the month. IF RENT IS NOT PAID WITHIN

DATE, LANDLORD MAY TERMINATE THIS RENTAL AGREEMENT. Rent paid after the fifth day of the

of \$ 10.⁰⁰/DAY. Returned checks shall be subject to a charge of \$ 50.⁰⁰

before the sixth day of the month. Notwithstanding, if any check of the Tenant for the security deposit or

insufficient funds, Landlord may declare this rental agreement void and immediately terminated.

550.⁰⁰ will be deposited (interest free) by Tenant upon execution of this agreement, and prior to

termination of this tenancy as security for the full and faithful performance by Tenant of all the terms of

place said security deposit with other security deposits in a separate trust account and to deduct

charges to the property and/or any accrued rent or late charges, upon vacating of tenant. Security

first month of this tenancy. If the damages sustained by the Landlord as a result of Tenant not

and so much of the security deposit as is left after deductions therefrom pursuant to this

as a failure to deliver possession of the premises at the commencement of this lease, the monthly rental provided
fully basis and shall not be due until occupancy is available. The tenant, however, may notify the Landlord upon
that he elects to terminate the lease for failure to deliver the premises. In such case, the Landlord shall return all prepaid

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

PETS. Tenant shall not keep domestic or other animals on or about the premises without the PRIOR WRITTEN CONSENT of the
Landlord. If Landlord does, at his sole discretion, consent, and if Tenant makes payment of any required pet fee, Tenant may keep and maintain the
animal on the leased premises in accordance with the terms hereof, and any special agreements reached between Landlord and
Tenant. Notwithstanding the above, no animal shall be kept in violation of these terms. Tenant shall be responsible for the animal, its behavior, and any damage, over and above the pet
fee. The Landlord will have the right to withdraw consent and demand removal of any previously permitted animal upon the
presentation of evidence of injury or damage caused by animal. Any special pet agreement is an integral part

PREMISES. Tenant acknowledges that he has inspected the premises and agrees that the premises and the
are in safe, fit and habitable condition. The electrical, plumbing, heating and air-conditioning system, if any,
and with the premises are in good working order.

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

Tenant shall keep the dwelling unit and all parts of the premises that he uses safe and clean. In the case of a single-family house or
apartment, Tenant shall keep the premises watered and free of rubbish and to keep the gutters clean and the shrubs neatly trimmed. Tenant shall
keep the premises in a safe and sanitary manner. Tenant shall not negligently destroy, deface, impair, or remove any part of
the premises or its contents.

Tenant, at Tenant's expense, keep sinks, lavatories and commodes open, reporting any initial malfunction
within 24 hours of discovery. Tenant shall repair any damage to screens, interior walls and doors,
floors, or damage to electrical, plumbing, heating or air-conditioning systems. Tenant agrees to
prevent or careless use of the premises, including repairs to electrical, plumbing, heating and
cooling appliances, and to pay for repairs resulting from theft, malicious mischief or vandalism by

...for, and to make at Tenant's expense all routine maintenance including, but not limited to, stoppage of sewer pipes or fixtures due to neglect or carelessness of Tenant. Tenant is directly responsible for any damage caused by ... Tenant is responsible for changing air filters in heating and air-conditioning systems and reporting any water ... liable for damage to heating and air-conditioning systems by filters not being kept in a satisfactory condition.

31. Tenant will report any pest problem within three (3) days of possession. Tenant's failure to identify any pest problem ... days shall constitute Tenant's agreement that premises has no infestation of any kind. Any future infestations of any kind shall ... of () Tenant (~~X~~) Landlord.

DAMAGE OR CASUALTY. If the premises are damaged or destroyed by fire or other casualty to the extent that normal use and ... substantially impaired, Tenant may immediately vacate the premises and notify the Landlord in writing within seven (7) days thereafter ... to terminate the rental agreement. In which case, the rental agreement terminates as of the date of vacating. If continued occupancy is ... any portion any part of the dwelling until rendered unusable by the fire or casualty. In which case the Tenant's liability for rent is ... to the diminution in the fair-market rental value of the unit. If the rental agreement is terminated, the Landlord shall return ... under Paragraph 6 of this agreement and all prepaid rent. Accounting for rent in the event of termination or apportionment will ... of the fire or casualty.

Tenant acknowledges that the Landlord does not carry insurance to cover the Tenant's personal property or his personal ... obtain Renters' Insurance to protect his interests. Tenant agrees to comply in all respects with the requirements of the ... insurance-carrier and not to permit anything to be done at or within the premises which shall cause cancellation of, or ... insurance thereon. Tenant agrees to obtain liability insurance to cover possible water damage should a waterbed be

Tenant agrees that he will pay for all utilities except ~~Landlord~~ ... the premises by the Tenant, and in the event of Tenant's default therein, Landlord may pay the same and add the ... of rent thereafter falling due hereunder, together with any penalties or interest which may have been paid by the ... for any inspections required by utility companies due to the Tenant's failure to obtain service at time of occupancy. ... of this agreement.

Rental Agreement shall not be assigned nor shall the premises be sublet without written consent of the Landlord.

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

END OF TERM. At the end of the term of this Rental Agreement as set forth in Paragraph 3

shall be extended for successive one month periods and be considered a month-to-month tenancy.

provided Landlord gives Tenant thirty (30) days written notice prior to the adjustment. If Tenant

this agreement or at any extension thereof, Tenant shall notify the Landlord in writing, at least

termination of this agreement, or at least thirty (30) days prior to the date specified in the notice

Any termination shall be on the last day of the calendar month, unless otherwise stated.

within date of this agreement he may do so by giving Tenant at least thirty (30) days

may terminate any extension of this agreement by notifying Tenant in writing, at

Oral or authorized to be given hereunder or pursuant to applicable law shall be sent by certified or registered mail to the following addresses: Tenant at the address of the premises; Landlord at the address to which rental payments are sent,

and address of the Landlord herein or the person authorized to act on behalf of the owner as agent is _____

30 BELLE TERRE CT GREENVILLE SC 29609 LUKAS RITON 864-991-1719

made upon said agent and he is authorized to receive notice or demands under this agreement.

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

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

Landlord may reasonably withhold consent to the landlord to enter into the dwelling unit in order to inspect the premises, make necessary repairs, alterations, or improvements, supply necessary or agreed services, or exhibit the dwelling unit to prospective tenants, workmen, or contractors.

Landlord may enter the dwelling unit without consent of the tenant:

(a) in an emergency — prospective changes in weather conditions which pose a likelihood of danger to the property may be an emergency;

(b) between 8:00 a.m. and 6:00 p.m. for the purpose of providing regularly scheduled periodic services such as changing furnace filters, providing termite, insect or pest treatment, and the like, provided that the right to enter to provide regularly scheduled services is conspicuously set forth in writing in the rental agreement and that prior to the entering, the landlord has given the tenant notice to enter to perform services;

(c) between 8:00 a.m. and 8:00 p.m. for the purpose of providing services requested by the tenant and that prior to entering, the landlord has given the tenant notice to enter to perform services;

(d) if the landlord has a reasonable belief that access or use of the premises is necessary to harass the tenant, except in cases under item (b) above, the landlord shall give the tenant notice of his intent to enter and may enter only at reasonable times.

except:

Article IV:

Landlord may enter at reasonable times for the purpose of service of process in ejectment proceedings; or for the purpose of inspecting the premises.

Landlord may use area facilities, if any, when open and operating and subject to applicable rules and regulations. Designated parking areas and only for the vehicles belonging to the Tenant and their guests. Other vehicles will be permitted to be parked at the premises without written permission. The Landlord has the right to tow away and store at the Tenant's expense any vehicle parked on the premises without written permission.

ained which become a nuisance to the premises, such as wrecked or disabled vehicles or vehicles not currently
able law. Auto repairs requiring disassembly of auto are not permitted without written permission of the Landlord.
only as a dwelling unit and shall not create or permit any nuisance, nor create any disturbance, nor conduct or
person. Tenant agrees to observe faithfully all rules and regulations that the Landlord now has, or may hereafter adopt
to include any restrictive covenants in effect within the community and/or legal jurisdiction.

ARTICLE 10. TENANT Tenant is forbidden to change any locks, add any additional locks, or remove any existing locks without prior written
consent. Furthermore, without prior written consent, the Tenant shall not paint, mark, drive nails or screws into, or otherwise deface
ceilings, floors, windows, cabinets, woodwork, stone, ironwork, or any other part of the premises inside or out. Any wall
may be hung with "bulldog" type hangers. Any alteration or improvements made by the Tenant including any fixtures, carpeting,
furniture, shrubs or any other plants shall become a part of the premises unless otherwise specified by the Landlord in writing. Upon
vacation, the Tenant shall restore the property to its original condition or repair, safety and appearance, ordinary wear and tear
except the fixtures, carpeting, painting, wallpaper, shrubs or any other plants which Landlord has accepted. If Tenant fails to do so,
Landlord shall charge the Tenant for any expenses required to so restore the premises.

ARTICLE 11. VACATION If Tenant is a member of the Armed Forces of the United States, stationed in the Tri-County area and shall, after
vacation receive permanent change of station orders out of the Tri-County area, Tenant may, upon presentation of a
copy of the orders, along with thirty (30) days written notice of intent to vacate, and payment of all rent to the expiration
of the term of this Rental Agreement, terminate this Rental Agreement. Normal enlistment termination or other type
termination, unless due to conditions beyond the Service Member's control, or acceptance of Government quarters is not a
justification for lease termination. Withholding knowledge of pending transfer or discharge at time of entry
into the premises shall constitute a breach of this section.

Tenant acknowledges that Landlord has relied on the information provided by the Tenant in the rental application. If any
information provided is untrue, Landlord shall have the right to terminate the tenancy immediately and to collect from the Tenant
damages, including reasonable attorney fees. Tenant and only those persons named in the application shall occupy or use the

premises. If a Tenant is absent from premises for a period of fifteen (15) days after default in the payment of
rent, or if the premises has been abandoned, or the rental agreement has come to an end and the
Tenant has not returned to the property or voluntarily and permanently terminated his tenancy, and has left personal property on the
premises, the Landlord may enter the premises, using forceable entry if required,
and the actions taken by this section will be handled under the provisions of Code of Laws of South Carolina for
vacation of the unit, he shall be liable for the rent for the remaining term of this agreement pursuant to
the Residential Landlord and Tenant Act.

As described in this rental agreement is delivered to a bona fide purchaser in a good faith sale,
all events occurring after written notice to the Tenant of the conveyance.

The entire agreement of the parties. No agreement, statement, representation,
or condition not contained in this agreement.

TERMS, CONDITIONS, ADDENDA: _____

Agreement is made pursuant to the South Carolina Residential Landlord and Tenant Act and the provisions of said Act shall control.

I, LANDLORD, ACKNOWLEDGES THAT THIS RENTAL AGREEMENT HAS BEEN READ PRIOR TO SIGNING AND THAT THE
TERMS ARE AGREED TO.

LANDLORD: Company

RIZAN PROPERTIES, LLC

TENANT

Jerry Powers

By

Witness

JERRY POWERS

CToR form, 3/88

STATE OF SOUTH CAROLINA)
COUNTY OF GREENVILLE)

LEASE AGREEMENT

THIS AGREEMENT entered into by and between Rizan Properties, LLC, hereinafter referred to as Lessor, and Jerry Powers and Jackie Pearson, hereinafter referred to as Lessee.

WITNESSETH

FOR AND IN CONSIDERATION of the mutual covenants hereinafter set forth, the parties hereto, for themselves, their successors and assigns, agree as follows:

ARTICLE I.
DESCRIPTION OF PREMISES

Lessor, for and in consideration of the rents, covenants and agreements hereinafter specified to be paid, kept and performed by the Lessee, leases the premises consisting of a house and lot designated as 39 2nd Ave., Greenville, SC 29609 (the "Demised Premises").

ARTICLE II.
RENT, LATE FEE & SECURITY DEPOSIT

Lessee shall pay to Lessor as rent for the Demised Premises the amount of Fifty two Thousand Eight Hundred and No/100s (\$52,800.00) Dollars. Rent shall be payable at the rate of Five Hundred Fifty and No/100s (\$550.00) Dollars per month in advance. Rent not received by the Lessee by the fifth (5th) day of each month shall be deemed late and the Lessee shall be charged a \$50.00 late fee. A Security Deposit of Five Hundred Fifty and No/100s (\$550.00) shall be paid from Lessee to the Lessor.

ARTICLE III.
BEGINNING DATE OF LEASE TERM

The beginning date of this Lease shall be May 1, 2013. The term of this Lease will begin at that date and will continue until eight years from the beginning date herein.

ARTICLE IV.
RENTER'S INSURANCE

Lessee covenants and agrees that it will at all times during the term of this Lease or any extension thereof at its own expense, maintain and keep in force comprehensive renter's insurance for damage to the Lessee's personal property. Lessor shall not be liable for damage to, or theft of Lessee's personal property.

**ARTICLE V.
INSURANCE AND TAXES**

Lessor shall maintain all expenses for taxes and insurance on this property for and during the term of this lease; if the Lessee, by reason of its use of the Leased Premises or any other use, causes an increase in the insurance rates of the Lessor, Lessee will compensate the Lessor by paying additional rent to equal the amount of the increase in the rate caused by the Lessee's use. This amount shall be due and payable to the Lessor on the first day of the month immediately following any such increase.

**ARTICLE VI.
UTILITY CHARGES**

The Lessee shall pay all charges for all utilities, including but not limited to, water, gas and electricity during the term of this lease.

**ARTICLE VII.
MAINTENANCE AND REPAIRS**

The Parties hereto do hereby agree that the maintenance of the structure of the house and the major systems (electrical, plumbing, heating and air) shall be the responsibility of the Lessee, except where the damage is due to the negligence of the Lessor or one of his/her agents. General cleanliness of the yard and the interior of the house shall also be the responsibility of the Lessee.

**ARTICLE VIII.
REMOVAL OF IMPROVEMENTS BY LESSEE UPON TERMINATION OF LEASE**

Upon expiration of the term of this Lease, or sooner termination if applicable, Lessee, at Lessee's expense, shall remove all property belonging to Lessee. Lessee shall repair all damage to the Premises caused by such removal, and restore the Premises to the condition they were in prior to removal of said property, normal wear and tear excepted. It is further expressly understood and agreed that the Premises are in good repair at the time of signing this Lease.

**ARTICLE IX.
ASSIGNMENT AND SUBLEASE**

It is expressly understood by the Parties hereto that the Demised Premises shall not be sublet, or this lease assigned to any corporation, person or persons without the express written consent of the Lessor herein. It is further agreed by the Parties that the Premises shall be used as single family residential only, and shall be used for no other purpose without the written consent of the Lessor herein.

ARTICLE X.
EFFECT OF DAMAGE TO OR DESTRUCTION OF DEMISED PREMISES

If the Demised Premises are damaged or destroyed, in whole or in part, by fire or other casualty during the term of this Lease, Lessor, with due diligence, shall repair, restore, rebuild or replace the Premises or such portions that are destroyed or damaged so that the property shall be substantially the same as prior to such damage. If the destruction or damage shall be more than 50% of the insurance value of the Premises, Lessor, at Lessor's option, may cancel and terminate the Lease by giving written notice to Lessee within 30 days after the date such damage or destruction has occurred. In such event this Lease shall terminate on the date specified in such notice, and Lessor shall not be obligated to repair or rebuild. In the event repair of the building is required or elected by Lessor, rent shall be abated for the time during which the Demised Premises may not be used by Lessee. Lessee shall be entitled to receive a pro-rata refund out of any advancement paid by it for the period the Premises were unusable by reason of destruction or damage.

ARTICLE XI.
LESSOR'S RIGHT TO INSPECT

Lessee shall permit Lessor, its agents, or other representatives, to enter the Demised Premises, or any part thereof, upon receipt of 24 hours written or oral notice, to examine said Premises. Lessor shall be reasonable in its inspection requests and Lessee shall not withhold such permission unreasonably.

ARTICLE XII.
MANNER OF GIVING NOTICES

Any notice from either party to the other, pursuant to the provisions of this Lease or of any law, shall be given by Registered or Certified Mail, addressed to the party for whom it is intended at the address of the respective party as set forth on the signature page. The date of delivery as indicated on the Return Receipt shall be deemed to be the effective date of Notice for purposes of determining questions hereunder.

ARTICLE XIII.
LEASE SUBORDINATE TO ENCUMBRANCES

This Lease is subject and subordinate to any Mortgages now on or hereafter may be placed against the premises, and to all advances made or that may be made on account of the encumbrances, to the full extent of the principal sums secured thereby and interest thereon.

ARTICLE XIV.
LESSOR'S WRITTEN APPROVAL REQUIRED FOR ALTERATION

Except as expressly provided herein, Lessee shall not make any alterations, improvements or additions to the Premises without prior written consent of Lessor.

ARTICLE XV.
RIGHTS OF PAYMENT UPON DEFAULT

Lessee shall pay as rental, in addition to the rental herein reserved, any and all sums that may become due by reason of the failure of Lessee to comply with all of the covenants of this Lease, including any and all damages, costs and expenses the Lessor may suffer or incur by reason of any default of Lessee; or failure on Lessee's part to comply with the covenants of this Lease, and also, any and all damages to the Demised Premises cause by any act or neglect of the Lessee, its agents, employees, or invitees.

ARTICLE XVI.
DEFAULT

If Lessee shall continue in default for payment of any rent reserved hereunder for a period often (10) days after notice of such default has been given to Lessee, or if the Lessee shall default in the performance of any of the other terms, conditions or covenants in this Lease to be observed or performed by it, and Lessee does not remedy such default within ten (10) days after notice, or in the event that the Premises are vacated before the expiration of the Lease, or should the Lessee go into bankruptcy, voluntary or involuntary, or be placed in the hands of a receiver or make a general assignment of the property for the benefit of a creditor or file any petition involving the insolvency of the Lessee, then and in such event or events, the Lessor shall have the right to terminate this Lease. Lessor shall have the immediate right of re-entry and may remove all persons and property from the Demised Premises and such property may be removed and stored in a public warehouse, or elsewhere, at Lessee's expense, all without resort to legal process and without being deemed guilty of trespass or becoming liable for any loss or damage which may be occasioned thereby. If Lessor should elect to re-enter as herein provided or take possession pursuant to legal proceedings, Lessor may either terminate this Lease, or from time to time without terminating this Lease may make such alterations and repairs as may be necessary in order to relet the Demised Premises, and relet said Demised Premises for such term and at such rentals and upon such other terms and conditions as Lessor may deem advisable. In the event of such reletting, all rentals received by Lessor shall be applied: First, to the payment of any indebtedness other than rent due hereunder from Lessee to Lessor; Second, to the payment of any costs and expenses of such reletting, including the expenses of alterations and repairs; and

Third, to the payment of rent due and unpaid hereunder, and the residue, if any, shall be held by Lessor and applied in payment of future rent due and unpaid hereunder. If such reletting shall yield rentals insufficient for any month to pay the rent due by the Lessee hereunder for that month, the Lessee shall be liable to Lessor for any deficiency and same shall be paid monthly. No such re-entry or taking possession of the leased building by the Lessor shall be construed as an election to terminate this Lease unless a written notice of such intention is given by the Lessor to Lessee at the time of such re-entry. Notwithstanding any such re-entry and reletting without termination, the lessor may at any time thereafter elect to terminate this Lease for such previous breach, including the cost of recovering the Demised Premises and the difference in value between the rent reserved hereunder for the remainder of the term and the reasonable rental value of the property for the remainder of the term.

ARTICLE XVII. QUIET ENJOYMENT

Lessor warrants that Lessee shall be granted peaceable and quiet enjoyment of the Demised Premises free from any eviction or interference by Lessor if Lessee pays the rent and other charges provided herein, and otherwise fully and punctually performs the terms and conditions imposed on Lessee.

ARTICLE XVIII. TIME OF THE ESSENCE

Time is of the essence for each provision, covenant, and condition herein contained, and on the part of Lessee or Lessor to be done and performed.

ARTICLE XIX. LEASE BINDING ON SUCCESSORS AND ASSIGNS

The within covenants and agreements shall be binding on the parties hereto, their respective successors, heirs, executors, administrators and assigns.

ARTICLE XX. HAZARDOUS MATERIAL

Lessee shall not use or permit to be brought into the Demised Premises or the real estate, any inflammatory or explosive substance or other article deemed hazardous to person or property, nor shall Lessee do or permit to be done any act or thing which will invalidate or be in conflict with fire or other insurance policies covering the Demised Premises, or any part thereof. Lessee shall not do or permit to be done anything in or upon the Demised Premises or bring to keep anything therein which shall not comply with all rules, orders, regulations or requirements

of the Board of Fire Underwriters or any similar organization (Lessee shall at all times comply with all such rules, orders, regulations or requirements), or which shall increase the insurance premiums or the rate of insurance on the Demised Premises, its appurtenances or contents. If by reason of the failure of Lessee to comply with the provisions of this Lease, or by reason of Lessee's use or occupancy of the Demised Premises, any insurance premium shall at any time be increased, Lessee shall reimburse Lessor for all such increase in premium; provided, however, that receipt of such reimbursement from Lessee shall not be deemed a waiver of Lessee's default under this paragraph, and Lessor shall not be estopped from enforcing his/her other remedies against Lessee on account of such default.

ARTICLE XXI
APPLICABLE LAW

This Lease shall be governed and construed under the Laws of the State of South Carolina.

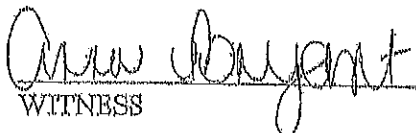
ARTICLE XXII.
MISCELLANEOUS

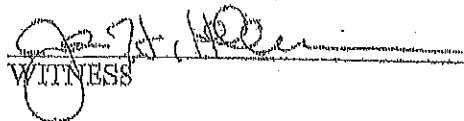
The Lessee covenants and agrees to hold harmless and indemnify the Lessor from and against all losses, liability or expenses that may be incurred or in any way growing out of the negligent use, misuse, or willful abuse of the premises hereby leased.

Other conditions/covenants:

IN WITNESS WHEREOF, the parties herunto set their hands and seals as of this ____ day of April, 2013.

LESSOR:


WITNESS


WITNESS


RIZAN PROPERTIES, LLC

LESSEE:

Ann Bryant
WITNESS

Gerry L. Powers
JERRY POWERS

Joe St. John
WITNESS

Jackie Pearson
JACKIE PEARSON

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

OPTION TO PURCHASE

KNOWN ALL MEN BY THESE PRESENTS, that Rizan Properties, LLC,

in consideration of Five Hundred Fifty and No/100s (\$550.00) Dollars,

the receipt of which is hereby acknowledged, have granted, bargained and delivered and by these presents do grant, bargain and deliver unto Jerry Powers and Jackie Pearson;

AN OPTION TO PURCHASE

1. The Grantee shall have the option to purchase premises known as 39 2nd Ave., Greenville, SC 29609 for the period of eight years from the date of this agreement for the price of Fifty Two Thousand Eight Hundred and No/100s (\$52,800.00) Dollars. The total consideration herein shall be payable as follows: 1) \$550.00 payable at the signing of this agreement; 2) \$52,300.00 payable upon closing. Should the Grantee exercise its right to purchase, the amount of \$550.00 plus \$550.00 of each month's rent paid shall be applied to the purchase price at closing. Should the Grantee fail to exercise his option to purchase all monies paid hereunder are considered forfeited as consideration for the option.
2. If the Grantee chooses to exercise his option to purchase, all expenses necessary for the consummation of the sale shall be paid as follows: 1) Seller shall pay for deed preparation, deed recording fees, costs associated with the mortgage payoff, state and county deed stamps and other customary Seller's expenses. 2) The Grantee shall pay all lenders charges in connection with financing, customary purchaser's attorney's fees, title insurance, recording fees and all other customary purchaser's expenses. If the Grantee chooses to exercise his option to purchase, the Seller agrees to deliver a proper statutory warranty deed free of all liens and encumbrances with all stamps affixed thereto. The Seller shall pay for deed stamps, document preparation and all expenses necessary to deliver clear, marketable and insurable title to the premises. The parties shall formally execute a purchase contract within ten (10) days of the purchaser's notification to the seller that he is exercising this option.
3. If the premises are damaged or destroyed, in whole or in part, by fire or other casualty during the term of this option, Grantor, with due diligence, shall repair, restore, rebuild or replace the premises or such portions of the premises that are damaged and/or destroyed so that the property shall be substantially the same as prior to such damage. If the destruction or damage shall include more than 50% of the insurance value of the premises, Grantor, at Grantor's option

may cancel and terminate the option to purchase by giving written notice to Grantee within thirty (30) days after the date such damage or destruction has occurred and returning all consideration paid for the option. In such an event, this option shall terminate on the date specified in such notice, and Grantor shall not be obligated to repair or rebuild the premises.

4. The closing will be conducted at the offices of The Heckman Law Firm, 409 Pettigru Street, Greenville, SC 29601 and the closing shall occur on or before date specified by the closing agent. If the Grantee wishes to exercise this option, it should notify the Grantor herein in writing and the parties shall execute a contract of sale incorporating the price and terms herein at that time. The terms of this provision shall be binding upon the heirs, successors and assigns of the parties.

SIGNED, sealed and delivered May 1, 2013
in the presence of:

[Signature]
WITNESS

RIZAN PROPERTIES, LLC

[Signature] (SEAL)
By: Lukas Lavette Rigdon, Member

[Signature]
WITNESS

[Signature]
WITNESS

[Signature] (SEAL)
Jerry Powers

[Signature]
WITNESS

[Signature] (SEAL)
Jackie Pearson

FILED-CLERK OF COURT
GREENVILLE SC

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

Meredith M. Rigdon,

Plaintiff,

vs.

Lukas L. Rigdon,

Defendant.

IN THE FAMILY COURT FOR THE

THIRTEENTH JUDICIAL CIRCUIT

FAMILY COURT A. No: 2017-DR-23-4982

FINAL ORDER OF
SEPARATE SUPPORT & MAINTENANCE
(Approval of Agreement)

FILED

Plaintiff's Counsel:
Catherin E. Fairey

Defendant's Counsel:
Vanessa H. Kormylo

Guardian *ad Litem*:
Elizabeth Martin-Young

Hearing date:
August 6, 2018

Hearing Judge:
W. Marsh Robertson

Court Reporter:
Steven LeBlanc

This matter was before the Court for final hearing on the date and time indicated above. The Plaintiff appeared represented by her attorney, Catherine E. Fairey. Defendant also appeared represented his attorney, Vanessa H. Kormylo of Vanessa Hartman Kormylo, P.A. Also in attendance was the Guardian *ad Litem*, Elizabeth Martin-Young.

At the call of the case, the attorneys for the parties announced to the Court that the parties had reached a full and final agreement at mediation on all issues arising out of the marriage. The agreement is set forth in a Memorandum of Agreement dated May 30, 2018 with one revision agreed to by all parties as set forth herein below. The parties



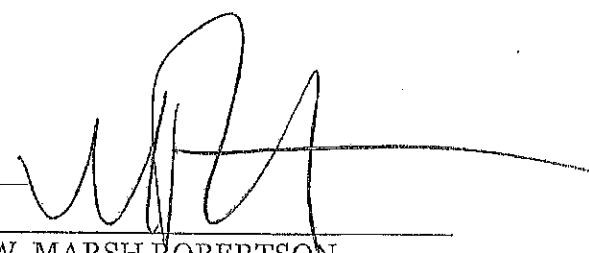
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Commencing September 1, 2018 and continuing on the 1st of each month thereafter, Defendant shall pay child support directly to Plaintiff in the amount of Two Hundred Thirty-eight (\$238.00) per month. Should the Defendant be more than five (5) days late in the payment of any support, then upon the filing of an Affidavit attesting to the late payment, all future child support shall be payable through the Clerk of Court together with the applicable five (5%) percent administrative fee.

Each party shall pay the Guardian *ad Litem* Three Hundred Ninety-six and 87/100 (\$396.87) within thirty (30) days of the date of this Order.

This Court reserves jurisdiction to issue such additional Orders, including Qualified Domestic Relations Orders, as may be necessary to complete the property transfers required herein.

IT IS SO ORDERED.


W. MARSH ROBERTSON
Presiding Judge, The Family Court
Thirteenth Judicial Circuit

Greenville, South Carolina

August 21, 2018

A Certified Copy
Paul B. Wickham
Clerk of Court C.P. & G.S. & Family Court
Greenville County, SC
Dated 8/20/2018

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLEMeredith Rigdon

Plaintiff,

vs.

Lukas Rigdon

Defendant.

IN THE FAMILY COURT OF THE
THIRTEENTH JUDICIAL CIRCUIT**FINANCIAL DECLARATION
OF LUKAS RIGDON**Docket No. 21017-DR-23-4982

HUSBAND/FATHER		WIFE/MOTHER	
Address	12212 Canter Trail	Address	
Age	43	Age	
Occupation	Pricing Specialist	Occupation	
Employer	Seansource	Employer	
Employer Address	6 Logue Ct Greenville SC 29615	Employer Address	

Gross Monthly Income	Husband/Father	Wife/Mother
Principal Earnings from Employment ¹	\$4,098.66	
Overtime, Tips, Commission, Bonuses ²		
Pensions, Retirement, and Annuities Income		
Additional Employment Income		
Social Security Benefits (SSA) and VA Benefits		
Disability and Worker's Compensation Benefits		
Unemployment and AFDC		
Spousal or Child Support (from other marriage/relationship)		
Dividends, Interest, Trust Income, and Capital Gains		
Rental Income and Business Profits	\$1,203.33	
Other (Specify):		
TOTAL GROSS MONTHLY INCOME	\$5,301.99	

Payroll Deductions from Monthly Income	Husband/Father	Wife/Mother
Federal Income Tax ³	\$263.96	
State Income Tax	\$231.34	
Social Security and Medicare Tax (FICA)	\$234.84	
Self-Employment Tax	\$447.00	
Health and Dental Insurance (Adult)	\$256.60	
Health and Dental Insurance (Child)	\$95.65	
Union Dues		
Voluntary Retirement Contribution (401(k), 457, IRA)	\$204.94	
Mandatory Retirement Contribution		
Savings Plan		
Other (Specify):		
TOTAL MONTHLY DEDUCTIONS	\$1,734.33	
NET MONTHLY INCOME ⁴	\$3,567.66	

Estimate monthly expenses: (Specify which party is the custodial parent and list name and relationship of all members of household whose expenses are included. Lukas Rigdon)

MONTHLY EXPENSES ⁵	Husband/Father	Wife/Mother
Residential Rent Payment	\$1,413.95	
Note or Mortgage Payment on Residence(s)		
Food and Household Supplies ⁶	\$500.00	
Utilities, Water, and Garbage Collection	\$80.00	
Telephone and Cellular Phone	\$70.00	
Medical, Dental and Disability Insurance Premiums (not deducted from paycheck)		
Life Insurance Premiums (not deducted from paycheck)	20.00	
Child Support (from other relationship)		
Work Related Day Care		
Spousal Support (from prior marriage)	500.00	
Auto Payment	\$295.00	
Auto Insurance, taxes, gasoline, and maintenance ⁷	\$433.83	
SUBTOTAL: \$3622.48		
Real Property Tax on Residence(s)		
Maintenance for household ⁸		
Adult Clothing	\$100.00	
Children's Clothing ⁹	\$50.00	
Cable Television, Satellite, and Internet/Online Services	\$110.00	
Laundry and Dry Cleaning ¹⁰		
Medical and Dental Expenses (not paid by insurance)		
Prescriptions, Glasses, and Contacts (not paid by insurance)		
Children's incidental expenses ¹¹		
School lunches, supplies, field trips, and fees ¹²	\$50.00	
Entertainment ¹³	\$200.00	
Adult Incidental expenses ¹⁴		
All Installment payments ¹⁵	\$400.00	
Other (Specify):		
SUBTOTAL: \$910.00		
TOTAL MONTHLY EXPENSES	\$4,532.48	

Installment Loan Payments Section

Creditor	For	Monthly Payment	Balance	Owed by ¹⁶
trulliant	attorney/debt	\$310.00	\$9,441.93	
rooms to go	furnishings	\$90.00	\$4,500.00	
Carolina Center	Hospital	20.00	5475.00	
Greenville Hospital	Hospital	20.00	878.41	
Saint Francis	Hospital	20.00	973.71	

Other Debts and Obligations *not* payable in monthly installments

Creditor	For	Date Payable	Balance	Owed by ¹⁶

Are you currently in Bankruptcy? ☐ YES ☒ NO

Are any obligations listed above, including mortgage and note payments, in arrears? ☐ YES ☒ NO

If yes, please list the obligations in arrears.

All Marital Property Known to Parties

Assets	Husband/Father	Wife/Mother	Joint
Cash and Money in Checking Account(s)	1438.28		
Money in Savings Account(s), Credit Union, Money Market, or Cert. of Dep.	10.14		
Value of Voluntary Retirement Account(s)	\$45856.45		
Value of Pension Account			
Value of Publicly Held Stocks, Bonds, Securities, Mutual Funds	\$260.00		
Value of Privately Held Stocks and Other Business			
Value of Real Estate -- Net of Mortgage Balances			
Value of All Other Property ¹⁷			
TOTAL ASSETS	47564.87		

Any Non Marital Property Known to Parties

Description of Asset	Title Owner	Date of Acquisition	Source of Funds to Acquirer	Estimate Present market Value

If total assets are less than \$300,000.00, sign and have notarized.

If total assets are greater than \$300,000.00, itemize assets by completing additional sections below and sign and have notarized.

Financial Accounts Section¹⁸

Owner	Name of Institution	Type of Account	Balance
Lukas Rigdon	Trulliant Federal Credit Union	Checking/Savings	1438.28
Rizan Properties-Lukas Rigdon	Bank of America	Checking/Savings	305.94

Voluntary Retirement Accounts and Pension Accounts Section

Type of Account	Value
401k	45,856.45

Publicly Held Stocks, Bonds, Securities, Mutual Funds Section (Non-Retirement)¹⁹

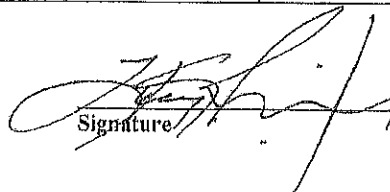
Name of Company	Number of Shares/Type of Account	Value

Real Estate Section²⁰

Owner	Address	Value	Mortgage Balance	Mortgage Equity
Rizan Prop.LLC	39 2 nd Ave Greenville SC 29609	34030.00	0.00	34,030.00
Rizan Properties	208 Maloy St. Greenville SC 29601	38300.00	0.00	38300.00
Rizan Properties	302 Orders St. Greenville SC 29609	32040.00	0.00	32040.00

Other Property Section¹⁷

Owner	Description of Asset	Value	Loan Balance	Equity
Lukas Rigdon	Volkswagen Golf-Lease			0.00


 Signature

Sworn to before me this 3rd of Aug.
2018.

Amanda E. Hartman (SEAL)
 Notary Public for South Carolina
 My commission expires: 7/27/2020

Custodial Parent (if applicable): _____

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

Jerry Powers,

Appellant,

v.

Rizan Properties LLC, Anthony Pearson,
and Tiesha Dash;

Respondent(s)

) IN THE COURT OF COMMON PLEAS
) THIRTEENTH JUDICIAL CIRCUIT
)

) CASE NO. 2020-CP-23-02076
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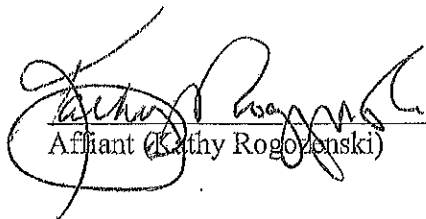
**AFFIDAVIT OF
KATHY ROGOZENSKI**

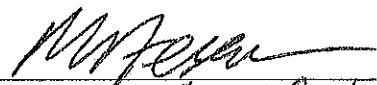
The undersigned witness, being duly sworn, states the following:

1. I, Kathy Rogozenski, have personal knowledge of the facts in this Affidavit.
2. I am a paralegal employed by South Carolina Legal Services ("SCLS").
3. The attached form titled "Income Certification, Declaration of Citizenship, and Referral Authorization" is a form that SCLS is required to have all persons sign the first time they set foot in our office. This rule applies to any clients, applicants, or potential applicant.
4. Consistent with this regular business practice, Jerry Powers signed the attached document the first time he visited the Greenville office in person. I observed Jerry Powers sign this form on November 9, 2018 as indicated by my initials in the top right corner of the document. I initial these documents when I observe the person sign the document, but (s)he does not date the document him or herself.
5. Once Mr. Powers became a client, the document was placed in Mr. Powers' file, where it remains today.
6. This date does not indicate the first time Mr. Powers ever met with an attorney, as all cases go through a case review and acceptance process.
7. Further the affiant sayeth not.

SWORN TO AND SUBSCRIBED

BEFORE ME THIS 7th DAY OF
Jan, 2021


Affiant (Kathy Rogozinski)


Notary Public for South Carolina (state)
My commission expires: 1-13-2021

INCOME CERTIFICATION, DECLARATION OF CITIZENSHIP
AND REFERRAL AUTHORIZATION

5/1/19/18
R

NAME: DEBRA L. PUGH
(Please Print)

INCOME CERTIFICATION

I HEREBY CERTIFY that the information I have given about my income and assets is correct. I further consent to release of information deemed as requested by funders of SCLS.

Debra L. Pugh
Signature Date

DECLARATION OF CITIZENSHIP

I HEREBY DECLARE that I am a citizen of the United States or a member

Debra L. Pugh
Signature Date

AUTHORIZATION TO REFER TO PRO BONO OR PAI

I HEREBY AUTHORIZE South Carolina Legal Services to refer my case to the Pro bono or the Private Attorney Involvement (PAI) Program when appropriate and to send any documents and records related to my case to either.

Debra L. Pugh
Signature Date

CONSENT TO POSSIBLE LIMITATION OF SERVICE

I UNDERSTAND AND AGREE that this intake may be denied or accepted and could be subject to change or denial of service.

Debra L. Pugh
Signature Date

Eviction Notice

12-3-18

Jerry Powers and Jackie Pearson

39 2nd Ave. Greenville SC 29609

This notice is to serve as the immediate eviction requirement of lessees Jerry Powers and Jackie Pearson of the premise 39 2nd Ave Greenville SC 29609. This eviction is being required for the following contract infractions:

- Rent past due of \$1,401.00
- 55 late payment fees unpaid for a total of \$2,750.00
- Failure to maintain the home -- Water damage to roof determined unsafe due to rotting wood and mold. Estimate to tear down and rebuild \$10,000-\$12,000.
- Verbal refusal to pay rent for November 2018.

Contract to own the home is null and void due to late payments not paid in full within 10 days of notification. Failure to pay late fees. Failure to properly maintain the home which will now require partial demolition to rebuild.

If the home is not vacated all resources necessary will be taken to collect the above financial penalties through a court of law including the garnishing of wages and other legal consequences as deemed by a court of law.

Acknowledgement of receipt of notification:

Jerry Powers

Jacki Pearson

Date


Lukas Rigdon

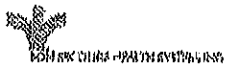
Rizan Properties, LLC

12/3/18

12/3/18
I Jacqueline Pearson
We'll be out of said
house as of Jan 5. 2019

Payment date	X=late	Amount +/-	Amount past due	Notes
5/1/2013	x			
6/1/2013	x			
7/1/2013	x			
8/1/2013				Missing receipt
9/1/2013				Missing receipt
10/1/2013				Missing receipt
11/1/2013				Missing receipt
12/1/2013				Missing receipt
1/1/2014	x			
2/1/2014	x	-150		
3/1/2014	x	150		
4/1/2014	x	-50		
5/1/2014	x			
6/1/2014	x	-250		
7/1/2014	x			Missing Receipt
8/1/2014				Missing Receipt
9/1/2014				
10/1/2014				
11/1/2014	x			
12/1/2014				
1/1/2015	x	-550		
2/1/2015	x			
3/1/2015				Missing Receipt
4/1/2015				
5/1/2015				
6/1/2015	x	-550		
7/1/2015	x	550		Paid June owes \$550
8/1/2015	x			
9/1/2015	x			
10/1/2015	x			
11/1/2015	x	-25		
12/1/2015	x	-84		
1/1/2016	x		-531	Owes - \$531 from 2015
2/1/2016	x			
3/1/2016	x			
4/1/2016	x			
5/1/2016	x			
6/1/2016	x	-210	-731	
7/1/2016	x			
8/1/2016	x			
9/1/2016	x			
10/1/2016	x		-731	Was short \$150 then paid up \$150 in Oct.
11/1/2016	x	50	-681	
12/1/2016	x			
1/1/2017	x		-681	Still a debt of -\$681 from 2015-16
2/1/2017	x	-100	-781	
3/1/2017	x			
4/1/2017	x			
5/1/2017	x			
6/1/2017	x	-50	-831	
7/1/2017	x	50	781	
8/1/2017	x			
9/1/2017	x			
10/1/2017	x			
11/1/2017	x			
12/1/2017	x			
1/1/2018	x		-781	owes \$781 from 2015-16
2/1/2018	x		-781	
3/1/2018	x		-781	

4/1/2018	x		-781	
5/1/2018	x	-20	-801	Short \$20
6/1/2018	x			
7/1/2018	x	-150	-951	Short \$150
8/1/2018	x	-50	-1001	Short \$50
9/1/2018	x	150	-851	Paid up \$150
10/1/2018	x		-851	
11/1/2018	x	-550	-1401	Verbal refusal to pay rent for November. Total amount past due \$-1401.00
				55 late payments x \$50 late fee = \$2,750.00
				Total amount past due - \$4,151.00



ST FRANCIS DOWNTOWN
ONE ST FRANCIS DRIVE
GREENVILLE SC 29601-3955

Powers, Jerry
MRN: [REDACTED] DOB: 8/9/1957, Sex: M
Admit #: [REDACTED]
Arrived 12/19/2018, D/C: 12/21/2018

Signed By: Greg W San, MD
December 20, 2018

Electronically signed by San, Greg W, MD at 12/20/18 1803

Discharge Summary by Jennings, Stelina D, NP at 12/21/18 0832

Author: Jennings, Stelina D, NP	Service: Cardiology	Author Type: Nurse Practitioner
Filed: 12/21/18 1108	Date of Service: 12/21/18 0832	Status: Addendum
Editor: Jennings, Stelina D, NP (Nurse Practitioner)		
Revised Notes: Original Note by Jennings, Stelina D, NP (Nurse Practitioner) filed at 12/21/18 1034		
Designer: San, Greg W, MD at 12/21/18 1251		



Patient ID:
Jerry Powers
247114126
61 y.o.
8/9/1957

Admit date: 12/19/2018

Discharge date: 12/21/2018

Admitting Physician: Mark A Grabarczyk, MD

Discharge Physician: Stelina D Jennings, NP/Dr. San

Admission Diagnoses: NSTEMI (non-ST elevated myocardial infarction) (H00)
NSTEMI (non-ST elevated myocardial infarction) (H00)

Discharge Diagnoses:

[REDACTED]

Patient Demographics (continued)

Patient Name	Sex	DOB	SSN	Address	Phone
Powers, Jerry	Male	8/8/1987	xxx-xx-4126	800 Watkins Rd GREENVILLE SC 29611	864-200-9488 (Home) *Preferred* 864-803-2338 (Mobile)

Patient Language

Language
ENGLISH [18]

Chief Complaint

Chief Complaint
Chest Pain

Clinical Impression

Diagnosis	Comment	Order by	Date Added	Order Type	Order Specialty
STEMI (non-ST elevated myocardial infarction) (HCC) [21.4]		Zellner, Dawn L, MD	2/8/2019 8:05 PM	Attending Provider	Emergency Medicine

ED Treatment Team

Provider	Role	Time	Time
Zellner, Dawn L, MD	Attending Provider	02/08/19 1703	02/08/19 1637
Wilbanks, Lacey M, RN	Primary Nurse	02/08/19 1715	02/08/19 1637
Bittrick, Jon M, MD	Admitting Provider		

HC Disposition

Disposition	Order by	Comment
Admitted	Bittrick, Jon M, MD	Status: INPATIENT [101] Type of Bed: Telemetry [10] Inpatient Hospitalization Certified Necessary for the Following Reasons: 2. Patient admitted for Inpatient Only Procedure (Surgical) Admitting Diagnosis: ACS (acute coronary syndrome) (HCC) [303608] Admitting Physician: BITTRICK, JON M [1107] Attending Physician: BITTRICK, JON M [1107] Estimated Length of Stay: 2 Midnights Discharge Plan: Home with Office Follow-up

Follow-up Information

None

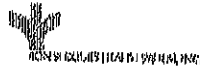
Lab Results

Procedure	Completion	Specimen	Collected	Updated
LIPID PANEL	Completed		02/09/19 0854	02/09/19 0856
Order Status: Completed				

LIPID PROFILE

METABOLIC PANEL, BASIC [10]	Specimen	Collected	Updated
Order Status: Completed		02/09/19 0854	02/09/19 0856

Powers, Jerry (MRN [2177]) Printed by Bittrick, Jon M, MD [2177] at 2/9/19 8:37 AM



Facility Information

Name	Address	Phone
ST FRANCIS DOWNTOWN	ONE ST FRANCIS DRIVE Greenville SC 29601-6955	864-255-1000

Patient Information

Patient Name	Gender Identity	DOB
Powers, Jerry	Male	8/9/1957

Referral Details

Referred by	Order	Referred to
Smith, Traola D, NP 212 Frontage Rd Clemson SC 29607 Phone: 864-654-8885 Fax: 864-222-2708	Referral To Cardiac Rehab Reason: Specialty Services Required	Sto Healthy Self 2 INNOVATION DR GREENVILLE SC 29607 Phone: 864-400-8651

Discharge Information

Admitting Physician	Service Area	Unit
Blitrok, Jon M, MD	BON SECOURS HEALTH SYSTEM	BFD & TELEMTRY
Discharge Location	Discharge Date/Time	Discharge Disposition
Blitrok, Jon M, MD	02/10/2019 11:32 AM	Home or Self Care

Patient Language

Language
ENGLISH [10]

Problem List as of 2/10/2019

Reviewed: 12/20/2019 8:52 AM by Phillips, Melissa
A, NP

Active Problems

* Hypertension

1/8/2017 - 2/8/2019 by
Present Blitrok, Jon M,
MD

* Coronary atherosclerosis of native coronary vessel

Entered by Taylor, Riosle A
1/8/2017 - 2/8/2019 by
Present Blitrok, Jon M,
MD

* Uncontrolled type 2 diabetes mellitus

Entered by Taylor, Riosle A
7/8/2017 - 2/8/2019 by
Present Blitrok, Jon M,
MD

* Hypercholesterolemia

Entered by Horton, James Kyle,
MD
Unknown - 2/8/2019 by
Present Blitrok, Jon M,
MD

Powers, Jerry (MRN 247114126) Printed at 2/10/19 2:32 PM

Page 1 of 9

2015-09-16 23:25

pipecorprt05 8642958461 >>
Powers, Jerry Lee (MRN: 634190933) Printed by AUKI I.A. PUGH III, CARVILLE (10/07/19)

P 1/16
Page 1 of 6

Powers, Jerry Lee "J.P." (MRN: [REDACTED]) DOB: 08/09/1957

Encounter Date: 04/10/2019

Do you have a question about this report?

Ask a Question

Powers, Jerry Lee

MRN: [REDACTED]

ED to Hosp-Admission Last attending: Barry Rodgers Davis, MD • Treatment team
4/10/2019 - 4/22/2019 (12 days)
Status: Discharged
GREENVILLE MEMORIAL
HOSPITAL

Discharge Summary Kevin R Knapp, PA (Physician Assistant) • Cardiac Surgery
Cosigned by: Barry Rodgers Davis, MD at 4/22/2019 2:56 PM
Cardiac Surgery Discharge Summary

Admitting Provider: Joseph Houston Henderson, MD
Primary Care Physician at Discharge: Daryl Allyn Lapeyrolerie, MD
Referring Provider: Dr. Henderson
Consulting Provider: PHARMACY TO DOSE GENTAMICIN
PHARMACY TO DOSE VANCO
IP CONSULT TO ENDOCRINOLOGY
CONSULT TO CASE MANAGEMENT / SOCIAL WORK
IP CONSULT TO NEUROLOGY

Admission Date: 4/10/2019 Discharge Date: 4/22/2019

Reason for Admission: Ischemic coronary artery disease status post acute anterior myocardial infarction requiring emergent percutaneous intervention

Discharge Diagnosis: [REDACTED]

Operative Procedures Performed

History of Present Illness/Hospital Course

Jerry Lee Powers is a 61 y.o. male who has known coronary artery disease and is status post percutaneous intervention with stents to the LAD and diagonal coronary artery.

Incident Detail Report

Data Source: Data Warehouse

Incident Status: Closed

Incident number: SO191027-

186365 Map It

Case Numbers:

Incident Date: 10/27/2019 15:34:57

Report Generated: 12/22/2020

08:37:57

Incident Type:	1 DEPUTY	Alarm Level:	
Priority:	Deputy Req 1025	Problem:	53C_Suspicious Vehicle
Determinant:		Agency:	SHERIFF
Base Response#:		Jurisdiction:	SHERIFF
Confirmation#:	10272019-0130585	Division:	SOW
Taken By:	Smith, Jeremy G 371_SO	Battalion:	SOW9
Response Area:	SO9I	Response Plan:	1D-09
Disposition:	03_Handled by Deputy No Report	Command Ch:	
Cancel Reason:		Primary TAC:	
Incident Status:	Closed	Secondary TAC:	
Certification:		Delay Reason (if any):	
Longitude:	82409166	Latitude:	34867463
Location Name:		County:	GREENVILLE
Address:	39 2nd Ave	Location Type:	
Apartment:		Cross Street:	C ST/SHAW ST
Building:		Map Reference:	
City, State, Zip:	(C) GREENVILLE SC 29609		
Caller Name:	MERIDETH RIGDON	Call Back Phone:	864-884-0473
Method Received:		Caller Location:	
Caller Type:		Caller Location Phone:	
Caller Address:		Caller Apartment:	
Caller Building:		Caller County:	
Caller City, State, Zip:			

Description	Date	Time	User	Description	Time
Phone Pickup	10/27/2019	15:34:44			
1st Key Stroke	10/27/2019	15:34:57		Received to In Queue	00:01:43
In Waiting Queue	10/27/2019	16:36:40		Call Taking	00:01:43
Call Taking Complete	10/27/2019	15:36:40	Smith, Jeremy G 371_SO	In Queue to 1st Assign	00:00:33.0
1st Unit Assigned	10/27/2019	15:37:13		Call Received to 1st Assign	00:02:28.0
1st Unit Enroute	10/27/2019	15:37:13		Assigned to 1st Enroute	00:00:00.0
1st Unit Arrived	10/27/2019	15:50:11		Enroute to 1st Arrived	00:12:58.5
Closed	10/27/2019	16:25:55	Jasper, Kelsey Lynn 323_SO	Incident Duration	00:51:11

Unit	Primary Flag	Assigned	Disposition	Enroute	Staged	Arrived	At Patient	Delay Avail	Complete	Odm. Enroute	Odm. Arrived	Cancel Reason
B39SO	Y	15:37:13		15:37:13		15:50:11			16:25:55			
B30SO	N	15:37:56	03_Handled by Deputy No Report						16:25:55			

Unit	Name
B39SO	Tarrant, Zachary Burgess B39 (SO1579)
B30SO	Skinner, Aaron Lee A19 (SO1525)

No Caution Notes found

No Pre-Scheduled Information

No Transports Information

No Transports Information

Date	Time	User	Type	Conf.	Comments
10/27/2019	15:36:40	SO1106	Response		[1] 1024 OWNS THIS VACANT PROPTERY CAME TO CHECK ON THE PROPTERY STATES A SUBJ INA BLACK HONDA CIVIC IS BACKED IN THE DRIVEWAY 1024 1011 AT THE SPINX AT RUTHERFORD / SHAW
10/27/2019	15:37:48	SO1740	Response		[2] Secondary Location for B39SO: Spinx on Rutherford St, 619 RUTHERFORD ST,(C) GREENVILLE, SC 29609.
10/27/2019	15:37:56	SO1740	Response		[3] Secondary Location for B30SO: Spinx on Rutherford St, 619 RUTHERFORD ST,(C) GREENVILLE, SC 29609
10/27/2019	15:37:57	SO1740	Response		[4] Backed up b39so with B30SO

No Address Changes

Date	Time	Changed from	Priority	Reason	User
10/27/2019	16:02:54	Immediate		Default Reason	KLJ

No Alarm Level Changes

Date	Time	Radio	Activity	Location	Log Entry	User
10/27/2019	15:36:40		Incident In Waiting Queue			
10/27/2019	15:36:40		Waiting Pending Incident Time Warning		Waiting Pending Incident Time Warning timer expired	
10/27/2019	15:36:45		Read Incident		Incident 209 was Marked as Read.	SO1740
10/27/2019	15:37:13		Incident Timer Clear	39 2nd Ave	Incident Late Timer cleared for SO191027-186365	SO1740
10/27/2019	15:37:13	B39SO	Dispatched	39 2nd Ave		SO1740
10/27/2019	15:37:13	B39SO	Enroute	39 2nd Ave	Responding From = Lions Park Rd / Chestnut Ridge Rd.	SO1740
10/27/2019	15:37:48	B39SO	Responding 2nd Loc	Spinx on Rutherford St	Incident ID = 9196209, 619 RUTHERFORD ST 34867089, 82405169,	SO1740
10/27/2019	15:37:56	B30SO	Dispatched	39 2nd Ave		SO1740

10/27/2019	15:37:56	B30SO	Responding 2nd Loc	Splnx on Rutherford St	Incident ID = 9196209, 619 RUTHERFORD ST 34.867089, - 82.405169, ,	SO1740
10/27/2019	15:37:57	B39SO	Unit Backed up	Lions Park Rd / Chestnut Ridge Rd	Backed up with B30SO	SO1740
10/27/2019	15:37:58		UserAction		User clicked Exit/Save	SO1740
10/27/2019	15:50:08	B39SO	At Scene 2nd Location	Splnx on Rutherford St	Incident ID = 9196209, 619 RUTHERFORD ST 34.867089, - 82.405169, ,	SO1740
10/27/2019	15:50:11	B39SO	At Scene	39 2nd Ave		SO1740
10/27/2019	15:52:12		Incident Late		Active Incident marked as late	
10/27/2019	15:52:26	B39SO	Reset System Timer	39 2nd Ave	[Timer] Reset System Timer [Reset Reason] Safety Check [Next Late Check Time] 10/27/2019 16:02:26	SO1740
10/27/2019	16:02:27		Incident Late		Active Incident marked as late	
10/27/2019	16:02:54		Incident Priority Change		Incident priority changed from Immediate to Deputy Req 1025 due to Default Reason	SO1740
10/27/2019	16:02:54		UserAction		User clicked Exit/Save	SO1740
10/27/2019	16:02:54	B30SO	Change Unit Priority		Change Unit Priority from Immediate to Deputy Req 1025	SO1740
10/27/2019	16:07:50	B30SO	At Scene 2nd Location	Splnx on Rutherford St	Incident ID = 9196209, 619 RUTHERFORD ST 34.867089, - 82.405169, ,	SO1740
10/27/2019	16:25:55	B30SO	Available	619 RUTHERFORD ST [Splnx on Rutherford St]		SO1740
10/27/2019	16:25:55	B30SO	Disposition	39 2nd Ave	03_Handled by Deputy No Report	SO1740
10/27/2019	16:25:55	B30SO	Response Closed	39 2nd Ave	Response Disposition: 03_Handled by Deputy No Report	SO1740
10/27/2019	16:25:55	B39SO	Available	39 2nd Ave		SO1740

Date	Time	Field	Change d From	Changed To	Reason	Table	Workstatt on	User
10/27/2019	15:35:03	Address	(Blank)	39 2ND AVE	New Entry	Response_Master_Incident	SHERIFF 05	SO11 06
10/27/2019	15:35:06	Longitude	0	82409166	Entry Selected/Returned from GeoLocator	Response_Master_Incident	SHERIFF 05	SO11 06
10/27/2019	15:35:06	Latitude	0	34867463	Entry Selected/Returned from GeoLocator	Response_Master_Incident	SHERIFF 05	SO11 06
10/27/2019	15:35:06	City	(C) GREENVILLE		Updated City	Response_Master_Incident	SHERIFF 05	SO11 06
10/27/2019	15:35:06	Address	39 2ND AVE	39 2ND AVE	Entry Selected/Returned from GeoLocator	Response_Master_Incident	SHERIFF 05	SO11 06
10/27/2019	15:35:06	ResponsePlanType	0	0	(Response Viewer)	Response_Master_Incident	SHERIFF 05	SO11 06
10/27/2019	15:35:06	Response_Area		SO91	(Response Viewer)	Response_Master_Incident	SHERIFF 05	SO11 06
10/27/2019	15:35:06	Battalion		SOW9	(Response Viewer)	Response_Master_Incident	SHERIFF 05	SO11 06

10/27/20 15:35: Division	SOW	(Response Viewer)	Response_Master_Incl dent	SHERIFF 05	SO11 08
19 06					
10/27/20 15:35: Jurisdiction	SHERIFF	(Response Viewer)	Response_Master_Incl dent	SHERIFF 05	SO11 06
19 06					
10/27/20 15:35: Caller_Name	MERIDETH RIGDON	(Response Viewer)	Response_Master_Incl dent	SHERIFF 05	SO11 06
19 14					
10/27/20 15:35: Call_Back_Phone	864-884-0473	(Response Viewer)	Response_Master_Incl dent	SHERIFF 05	SO11 06
19 27					
10/27/20 15:36: Incident_Type	1 DEPUTY	(Response Viewer)	Response_Master_Incl dent	SHERIFF 05	SO11 06
19 38					
10/27/20 15:36: Priority_Number	0 2		Response_Master_Incl dent	SHERIFF 05	SO11 06
19 38					
10/27/20 15:36: Priority_Description	Immediate		Response_Master_Incl dent	SHERIFF 05	SO11 06
19 38					
10/27/20 15:36: ResponsePlanType	0 1	(Response Viewer)	Response_Master_Incl dent	SHERIFF 05	SO11 06
19 38					
10/27/20 15:36: DispatchLevel	Normal	(Response Viewer)	Response_Master_Incl dent	SHERIFF 05	SO11 06
19 38					
10/27/20 15:36: Response_Plan	1D-09	(Response Viewer)	Response_Master_Incl dent	SHERIFF 05	SO11 06
19 38					
10/27/20 15:36: Problem	53C_Suspectious Vehicle	(Response Viewer)	Response_Master_Incl dent	SHERIFF 05	SO11 06
19 38					
10/27/20 15:36: Read Call	False True	(Response Viewer)	Response_Master_Incl dent	SHERIFF 03	SO17 40
19 45					
10/27/20 16:02: Current_UnitRespPriorityDesc	B30SO: Deputy Req Immediate	Default Reason	Response_Vehicles_Assigned	SHERIFF 03	SO17 40
19 54					
10/27/20 16:02: Priority_Number	2 25	Default Reason	Response_Master_Incl dent	SHERIFF 03	SO17 40
19 54					
10/27/20 16:02: Priority_Description	Immediate Deputy Req 1025	Default Reason	Response_Master_Incl dent	SHERIFF 03	SO17 40
19 54					

No Custom Time Stamps

Description	Data	User
FireDist	PARKER FIRE DISTRICT	SO1106
FireDist	PARKER FIRE DISTRICT	SO1106

No Attachment

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN RE: GCSO CASE NO.: 01-19-186365

CERTIFICATE OF RECORD

CASE NO.: 2020-CP-23-02076

PERSONALLY APPEARED before me, Michael McGaha, who first being duly sworn testifies:

1. I am a Legal Investigator assigned to the Legal Unit of the Greenville County Sheriff's Office. My duties include responding to records requests directed to the Sheriff's Office.
2. I received a Subpoena Duces Tecum requesting records as described in the addendum of the attached subpoena.
3. Today I have reviewed the recordings at the request of the law firm making the original request.
4. I certify that the records I have provided and reviewed today are a true copy of the records that are kept in the normal course of business by the Sheriff's Office, and are copies of the records that I provided in my original response.

Michael McGaha
Michael McGaha

12/22/2020
Date

SWORN to and subscribed

Before me this 22 day of December, 2020

Diara Clapp
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES: 8/13/2022

IN MEMORY OF
JACQUELINE
"JACKE"
PEARSON

19 - 2301630

Greenville County
Probate Court

2019 JUL 10 AM 9:29

Obituary for Jacqueline "Jacke" Pearson



Ms. Jacqueline Pearson, 60, of Greenville, passed on July 1, 2019, at PRISMA Health Upstate. She was a daughter of the late Cleophas and Ethel Pearson.

Surviving: Fiancée, Jerry Powers; a daughter, Tiesha Dash of Queens, NY; a son Shacko Pearson of Greenville, SC; grandchildren, Amadi, Messiah, Malachi, Kaleb, and Madison; one aunt, Georgia Robinson of Detroit, MI; two sisters, Sandra Reaves of Bronx, NY, and Cleo Carter of New York, NY; a brother-in-law, William Carter of New York, NY; three brothers, Glennice Pearson of Florida, and James and Andre Jefferson of Bronx, NY; six nieces, Yori, Dominique, Shonte, Nya, Jazelle, Kenyatta, and Renee of New York, NY; one nephew, Adrian of Bronx, NY; great-nieces, Skyla, Kyla and Mackenzie of Bronx, NY; one great-nephew, Marvin Jr. Bronx, NY; and a host of other relatives and friends.

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Watkins Garrett & Woods Mortuary Inc.

[Print](#)

IMAGED

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
THIRTEENTH JUDICIAL CIRCUIT

Jerry Powers,

C.A. No.: 2020-CP-23-02076

Plaintiff,

Rizan Properties, LLC, Anthony Pearson
and Tiesha Dash

AFFIDAVIT OF JOHN H. HECKMAN III

Defendants.

Personally appeared before me John H. Heckman III who after being duly sworn states as follows:

1. My name is John H. Heckman III and I am an attorney licensed in South Carolina with my practice located at 409 Pettigru Street Greenville, South Carolina.
2. That in the past I have had occasion to represent Lukas Rigdon and Rizan Properties, LLC in various matters, primarily related to real estate.
3. That attached to this affidavit collectively as Exhibits A and B are a lease and an option contract both prepared by me on instructions from Lukas Rigdon concerning a lease on a property located at 39 2nd Ave., Greenville, SC 29609 and an option to purchase the same property.
4. That both the lease agreement and the option contract were prepared by me and the execution of both documents were witnessed by myself and a member of my staff.
5. That in connection with the execution of the documents I would have sat down and explained to both Jerry Powers and Lukas Rigdon the documents being executed and confirmed that the documents both related to the same property and should be construed together.

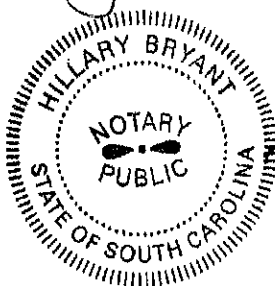
6. That as part of my review of the documents and discussions with the participants during execution I would have explained that the intent of the documents and the purpose of preparing them and executing them together was that as long as all of the lease payments were made in full the option to purchase the dwelling remained valid and the option could be exercised. On the other hand I would have also explained that in the event there was a default in payments under the lease, the Sellers remedy would be eviction and the option to purchase would lapse.
7. That no one at the table questioned my explanation of the intent behind the documents nor expressed any confusion in their understanding that the documents were to be construed together and a default in the lease would result in a default of the option.

FURTHER AFFIANT SAYETH NAUGHT.

Sworn to me this 9th day
of December, 2020

Hillary Bryant
Notary Public for South Carolina
My Commission Expires: 09-30-27

John H. Heckman III
John H. Heckman III



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED

Jun 23 2021

SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master in Equity

Case No. 2020-CP-23-02076

Jerry Powers, ...Appellant

v.

Rizan Properties, LLC, Anthony Pearson, and Tiesha Dash, ...Defendants

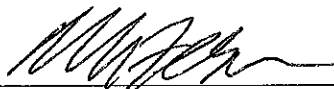
Of which Rizan Properties, LLC is the Respondent

CERTIFICATE OF COUNSEL

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

Respectfully Submitted,

SOUTH CAROLINA LEGAL SERVICES



June 14, 2021

Mark Fessler (S.C. Bar No.: 77376)
701 South Main St.
Greenville, South Carolina 29601
Office: (864) 679-3254
Fax: (864) 679-3260
markfessler@sclegal.org