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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson., Circuit Court Judge

Court of Appeals Opinion No.: 20-UP-238
Case No. 2015-CP-10-03038
Appellate Tracking No.: 2020-001371

Barry Clarke.....Petitioner,

vs.

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

of which Fine Housing, Inc. is the Respondent.

APPENDIX
Volume 1

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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Case No. 2015-CP-10-03038

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SC Court of Appeals

Barry Clarke,

Respondent/Appellant,

v.

Fine Housing, Inc. and RRJR, LLC,

Defendants,

Of which Fine Housing, Inc. is the

Appellant/Respondent.

RECORD ON APPEAL – VOLUME 1 OF 2

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-3038

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

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

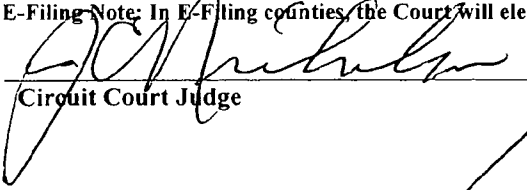
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

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

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

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

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


Circuit Court Judge

 2117
Judge Code

 10/18/2017
Date

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

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

2015

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

ORDER OF JUDGMENT

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

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

Procedural Background

gen

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

General denial.

Denial based on vagueness of the right of first refusal.

Waiver.

Laches.

Estoppel.

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



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

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

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

Factual Background



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

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

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



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

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

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

This lease is the central issue in this case.

According to plaintiff's testimony, Robinson and Clarke jointly met with a local lawyer, who drafted and recorded the lease (Plaintiff's Exhibit 1). Plaintiff testified there were negotiations between the two, and that the recorded lease represented the terms to which Plaintiff agreed—including the right of first refusal in Article V, as may be seen by their signatures on the lease. (Robin Robinson signed the lease for RRJR, L.L.C.—see Plaintiff's Exhibit 1, page 10.) After Clarke and Robinson signed the lease, the lawyer who drafted it sent it to the Register of Mesne Conveyance for Charleston County where the R.M.C. recorded it on January 17, 1999, at Book C 319 at Page 791. The lease contains Article V, which is the heart of the dispute now before the Court. Article V reads as follows:

Article V

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

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

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

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

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

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

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



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

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

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

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

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

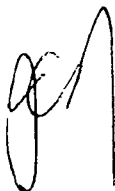
Discussion of the issues

A. South Carolina Recording Statute

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

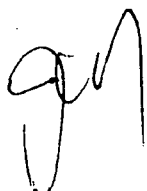
There are two broad principles of law invoked in this case. (The defendant's affirmative

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



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

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



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

B. Vagueness or Ambiguity

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

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

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

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

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

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

gm

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

gm
If a contract's language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and its language determines the instrument's force and effect. *Jordan v. Security Group, Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993); *Blakeley* at 72, 221 S.E.2d at 769. "Where an agreement is clear and capable of legal interpretation, the courts only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Ellie* at 93, 594 S.E.2d at 493 (quoting *Heins v. Heins*, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct. App. 2001)). However, where an agreement is ambiguous, the court should seek to determine the parties' intent. *Smith-Cooper v. Cooper*, 344 S.C. 289, 295, 543 S.E.2d 271, 274 (Ct.App.2001); *Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship*, 331 S.C. 385, 390, 503 S.E.2d 184, 187 (Ct.App.1998).

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

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

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

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

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

C. Waiver, Estoppel and Laches

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

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

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

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

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

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

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

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

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

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

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

FINDINGS OF FACT

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

the hands of a new person.

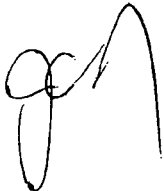
9. The plaintiff first attempted to exercise his right of first refusal on April 10, 2014, when his lawyer conveyed an offer to purchase to the defendant.
10. The right of first refusal contained in Article V of the lease between Group Housing, Inc. and Barry Clarke contains sufficient terms to be enforceable.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

Based on these facts, the Court makes the following

CONCLUSIONS OF LAW

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

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



It is therefore **ORDERED**:

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

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

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

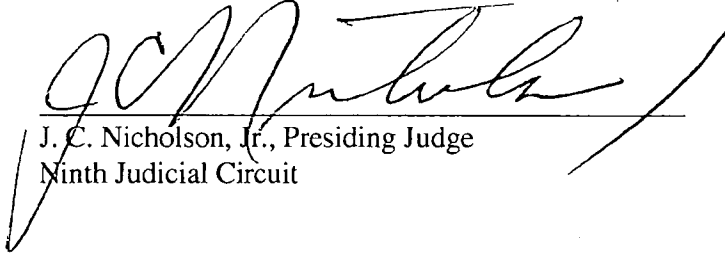
ORDERED that if the plaintiff does not perform under the terms of this Order within sixty

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

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

AND IT IS SO ORDERED!

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


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

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-3038

Barry Clarke

Fine Housing Inc.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

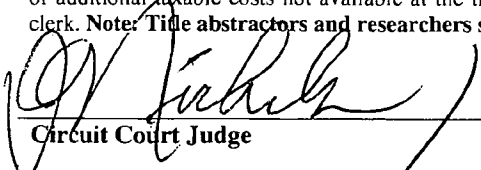
INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$

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

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


Circuit Court Judge

2117
Judge Code

8/26/16
Date

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-3038

Barry Clarke

Fine Housing Inc.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
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- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Defendant's Motion for Summary Judgment filed on 5/5/2016 is **denied**, viewing the evidence in favor of the non-moving party and finding a scintilla of evidence exists giving rise to a genuine issue of material fact.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk : _____

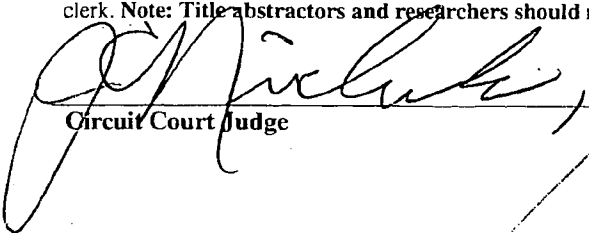
INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$

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

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


Circuit Court Judge

2117
Judge Code

8/26/16
Date

5/28/15 2:53PM

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

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

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

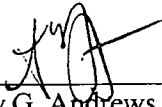
ALL that piece, parcel or tract of land, situate, lying and being in Charleston County, South Carolina, known and designated as "Tract A, 1.610 Acres, Property of Group Investment Company, Inc., TMS 466-16-00-011" on a plat entitled "Plat Showing TMS 466-16-00-011, being subdivided into tracts 'AB' and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

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

TMS # 466-16-00-011

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

May 26, 2015



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

andrews@lafondlaw.com

ATTORNEYS FOR PLAINTIFF



Thomas R. Goldstein, #2186
BELK, COBB, INFINGER & GOLDSTEIN, P.A.
P. O. Box 71121
Charleston, South Carolina 29415-1121
843-554-4291; 843-554-5566 fax
tgoldstein@cobblaw.net
ATTORNEYS FOR THE PLAINTIFF

2015-CP-10-3038

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

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

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

COMPLAINT
(Breach of Lease-non-jury trial demanded)

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

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

CAUSE OF ACTION
Breach of Lease—Right of First Refusal

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

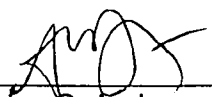
Wherefore, having fully set forth his complaint, the plaintiff prays an Order of the Court:

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

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

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

May 26, 2015



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

May 26, 2015



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

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

LEASE AND AGREEMENT

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

WITNESSETH:

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

ARTICLE I

Demise of the Premises and Warranties

With Respect Thereto

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

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

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

ARTICLE II

Improvements

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

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

ARTICLE III

Term and Commencement Date

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

ARTICLE IV

Rent

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

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

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

property taxes on the premises.

ARTICLE V

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

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

ARTICLE VI

Surrender Upon Termination or Cancellation

No Holding Over

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

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

ARTICLE VII

Use of the Premises: Lessor's Covenant

of Quiet Enjoyment: Right of Entry and

Inspection

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

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

ARTICLE VIII

Repair and Maintenance; Indemnification of Lessor

Liability Insurance

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

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

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

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

ARTICLE IX

Personal Property on the Premises:

Lessee's Rights Therein

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

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

ARTICLE X

Assignment and Subletting

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

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

ARTICLE XI

Default: Lessor's Remedies

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

ARTICLE XII

Subrogation

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

ARTICLE XIII

Binding Effect: Successors and Assigns

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

ARTICLE XIV

Notice: payments

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

If to Lessor:

2347 SOL LEGARE ROAD

CHARLESTON, SC 29412

If to Lessee:

2162 Westriver Drive
Charleston, SC 29412-2091

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

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

ARTICLE XV

Entire Agreement Herein

or Changes Waivers

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

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

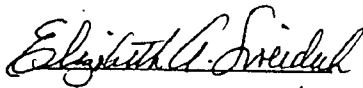
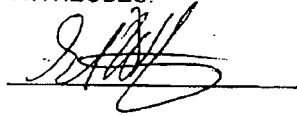
ARTICLE XVI

Headings

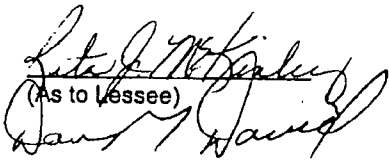
Section 16.1: The headings as to the contents of particular Articles and Sections herein are inserted only for convenience and are in no way to be construed as part of this lease or as a limitation on the scope of the particular Articles or Section to which they refer.

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

WITNESSES:



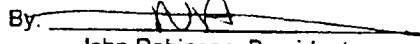
(As to Lessor)

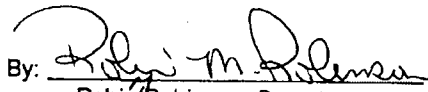


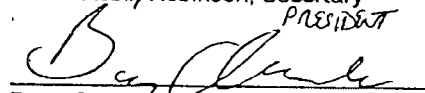
(As to Lessee)

GROUP INVESTMENT COMPANY, INC.
Lessor



By: 
John Robinson, President

By: 
Robin Robinson, Secretary
PRESIDENT


Barry Clarke, Lessee

BK C 319PG801

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

ACKNOWLEDGEMENT

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

SWORN to before me this

2th day of January, 1999.

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

Exhibit A

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

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

Dan David

BK C 319PG803

~~g~~
w

FILED

C319-791

99 JAN 27 PM 12:07

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

18.0
4

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
Ninth Judicial Circuit

ROBIN M. ROBINSON and RRJR, LLC,

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

Plaintiffs,

v.

FINE HOUSING, INC.,

Defendant/Third Party
Plaintiff,

v.

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

Third Party Defendants.

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

STIPULATION OF DISMISSAL

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

WE SO STIPULATE:

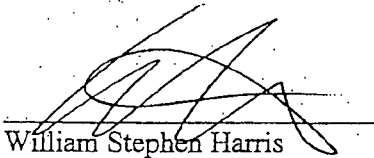

Robin M. Robinson, *Pro Se*

Robinson

Civil Action Number: 2014-CP-10-1035

Page 2 of 7

WE SO STIPULATE:

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

William Stephen Harris

Harris & Huge, LLC

180 Spring Street

Charleston, SC 29403

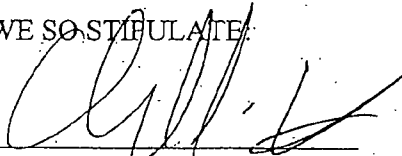
Attorney for RRJR, LLC

Robinson

Civil Action Number: 2014-CP-10-1035

Page 3 of 7

WE SO STIPULATE:

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

Charles S. Altman

Altman & Coker, LLC

575 King Street, Suite A

Charleston, South Carolina 29403

Attorney for Fine Housing, Inc.

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

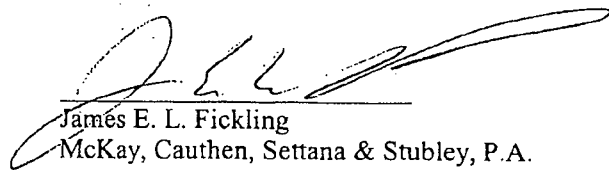
WE SO STIPULATE:

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

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

Robinson, et al, v. Fine Housing, et al.
Civil Action Number: 2014-CP-10-1035
Page 5 of 7

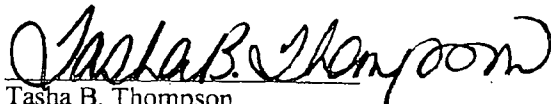
WE SO STIPULATE:



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

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

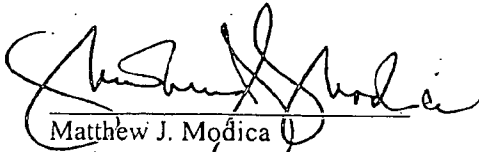
WE SO STIPULATE:

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

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

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

WE SO STIPULATE:

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

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

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



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

3038

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

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

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

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

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

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

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

Service By GREEN, B.

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

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

ATTEST OF CERTIFIED TRUE COPY

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

NOTARY PUBLIC SOUTH CAROLINA

DATE: 6/26/15

MY COMMISSION EXPIRES: 10/29/17

BY: *Beth*

AFFIDAVIT OF SERVICE

State of South Carolina

County of Charleston

Common Pleas Court

Case Number: 2015-CP-10-3038

Plaintiff:

BARRY CLARKE

vs.

Defendant:

FINE HOUSING, INC AND RRJR, LLC

For:

Thomas R. Goldstein, Esq.

Belk, Cobb, Infinger & Goldstein

P. O. Box 71121

Charleston, SC 29415-1121

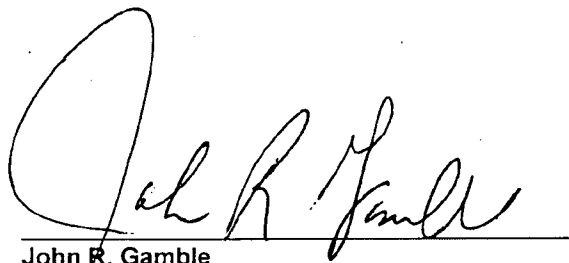
FILED
2015 JUL -6 PM 2:21
JULIE J. ARMSTRONG
CLERK OF COURT

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

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

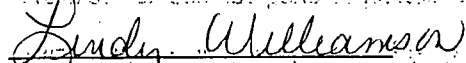
SERVED the within named CORPORATION by delivering a true copy of the **LIS PENDENS (TMS# 466-16-00-011); SUMMONS; COMPLAINT; LEASE AND AGREEMENT; STIPULATION OF DISMISSAL (C/A nO: 2014-CP-10-1035) HARRIS,ALTMAN, FOGEL,FICKLING,THOMPSON, MODICA** with the date and hour of service endorsed hereon by me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

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



John R. Gamble
PROCESS SERVER

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



NOTARY PUBLIC

Commission Expires: 5-6-19

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

Our Job Serial Number: LEX-2015001548

AFFIDAVIT OF SERVICE

State of South Carolina

County of Charleston

Common Pleas Court

Case Number: 2015-CP-10-3038

Plaintiff:

BARRY CLARKE

vs.

Defendant:

FINE HOUSING, INC AND RRJR, LLC

For:

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

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

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

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

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

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

Linda Williamson
NOTARY PUBLIC

Commission Expires: 5-6-19

Doug Wells
Doug Wells
Process Server

PROCESS SERVICE, INC.

P.O. Box 20097

Charleston, SC 29413

(843) 577-2355

Our Job Serial Number: LEX-2015001547

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Case No.: 2015-CP-10-3038

Barry Clarke,)

Plaintiffs,)

vs.)

Affidavit of Default

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

Defendants.)

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

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

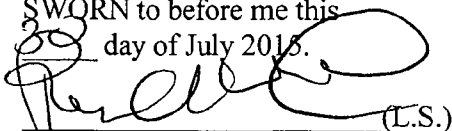
1. That he represents the Plaintiff in the within action and is familiar with all of the proceedings herein.
2. That Defendant, RRJR, LLC was served a copy of the Summons and Complaint and Lis Pendens on June 29, 2015, by reference of affidavit of service attached hereto.
3. That more than thirty (30)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

July 30, 2015



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

SWORN to before me this
29 day of July 2015.


(L.S.)

Notary Public for South Carolina

My Commission Expires: 10/30/2016

AFFIDAVIT OF SERVICE

State of South Carolina

County of Charleston

Common Pleas Court

Case Number: 2015-CP-10-3038

Plaintiff:

BARRY CLARKE

vs.

Defendant:

FINE HOUSING, INC AND RRJR, LLC

For:

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

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

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

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

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

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

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

Doug Wells
Doug Wells
Process Server

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

Our Job Serial Number: LEX-2015001547

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Barry Clarke,

Plaintiff,

v.

Fine Housing, Inc. and RRJR, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2015-CP-10-03038

ANSWER OF FINE HOUSING, INC.

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

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

FOR A FIRST DEFENSE TO ALL CAUSES OF ACTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FOR A SECOND DEFENSE

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

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

FOR A THIRD DEFENSE

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

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

FOR A FOURTH DEFENSE

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

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

FOR A FIFTH DEFENSE

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

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

FOR A SIXTH DEFENSE

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

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

FOR A SEVENTH DEFENSE

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

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

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

FOR AN EIGHTH DEFENSE

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

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

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



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

Adams and Reese LLP

PO Box 2285

Columbia, SC 29202

P: 803-254-4190

F: 803-779-4749

cliff.moore@arlaw.com

Attorney for Defendant Fine Housing, Inc.

August 31, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Barry Clarke,

Plaintiff,

v.

Fine Housing, Inc. and RRJR, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2015-CP-10-03038

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

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

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

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

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

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

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

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

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

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

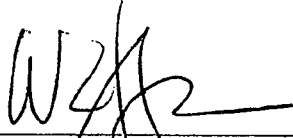
In Page, the Court found that (1) there was testimony of a legitimate purpose – assuring that property remained in the family – and (2) the language creating the right identified the price to be paid by the person exercising the right. However the Page Court found that the document that created the right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

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

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

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

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



W. Cliff Moore, III (SC Bar No. 4067)
Adams and Reese LLP
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cliff.moore@arlaw.com

Attorney for Defendant Fine Housing, Inc.

May 2, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Barry Clarke,

Plaintiff,

v.

Fine Housing, Inc. and RRJR, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2015-CP-10-03038

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

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

FILED
JUL 15 PM 3:02
CLERK OF COURT
BY

OVERVIEW

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

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

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

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

BACKGROUND

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

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

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

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

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

ARGUMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

b. The *Page* Decision.

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

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

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

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

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

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

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

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

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

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

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

a. Rule against perpetuities.

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

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

b. Collateral Estoppel

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

Clarke's Motion for Summary Judgment.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

In his Memorandum Clarke states:

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

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

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

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

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

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

CONCLUSION

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



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

Adams and Reese LLP

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Columbia, SC 29202

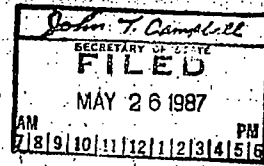
P: 803-254-4190

cliff.moore@arlaw.com

Attorney for Defendant Fine Housing, Inc.

July 12, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA
SECRETARY OF STATE
ARTICLES OF INCORPORATION
OF



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

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

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

This Space for Use
by
Secretary of State

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

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

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

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

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

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

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

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

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

KITCO

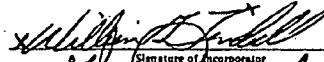
EXHIBIT

1

82

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

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

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

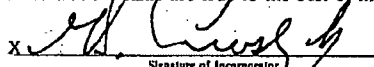
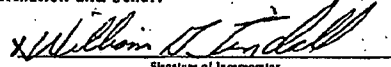
Date: May 21, 1987

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

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

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

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

CERTIFICATE OF ATTORNEY

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

Date: May 21, 1987


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

SCHEDULE OF FEES

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

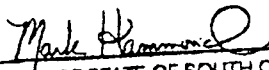
Fee for filing Articles	\$ 5.00
In addition to the above, \$.40 for each \$1,000.00 of the aggregate value of shares which the corporation is authorized to issue, but in no case less than nor more than	40.00 1,000.00

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

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

JUN 30 2016

DEPARTMENT OF STATE
COLUMBIA, SOUTH CAROLINA


SECRETARY OF STATE OF SOUTH CAROLINA

DECLARATION OF DISSOLUTION BY FORFEITURE

Date of Dissolution FEB 22, 2000

GROUP INVESTMENT COMPANY INC
PO BOX 80160
CHARLESTON SC 29416

21104112-0

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

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

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

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

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

Jim Miles
Secretary of State

COPY

R.D. TXPCI016

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

00-007558AC

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

JUN 30 2016

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

ARTICLES OF ORGANIZATION
LIMITED LIABILITY COMPANY

TYPE OR PRINT CLEARLY IN BLACK INK

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

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

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

Street Address

Charleston

29412

City

Zip Code

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

John F. Martin

Name

[Signature]
Signature

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

113 Wappoo Creek Drive

Street Address

Charleston

29412

City

Zip Code

4 The name and address of each organizer is

(a) Robin M. Robinson

Name

2347 Sol Legare Road

Street Address

Charleston

City

South Carolina

State

29412

Zip Code

(b)

Name

Street Address

City

State

Zip Code

(Add additional lines if necessary)

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

070330-0096
RRJR, LLC

Mark Hammond

FILED 03/29/2007

Filing Fee \$110.00 ORIG

South Carolina Secretary of State

RRJR, LLC

Name of Limited Liability Company

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

(a) _____
Name

Street Address City

State Zip Code

(b) _____
Name

Street Address City

State Zip Code

(c) _____
Name

Street Address City

State Zip Code

(d) _____
Name

Street Address City

State Zip Code

(Add additional lines if necessary)

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

RRJR, LLC

Name of Limited Liability Company

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

- 10 Signature of each organizer

Robert Johnson

Date

03/28/03

(Add Additional lines if necessary)

FILING INSTRUCTIONS

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

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

NOTE

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

Form Revised by South Carolina
Secretary of State, January 2000

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

JUN 30 2016

Mark Hammond
SECRETARY OF STATE OF SOUTH CAROLINA

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

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

TYPE OR PRINT CLEARLY IN BLACK INK

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

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

RRJR, LLC

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

Date

10/22/13

John F. Martin
Signature of Agent

John F. Martin
Type or Print Name

FILING INSTRUCTIONS

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

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

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

Form Revised by South Carolina
Secretary of State, May 2011

131031-0106
RRJR, LLC

FILED: 10/23/2013

Filing Fee: \$10.00 ORIG

Mark Hammond

South Carolina Secretary of State

JUL 0 1 2016

STATE OF SOUTH CAROLINA
SECRETARY OF STATE

SECRETARY OF STATE OF SOUTH CAROLINA

ARTICLES OF ORGANIZATION
LIMITED LIABILITY COMPANY

TYPE OR PRINT CLEARLY IN BLACK INK

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

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

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

Street Address

Charleston

City

29412

Zip Code

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

John F. Martin

Name

Signature

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

113 Wappoo Creek Drive

Street Address

Charleston

City

29412

Zip Code

4 The name and address of each organizer is

(a) Robin M. Robinson

Name

2347 Sol Legare Road

Street Address

Charleston

City

South Carolina

State

29412

Zip Code

(b)

Name

Street Address

City

State

Zip Code

(Add additional lines if necessary)

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

070330-0096
RRJR, LLC

Mark Hammond

FILED 03/29/2007

Filing Fee \$110.00 ORIG

South Carolina Secretary of State

RRJR, LLC

Name of Limited Liability Company

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

(a) _____
Name

Street Address City

State Zip Code

(b) _____
Name

Street Address City

State Zip Code

(c) _____
Name

Street Address City

State Zip Code

(d) _____
Name

Street Address City

State Zip Code

(Add additional lines if necessary)

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

RRJR, LLC

Name of Limited Liability Company

- 8 Unless a delayed effective date is specified, these articles will be effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time.
- 9 Set forth any other provisions not inconsistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement.
- 10 Signature of each organizer
Robert R. Jensen
Date 03/28/03
(Add Additional lines if necessary)

FILING INSTRUCTIONS

- 1 File two copies of this form, the original and either a duplicate original or a conformed copy.
- 2 If space on this form is not sufficient, please attach additional sheets containing a reference to the appropriate paragraph in this form, or prepare this using a computer disk which will allow for expansion of the space on the form.
- 3 This form must be accompanied by the filing fee of \$110.00 payable to the Secretary of State.
- Return to: Secretary of State
P.O. Box 11350
Columbia, SC 29211

NOTE

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

Form Revised by South Carolina
Secretary of State, January 2000

08-4249

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT OF BARRY CLARKE

BY

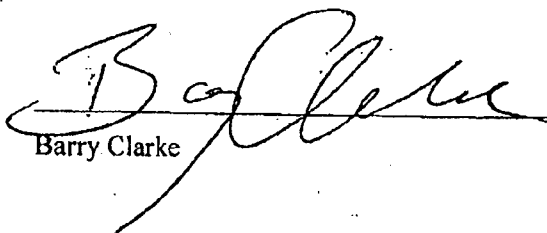
JULIE ARMSTRONG
CLERK OF COURT

2010 NOV 23 PM 4:24

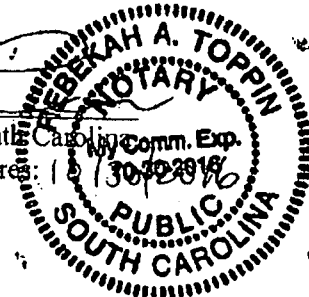
FILED

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

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


Barry Clarke

Sworn to before me this 19
November 2010


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




08-4249

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT OF TERRY J. HILL

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

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

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

Further your deponent saith not.

Terry Hill
Terry Hill

Sworn to before me this

2nd day of July 2010

U. R. Hill

Notary Public for South Carolina

My Commission expires: 12/16/2020

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

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

AFFIDAVIT OF BONUM S. WILSON III

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

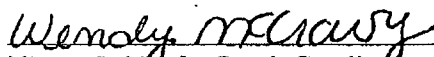
1. Wilson & Heyward previously represented Barry Clarke, and I personally was aware that there was a dispute between Mr. Clarke and John Robinson regarding the lease of a building next to a parking lot.
2. On one occasion, I personally hand delivered a One Thousand Dollar (\$1,000.00) check to Mr. Robinson's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

Further your deponent sayeth not


 Bonum S. Wilson, III

Sworn to before me this

16 day of April 2010


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



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

WILSON & HEYWARD LLC

MARGARET M. FANNING ESQ.

February 15, 2007

John B. Robinson
2347 Sol Legare Rd
Charleston SC 29412

Dear Mr. Robinson:

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

With best regards, I remain.

Very truly yours,

WILSON & HEYWARD LLC

Margaret M. Fanning

MMF/cbb
Enclosure
cc: Mr. Barry Clarke

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

WILSON & HEYWARD LLC

Pegal vs. Clarke
3324
MARGARET M. FANNING Esq.

March 14, 2007

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

Re: \$1,000 check

Dear Mr. Skip:

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

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

With best regards, I remain,

Very truly yours,

WILSON & HEYWARD LLC


Margaret M. Fanning

MMF/cbb
Enclosure
cc: Mr. Barry Clarke

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

WILSON & HEYWARD LLC

MARGARET M. FANNING Esq.

April 3, 2007

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

Re: \$1,000 check

Dear Skip:

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

With best regards, I remain,

Very truly yours,

WILSON & HEYWARD LLC



Bonum S. Wilson, III, Esquire

BSWIII/lsm

Enclosure

cc: Barry Clarke



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

WILSON & HEYWARD LLC

MARGARET M. FANNING Esq.

April 9, 2007

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

Re: \$1,000 check

Dear Skip:

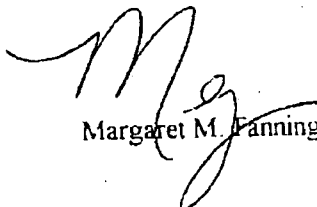
Enclosed please find the check for \$1,000 to replace the one that was previously delivered to Mr. Robinson but he stated has never received. I trust you will deliver and acknowledge that Mr. Robinson has now received the check.

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

With best regards, I remain,

Very truly yours,

WILSON & HEYWARD LLC


Margaret M. Fanning

MMF/cbb
Enclosure
cc: Mr. Barry Clarke

BARRY CLARKE

67-776/532

10620

EZShield[®] Check
Fraud Protection

DATE 3/30/07

PAY TO THE
ORDER OF

GROUP INCUBATOR CO INC \$ 1000.00

One Thousand & 00/100

DOLLARS

Security
Features
Details
on back

WACHOVIA BANK, N.A.
CHARLESTON, SC 29402

TO NO PROUD CHECK DATA
10456 1/3/07
FOR THREE HUNDRED AND NO PENCE

Barry Clarke

⑆053207766⑆ ⑆000500000334⑆ 0620

P.O. Box 13177, CHARLESTON, SC

Clarke 00011899

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

Harry C. Belk (1919-2003)

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

Peggy M. Infinger
pmfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

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

November 26, 2007

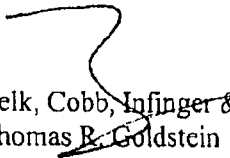
Mr. John F. Martin
Martin Law Firm
113 Wappoo Creek Drive
Charleston, S. C. 29412

Re: 2008 Annual payment

Dear Skip,

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

Very truly yours,


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

enclosure: check
cc: Barry Clarke

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

Harry C. Belk (1919-2003)

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

Peggy M. Infinger
pinfinger@att.net

Thomas R. Goldstein
tgoldstein@att.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

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

February 29, 2012

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

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

Dear Skip,

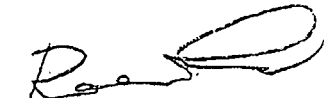
I enclose Barry's check in the amount of \$1,000.00 for rent payment on the disputed parking lot lease. I have been carrying this check around with me for some time because we were supposed to get together on this case and the Philip Rawlins case. (It is my fault we did not.)

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

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

Very truly yours,

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



Thomas R. Goldstein

TRG/rt
enclosure: as stated, check #15202

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

Harry C. Belk (1919-2003)

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

Peggy M. Infinger
pinfinger@cobb-law.net

Thomas R. Goldstein
tgoldstein@cobb-law.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

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

December 12, 2013

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

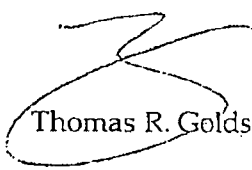
Re: Barry Clarke vs. Estate of John Robinson, et. al.,
Case No.: 2008-CP-10-4249

Dear Skip,

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

Very truly yours,

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



Thomas R. Goldstein

TRG/rt

enclosure: as stated, check #17922

cc: Barry Clarke

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

Harry C. Belk (1919-2003)

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

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

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

April 7, 2014

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

RE: Lease 2028 Pittsburgh

Dear Vincent,

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

Very truly yours,

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

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

Clarke 000120
103

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Barry Clarke,

Plaintiff,

v.

Fine Housing, Inc. and RRJR, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2015-CP-10-03038

AFFIDAVIT OF VINCE DESTASO

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

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

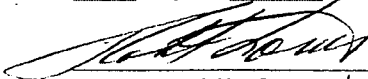


8. On January 28, 2015 Fine Housing, Inc. and Heavy Man SC, LLC entered a Commercial Real Estate Lease With Option To Purchase concerning the Property (the "Heavy Man Lease"), a copy of which is attached to this Affidavit as Exhibit 2.
9. In Addendum "A" to the Heavy Man Lease there is a statement that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



Vince DeStaso

Sworn to before me this
30 day of June, 2016



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

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

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

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

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

PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT

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

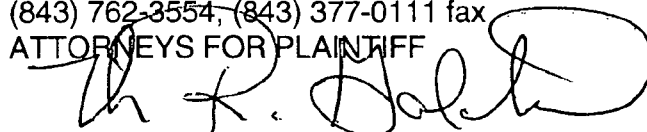
To: The Defendant, Fine Housing, Inc., (the defendant, RRJR, L.L.C. is in default) above named:

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

June 17, 2016

 FOR

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



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

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

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

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

PLAINTIFF'S MEMORANDUM OF LAW
IN SUPPORT OF SUMMARY JUDGMENT

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

UNDISPUTED FACTS

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

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

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

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

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

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

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

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

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

Rule Against Perpetuities

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

If a contract's language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and its language determines the instrument's force and effect. *Jordan v. Security Group, Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993); *Blakeley* at 72, 221 S.E.2d at 769. "Where an agreement is clear and capable of legal interpretation, the courts only function is to interpret its lawful meaning, discover the intention of the parties as found within the agreement, and give effect to it." *Ellie* at 93, 594 S.E.2d at 493 (quoting *Heins v. Heins*, 344 S.C. 146, 158, 543 S.E.2d 224, 230 (Ct.App. 2001)). However, where an agreement is ambiguous, the court should seek to determine the parties' intent. *Smith-Cooper v. Cooper*, 344 S.C. 289, 295, 543 S.E.2d 271, 274 (Ct.App.2001); *Prestwick Golf Club, Inc. v. Prestwick Ltd. P'ship*, 331 S.C. 385, 390, 503 S.E.2d 184, 187 (Ct.App.1998).

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

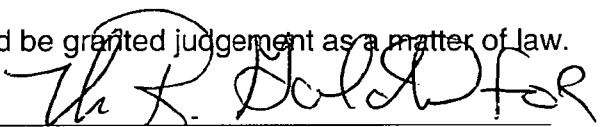
Ecclesiastes Production is factually similar to this case. The only difference is that in *Ecclesiastes*, the landowner settled with a joint tortfeasor over its allegation that the two tortfeasors conspired to deprive it of its right of first refusal. After *Ecclesiastes* settled with the purchaser,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

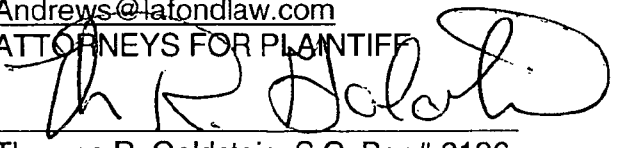
evidence shows that Fine Housing noted the existence of the lease, but failed to read it to discover its terms. Fine Housing learned from its mistake, and when it entered into its January 28, 2015, lease with its current tenant, Heavy Man, SC, it was careful to note in its lease: "This lease and option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

Conclusion

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

June 17, 2016

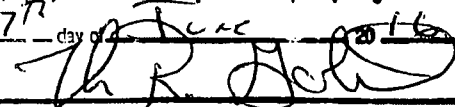

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CERTIFICATE OF SERVICE

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

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

This 17th day of JUNE 2016
BY 

EXHIBITS

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

EXHIBIT 1



BP0377843

#PGS:

5

STATE OF SOUTH CAROLINA)

)

TITLE TO REAL ESTATE

COUNTY OF CHARLESTON)

)

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

SEE EXHIBIT "A" ATTACHED HERETO

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

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

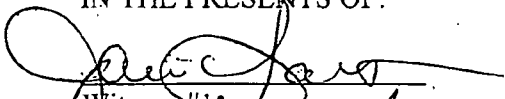
TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

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

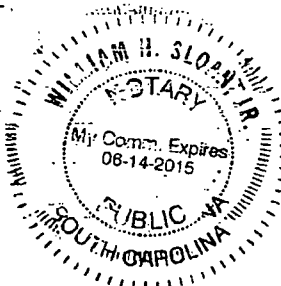
AND RRJR, LLC does hereby bind itself and its Successors and Assigns to warrant and forever defend, all and singular, the said Premises unto the said Grantee, its successors and assigns, against RRJR, LLC and its Successors and Assigns, and all persons whomsoever so lawfully claiming, or to claim the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

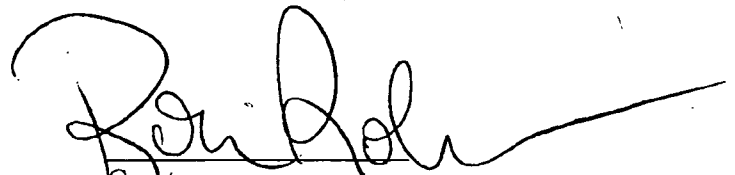
WITNESS our Hands and Seals this 22 day of December, in the year of our Lord Two Thousand and Thirteen.

SIGNED, SEALED AND DELIVERED
IN THE PRESENTS OF:


Witness #1

Notary Public as Witness #2



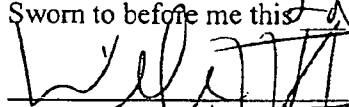

Grantor

THE STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

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



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


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

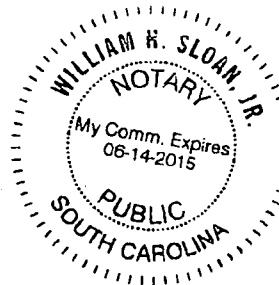


Exhibit A

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

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

TMS# 466-16-00-011

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

AFFIDAVIT

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

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

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

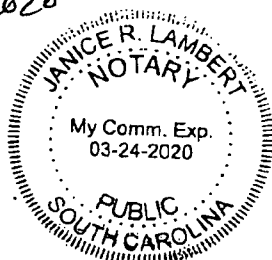
SWORN this 2nd day of December, 2013

Notary Public for South Carolina

My Commission Expires: 3-24-2020

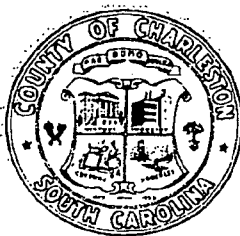
THE SLOAN LAW FIRM, P.A.

William H. Sloan, Jr.



RECORDER'S PAGE

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



cm
Filed By:

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

MAKER:

RRJR LLC

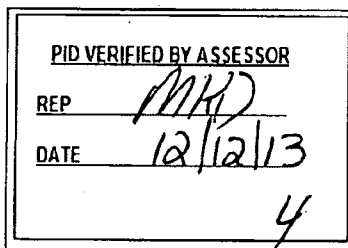
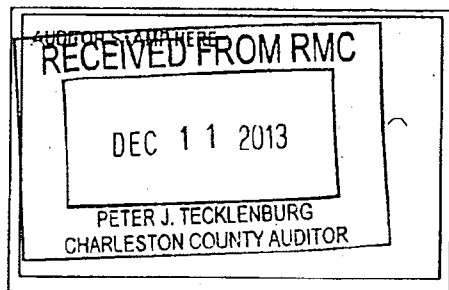
RECIPIENT:

FINE HOUSING INC

Note:

Original Book:

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Date: December 9, 2013

Time: 4:32:18 PM

Book

Page

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843

Deed

Charlie Lybrand, Register
Charleston County, SC

of Pages: 5

Recording Fee \$ 10.00

State Fee \$ 390.00

County Fee \$ 165.00

Extra Pages \$ -

Postage \$ -

Chattel \$ -

TOTAL \$ 565.00

DRAWER Drawer 3

CLERK ECP



0377
Book



843
Page



12/09/2013
Recorded Date



5
Pgs



Original Book



Original Page



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EXHIBIT 2



PGS:

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BP0377842

STATE OF SOUTH CAROLINA)

)

TITLE TO REAL ESTATE

COUNTY OF CHARLESTON)

)

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

SEE EXHIBIT "A" ATTACHED HERETO

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

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

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

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

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

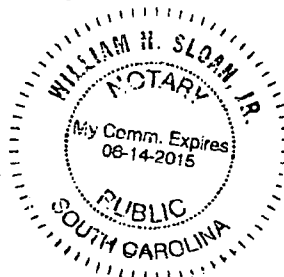
WITNESS our Hands and Seals this 16 day of December, in the year of our Lord Two Thousand and Thirteen.

SIGNED, SEALED AND DELIVERED
IN THE PRESENTS OF:

Witness #1

Notary Public as Witness #2

Robin M. Robinson



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

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission expires:



Exhibit A

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

ALSO

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

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

TMS# 330-08-00-007

AFFIDAVIT

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

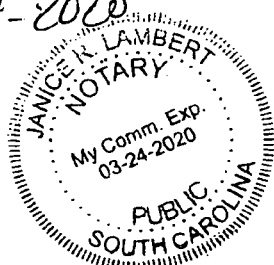
PERSONALLY appeared before me the undersigned, who, being duly sworn, deposes and says:

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

SWORN this 2nd day of December, 2013

THE SLOAN, LAW FIRM, P.A.

William H. Sloan, Jr.



RECORDER'S PAGE

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



cm
Filed By:

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

MAKER:

ROBINSON ROBIN M

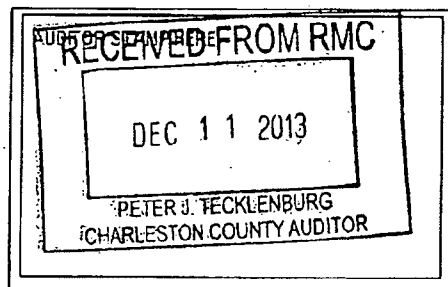
RECIPIENT:

FINE HOUSING INC

Note:

Original Book:

Original Page:



PID VERIFIED BY ASSESSOR	
REP	_____
DATE	_____

TO Mapping

RECORDED

Date: December 9, 2013

Time: 4:31:22 PM

Book	Page	DocType
0377	842	Deed

Charlie Lybrand, Register
Charleston County, SC

of Pages: 5

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

DRAWER Drawer 3
CLERK ECP



0377
Book



842
Page



12/09/2013
Recorded Date



5
Pgs



Original Book



Original Page



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Doc Type



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Recorded Time

EXHIBIT 3

OPTION TO PURCHASE REAL ESTATE AGREEMENT

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SELLER/LANDLORD:

[Signature]

[Signature]

12/3/13

FINE HOUSING, LLC

BY: VINCENT DOSTALO

Its: pres.

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

Joseph Kowalchuk Sr.

Notary Name Printed

[Signature]

Notary Signature

[Signature] 12/3/13

Witness Signature

Commission expires: 12/2/14

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

BUYER/TENANT:

Jaice Labet
Willth

RRJR, LLC

BY:

Its:

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

Willth

Notary Name Printed

William H. Sloan, Jr.

Willth

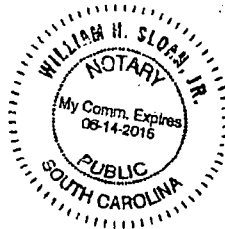
Notary Signature

Jaice Labet

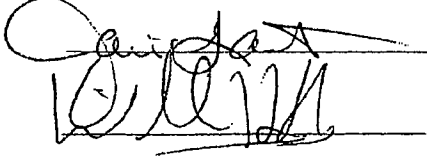
Witness Signature

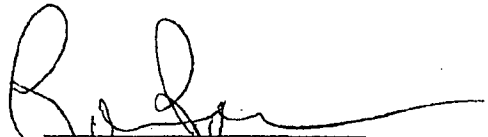
Commission expires:

6/14/2015



BUYER/TENANT:

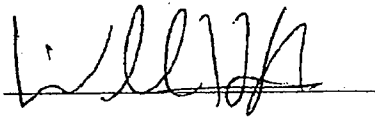



ROBIN M. ROBINSON

BY: Robi

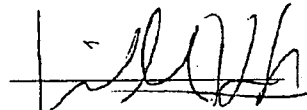
Its:

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

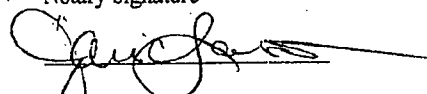


Notary Name Printed

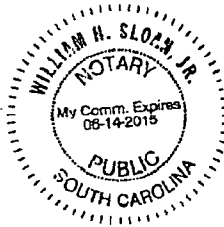
William H Sloan



Notary Signature


Witness Signature

Commission expires: 6/14/2015



Legal Description A

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

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

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

TMS No. 3300800007

Property Address 2470 Sol Legare Road, Charleston, SC 29412

Legal Description B

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

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

TMS NO. 4661600011

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

EXHIBIT 4

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

From: Bill Sloan <sloanlawfirm@yahoo.com>

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

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

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

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

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

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

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

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

From:

EXHIBIT 5

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

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

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

Borrower

Fire Housing Inc

Seller

Robin M. Robinson

RRJR, LLC

Authorized member of
RRJR, LLC

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

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

Sloan Law Firm, Settlement Agent

EXHIBIT 6

2028
lease
with Scott Vincent

Commercial Real Estate Lease With Option To Purchase

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

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

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

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

The deposit shall be applied as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Addendum "A"

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

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

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

LANDLORD:
Fine Housing, Inc

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

TENANT:
Heavy Man SC, LLC

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

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

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

LANDLORD:

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

TENANT:

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

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

LANDLORD:

Fine Housing, Inc

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

TENANT:

Heavy Man SC, LLC

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

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

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

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

2015

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

PLAINTIFF'S REPLY TO DEFENDANT'S
MEMORANDUM OF LAW

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

FILED

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

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

RIGHT OF FIRST REFUSAL

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

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

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

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

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

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

THE COURT'S FUNCTION IN ENFORCING A CONTRACT

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

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

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

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

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

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

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

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

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

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

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

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

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

Q. You spoke to—

A. --Vince.

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

A. When?

Q. Yes.

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

Q. Generally, do you recall when it was?

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

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

A. It was approximately that time. Approximately.

Q. Approximately December of 2013?

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

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

A. Yes, sir.

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

A. Around—that's my memory.

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

A. Because—

Q. --around that time.

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

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

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

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

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

2016, brief.)

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

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

. . . .

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

CONCLUSION

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

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

July 13, 2016



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

CERTIFICATE OF SERVICE

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

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

☐ handing counsel a copy thereof

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

This 13TH day of July, 2016

BY T. R. Goldstein

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Barry Clarke,

Plaintiff,

v.

Fine Housing, Inc. and RRJR, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2015-CP-10-03038

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

FILED
OCT 13 PM 2:20
CLERK OF COURT

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

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

1. The Order does not explain the Court's conclusion that the right of first refusal extends to a parcel that includes more property than the Plaintiff leased. The testimony revealed that the Lease was for only an unidentified one half (1/2) of the identified parking spaces of the Pittsburg Avenue property, but the Court ruled that the right of first refusal pertained to the entire tract, including all improvements. Finding of Fact number 4 erroneously states that the legal description of the property encumbered by the lease is the same as the property encumbered by the right of first refusal. Finding of Fact number 11 states that the right of first refusal contains an exact legal description of the property encumbered. In fact, there is no property description in the right of first refusal paragraph of the Lease. Fine Housing argued that the discrepancy

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

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

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

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

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

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

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

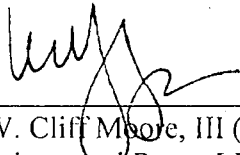
3. Any suggestion that Fine Housing or Vince DeStaso offered or committed to loaning money to Robin Robinson and/or RRJR, LLC.

D. To exclude the following extraneous and irrelevant information:

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

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

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



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October 2, 2017

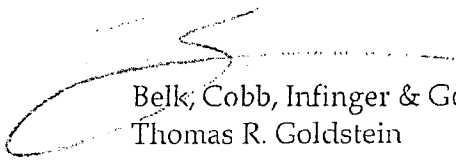
Mr. W. Cliff Moore, III
Adams and Reese, L.L.P.
P. O. Box 2285
Columbia, S. C. 29202

Re: Clarke vs. Fine Housing, Inc.; 2015-CP-10-3038

Dear Cliff,

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

Very truly yours,


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

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

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

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

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

APPEARANCES:

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Official Court Reporter

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EXHIBITS

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

DEFENSE EXHIBITS

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

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

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

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

7 THE COURT: Okay.

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

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

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

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

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

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

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

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

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

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

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

18 MR. GOLDSTEIN: Yes, sir.

19 MR. MOORE: Yes, sir.

20 (Off the Record, briefly.)

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

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

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

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

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

14 MR. GOLDSTEIN: Correct.

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

17 MR. GOLDSTEIN: That is correct, Judge.

18 THE COURT: All right.

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

21 THE COURT: What was the purchase price?

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

23 THE COURT: Is that stipulated to also?

24 MR. GOLDSTEIN: It is.

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

1 says, Your Honor.

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

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

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

6 MR. MOORE: Yes, Your Honor.

7 THE COURT: Go ahead.

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

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

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

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

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

9 THE COURT: Okay.

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

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

16 MR. MOORE: Exhibits One through Six.

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

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

21 (Court reporter marks the exhibits.)

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

23 MR. MOORE: No, Your Honor.

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

25 MR. GOLDSTEIN: No, Your Honor.

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

8 MR. GOLDSTEIN: Yes, sir.

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

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

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

16 MR. GOLDSTEIN: That is correct.

17 THE COURT: Is he here?

18 MR. GOLDSTEIN: He was.

19 THE COURT: He was here.

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

22 MR. MOORE: No, Your Honor.

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

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

7 MR. GOLDSTEIN: Yes, Your Honor.

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

11 MR. MOORE: Yes, Your Honor.

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

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

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

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

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

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

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

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

12 THE COURT: Okay. That's fine.

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

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

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

1 just kind of an interesting thing.

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

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

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

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

1 was facing a foreclosure date of December 3rd.

2 On December the 2nd, Mr. Destaso lent Ms. Robinson a
3 sum of money at extortionary rates in excess of 50 percent,
4 and there will be testimony about the closing itself, which
5 has all the earmarks of classic predatory lending.

6 But be that as it may, the parties have stipulated, and
7 there is a recordance entered into evidence without
8 objection, a recorded request for admission. The defendant
9 concedes at the time of closing on December 2nd, 2013, no
10 one notified my client, Barry Clarke. It's a stipulated
11 fact.

12 THE COURT: Nobody notified your client of the transfer
13 of the property?

14 MR. GOLDSTEIN: That is correct.

15 THE COURT: Okay.

16 MR. GOLDSTEIN: So in March of 2014, rumors were on the
17 street, because as Your Honor probably knows, adult
18 businesses have very few locations in which they may
19 operate. They are highly regulated and so it's a small
20 closed world. So word began circulating that Robin was no
21 longer in control of the club; Mr. Destaso was. And it is
22 stipulated that in March of 2014, Mr. Destaso, through his
23 lawyer, Mr. Sloan, reached out to me to inquire about the
24 status of Mr. Clarke's lease. At that point, for lack of a
25 better expression and to use a colloquial, the cat was out

1 of the bag. The title had been transferred.

2 My client, being highly attuned and attentive to his
3 business, he let no moss grow on his stone, and on April
4 10th ---

5 THE COURT: What year are we talking about?

6 MR. GOLDSTEIN: Closing was December 2nd, 2013.

7 THE COURT: Okay.

8 MR. GOLDSTEIN: It is undisputed and the evidence is in
9 record that Mr. Destaso reached out to me through his
10 lawyer, Bill Sloan, on March 10th, 2014. On April 10th,
11 2014, Ashley Andrews, who is seated to my left, conveys a
12 written offer to Mr. Destaso to purchase the property;
13 again, that's undisputed and that e-mail is in evidence
14 without objection.

15 There was a second modification of the proposal for
16 purchase for \$650,000 and that, too, is in the record -- and
17 I'm doing this from memory, but I think that e-mail is in
18 the record by agreement was April 21st, 2014.

19 The parties were unable to arrive at an acquisition
20 price for Mr. Clarke. Meanwhile, on February 9th -- and I
21 hate to do this to the Court; I'm now skipping back a month.
22 On February 9th, 2014, Mr. Swope filed a suit on behalf of
23 Robin Robinson to rescind the deal alleging that it was not
24 a conveyance, that it was, in fact, a loan.

25 That matter was handled by counsel for Mr. Destaso,

1 Charlie Altman. That matter was resolved in September of
2 2015. So during that time, there was a lot of back and
3 forth about whether Mr. Clarke did or did not have an
4 enforceable right of first refusal.

5 THE COURT: How was that resolved?

6 MR. GOLDSTEIN: Robin Robinson's lawyer was William
7 Swope. William Swope moved to be relieved as counsel due to
8 the fact that he was an obvious witness. The Court entered
9 an Order relieving Mr. Swope, I forget the date, but we have
10 it, and Ms. Robinson never secured additional counsel, and
11 that matter was therefore resolved by stipulation of
12 dismissal signed by Robin Robinson.

13 THE COURT: Okay. So it was dismissed?

14 MR. GOLDSTEIN: Dismissed.

15 THE COURT: All right. Go ahead.

16 MR. GOLDSTEIN: It's in the record as -- the Order of
17 Dismissal, Robinson v. Fine Housing, Case number 2014-CP-10-
18 01035 was January 9th, 2015; that case was dismissed.

19 THE COURT: Okay.

20 MR. GOLDSTEIN: The question the Court is called to
21 answer is does the plaintiff have an enforceable right of
22 first refusal? If he does not, the inquiry stops and the
23 case is resolved in favor of the defendant. If he does,
24 then the next question the Court is called upon to answer is
25 whether he waived that right or whether he is precluded from

1 exercising it by failing to act in a timely manner, which
2 would be laches or estoppel. So those are the legal issues
3 before the Court. Unless the Court has any questions, I
4 will conclude there.

5 THE COURT: Okay. Mr. Moore?

6 MR. MOORE: Thank you, Your Honor. Just as a start,
7 because I know certain things get in people's minds once
8 they're said. There were a couple of things that were said
9 there in the presentation that I think illustrate the issues
10 that are before the Court today. But let me just go and
11 correct a couple of things.

12 First, the transaction whereby RRJR, LLC, transferred
13 the property to Fine Housing, Inc., is a deed. It was
14 referred to by Mr. Goldstein as a loan and we don't think
15 it's a loan.

16 THE COURT: I think he said that it could possibly be a
17 loan. He may have said it's a deed, maybe I misheard him.
18 I know he said your position was that it was a loan.

19 MR. MOORE: No, sir, our position is that it was a
20 purchase.

21 THE COURT: A purchase. Okay. Let me ask you, since
22 you brought it up, as far as whether the first right of
23 refusal or not, whether it was exercised or whether it was
24 your obligation to notify them to exercise it, what
25 difference does it make whether it's a loan or a deed? Is

1 the deed recorded? So from my perspective, I will assume,
2 my gut reaction, I'm going to go by what's recorded and say
3 a deed. So what difference does it make whether it's a loan
4 or a deed as far as determining whether or not first refusal
5 was violated in breach of contract?

6 MR. MOORE: That's our position, Your Honor. I think
7 there was a transaction that triggered that right of way.

8 THE COURT: And whether or not it was a transaction, a
9 deed or a lien, the first refusal would still be there.

10 MR. MOORE: Right.

11 THE COURT: So what difference does it make? I guess
12 that's my question to you.

13 MR. MOORE: I don't think it makes a difference.
14 That's Mr. Goldstein's position. He has characterized the
15 transaction as a loan.

16 THE COURT: Okay. Go ahead.

17 MR. MOORE: Your Honor, also, just a technicality, but
18 this is on the record, a stipulation that -- or an admission
19 that we made was that no one from Fine Housing provided
20 notice. We didn't -- we don't know if notice was given by
21 RRJR or anyone else.

22 THE COURT: Let me ask you this up front before we go
23 any further, and Mr. Goldstein can respond to it if he feels
24 it is appropriate. When you have a first right of refusal
25 and another offer comes on to buy the property, whose

1 obligation is it to notify the person who owns the first
2 right of refusal? The person selling it or is the person
3 who owns the first right of refusal obligated to follow the
4 transaction throughout and keep up with it? Is there any
5 law on that issue? Y'all haven't even brought that issue
6 up, but that's one question that I have in my mind. If
7 you've got a piece of property and I've got a first right of
8 refusal and you go and sell it to Mr. Goldstein for
9 \$100,000, is it your obligation to come to me and say, "Hey,
10 Mr. Goldstein has offered a hundred, are you going to pay
11 the hundred? Or is it my obligation to keep up with what's
12 going on with your property, legally, whose obligation?

13 MR. MOORE: I understand your question, Your Honor.
14 That's our whole case. Because an enforceable right of
15 first refusal has all those terms in it. It says what
16 happens in the instance.

17 THE COURT: I'm not talking about the contract. Are
18 there any cases that say who has the obligation, is my
19 question.

20 MR. MOORE: No, the cases all say look to what the
21 agreement says and you follow the agreement.

22 THE COURT: Okay. All right. Go ahead.

23 MR. MOORE: Your Honor, Mr. Goldstein also stated that
24 in that conversation or that communication from Mr. Destaso
25 to Barry Clarke was initiated by Mr. Destaso in March of

1 2014 and I don't think that's what the record shows. I
2 think it's exactly the opposite. I think Mr. Clarke
3 discovered that the property had been transferred and he
4 reached out to Mr. who in turn reached out to Mr. Destaso,
5 and Mr. Destaso reached back to Mr. Clarke. And the
6 evidence will show that that's what the e-mail that's in
7 evidence shows.

8 Your Honor, we think this is a simple case. It's hard
9 to decide what's a simple case. It's an action by Mr.
10 Clarke to have this Court enter an Order requiring specific
11 performance of a contract. We've got one piece of property
12 and we've got competing interests.

13 Right now, Fine Housing, Inc., is the owner of record
14 of that property. Mr. Clarke claims that he can require
15 Fine Housing, Inc., to convey that property to him because
16 of this lease term. So what the Court is called on to do is
17 consider the precise rules that we have in South Carolina
18 concerning creations of interest in real estate and
19 enforcing those rights; that's what this case is about.
20 What property right, if any, does Mr. Clarke have in this
21 piece of property? The interest that he has is the right of
22 first refusal, and the law in South Carolina is that rights
23 of first refusal are restraints on alienation. And to be
24 valid, there must be a writing. It must be specific in all
25 required elements. They've got to have the price, an

1 adequate description of the property, the procedures for
2 invoking or exercising the right, when it needs to be
3 exercised, the time, and it must state a legitimate purpose.
4 If it's not specific in all of those requirements, our law
5 is that it's an unreasonable limitation on alienation in
6 filing public policy and should not enforced. Our evidence
7 is going to show today that none of the required elements
8 are there.

9 THE COURT: What do you think the elements are?

10 MR. MOORE: Yes, sir. And for purposes of today,
11 because we keep referring to it, I've blown up -- and I've
12 shown Tommy this. That's the right of first refusal.

13 THE COURT: You're going to have to bring it up closer
14 than that if you want me to see it. I don't have a
15 magnifying glass or binoculars in this courtroom, but go
16 ahead.

17 MR. MOORE: So this is the right of first refusal. The
18 words that I have outlined are highlighted in yellow,
19 "Lesser grants the lessee the right of first refusal should
20 it wish to sell." In order for it to be an enforceable
21 restraint on alienation, it needed to have a price. There
22 is no price there.

23 THE COURT: On a first refusal, you don't know what the
24 price is. That's why I said before, I offered to sell it
25 for \$100,000; that's the price. That offer establishes it.

1 Then, you go to the person who holds the refusal and say,
2 "Hey, I got an offer of 100, are you going to pay me 100?
3 So the price is never established in a first right of
4 refusal, I wouldn't think; maybe I'm wrong.

5 MR. MOORE: Well, the case law suggests that you have
6 to have a price there.

7 THE COURT: You have to have a means of determining
8 price, I would agree with that now.

9 MR. MOORE: Right.

10 THE COURT: But how are you going to say -- so you're
11 saying -- are you telling me you have to establish a hard
12 and fast price for the first refusal or you have to have a
13 means of determining the price?

14 MR. MOORE: A means of establishing the price.

15 THE COURT: I'll buy that, but I don't buy you got to
16 put a dollar figure in it.

17 MR. MOORE: No, sir. And then the evidence is going to
18 show that there have been three suggestions as to how that
19 price is determined. One, and this is all coming from the
20 plaintiff. The first one was meet the price, which you
21 suggested. The other one, the one they have in their
22 pleadings, is pay a dollar more. Then, the one they argue
23 to this Court on summary judgment is that the right of first
24 refusal creates a bidding war. Then, you go back and forth
25 and whoever ends up on top is the winner and that's the

1 price of the property. And I think that points to the fact
2 that you need some decided method of determining what the
3 price is and you don't leave it to chance.

4 THE COURT: And this context that we're talking about,
5 wouldn't the price -- I'm not saying I'm going to say that
6 it's a valid right of refusal, so please don't think I am
7 with this question, okay? Because I don't have a clue at
8 this point in time until I listen to testimony.

9 I would assume under normal circumstances that the
10 consideration on the deed would be the price that the first
11 refusal should have been -- under normal circumstances. I
12 understand in this case, \$850,000 allocated so much to a
13 house somewhere and so much to this property, so that was
14 the consideration on the deed. Well, under normal
15 circumstances, I would assume the price of the first refusal
16 would be the price on the consideration when you didn't --
17 assuming you had a valid right of first refusal. Is that
18 right or is that wrong?

19 MR. MOORE: In a normal situation, I don't think there
20 would have been a deed. I think there would have been a
21 contract offer to purchase at a certain price and that would
22 have been presented to Mr. Clarke ---

23 THE COURT: All right. Well, then that would identify
24 the price you can sell the property for, but the deed does
25 the same thing. It's called consideration.

1 MR. MOORE: Right.

2 THE COURT: So I mean, why wouldn't the consideration
3 on the deed show the price that the first refusal should
4 have paid for the property?

5 MR. MOORE: Because the agreement could have said pay a
6 dollar more, but the agreement could have said pay \$100
7 more.

8 THE COURT: Well, in this case, you don't have that.

9 MR. MOORE: But we have a suggestion from the plaintiff
10 that there are three different ways for computing what was
11 owed.

12 THE COURT: Well, I don't know, but go ahead.

13 MR. MOORE: All right. Your Honor, there has to be
14 required that the procedures for exercising that right of
15 first refusal need to be set out, and procedures such as who
16 gives notice, when they give notice, how that notice is
17 given, and then the time, which can be also a part of the
18 procedures. How long does he have to exercise this right of
19 first refusal? Can he wait a month? Can he wait a year?
20 Can he wait three years?

21 THE COURT: In this particular case, from an equitable
22 standpoint, from what Mr. Goldstein said on that point is
23 when he found out about it -- I don't remember exact dates,
24 but it was just within a month or two before they started
25 trying to make an offer. Is that right or wrong? So it

1 wasn't a big time lapse there once he says he found out
2 about it. Assuming that's correct. I'm not saying he did.
3 I've got to listen to testimony. So the time lapse in this
4 case is not great; is that right or wrong, factually?

5 MR. MOORE: We disagree on the timelines.

6 THE COURT: Well, was it 30 days, 60 days, 90 days or
7 what?

8 MR. MOORE: We believe it was one year and 24 days.

9 THE COURT: One year and 24 days?

10 MR. MOORE: Yes, sir.

11 THE COURT: Okay. So you think it was one year and 24
12 days?

13 MR. MOORE: Right. I think what the Court is doing with
14 its questioning is its looking at this situation and saying
15 in this context is there an enforceable right of first
16 refusal?

17 THE COURT: Right, I understand.

18 MR. MOORE: And I think what you have

19 THE COURT: That's why I'm asking some of these
20 questions.

21 MR. MOORE: I think you have to look back at this
22 document as it's recorded without any consideration and what
23 happened to Fine Housing.

24 THE COURT: I understand that, but I'm also asking
25 these other questions in case I do say the document is

1 valid, okay?

2 MR. MOORE: Yes, sir.

3 THE COURT: Mr. Goldstein, what's your position on when
4 you first started establishing a price, whether it was by
5 bidding war or whatever?

6 MR. GOLDSTEIN: The testimony will be that the first
7 conversation between the owner of the right of first refusal
8 and the putative owner of the property occurred in March of
9 2014. The stipulated evidence already in the record will
10 reflect that on April 10th, 2014, Ms. Andrews conveyed to
11 the putative owner of the ---

12 THE COURT: And the deed was recorded when?

13 MR. GOLDSTEIN: December 9th, 2013.

14 THE COURT: So thereagain, we're talking about three or
15 four months?

16 MR. GOLDSTEIN: Correct.

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

18 MR. MOORE: Your Honor, we think the evidence is going
19 to show that this is not ---

20 THE COURT: Well, your position is it's not a valid
21 contract to begin with, okay, because it's ambiguous and
22 probably not a lease requirement of the statute and terms of
23 a first right of refusal. That's your obligation and I
24 understand that.

25 MR. MOORE: I believe it's a valid contract; I just

1 don't think it creates the interest in real estate that they
2 are claiming.

3 THE COURT: All right. So you think it's a valid
4 contract, you just don't think it creates interest?

5 MR. MOORE: It's a lease. This is one provision of a
6 lease. What I'm saying, this does not create an enforceable
7 right of first refusal that can be enforced against a third
8 party. I think the Court needs to remember that we're
9 dealing with Fine Housing that's a third party to this
10 transaction, not the party that gave this right of first
11 refusal.

12 THE COURT: Well, I understand, but the lease was
13 recorded and he had constructive notice. Because his
14 attorney didn't find it, that's his problem. He should have
15 had notice of it when he purchased it, but I don't think
16 that's the problem because it's third party. I understand
17 what you're saying about the contract itself, okay? I mean,
18 the fact that he just didn't know about it and his attorney
19 not picking it up on the title examination, that's that
20 attorney's problem.

21 MR. MOORE: Your Honor, if you find that this is an
22 enforceable interest in real estate, enforceable against
23 Fine Housing, we think that Mr. Clarke walked away from
24 this.

25 THE COURT: Okay.

1 MR. MOORE: Mr. Clarke as I indicated to the Court, the
2 evidence will show that Mr. Clarke and his attorney, Mr.
3 Goldstein, called Mr. Sloan, the attorney who closed the
4 transaction when Fine Housing purchased the property, and
5 asked Mr. Sloan what went on. Why were we left out? Mr.
6 Sloan then went and looked at the record, found the lease,
7 found the right of first refusal and sent it to Mr. Destaso
8 and Mr. Altman.

9 THE COURT: That's the first time Mr. Destaso knew
10 about it, right?

11 MR. MOORE: Right. And that's the first time I believe
12 Mr. Sloan will tell you he knew about it.

13 THE COURT: Okay.

14 MR. MOORE: The evidence is going to show that Mr.
15 Sloan relied on title work from Mr. Swope that didn't have
16 this lease in it. So Mr. Destaso then calls Mr. Clarke and
17 they discuss purchasing the property. At no time did Mr.
18 Clarke raise the right of first refusal until the following
19 year, until April 13th, 2015. During that period of time,
20 from when they had that conversation on March 21st, 2014, to
21 April 13th, 2015, Mr. Clarke, through his attorney, paid two
22 lease payments to Fine Housing.

23 THE COURT: Did he make the lease payments after the
24 negotiations to purchase had failed or before?

25 MR. MOORE: One before and one after.

1 THE COURT: All right.

2 MR. MOORE: I'd say immediately after that telephone
3 conversation, a check comes for \$1,000 year rental to Fine
4 Housing.

5 THE COURT: Since you said that, let me back up and ask
6 you this, is your position that the entire lease is invalid
7 or just the provision of the first right of refusal is
8 invalid in that lease?

9 MR. MOORE: The right of first refusal.

10 THE COURT: But you do acknowledge that it's a valid
11 lease?

12 MR. MOORE: Yes.

13 THE COURT: Okay. All right. Go ahead.

14 MR. MOORE: So during that period of time that we just
15 talked about, that was from March 21st, 2014 to April 13th,
16 2015, they send one lease payment. Then for four months,
17 they negotiate for the purchase of this property. Ms.
18 Andrews prepares two contracts, both for \$650,000, offering
19 the purchase of this property to Fine Housing for that
20 amount. Nowhere in those contracts and nowhere in those
21 conversations is the right of first refusal mentioned. When
22 he paid that first lease payment, right of first refusal was
23 not mentioned.

24 THE COURT: You've already told me that, but go ahead.

25 MR. MOORE: Then, there is another lease payment in

1 December of 2014 for all of 2015 to Fine Housing and there
2 is no mention of the right of first refusal.

3 The first mention of right of first refusal that we
4 found in the record before the Court is not until April
5 13th, 2015. We think those facts show that Mr. Clarke
6 waived his right to enforce this right of first refusal if
7 it is valid. He's estopped from asserting it, because the
8 evidence is going to show that all of this time Fine Housing
9 is investing and improving this property to its jeopardy on
10 reliance on the non-exercise of the right of first refusal.

11 We also think they are barred by the doctrine of
12 laches. We think that one year and 24 days is delayed and
13 constitutes laches. So because of those delayed offenses,
14 well, first we believe that it's unenforceable. Second, we
15 believe it's waived, and think that after the Court
16 considers all of the evidence, we hope it finds in favor of
17 Fine Housing. It is the owner of this property and it is
18 not encumbered by this right.

19 THE COURT: Okay. Anything else?

20 MR. MOORE: No, Your Honor.

21 THE COURT: Okay. Thank you, Mr. Moore. Call your
22 first witness.

23 MR. GOLDSTEIN: Well, in light of the opening
24 statements, I think I want to throw Mr. Moore a curve and
25 call Mr. Destaso as my first witness.

1 THE COURT: It's your trial.

2 (Whereupon, Mr. Destaso is duly sworn by the Clerk.)

3 CLERK: Take a seat up on the stand. If you would,
4 please, state your full name and spell your last name.

5 MR. DESTASSO: VINCENT DESTASSO, D-E-S-T-A-S-S-O.

6 MR. GOLDSTEIN: May it please the Court?

7 THE COURT: Yes, sir.

8 DIRECT EXAMINATION

9 BY MR. GOLDSTEIN:

10 Q Mr. Destaso, this is the first time that you and I have
11 met. My name is Tommy Goldstein and I represent the
12 plaintiff in this case, Barry Clarke. You are from
13 Congress, New York; is that correct?

14 A Yes.

15 Q Okay. And your business is that you own a gas station
16 up there, correct?

17 A I do own a gas station, yes.

18 Q In Congress, New York?

19 A Yes.

20 Q And you also own a company named Tamara Lane, Inc.; is
21 that correct?

22 A Yes.

23 Q Am I pronouncing that incorrectly?

24 A I don't know.

25 Q And Tamara Lane is also in the business of making real

1 estate loans, is that correct?

2 A It predominantly owns property.

3 Q It's in property management?

4 A It's an owner of property.

5 Q Okay. I don't want to embarrass you, because you're
6 very youthful looking, but if you don't mind me asking, how
7 old are you?

8 A Forty-seven.

9 Q Forty-seven. And you're an experienced real estate --
10 I don't know what word I want to use, not developer, but
11 investor, correct?

12 A I'm not sure.

13 Q Okay. It's not uncommon for you to make an investment
14 in real estate? That's your business?

15 A Well, like you said, I own a gas station and I develop
16 portable housing for seniors in the State of New York.

17 Q Okay. And you also make loans. In some of your
18 depositions you said you made a loan in some property in New
19 Jersey, is that correct?

20 A Yes, I have in the past.

21 Q All right. You also made some loans in property in New
22 York; is that also correct?

23 A When you say me personally, I'm not sure.

24 Q With your dad?

25 A No, never with my dad.

1 Q I'm sorry?

2 A No, never with my dad.

3 Q These cases that came out of New York, Vincent Destaso
4 versus -- and I can't pronounce the defendant's name. I'll
5 spell it for the court reporter, B-O-T-T-I-G-L-I-E-R-I,
6 Peter A. Bottiglieri, that was your father's name? That was
7 your father's company or your company?

8 A I don't know that there was any company involved.

9 Q Okay. The case is called Vincent Destaso v. Peter
10 Bottiglieri, are you familiar with that case?

11 A Yes.

12 Q And that was a case in which some loans were set aside
13 as being usurious; is that correct?

14 A I don't fully understand what happened there.

15 Q Okay. Do you know who Vincent Destaso, the plaintiff,
16 was in the case against Peter Bottiglieri?

17 A It was my dad that lent him money.

18 Q Okay. And those loans were set aside as being
19 usurious; is that correct?

20 MR. MOORE: Objection, Your Honor. Irrelevance. He's
21 asking him questions about a lawsuit in which he's not aware
22 ---

23 THE COURT: What's your legal objection?

24 MR. MOORE: Irrelevance.

25 THE COURT: Overruled. Go ahead.

1 Q You knew about your dad being involved in this,
2 correct?

3 A Yes.

4 Q Okay. And so you're generally familiar with New York
5 having a usury statute and that kind of thing, correct?

6 A I don't fully understand it, no.

7 Q Okay. You're aware that when you lend money, you have
8 to conform to rules and regulations of lending money,
9 correct?

10 A Yes.

11 Q All right. And you're not licensed to do business in
12 South Carolina, except through Fine Housing, Inc., is that
13 correct?

14 A Am I personally?

15 Q Right.

16 A No.

17 Q All right. And the only reason Fine Housing, Inc.,
18 exists was to enter into this transaction with Robin
19 Robinson, correct?

20 A No.

21 Q What else does Fine Housing do?

22 A It owned a small piece of property prior to purchasing
23 the property from Robinson.

24 Q Where is that piece of property?

25 A Well, it was in Walden, New York.

1 Q And you sold that?

2 A Yes.

3 Q Okay. And you first learned about -- what do you want
4 to call the property over there on Pittsburgh Avenue? Do
5 you want to call it "The Club" or "2028 Pittsburgh"? What's
6 your term for the property?

7 A Pittsburgh Avenue.

8 Q Pittsburgh Avenue, okay. You first heard about
9 Pittsburgh Avenue when you received a call from a broker
10 soliciting a loan, correct?

11 A Correct.

12 Q All right. And the pitch to you was were you or were
13 you not willing to loan money to Robin Robinson in
14 Charleston, South Carolina, correct?

15 A No.

16 Q All right. Do you recall having a conversation with
17 Mr. Swope in March of 2013?

18 A No.

19 Q All right. Do you recall having one telephone call
20 with Mr. Swope in 2013?

21 A Yes.

22 Q I think in your previous deposition you testified that
23 he got angry and hung up on you; is that correct?

24 A Correct.

25 Q All right. And the purpose of that phone call was to

1 solicit your willingness to make a loan to Robin Robinson,
2 is that correct?

3 A No.

4 Q What was the purpose of that phone call?

5 A Initially, I was contacted by a broker out of New York.
6 He said that he had a real estate deal. He didn't specify
7 what it was, but that he would get me in contact with a
8 person in South Carolina.

9 Q And the person you got in contact with was William
10 Swope?

11 A Eventually, William Swope called me, yes.

12 Q And the conversation you had was whether your were or
13 were not willing to loan Robin Robinson some money, correct?

14 A Well, he was on the phone for some time and he
15 described the situation and then he described what he was
16 looking for, and I told him I would not be interested in
17 lending anyone money in South Carolina, but I would consider
18 buying the property.

19 Q Okay. And he asked you if you would be willing to make
20 a loan at 14 percent, 16 percent and then 18 percent, and
21 you said no, correct?

22 A I don't recall him making a discussion about interest
23 rates.

24 Q Okay. But at any rate, the phone call ended without
25 any resolution and he hung up the phone on you?

- 1 A Yes.
- 2 Q And you never heard from him again?
- 3 A I don't think so.
- 4 Q And then the broker called you back and you told the
5 broker you knew they would be back because they were
6 desperate, isn't that right?
- 7 A No.
- 8 Q Do you recall giving a deposition in a case called Fine
9 Housing, Inc., v. William H. Sloan?
- 10 A Yes.
- 11 Q Okay. That's Mr. Sloan seated there?
- 12 A Yes.
- 13 Q And you're suing Mr. Sloan because he didn't pick up
14 Barry Clarke's lease in the title examination; is that
15 correct?
- 16 A I believe there are several causes of action there.
- 17 Q Okay. But the basis of it is you're suing him because
18 he didn't tell you about Barry Clarke's lease, correct?
- 19 A I would not say that.
- 20 Q Okay. Then, why are you suing him?
- 21 A Again, there are several reasons. I wasn't aware of
22 tax liens on the property. I wasn't aware of the lease on
23 the property. Problems after the closing. An inability to
24 draw up the lease. There were several reasons.
- 25 Q Okay. But you gave a deposition in that case, correct?

1 A Yes.

2 Q Okay. And Mark Alfredo -- you testified in that case
3 that Mark Alfredo called you back and said that you made Mr.
4 Swope unhappy, is that correct?

5 A Correct.

6 Q All right. And he said, "And you told Mr. Alfredo, 'I
7 think they'll be coming back around'", is that true?

8 A That's true. You said I knew they would be coming
9 back.

10 Q Okay. You said, "And I think they'll be coming back
11 around," "Is that true?" and your answer was, "Yes." Is
12 that correct?

13 A Is that a question?

14 Q Yes.

15 A Yes.

16 Q All right. Because you knew that Robin Robinson was
17 desperate and you knew that it was a good opportunity for
18 you.

19 A Not exactly. I was told that they were unable to find
20 anybody to invest given the problems that were there.

21 Q That's right. And to be fair to you, high risk, high
22 reward, correct?

23 A I don't know the answer to that.

24 Q Well, I mean, Robin Robinson didn't represent a normal
25 kind of debtor, did she? She didn't have tax returns, isn't

1 that right?

2 A I don't recall if she had tax returns or not.

3 Q Okay. Didn't you ask to look at her tax returns?

4 A I ask for everything that the brokers can provide to
5 me, yes.

6 Q Well, let's just -- we'll come back to the minutia of
7 it, but the fact is as a result of those negotiations, you
8 ultimately hired Mr. Sloan to do a title search to handle
9 the closing for your acquisition of the property, correct?

10 A I did hire Mr. Sloan.

11 Q Okay. And when did hire Mr. Sloan?

12 A At the end of November 2013.

13 Q And when was the closing? December 2nd, wasn't it?

14 A December 2nd, 2013.

15 Q Okay. And did you think that was fair to Mr. Sloan to
16 ask him to do a closing and get that ready over the
17 Thanksgiving holiday and be ready on December 2nd?

18 A Yes.

19 Q You did think that was fair?

20 A I don't understand why it would not be fair.

21 Q Okay. Have you ever conducted a title examination?

22 A Where I'm from, the title company has a person that
23 does the search. I didn't know for a year after the
24 purchase that the attorney actually did the search.

25 Q Okay. But anyway, y'all had the closing on December

1 2nd. You came down?
2 A No.
3 Q Oh, you did it through Mr. Sloan? You just wired the
4 money?
5 A Correct.
6 Q And how much did you tell Robin Robinson that you would
7 lend her for this closing on December 2nd, 2013?
8 A Zero.
9 Q Okay. How much did you tell her you would pay her for
10 the acquisition of the property?
11 A \$850,000.
12 Q You didn't wire \$850,000, though, did you?
13 A I did not.
14 Q Because you're a predatory lender, aren't you?
15 MR. MOORE: Objection, Your Honor.
16 THE COURT: I'll sustain the objection.
17 Q Well, let's talk about the closing. You told her you
18 would pay 850 to acquire title to the property, correct?
19 A Correct.
20 Q But you didn't wire 850, did you?
21 A No.
22 Q You wired \$815?
23 A Correct.
24 Q Okay. You kept \$35,000 back, isn't that correct?
25 A Yes.

1 Q You paid 3500 to Tamara Lane; is that correct?

2 A Correct.

3 Q That's you. You're Tamara Lane?

4 A It's myself and I have a partner.

5 Q Okay. And in your deposition in Mr. Sloan's case, you
6 told them that you were sending the money to AAA Inspection
7 Services for inspecting the paperwork, isn't that what you
8 told them?

9 A I don't recall saying that, no.

10 Q Okay. Well, Mr. Sloan initially wrote a check to AAA
11 for \$3500 and then voided it and sent a check for \$3500 to
12 Tamara Lane, correct?

13 A It's possible; I don't recall.

14 Q Okay. But that was you squeezing the transaction to
15 get another \$3500 bucks out of it.

16 MR. MOORE: Objection, Your Honor.

17 THE COURT: Overruled. Go ahead.

18 Q That was you squeezing Robin Robinson for an extra
19 \$5500; isn't that correct?

20 A I don't remember 5500. I know it was a payment that
21 went to another person, not to me.

22 Q It went to Tamara Lane, Inc.

23 A It went to Tamara Lane, Inc., yes.

24 Q And you're the registered agent of Tamara Lane, Inc.?

25 A That is correct, but I have an associate that acts as a

1 broker.

2 Q And Tamara Lane, Inc.'s office address, according to
3 the New York Secretary of State, is your home address, isn't
4 that correct? 14 Weatherly or something like that?

5 A That's not correct.

6 Q Oh, well, who's address is that?

7 A It's the address for Tamara Lane, Incorporated.

8 Q Okay. That's a residence, isn't it?

9 A It's a residence, yes.

10 Q You also had \$3500 go to Joe Scarmato for drafting a
11 lease for Robin Robinson, didn't you?

12 A Correct.

13 Q He didn't draft the lease for Robin Robinson, did he?

14 A I believe he did.

15 Q And a lease is a handwritten form with just Tamara Lane
16 scratched out and Robin Robinson written in over it; isn't
17 that right?

18 A I don't recall.

19 Q Okay. Well, I'm going to show you those documents in a
20 minute. Now, the \$35,000 you held back, if I'm doing the
21 math right, 850 minus 815, that's 35, right? I'm not good
22 at math.

23 A Correct.

24 Q That was for you to hold as security to make sure Robin
25 paid rent, isn't that right?

1 MR. MOORE: Objection, Your Honor. This whole line of
2 questioning is getting into something that's not relevant
3 here.

4 THE COURT: Your objection is to relevancy?

5 MR. MOORE: Yes, sir.

6 THE COURT: Okay. Overruled. Go ahead.

7 Q The 35 was for you to hold back to make sure she
8 conformed to the lease and the buyback, correct?

9 A I had an agreement with Robin Robinson that the
10 security deposit would be three months of the rent.

11 Q That's right. And the following month, you commenced
12 an ejectment proceeding against her, isn't that true?

13 A I think it was a little bit longer than a month.

14 Q It was January of 2014, wasn't it?

15 A I don't recall the exact date, but I think it was more
16 than a month..

17 Q All right. Well, I'll show you the document. But
18 according to your testimony in Mr. Sloan's case, she
19 defaulted on day one; that was your exact quote, right? Am
20 I quoting that correctly?

21 A She defaulted on day one, that's correct.

22 Q All right. Now, do you realize why we're here?

23 A I think so.

24 Q Okay. Explain to me your understanding of why we're
25 here.

1 A Can you give me a little more specific ---

2 Q Sure. Are you unable to explain in your own words what
3 the subject matter of this dispute is about? And if you
4 are, that's fine. I'm not suggesting that you -- it's not a
5 trick question. If you're not, I will walk you through it.

6 A Barry Clarke is claiming that he has a right of first
7 refusal.

8 Q That's correct, okay. And you're claiming that he does
9 not, is that right?

10 A Correct.

11 Q And you have the right to rely on counsel, of course.
12 We all agree on that, right?

13 A Sure.

14 Q And you're represented by one of the lions of the South
15 Carolina Bar, Cliff Moore, correct?

16 A I've never heard that characterization.

17 Q Okay. Well, take my word for it, he's a well-respected
18 member of the bar. You don't have any complaints with his
19 representation?

20 A Well, he yelled at me a little yesterday.

21 Q Well, I won't ask you about that, but lawyers tend to
22 do that sometimes. But the issue is as you've defined it,
23 you say Mr. Clarke does not have a right of first refusal,
24 or if he does, he's waived it; is that correct? Is that
25 your position?

1 A Correct.

2 Q Now, in evaluating this testimony, the Court evaluates
3 your believability and credibility, and judges need just as
4 well, the Court can judge me as to whether I'm being fair
5 just as much as the Court judges your testimony, so we are
6 all being judged fairly and equally, do you understand that?

7 A I think so.

8 Q All right. So now, since we're all on an equal playing
9 field now, to be fair to the Court, to be fair to Mr.
10 Clarke, to be fair to you, this transaction was a loan in
11 the guise of a bond for title. You were going to hold title
12 as security that she perform the terms of the financing
13 agreement; is that correct?

14 MR. MOORE: Objection to the extent that it calls for a
15 legal conclusion, Your Honor.

16 THE COURT: Overruled.

17 A Absolutely not.

18 Q Okay. Well, let's bring it down or as they say on
19 television these days, which I don't understand, let's
20 unpack that. I have no idea what that means. Your
21 agreement and the transaction that was closed on December
22 2nd, 2013, was you would acquire title, correct?

23 A My -- I ---

24 Q When I say you, I mean Fine Housing.

25 A Well, that Fine Housing would buy the property, obtain

1 a deed, and own the property.

2 Q Correct. And Robin Robinson would have the right to

3 lease it for two years, right?

4 A Robin Robinson negotiated to be a tenant, yes.

5 Q Okay. And she signed a lease?

6 A Yes.

7 Q And you also negotiated and signed an option buy-back

8 agreement where if she performed the lease, she could

9 purchase the property at the agreed upon price?

10 A Correct.

11 Q Okay. And the lease called for her to make monthly

12 lease payments of \$15,000 a month, correct?

13 A No.

14 Q Oh, I'm sorry, how much, \$12,500?

15 A I think it was 12 or 12,200, or something.

16 Q All right.

17 A For both properties.

18 Q All right. Well, I may be misremembering the number.

19 Some amount in excess of \$12,000, correct?

20 A It may have just been 12; I'm not sure.

21 Q Okay, 12. Let's say it was 12 in this conversation.

22 Your agreement was if she made the 24 monthly payments at

23 \$12,000, then she had the right to reacquire title for the

24 sum of one million, one hundred and fifty thousand dollars,

25 correct?

1 A Yeah, we had an option agreement that she could buy the
2 property.

3 Q All right. And under the agreement that you negotiated
4 and executed through your lawyer, William Sloan, you signed
5 all of those documents, correct? I mean, that's the deal.

6 A I signed what documents?

7 Q The lease and the buyback and all of those documents.

8 A Correct.

9 Q Okay. However, in January of 2014, you started an
10 ejectment proceeding against Robin Robinson, is that not
11 correct?

12 A I believe it was on or about sometime in January.

13 Q Okay. Well, I have the exact date if you want it. So
14 you started an ejectment proceeding against her literally
15 days after the closing even though you had three months of
16 rent in your pocket, correct?

17 A Incorrect.

18 Q You had \$35,000 you held back.

19 A A security deposit is not to be used for rent, ever.

20 Q Okay. Now, we have your lease and we will go over it
21 in a little bit. In your lease, there is no provision in
22 your lease for security deposit, isn't that correct?

23 A I don't know if the lease ever got finalized once it
24 got down to South Carolina.

25 Q Okay. Well, whether it did or didn't, would you agree

1 with me, I mean, being fair to everybody, this sounds like
2 predatory lending, doesn't it?

3 A Absolutely not.

4 Q Okay. Well, if she had paid back -- if she had stayed
5 in compliance with the lease -- let me show you -- well,
6 these are my copies.

7 MR. GOLDSTEIN: Your Honor, may I approach the court
8 reporter?

9 THE COURT: Yes, sir.

10 Q Let me show you what's been marked Plaintiff's Exhibit
11 10. That's the lease that you negotiated with Robin
12 Robinson, correct?

13 A I really need my glasses, but I think yes.

14 Q Okay. And just so the Court is clear, that's the lease
15 that you held back \$3500 for your lawyer in New York for
16 drafting, is that not correct?

17 A I believe that is correct.

18 Q Okay. Come on, a lawyer didn't draft that lease.

19 A Yes, he did.

20 Q Well, whose handwriting is that on the lease?

21 A I think it's Mr. Sloan.

22 Q So somebody just took a form, a Tamara Lane form and
23 just struck through it and wrote in Fine Housing, Inc.,
24 correct?

25 A Again, I think it was my attorney.

1 Q And you charged Robin Robinson \$3500 for that?

2 A I didn't charge Robin Robinson anything.

3 Q Well, yeah, you did. We're going to the HUD I in a
4 little bit. You held back \$3500 for Exhibit 10, did you
5 not?

6 A Again, I did not.

7 Q Okay. Well, we will talk about that in a minute.

8 Paragraph 4.2 says, "There shall be no security required for
9 the term of this lease," do you see that?

10 A Again, I can't read it.

11 Q Okay.

12 MR. GOLDSTEIN: Well, Your Honor, I'm offering
13 Plaintiff's Exhibit 10 into evidence at this time.

14 THE COURT: Ten is already in.

15 MR. GOLDSTEIN: Oh, I apologize, Judge. I went through
16 all of that for nothing. Your Honor, since the witness says
17 he can't read the ---

18 MR. DESTASSO: I have my glasses.

19 MR. GOLDSTEIN: Okay.

20 Q Okay, 4.2 says, "There shall be no security for the
21 term of this lease," does it not?

22 A That's what it says, correct.

23 Q Okay. So your previous answer was incorrect then, we
24 now know from the lease, the lease controls, correct?

25 A No, incorrect. Again, this was sent down and meant to

1 be changed as needed. The negotiations went on that day
2 until about 7 pm. It was supposed to be corrected and added
3 in there; it was not. We negotiated with Robin Robinson and
4 we agreed upon three months security deposit.

5 Q Okay. So your asking the Court to -- or you're not
6 asking the Court anything. That was a terrible question.
7 Your testimony is don't rely on what the document says, just
8 rely on what I'm telling you the deal was, right?

9 A Absolutely. I negotiated the deal and I didn't see the
10 lease until a week after the closing.

11 Q All right. So we can't rely on this lease at all?

12 A In fact, it was thrown out and had to be completely
13 redone.

14 Q All right. So is your analysis of the lease the same
15 analysis that you apply to Mr. Clarke's recorded lease that
16 was recorded at the RMC office and we just can't rely on it?
17 It wasn't what the parties agreed to?

18 A That's kind of a vague statement. Is there a specific
19 question?

20 Q Yeah, I'll rephrase it. When parties enter into a
21 written agreement, sign it, and record it at the courthouse,
22 that's what controls, right?

23 MR. MOORE: Objection, to the extent that it calls for
24 a legal conclusion, Your Honor.

25 THE COURT: Overruled.

1 A I don't know the answer to that.

2 Q Okay. So if you and I entered into a written agreement
3 that you were going to buy my bicycle for \$100, that we both
4 signed it and it was recorded at the courthouse, and you
5 came to pick up the bicycle and you tendered the \$100 to me,
6 and I said, "Oh, no, that wasn't our deal. Our deal was
7 \$250." You would say, "Oh, okay." You would give me the
8 250?

9 A No, if you and I had made an agreement, of course.

10 Q Yeah, you'd stick to the agreement. So we can move on
11 then. Now, the closing was on December 2nd, correct?

12 A Correct.

13 Q And on January 9th, I think -- well, let me give you
14 the date rather than guess, how about that? That's more
15 fair to you. On Monday, December 23rd, 2013, at 2:39 p.m.,
16 you sent an e-mail from you to a real estate agent named
17 Jim, which you wrote, and I quote, "We do have an agreement
18 to get a deed. We just ran into a title issue and we will
19 be done in two weeks, then we can list. We were thinking
20 990K. What's your opinion on the price? Do you remember
21 that? Jim Hamilton?

22 A I don't recall that exact e-mail, no.

23 Q Okay. That's fair enough. That's really not fair to
24 you. I show you what's been marked as Plaintiff's Exhibit
25 34. Can you identify that?

1 A Yes.

2 Q That's the e-mail you sent to Jim Hamilton?

3 A Correct.

4 Q And your telling him that you were thinking about

5 asking 990 for Robin Robinson's house on Sol Legare?

6 A Yes.

7 Q Okay. And that was -- two from twenty-three, that's

8 what? Twenty-one? Twenty-one days after the closing?

9 A Correct.

10 Q You're already looking to sell her house for \$990,000?

11 A No, not exactly.

12 Q All right. You did ultimately selling the house,

13 though?

14 A Correct.

15 Q For \$500,000?

16 A Correct.

17 Q All right. Well, let's go back to the closing on

18 December 2nd. You signed a HUD I on that day, correct? Do

19 you know what a HUD I is?

20 A I believe so.

21 Q All right. This one is not in evidence, so I'm going

22 to have to walk you through this one. I show you what's

23 been marked as Plaintiff's Exhibit Four and ask if you can

24 identify that.

25 A Settlement Statement HUD I.

1 Q Okay. Now, when you ---

2 MR. MOORE: Your Honor, we're objecting to this
3 document on relevancy and res judicata grounds.

4 THE COURT: What does res judicata got to do with
5 admissibility of something in evidence?

6 MR. MOORE: Well, Your Honor, because it goes to the
7 relevancy, because what he's trying to do is he's trying to
8 ---

9 THE COURT: I don't know what he's trying to do, but
10 why do you think it's not relevant?

11 MR. MOORE: Because he is trying to use this to
12 establish that this was a lease or a loan and not a sale,
13 and that's already been decided. That's the purpose of the
14 res judicata. The Order that was entered in the action
15 where Ms. Robinson sued Fine Housing ---

16 THE COURT: Well, that action is dismissed, right? It
17 was not brought to final conclusion, right?

18 MR. MOORE: With prejudice.

19 THE COURT: How could it possibly be res judicata with
20 voluntary dismissal, is what I was told.

21 MR. MOORE: With prejudice, Your Honor.

22 THE COURT: Well, I mean, there was no Court ruling in
23 that case, was it?

24 MR. MOORE: No, sir.

25 THE COURT: As far as res judicata, that's denied. Talk

1 to me about relevancy in this particular case. Apparently,
2 he's got a selective memory. He's been admitting to some
3 things and not admitting to other things, so I assume he is
4 offering this to possibly show bias or prejudice on the true
5 actions of what transpired at the loan closing. I assume
6 that. So to me, from that standpoint, it is relevant.

7 MR. MOORE: Thank you, Your Honor.

8 THE COURT: Okay. So the motion is denied. Please
9 proceed.

10 Q Exhibit Four is the closing statement from December
11 2nd, correct?

12 A I believe so, yes.

13 Q And that established what you ---

14 THE COURT: First of all, I don't now if he's going to
15 offer it, okay? Are you going to offer it?

16 MR. GOLDSTEIN: Yes, sir, Your Honor.

17 THE COURT: I mean, he's objected to the offering of
18 the document, but he hasn't offered before you made the
19 objection.

20 MR. MOORE: I understand, Your Honor, but he was
21 starting to testify.

22 THE COURT: I understand, but he can testify to it and
23 still not offer it.

24 MR. MOORE: Yes, sir.

25 THE COURT: Are you offering it?

1 MR. GOLDSTEIN: I am going to offer it. I was getting
2 there.

3 THE COURT: All right. Do you have an objection to
4 offering of Plaintiff's Exhibit Number Four?

5 MR. MOORE: Relevancy, Your Honor.

6 THE COURT: All right. Denied, admitted with
7 objection.

8 MR. GOLDSTEIN: Well, in that case, Your Honor, I can
9 -- if I may -- well, I've got my own copy. In that case,
10 Your Honor, may I publish the Four since it's in evidence
11 now?

12 THE COURT: Yes.

13 Q The HUD I shows the alleged purchase price as \$850,000,
14 correct?

15 A Yes.

16 Q Well, you've already told us you didn't wire 850, you
17 wired 805, correct?

18 THE COURT: Is this -- on what property? Is this the
19 James Island Property or is this the Pittman Street -- is it
20 Pittman Street?

21 MR. GOLDSTEIN: That was going to be my next series of
22 questions. So let me leap ahead.

23 THE COURT: Please tell me what property we're talking
24 about.

25 MR. GOLDSTEIN: The defendant in this case allocated

1 \$150,000.

2 THE COURT: I understand that.

3 MR. GOLDSTEIN: Right, so the rest of the money was
4 allocated to the acquisition of the Sol Legare property.

5 THE COURT: All right. The HUD statement is for what
6 closing on what property?

7 MR. GOLDSTEIN: They were both purchased ---

8 THE COURT: That same day.

9 MR. GOLDSTEIN: That same day.

10 THE COURT: Okay. The HUD is for both properties?

11 MR. GOLDSTEIN: Correct.

12 THE COURT: They didn't have a separate HUD for each
13 one?

14 MR. GOLDSTEIN: No, sir.

15 THE COURT: Okay. Go ahead.

16 Q Okay, you already told us that the alleged purchase
17 price for the two properties, Sol Legare and 2028 Pittsburgh
18 was \$850,000, correct?

19 A Correct.

20 Q You already told us you didn't wire 850, you wired 815?

21 A Correct.

22 Q And you already told us the reason you held back 35 was
23 because it was a "security deposit" for Robin Robinson's
24 lease on 2028?

25 A Correct.

1 Q You knew on the day of closing that there was a
2 critical time deadline because Mr. Altman was fixing to take
3 the Sol Legare property to a foreclosure sale on December
4 3rd; you knew that, correct?

5 A Correct.

6 Q Okay. So that's why poor Mr. Sloan back here was put
7 in a jam because his marching orders came in a couple days
8 before Thanksgiving and so he had to scramble from a couple
9 days before Thanksgiving to December 2nd to get all of this
10 ready, correct?

11 A I guess.

12 Q Okay. Well, as a sophisticated investor, you knew that
13 was a hard thing to ask him to do, isn't that right?

14 A I don't think so, no.

15 Q Okay. Not that it has anything to do with this, but do
16 you think that was fair to Mr. Sloan?

17 A Yes. If he didn't want to do it, he could say no.

18 Q Okay. Now, the HUD statement we've already been over;
19 it's already in evidence. It shows that you held back
20 \$5500, according to the HUD, to AAA, correct? You want me
21 to give you the line number?

22 A (NO RESPONSE.)

23 Q Well, I can publish it. It's line 1206, my eagle-eye
24 co-counsel is informing me. And that's for an inspection
25 fee. That line is \$5,500.

1 A Yes, I don't think that amount ever was dispersed.

2 Q Oh, really? Well, that's interesting. Let me show you
3 what has been marked as Plaintiff's Exhibit Number Seven and
4 Eight. Do you recognize those?

5 A I don't recognize the check from AAA and the one for
6 Tamara Lane is for \$5500; that is correct.

7 Q Correct. So Tamara Lane, which is you, got \$5500?

8 A Again, it went to another broker. It did not go to me.

9 Q Okay.

10 MR. GOLDSTEIN: Your Honor, I'd like to offer
11 Plaintiff's Seven and Eight into evidence.

12 MR. MOORE: And our objection is to relevance, Your
13 Honor.

14 THE COURT: What's the relevance? We've got the HUD
15 closing statement. Why do we need the checks? I mean,
16 doesn't the statement show the checks?

17 MR. GOLDSTEIN: It absolutely does.

18 THE COURT: So why do we need the checks?

19 MR. GOLDSTEIN: It is cumulative, but it shows the
20 predatory
21 nature of this loan and the next question is going to tie it
22 up just a little bit more, because the next question is
23 about the insurance premium.

24 THE COURT: Well, then, tie it up. For now, I will
25 sustain the objection.

1 Q Let me show you what's been marked as Plaintiff's
2 Exhibit Five. Do you recognize that?

3 A That was for the FEMA flood insurance on the
4 residential property.

5 Q That's right. And so you're making Robin Robinson pay
6 for the flood insurance on property that you claim that you
7 own; is that correct?

8 A That was our agreement, yes.

9 Q Okay. So that is more of an inditia of a loan than a
10 purchase, don't you agree?

11 A I do not agree, no.

12 Q So is it your normal practice as a real estate investor
13 that when you purchase a piece of real estate, it remains
14 the seller's obligation to insure it?

15 A For most of my transactions, yes.

16 MR. GOLDSTEIN: Your Honor, I offer Plaintiff's Exhibit
17 Five into evidence.

18 MR. MOORE: Your Honor, foundation. He asked him
19 questions about it, but this is a check that Mr. Sloan's
20 office wrote. It's reflected on the HUD Settlement
21 Statement. I don't think he had any testimony that this
22 witness knows anything about this document, other than he
23 read what it was.

24 MR. GOLDSTEIN: He said he knew what it was.

25 THE COURT: All right. I'll sustain the objection;

1 five, six, seven, eight and nine, about the checks. They
2 are reflected on the HUD statement.

3 Q Now, let me show you what's been marked as Plaintiff's
4 Exhibit Number Nine. Is that the Secretary of State report,
5 the State of New York for Tamara Lane, Inc.?

6 A Yes, it is.

7 Q And it shows you, Vincent Destaso, 102 Lake Road,
8 Congress, New York, as the Chief Executive Officer?

9 A That's correct.

10 MR. GOLDSTEIN: Your Honor, I offer Plaintiff's Exhibit
11 Number Nine into evidence.

12 THE COURT: Any objection?

13 MR. MOORE: Other than relevance.

14 THE COURT: Nine is admitted without objection.

15 Q Now, you came down to South Carolina to look at 2028
16 Pittsburgh Avenue for yourself, correct?

17 A Yes.

18 Q And you formed an opinion as to what it was worth?

19 A Yeah, I contacted a broker.

20 Q You did your due diligence. And you reached an opinion
21 that you were thinking it was worth 300 on the low end and
22 650 on the high end, correct?

23 A Something in that area.

24 Q Now, do you know how a right of first refusal works?

25 A I have a general idea.

1 Q Okay. What's your general idea of how a right of first
2 refusal works?

3 A Well ---

4 Q Want to see if I can help you out? If I have the right
5 of first refusal on your property -- if Mr. Moore offers you
6 \$100,000, then I have the right to buy it for \$100,000 plus
7 one, correct?

8 A Well, I would think the seller would need to contact
9 the person who has the option and see if they wanted to make
10 a better purchase price.

11 Q Exactly. I couldn't agree with you more. That didn't
12 happen in this case, did it?

13 A I don't believe it happened, no.

14 Q So in your view, there are two innocent parties in your
15 view, correct? You and Mr. Clarke?

16 A I don't look at it that way, no.

17 Q Okay. Prior to going to the closing on December 2nd,
18 did you contact us or ask him if his foreclosing client
19 would sell you the paper?

20 A Yes.

21 Q Okay. And he refused, correct?

22 A Correct.

23 Q But you explored that?

24 A Yes.

25 Q Okay. And in your view, you could have foreclosed on

1 the property and simply taken it, stepped into the shoes of
2 Mr. Altman's foreclosing client, correct?

3 A No, that was not the idea as I think we all understand.
4 There was a time pressure element involved and I was being
5 asked to try and help give more time for the closing.

6 Q Now, you did have conversations with Barry Clarke, who
7 is seated to my left, you did have conversations with him in
8 March of 2014 about him purchasing the property, correct?

9 A Correct.

10 Q Okay. He just didn't offer enough money, right?

11 A No, we agreed upon a price.

12 Q You did agree upon a price?

13 A Yes.

14 Q Oh, do you mind telling us what that was?

15 A It was \$650,000.

16 Q So if Mr. Clarke tenders \$650,000 to you today, we're
17 done?

18 A No, we're not done at all. Today and the situation of
19 the property and in March of 2014 are two totally different
20 things.

21 Q Are you telling us that you would have taken \$650,000
22 in 2014?

23 A At the time when we were speaking, we had an agreed
24 upon a price, but when the contract came in, it was
25 completely different than what we had spoken about.

1 Q What was different about it?

2 A Well, the contract had several provisions in there for
3 a lengthy inspection period. He wanted me to cure
4 violations on the property. It was very important to him
5 that I evict Robin Robinson because he didn't want anything
6 to do with her. He was not buying the property the way I
7 bought the property with the problems and all.

8 Q Since that time, you've been collecting rent on the
9 property, though, correct?

10 A It was a period of almost a year and a half where I
11 collected no rent.

12 Q It was fully occupied, wasn't it?

13 A It was.

14 Q But are you telling the Court you had a tenant in
15 there, but they didn't pay rent and you let them stay?

16 A No, we moved to evict Robin Robinson.

17 Q Oh, Robin Robinson.

18 A Eventually, we did, but that was part of the
19 complication with Barry purchasing the property.

20 Q But she's been out for a long time, right?

21 A I believe since January of 2015.

22 Q All right. You have a new tenant in there, Heavy Man,
23 LLC?

24 A Heavy Man is no longer in there.

25 Q Okay. Who is in there now?

1 A A gentleman named Frankie Woods and Scott Hendrix.

2 Q Okay. Same people, just different name?

3 A No.

4 Q But you've been collecting rent since the new tenant
5 came in at what, \$15,000 a month, 20?

6 A Incorrect. Initially, I had to give up 20 or 30, over
7 \$30,000 because of issues with the building and improvements
8 that were needed. Since then, our new current lease is for
9 \$15,000 a month.

10 Q Okay. And you've been collecting that rent?

11 A Well, that lease commenced just January of this year.

12 Q Okay. So you've had the property since 2013, correct?

13 A December 2nd, 2013 is when I bought the property.

14 Q Okay. You sold Sol Legare for \$500,000?

15 A Yes.

16 Q You've collected rent on 2028 Pittsburgh in some amount
17 of money?

18 A Yes.

19 Q Okay. And Mr. Clarke's offer to you was unacceptable
20 because it contained conditions that you wouldn't agree to,
21 is that your testimony?

22 A Well, again, at the time when I purchased the property,
23 there were multiple problems that were there that I
24 eventually was able to correct and get rid of the non-paying
25 tenant and put a paying tenant in there and maintain the

1 licensing, which is where the value is. When I spoke to Mr.
2 Clarke, he said he was interested in buying it, but when I
3 received the contract, there were too many conditions in
4 there. In fact, at one point, he wanted to lease the
5 property for a very, very low number and that was
6 unacceptable.

7 Q I asked you earlier, I didn't have the date in front of
8 me and now I do, you started the eviction proceedings
9 against Robin on December 16th, 2014, in case number 2014-
10 CV-10-10-502241. You don't know the case number, I'm sure.

11 A I don't know the case number, but I don't think it was
12 December.

13 Q Okay. Who was the lawyer handling that case for you?

14 A It was a gentleman named Van out of Charlie Altman's
15 office.

16 Q Okay.

17 THE COURT: Mr. Goldstein, while you are collecting
18 your thoughts, we are going to take about a 15 to 20 minute
19 break.

20 MR. GOLDSTEIN: Yes, sir.

21 THE COURT: We're going to take a short break. During
22 the break, don't discuss the case with anyone, okay?

23 (Off the record, briefly.)

24 THE COURT: Mr. Goldstein, you may continue.

25 MR. GOLDSTEIN: Thank you for that break. My co-

1 counsel got my thoughts focused, so I only have three more
2 questions.

3 THE COURT: Good.

4 MR. GOLDSTEIN: So you can give Ms. Andrews all the
5 credit for my brevity.

6 THE COURT: Okay. We are gonna count them. You said
7 three. I bet there will be six.

8 DIRECT EXAMINATION CONTINUED

9 BY MR. GOLDSTEIN:

10 Q I show you what's been marked Plaintiff's Exhibit 26.
11 Is that the sale of the Sol Legare property that you
12 previously testified about?

13 A Yes.

14 Q And is that the deed of that transaction?

15 A Yes.

16 MR. GOLDSTEIN: Your Honor, I offer Plaintiff's Exhibit
17 Number Twenty-six into evidence.

18 THE COURT: Any objection?

19 MR. MOORE: Relevancy, Your Honor.

20 THE COURT: What's your relevancy?

21 MR. GOLDSTEIN: Well, even if it were irrelevant, it's
22 very relevant because it shows that this transaction was
23 more of a loan than a sale, but he already testified about
24 it, so the door is wide open as to irrelevancy.

25 THE COURT: All right. I'll let it in without

1 objection. Go ahead.

2 Q Okay. Last question, I was rummaging around,
3 unfocused, and doing a poor job of locating exhibits, but it
4 turns out they are Defendant's Exhibits Four and Five, which
5 are already in evidence. These are the two documents you
6 were testifying about earlier about Barry Clarke for the
7 purchase of the property, is that right?

8 A I believe so, yes.

9 Q And you testified that one of the reasons these
10 agreements are not satisfactory to you is because it
11 required you to get Robin Robinson out, correct?

12 A That was a comment that Barry had said to me verbally
13 that was in the contract.

14 Q Oh, okay. It's not in the contract, is it?

15 A That issue is not in the contract, but others are in
16 the contract.

17 Q Okay.

18 MR. GOLDSTEIN: No further questions, Your Honor.

19 Thank you.

20 THE COURT: Do you want to do cross or do you want to
21 wait until you call your case?

22 MR. MOORE: We will do cross, Your Honor.

23 THE COURT: Okay.

24 CROSS-EXAMINATION

25 BY MR. MOORE:

1 Q Mr. Destaso, can you tell me what your relationship, if
2 any, to Fine Housing is?

3 A I'm a shareholder.

4 Q Okay. You're here today testifying on its behalf?

5 A Correct.

6 Q In responses to questions that Mr. Goldstein asked you,
7 you talked about the property after you had closed on it,
8 after you had purchased the property. Were there issues
9 concerning the property that you had to deal with after you
10 purchased it?

11 A Yes.

12 Q What were those issues?

13 A There were many. Generally, there was a mess.

14 THE COURT: Can I ask for clarification. Are we
15 talking about Pittsburgh Avenue or the James Island
16 property?

17 MR. MOORE: Pittsburgh Avenue, Your Honor.

18 THE COURT: All right. Because he's been lumping them
19 together, so I'd like to know which property we're talking
20 about.

21 Q So Mr. Destaso, my questions are about the Pittsburgh
22 Avenue property.

23 A Okay.

24 Q What issues required your attention at that property
25 after you purchased it?

1 A There were unpaid tax loans. We had a tenant that was
2 very problematic, and recently, they lost the license to do
3 business at the site. There were many building code
4 violations and issue from the municipality with the
5 property. Eventually, we had to do the eviction. There was
6 a pending suit, also, that I was unaware of from former
7 employees that encumbered the property.

8 Q How did that encumber the property?

9 A They filed a lawsuit and a lis pendens.

10 Q All of those things that you've discussed and
11 identified, have those been resolved?

12 A I believe almost everything has been resolved.

13 Q How were the tax liens resolved?

14 A Eventually, I hired an additional attorney, Mr. Altman,
15 and through the litigation he was able to get payoffs and
16 secure transactions and paid off the tax liens.

17 Q The problems you had with the tenant, how were they
18 resolved?

19 A The problems were almost immediate after the closing.
20 The main tenant refused to communicate. Her boyfriend
21 started calling me incessantly and saying they were not
22 going to pay rent and that they had lost their license. We
23 filed, initially, for an eviction and then I think we
24 stopped and had to refile for an eviction. We eventually
25 had a settlement with them where they acknowledged that this

1 was, in fact, a sale and I had to pay her some money to get
2 her to vacate the premises.

3 Q How much did you pay her?

4 A I don't recall. We waived the majority of back rent,
5 which was over \$100,000, and then we paid her additionally
6 to move and we gave her more time to live in the house; so
7 there were a lot of concessions that had to be made.

8 Q All right. The permit and licensing issues, were those
9 resolved?

10 A For the most part, yes.

11 Q What did you do to resolve those?

12 A My understanding, and I'm not exactly clear on the
13 licensing and how it works, but there was one portion of the
14 license that was never resolved. Then, one that came back
15 into compliance because we paid South Carolina Department of
16 Revenue and had to cure some issues with the town and the
17 building department and problems of that nature.

18 Q Okay. What about the litigation with former employees
19 and the lis pendens, was that resolved?

20 A Eventually, we had resolved that as well, yeah.

21 Q How did you resolve that?

22 A Eventually, there was a settlement of \$102,000, I
23 believe.

24 Q You paid the 102,000?

25 A I paid 50 and I believe my title insurance company paid

1 52, I believe.

2 Q Have you made any improvements to the property since
3 you purchased it?

4 A We've corrected -- there were a majority of violations,
5 as I mentioned, on the property. There was apparently a
6 structure that was built illegally sometime in the past. I
7 was able to communicate with the town, or the city, I'm not
8 sure, or the county, and come up with a solution. I also
9 had to give rent abatements to the new tenant that
10 eventually moved in for them to do some new improvements to
11 the space that I lease to the tenants.

12 Q Do you recall how much the rent abatement was?

13 A Over \$30,000.

14 Q So the property that you acquired or purchased from
15 RRJR, LLC, back on December 2nd, 2013, is it the same
16 property that is there today?

17 A No.

18 Q It's a different property?

19 A Yes. One main thing is the former owner that became a
20 tenant was a disaster, and they were, again, losing their
21 license and having problems, so we were able to clear that
22 up. I was able to obtain a survey to the property and
23 correct some of the issues that were pending. We have a
24 stable tenant now and he is paying rent, licensing has been
25 cleared up, back liens and taxes have been paid. Of course,

1 the real estate market has improved over the past three
2 years, so that has helped. So yes, it is a completely
3 different animal than it once was.

4 Q All right. When you purchased this property on
5 Pittsburgh Avenue on December 2nd, 2013, did you know that
6 Barry Clarke had a lease on that property?

7 A No.

8 Q When did you discover that Barry Clarke had a lease on
9 that property?

10 A March 21st, 2014.

11 Q And how did you learn of that?

12 A My closing attorney advised me.

13 Q You were contacted by your closing attorney?

14 A Yes.

15 Q And that is -- what's his name?

16 A William Sloan.

17 Q Did he call you, e-mail you, visit you? How did you
18 communicate?

19 A He e-mailed me and we also had a telephone
20 conversation.

21 Q I'm going to hand you what's been marked and admitted
22 into evidence as Plaintiff's Exhibit Number 12.

23 A Okay.

24 Q Is that the e-mail that you are referring to?

25 A Yes.

1 Q That's your first notification that there was a lease?

2 A Correct.

3 Q And your attorney in that e-mail also told you that
4 there was a right in that. -- how does he refer to it in the
5 e-mail?

6 A Yeah, there was some confusion. He said there was a
7 right of refusal to sell.

8 Q So was that the first time that you became aware of the
9 language in the lease that we are here today about and Mr.
10 Clarke is suggesting is a right of first refusal?

11 A Yes, again, there was some confusion but this was my
12 first notification of anything existing at all.

13 Q What did you do once you received that e-mail?

14 A I contacted Mr. Clarke and we had a conversation.

15 Q And Mr. Clarke's number was provided to you in that e-
16 mail?

17 A Yes.

18 Q Had you ever talked to Barry Clarke before the
19 telephone call and after you received this e-mail?

20 A No.

21 Q So the first telephone conversation or the first
22 communication you ever had with Barry Clarke was after you
23 received this e-mail from your attorney?

24 A Yes.

25 Q Was it the same day?

1 A I believe it was the same day.

2 Q All right. You called Mr. Clarke. What was the
3 substance of your communication with Mr. Clarke when you
4 called him?

5 A It was a fairly long conversation, very friendly. Mr.
6 Clarke was quite talkative. He discussed his life in
7 Charleston and that he owned the property across the street,
8 and he knew John Robinson who had passed away. He discussed
9 that at one time in the past they had contemplated sharing
10 the parking lot and he had a lease for every other parking
11 lot and that he had -- he expressed hatred toward Robin. He
12 had many problems with her.

13 Q Did he describe the problems to you?

14 A They were general in terms, but there was quite a lot
15 of negative commentary on Robin Robinson.

16 Q Did he express any interest in purchasing the property
17 during that conversation?

18 A Not during the first conversation, no.

19 Q During that first conversation that you had with him,
20 did he tell you he had a right of first refusal on this
21 property?

22 A No.

23 Q Was the right of first refusal ever discussed during
24 that first conversation?

25 A No, it was not ever discussed.

1 Q Did you have subsequent telephone conversations with
2 Mr. Clarke?

3 A Yes.

4 Q When was the next one?

5 A Within the next few days, we spoke again.

6 Q All right. And what was the substance of that next
7 call that you had with Mr. Clarke?

8 A Well, we had discussed the problems with the property.
9 He had indicated that he thought he could help me navigate
10 some of the issues that were there and eventually he said he
11 might be interested in purchasing the property.

12 Q Did you discuss price?

13 A Eventually, we discussed price.

14 Q During that second telephone conversation that you had
15 with him?

16 A It might have been the third, but somewhere shortly
17 thereafter, yes.

18 Q And did you agree on a price with Mr. Clarke?

19 A Well, eventually, you know, we were having problems
20 with the property and I wasn't sure how some of the issues
21 were going to be resolved, but basically we agreed that if
22 he were able to step in my shoes and pay 650, taking the
23 property the way I took it, he could have it.

24 Q All right. So you were going to sign a deed and he was
25 going to give you 650?

1 A We discussed some different possibilities, as well as
2 him buying Fine Housing.

3 Q Explain that. He was going to buy Fine Housing?

4 A It was his idea to instead of signing a deed, buying
5 the shares in the company. It was one of several different
6 proposals that he had made.

7 Q Okay. After the telephone conversation during which
8 you discussed price and you agreed upon the \$650,000 figure,
9 what happened next in your communications with Mr. Clarke
10 concerning this property?

11 A Eventually, I received an e-mail with a contract and
12 then there were several calls and conference calls, and then
13 an additional contract came in.

14 Q Okay. And who were those with? Were those with Mr.
15 Clarke?

16 A Yes.

17 Q Did you have any conversation with anyone else other
18 than Mr. Clarke or communication with anyone else other than
19 Mr. Clarke?

20 A I believe Ashley Andrews.

21 Q I am going to show you what's been admitted into
22 evidence as Plaintiff's Exhibits 16 and 17 and Defendant's
23 Exhibits One, Two and Three.

24 THE COURT: Mr. Moore, tell me briefly what Defendant's
25 One is.

1 MR. MOORE: Defendant's One is the lease, Your Honor.

2 THE COURT: What is Two?

3 MR. MOORE: It's a survey.

4 THE COURT: All right. And three?

5 MR. MOORE: Three is the deed from RRJR to Fine
6 Housing.

7 THE COURT: And Four, do you have that available?

8 MR. MOORE: I don't see it. Maybe it's over here.
9 Four is the settlement statement, Your Honor.

10 THE COURT: Okay. Settlement statement for what?

11 MR. MOORE: The settlement statement where RRJR ---

12 THE COURT: So it's from RRJR to Fine Housing?

13 MR. MOORE: Well, it's from RRJR and Robin Robinson,
14 because Robin Robinson owned the title to the property on
15 James Island.

16 THE COURT: Okay. So it was the James Island and the
17 Pittsburgh property?

18 MR. MOORE: Yes, sir.

19 THE COURT: Has the HUD statement already been
20 admitted?

21 MR. MOORE: Yes, sir.

22 THE COURT: Okay. So it's in twice, right?

23 MR. MOORE: I think four is he -- I don't think we
24 agreed on that one. I thought Four was -- maybe we did, but
25 I think Your Honor ---

1 THE COURT: I think we've admitted One through Six. I
2 was just trying to get you to tell me what they were, that's
3 all.

4 MR. MOORE: Yes, Your Honor.

5 THE COURT: Four is a HUD statement?

6 MR. MOORE: Yes, sir.

7 THE COURT: All right. What's Five?

8 MR. MOORE: Let me check my notes.

9 THE COURT: Or you can hand them to me, and I'll look
10 at them myself. Whichever one you want to do.

11 MR. MOORE: That was a check, 1762, but my notes
12 reflect that that one was not in.

13 MR. GOLDSTEIN: If I may help opposing counsel? He's
14 asking about your exhibits.

15 THE COURT: I'm talking about Defendant's exhibits.

16 MR. MOORE: Oh, I'm sorry, Your Honor.

17 THE COURT: I'm asking about what your exhibits are.

18 MR. MOORE: All right.

19 THE COURT: I have a list of the plaintiffs.

20 MR. MOORE: And I have a list, but we used him and then
21 I added mine in. All right, so let's start back.

22 THE COURT: Give me the documents and I'll figure it
23 out myself. Either way, I want to know what One through Six
24 are.

25 MR. MOORE: All right. Your Honor, One, Two, and Three

1 are e-mails from Ashley Andrews to Mr. Destaso. Number Four
2 is the contract for \$650,000. Number Five is another
3 iteration of that contract.

4 THE COURT: Okay.

5 MR. MOORE: And number six is a letter from Mr.
6 Goldstein to Mr. Altman dated April 13th, 2015.

7 THE COURT: Okay. Thank you very much. I'm sorry for
8 the confusion.

9 MR. MOORE: I'm sorry, Judge.

10 THE COURT: All right. Go ahead.

11 Q I'm handing you Plaintiff's Exhibits number 16 and 17
12 and Defendant's Exhibits Number One, Two and Three. Look at
13 those for a minute for me, please.

14 A Okay.

15 Q What are those?

16 A They are e-mails from Ashley Andrews.

17 Q And what timeframe do those e-mails expand? What
18 expanse of time do those e-mails cover?

19 A I believe they are commencing on April 10th, 2014 to
20 July 8th, 2014.

21 Q And that's roughly the period that you were negotiating
22 with Mr. Clarke and Ms. Andrews for the sale of this
23 property?

24 A Yeah, it actually went on a little bit longer, but yes.

25 Q Okay. In any of those communications that you are

1 looking at, is the right of first refusal that Mr. Clarke
2 now claims mentioned?

3 A No, never.

4 Q In any of the communications that you had with Mr.
5 Clarke on the telephone or with Ms. Andrews on the
6 telephone, was the right of first refusal that Mr. Clarke
7 now claims mentioned?

8 A No, never.

9 Q Did you discuss or propose a number other than
10 \$650,000?

11 A Well, Mr. Clarke kept coming up with different
12 scenarios and kind of changing the situation and I was
13 becoming concerned. And at one point towards the end, we
14 started talking about higher numbers.

15 Q And what was the range of the numbers that you were
16 discussing towards the end?

17 A Towards the end, we were talking about a million
18 dollars. You know, if I was going to have to clear up
19 problems and things like that.

20 Q But there was never an agreement on price?

21 A Eventually, we never agreed, no.

22 Q All right. I'm going to hand you Defendant's Exhibits
23 Four and Five, which are in evidence. Are those proposed
24 contracts that were submitted to you by Ashley Andrews as
25 Mr. Clarke's attorney?

1 A Yes.

2 Q Were either of those contracts ever signed?

3 A No.

4 Q What is the difference between the two contracts?

5 A One is the first one that was sent. The other was sent

6 ---

7 Q What exhibit is that?

8 A The first one is Defendant Exhibit Number Four. I
9 believe that was the first one that was sent. And again,
10 the deal kept changing, and the second one was sent and
11 there was one paragraph that was changed and there was an
12 addition of a lease.

13 Q All right. What was the change to that second
14 iteration of the contract?

15 A (NO RESPONSE.)

16 Q You don't have to quote specifically the language, but
17 can you tell me what the change -- do you recall what the
18 change involved?

19 A One was there was a paragraph in the second one that
20 had a purchaser's option to lease and I think it was going
21 out for like two years and he wanted to tie up the property
22 without buying it.

23 Q Is that something that you discussed with Mr. Clarke?

24 A It was something that he suggested and I said no, I
25 didn't want to tie up the property.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

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

Case No. 2015-CP-10-03038

RECEIVED
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SC Court of Appeals

Barry Clarke,

Respondent/Appellant,

v.

Fine Housing, Inc. and RRJR, LLC,

Defendants,

Of which Fine Housing, Inc. is the

Appellant/Respondent.

RECORD ON APPEAL – VOLUME 2 OF 2

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1 Q So as part of this purchase process, he suggested that
2 he lease the property from you?

3 A He wanted to lease the property at a ridiculously low
4 number and I was becoming more and more concerned with his
5 intent.

6 Q I hand you what's been marked and admitted into
7 evidence as Plaintiff's Exhibit Number 22. Can you tell the
8 Court what that is?

9 A That is the first letter I received from Mr. Goldstein.

10 Q And what is the purpose of the letter?

11 A It's, I believe, summarizing a conversation that he had
12 with my attorney and -- and let me read it. It's
13 summarizing the conversation with the attorney and he stated
14 that he had sent the lease payment to the former owner and
15 was not aware that I held title, and he said he is sending a
16 check for \$1,000 representing the 2014 annual rent for the
17 parking lot.

18 Q And at the bottom of that exhibit, is there a copy of
19 the check?

20 A Yes.

21 Q And whose account is that check drawn on?

22 A Barry Clarke.

23 Q Did you have any conversation with Mr. Goldstein over
24 this or was it all by letter?

25 A Letter.

1 Q In that letter, does Mr. Goldstein raise Mr. Clarke's
2 right of first refusal that he is claiming here today?

3 A No, never.

4 Q I hand you what's been submitted into evidence as
5 Plaintiff's Exhibit Number 23 -- excuse me, go back to
6 Exhibit 22. What's the date on that letter?

7 A April 7th, 2014.

8 Q Okay. So that is after you had received the e-mail
9 from your attorney advising you for the right of first
10 refusal but before you received the first contract?

11 A Well, I received an e-mail from my attorney advising me
12 of the lease and there was some confusion, and then I had a
13 conversation with Barry Clarke and gave him my information,
14 address, and stuff, and he sent the check.

15 Q Okay. And then look again at Exhibit number 23 and
16 tell me what that is.

17 A That is another letter from Mr. Goldstein dated
18 December 11th, 2014. "Enclosed the lease payment for the
19 parking lot. Please feel free to contact me if there are
20 any questions, and a check."

21 Q How much is the check?

22 A \$1,000.

23 Q And what is the date on the check and the date on the
24 letter?

25 A They are both dated December 14th, 2014.

1 Q Did you receive that check?

2 A Yes.

3 Q And deposited it?

4 A I believe it was deposited.

5 Q In that letter, does Mr. Goldstein raise the right of

6 first refusal?

7 A No.

8 Q I hand you what's been identified as Defendant's Number

9 six and ask you if you have seen that document before?

10 A I have.

11 Q What is that?

12 A It's a letter from Mr. Goldstein to Mr. Altman, April

13 13th, 2015.

14 Q At that point in time, was Mr. Altman your lawyer?

15 A Yes.

16 Q Just summarize for me what that letter was.

17 A It's a letter discussing Robin Robinson being at her

18 property and they want to buy the property for \$115,001.

19 Q Does he raise the right of first refusal in that

20 letter?

21 A Yes.

22 Q Do you know of any communication that you had with Mr.

23 Clarke or any of those attorneys or anyone on his behalf

24 prior to this communication that raised the right of first

25 refusal?

1 A It was never mentioned.

2 Q This is the first time it was raised?

3 A This was the first time.

4 MR. MOORE: Beg the Court's indulgence for just one
5 moment.

6 Q The consideration that is listed in the deed conveying
7 the property to Fine Housing, Inc., from RRJR, LLC, lists
8 the consideration as being \$150,000. How was that amount
9 determined? A I don't know for sure. I was later told that
10 one of the attorneys filled in that number.

11 Q Is it a number that you determined and instructed?

12 A No, I never determined that at all. The tax assessor's
13 value of the property, I think, was \$680,000 at the time.

14 Q So do you know now how that \$150,000 consideration
15 found its way to that deed?

16 A Again, either William Sloan or William Swope, I guess,
17 made up the numbers for it.

18 Q Looking back at Plaintiff's Exhibit Number 22, a yellow
19 tab, there is a reference in that communication saying that
20 Mr. Goldstein has spoken with your attorney. At that point
21 in time, who was your attorney in that matter?

22 A William Sloan.

23 MR. MOORE: No further questions, Your Honor.

24 THE COURT: Any redirect?

25 MR. GOLDSTEIN: Yes, Your Honor. May it please the

1 Court?

2 REDIRECT EXAMINATION

3 BY MR. GOLDSTEIN:

4 Q The \$150,000 consideration that Mr. Moore just asked
5 you about, that was the amount you put in the deed that is
6 recorded at the RMC office, correct?

7 MR. MOORE: Objection, Your Honor. That's not what his
8 testimony was. Misstatement of the testimony.

9 THE COURT: Overruled. He can correct it. Go ahead.

10 Q You said it was \$150,000, correct?

11 A (NO RESPONSE.)

12 Q The deed? It says 150 right?

13 A I'm sorry, did you say that I put that amount in there?

14 Q No, no, no, the deed that is on record at the
15 courthouse?

16 A I believe so.

17 Q All right. It says \$150,000. And the deed is
18 accompanied by an affidavit of true consideration which the
19 preparer swears that that is the amount exchanged for the
20 property, right?

21 A I don't know anything about an affidavit like that, no.

22 Q All right. Well, whatever the deed says, the deed
23 says, right?

24 A I would disagree with that.

25 Q Okay. Well, I didn't think you would. Now, if we

1 wanted to find out what you were really paying for the
2 property, you would have a contract for sale, wouldn't you?

3 A Well, again, this was a distressed property with a lot
4 of problems and I was pressured to get to a closing table
5 before it was sold at a foreclosure sale. And our agreement
6 between myself and the seller was for two properties for one
7 price.

8 Q That's right.

9 A Other than that, I can't speculate.

10 Q I got you. But there was no contract of sale, yes or
11 no? Was there or was there not a contract of sale?

12 A No, there was never a contract. This was a fire sale.

13 Q It was a fire sale?

14 A Exactly right.

15 Q We agree on that. Now, the two contracts that you
16 testified about -- I think you have them up there on the
17 counter with you, Defendant's Four and Five. I think your
18 recollection is a little shaky on that. Do you have them
19 there in front of you?

20 A I do.

21 Q Okay. The only change is paragraph 17, isn't that
22 right? Let me read them to you. They're in evidence.
23 Paragraph 17 in Defendant's Exhibit Four says, "This
24 agreement shall bind and inure to the benefit of the parties
25 and their respective heirs, executors, representatives,

1 successors and assigns, purchaser reserves the right to
2 assign his rights under this agreement." That's what
3 Paragraph 17 says in Defendant's Exhibit Four, correct?

4 A Correct.

5 Q And Defendant's Exhibit Five, Paragraph 17 says, "The
6 parties acknowledge that if the property is vacant, then it
7 may affect purchaser's ability to obtain permits and
8 licenses; namely alcohol beverage licensing. For that
9 reason, if the current tenant vacates the property,
10 purchaser shall have the option to lease the property
11 according to the terms of Exhibit B attached hereto and
12 incorporated herein by a reference." That's what it says,
13 correct?

14 A Yes.

15 Q Okay. Those are the only changes, right?

16 A Well, no. There are several more paragraphs. There
17 appear to be 25 in the first document and the second one has
18 28 and has an attachment of a lease.

19 Q Okay. Now, according to paragraph 17 in the revised
20 vision, the purpose of that was if the place went dark and
21 there was no one occupying it, then all the licensure would
22 expire and you would be back at square one, correct?

23 A I wasn't selling a license.

24 Q That's right, you weren't. But you agree with me that
25 2028 Pittsburgh Avenue, I mean, let's be honest with each

1 other, its only value is as a properly licensed adult
2 business, correct?

3 A No, it's not its only value, no.

4 Q Well, I mean, Hilton isn't going to put up a Hilton
5 there, right?

6 A I don't think that makes any sense, but.

7 Q Well, do you think anybody is going to build a
8 residential home on that site? It's an industrial area,
9 right?

10 A It's an industrial area, but it certainly has value,
11 yes.

12 Q Well, of course, every piece of property has value, I
13 agree with you on that. But you know what I mean, this
14 isn't ---

15 A Well, I think you're trying to spin it in a different
16 way.

17 Q Well, no, I don't want to spin anything. This is a
18 search for the truth.

19 A Well, ask a direct question and I'll give you a direct
20 answer.

21 Q All right. The value of this property is in its
22 ability to be operated as a properly licensed sexually
23 oriented business, correct?

24 A That's not the only value for the property.

25 Q Fair enough. I will rephrase the question. That's a

1 good observation. Its highest and best use, its most
2 profitable use is as a properly licensed sexually oriented
3 business, correct?

4 A I would think that's correct.

5 Q Okay. Because sexually oriented business licenses,
6 they're hard to come by, right?

7 A I have no idea. I'm not in the business.

8 Q Okay. Now, paragraph five, which I don't think changed
9 from either contract, but let me make sure. Paragraph five
10 appears to be identical. Paragraph five says, "The parties
11 acknowledge their outstanding issues of affecting the
12 marketability of title to the property." This paragraph is
13 to give you as the seller an opportunity to clear up any
14 marketability title problems if there are any, right?

15 A Yes, it is, yes.

16 Q Oh, by the way, and I want to get this out in open
17 court on the record. You and I did have a telephone
18 conversation, correct?

19 A I don't ever remember having a conversation with you.

20 Q You don't?

21 A No.

22 Q You are going to deny me the opportunity to elicit
23 testimony about the compliments I paid to your counsel,
24 Charlie Altman?

25 A I'm fairly certain you are confusing me with William

1 Sloan.

2 Q Okay.

3 A I've never had a conversation with you.

4 Q Okay. A few more questions and then I'm done. Oh, you
5 testified that you had to begin a process to get Robin out
6 of the place and take it over and that ultimately resulted
7 in a settlement agreement, correct?

8 A Correct.

9 Q Okay. I show you what's been marked Plaintiff's
10 Exhibit 35.

11 MR. MOORE: May I see it?

12 MR. GOLDSTEIN: Oh, you are correct. I am so sorry.
13 This is a new one.

14 THE COURT: All right. Exhibit 35 is admitted without
15 objection. What is it?

16 MR. GOLDSTEIN: Exhibit 35 is the Settlement Agreement
17 reached in September 2014 between this defendant and Robin
18 Robinson.

19 THE COURT: Okay .

20 Q Well, since it's in evidence, I don't have to lead you
21 through it. You testified earlier about the disagreement
22 you had with Robin Robinson. You had to get her out and
23 then you entered into a settlement agreement with her, etc.,
24 correct?

25 A Yes.

1 Q All right. And as a result of that, you actually
2 signed a settlement agreement. All parties signed it,
3 correct?

4 A Correct.

5 Q And in this agreement, as part of the terms of the
6 agreement, Robin Robinson agreed when this was signed that
7 the conveyance of the property was not collateral to secure
8 a loan, but was an actual sale.

9 A It was a sale.

10 Q Well, I know, but according to Plaintiff's Exhibit 14,
11 which is already admitted into evidence without objection,
12 she filed a suit against you on February 9th, 2014,
13 disputing that saying that it was not a sale, that it was
14 collateral to secure a loan, correct?

15 A She filed a suit and then acknowledged that it was just
16 a delay tactic.

17 Q Ultimately, you prevailed?

18 A We prevailed and she said that.

19 Q Okay. But until she prevailed, the issue was
20 unsettled, correct? She was making a claim against you.

21 A Well, I was the owner. I had the deed to the property.
22 It wasn't unsettled on my part.

23 Q Right. But she filed a lawsuit against you alleging
24 that it was an unfair trade practice and a host of other
25 claims that you had tricked her into giving you the title

1 under false pretenses. I'm not saying whether it's true or
2 not, I'm just saying that was her allegation.

3 A And she told me she used it as a delay tactic to stay
4 in the property.

5 Q Okay. But in regards to those of us who were on the
6 outside and weren't parties to it wouldn't know who was
7 telling the truth, right?

8 A I think everyone knew the truth.

9 Q Well, truth can be a relative thing sometimes, correct?

10 A Not to me.

11 Q Well, let's look at Plaintiff's Exhibit 14 then, which
12 is already in evidence, so I can publish it to you. I think
13 we're going to make the court reporter have bad dreams with
14 all of these documents. All right. Plaintiff's Exhibit 14,
15 on February 19th, 2014, Robin Robinson filed a suit against
16 you alleging, among other things, that four days prior to
17 the scheduled foreclosure sale, the agent for the defendant,
18 that's you, disclosed for the first time that he would loan
19 only \$800,000 and insisted he wanted a premium of one
20 million, two hundred thousand dollars. That's what she
21 alleged, right?

22 A It's in the document.

23 Q It's in the document. And then she alleged that over
24 the course of the weekend, this is the weekend before
25 Thanksgiving, agents for the parties negotiated a loan of

1 \$850,000 in repayment of one million, one hundred fifty-
2 thousand dollars, correct? That's what she alleged?

3 A It's in the document.

4 Q Yep. She alleged that the transaction occurred on
5 Monday, December 2nd, at the Sloan Law Firm, correct?

6 A Correct. It's in the document.

7 Q All right. Then, she alleged that Sloan received into
8 his client trust account less than \$850,000 from you; that's
9 what she alleged.

10 A That's what she alleged.

11 Q And by the way, before I forget, these tax liens that
12 you were testifying about in response to your counsel's
13 questions, all of that got paid out of Mr. Sloan's trust
14 account, right?

15 A Right.

16 Q You weren't trying to mislead the Court and suggest
17 that you had to come up with more money, were you?

18 A I didn't say that.

19 Q Okay. I just wanted to make sure. She alleges that on
20 January 20th, 2014, she directed Sloan to transfer \$12,700
21 from his client's trust as payment for the January 2014 loan
22 payment. In following up on his task, was revealed that
23 Sloan had not done so and then he delivered funds on
24 February 2nd and that you had acted in bad faith by failing
25 to pay the full loan amount, to accept credit or funds from

1 possession to afford plaintiffs and their agents, to
2 institute an eviction for failure to pay rent. She alleged
3 all of those things, right?

4 A She alleged all of those things.

5 Q And she alleged that you breached the contract with
6 fraudulent intent, she alleged that, right?

7 A She did.

8 Q Okay. And she also asked the Court to rescind the
9 contract, did she not?

10 A I think so.

11 Q So if you're Barry Clarke sitting on the outside
12 looking in, how would he know who is telling the truth and
13 who is not telling the truth?

14 A He told me.

15 Q He told you? He told you that he knew you were telling
16 the truth?

17 A Yes, we had several discussions regarding our lawsuit
18 and he was going to assist me with it since he had problems
19 with her in the past.

20 Q Okay. And the letter that -- I think it was
21 Defendant's Exhibit Six, I don't want to waste the Court's
22 time while I look for it. That's my letter to Mr. Altman.
23 That's the letter that says well, we see that you have
24 resolved your case with Robin Robinson and it appears that
25 your client does claim to hold title; that's what the letter

1 says, right?

2 A Not exactly.

3 Q Okay. But something approximately like that. You want
4 to get the letter and read it?

5 A No, it doesn't say you appear, it says that the
6 litigation has been resolved. That's correct.

7 Q Oh, the stipulation of dismissal ending Robin
8 Robinson's suit against you, it was filed in September of
9 2014, correct?

10 A I believe so, yes.

11 Q Okay. Thank you.

12 MR. GOLDSTEIN: That's all the questions I have.

13 THE COURT: All right. You may step down. Thank you
14 very much. We're not doing any recross. You can call him
15 on direct on your case.

16 MR. MOORE: Okay.

17 THE COURT: Step down. All right. We will break for
18 lunch. See you at 2:30. Thank you very much.

19 (Whereupon, the Court is in recess in the trial of this
20 case for the lunch hour. Whereupon, at 2:00 p.m., the
21 following is held on the record.)

22 THE COURT: All right. Mr. Goldstein, you can call
23 your next witness, please.

24 MR. GOLDSTEIN: Thank you, Your Honor. May it please
25 the Court? We call William H. Sloan, Jr.

1 (Whereupon, Mr. Sloan is duly sworn.)

2 MR. SLOAN: William H. Sloan, S-L-O-A-N.

3 DIRECT EXAMINATION

4 BY MR. GOLDSTEIN:

5 Q Mr. Sloan, good afternoon. Thank you for coming. You
6 were double-subpoenaed, is that correct?

7 A Yes, sir.

8 Q I still owe you a witness fee. It's somewhere in that
9 file and I will get it to you. You're a licensed attorney?

10 A Yes.

11 Q In the State of South Carolina?

12 A Yes.

13 Q You do both residential and commercial closings?

14 A I did residential and commercial closings from 2001
15 until 2016.

16 Q How long have you been licensed as a member of the
17 South Carolina Bar?

18 A I was admitted November 13th, 2001.

19 Q You were the closing attorney for this particular
20 transaction?

21 A Yes.

22 Q When were you hired?

23 A I was hired the Tuesday before Thanksgiving 2013; six
24 days before the closing date of December 2nd, 2013.

25 Q Six days before the closing. If I told you that -- does

1 November 26th sound like it might be the right date?

2 A Yes.

3 Q Okay. So on November 26th, who hired you?

4 A Fine Housing, Incorporated.

5 Q Okay. What did you think you were being hired to do on

6 November 26th?

7 A A refinance transaction for a commercial property and a

8 residential property.

9 Q Why did you think you were handling a refinance?

10 A Because that's how it was explained to me by William

11 Swope.

12 Q Okay. Were you provided with any documents, such as a

13 contract of sale?

14 A No.

15 Q Okay. Did you know the terms of the alleged refinance?

16 A No.

17 Q Okay. On the 26th of November, six days before the

18 closing, what did you do to get ready for what you thought

19 was going to be a refinance?

20 A I had already received a title search from Mr. Swope,

21 thinking at the time it was a refinance, so we were trying

22 to get the terms down for the said refinance.

23 Q Okay. When did you have any conversation with anyone

24 that led you to think it might not be a refinance?

25 A I can't remember the exact date. It would have either

1 been Tuesday, the 26th or Wednesday, the 27th, or even
2 Monday, December 2nd; not before then.

3 Q Okay. And how was this information imparted to you
4 that it might be something other than a refinance?

5 A Conversations with Mr. Destaso?

6 Q Okay. And what did Mr. Destaso tell you?

7 A He told me that it was going to be a purchase
8 transaction, not a refinance.

9 Q Were you prepared to handle a purchase transaction?

10 A That's not an easy yes or no, but I did have title
11 work. Of course, I didn't have a contract, but I did the
12 best I could under the time constraints.

13 Q And what did you understand the time constraints to be?

14 A There was a pending foreclosure sale on Tuesday,
15 December 3rd, at 11:00 a.m. in this courthouse for the Sol
16 Legare property, the residential property.

17 Q And who was handling that foreclosure action?

18 A Mr. Altman.

19 Q All right. And what was your understanding of when the
20 funds had to be in Mr. Altman's hands in order to avoid the
21 foreclosure?

22 A I had to drive to his office to hand him a bank check
23 before 10:00 a.m., an hour before the sale time.

24 Q And the sale time was on December 3rd?

25 A Tuesday, December 3rd at 11:00 a.m.

- 1 Q The closing was on December 2nd?
- 2 A Correct.
- 3 Q And you were first notified of this on November 26th?
- 4 A Correct.
- 5 Q And when you were first notified, you thought you were
- 6 handling a refinance?
- 7 A Correct.
- 8 Q Okay. Have you handled closings before?
- 9 A Yes.
- 10 Q Have you handled closings before that involved the sale
- 11 of real property?
- 12 A Absolutely.
- 13 Q Have you ever handled a sale of real property prior to
- 14 this one, this alleged sale, have you ever handled one that
- 15 did not have a contract for sale?
- 16 A I had to jog my memory, I don't recall doing a purchase
- 17 transaction without a sales contract. It's possible, but I
- 18 can't remember.
- 19 Q I'm going to take that same question and turn around
- 20 and make it a mirror image of itself. Do you ever recall
- 21 doing a purchase closing without a sales contract?
- 22 A No, I do not recall.
- 23 Q In preparing to handle the transfer of real property,
- 24 is the sales contract a normal starting point?
- 25 A Yes.

1 Q Okay. What information is contained in the sales
2 contract that you relied upon in order to prepare for a
3 closing?

4 A Buyer, buyer's name, seller's name, property address,
5 tax map service number, legal descriptions are usually not
6 on there, but purchase price, closing date, and any special
7 provisions.

8 Q Okay. Ultimately, what did you understand the alleged
9 purchase price to be? What amount?

10 A \$850,000.

11 Q And did your office prepare two deeds for recording in
12 the RMC office in Charleston County?

13 A No. Mr. Swope prepared the deeds representing the
14 seller in the transaction.

15 Q And who signed those deeds on behalf of the seller?

16 A Robin Robinson.

17 Q Okay. Did you record those deeds on behalf of Fine
18 Housing, Inc.?

19 A Yes.

20 Q Okay. Was their consideration reflected in the deeds
21 for each parcel of real estate?

22 A Yes.

23 Q Without looking at the documents, which you can review
24 them, they are up there in front of you if you need them.

25 But if you could do it without looking at them, do you

1 recall what the consideration for each parcel was?

2 A The purchase price listed for the Pittsburgh property
3 was \$150,000 and the purchase price consideration for the
4 Sol Legare property was \$700,000.

5 Q Okay. Did Mr. Destaso know that?

6 A Near as I recall, yes.

7 Q Okay. And how did he know that?

8 A I had several phone calls and e-mails with him on
9 Monday, December 2nd, 2013.

10 Q Did the -- were the deeds recorded at the RMC office?

11 A Yes.

12 Q And do the deeds, when they are recorded, are they
13 accompanied by an affidavit of true consideration?

14 A Yes.

15 Q Okay. Now, did you receive \$850,000 in your escrow
16 account for disbursement?

17 A No.

18 Q How much did you receive?

19 A \$815,000, 8-1-5.

20 Q When did you find out that you were receiving 815 and
21 not 850?

22 A Sometime in the early afternoon on December 2nd, 2013.

23 Q Did you have an adequate period of time to get all of
24 this ready?

25 A It's not an easy yes or no. It was certainly a rushed

1 closing, to put it mildly.

2 Q Were you relying on information being provided to you?

3 A Yes.

4 Q Okay. Did you have enough time to conduct a full 40-
5 60-or even 20 year search without relying on information
6 that was provided to you?

7 A Mr. Swope, I relied on the title work of Mr. Swope that
8 he furnished sometime earlier in the month, sometime around
9 -- around November the 17th, sometime around there.

10 Q Okay.

11 A To do the closing.

12 Q Okay. Did that property title work provided to you
13 reveal the existence of a lease recorded at the RMC office
14 in favor of Barry Clarke?

15 A No, it did not.

16 Q When did you discover that there was a lease on file at
17 the RMC office in favor of Barry Clarke?

18 A March 21st, 2014.

19 Q Okay. And that was after the closing?

20 A Yes.

21 Q Now, had you fully disbursed all of the money from your
22 escrow account?

23 A No.

24 Q Okay. Again, I have the checks up there if you need to
25 review them, but just approximately how much did you still

1 have in your escrow account?

2 A It was somewhere in the low six figures. I think it
3 was around \$150,000.

4 Q Okay. And for what purpose was that money being
5 retained in your escrow account?

6 A For payoffs on tax liens that Mr. Swope was allegedly
7 procuring.

8 Q Okay. And ultimately was there sufficient money in
9 your escrow account to satisfy all those liens?

10 A Yes.

11 Q And at the end of the -- once all the dust had settled,
12 was there money to convey to Robin Robinson?

13 A No.

14 Q Okay. Can you tell us -- and again, I'll be happy to
15 show you the HUD statement, because it's in evidence. Would
16 you feel more comfortable with that in front of you?

17 A Sure.

18 Q Okay. Let me hand it to you. Do you see it?

19 A There it is.

20 Q I'm handing you Plaintiff's Exhibits Four through Ten.
21 Now, some of these are not in evidence, so we will get to
22 those in a second. Plaintiff's Exhibit Four, is that your
23 settlement statement?

24 A Yes.

25 Q Did you prepare that?

1 A Yes.

2 Q Did someone sign it on behalf of Fine Housing, Inc.?

3 A Exhibit Four, no. The exhibit in front of me is not
4 signed by Fine Housing, at least not in the spot where it
5 usually would be signed.

6 Q You just figured it must be another version that has a
7 signature on there somewhere?

8 A I believe there is.

9 Q And who signed on behalf of Robin Robinson?

10 A Robin Robinson signed for herself and I believe she
11 signed as an authorized member of RRJR, LLC.

12 Q Okay. Now, based on that settlement statement, it
13 shows the alleged purchase price of 850, correct? \$850,000,
14 correct?

15 A Yes.

16 Q Okay. You've already told us only 815 got wired in?

17 A Correct.

18 Q Were you provided an explanation as to why there was
19 \$35,000 withheld?

20 A Near as I recall, Mr. Destaso withheld \$35,000 for a
21 security deposit on the forthcoming leases on the commercial
22 property.

23 Q All right. Now, on the settlement statement, how much
24 of the \$815,000 that was wired into your account, how much
25 of it went back to Mr. Destaso?

1 A I'm not sure of any of it.

2 Q Okay. Let me ask you this, was there a \$5,500 check to

3 AAA?

4 A Yes.

5 Q Did you void that check and reissue it to Tamara Lane,

6 Inc.?

7 A Near as I recall, yes.

8 Q Okay. Do you know who Tamara Lane, Inc., was?

9 A No, not until today.

10 Q Okay. But you were directed to issue that check by Mr.

11 Destaso?

12 A Yes.

13 Q Okay. Now, did you also send \$3,500 back to a New York

14 Lawyer named Joseph Scarmato -- I might be mispronouncing

15 that.

16 A I see that on HUD, yes.

17 Q Okay. And did you do that at the direction of Mr.

18 Destaso?

19 A Yes.

20 Q Okay. Do you know what that check was supposedly for?

21 A It says on the HUD for attorney's fees, so I'm assuming

22 it's for attorney's fees.

23 Q And did you also send a check to -- and I forgot the

24 name, you have the HUD in front of you, to an insurance

25 company that covered flood insurance on the Sol Legare

1 property?

2 A I remember dispersing a check to an insurance company,
3 but I don't ---

4 Q The checks are immediately following on the HUD.

5 A Oh, okay. Yes, to the Sherry Dumas Agency for \$9,311.
6 It was signed -- the check was dated December 11th, 2013,
7 and my assistant at the time, Janice Lambert, wrote a note
8 that she Fedexed that check to Sherry Dumas Agency.

9 Q Okay. Was that at the instruction of Mr. Destaso?

10 A Yes.

11 Q Okay. And was that to pay for his flood insurance for
12 the coming year on property he had just allegedly purchased?

13 A It was for one insurance on one of the properties. I
14 don't remember to that detail.

15 Q Okay. Did you tell Mr. Destaso you could not issue a
16 title commitment to him?

17 A Not until we had gotten the tax lien payoffs resolved,
18 which Mr. Destaso knew was going to be pending on December
19 2nd, 2013.

20 Q Okay. And if the tax liens had not been resolved on
21 December 2nd when everyone at your office was ready to close
22 -- and I take it Mr. Destaso did not come to the closing,
23 correct?

24 A He did not attend the closing.

25 Q He attended by way of power of attorney?

1 A He (could not discern what was said.)

2 Q Okay. And so on December 2nd, if all those items were
3 not settled, why did you have the closing on December 2nd if
4 all these matters were unresolved as of this day?

5 A Because with the information that he had at the time
6 and all of the information that I furnished Mr. Destaso, he
7 wanted to get this closed because it had to close on
8 December 2nd because of the imminent foreclosure sale on the
9 Sol Legare property on the morning of December 3rd.

10 Q Okay. Did Mr. Destaso ask you to take steps to see if
11 he could purchase the foreclosing creditors interest in the
12 property?

13 A I believe that's correct.

14 Q Were you successful in doing that?

15 A No.

16 Q Did Mr. Destaso ask you to assist him in purchasing the
17 Zyfus (sic) judgment?

18 A I believe he did, but I don't recall for sure either
19 way.

20 Q Now, you did hire a separate title examiner abstractor
21 to check the title, correct?

22 A Yes.

23 Q And who was that?

24 A Charles Feeley, Esquire.

25 Q Okay. When did he complete that title examination?

1 A In the late afternoon of December 3rd -- excuse me, the
2 late afternoon December 2nd, 2013.

3 Q Okay. And that title exam, did it or did it not reveal
4 the existence of the Barry Clarke lease?

5 A He did pick it up.

6 Q Okay. But was it too late because of the urgency
7 brought on by the pending foreclosure?

8 A Yes. I was in the conference room with Ms. Robinson at
9 the time that Mr. Feeley e-mailed the title search to me.

10 Q Okay. What were your instructions upon learning that
11 information?

12 A I'm sorry, could you repeat that?

13 Q Once Mr. Feeley transmitted ---

14 THE COURT: What was the date that Mr. Feeley produced
15 the title?

16 MR. GOLDSTEIN: December 2nd.

17 THE COURT: Of '13?

18 MR. GOLDSTEIN: Yes, 2013. It was just hours after the
19 closing.

20 A It was December 2nd, 2013, around 4:30 in the afternoon
21 at the time I was in the conference room with Ms. Robinson
22 doing the closing.

23 Q Okay. And once you received that information, what
24 were your instructions then?

25 A Once I had received ---

1 Q The Feeley report.

2 A Oh, okay. I had a very few minutes to review Mr.
3 Feeley's search and there was on tax lien that I was
4 concerned about that was not reported in Mr. Swope's search.
5 So I made a nervous phone call to Mr. Swope and sent him an
6 e-mail about that tax lien and he called me back moments
7 later and reassured me that that lien was only against now
8 the late John Robinson, Ms. Robinson's husband and not Ms.
9 Robinson. I relied on that representation by Mr. Swope. So
10 at that point, I moved forward the next morning to get the
11 bank check and take it to Mr. Altman's office to stop an
12 imminent foreclosure sale.

13 Q At that moment, were you or were you not aware that the
14 lease contained a right of first refusal?

15 A Unaware.

16 Q Unaware?

17 A Unaware.

18 Q And is that because of the urgency of the closing and
19 the lack of time to prepare adequately?

20 A Yes.

21 Q Okay. Now, if you had had the luxury of the proper
22 amount of time, would you have reviewed the lease since you
23 now know there is a least recorded?

24 A Yes.

25 Q And if you had become aware of the right of first

1 refusal, would you have closed the transaction or would you
2 have taken additional steps?

3 A I would have immediately called Mr. Destaso and
4 discussed it with him on whether to move forward or cancel
5 the closing.

6 Q Okay. And you did not do that in this case?

7 A No.

8 Q Because you didn't have time?

9 A Correct.

10 Q Okay. Because at 10:00 the following day, the Sol
11 Legare property is gone?

12 A Correct.

13 Q Okay. Have you ever handled a transaction in the past
14 that did have a right of first refusal?

15 A I'm sure I did sometime in the last 16 years. I can't
16 -- I'm not sure -- I can't pinpoint -- I can't remember a
17 particular one or not.

18 Q If you found a least containing a right of first
19 refusal in a chain of title, what steps would you -- not in
20 this situation, but in a hypothetical, just a hypothetical
21 closing, parcel A, if you conducted a title search and saw a
22 least that contained a right of first refusal, what steps,
23 if any, would you take in order to be able to move forward?

24 MR. MOORE: Objection, Your Honor. He's asking this
25 witness for an opinion who is not identified as an expert.

1 THE COURT: Well, I don't think he's giving an opinion.
2 He's just asking what steps would he take as a lawyer. I
3 think he can answer that. Overruled. Go ahead. What he
4 would have -- I don't think he's taking a position as to
5 what should have been taken, but asking him what he should
6 have done as an attorney. Now, if you want to qualify him,
7 feel free.

8 MR. GOLDSTEIN: No, I'm not.

9 THE COURT: Because if you're going further than where
10 you're going, I'm going to require you to qualify him.

11 MR. GOLDSTEIN: I understand.

12 THE COURT: Okay .

13 Q If you were in a hypothetical closing, we will call it
14 Parcel A and you conducted a title examination and you see a
15 lease that contains a right of first refusal, what steps, if
16 any, would you take prior to closing the transaction?

17 A Well, first, I would communicate with my potential
18 buyer and make him aware of this and if they wanted to move
19 forward with the closing, I certainly would consult with the
20 person or entity who had the right of first refusal and made
21 them aware of this in the contract.

22 Q And did that not happen in this case, correct?

23 A That's correct.

24 Q Okay. And I just want to be clear, because I feel
25 awful asking you these questions to be brutally honest about

1 it, but the reason for that is you were so rushed you had to
2 have -- well, let me back up. That was going to be a
3 terrible question, so I'm just going to withdraw it. The
4 check you took to Mr. Altman, you had to be there by 10:00
5 on the 3rd, correct?

6 A Correct.

7 Q Would he accept your trust account check?

8 A No, he did not -- no, he would not.

9 Q Okay. What did he require as an addition?

10 A He required a bank check.

11 Q Okay. So did that require an additional step on your
12 part?

13 A That required me to getting to my bank on Mall Drive
14 and they opened at 9:00 a.m. to get a bank check from Denise
15 Orbin and then driving to Mr. Altman's office on King
16 Street.

17 Q Okay. Did that place additional time constraints on
18 your already constrained period of time in order to handle
19 this transaction?

20 A Yes.

21 Q Okay. Thank you, Mr. Sloan. I have no further
22 questions. If you would answer any questions by Mr. Moore.

23 THE COURT: Cross-examination.

24 CROSS-EXAMINATION

25 BY MR. MOORE:

1 Q Mr. Sloan, a lot of attorney's names were mentioned and
2 I just want to clarify who was involved in the transaction
3 and who was representing who. You were involved in the
4 transaction. Did you testify to the one that occurred on
5 December 2nd, 2013 where Fine Housing purchased these two
6 properties?

7 A Yes..

8 Q Who was your client?

9 A Fine Housing, Incorporated.

10 Q Mr. Swope was involved in that transaction?

11 A Yes. When it became a purchase transaction, Mr. Swope
12 took on the representation of Ms. Robinson and RRJR, LLC.

13 Q All right. You mentioned Mr. Altman, what was his
14 involvement in the transaction?

15 A He was representing a trust, I believe, the name was
16 Sherman. It was a foreclosure on the Sol Legare property on
17 James Island.

18 Q Was Mr. Altman representing Fine Housing or Mr. Destaso
19 in that transaction?

20 A No, no.

21 Q The consideration that was listed on the deed for the
22 Pittsburgh property, the \$150,000, how was that determined?

23 A I don't remember precisely, but I went back and forth
24 with Mr. Destaso and Mr. Swope and eventually those two
25 numbers were reached.

1 Q And that was on the December 2nd?

2 A Yes.

3 Q So you were talking with Mr. Swope. Why were you
4 speaking with Mr. Swope about that?

5 A Because Mr. Swope was representing the sellers and
6 preparing the deed and he attended the closing as well on
7 behalf of Ms. Robinson.

8 Q Okay. And what do you recall specifically your
9 communications with Mr. Destaso concerning the
10 consideration?

11 A I remember there was lots of back and forth between him
12 that day by phone and by e-mail, I believe. I was in
13 constant communication with him the entire day.

14 Q But do you specifically recall discussing the
15 consideration that day?

16 A With Mr. Destaso? I'm sorry, can you repeat the
17 question?

18 Q On December 2nd, 2013, do you specifically remember the
19 amount of the consideration of the Pittsburgh property with
20 Mr. Destaso?

21 A I don't remember exactly how we came to it, but we did
22 discuss the consideration.

23 Q Who signed the affidavit of consideration attached to
24 the deed?

25 A Is it one of the exhibits?

1 Q Yes.

2 A It would have either been Ms. Robinson or myself.

3 MR. MOORE: This is Plaintiff's Exhibit Three, Your
4 Honor.

5 A Oh, okay. There were two deeds. This is the deed for
6 Pittsburgh and I signed the affidavit of consideration.

7 Q I want to clarify some of your testimony because I
8 heard that you got involved in this transaction the week
9 before Thanksgiving, but there was also a date of November
10 17th that you had title work for Mr. Swope.

11 A Yes, I have to clarify that. Mr. Swope had been in
12 touch with me leading up to the time of the closing. It was
13 my understanding that he was shopping around for a refinance
14 for Ms. Robinson. Mr. Destaso did not become a client until
15 November 26th, 2013. That's the first time I became aware
16 of him, but in planning on doing a refinance, I had been in
17 touch with Mr. Swope weeks earlier about doing one.
18 November 17th is the approximate date he delivered me his
19 title search.

20 Q Did you talk with Mr. Swope before that date, November
21 17th, about this transaction that you thought was going to
22 be a loan? ? A Yes.

23 Q When did you first talk with Mr. Swope about any
24 transaction involving the Pittsburgh property?

25 A I know we had talked about doing such a transaction in

1 the summer of 2013, but I don't remember if it involved
2 Pittsburgh or just the Sol Legare property. He could not
3 find any money so he advised Ms. Robinson to file
4 bankruptcy. She fell out of bankruptcy and then later in
5 that fall, 2013, Mr. Swope started contacting me again about
6 a potential closing.

7 Q Is this the only transaction that Mr. Swope ever
8 referred to you?

9 A No.

10 Q Does he quite often refer work to you?

11 A He referred a tiny number of refinances to me.

12 Q Any other type of transactions?

13 A The only other one I can remember is I did a refinance
14 on a commercial property.

15 Q But there were other transactions or other legal
16 matters that Mr. Swope referred to you?

17 A I think he -- that's the only one I can remember. He
18 wanted to refer me other matters after this and I declined.

19 Q You made reference to tax liens in response to some of
20 the questions that Mr. Goldstein asked. Specifically, you
21 said you couldn't issue a title until all of the tax liens
22 were satisfied; is that correct?

23 A Correct.

24 Q When were all of the tax liens satisfied?

25 A I'm not sure.

- 1 Q Was it the next week?
- 2 A Probably not until 2014, I believe.
- 3 Q All right. How far into 2014?
- 4 A Late into 2014.
- 5 Q And are those things that you worked to resolve?
- 6 A No, but Mr. Destaso retained Mr. Altman in February
- 7 2014 I believe for evicting Ms. Robinson out of the
- 8 commercial property and then Mr. Altman took over all of
- 9 Fine Housing's matters.
- 10 Q On December 2nd, 2013, when you received that abstract,
- 11 the one that Mr. Swope did not do, did you review it?
- 12 A I looked at it as best I could do with the limited time
- 13 that I had. Again, I saw that tax lien that I did not see
- 14 in Mr. Swope's report and then I had that phone call with
- 15 Mr. Swope and Mr. Swope assured me that tax lien -- he
- 16 assured me incorrectly that that tax lien didn't apply to
- 17 the Sol Legare property.
- 18 Q Did you see the lease that day?
- 19 A I don't recall seeing it.
- 20 Q Did you review the lease that day?
- 21 A No.
- 22 Q Did you ask the abstractor to provide you with a copy
- 23 of the lease that day?
- 24 A No.
- 25 Q When did you first review the lease?

1 A March 21st 2014.

2 Q I'm handing you a document that has been entered into
3 evidence as Plaintiff's Exhibit Number 12. Let me ask you
4 if you recognize that?

5 A Yes.

6 Q What is that?

7 A That's the e-mail I sent to Mr. Altman and Mr. Destaso
8 advising them about the lease -- I mistakenly said it was
9 the Sol Legare property when it was actually for the
10 Pittsburgh property and the right of first refusal.

11 Q All right. And you made reference in that e-mail that
12 you had telephone conversation earlier that day with Mr.
13 Goldstein and Mr. Clarke?

14 A I don't remember if I spoke to Mr. Goldstein on the
15 phone about it, but I exchanged a couple of e-mails with
16 him. I did have -- this was very shortly after I had a
17 phone call with Mr. Clarke who called my office that day.

18 Q And what did Mr. Clarke tell you in that phone call?

19 A Mr. Clarke advised me of this lease with the right of
20 first refusal.

21 Q During that phone call, do you remember if Mr. Clarke
22 said I have a right of first refusal and I want to exercise
23 that right?

24 A He did not say that in that conversation.

25 Q Have you ever had a conversation with Mr. Goldstein

1 where he said Mr. Clarke has a right of first refusal if he
2 wants to exercise that right.

3 A In the two e-mails, there was no more than two that I
4 had with Mr. Goldstein. He sent me the first e-mail. I
5 sent him a reply e-mail and asked him what does Mr. Clarke
6 want to do and as I recall Mr. Goldstein e-mailed me back
7 and said he, referring to Mr. Clarke, was unsure what he
8 wanted to do.

9 Q After you sent this e-mail to Mr. Destaso and to Mr.
10 Altman, did you have a conversation with them?

11 A I'm certain I talked to Mr. Destaso on the phone that
12 afternoon. I'm sure of it.

13 Q Based on your understanding of all of the facts, is
14 that the first time that Mr. Destaso with Fine Housing had
15 notice of this lease and the right of first refusal?

16 A Yes.

17 Q Do you know how Fine Housing and Mr. Destaso came to
18 hire Mr. Altman?

19 A I referred Mr. Destaso to Mr. Altman.

20 MR. MOORE: No further questions, Your Honor.

21 THE COURT: Redirect?

22 MR. GOLDSTEIN: Maybe not, Your Honor. If I may
23 approach, I just want to check the court reporter's exhibit
24 list if I may and that may be all I need.

25 (Whereupon, Mr. Goldstein and the court reporter go

1 over the exhibit list.)

2 MR. GOLDSTEIN: No further questions, Your Honor.

3 DIRECT EXAMINATION

4 BY THE COURT:

5 Q Mr. Sloan, let me make sure I understand what you
6 testified to. You said you were withholding \$150,000 in
7 your escrow at the time of the closing for tax liens?

8 A Approximately \$150,000, yes, sir.

9 Q Later you said you didn't know if the tax liens were
10 ever satisfied? If you don't know if the tax liens were
11 ever satisfied, where is the \$150,000?

12 A It's my understanding now, Your Honor, that all the tax
13 liens have been paid off and satisfied.

14 Q Have you ever issued a title opinion to anybody?

15 A Yes, Your Honor, I did ultimately issue ---

16 Q Have you taken exceptions to the tax lien when you
17 issued or when did you issue it?

18 A I did take exceptions to the tax liens that I was aware
19 of at the time.

20 Q Well, to your knowledge, you have expended \$150,000
21 towards the tax liens to your knowledge?

22 A It was approximately that amount.

23 Q Well, approximately; that money is no longer, to your
24 knowledge, it went to the tax liens, is that correct?

25 A That's correct, Your Honor. I received instructions on

1 a couple of occasions ---

2 Q I mean, did you write the check out to Charleston
3 County or who had the tax liens, Charleston County?

4 A There was one with Charleston County. There was some
5 state tax liens and there was some federal tax liens.

6 Q Did you make the check out to the Federal, State and
7 the County or who did you make the checks out to?

8 A There was one check to the county. There was a check to
9 the State and there were checks to the Feds.

10 Q And you never took exception to the lien on the title
11 opinion?

12 A I did take exception to the liens that remained unpaid
13 at the time.

14 Q Okay. Did you ever take exception to the lease itself
15 and the first right of refusal or you really didn't read it
16 until April, so you didn't know about it until April and I
17 assume it was too late for any type of exceptions at that
18 time, is that correct?

19 A I did take exception to it in the final policy, because
20 it was issued after March 21st. I did not take exception to
21 it in the commitment that I ultimately wrote out.

22 Q Okay. That was early on?

23 A Yes, sir.

24 Q So you did take exception in the final title policy?

25 A Yes, sir.

1 Q And the title policy was issued with that exception, is
2 that correct?

3 A That is correct, Your Honor.

4 Q Okay. All right.

5 THE COURT: Any questions from either party based upon
6 the questions I asked. I just wanted to get clarification
7 because I didn't understand what he was saying.

8 MR. GOLDSTEIN: I do have a couple follow-up to Your
9 Honor's questions.

10 THE COURT: That's fine. I'll let both of you have
11 follow-up questions for him, if you have any. I just didn't
12 understand what he was saying earlier. Thank you, Mr.
13 Sloan.

14 MR. SLOAN: You're welcome, Your Honor.

15 FURTHER EXAMINATION

16 BY MR. GOLDSTEIN:

17 Q In response to Your Honor's question, I show you what's
18 been marked as Plaintiff's Exhibit 36. Does that help you
19 in answering the Court's questions?

20 A Certainly. Your Honor, Plaintiff's Exhibit 36 is a
21 ledger balance of my trust account for this closing. It
22 appears to have been created by Janice, my assistant at the
23 time on August 21st, 2014. On that date, my trust account
24 had a balance for this closing of \$134,253.71.

25 Q Okay. So that's approximately \$150 you referred to,

1 correct?

2 A Correct.

3 Q Okay. Thank you very much.

4 MR. GOLDSTEIN: And if I may ask one follow-up.

5 THE COURT: Yes, sir.

6 Q You may have asked this, Judge, and I just didn't hear
7 you, so I may be repeating the question. You did issue a
8 final title opinion?

9 A I issued a final title policy.

10 Q Title policy. Did you take exception to the Clarke
11 lease?

12 A I did take exception to the Clarke lease as the final
13 policy. I did not take exception to it in the commitment.

14 Q Got it. Okay.

15 MR. GOLDSTEIN: Thank you. That's all I have.

16 FURTHER EXAMINATION

17 BY THE COURT:

18 Q Is that Chicago or Lawyer Title?

19 A Stewart Title, Your Honor.

20 Q Okay.

21 THE COURT: Mr. Moore?

22 MR. MOORE: Based on those questions that you've asked,
23 I need to take a quick break. There is some other
24 litigation that is going on concerning these matters and I
25 need to get some information to be able to ask this witness

1 questions.

2 THE COURT: Who do you need to get it from?

3 MR. MOORE: Well, I've been retained by the Title
4 Insurance Company to represent Mr. Destaso.

5 THE COURT: I understand.

6 MR. MOORE: And I can't get involved in coverage
7 issues. You raised a question concerning the issuance of a
8 policy. I have not been involved in that and I need to
9 inquire before we close this part of the testimony.

10 THE COURT: Who are you going to inquire from? I'm
11 going to let you talk to him during the break.

12 MR. MOORE: No, sir. I'm going to inquire from the
13 title insurance company.

14 THE COURT: Okay. That's fine if you want to do that .
15 I was just trying to understand what he's saying, okay. I'm
16 not trying to get into the other litigation at all, because
17 I don't think the other litigation has any bearing on this.
18 I just didn't understand what he was saying about the tax
19 liens.

20 MR. MOORE: Well, if it's not an issue ---

21 THE COURT: To me, it's not an issue. I just wanted to
22 make sure I understand what Mr. Sloan was saying about the
23 tax liens. However, if you want to talk to the title
24 insurance company, I will be glad to give you that
25 opportunity. Because this may come back later on and I

1 understand where you're coming from. But from my
2 perspective on my decision, I don't think it has a bearing
3 on my decision, okay?

4 MR. MOORE: Can I talk with Mr. Altman for just a
5 minute?

6 THE COURT: I'll be happy to take a break and let you
7 talk with whoever you want. Let's take 15 minutes. You can
8 talk to Mr. Altman, talk to your client. Talk to President
9 Trump if you want to. All right, we will take about a 15
10 minute break. Let me know when you're ready.

11 MR. GOLDSTEIN: May I just say for the record, I now
12 move Plaintiff's Exhibit 36 into evidence.

13 THE COURT: Any objection to Exhibit 36? That's his
14 escrow account. Showing the amount of \$134,273.71.

15 MR. MOORE: No objection, Your Honor.

16 THE COURT: All right. Plaintiff's 36 admitted without
17 objection. We will take about a 15 minute break.

18 (Off the record, briefly.)

19 MR. GOLDSTEIN: Before we release the witness, your
20 court reporter informs me that Plaintiff's Exhibit Six, the
21 closing check to Joseph Scarmato, is not in evidence. So
22 before we release the witness, can I ask that Plaintiff's
23 Exhibit Six be moved into evidence.

24 THE COURT: Plaintiff's Exhibits Five, Six, Seven and
25 Eight hasn't been admitted.

1 MR. GOLDSTEIN: They have not?

2 THE COURT: No.

3 MR. GOLDSTEIN: Oh.

4 THE COURT: You moved for it but he made an objection
5 and I sustained it.

6 MR. GOLDSTEIN: Oh.

7 THE COURT: Is that right?

8 MR. MOORE: That's what I have, Your Honor.

9 THE COURT: They haven't been admitted. You moved for
10 them and he made an objection and I sustained it.

11 MR. GOLDSTEIN: Oh, well ---

12 THE COURT: I think the objection was -- I said it was
13 cumulative because the HUD statement included it and you
14 said it was relevance.

15 MR. GOLDSTEIN: Well, before we release this witness,
16 can I renew my request to -- you said Five, Six, Seven and
17 Eight are not in? ✓

18 THE COURT: Right .

19 MR. GOLDSTEIN: I'm renewing my request to move them
20 in, in light of his testimony.

21 MR. MOORE: Same objection.

22 THE COURT: All right. He has the same objection.

23 MR. GOLDSTEIN: I understand.

24 THE COURT: What's relevant about it?

25 MR. GOLDSTEIN: Oh, well, he testified -- Mr. Sloan

1 testified about them. I thought they were already in
2 evidence and he testified about them in response as to how
3 much he received and how much he dispersed out. But Your
4 Honor is correct that they are shown on the closing
5 statement.

6 THE COURT: I mean they ought to show on the closing
7 statement.

8 MR. GOLDSTEIN: They are.

9 THE COURT: My thoughts are it's cumulative. Motion
10 denied. I don't know why you want them in. The HUD
11 statement shows them. Testimony says what they are for.

12 MR. GOLDSTEIN: Judge, I'm afraid the Court is unaware
13 of the depths of my neurosis and paranoia, so that's ---

14 THE COURT: The HUD statement lists them. The
15 testimony from everybody that's testified has stated what
16 they were and what they're for. Where do you want me to --
17 paste them on the wall?

18 MR. GOLDSTEIN: I just always want more, Judge.

19 THE COURT: I sustain the objection.

20 MR. GOLDSTEIN: I understand.

21 THE COURT: On the grounds that it's cumulative.

22 MR. GOLDSTEIN: I understand. Thank you, Your Honor.

23 THE COURT: Is there any reason Mr. Sloan can't be
24 excused?

25 MR. GOLDSTEIN: Oh, no, he can be excused.

1 MR. MOORE: I agree, Your Honor.

2 THE COURT: All right. Mr. Sloan, thank you so very
3 much for being here.

4 MR. SLOAN: Thank you, Your Honor.

5 THE COURT: You are welcome to stay or go or whatever
6 you want to do. Call your next witness.

7 MR. GOLDSTEIN: I will call Barry Clarke.

8 (Whereupon, Mr. Barry Clarke is duly sworn.)

9 CLERK: Please have a seat and state your name for the
10 record and spell your last name, please.

11 MR. CLARKE: My first name is Barry; my last name is
12 Clarke, C-L-A-R-K-E.

13 DIRECT EXAMINATION

14 BY MR. GOLDSTEIN:

15 Q Mr. Clarke, do you know you're under oath?

16 A Yes.

17 Q And you have to tell the truth?

18 A Yes.

19 Q So I can ask you some questions about Betty back there?

20 A No.

21 Q All right. Tell us where you live.

22 A 2162 Westrivers Road -- that's one word, Charleston, SC
23 29412.

24 Q What kind of work do you do?

25 A Well, I have properties and I take care of the

1 properties. If you want me to be more specific?

2 Q Okay.

3 A Apartments, like the club and stuff like that.

4 Q And you manage these properties, correct?

5 A Not by myself, but I do.

6 Q Okay. And you're familiar with the lease that's been

7 entered into evidence as Plaintiff's Exhibit One, the

8 applicable section of which is ---

9 A I cannot see that writing, sir.

10 Q You cannot?

11 A Cannot.

12 Q All right. Let me hand you Plaintiff's Exhibit One.

13 A I need a magnifying glass.

14 Q All right. Plaintiff's Exhibit One is already in

15 evidence. Is that your 1999 lease with you and John

16 Robinson?

17 A It looks like it from the first line. I see the 8th of

18 January 1999. That looks like it, Yes, sir.

19 Q Did you and John Robinson negotiate the terms of that

20 lease? A Yes, we did.

21 Q Does it contain the terms that you wish to be included

22 in the lease?

23 A Yes, he and I agreed on it.

24 Q All right. Does it contain the terms that he wished to

25 be included in the lease?

1 A Yes, we agreed. We went back and forth a little bit but
2 we were friends and took care of it.

3 Q Okay. Now, I know you've been dying to tell the Court
4 about your friendship with John Robinson, so tell us about
5 your friendship with John Robinson.

6 A Well, I just happen to have a picture with me of John
7 Robinson and myself. It's a polaroid as you can see, so it's
8 a little old. But John asked me to take this picture of
9 him. It had to be, my goodness, '80s or '90s. He had the
10 club going on Market Street. The first time I met John, he
11 was 19 years old. He wanted to go into the club business.
12 I'm a little older than him by about nine years and I said
13 let me give you some good advice. He said what? I said
14 don't go in the club business. You won't get but \$10,000 to
15 help with that. But he went in it anyway and became pretty
16 successful. We were friends a very long time.

17 Q And he was married to Robin Robinson?

18 A That was one of his wives. He was married five or six
19 times. I hope I'm not saying too much, but I'm just telling
20 you about John. He's a pretty good guy.

21 Q All right. Well, that was his last one, correct?

22 A That was his last one, yes, sir.

23 Q Now, at one time did John rent your property?

24 A Yes, sir.

25 Q Okay.

1 A Specifically, the one on Pittsburgh Avenue.

2 Q Okay. 2015 Pittsburgh Avenue?

3 A Across the street, yes, sir, in the city of Charleston.

4 Q And he operated that for how many years?

5 A Gosh, it's hard to remember, probably 10 or 12 years,

6 something like that.

7 Q And did he also operate the property across the street,

8 2028 Pittsburgh Avenue?

9 A Yes, sir, he acquired that after he was at my place, if

10 I remember right.

11 Q All right. So is it your testimony then after John

12 Robinson vacated your property at 2015, he then opened up at

13 2028?

14 A He had both of them at the same time.

15 Q Okay. That was my memory, but I thought maybe I was

16 remembering wrong.

17 A He had both at the same time.

18 Q Okay.

19 A As a matter of fact, if I may, I know you don't want me

20 to -- I was going to get that property across the street and

21 he and I had a little thing about that, but he wound up with

22 it.

23 Q Okay. Now, when you were operating your place at 2015

24 Pittsburgh and he was operating his place at 2028

25 Pittsburgh, did y'all share parking?

1 A Yeah, I didn't mind him using it. Ours was just a
2 little cars in the lot and the more people think you've got
3 customers in there, so it didn't bother me at all.

4 Q Okay. Did you enter into a lease to rent -- to have
5 the right for your customers to park on his property at 2028
6 Pittsburgh?

7 A Yes, sir. I got a lease -- that's exactly right.

8 Q All right. And that lease is what's been introduced
9 into evidence as Plaintiff's Exhibit One that you have there
10 in front of you?

11 A Yes, sir.

12 Q And did the two of you hire a lawyer to draft the
13 lease?

14 A We had a lawyer there, yes, sir.

15 Q And was it a lawyer that you agreed to?

16 A We both agreed to it.

17 Q All right. Well, you anticipated my next question.
18 Was it a lawyer that he agreed to?

19 A Yes, sir.

20 Q All right. And did the two of you review the lease
21 before it was recorded?

22 A Yes, sir.

23 Q And was it recorded?

24 A Yes, sir.

25 Q Why did you record the lease?

1 A Well, I record all of my leases with the commercial
2 properties.

3 Q All right. Now, the lease provides that the term of
4 the lease is your life plus six years.

5 A Yes, sir.

6 Q And why did you make the term of the lease your life
7 plus six years?

8 A Well, I negotiated that down, if you want me to tell
9 that story. I'm sorry. It was going to be my life plus --
10 I don't know, I told him 20 years or something like that,
11 and we laughed about that, and the joke was if I die, you're
12 still going to have aggravation.

13 Q Okay. Now, did you pay the rent on the lease at all
14 times?

15 A Yes, sir, every month. I'm very careful about that.

16 Q All right. And when you would go and pay the rent,
17 until recent times, how did you go and pay it?

18 A I would go to the club. He was leasing from me. I
19 would give his manager, I believe it was 80-something
20 dollars a month. When I picked up my rent, I gave him a
21 check for 80-something dollars a month.

22 Q Okay. And did your relationship with that lease and
23 the manner in which you paid rent, did it change after
24 John's death? Did he die in 2008 or 2009?

25 A I don't remember the year, sir.

1 Q Okay. Did it become more difficult, less difficult, or
2 stay the same after his death?

3 A As far as paying the rent?

4 Q Yeah.

5 A Oh, no, instead I paid a \$1,000.

6 Q Okay.

7 A A year -- I paid \$1,000 a year.

8 Q Okay. What was the purpose of your having a right of
9 first refusal? Why did you want it?

10 A Well, that benefits the property owner, so John was
11 alright with it, and it ensures ---

12 MR. MOORE: Objection, Your Honor.

13 THE COURT: What's your objection?

14 MR. MOORE: My objection is the dead man's statute.
15 He's testifying as to what Mr. Robinson wanted, What Mr.
16 Robinson said and intended. He cannot do that under the
17 dead man's statute.

18 THE COURT: Well, just don't testify to what Mr.
19 Robinson said, okay? I will sustain the objection.

20 Q Don't tell us what John said.

21 A Okay.

22 Q But you can tell us what you did and what you said.

23 A Okay.

24 Q So the question was why did you want a right of first
25 refusal?

1 A So that if anything happened, I got a shot at getting
2 the property.

3 Q Okay. In your view, does the right of first refusal
4 inhibit the ability to sell the property or does it promote
5 the ability to sell the property?

6 A It promotes it. Well, it doesn't inhibit it, but it
7 gives the owner of the property a better shot at getting
8 more money.

9 Q Okay. Now, putting a right of first refusal in a
10 lease, was that unique to this property or is that something
11 you do as a matter of course?

12 A As I got experience with property, I found that that's
13 the way to do it.

14 Q Okay. And for what reason?

15 A Because if someone offered me \$1,000, he'd have
16 competition because the other person may have \$1,050 and it
17 would be competition and they would be bidding on the same
18 property, and I'd get the best price.

19 Q Okay. Do you also contain rights of first refusal and
20 property that you lease to others?

21 A Not on my one bedrooms and things, but ---

22 Q No, of course not on those.

23 A On things like this. If I lease -- like I have another
24 little bar that I lease out and I do that; it's in that
25 lease.

1 Q Okay. Now, if you're the owner and you are putting in
2 a right of first refusal ---

3 A No, no, I'm the owner of that property I was just
4 talking about.

5 Q Exactly. So if there is a right of first refusal in
6 there, how are you benefiting? How is it good for you?

7 A It's good for me because there is competition in the
8 price that I'm selling the property for.

9 Q Now, if you're the tenant, how does it benefit you?

10 A Because they if they are leasing from me, they have a
11 right to own the property. That's the benefit. In other
12 words, if I get it for first right of refusal from John or
13 whomever owns the property, then if he went to sell it, I
14 would say, hey, wait a minute, I want the property. Then we
15 would go back and forth on the property.

16 Q Now, is there anything in this right of first refusal
17 that says, section 52, right of first refusal, "Lessor" and
18 that is John Robinson, correct?

19 A Yeah, yeah, John would be the Lessor.

20 Q Grants the "Lessee" and that would be you, correct?

21 A Right.

22 Q The right of first refusal should it wish to sell.

23 A Right.

24 Q Is there anything ambiguous in that to you?

25 A I don't see anything ambiguous in it, no.

1 Q Well, if it were ambiguous, what would it mean?

2 A It would mean that it's not clear, but we sort of made
3 it clear, because we had to exhibit what property I was
4 getting as right of first refusal.

5 Q Okay. Did the lease that's recorded at the courthouse
6 that contains the right of first refusal contain a legal
7 description describing the premises?

8 A Of course.

9 Q And does the legal description include a plat?

10 A I would think so, Yes, sir.

11 Q So is there any question in your mind as to what you
12 were getting the right of first refusal to?

13 A None in my mind and none in the lessor's mind.

14 MR. MOORE: Objection, Your Honor. He's testifying
15 again as to the intention of the dead man's statute.

16 THE COURT: I will sustain the objection.

17 Q Is there anything about the right of first refusal that
18 is unclear to you?

19 A Not that I know of.

20 Q Prior to the property being allegedly conveyed on
21 December 2nd 2013, did anyone contact you and notify you
22 that there was a potential buyer and that you had to match
23 or exceed the offer?

24 A No, sir.

25 Q If someone had called you and said I got an offer on

1 this property for \$150,000, what would you have done?

2 A I would have called you and Ashley.

3 Q Would you have been prepared to tender that price?

4 A Absolutely.

5 Q When did you first learn that there was someone else
6 other than -- let me back up. Do you know who Group
7 Investment Company is?

8 A Yeah, they represent John Robinson.

9 Q Okay. And do you know who RRJR is?

10 A Represent John Robinson.

11 Q Okay. Do you know why the property went from Group
12 Investment to RRJR?

13 A It was such a small deal of money between them that ---

14 MR. MOORE: Objection, Your Honor. Foundation.

15 MR. GOLDSTEIN: I will withdraw the question.

16 Q Is there any difference between Group Investment
17 Company and RRJR?

18 MR. MOORE: Objection, Your Honor. Foundation.

19 THE COURT: Overruled.

20 A I wouldn't think so. It's the same as John.

21 Q All right. Were you aware the property went from Group
22 Investment Company to RRJR?

23 A I don't -- It was a long time ago, but I don't
24 remember.

25 Q Okay. Do you remember what the consideration paid for

1 the transfer from ---

2 A Somebody mentioned to me \$5.00.

3 Q Okay. When did you first learn that someone other than
4 Robin Robinson, or RRJR, was claiming title to the property
5 located at 2028 Pittsburgh Avenue?

6 A A couple of guys came to my house, called me up, and
7 one was a friend and one I didn't know. They explained to
8 me that they thought the property sold. I said it can't be
9 sold, because I have first right of refusal.

10 Q Okay. And approximately when was this conversation?

11 A Oh, God, it had to be three, four years ago, two and a
12 half years ago.

13 Q Were these people -- do you remember their names?

14 A Yeah, they are both named Terry. One is Terry Hill and
15 the other one is Terry, I think, Johnson is his name.

16 Q What was their relation to the property, if you know?

17 A I used to know some of it. Terry Johnson was friends
18 with Robin, I believe. And Terry Hill apparently had to
19 know Terry Johnson, and I -- well, I knew Terry Hill, but I
20 know Terry Johnson better now.

21 Q All right. And I'm going to ask you a question, and
22 it's going to draw an objection, and I'm just going to offer
23 an explanation saying it's not being offered for the truth
24 of the matter asserted. Maybe I can head off the objection
25 by saying it. What was the information that was conveyed to

1 you?

2 A Well, again, it was several years ago, right? But it
3 was like someone else is getting the property. Again, what
4 I said to them, I believe I said to them, I have right of
5 first refusal. Somebody has got to let me know something,
6 and that was at night they came to me, and I believe the
7 next day started calling you guys and banging your ears with
8 it.

9 Q Okay. And as a result of that, what was your next
10 step?

11 A I don't remember exactly. I just waited for you to
12 tell me what to do.

13 Q Did you authorize Ms. Andrews to talk with Vincent
14 Destaso on your behalf?

15 A Let me see how this went down exactly. I don't
16 remember exactly. Oh yeah, yeah, yeah. I went to Ms.
17 Johnson; I didn't go to you with that.

18 Q Did Vincent Destaso ever call you or did you ever call
19 him?

20 A I can't remember exactly. What I do remember. I
21 remember a couple of things. I remember talking one time to
22 Vincent -- I forgot his last name.

23 Q Destaso.

24 A Mr. Destaso, and somehow Ashley and I gave him that
25 price of \$650,000, right? And that was sort of a sweet spot

1 for me because it was half a million more than it was worth
2 and I could afford to get the money for that, so I said,
3 "Okay, we'll do that," and he has to say yes to this thing,
4 right? So he said, "I'll call you back in two weeks." So I
5 wait four weeks and I called him back. What he told me I
6 will never forget this, "I forgot about it."

7 Now, a half a million dollars is pretty good money to
8 make on something you paid \$150,000 for. He said he forgot
9 it and I turned around, and I believe it was Ashley who I
10 was talking to, and I said, "I don't want to ever talk to
11 him again." And I think from that time on, unless he called
12 me, unless I'm mistaken, only Ashley spoke to him and you
13 spoke to him.

14 Q Did you authorize Ashley Andrews to extend a purchase -
15 - a proposed purchase agreement on your behalf to Mr.
16 Destaso?

17 A Yes.

18 Q Did she do that?

19 A I believe so, Yes, sir.

20 Q All right. It's already been introduced into evidence,
21 so we can publish it as Defendant's exhibits Four and Five.
22 So I don't have to ask you, I can tell you that Defendant's
23 Exhibits Four and Five, those are the two proposals that Ms.
24 Andrews sent on your behalf, correct?

25 A I would imagine this is what I told them, you know.

1 I'll agree this is what was discussed.

2 Q Okay. And what was the difference between the two
3 proposals? I don't mean exactly word for word; I mean, just
4 what was your understanding of what was different? What
5 were the negotiations?

6 A Well, I do know one thing, I believe he was concerned
7 about Ms. Robinson and I said, well, I have an attorney who
8 is a real estate attorney, Ms. Andrews. I have no problem.
9 We will get her out. You don't have to worry about that.
10 Now, the other things we talked about were similar to what -
11 - going back to you and you and Ashley and said how bad can
12 it be and what can be the things against it? We discussed
13 that. I would have to read this to know what it's about.

14 Q You don't have to read it. If you thought you had a
15 right of first refusal, why were you offering \$650,000?

16 A Because we go through all of this and I would be
17 getting rent and all of the good things would happen. You
18 know, you take something that what I'm thinking about, if I
19 spend \$650,000 on a piece of property, then you take a lot
20 of it off on the taxes and all this kind of stuff going on
21 and I wouldn't have to go through a lawsuit or whatever was
22 going to happen, because let me tell you something, again
23 I'm talking extra. But there was so much confusion on that
24 thing I couldn't tell who was doing what, when and where and
25 I kept getting information and everything seemed to be

1 contradicting to the last story I heard that was going on
2 down there across the street at the club at 2028. Anyway, I
3 was told to be wary, which, okay, I'm done. Go ahead.

4 Q Were you aware the Robin Robinson had filed a lawsuit
5 claiming that the sale should be unwound or rescinded so
6 that there was a dispute between her and Mr. Destaso and who
7 actually owned the property?

8 A I heard all of that from her friends and people who
9 knew her and stuff like that, I wasn't in direct contact
10 with Ms. Robinson. Maybe one time, I don't know, but I
11 really didn't do a lot of conversations with her.

12 Q Do you know what waiver or waiving means? If you
13 waive a right, do you know what that means?

14 A Yes, sir.

15 Q Did you ever knowingly waive your right to purchase
16 this property?

17 A Absolutely not.

18 Q Okay. And I apologize if I've already asked you this,
19 but it's important to know, even running the risk of being
20 repetitious to ask you again if I did. Did Vincent Destaso
21 ever call you and give you the opportunity to exercise your
22 right of first refusal?

23 A No.

24 Q Did Robin Robinson ever call you?

25 A No.

1 Q Did anyone ever call you?

2 A No.

3 Q Okay. Who made the first contact between you and
4 Vincent Destaso about the right of first refusal? Was it
5 the nighttime visit between the two Terry's? Was that your
6 first notice?

7 A I believe that was the first time I heard that the
8 property was being conveyed to someone else.

9 Q As soon as you found out that there might be a claim to
10 the property, did you attempt to exercise your rights in a
11 diligent and straightforward honest way?

12 A I called Ashley. I believe she got in touch with you.
13 And whatever you told me to do, that's what I did.

14 Q Okay.

15 MR. GOLDSTEIN: That's all the questions I have, Your
16 Honor.

17 THE COURT: Cross-examination.

18 MR. MOORE: Thank you.

19 CROSS-EXAMINATION

20 BY MR. MOORE:

21 Q Exhibit Number One that is in front of you is a lease
22 that has the right that you are claiming in it. That lease
23 is for what? One half of the parking spaces of the property
24 that you were leasing?

25 A It has to do with me using his lot to park in.

1 Q I've got a copy of the survey that's attached to the
2 lease.

3 A Yes, sir.

4 Q It's also referenced in the lease. It's also been
5 entered as Plaintiff's Exhibit Number Two, which I will hand
6 up to the Court to see. I'll bring this one over to you.
7 In your lease, were you leasing all of this property?

8 A I had rights to use the property, yes.

9 Q You were leasing everything that is shown ---

10 A No, sir, it didn't work that way.

11 Q All right. Well, tell me what you were leasing.

12 A Okay. What we were doing is I could use the property
13 and because it would be about half, but no special spot.

14 Q On Tract AB, there are some buildings; did you lease
15 those?

16 A I did in the exhibit, but not lease the buildings,
17 because then I would be running his business.

18 Q Okay. So your lease was only for parking spaces?

19 A I believe that's true.

20 Q Half of the parking spaces?

21 A If that's what this says. Like I said, it was 1990-
22 something. But there was never a question of how much I
23 used.

24 Q Well, look at paragraph 2.1 of the lease; that's
25 Exhibit Number One. What does it say?

1 A Yes, sir. Here we go, "Delivery of existing
2 improvements. The improvements are delivered as is and in
3 such condition as the date of this lease. The premises is
4 unimproved property to be used as a parking lot by both the
5 Lessor and the Lessee."

6 Q And how about paragraph 7.1 on the next page, what does
7 it say?

8 A Okay, 7.1, "Lessee shall use and occupy the premises
9 jointly with the Lessor for the purposes the Lessee and the
10 Lessor shall be entitled to use one half of the spaces
11 contained in the parking lot which encumbrances all of the
12 property described in Exhibit A. However, in the event of
13 the other parties spaces are not used, then the other party
14 may use the said unused spaces."

15 Q All right. After reading those two paragraphs, let me
16 ask you again. Your lease was just of the parking spaces?

17 A Well, it wasn't a designated -- I'm not trying to bait
18 you, sir. It wasn't a designated line. Nobody said you had
19 to park here or here. And I could not lease the building
20 because he was operating the building, so of course not.
21 Only where the cars went, sir.

22 Q All right. When Mr. Goldstein asked you who drafted
23 this lease, you identified an attorney and said this
24 attorney represented both you and Ms. Robinson?

25 A How could he represent both of us? What I remember is

1 we had an attorney to make sure -- we were friendly, so we
2 just let the attorney deal with it.

3 Q Do you remember when I took your deposition?

4 A Yes, sir.

5 Q And you remember when I asked you if it was your
6 attorney who drafted this, you responded that yes, it was
7 your attorney.

8 A Well, let me correct myself. He did work for him, but
9 he wasn't working against John. He was giving us advice on
10 this thing.

11 Q And I asked you if he was John Robinson's attorney and
12 you said no, he wasn't.

13 A No, he wasn't. He was my attorney and he was working
14 for both of us, I guess; something like that. We didn't have
15 -- I can't think of the word I want to use, but an argument
16 between us. We had agreed on it. John wanted something I
17 had. He wanted an extension on the lease at the club. He
18 was leasing from me. So he was prone to anything that would
19 have hurt, like the option of first refusal, which wouldn't
20 hurt him; it could only help him. So he wasn't arguing with
21 me about that. He wasn't arguing with me about the spaces,
22 because in fact, he would use my property sometime, and I
23 never said a word because when he would use my property, it
24 made it look like I had more people in the building, which
25 helps your business.

1 Q This litigation is about right of first refusal that
2 was contained in the lease.

3 A Yes, sir.

4 Q Your lease is half of the parking spaces, but you're
5 claiming that the right of first refusal pertains to the
6 entire tract, including the improvements and ---

7 A Well, other than the exhibit ---

8 Q --- let me finish my question.

9 A I'm sorry.

10 Q You're saying that the right of first refusal applies
11 not only to the half of the parking spaces you were leasing,
12 but also the other half of parking spaces and improvements.

13 A I believe the exhibit shows the whole property.

14 Q So where does it say in the right of first refusal that
15 it applies to the whole property and doesn't apply just to
16 half of the parking space?

17 A In the exhibit, sir. In the exhibit it shows you the
18 property that was the right of first refusal. Did you look
19 at the exhibit.

20 Q Let's go back to that deposition that we made reference
21 to just a minute ago.

22 A Yes, sir.

23 Q I'm going to give you a copy of your deposition and I
24 want you to read along with me and tell me whether or not
25 I'm reading this accurately. I'm on page 38 of that

1 deposition, Line 14.

2 A All right.

3 Q I asked you the question, starting at line 14, "What
4 was the right of first refusal on?" Your response was, "It
5 was the whole property, the building, and everything." Am I
6 right so far?

7 A That's what it says, yes, sir.

8 Q All right. Then I said, "All right, where does it say
9 that?" talking about the right of first refusal. What did
10 you say in response?

11 A I said, "It doesn't."

12 Q Okay. So you testified at your deposition that your
13 right of first refusal does not say that it is the entire
14 property.

15 A I wasn't trying to lie then, I'm not trying to lie now.
16 You will find that I don't lie. What I'm saying to you is
17 that the exhibit tells us that it's the whole property, and
18 I might have misunderstood the question. Let me read the
19 question again, sir, if you don't mind. I'm not in the
20 habit of lying. All right, now 14, "What was the right of
21 first refusal on? It was on the whole property, the
22 building, and everything." All right. Where does it say
23 that?" "It doesn't." "No, it doesn't say that. It is not
24 written there, but it's" -- I'm sorry about how I'm speaking
25 to you, sir, I apologize. I really apologize. You're a

1 good guy. When you look at the exhibit, it gives you the
2 whole property. I'm not an attorney, but that's how I look
3 at it. That's how I meant it to be. And John had no
4 reason, and I'm not going to speak for him, but no one who
5 owned the property would have any reason to have a problem
6 with that, because then he can bargain with two people,
7 instead of one, if they want the property.

8 Q After you entered this lease agreement, exhibit number
9 one, with Group Investment Company, what did you expect to
10 happen?

11 A Are we out of this now, sir?

12 Q Yes.

13 A Okay. Ask me your question again so I can focus.

14 Q After you entered this lease with Group Development
15 Company, Inc., on January 8th, 1999, what were your
16 expectations as to what would happen if Group Investment
17 wanted to sell the property?

18 A Okay. If they wanted to sell the property, in my mind,
19 if they wanted to sell the property, I would get a shot at
20 it. That's number one. Number two, if they sell the
21 property and I don't get a shot at it -- I mean, if I can't
22 afford what the other side can afford, I still got the
23 parking. So for me, it was a win-win situation.

24 Q All right. So you said they would come to you and you
25 would have the opportunity to purchase the property?

1 A Yes, sir.

2 Q At what price?

3 A It depends on what price the other, like, your clients
4 at \$150,000 and I kept getting stories that they weren't
5 going to tell me -- you know, after the fact that they were
6 trying to get around all the time.

7 Q Who is "they"?

8 A The people who owned the property. They were always
9 doing a little of this and that, and so ---

10 Q I'm sorry, you said the people who owned the property.
11 Are you talking about Fine Housing?

12 A Yes, sir.

13 Q Okay. So those are the people who were trying to get
14 around you?

15 A They didn't want me to know that they bought the
16 property. It was very confusing to me. Those guys came to
17 me, then I got a head's up on it.

18 Q Let's go back to my question, though. What was the
19 price at which you would exercise your right of first
20 refusal? How would you figure out what the price was?

21 A Well, I would figure out the price whatever was
22 offered. They guy comes up and says, "Hey, man, I want to
23 guy the property for \$500,000. I've got an opportunity to
24 pay more. I was just in a bidding war with somebody and
25 they raised it 500, and I raised it 500, he raised it 1,000,

1 and I raised it to 1,000. I raised it to 5,000, I raised it
2 to 5,000. We were in court. I had loaned somebody some
3 money. The same situation.

4 Q So the right of first refusal that you entered was your
5 understanding that if Group Investment wanted to sell the
6 property, they would come to you and say, "I've got a buyer
7 who wants to buy the property."

8 A Right, that's how I would do it, yes, sir, because it
9 would be to their advantage to tell me that.

10 Q All right. So they would tell you that and what would
11 you come back with? All right, I'll pay \$510,000?

12 A Okay. Let me say this, sometimes I have a lot of
13 money. Sometimes I have a little money. If I have a lot of
14 money, I'm gonna offer more. Like the time that guy tried
15 to outbid me, I just -- whatever he offered, I offered the
16 same and more and he quit. Well, I had a lot of money at
17 that time. Now, he might come to me and I might not have a
18 lot of money, so I don't know what I would bid.

19 Q What I'm trying to understand from you, what you
20 understood about this right of first refusal and how the
21 price would be determined. and are you telling me is what
22 you would do is because you have that right of first refusal
23 is that you would have the right to participate in a bidding
24 war?

25 A That's correct.

1 Q And whoever won that war is the purchaser of the
2 property.

3 A That's correct.

4 Q So in this situation, if they came to you and said it's
5 \$150,000; you could have come and said 160.

6 A Yeah.

7 Q He could have said 300.

8 A Right.

9 Q You could have said 350?

10 A Yes, sir.

11 Q And it could have gone all the way up to a million
12 dollars?

13 A Might could have gone to a hundred million dollars, who
14 knows? But they aren't going to pay more than what it's
15 worth. I would. I will pay more than it's worth.

16 Q Where does it say that in your lease of the right of
17 first refusal?

18 A It's an obvious thing. In my opinion, when you have
19 right of first refusal, the guy comes to you with the price
20 and then you have a bidding war. That's what the right of
21 first refusal is, sir, as to my understanding.

22 Q All right. And that was your understanding of what you
23 negotiated in your right of first refusal that's in Exhibit
24 Number One?

25 A That's why I gave the right of first refusal to anybody

1 who rented from me.

2 Q In your complaint, you say that you are entitled to
3 purchase this property for \$150,000.

4 A That's correct, sir.

5 Q That's different than the bidding war scenario?

6 A That's correct, sir.

7 Q All right. Why is it?

8 A Why is it different?

9 Q Yes.

10 A Because no one told me and they were trying to get
11 around me by saying they were going to lease the property,
12 yet they were leasing the property. My understanding, and
13 I'm not an attorney, they said they were leasing the
14 property, but what they had done was purchased the property.
15 And as a matter of fact in the beginning, I kept hearing
16 that he would get people into something where they were
17 going to say, okay, I will buy the property, but then he
18 couldn't sell it, couldn't buy it to them, and then he made
19 the deal to try to lease it to them. It's so confusing,
20 there's so many things going on that didn't smell right to
21 me.

22 Q Let's get back to the question, because I'm a little
23 bit confused and I want to clarify.

24 A Yes, sir.

25 Q So if they would have come to you before the deed and

1 told you the purchase price, that launches the bidding war?

2 A Say that again, please.

3 Q If RRJR came to you and said, "I've got this contract.
4 I can sell the property to Fine Housing for \$150,000, that
5 would have launched a bidding war?

6 A Yes, I believe so. It would have on my part, as far as
7 I know.

8 Q But because they went ahead and didn't tell you and
9 just signed a deed, now you get to buy it for a dollar more?

10 A I would like to, but I don't think that's going to
11 happen. That would be completely fair to him. I don't know
12 what he really did, and I'm speaking about your client, but
13 I should give him -- I don't want to give him more, because
14 he's got some money in there. He had to take some of his
15 stuff off of there, the lawsuits, he had certain expenses he
16 had to go through, and at that time, I would go to my
17 attorneys and say now, what is fair and ethical? That's
18 exactly what I would ask them.

19 Q Now, you are here today in Court trying to enforce a
20 right of first refusal saying that Fine Housing has to sell
21 you the property for \$150,000 and one dollar, that's what
22 your complaint says. And what I'm trying to understand is
23 where is all of that payment scenario in this lease?

24 A I'm not stuck on \$150,000, sir. What I would do is
25 once we got this thing settled, I would go to my attorneys

1 and say, "Now, what is the right thing to do?" and they know
2 that I ask that of them all the time.

3 Q We're here today and you're asking for specific
4 performance, which is you want title to the property and you
5 want Fine Housing to give you money. In your complaint, you
6 said ---

7 A Well ---

8 Q --- your complaint has said \$150,000 plus one dollar.

9 A Let me expand on that.

10 Q Let me ask my question. Let me ask my question and
11 then you can answer it any way you want.

12 A Yes, sir.

13 Q Where in the lease, in that right of first refusal
14 language, does it say that's how you determine the price?

15 A I don't know that it does. But let me expand on what I
16 was saying. This settlement was picked up I heard, and I
17 think we can probably prove it, a half a million at one
18 point a few months ago on that property across the street,
19 plus he has been getting rents. I would guess he's been
20 getting for three years probably three quarters of a million
21 if what he says on the record is correct. So I would think
22 if he's lucky, because if I win the property, I might go
23 back and say, "Hey, where's my money?" That would be up to
24 my attorneys to say that, not me. If they tell me, "Don't
25 do that, Barry," I wouldn't do that. I don't do anything my

1 attorneys tell me to do.

2 Q Looking at the right of first refusal that you're
3 asking this Court to enforce, does it say what the timeframe
4 for exercising the right of first refusal is?

5 A I don't know about that.

6 Q Well, how long did you have to exercise the right of
7 first refusal?

8 A Once they tell me -- once this gentleman tells me or
9 Robin would tell me, then I would imagine I have few weeks
10 or a month or something like that. I'm not sure exactly
11 what his situation is, but I would have reacted as soon as I
12 know it.

13 Q All right. Is the timeframe addressed anywhere in your
14 lease?

15 A I have no idea. I don't know if it does or not. It
16 probably has something in there on it.

17 Q Can you look and show me where it is.

18 THE COURT: He said he doesn't know.

19 A You want me to read this whole thing now?

20 THE COURT: I understand. He says he doesn't. The
21 document speaks for itself, okay?

22 MR. MOORE: Thank you, Your Honor.

23 THE COURT: I mean, I can read the document. He
24 doesn't have to interpret it for me.

25 Q How would you exercise the right of first refusal?

1 What would you do?

2 A I would first call my attorneys. If I have to -- just
3 make an example, sir, if you don't mind. If I have a call
4 in to them, I would say I want this thing done. I wouldn't
5 get in the middle of how he would do it. If I have a legal
6 question, I have two attorneys, not one, that I pay both of
7 them. And I get their opinion and two different kind of
8 thinkers -- I did this on purpose so they can get between
9 them and say, "Barry, this is what we came up with." So I
10 get the best answer so I can go to them every time there is
11 -- every time there is a legal question about anything, I go
12 to them. "

13 Q Okay. So you would go to your attorney and your
14 attorney would tell you how to exercise your ---

15 A We would discuss it and then I would say, "Whoa, whoa,
16 what about this? What about that?" and they would say,
17 "Hey, Barry, you're being silly," and we would come up with
18 the answer.

19 Q You think you had the opportunity to examine title to
20 the property?

21 A The title to the property?

22 Q Right.

23 A Have I examined title to the property? I don't
24 remember doing that, I may have, but I don't remember ever
25 doing that.

1 Q No, sir. Here's my question, under the right of first
2 refusal, do you think you have the opportunity during your
3 time to consider whether or not you want to exercise that
4 right to examine title to the property?

5 A I would think so.

6 Q All right. Any other due diligence you would want to
7 do on the property?

8 A Only what my attorneys tell me to do. That's why I
9 hire attorneys.

10 Q If you decide you don't want to exercise the right of
11 first refusal, what do you want to do?

12 A Well, I wouldn't do that. I'm gonna tell you that now,
13 I would never do that.

14 Q But say it's not on this piece of property; it's on
15 another piece of property.

16 A On any property, I want the right of first refusal
17 because I want it. And I have a tendency to buy properties
18 that are around other properties that I have. Like my home,
19 I have two other properties there that I combined. I had a
20 piece of property on Spruill Avenue, I got four lots next
21 door to it. It's geometric progression on what you own. If
22 you own another property, it's geometric, in my opinion.

23 Q There was some testimony about a transfer of the
24 property from Group Investment, Inc., to RRJR, LLC, on
25 February 19th, 2007, do you remember that?

1 A I don't remember it, but I've been told it by the same
2 people. It's a \$5 deal.

3 Q Why didn't you exercise your right of first refusal
4 when the property was transferred?

5 A Because it was the same people. I wouldn't bother John
6 with something like that; it would be wrong.

7 Q Does it say in the right of first refusal that certain
8 transactions are excluded from triggering the right of first
9 refusal?

10 A No. I don't think so. I'm saying no, I must be crazy.
11 I don't really know.

12 Q Did you know the transfer from Group Investment to RRJR
13 ---

14 A Well, it was a long time ago. I probably did. I don't
15 remember exactly. But what I mean is I knew it between John
16 and Johnny, so I would, "Hey, John," and bust his eardrums
17 with that kind of thing.

18 Q During your testimony in response to questions that Mr.
19 Goldstein asked, you indicated that maybe you did not know
20 about that transfer from Group Investment to RRJR?

21 A Like I said, it was a long time ago.

22 Q During your deposition, however, you testified that you
23 didn't know about it at that time.

24 A And I did know.

25 Q So you probably did know or?

1 A I don't remember now. If I may make you feel sorry for
2 me, I'm 82 years old. Nobody feels sorry, how do you like
3 that?

4 Q On April 7th, 2014, Mr. Goldstein sent a \$1,000 check
5 to Fine Housing?

6 A Yes, sir.

7 Q Was that at your instruction?

8 A Yes, sir. And I will tell you why, because I sent it
9 to Robin, too. It was only \$1,000, but I didn't know which
10 way they were jumping between Robin, who is not a bad
11 person, but she -- I think she gets confused a lot and
12 that's how that happened, she lost her property, because I
13 have talked to her since and I told her I was sorry it
14 happened, because John was my friend. When I found out how
15 it happened and everything, and I don't remember everything,
16 but you know, so I said -- I went to Tommy, Mr. Goldstein,
17 and he said, "You've already sent \$1,000," and I said "No,
18 for Gino, I'm gonna be sure that nobody messes with me and
19 tries to do something crazy like I don't have the parking
20 lot or right of first refusal, something, they're going to
21 mess with me." I mean, one of the -- well, I don't know if
22 I should go into that, but one attorney called me up and
23 tried to get a loan from me and trying to make things messed
24 up, and that's just one thing. I said, "Hey, man, I don't
25 mind." They only wanted \$10,000, and I told them I could do

1 that, but I can't do that, because then it might be that I'm
2 bribing somebody, so I backed out.

3 Q All right. So you sent the \$1,000 to Fine Housing for
4 the rent?

5 A No, Tommy sent the \$1,000. I wanted to make sure that
6 it came from an attorney. That they weren't going to say
7 that I didn't send it.

8 Q Okay. And you paid the rent again in December of 2014.

9 A Yes, sir. I would pay. I would pay two or three of
10 them if I wanted to make sure, double check and make sure
11 nobody messes with me, because I was dealing with people the
12 first time he said he was going to call me back and didn't
13 and give me the excuse that he forgot, I knew from then on I
14 had to watch out who I was dealing with.

15 Q Okay. The two contracts that were presented for
16 \$650,000 that you provided testimony on, have you read those
17 contracts?

18 A Not since then.

19 Q But you read them at the time?

20 A Well, yeah, I would have discussed it with Ashley and
21 we would have talked back and forth. That would be my way of
22 doing things, sure.

23 Q Okay. Neither of those leases and none of the
24 correspondence that your attorney sent to Fine Housing, none
25 of the e-mails that your attorney sent to Fine Housing

1 mentioned the right of first refusal?

2 A You would have to ask them about that, sir, not me.

3 Q Well, you've reviewed the documents?

4 A Yeah, but that's legal stuff.

5 Q So you didn't raise the issue of the right of first
6 refusal with your attorney after you reviewed the lease?

7 A Apparently, I didn't, no, sir. I thought \$650,000 was
8 going to buy the property; he made a half a million real
9 quick and he still had the house. And he's in New York. He
10 can't run a club from New York. I figured I had it.

11 Q Do you recall your telephone conversations with Mr.
12 Destaso?

13 A I only remember the first one. Now, if he called me --
14 I remember the first one. If he called me after that, then
15 -- I only remember the first one. If he called me after
16 that, I just don't have a memory. You might jog my memory.

17 MR. MOORE: I beg the Court's indulgence for just one
18 minute. We might be through.

19 THE COURT: That would be great.

20 MR. MOORE: No further questions, Your Honor.

21 THE COURT: Any redirect?

22 MR. GOLDSTEIN: Just a few, Your Honor. May it please
23 the Court?

24 REDIRECT EXAMINATION

25 BY MR. GOLDSTEIN:

1 Q Why can't you run a club from New York to down here in
2 Charleston?

3 A (Laughing.)

4 MR. MOORE: Objection, Your Honor. Relevance.

5 THE COURT: You asked him. I mean he testified. You
6 asked him in one of your questions. I think it's proper for
7 redirect. Overruled.

8 Q Why can't you run a club from New York down here?

9 A Well, number one, people steal. As a matter of fact,
10 back when you could get polygraph tests and I had some
11 people running a club for me, the polygraph guy said you
12 don't have people stealing, you got partners, okay? So I
13 know I got to have people and I got to watch them, and it's
14 got to be people in the club. At any club in town,
15 especially this kind of club, because they are all hustlers;
16 that's what it's about, a hustle. And it's got to be a
17 legal hustle, but it's a hustle. And so you can't be in New
18 York City and run a club in Charleston. You can't be in
19 Summerville in run a club in Charleston. You got to be
20 there. Or have representatives that you trust with your
21 life or you just not gonna get your money. If I may say, I
22 know you didn't ask me this, but that's what happened to
23 Robin.

24 Q Okay. Now, Mr. Moore asked you when you would exercise
25 the right of first refusal. Would it be to your benefit to

1 exercise it as quickly as possible or to drag your feet?

2 A I would do it as quickly as possible. I don't know if
3 it would be to my benefit or not, but I would be too anxious
4 to find out what the heck is going on and deal with it.
5 Now, I don't know what the advantage would be. I'm not sure
6 about that.

7 Q Okay. Now, if you're in control of the club and you're
8 running it properly, are you making a profit, based on your
9 past experience?

10 A Yes.

11 Q Okay. And if you make a profit operating these clubs,
12 would you rather start operating it sooner or later?

13 A The sooner the better. Start making profit right away.
14 Well, not right away, but you know.

15 Q And is that why you offered \$650,000 to get it?

16 A Well, yes, the sooner I got the property, the better --
17 every minute that goes by I'm losing -- a guy that wants the
18 property and knows how to operate a place is losing money.

19 Q Okay. You brought me to my last question. How much
20 money do you think you've lost by not being in there when
21 you offered the money?

22 MR. MOORE: Objection, Your Honor. Speculation.

23 THE COURT: Overruled.

24 A There's no way to predict that kind of thing, but you
25 can be making, you know, \$5,000 a week. You might make

1 \$10,000 a week. You might make \$3,000 a week. But you
2 always got profit because the overhead in that kind of club
3 is not a lot. I mean, it's a lot, but it's not so much that
4 it's really difficult to make a copy. I don't want to say
5 it's a whole bunch, but it could be a whole bunch, or it
6 might be a little bit. But it's almost always a profit if
7 you don't have people stealing.

8 Q Okay. That's all I have.

9 MR. GOLDSTEIN: Thank you, Your Honor.

10 THE COURT: Mr. Clarke, you may step down.

11 MR. GOLDSTEIN: That completes the plaintiff's case,
12 Your Honor.

13 THE COURT: All right. You're not going to call
14 anymore witnesses?

15 MR. GOLDSTEIN: Well, I would like to call William
16 Swope as to the issue of the Group Investment transfer to
17 RRJR, but that's the only thing I really in light of the
18 testimony we've heard today.

19 THE COURT: So you think you want to -- well, we will
20 decide at the end of the trial whether you want to do it by
21 deposition or reopen it when he gets back.

22 MR. GOLDSTEIN: Well, I know the answer to the question
23 and the other side may agree, and if they can, then I don't.

24 THE COURT: Well, we will deal with that after all of
25 the testimony is in.

1 MR. GOLDSTEIN: Okay.

2 THE COURT: But other than that, Mr. Swope by
3 deposition or leaving the record open to reopen the hearing,
4 you don't have any other further witnesses, is that correct?

5 MR. GOLDSTEIN: Correct.

6 THE COURT: All right. How many witnesses do you
7 anticipate tomorrow?

8 MR. MOORE: One second, Your Honor, please.

9 (Off the record, briefly.)

10 MR. MOORE: Your Honor, we have a motion for an
11 involuntary nonsuit and then after that we have no
12 witnesses.

13 THE COURT: I'm not talking about -- my question was
14 how many witnesses do you anticipate calling tomorrow?

15 MR. MOORE: None.

16 THE COURT: You're not going to call any?

17 MR. MOORE: No, sir.

18 THE COURT: All right.

19 MR. MOORE: That's why I said I only have the
20 involuntary nonsuit left.

21 THE COURT: Okay. You're not going to recall Mr.
22 Destaso?

23 MR. MOORE: No, sir.

24 THE COURT: So from your perspective, the only thing
25 you have left is your motion?

1 MR. MOORE: Yes, sir.

2 THE COURT: All right. I will be glad to hear you.

3 First of all, let me hear from the plaintiff. Do you have
4 any motions?

5 MR. GOLDSTEIN: Well, normally, I would reserve it for
6 the close of the defendant's case, but in light of the fact
7 that the testimony is closed, other than Mr. Swope, and like
8 I said, I know the answer to the Group Investment to RRJR,
9 but I don't want to say it out loud without permission of
10 opposing counsel, so maybe I will get with him later to see
11 if he has any objection.

12 I would move for a directed verdict. I think all of
13 the evidence is in. And I understand involuntary nonsuit
14 without prejudice probably should go first, but since I'm on
15 my feet, I'm going to move for directed verdict because the
16 evidence is uncontested. There really is no issue in fact
17 and the law is clear that South Carolina has a recording
18 statute, which I briefed. I know he is going to move for an
19 involuntary nonsuit. And by the way, Mr. Moore is one of the
20 few lawyers who knows a voluntary nonsuit with prejudice of
21 a non-jury. It's amazing many lawyers don't know that.

22 The recording statute says what it says. The seller in
23 this case was on notice of the right of first refusal. As
24 for the timeliness and the vagueness, either the right of
25 first refusal is ambiguous or it's not. That's the only two

1 choices. I don't think it's ambiguous in the least, but if
2 it is ambiguous, Mr. Clarke testified very clear as to what
3 the understanding of the parties were.

4 Now, as to timeliness, and I have briefed this, but
5 there are at least 200 cases, at least, that say that every
6 contract contains within it and implied obligation that the
7 terms shall be discharged in a timely manner. And if time
8 is not of the essence is not contained in the contract, then
9 the Court implies a reasonable amount of time. Mr. Clarke
10 just testified that it would be to his financial benefit to
11 exercise the right sooner rather than later because you can
12 make a profit operating a club. He has a long successful
13 history of operating such businesses.

14 So I think by application of South Carolina law, the
15 plaintiff has proved by a preponderance of the evidence that
16 he's entitled to specific forums.

17 THE COURT: Mr. Moore, anything you would like to put
18 on the record before I rule pursuant to his motion?

19 MR. MOORE: Yes, Your Honor, if I can respond with my
20 involuntary nonsuit; it's the same thing.

21 THE COURT: He made a motion. Do you want to respond
22 to it? That's my question.

23 MR. MOORE: Yes, Your Honor. I don't think this motion
24 is appropriate at this time. I think that in the order of
25 things, the motion that should be heard is my involuntary

1 nonsuit. The Court has asked ---

2 THE COURT: You don't think the plaintiff can make a
3 motion for directed verdict at the close of testimony?
4 That's what he's made. Procedurally, is that your position?

5 MR. MOORE: My position, Your Honor, is that after the
6 plaintiff rests his case, I have the opportunity at that
7 time ---

8 THE COURT: You said you were not going to present
9 testimony.

10 MR. MOORE: With all due respect, Your Honor, I think
11 prior to submitting any testimony, I have the opportunity to
12 make a motion for an involuntary nonsuit ---

13 THE COURT: I'm going to hear you in just a second.
14 I'm just asking do you want to address what he said in his
15 motion for directed verdict? That's what his motion was the
16 way I understand it, Mr. Goldstein?

17 MR. GOLDSTEIN: Correct, Your Honor.

18 THE COURT: And you want to respond to it. If you
19 don't want to, that's fine. I'm not trying to get you to.
20 If you do, fine. If you don't, that's fine, too.

21 MR. MOORE: All right. Your Honor, we would like to
22 respond.

23 THE COURT: I'm not trying to force you to respond.

24 MR. MOORE: Your Honor, with all due respect.

25 THE COURT: I can rule without you responding.

1 MR. MOORE: I understand, Your Honor. It is my
2 understanding that his motion comes after I have rested
3 after I have finished my case. You asked me whether or not
4 I intended to call witnesses for scheduling purposes.

5 THE COURT: Well, I'll take his motion under
6 advisement. Let me hear your motion for involuntary
7 nonsuit.

8 MR. MOORE: Thank you, Your Honor. Fine Housing moves
9 for a dismissal on the grounds of the facts and the law Mr.
10 Clarke has shown no right to relief.

11 The singular issue in this case is whether or not Mr.
12 Clarke has an enforceable interest in real estate. That
13 interest in real estate is a right of first refusal. It's a
14 restraint on alienation and our law in the State is very
15 clear. In order to have a restraint on alienation be
16 enforceable, it has to be very precise and must contain
17 language that talks to the legitimacy of purpose, the price,
18 the time to exercise, the procedure for exercising that
19 right, and it must specifically describe the property.
20 There is nothing in the right of first refusal that has been
21 offered to this Court that has any of those terms.

22 Relying on reasoning and the unpublished opinion of
23 Page v. Page ---

24 THE COURT: Well, if it's unpublished, it's not
25 precedent, is it?

1 MR. MOORE: No, sir, but ---

2 THE COURT: I'm very persuasive, if you want to pass it
3 up or tell me what it says.

4 MR. MOORE: Your Honor, I will be happy to pass up a
5 copy.

6 THE COURT: Well, just tell me what it says. It's
7 unpublished, so it's not precedent.

8 MR. MOORE: It says exactly what I've just said, that
9 in order to have an enforceable right of first refusal that
10 is a reasonable restraint on alienation, it must contain
11 those elements. And if it doesn't, then that right of first
12 refusal is not enforceable. It violates public policy and
13 this violation of public policy cannot be enforced by
14 specific performance.

15 That case kind of provided a roadmap to the Court on
16 how to decide cases like this that did recite and make
17 reference to the restatement of property, made reference to
18 ameris jurisprudence, made reference to the case of Webb v.
19 Greens, to the case of McCraney v. Oates, and the case of
20 Wise v. Poston. All of those cases contain pieces of what
21 I've just summarized to the Court from what Page v. Page
22 summarizes.

23 All of those cases, if you put all of those pieces
24 together, you get the unpublished decision of Page v. Page,
25 which we think provides a roadmap. The right of first

1 refusal here is just one line. It does not clearly identify
2 the property. It does not state a price. It does not state
3 a purpose. It does not provide time for exercise. It does
4 not provide a procedure for exercise. As such, it's
5 unenforceable and we think as a matter of law, the Court
6 should find that it's unreasonable restraint on alienation
7 and violates public policy and should not be enforceable.

8 Second, Mr. Clarke asked that the enforcement of a
9 right in real estate be enforceable under the statute of
10 frauds. There is a requirement that the agreement creating
11 the right must be in writing. The lease is in writing and
12 the statute of fraud also requires that the writing contain
13 all the essential terms. They must be expressed with some
14 definitiveness, certainty and clarity. That it may be
15 understood without recourse to parole evidence to show the
16 intention of the parties.

17 In Cash v. Maddox, the Supreme Court refused to enforce
18 a writing reporting to be the sale of 15 acres in Pickens
19 County, South Carolina, when the seller owned 76 acres. The
20 Court reasoned that the alleged contract gave no definite
21 location or the shape of the 15 acres to be purchased. Here
22 you have the same thing, you have a lease on a piece of
23 property that is one half of the parking spaces on a piece
24 of property and is suggesting that the right of first
25 refusal goes to the entire tract.

1 There is nothing in the agreement that says that
2 specifically. There is testimony in deposition and confirmed
3 here today says the agreement doesn't say that. And because
4 of that reason, we think the statute of frauds would
5 preclude the relief that is being requested here today.

6 Finally, a waiver, laches, and estoppel preclude the
7 enforcement of right of first refusal. When Group
8 Investment sold the property to RRJR, LLC, in 2007, Mr.
9 Clarke did not exercise the right of first refusal. His
10 testimony was that he didn't have to because it was a
11 transfer from a related company to another company that was
12 related. It went from a corporation to a LLC. That was the
13 transfer. There is nothing in the right of first refusal
14 that says that type of transfer does not trigger the right
15 of first refusal. As such, and because he did not execute
16 the right of first refusal, at that point in time, he should
17 be deemed to have waived the right.

18 When Mr. Clarke did learn of the sale from RRJR, LLC to
19 Fine Housing, he did not attempt to exercise his right of
20 first refusal. Testimony was, instead, he made two annual
21 lease payments to Fine Housing without invoking the right of
22 first refusal; he negotiated for at least four months to
23 purchase the property suggesting a sales price of \$650,000
24 without invoking the right of first refusal. And he
25 discussed purchasing an interest in Fine Housing from Mr.

1 Destaso as a potential relief or a potential way of working
2 this situation out.

3 He waited for more than a year before he raised the
4 right of first refusal after he became aware of the fact
5 that Fine Housing was the owner of the property. We think
6 that the conduct of Mr. Clarke constitutes waiver. We think
7 that it's laches. And we think because of this conduct and
8 because of Mr. Destaso's testimony concerning the investment
9 that he made in the property after he purchased it in
10 reliance on what Mr. Clarke's non-exercise of the right of
11 first refusal, that he is also estopped from raising the
12 right of first refusal.

13 So Your Honor, that's our motion. I would like that
14 also to be my response to Mr. Goldstein's motion for a
15 directed verdict.

16 THE COURT: Okay. Thank you so very much. Let me ask
17 the parties one question before I listen to Mr. Goldstein.
18 When was -- I was trying to find the Plaintiff's Exhibit on
19 the list the contracts that were mailed to the defendant in
20 this case, I believe by Ms. Andrews or Mr. Goldstein one.
21 What are the dates of those contracts? Are they listed in
22 this?

23 MR. GOLDSTEIN: April 10th and April 21st.

24 THE COURT: Are those contracts in your exhibit list?

25 MR. GOLDSTEIN: No, sir. They are in the defendant's

1 exhibit list, Defendant's Four and Five.

2 THE COURT: All right. And what's the date?

3 MR. GOLDSTEIN: She transmitted the first one on April
4 10th, 2014 and the second one on April 21st, 2014.

5 THE COURT: All right.

6 MR. MOORE: Neither one of them are dated, Your Honor.
7 You get those dates from reference to the e-mails.

8 MR. GOLDSTEIN: That's correct.

9 THE COURT: That's what I couldn't remember and I
10 hadn't looked at the defense exhibits. All right, Mr.
11 Goldstein, I'll be glad to hear from you in reference to the
12 involuntary nonsuit that the defendant has requested.

13 MR. GOLDSTEIN: Yes, Your Honor, and I'll keep it very
14 brief. Again, let me compliment opposing counsel for
15 knowing involuntary nonsuit in a non-jury trial. I'm
16 surprised at how many lawyers do not know that. Most
17 lawyers on the defense side say it's a directed verdict, but
18 if you're on the defense in a non-jury trial, Mr. Moore is
19 correct.

20 THE COURT: I agree with you.

21 MR. GOLDSTEIN: Well, I think for the plaintiff it
22 remains a directed verdict. Anyway, Judge Young has always
23 been a stickler for that.

24 I'll go backwards. I'll go in reverse order. Waiver,
25 there's no evidence in this record ---

1 THE COURT: Before we get there, Mr. Moore, would you
2 hand me up that unpublished opinion if you don't mind,
3 please, sir.

4 (Hands up document to the Court.)

5 MR. MOORE: Your Honor, I have copies of the cases that
6 are referenced in that case, too.

7 THE COURT: I don't need those. All right, go ahead,
8 Mr. Goldstein.

9 MR. GOLDSTEIN: Thank you, Your Honor. May it please
10 the Court? As for waiver, there is no evidence in this
11 record of a knowing and voluntary waiver and that's what is
12 required. Waiver is an affirmative defense and must be pled
13 and proved and there is no evidence in this record that Mr.
14 Moore's argument is based purely on the timing and nothing
15 more and that is insufficient as a matter of law to be
16 evidence on a knowing and intentional waiver under no legal
17 right.

18 Furthermore, Mr. Clarke testified at great length that
19 he didn't know who owned the property. He was trying to
20 cover all the bases. As a matter of fact, he was very clear
21 that he sent the \$1,000 rent payment to both parties as he
22 says for \$1,000 I'm going to cover all of my bases.

23 He paid both Robin and Mr. Destaso. Now, as for Group
24 Investment v. RRJR, I'll be glad to submit Mr. Swope's
25 testimony by affidavit or by deposition, but I can tell you

1 what that transfer was. That was a transfer from John
2 Robinson to John Robinson to try and avoid a tax lien that
3 was coming down. That's what that transfer was. The
4 consideration was \$5 and that does not trigger the right of
5 first refusal.

6 As for laches, I don't even understand that argument
7 because laches, looking at the evidence in the light most
8 favorable to Mr. Moore, which is turning the standard on its
9 head, we commenced this suit within, I think he told you, a
10 year and 120 days of this closing on December 2nd, 2013. It
11 couldn't possibly be laches.

12 As for Mr. Moore's argument there is no description of
13 the property being conveyed and therefore the right of
14 first refusal according to Mr. Moore is void as a matter of
15 vagueness, that is absolutely refuted unequivocally by not
16 only Mr. Clarke's cogent and clear testimony on that point
17 on the stand, but also Plaintiff's Exhibit One, which
18 contains the exact detailed legal description of the
19 property being subjected in the lease, as well as the plat,
20 which is referenced in a legal description.

21 THE COURT: The lease itself just talks about I believe
22 tract AB.

23 MR. GOLDSTEIN: Correct.

24 THE COURT: It doesn't address AB.1, except in the
25 legal description itself, and the lease is about renting

1 tract AB.1..

2 MR. GOLDSTEIN: Right. And if I can get that in front
3 of me ---

4 THE COURT: But I agree with you, the legal description
5 does include AB and AB.1, so I guess my question to you is
6 how do you expand what you're leasing to a right to first
7 refusal of the entire tract?

8 MR. GOLDSTEIN: Yeah. I'm glad you brought that up,
9 Your Honor.

10 THE COURT: I mean, that's my question in my mind.

11 MR. GOLDSTEIN: That's a very good question and there's
12 a very clear answer. AD1 is not part of these Southern Bell
13 or a part of the -- that's a separate tract. I don't know
14 who owns that.

15 THE COURT: All right. AB.1?

16 MR. GOLDSTEIN: AB.1, I have some photographs.

17 THE COURT: All right. AB.1 is not part of this tract?

18 MR. GOLDSTEIN: No, it's not part of these Southern
19 Bell or -- I forget the name that it's doing business under
20 now. What's the name now?

21 MR. CLARKE: Heavy Man.

22 MR. GOLDSTEIN: No, the name of the club?

23 MS. CLARKE: The Gentlemen's Club.

24 MR. GOLDSTEIN: The Gentlemen's Club, that's not part
25 of the Gentlemen's Club. The Gentlemen's Club is what

1 showed on AB.

2 THE COURT: Well, if you look at Exhibit A, all that
3 parcel, unknown, and designated as Tract AB is .161 acres.

4 MR. GOLDSTEIN: Correct.

5 THE COURT: And on the plat established -- okay, and
6 subdivided into Tract AB and AB.1. All right, so you are
7 telling me that AB.1 doesn't belong to the defendant?

8 MR. GOLDSTEIN: Correct. Yes, John Robinson sold that
9 years ago.

10 THE COURT: All right. That's fine. I just didn't
11 understand it.

12 MR. GOLDSTEIN: I'm glad you cleared that up.

13 THE COURT: Okay. Go ahead.

14 MR. GOLDSTEIN: That brings us to statute of frauds. I
15 don't understand the statute of frauds argument, because we
16 do have a writing that is charged by the party against who
17 is being -- it's signed by the party against whom the
18 document is being charged, being John Robinson's successors.
19 You don't renew a document every time the signatory dies.
20 When there are documents that I may have signed and I may
21 drop dead tomorrow doesn't mean those documents have to be
22 resigned and renegotiated because of my death. Whatever the
23 documents provide survive my death.

24 And then the final thing is I want to say this, Mr.
25 Moore has asserted several times before this Court that a

1 right of first refusal is a "restraint on alienation". I
2 could not disagree with my learned colleague more. A right
3 of first refusal is the exact opposite of a restraint on
4 alienation. As Mr. Clarke testified, it promotes
5 alienation. It makes sure that the seller has, as Mr.
6 Clarke testified so clearly, always has two buyers on every
7 transaction. So as far as it being a restraint on
8 alienation, it is exactly the opposite. It stimulates
9 alienation.

10 So I think I have addressed all of the legal arguments
11 he made, but if I've overlooked any, I'll be happy to take
12 questions from the Court.

13 THE COURT: Okay. Thank you very much. As far as the
14 involuntary nonsuit, that's denied. As far as the directed
15 verdict on behalf of the plaintiff, that is also denied.
16 Now, you want to take Mr. Swope's deposition or do you want
17 me to reopen and set up a hearing and take live testimony?
18 Which do the lawyer's prefer? It doesn't matter to the
19 Court. I will leave it to y'all's convenience.

20 MR. GOLDSTEIN: I'm hoping Mr. Moore and I can confer
21 and see if we can reach an agreement, so we won't have to do
22 either one is what I'm hoping.

23 THE COURT: Well, I guess my second question is how
24 soon can we do this because if we are going to bring any
25 additional stipulation, deposition or live testimony, I

1 can't make a decision until that's done. So how soon can we
2 get this done?

3 MR. GOLDSTEIN: Well, we propose that we end it right
4 now. It sounds like we have a stipulation that will allow
5 the matter to be concluded today.

6 THE COURT: Okay. What is it?

7 MR. GOLDSTEIN: The stipulation is that the parties are
8 stipulating that the shareholders of Group Investment
9 Company, Inc., were Robin Robinson and John Robinson and
10 that two members of RRJR were Robin Robinson and John
11 Robinson, although there may have been other members.

12 MR. MOORE: Same thing with the shareholders. There
13 may have been other shareholders. We will stipulate that
14 Robin Robinson and John Robinson were both shareholders of
15 Group Investment and members of RRJR, LLC.

16 THE COURT: They were the same members in both
17 corporations?

18 MR. MOORE: We just don't know if there were other
19 members.

20 THE COURT: Okay. So you don't know if it was just the
21 two of them or other people?

22 MR. MOORE: Right.

23 THE COURT: In the corporation or the LLC?

24 MR. MOORE: Right. They both have those two in common.

25 THE COURT: All right.

1 MR. GOLDSTEIN: There is no sense in bringing Mr. Swope
2 back to clear that up.

3 THE COURT: All right. That's fine. Let me make some
4 observations. Let me say this before I make those
5 observations, after I have reviewed everything, read the
6 cases and reflected on it, I may change a lot of things, but
7 I'm taking these observations today in hopes that maybe the
8 two of y'all can sit down and resolve this issue between the
9 two parties.

10 My first observation is this, the notice of refusal is
11 given to the defendant on 3-14 by the e-mail. In the e-mail
12 from Mr. Sloan to the defendant, he said there was a lease
13 and he said there was a right of refusal. So at that point
14 in time, the defendant knew about the right of refusal. So
15 in that, in my opinion, laches and estoppel would not apply
16 under those conditions.

17 I don't think there was any waiver by the plaintiff,
18 because once he found out about it, he immediately started
19 trying to negotiate a price to buy it, and according to the
20 defendant, he testified on direct that they had agreed on
21 \$650,000. However, when the written contract came in, there
22 was some other conditions that he did not agree to those
23 conditions, so he never signed the contract. Now, on cross,
24 he backed up on that. He said they talked about it. So I
25 don't know what went on. But on direct he clearly said, "I

1 agree to the price of \$650,000, but there was conditions on
2 the contract. So I don't think there was any waiver on the
3 part of the plaintiff.

4 The argument that's been going on in raising whether it
5 was a sale or whether it was a loan, I think it's
6 immaterial. The Court's position is it was a sale. It was
7 a deed on two pieces of property. I think you have to go
8 with the deed. A deed transfers property and as those deeds
9 are still valid, they haven't been set aside, I don't think
10 there's any way this Court can take the position that it was
11 a loan.

12 Now, the Court, in my opinion, what I'm going to have
13 to look at to see if this first right of refusal is
14 appropriate and legal under the South Carolina Law. I'm
15 going to have to look at the cases y'all have presented and
16 do some research myself and make a decision on that issue.

17 Now, the second thing I want to say to you, if in fact,
18 I do say that the first right of refusal is valid, then the
19 second question, of course, the Court will have to decide is
20 what's the price. The plaintiff has said 115 and the
21 plaintiff has testified to 650. The defendant testified
22 that he had agreed to 650. So the Court will have to set a
23 price if in fact this first right of refusal is valid.

24 Now, those are my observations from having listened to
25 testimony all day today. I will say again, those are

1 observations. Those are not my final findings of fact. I may
2 modify them. So don't go running around saying I have ruled
3 from the bench, because I have not. I'm saying this to the
4 two fine attorneys -- the four fine attorneys in the
5 courtroom, and the fifth one, Mr. Sloan in the back, in an
6 effort for y'all to sit down and try to negotiate this
7 situation. Otherwise, I will let you know just as soon as I
8 decide whether it's a valid first right of refusal and then
9 set a price. Okay?

10 MR. GOLDSTEIN: Yes, Your Honor.

11 MR. MOORE: Thank you, Your Honor.

12 THE COURT: Thank you very much.

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STATE OF SOUTH CAROLINA)
)
COUNTY OF COLLETON) CERTIFICATE

I, REBECCA H. HILL, Official Court Reporter for the Judicial Department of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of the proceedings had in the hearing of the captioned case, in the Court of Common Pleas Non-Jury for Charleston County, South Carolina, on the 26th day of July 2017.

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

November 8, 2017

Rebecca H. Hill

Rebecca H. Hill,
Official Court Reporter

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

LEASE AND AGREEMENT

THIS LEASE AND AGREEMENT made this 8TH day of JANUARY
1999, by and between GROUP INVESTMENT COMPANY, INC., (hereinafter referred to
as "Lessor"), and BARRY CLARKE, (hereinafter referred to as "Lessee").

WITNESSETH:

In consideration of the mutual covenants hereinafter set forth and the
premises, the parties hereto agree and covenant as follows:

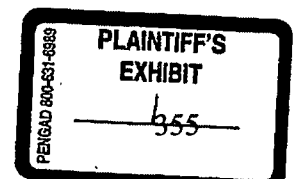
ARTICLE I

Demise of the Premises and Warranties

With Respect Thereto

Section 1.1: Demises: Subject to and upon the terms, conditions, covenants
and undertakings hereinafter set forth, Lessor hereby leases and permits the use to
Lessee, and Lessee hereby leases from Lessor the property generally described in Exhibit
"A" attached hereto, located in the County of Charleston, State of South Carolina
(hereinafter referred to as "the premises").

Section 1.2: Warranties: The Lessor hereby warrants and covenants that it
is a valid South Carolina corporation presently in good standing. All necessary meetings
have been held to authorize the officers of the Lessor to lease the said premises to the
Lessee. The Lessor further warrants and covenants that it has a good and marketable fee



simple title to the subject property and there are no liens or encumbrances against the property that would prevent the leasing hereof.

ARTICLE II

Improvements

Section 2.1: Delivery of Existing Improvements: The improvements are delivered "as is" and in such condition as on the date of this lease. The premises is unimproved property to be used as a parking lot by both the Lessor and the Lessee.

Section 2.2: Future Improvements: All future improvements made on the premises shall be made at the sole cost and expense of Lessor to provide suitable parking.

ARTICLE III

Term and Commencement Date

Section 3.1: Term: ~~The term of this lease is for ninety-nine (99) years.~~ The lease shall commence on the 8TH day of JANUARY, 1999 and terminate on the ~~last day of 2097~~. 6TH YEAR ANNIVERSARY OF LESSEE'S (BARRY CLINKERIS) DEATH.

ARTICLE IV

Rent

Section 4.1: Rent: Lessee agrees to pay as rental to the Lessor the yearly sum of one thousand and No/100 (\$1000.00) Dollars; payable monthly, in the amount of _____ per month.

Section 4.2: Payment of Utilities: Lessor shall pay all charges for sewerage, water, gas, electricity, and other public utilities now in existence or hereafter added if needed for parking.

Section 4.3: Taxes: Lessor shall pay and be responsible for all county

property taxes on the premises.

ARTICLE V

Section 5.1: Option to Renew: There are no options to renew.

Section 5.2: Right of First Refusal: Lessor grants the Lessee the right of first refusal should it wish to sell.

ARTICLE VI

Surrender Upon Termination or Cancellation

No Holding Over

Section 6.1: Surrender: Upon the expiration of this Lease, Lessee shall quietly and peaceably surrender possession of the premises.

Section 6.2: Holding Over: There shall not be any holding over by Lessee or any assigned beyond the expiration or sooner termination of this lease.

ARTICLE VII

Use of the Premises; Lessor's Covenant

of Quiet Enjoyment; Right of Entry and

Inspection

Section 7.1: Use: Lessee shall use and occupy the premises jointly with the Lessor for his purposes. The Lessee and Lessor shall be entitled to use of one half (1/2) of the spaces contained in the parking lot [which encumbrances all of the property described in Exhibit A]. However, in the event either parties' spaces are not used then the other party may use the said unused spaces.

Section 7.2: Quiet Enjoyment: Lessee shall permit Lessor or Lessor's duly authorized agents, employees or representatives to enter upon the premises at all reasonable times for the purpose of inspecting the same. It shall be the responsibility of the Lessor to maintain the premises and to make such repairs as may be necessary to maintain the premises for a parking lot.

ARTICLE VIII

Repair and Maintenance; Indemnification of Lessor

Liability Insurance

Section 8.1: Liens: Lessor shall, during the term of this lease, promptly remove or release, by the posting of a bond as either required or permitted by law, any lien against the premises or any portion thereof arising by reason of any fault or omission on the part of the Lessor, and shall save and hold Lessee harmless from or against any such lien. In the event any such lien does attach against the premises, and shall not be released as aforescribed within fifteen (15) days after notice thereof, Lessee, in Lessee's sole discretion, may pay and discharge the same and relieve the premises therefrom; thereafter, Lessee may deduct from any rent such sum paid (including attorneys' fees) by Lessee in discharging such lien, which sum shall include interest at the rate of one (5%) per cent above the prime lending rate as established by the Wall Street Journal per annum from the date such lien is paid by Lessee until the date Lessee is reimbursed by Lessor. Notwithstanding the foregoing, Lessor may contest any such lien or claim of lien upon furnishing Lessee with a valid and sufficient bond issued by a reputable bonding or surety company legally qualified to do business in the State of South

Carolina, indemnifying Lessee against any loss, liability or damage on account thereof.

Section 8.2: Indemnification: Lessor hereby indemnifies and agrees to hold Lessee harmless from and against any and all injuries sustained on the premises while occupied by the Lessee or Lessor, and any and all actions, claims and demands arising out of the use, occupancy, or non-use of the premises as herein provided, including, but without limitation of the foregoing; any carelessness, negligence, improper conduct or breach of this lease by Lessor or its agents, employees, patrons, suppliers, or assigns, and all costs, expenses and fees, including attorneys' fees, incurred by Lessor incident thereto.

Section 8.3: Insurance: To further protect Lessee and assure compliance by Lessor with the foregoing provisions of this agreement, Lessor shall obtain and maintain at all times during the term hereof, with a responsible insurer, for the benefit of Lessor and Lessee as their respective interests may appear, comprehensive general liability insurance against any loss or liability for damages and any expense of defendant against any claim for damages which might result from the use or occupation or condition of the premises and those premises of the Lessor used for ingress and egress by the Lessee, its agents, employees, customers, suppliers, or assigns, in such amount or amounts as shall not be less than is customary and usual for operations of the type, character and scope to be carried on by Lessee on the premises, but in no event in amounts affording protection of less than One Million and No/100 (\$1,000,000.00) Dollars in respect to any injury to or death of one person, One Million and No/100 (\$1,000,000.00) Dollars in respect of personal injuries or death occurring as a result or arising out of one accident or event, and Fifty Thousand and No/100 (\$50,000.00) Dollars in respect of property damages. Lessor shall furnish a copy of such insurance policy and renewals thereof to Lessee.

ARTICLE IX

Personal Property on the Premises:

Lessee's Rights Therein

Section 9.1: Personal Property: Lessee, at its sole costs and expense, may place or install such fixtures, equipment and other personal property on the premises as Lessee shall deem necessary for the efficient conduct of the business to be carried on thereon or therefrom. Lessee may also, at its sole cost and expense, (1) place a sign or signs on the premises announcing the business to be carried on therein or therefrom; the size and shape of said sign and (2) place such sign or signs on the premises as may establish a definite landmark for said business or appropriately advertise the same.

Section 9.2: Lessee's Rights: All of the aforementioned personal property shall at all times be and remain the personal property of Lessee, regardless of the manner in which any or all of the said personal property may be affixed or attached to the premises. Accordingly, in the event any such personal property purchased by Lessee shall at the time of or as a result of said purchase be subject to a purchase money security interest or other security interest, Lessor's rights in such personal property, if any, shall be subject and subordinate thereto. The foregoing provisions for the subordinate of Lessor's interest is intended to be self-operative; nevertheless, at Lessee's request, Lessor shall execute such document or documents as may further evidence the subordination of Lessor's interest.

ARTICLE X

Assignment and Subletting

Section 10.1: Assignment: The Lessee shall have the right to assign its interest in this lease, or any part thereof, to any person, corporation, partnership, association or other entity.

Section 10.2: Subletting: The Lessee shall have the right to sublet the premises.

ARTICLE XI

Default; Lessor's Remedies

Section 11.1: Default: It shall be an event of default by Lessee hereunder if Lessee shall fail to pay the rent within 60 days after notice.

ARTICLE XII

Subrogation

Section 12.1: Lessor and Lessee, to the maximum extent permitted by insurance policies owned by lessor or which may be acquired by lessee, do waive for the benefit of each other all rights of subrogation which any insurer of either may otherwise have.

ARTICLE XIII

Binding Effect; Successors and Assigns

Section 13.1: This lease shall be binding upon, and inure to the benefit of, the parties hereto, Lessee's successors and assigns and Lessor's successors and assigns.

ARTICLE XIV

Notice; payments

Section 14.1: Notices: Any and all notices, requests or demands required hereunder shall be in writing and shall be delivered in person or sent by United States certified or registered mail (return receipt requested), addressed as follows:

If to Lessor:

2347 SOL LEGARE ROAD

CHARLESTON, S.C 29412

If to Lessee:

2162 Westriver Drive
Charleston, SC 29412-2091

Any such notice, request or demand shall be effective as of the date the same is received. The address of either party hereinabove set forth may be changed from time to time by giving written notice in that regard.

Section 14.2: Payments: All payments required to be made hereunder shall be made at the appropriate address hereinabove set forth or to such other address as either of the parties may from time to time specify in writing.

ARTICLE XV

Entire Agreement Herein

or Changes Waivers

Section 15.1: This lease shall be deemed to include the entire agreement between the parties hereto and no waiver of any right, agreement or condition hereof and no modification hereof shall be binding upon either of the parties hereto unless in writing

and signed by the party to be charged therewith. Any waiver agreed upon shall be limited to the particular instance and shall not be deemed to waive any other breaches of such right, agreement or condition herein contained.

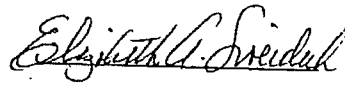
ARTICLE XVI

Headings

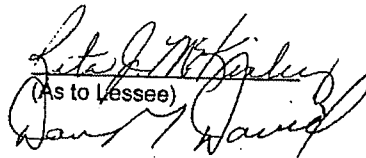
Section 16.1: The headings as to the contents of particular Articles and Sections herein are inserted only for convenience and are in no way to be construed as part of this lease or as a limitation on the scope of the particular Articles or Section to which they refer.

IN WITNESS WHEREOF, the parties hereto have executed this Lease and Agreement at Charleston, South Carolina, the day and year first above written.

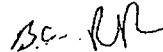
WITNESSES:



(As to Lessor)

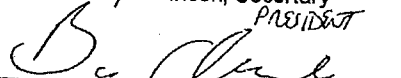


GROUP INVESTMENT COMPANY, INC.
Lessor



By: 
John Robinson, President

By: 
Robin Robinson, Secretary
PRESIDENT


Barry Clarke, Lessee

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

ACKNOWLEDGEMENT

I hereby acknowledge that Robin M. Robinson, as President of Group Investment Company, Inc., and Barry Clarke personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

SWORN to before me this

8th day of January, 1999.

Rita J. McKeel (SEAL)
Notary Public for South Carolina
My Commission Expires: 9/22/2007

Exhibit A

ALL that piece, parcel or tract of land, situate, lying and being in Charleston County, South Carolina, known and designated as "Tract "AB", 1.610 Acres, Property of Group Investment Company, Inc., TMS 466-16-00-0011" on a plat entitled "Plat Showing TMS 466-16-00-011, being subdivided into Tracts "AB" and AB.1", Property of Group Investment Company, Inc., Located North Charleston public Service District, Charleston County, SC", made by Davis & Floyd, Inc., dated January 19, 1989 and recorded in the RMC Office for Charleston County in Plat Book CE, page 116, said tract having such size, shape, dimensions, buttings and boundings as will reference to said plat more fully and at large appear.

Being the same premises conveyed to Group Investment Company, Inc., by deed of Cheryl Robinson, dba C. R. Intermodel, recorded in the RMC Office for Charleston County on February 18, 1997 in Book D280, Page 27.

David

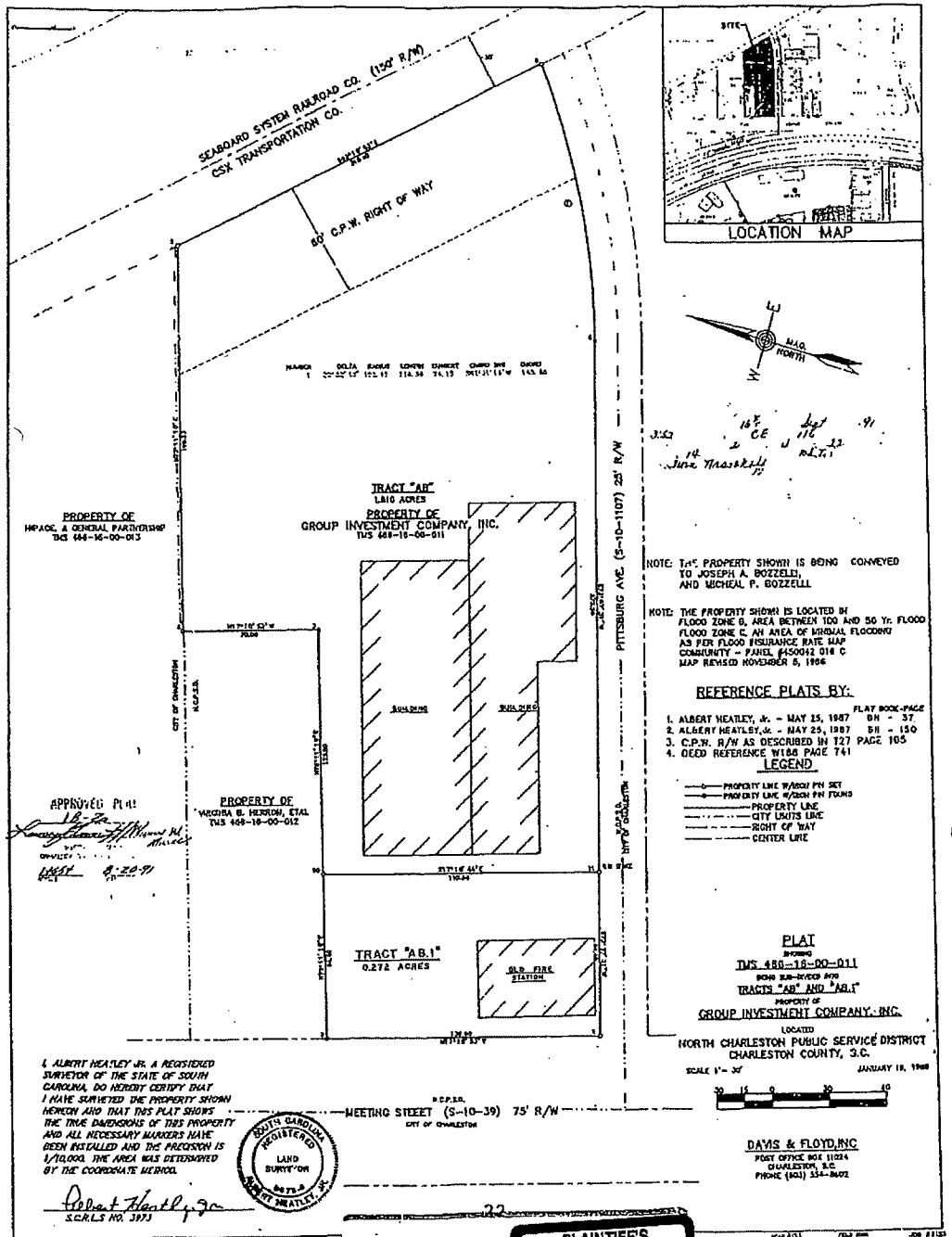
81C 319P6803

FILED

C319-791
99 JAN 27 PM 12:07

CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

18.10
4





PGS:

BP0377843

5

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that RRJR, LLC, in the State and County aforesaid, for and in consideration of the sum of ONE HUNDRED FIFTY THOUSAND and NO/100 (\$150,000.00) DOLLARS, to me in hand paid at and before the sealing of these presents by Fine Housing, Inc., in the State and County aforesaid, the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these Presents do hereby grant, bargain, sell and release unto the said Fine Housing, Inc., its successors and assigns, all my right, title and interest in the following described property to-wit:

SEE EXHIBIT "A" ATTACHED HERETO

THIS CONVEYANCE IS MADE SUBJECT TO all covenants, restrictions, conditions, easements and rights of way of record.

Grantee's Address: 102 Lake Road
Congers, NY 10920

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, an interest in the said Premises before mentioned unto the said Fine Housing, Inc., its successors and assigns forever.

AND RRJR, LLC does hereby bind itself and its Successors and Assigns to warrant and forever defend, all and singular, the said Premises unto the said Grantee, its successors and assigns, against RRJR, LLC and its Successors and Assigns, and all persons whomsoever so lawfully claiming, or to claim the same or any part thereof.

WITNESS our Hands and Seals this 24 day of December, in the year of our Lord Two Thousand and Thirteen.

SIGNED, SEALED AND DELIVERED
IN THE PRESENTS OF:

[Signature]
Witness #1
[Signature]
Notary Public as Witness #2



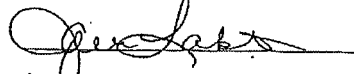
[Signature]
Grantor

68

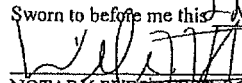


THE STATE OF SOUTH CAROLINA)
)
COUNTY OF BERKELEY)

PERSONALLY appeared before me the first witness and made oath that s/he saw the within named RRJR, LLC sign, seal and as its act and deed, deliver the within written Deed, that s/he with the other witness witnessed the execution thereof.



Sworn to before me this 21 day of December, 2014.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission expires: 6/17/2015

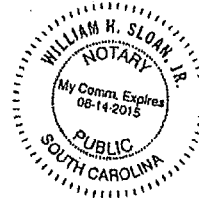


Exhibit A

ALL that piece, parcel or tract of land situate, lying and being in Charleston County, South Carolina, known and designated as "Tract A, 1.610 Acres, Property of Group Investment Company, Inc., TMS 466-16-00-011" on a plat entitle "Plat Showing TMS 466-16-00-011, being subdivided into tracts 'AB' and 'AB.1', property of Group Investment Company, Inc., located North Charleston Public Service District, Charleston County, SC," made by David & Floyd, Inc., dated January 19, 1989 and recorded in the RMC Office for Charleston County in Plat Book CE, Page 116; said tract having such size, shape, dimensions, buttings and boundings as will be referenced to said plat more fully and at large appear.

BEING the same property conveyed to RRJR, LLC by deed of Group Investment Company, Inc. dated February 19, 2007 and recorded April 25, 2007 in the RMC Office for Charleston County at Book H623, Page 181

TMS# 466-16-00-011

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

AFFIDAVIT

Date of Transfer of Title
Closing Date: 12/2/13

PERSONALLY appeared before me the undersigned, who, being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property is being transferred on: 12/2/13
by: RRJR, LLC
to: Fine Housing, Inc..
3. Check one of the following. The Deed is:
(A) X Subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(B) _____ Subject to deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
(C) _____ EXEMPT from deed recording fee because: Exemption #
Explanation if required. Transfer to Family Trust
(If exempt, please skip items 4-6, and go to item 7 of this Affidavit).
4. Check one of the following if either item 3(a) or 3(b) above has been checked.
(A) X The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$150,000.00
(B) _____ The fee is computed on the fair market value of the realty which is \$ _____
(C) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is **.
5. Check: YES _____ or NO X to the following: A lien or encumbrance existed on the land, tenement or realty before the transfer and remained on the land, tenement or realty after transfer. If "YES" the amount of the outstanding balance of this lien or encumbrance is \$ _____.
6. The Deed Recording Fee is computed as follows:
(A) 150,000.00 the amount listed in item 4 above.
(B) 0 the amount listed in item 5 above (no amount, place zero)
(C) 150,000.00 subtract line 6(b) from line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney
8. Check if property other than real property is being transferred on this Deed:
(A) _____ Mobile Home (B) _____ Other
9. _____ DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT: Estate of _____ deceased, Case Number _____. Personally appeared before me the undersigned attorney who, being duly sworn, certifies that s/he is licensed to practice law in the State of South Carolina; that s/he has prepared the Deed of Distribution for the Personal Rep in the Estate of _____ deceased, and that the grantee(s) therein are correct and conform to the estate file for the above-referenced decedent.
10. I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined but not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN this 2nd day of December, 2013

Notary Public for South Carolina
My Commission Expires: 3-24-2020

THE SLOAN LAW FIRM, P.A.

William H. Sloan, Jr.





A. Settlement Statement (HUD-1)

B. Type of Loan

1. ☐ FHA	2. ☐ RHS	3. ☐ Conv. Unins.	6. File Number: 13-264	7. Loan Number:	8. Mortgage Insurance Case Number:
4. ☐ VA	5. ☐ Conv. Ins.				

C. Note: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. Name and Address of Borrower: Fire Housing Inc 2028 Pittsburg Ave/2470 Sol Legare RD Charleston, SC 29405	E. Name and Address of Seller: Robin M. Robinson and RRJR, LLC	F. Name and Address of Lender:
G. Property Location: 2028 Pittsburg Ave/2470 Sol Legare RD Charleston, SC 29405 Charleston County, South Carolina	H. Settlement Agent: Sloan Law Firm 1055 N Main St Suite F Summerville, SC 29483 Place of Settlement: 1055 N Main St Suite F Summerville, SC 29483	I. Settlement Date: December 2, 2013 Ph. (843)873-7531

J. Summary of Borrower's transaction		K. Summary of Seller's transaction	
100. Gross Amount Due from Borrower:		400. Gross Amount Due to Seller:	
101. Contract sales price	850,000.00	401. Contract sales price	850,000.00
102. Personal property		402. Personal property	
103. Settlement Charges to Borrower (Line 1400)		403.	
104.		404.	
105.		405.	
Adjustments for items paid by Seller in advance		Adjustments for items paid by Seller in advance	
106. City/Town Taxes to		406. City/Town Taxes to	
107. County Taxes to		407. County Taxes to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. Gross Amount Due from Borrower	850,000.00	420. Gross Amount Due to Seller	850,000.00
200. Amounts Paid by or in Behalf of Borrower		500. Reductions in Amount Due Seller:	
201. Deposit or earnest money		501. Excess deposit (see instructions)	
202. Principal amount of new loan(s)		502. Settlement charges to Seller (Line 1400)	187,456.13
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204.		504. Payoff First Mortgage to Capital One	381,644.72
205.		505. Payoff Second Mortgage to Charleston Capital One	29,982.31
206.		506.	
207.		507. Federal Tax Lien to IRS	
208. Closing Cost Credit		508. Closing Cost Credit	
209. December's Rent and deposit		509. December's Rent and deposit	
Adjustments for items unpaid by Seller		Adjustments for items unpaid by Seller	
210. City/Town Taxes to		510. City/Town Taxes to	
211. County Taxes to		511. County Taxes to	
212. Assessments to		512. Assessments to	
213. Credit	35,000.00	513. Credit	35,000.00
214.		514.	
215.		515. Federal Tax Lien	101,000.00
216.		516. Federal Tax Lien	39,000.00
217.		517. State Tax Lien to IRS	5,539.04
218.		518. to IRS	
219.		519. 2012 & 2013 Taxes	60,320.00
220. Total Paid by/for Borrower	35,000.00	520. Total Reduction Amount Due Seller	839,942.20
300. Cash at Settlement from/to Borrower		600. Cash at settlement to/from Seller	
301. Gross amount due from Borrower (line 120)	850,000.00	601. Gross amount due to Seller (line 420)	850,000.00
302. Less amount paid by/for Borrower (line 220)	(35,000.00)	602. Less reductions due Seller (line 520)	(839,942.20)
303. Cash ☒ From ☐ To Borrower	815,000.00	603. Cash ☒ To ☐ From Seller	10,057.80

The undersigned hereby acknowledge receipt of a completed copy of this statement & any attachments referred to herein

Borrower

Fire Housing Inc

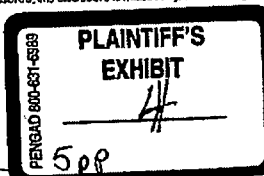
Seller

Robin M. Robinson

RRJR, LLC

authorized member of
RRJR, LLC

The Public Reporting Burden for this collection of information is estimated at 35 minutes per response for collecting, reviewing, and reporting the data. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. No confidentiality is assured; this disclosure is mandatory. This is designed to provide the parties to a RESPA covered transaction with information during the settlement process.



Settlement Charges

700. Total Real Estate Broker Fees				Paid From	Paid From
Division of commission (line 700) as follows:				Borrower's	Seller's
701. \$	to			Funds at	Settlement
702. \$	to			Settlement	Settlement
703. Commission paid at settlement					
704.					
705.					
800. Items Payable in Connection with Loan					
801. Our origination charge					
802. Your credit or charge (points) for the specific interest rate chosen					
803. Your adjusted origination charges					
804. Appraisal fee					
805. Credit Report					
806. Tax service					
807. Flood certification					
808.					
809.					
810.					
811.					
900. Items Required by Lender to Be Paid in Advance					
901. Daily interest charges from					
902. MIP Tot Ins. for Life of Loan					
903. Homeowner's Insurance for					
904.					
905.					
1000. Reserves Deposited with Lender					
1001. Initial deposit for your escrow account					
1002. Homeowner's insurance					
1003. Mortgage insurance					
1004. Property taxes					
1005.					
1006.					
1007.					
1008.					
1009.					
1100. Title Charges					
1101. Title services and lender's title insurance					
1102. Settlement or closing fee					
1103. Owner's title insurance to S					
1104. Lender's title insurance to S					
1105. Lender's title policy limit					
1106. Owner's title policy limit					
1107. Agent's portion of the total title insurance premium					
1108. Underwriter's portion of the total title insurance premium					
1109. Binder Title					
1110.					
1111.					
1112. Atty Fee					
1113. Atty Fee					
1200. Government Recording and Transfer Charges					
1201. Government recording charges					
1202. Deed \$					
1203. Transfer taxes					
1204. City/County tax/stamps					
1205. State tax/stamps					
1206. Inspection Fee					
1207. Broker Fee					
1300. Additional Settlement Charges					
1301. Required services that you can shop for					
1302. Fees					
1303. pay/Judgment Xiphias Holdings					
1304. Federal Tax Lien					
1305. Pay					
1400. Total Settlement Charges (enter on lines 103, Section J and 502, Section K)					

By signing page 1 of this statement, the signatories acknowledge receipt of a completed copy of page 2 & 3 of this three page statement.

Sloan Law Firm, Settlement Agent

Comparison of Good Faith Estimate (GFE) and HUD-1 Charges		Good Faith Estimate	HUD-1
Charges That Cannot Increase			
	HUD-1 Line Number		
Our origination charge	# 801		
Your credit or charge (points) for the specific interest rate chosen	# 802		
Your adjusted origination charges	# 803		
Transfer taxes	#1203		
Charges That in Total Cannot Increase More than 10%			
Government recording charges	#1201		
Total			
Increase between GFE and HUD-1 Charges		\$ 0.00 or	0.00%
Charges That Can Change			
Initial deposit for your escrow account	#1001		
Daily interest charges	# 901 \$ /day		
Homeowner's insurance	# 903		

Loan Terms

Your initial loan amount is	
Your loan term is	_____ years
Your initial interest rate is	_____ %
Your initial monthly amount owed for principal, interest and any mortgage insurance is	_____ Includes ☒ Principal ☒ Interest ☐ Mortgage Insurance
Can your interest rate rise?	☒ No ☐ Yes, it can rise to a maximum of _____%. The first change will be on _____ and can change again every _____ months after _____. Every change date, your interest rate can increase or decrease by _____%. Over the life of the loan, your interest rate is guaranteed to never be lower than _____% or higher than _____%.
Even if you make payments on time, can your loan balance rise?	☒ No ☐ Yes, it can rise to a maximum of \$_____.
Even if you make payments on time, can your monthly amount owed for principal, interest, and mortgage insurance rise?	☒ No ☐ Yes, the first increase can be on _____ and the monthly amount owed can rise to \$_____. The maximum it can ever rise to is \$_____.
Does your loan have a prepayment penalty?	☒ No ☐ Yes, your maximum prepayment penalty is \$_____.
Does your loan have a balloon payment?	☒ No ☐ Yes, you have a balloon payment of \$_____ due in _____ years on _____.
Total monthly amount owed including escrow account payments	☒ You do not have a monthly escrow payment for items, such as property taxes and homeowner's insurance. You must pay these items directly yourself. ☐ You have an additional monthly escrow payment of \$_____ that results in a total initial monthly amount owed of \$_____. This includes principal, interest, any mortgage insurance and any items checked below: ☐ Property taxes ☐ Flood Insurance ☐ ☐ Homeowner's insurance ☐ ☐

Note: If you have any questions about the Settlement Charges and Loan Terms listed on this form, please contact your lender.

HUD-1 Attachment

Borrower(s): Fire Housing Inc
 2028 Pittsburg Ave/2470 Sol Legare RD
 Charleston, SC 29405
 Settlement Agent: Sloan Law Firm
 (843)873-7531
 Place of Settlement: 1055 N Main St Suite F
 Summerville, SC 29483
 Settlement Date: December 2, 2013
 Property Location: 2028 Pittsburg Ave/2470 Sol Legare RD
 Charleston, SC 29405
 Charleston County, South Carolina

Self(s): Robin M. Robinson and RRJR, LLC

Seller Loan Payoff Details

Payoff First Mortgage to Captial One
 Loan Payoff As of
 Total Additional Interest days @ Per Diem
 Total Loan Payoff 381,644.72

Payoff Second Mortgage to Charleston Captial One
 Loan Payoff As of
 Total Additional Interest days @ Per Diem
 Total Loan Payoff 29,982.31

Title Services and Lender's Title Insurance Details

	BORROWER	SELLER
Binder Fee to Donlan Title Agency		100.00
Total	\$ 0.00	\$ 100.00

Settlement or Closing Fee Details

	BORROWER	SELLER
Atty Fee to Sloan Law Firm		2,100.00
Title Exam to Sloan Law Firm		200.00
Doc Prep to Sloan Law Firm		200.00
Courier Fee to Sloan Law Firm		500.00
Total	\$ 0.00	\$ 3,000.00

Owner's Title Insurance

	BORROWER	SELLER
Owner's Policy Premium to S	1,800.00	
Total	\$ 0.00	\$ 1,800.00

I have carefully reviewed the HUD-1 Settlement Statement and to the best of my knowledge and belief, it is a true and accurate statement of all receipts and disbursements made on my account or by me in this transaction. I further certify that I have received a copy of the HUD-1 Settlement Statement.

WARNING: It is a crime to knowingly make false statements to the United States on this or any similar form. Penalties upon conviction can include a fine and imprisonment. For details see: Title 18 U.S. Code Section 1001 and Section 1010.

(13-264.PFD/13-264/25)

Single Ledger Balance Report - Sorted By Ref/Ck Number

Selection Criteria

Trust Account: RE2

File ID: 13-264

Responsible Party:

Settlement Date: 12/02/13

Starting Date:

Trust Account Description: Real Estate Trust Account

Client / Matter: Inc, Fire Housing

Ledger Comment:

Property: 2028 Pittsburg Ave/2470 Sol Legare RD/C

Ending Date:

Ref/Ck No.	Transaction Date	Payee Name Memo	Medium	Cleared Date	Amount
Beginning Balance:					\$0.00
Deposits					
	12/02/13	ProForm generated Incoming funds	wire	12/31/13	\$815,000.00
		Real Estate Closing			
	06/20/14	Charleston County User Fee / overpayment 466-1 check		06/30/14	\$3,574.71
		Ich			
Total of 2 Deposits					\$818,574.71
Checks					
17654	12/03/13	Stewart Title	check	06/30/14	\$720.00
17655	12/03/13	Donlan Title Agency	check	12/31/13	\$1,080.00
17656	12/03/13	Charleston County ROD Office	check	12/31/13	\$3,165.00
17658	12/03/13	Joseph Scaumato	check	12/31/13	\$3,500.00
17661	12/03/13	Robin M. Robinson and RRJR, LLC	Check		\$8,557.80
17662	12/03/13	Charleston County Fees	check	12/31/13	\$15,748.80
17664	12/03/13	Charleston Capital One	check	12/31/13	\$29,982.31
		Payoff Second Mortgage			
17665	12/03/13	Will Swope	check	12/31/13	\$50,500.00
17666	12/03/13	Charleston County Treasurer	check	12/31/13	\$60,320.00
17667	12/03/13	Charles Feeley	check	12/31/13	\$250.00
17668	12/03/13	Sloan Law Firm	check	12/31/13	\$2,950.00
		Settlement Agents Fees			
17669	12/03/13	SCDOR	check	12/31/13	\$5,539.04
17670	12/05/13	SCDOR	check	12/31/13	\$24,175.94
17671	12/06/13	Tamara Lahe Inc	check	12/31/13	\$5,500.00
17672	12/11/13	The Cherie DuMez Agency	check	12/31/13	\$9,311.00
17673	12/16/13	Charleston County ROD Office	check	12/31/13	\$10.00
		Lost Mortgage Satisfactions (2)			
18144	11/05/14	United States Department of Treasury	Cashier Ck		\$55,342.52
Total of 17 Checks					\$276,652.41
Miscellaneous					
	12/03/13	Haynesworth Sinkler	wire	12/31/13	\$72,866.39
		Ich			
	12/03/13	Sci John Liatsis	wire	12/31/13	\$8,500.00
		Ich			
1540	12/03/13	Check	cashiers c	12/31/13	\$381,644.72
		Ich			
Total of 3 Miscellaneous items					\$463,011.11
Balance:					\$78,911.19
Ending Balance:					\$78,911.19
Report Totals:					

NYS Department of State

Division of Corporations

Entity Information

The information contained in this database is current through July 24, 2017.

Selected Entity Name: TAMARA LANE INC.

Selected Entity Status Information

Current Entity Name: TAMARA LANE INC.

DOS ID #: 4009665

Initial DOS Filing Date: OCTOBER 20, 2010

County: ROCKLAND

Jurisdiction: NEW YORK

Entity Type: DOMESTIC BUSINESS CORPORATION

Current Entity Status: ACTIVE

Selected Entity Address Information

DOS Process (Address to which DOS will mail process if accepted on behalf of the entity)

TAMARA LANE INC.
14 WESTERLY DRIVE
NEW CITY, NEW YORK, 10956

Chief Executive Officer

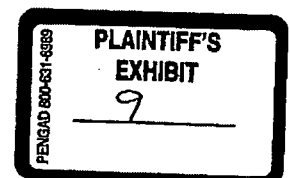
VINCENT DESTASO
102 LAKE RD
CONGERS, NEW YORK, 10920

Principal Executive Office

TAMARA LANE INC.
102 LAKE RD
CONGERS, NEW YORK, 10920

Registered Agent

NONE



This office does not record information regarding the names and addresses of officers, shareholders or directors of nonprofessional corporations except the chief executive officer, if provided, which would be listed above. Professional corporations must include the name(s) and address(es) of the initial officers, directors, and shareholders in the initial certificate of incorporation, however this information is not recorded and only available by viewing the certificate.

***Stock Information**

# of Shares	Type of Stock	\$ Value per Share
200	No Par Value	

*Stock information is applicable to domestic business corporations.

Name History

Filing Date	Name Type	Entity Name
OCT 20, 2010	Actual	TAMARA LANE INC.

A **Fictitious** name must be used when the **Actual** name of a foreign entity is unavailable for use in New York State. The entity must use the fictitious name when conducting its activities or business in New York State.

NOTE: New York State does not issue organizational identification numbers.

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Finehousing, Inc.

AGREEMENT OF LEASE

THIS AGREEMENT OF LEASE, made effective the 18th day of December, 2012 (the "Effective Date"), between TAMARA LANE INC., having an address at 102 Lake Road, Congers, New York 10920 (the "Landlord") and FMB REALTY, INC., a New York corporation having offices at 170-180 Route 9W, Congers, New York 10920 (the "Tenant").

Robin Robinson, Anthony Fogler and Daniel De Haven

WHEREAS, Landlord wishes to lease certain premises to Tenant and Tenant wishes to lease said premises from Landlord; and

WHEREAS, the Landlord and Tenant have agreed that the terms and conditions of the lease of the real property shall be in accordance with this Agreement of Lease;

NOW, THEREFORE, for valuable consideration, receipt of which is hereby acknowledged and with the foregoing being deemed incorporated hereinbelow, it is agreed as follows:

WITNESSETH

PREMISES.

2024 Pittsburg Ave. N. Chs. Sc. and 2470 So. Leger Rd. Charleston, SC 29412
1.1 That Landlord hereby leases to Tenant and Tenant hereby hires and takes from Landlord premises known as ~~170-180 ROUTE 9W, CONGERS, NEW YORK 10920~~, identified on Exhibit "A" to this Lease, which is incorporated herein as if stated forth below, ("Premises"), together with the right of access to Tenant, Tenant's employees, agents and servants, in common with all other lawfully entitled thereto, on, over and through the common areas of the said building in accordance with the laws of the municipality.

2. USE.

current purpose
2.1 To be used and occupied by Tenant for an ~~auto body repair shop~~. The premises shall be used for no other purpose unless approved in writing by Landlord, such approval not to be unreasonably withheld.

3. TERM.

Three years
3.1 The term of this Lease shall be for ~~ONE YEAR~~ commencing on the ~~1st~~ day of December, 2012 and terminating on the ~~1st~~ day of December, 2013. *30th day of Nov. 2016*

4. RENT AND SECURITY.

15,300.00
4.1 Tenant shall pay to Landlord rent in the yearly amount ONE HUNDRED FORTY-FOUR THOUSAND 00/100 DOLLARS (\$144,000.00) per year ("Rent") payable in monthly installments of TWELVE THOUSAND 00/100 DOLLARS (\$12,000.00) per month due and payable on the 1st day of each month. *Fifty-three Seven hundred fifty*

12,750.00
4.2 There shall be no security required for the term of this Lease.

4.3 The premises are leased for the entire term hereof. The entire rent for the term hereof is payable at the time of the execution of this Lease and the provisions in this Lease for the payments of such rent installments are for the convenience of the Tenant only.

4.4 PROMPT PAYMENT CREDIT: In the event Tenant's monthly rent payment shall be received by the Landlord ~~on or before~~ the due date, Tenant shall be entitled to a Prompt Payment Credit for the current month's rent of ONE THOUSAND 00/100 DOLLARS (\$1,000.00).

4.5 As Additional Rent, Tenant shall pay to the Landlord as and when the same shall be billed to the Tenant, the cost of any and all Landlord's expenses for real estate taxes, utilities, insurance and property maintenance according to attached Lease Rider A.

5. TENANT'S INSTALLATIONS.

5.1 Tenant shall have the privilege of installing Tenant's equipment and furnishings in such manner as Tenant may desire, provided, however, that if Tenant's installation of said equipment and furnishings costs more than \$1,500 Tenant shall get prior written approval by Landlord, which shall not be unreasonably withheld, and shall have full responsibility for complying with all local codes and regulations. There shall be no construction without Landlord's prior written approval.

6. REPAIRS AND MAINTENANCE

6.1 Throughout the term of this Lease, Tenant shall, at Tenant's Own cost and expense (i) replace any and all damages and/or broken glass in and about the demised premises; (ii) relamp lighting fixtures; (iii) maintain the leased premises and the improvements now or hereafter comprising same, and all Landlord supplied fixtures and equipment therein; (iv) make all repairs to the interior of the lease premises caused by actions of Tenant or Tenant's invitees, servants, agents, or employees; (v) Tenant shall not be responsible to make exterior repairs to the foundations, supporting walls, roof, uprights, beams and other structural members unless damage to such portions of the building occurs as a result of Tenant, Tenant's agents', servants', employees' or invitees' acts or omissions.

6.2 Any and all replacements or repairs to the leased premises, including supplied fixtures and equipment therein shall be subject to Landlord's prior approval. Any contractors utilized to make any such replacements or repairs shall also be subject to Landlord's prior approval.

6.3 Except as may be otherwise set forth in this Lease, all rent and additional rent shall accrue hereunder from the commencement date until the termination of this Lease and shall be payable in lawful money of the United States to Landlord at Landlord's mailing address.

7. SERVICES.

7.1 Landlord shall furnish to Tenant access to the premises twenty-four (24) hours a day, seven (7) days a week. Tenant shall provide and pay for all services required by Tenant, including utilities (as provided for elsewhere in this Lease), janitorial and the cost of fire and security systems. If Tenant makes installs a security system, Tenant shall pay for the cost of that system's removal at the end of the Lease term.

8. IMPROVEMENTS AND ALTERATIONS.

8.1 Tenant, upon the prior written consent of Landlord, (which consent maybe withheld or delayed in Landlord's sole discretion), may place partitions, trade or other fixtures (including lighting fixtures), and the like, in the premises and may make such improvements and alterations in the interior thereof as Tenant may desire, at Tenant's own expense.

8.1.1 All alterations, decorations and installations made by Tenant shall be performed in a good workmanlike manner and at a time not to disturb neighbors in the building or overburden the building facilities, and shall comply with all federal, state and local laws. Tenant or Tenant's contractors shall take out and pay for all permits, as required. Tenant or Tenant's contractors shall also be responsible for rubbish removal, hoisting of materials or other reasonable charges of a similar nature relating to such work. Tenant or Tenant's contractors shall consult with Landlord on any work affecting the premises' mechanical or electrical systems prior to commencing such work. In the event any mechanic's liens are filed against the building or land of which the Premises form a part by reason of work performed by or on behalf of Tenant, then Tenant agrees to remove or bond such lien within ten (10) days notice from Landlord or by other source, at Tenant's expense.

Dec 02 13 11:09a

All such things heretofore or hereafter made or installed by Tenant if not removed by Tenant at the end of the Lease shall become the property of Landlord and in the case of damage or destruction thereto by fire or other causes, Landlord shall have the right to recover the value thereof as Landlord's own loss from any insurance company with which Landlord or Tenant has insured the same, or to claim an award in the event of condemnation, notwithstanding that any of such things might be considered a part of the premises.

8.2 Notwithstanding the foregoing to the contrary, Tenant shall submit plans and specifications to Landlord for Landlord's prior review and written approval for all alterations or rearrangement work Tenant plans to make in Tenant's space in the building that Tenant estimates will cost in excess of One Thousand, Five Hundred (\$ 1,500) Dollars. Landlord shall review Tenant's plans and specifications and agrees that Landlord will not unreasonably withhold approval for Tenant to proceed with Tenant's contemplated work providing said work is not structural in nature. Tenant must secure Landlord's written approval in order to proceed with any alterations or rearrangement work.

9. SURRENDER.

9.1 At the expiration of this Lease or any extension or renewal thereof, Tenant shall surrender the demised premises in good order and condition, reasonable wear and tear, other casualty and the elements and repairs which Landlord is required to make herein excepted. All alterations, additions and improvements in or upon the premises or the building made by either party hereto shall become the property of Landlord and shall remain upon and be surrendered with the premises as a part thereof at the termination or other expiration of the term hereby granted. All furniture, including "built-in" that are removable without permanent damage to the premises, furnishings and trade fixtures including, without limitation, business machines and equipment, apparatus and any other movable property installed by Tenant or at the expense of Tenant, shall remain the property of Tenant and Tenant shall remove all or any part thereof at any time prior to the expiration of the term of this Lease, in which case Tenant shall restore the demised premises in good order and condition (normal wear and tear excepted). Any property of Tenant which may remain in the demised after the expiration of the term of this Lease, or if this Lease be renewed after the expiration of the last renewal term, shall be deemed to have been abandoned by Tenant and may be retained by Landlord as Landlord's property or may be disposed of in such manner as Landlord may see fit at Tenant's expense.

10. INSPECTION.

10.1 Landlord shall, upon advance oral notice to Tenant (except in an emergency) have the right at all times, to enter the premises to inspect the same and, at all times, to make repairs or replacements therein as required by this Lease, or as may be necessary or desirable in Landlord's sole discretion, provided, however, that Landlord shall use reasonable effort not to disturb Tenant's use and occupancy of the premises.

11. CASUALTY.

11.1 If the Premises are damaged by fire or any other cause, the following provisions of this article shall apply:
11.1.1 If the damage is to such extent that the cost of restoration, as estimated by Landlord, will equal or exceed thirty (30%) percent of the replacement value of the building (exclusive of foundations) in its condition just prior to the occurrence of the damage, Landlord may, not later than the thirtieth (30th) day following the damage, give Tenant a notice stating that Landlord elects to terminate this Lease. If such notice shall be given: (i) this Lease shall terminate on the third (3rd) day after the giving of said notice; (ii) Tenant shall surrender possession of the premises within a reasonable time thereafter not to exceed thirty (30) days; and (iii) the rent shall be apportioned as of the date of such surrender and any rent paid for any period beyond said date shall be repaid to Tenant.

11.1.2 If the cost of restoration as estimated by Landlord shall amount to less than thirty (30%) percent of said replacement value of the building or if, despite the cost, Landlord does not elect to terminate this Lease, Landlord shall restore the building and the premises with reasonable promptness, subject to delays beyond Landlord's control and delays in the making of insurance adjustments by Landlord, and Tenant shall not have the right to terminate this Lease.

11.1.3 Landlord need not restore fixtures, improvements or other property damaged as a result of any casualty, force majeure, labor dispute or other willful acts.

11.1.3 In any case in which the use of the premises is affected by any damage to the building, there shall be either an abatement or an equitable reduction in rent depending on the period for which and the extent to which the premises are not reasonably usable for the purposes for which they are leased hereunder. The words "restoration" and "restore" as used in this article shall include repairs. If the damage results from the fault of Tenant or Tenant's agents, servants, visitors or licensees, Tenant shall not be entitled to any abatement or reduction of rent except to the extent, if any, that Landlord receives the proceeds of rent insurance from Tenant's insurance company in lieu of such rent.

12. PROPERTY AND LIABILITY INSURANCE.

12.1 From and after the date of the execution of this Lease, Tenant shall pay as Additional Rent, the cost of Landlord's insurance as follows:

12.1.1 property and casualty insurance covering the premises against loss or damage by fire or water in an amount sufficient to meet the co-insurance requirements of the policies, but not less than the full insurable value of the premises, exclusive of the architectural and engineering fees, excavation, footings and foundations or other structural responsibilities. The term "full insurable value" shall mean herein the cost of replacement. Landlord shall be named insured with Tenant on said policy or policies which may, in Landlord's discretion, also list all mortgages, if any, as insured parties and said policies may not be cancelled without at least thirty (30) days prior notice to Landlord by the insurance carrier.

12.1.2 public liability insurance (personal injury insurance) covering any loss, liability, damage or claim to the aggregate amount of at least One Million (\$1,000,000) DOLLARS for each incident and at least One Million, Five Hundred Thousand (\$1,500,000) DOLLARS in the aggregate, for any matter alleged to have arisen from or relating to the leased premises and all parking and public areas related to the premises.

12.2 Tenant and Landlord hereby mutually waive their respective rights of recovery against each other for any loss to the extent insured by fire, extended coverage and other property insurance policies existing for the benefit of the respective parties. Each party shall obtain any special endorsements, if required by each party's respective insurer, to evidence compliance with the aforementioned waiver and Tenant shall bear the cost of any additional premium charged resulting therefrom.

12.3 In the event Tenant's use of the premises causes the premium of the insurance policies to increase either for the Tenant, Landlord or other Tenants, then and in that event, Tenant shall pay Tenant's, Landlord's and other Tenants' increased premiums.

12.4 At Landlord's sole discretion, Landlord may require Tenant to obtain at Tenant's sole cost and expense, public liability insurance (personal injury insurance) covering any loss, liability, damage or claim in the aggregate amount of at least One Million (\$1,000,000) DOLLARS for each incident and at least One Million, Five Hundred Thousand (\$1,500,000) DOLLARS in the aggregate, for any matter alleged to have arisen from or relating to the leased premises and all parking and public areas related to the premises and provide a certificate of insurance naming Landlord as an additional insured under such policies.

13. CONDEMNATION.

13.1 If at any time during the term, the whole of the premises shall be taken for any public or quasi-public use, under any statute, or by right of eminent domain, or if any part of the premises shall be so taken and the remaining part shall in the Landlord's opinion be insufficient for the conduct of Tenant's business as contemplated by this Lease, then, in such event, the term hereby granted and all rights of Tenant, except as hereinafter reserved, shall immediately cease.

and terminate as of the date of such taking, and the rent shall be apportioned and paid to the time of such termination. In case of any such taking, whether involving the whole or any part of the premises, the entire award shall be paid to Landlord, including the value of the improvements to the premises installed at Tenant's own expense (regardless of whether the improvements shall be or become the property of Landlord under the terms of this Lease), plus the value of Tenant's fixtures but not for moving and relocation expenses of the Tenant.

13.2 In the event that only a part of the premises shall be so taken and if the part not so taken shall be reasonably sufficient to enable Tenant to continue the conduct of Tenant's business on and in the remaining premises, this Lease shall remain unaffected, except:

13.2.1 Tenant shall be entitled to a pro rate reduction of rent and additional rents payable hereunder based on the proportion which the area of the space so taken bears to the area of the space demised hereunder immediately prior to such taking, provided that consideration shall be given to the respective values of the area so taken, and the area not so taken, and any dispute with respect to the amount of the reduction shall be resolved by the manner provided in this Lease;

13.2.2 The entire award for a partial taking shall be paid to Landlord which, at Landlord's own expense out of such award, shall restore the affected part of the building to substantially the same condition and tenability as existed prior to the taking, including all of the work and Tenant's alterations, costs in excess of the award shall be paid by Tenant. If such partial taking shall occur in the last year of the term of this Lease, either party, irrespective of the area of the space remaining may elect to terminate this Lease and the term hereby granted, provided such party shall, within thirty (30) days after having received office of such taking, give notice to that effect, and upon the giving of such notice, this Lease and the term hereby granted shall expire and come to an end upon the expiration of thirty-five (35) days following the date of said notice of taking. The rent shall be apportioned and paid to such expiration date. If either party shall so elect to end this Lease and the term hereby granted, the entire award for partial condemnation shall be paid to Landlord, and Tenant shall have no claim against Landlord for any part thereof.

14. TAXES.

14.2 Tenant shall be responsible to pay to the Landlord as Additional Rent, the cost of all property taxes assessed for the Premises.

15. SIGNS.

15.1 Tenant may at its sole cost and expense install signs on or about the building subject to meeting all codes and standards set by the municipality and subject to the approval of the Landlord, such approval not to be unreasonably withheld.

16. DEFAULT.

16.1 If Tenant makes default in the payment of rent or additional rent reserved herein and said default shall continue for a period of fifteen (15) days after written notice of nonpayment by Landlord to Tenant, this Lease shall fully and completely expire on the tenth (10) day from the date said notice is given, as though the Lease and term herein had ended on said date. If Tenant shall make default of any other condition of this Lease and such default shall continue for thirty (30) days after written notice to Tenant, or such default shall continue for a period of thirty (30) days after written notice thereof from Landlord specifying such default, and thereafter shall continue beyond such period as may be reasonably necessary to correct such default so long as Tenant is diligently occupied in correcting the same, or, if the premises shall be vacant or deserted and Tenant shall cease paying rent, or if any execution or attachment shall be issued against Tenant or any of Tenant's property whereupon the premises shall be taken or occupied or attempted to be taken or occupied by someone other than Tenant and the same shall not be bonded or dismissed or discharged as promptly as may be under the circumstances, but in no event more than five (5) business days, then, and in any such event, Landlord may give thirty (30) days notice of intention to end the term of this Lease and then upon the expiration of said thirty (30) days the term of this Lease shall, unless Tenant has cured such default, expire as fully and completely

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as if that day were the day herein definitely fixed for the expiration of said term, and Tenant shall then quit the premises and surrender the same, but shall remain liable as hereinafter provided.

16.2 If the notices provided in the above paragraph shall have been given and the term hereof shall expire as aforesaid, then, Landlord may, without further notice, re-enter the premises and dispossess Tenant and the legal representatives of Tenant or other occupant of the premises by summary proceedings or otherwise, and remove their effects and hold the premises as if this Lease has not been made; and Tenant hereby waives the service of notice of intention to re-enter or to institute legal proceedings to that end.

16.3 In case of such re-entry, expiration and/or dispossession by summary proceedings or otherwise, (i) the rent shall become due thereupon and be paid for the full term of this Agreement of Lease. Together with such expenses as Landlord may incur for legal expenses, reasonable attorneys fees, brokerage and/or putting the premises in good order for re-rental; (ii) Landlord may relet the premises or any part or parts thereof, either in Landlord's own name or otherwise, for a term or terms which may, at Landlord's option, be shorter or longer than the period which would otherwise have constituted the remainder of the term of this Lease to such extent as Landlord, in Landlord's judgment, considers advisable and necessary to relet the same; and (iii) Tenant or Tenant's successors shall also pay Landlord as liquidated damages for the failure of Tenant to observe and perform Tenant's covenants contained herein, any deficiency between the rent hereby reserved and the net amount, if any, of the rents collected on account of the Lease or Leases of the premises for each month of the period which would otherwise have constituted the remainder of the term hereof. In computing such liquidated damages there shall be added to said deficiency such reasonable expenses as Landlord may incur in connection with reletting such as legal expenses, attorneys fees, brokerage and for keeping or restoring the premises to good order for reletting. Any such liquidated damages shall be paid in monthly installments on the rent day specified in this Lease and any suit brought to collect the amount of the deficiency for any month shall not prejudice in any way the rights of Landlord to collect the deficiency for any subsequent month by a similar proceeding. Landlord, at Landlord's option, may make such alterations, repairs, replacements and decorations in the building upon the demised premises as Landlord, in Landlord's reasonable judgment, considers advisable and necessary for the purpose of reletting the premises; and the making of such alterations and decorations shall not operate or be construed to release Tenant from liability thereunder. In the event of a breach by Tenant of any of the covenants or provisions hereof, Landlord shall have the right of injunction and the right to invoke any remedy allowed at law or in equity as if re-entry, summary proceedings and other remedies were not provided for herein. Mention in this Lease of any particular remedy shall not preclude Landlord from any other remedy in law or at equity. Tenant hereby expressly waives any and all rights of redemption granted by or under any present or future laws in the event of Tenant being evicted or dispossessed, for any cause, or in the event of Landlord obtaining possession of the premises by reason of the violation by Tenant of any of the covenants and conditions of this Lease or otherwise.

16.4 In the event Tenant defaults under any of the terms or provisions of this Lease Agreement, the Tenant shall be responsible to pay all of Landlord's legal fees, costs and expenses in addition to any other amounts due hereunder.

17. HOLDOVER.

17.1 If Tenant remains in the premises beyond the expiration of this Lease, as said Lease may have been extended, such holding over in itself shall not constitute a renewal or extension of the Lease but, in such event, a tenancy from month-to-month shall arise at double the monthly rent due during the last month of occupancy pursuant to the terms of this Agreement of Lease.

18. NOTICES.

18.1 All notices or other communications required or permitted to be given by either party to the other under or pursuant to this Agreement must be in writing and shall be deemed to have been duly given only if delivered personally, by confirmed facsimile transmission or certified mail, return receipt requested (first class postage prepaid) or by Federal Express or other nationally recognized overnight delivery service, except for the United States Postal Service (Overnight Delivery) addressed to the parties as follows:

and

RECEIVED 2008

if to Landlord to:

~~TAMARA LANE INC.~~
~~102 Lake Road, Congers~~
~~New York 10920~~

Fine Housing, Inc.

if to Tenant to:
~~FMB REALTY, INC.~~
~~170 - 180 Route 9W~~
~~Congers, New York 10920~~

845-406-2206

Telephone: (845) _____

Facsimile: (845) _____

18.2 All such notices, requests and other communications shall, if personally delivered or by Overnight Delivery, be effective upon receipt, and mailed, be personally effective upon the earlier of (i) actual receipt, or (ii) five (5) days after first being postmarked by the United States of America Postal Service, if delivered by facsimile transmission, be deemed given upon confirmation. The Parties hereto and any other parties entitled to receive copies of notices or other communications shall be entitled to change the address or the facsimile number to which the same shall be delivered or mailed by giving written notice of such change of address or facsimile number in the manner provided for the giving of other notices.

19. ASSIGNMENT.

19.1 Tenant may not assign this Lease or sublet all or an part of the premises at any time during the term hereof, except with the prior written consent of Landlord, which consent shall not be unreasonably withheld. Tenant shall give Landlord thirty (30) days notice of Tenant's intent to assign or sublet and shall give the name of the Tenant who shall occupy the space and use proposed by said Tenant, as well as reasonable financial information about the proposed Tenant that Landlord may require. Landlord shall have thirty (30) days after receipt of said notification Landlord's election to permit the assignment or subletting, deny the assignment or subletting, or to cancel this Lease in the event of a proposed assignment or subletting. If Landlord elects to cancel the Lease, Tenant shall have the right to withdraw the assignment or sublease within five (5) days of receipt of notice of termination, in which case this Lease shall continue in full force and effect. Failure of Landlord to give notice to Tenant of approval of a sublease or assignment within said time period shall constitute a denial of consent to Tenant. If Landlord permits Tenant, by written consent or by operation of this article, to make such assignment or subletting, Tenant shall remain responsible for the faithful performance of all the covenants, terms and conditions hereof on Tenant's part to be performed.

20. QUIET ENJOYMENT.

20.1 Tenant, on paying the rent and performing the covenants of this Lease on this Lease on Tenant's part to be performed, may peaceably and quietly have, hold and enjoy the premises for the term of this Lease

21. VENUE.

21.1 The venue for any action shall be in the Supreme Court of the State of New York or lower court of competent jurisdiction, County of Westchester or Rockland, without regard to principles of conflicts of laws.

22. GOVERNING LAW.

22.1 This Agreement shall be governed by and construed under and pursuant to the laws of the State of New York, without regard to principles of conflicts of laws.

23. SUBORDINATION AND NON-DISTURBANCE.

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23.1 Tenant agrees that this Lease is subordinate to any mortgage or mortgages that now are or hereafter may be placed upon the demised premises and to any and all advances to be made there under and to the interest thereon and all renewals, replacements, consolidations and extensions thereof, and Tenant shall execute such further instrument or instruments as shall be reasonably requested by Landlord to effectuate the foregoing. Failure by Tenant to so cooperate shall be deemed to be a default pursuant to the terms of this Agreement.

23.2 In order to effectuate the subordination provisions of the Agreement of Lease, the Tenant hereby grants to Landlord a limited Power-of-Attorney coupled with an interest authorizing Landlord to execute any and all subordination documents requested by Landlord's mortgages both existing as of the date of this Agreement of Lease and any such mortgages of the premises in the future. This paragraph shall be deemed to be self-operating and Landlord and Tenant acknowledge that any and all mortgages of the premises may rely upon said Power-of-Attorney.

24. RULES AND REGULATIONS.

24.1 Tenant shall abide by and observe such reasonable rules or regulations as may be promulgated from time to time by Landlord for the operation, safety, security and maintenance of the premises, provided that the same are in conformity with common practice and usage in similar buildings, are not inconsistent with the provisions of this Lease or the leased premises, and a copy thereof is sent to Tenant.

25. FLOOR LOAD, NOISE AND FURNISHINGS.

25.1 Tenant shall not place a load upon any floor of the premises which exceeds the load per square foot which such floor was designed to carry and which is allowed by law.

25.2 Business and other machines and mechanical equipment belonging to the Tenant which cause noise or vibration that may be transmitted to the structure of the building or to the premises to such a degree as to be objectionable to Landlord or other tenants in the building or area, shall be placed and maintained by the party owning the machines or equipment, at such party's expense, in setting of cork, rubber or spring-type vibration eliminators sufficient to eliminate noise or vibration.

25.3 To the extent reasonably possible, Tenant's improvements, alterations, equipment, furnishings and fixtures, shall be of non-combustible and non-toxic materials.

26. SECURITY SYSTEM.

26.1 Tenant shall maintain any security and fire alarm systems as are located in said premises and shall make all repairs to and monthly maintenance payments for said systems as same are required.

27. OPERATING EXPENSES.

27.1 Tenant will be responsible for all operating expenses associated with maintenance of the Premises.

28. LAWS AND ORDINANCES, ENVIRONMENTAL COMPLIANCE.

28.1 Tenant shall, at Tenant's expense, comply with all laws, orders, ordinances and regulations of federal, state, county and municipal authorities and with any direction made pursuant to law of any public officer or officers which shall, with respect to the occupancy, use or manner of use of the premises, or to any abatement of nuisance, impose any violation, order or duty upon Landlord or Tenant arising from Tenant's occupancy, use or manner of use of the premises or any installations made therein.

28.2 Tenant shall be responsible for and shall comply with all laws, rules, ordinances, regulations or orders of any governmental authority having jurisdiction over the premises with respect to the abatement, removal, disposal or

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containment of Hazardous Substances (hereinafter defined) in or on the premises to the extent that such Hazardous Substances were brought upon or introduced to the premises by Tenant or Tenant's agents, contractors or employees. Tenant shall indemnify and hold Landlord harmless from and against any and all cost, claims, suits, causes or action, losses, injury or damage (including, without limitation, Attorney's fees, costs and expenses) resulting from Tenant's liability and such indemnity shall survive the expiration or earlier termination of this Agreement of Lease.

28.3 As used herein, "Hazardous Substances" shall mean any hazardous wastes, hazardous and toxic substances or related materials, asbestos, polychlorinated biphenyls or any other substance or material as defined by any federal, state or local environmental law, ordinance, rule or regulation including, without limitation, the comprehensive Environmental Response Compensation and Liability Act, as amended, the Hazardous Materials Transportation Act, as amended, 42 U.S.C.A. Section 9601 (subparagraph 14) and any regulations adopted and publications promulgated pursuant to each of the foregoing.

29. RIGHT TO SHOW PREMISES.

29.1 During the six (6) months prior to the expiration of the term of this Lease, or during the six (6) months after Tenant gives notice of intent to terminate the lease, Landlord may exhibit the premises to prospective tenants and/or purchasers, subject to giving reasonable advance notice to Tenant.

30. BROKER.

30.01. The parties hereto agree that NO BROKER brought about this Lease.

31. NON-WAIVER

31.1 Failure to insist upon strict compliance with any of the terms, covenants or conditions shall not be deemed a waiver of such terms, covenants or conditions nor shall any waiver or relinquishment of any rights or powers hereunder at any one time or more times be deemed a waiver or relinquishment of such rights or powers at any other time or times.

32. ATTORNEYS FEES.

32.1 In the event of a violation of the terms of this Lease by the Tenant, Tenant shall be responsible for the Payment of any and all legal fees incurred by the Landlord to remedy the default or for the removal of the Tenant from the Premises.

33. COUNTERPARTS.

33.1 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all which together shall be deemed one instrument.

34. BASEMENT STORAGE.

34.1 The Tenant acknowledges that he has no right to storage in any part of the Landlord's Premises that is not conveyed in this Lease.

35. DISTURBANCE DUE TO CONSTRUCTION.

35.1 Tenant acknowledges that the building in which the premises are located is in the process of being renovated by the Landlord and therefore, Tenant waives any and all claims of disturbance, interference, annoyance or inconvenience created by the renovations. Landlord will make reasonable attempts to limit any disturbance, interference, annoyance or inconvenience created by renovations.

36. ENVIRONMENTAL WARRANTIES AND COVENANTS

36.1 Warranties: The Tenant, being the former owner of the Premises and having conveyed the same to the Landlord concurrent with the execution of this Lease, makes the following representations and warranties: to the best of Tenant's knowledge: (i) Tenant is in compliance in all respects with all applicable federal, state and local laws and regulations, including, without limitation, those relating to toxic and hazardous substances and other environmental matters (the "Laws"), (ii) no portion of the Premises is being used for the disposal, storage, treatment, processing or other handling of any hazardous or toxic substances, in a manner not in compliance with the Laws, (iii) the soil and any surface water and ground water which are a part of the Premises are free from any solid wastes, toxic or hazardous substance or contaminant and any discharge of sewage or effluent; and (iv) neither the federal government nor the State of New York Department of Environmental Conservation or any other governmental or quasi-governmental entity has filed a lien on the Mortgaged Property, nor are there any governmental, judicial or administrative actions with respect to environmental matters pending, or to the best of the Tenant's knowledge, threatened, which involve the Premises.

Tenant makes the following additional representations and warranties: Throughout the term of and any extensions of this Lease: (i) Tenant is in compliance in all respects with all applicable federal, state and local laws and regulations, including, without limitation, those relating to toxic and hazardous substances and other environmental matters (the "Laws"), (ii) no portion of the Premises is being used for the disposal, storage, treatment, processing or other handling of any hazardous or toxic substances, in a manner not in compliance with the Laws, (iii) the soil and any surface water and ground water which are a part of the Premises are free from any solid wastes, toxic or hazardous substance or contaminant and any discharge of sewage or effluent; and (iv) neither the federal government nor the State of New York Department of Environmental Conservation or any other governmental or quasi-governmental entity has filed a lien on the Mortgaged Property, nor are there any governmental, judicial or administrative actions with respect to environmental matters pending, or to the best of the Tenant's knowledge, threatened, which involve the Premises.

36.2 Agreement to Comply: If any environmental contamination is found on the Premises for which any removal or remedial action is required pursuant to Law, ordinance, order, rule, regulation or governmental action, Tenant agrees that it will at its sole cost and expense taken such removal or remedial action promptly and to Landlord's satisfaction.

36.3 Indemnification: Tenant agrees to defend, indemnify and hold harmless Landlord, its employees, agents, officers and directors from and against any claims, actions demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including, without limitation, attorney and consultant fees, investigations and laboratory fees, court costs and litigation expenses of whatever kind or nature known or unknown contingent or otherwise arising out of or in any way related to: (i) disposal, release or threatened release of any hazardous or toxic substances on the Premises; (ii) any personal injury (including wrongful death or property damage, real or personal) arising out of or related to such hazardous or toxic substances; (iii) any lawsuit brought or threatened, settlement reached or government order given relating to such hazardous or toxic substances; and/or (iv) any violation of any law, order, regulations, requirement, or demand of any government authority, or any policies or requirements of Landlord, which are based upon or in any way related to such hazardous or toxic substances.

36.4 Other Sites: Tenant knows of no on-site or off-site locations where hazardous or toxic substances from the operation of the facility on the Premises have been stored, treated, recycled or disposed of.

36.5 Leases: Tenant agrees not to sublease of the Premises to a subtenant whose operations may result in contamination of the Premises with hazardous or toxic substances.

36.6 Non-operation by Landlord: Tenant acknowledges that any action Landlord takes under this Lease shall be taken to protect Landlord's interest only; Landlord does not hereby intend to be involved in the operations of the Tenant.

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23.1 Tenant agrees that this Lease is subordinate to any mortgage or mortgages that now are or hereafter may be placed upon the demised premises and to any and all advances to be made there under and to the interest thereon and all renewals, replacements, consolidations and extensions thereof, and Tenant shall execute such further instrument or instruments as shall be reasonably requested by Landlord to effectuate the foregoing. Failure by Tenant to so cooperate shall be deemed to be a default pursuant to the terms of this Agreement.

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25.1 Tenant shall not place a load upon any floor of the premises which exceeds the load per square foot which such floor was designed to carry and which is allowed by law.

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28.2 Tenant shall be responsible for and shall comply with all laws, rules, ordinances, regulations or orders of any governmental authority having jurisdiction over the premises with respect to the abatement, removal, disposal or

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containment of Hazardous Substances (hereinafter defined) in or on the premises to the extent that such Hazardous Substances were brought upon or introduced to the premises by Tenant or Tenant's agents, contractors or employees. Tenant shall indemnify and hold Landlord harmless from and against any and all cost, claims, suits, causes or action, losses, injury or damage (including, without limitation, Attorney's fees, costs and expenses) resulting from Tenant's liability and such indemnity shall survive the expiration or earlier termination of this Agreement of Lease.

28.3 As used herein, "Hazardous Substances" shall mean any hazardous wastes, hazardous and toxic substances or related materials, asbestos, polychlorinated biphenyls or any other substance or material as defined by any federal, state or local environmental law, ordinance, rule or regulation including, without limitation, the comprehensive Environmental Response Compensation and Liability Act, as amended, the Hazardous Materials Transportation Act, as amended, 42 U.S.C.A. Section 9601 (subparagraph 14) and any regulations adopted and publications promulgated pursuant to each of the foregoing.

29. RIGHT TO SHOW PREMISES.

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33.1 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, and all which together shall be deemed on instrument.

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35.1 Tenant acknowledges that the building in which the premises are located is in the process of being renovated by the Landlord and therefore, Tenant waives any and all claims of disturbance, interference, annoyance or inconvenience created by the renovations. Landlord will make reasonable attempts to limit any disturbance, interference, annoyance or inconvenience created by renovations.

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36. ENVIRONMENTAL WARRANTIES AND COVENANTS

36.1 Warranties: The Tenant, being the former owner of the Premises and having conveyed the same to the Landlord concurrent with the execution of this Lease, makes the following representations and warranties: to the best of Tenant's knowledge: (i) Tenant is in compliance in all respects with all applicable federal, state and local laws and regulations, including, without limitation, those relating to toxic and hazardous substances and other environmental matters (the "Laws"); (ii) no portion of the Premises is being used for the disposal, storage, treatment, processing or other handling of any hazardous or toxic substances, in a manner not in compliance with the Laws; (iii) the soil and any surface water and ground water which are a part of the Premises are free from any solid wastes, toxic or hazardous substance or contaminant and any discharge of sewage or effluent; and (iv) neither the federal government nor the State of New York Department of Environmental Conservation or any other governmental or quasi-governmental entity has filed a lien on the Mortgaged Property, nor are there any governmental, judicial or administrative actions with respect to environmental matters pending, or to the best of the Tenant's knowledge, threatened, which involve the Premises.

Tenant makes the following additional representations and warranties: Throughout the term of and any extensions of this Lease: (i) Tenant is in compliance in all respects with all applicable federal, state and local laws and regulations, including, without limitation, those relating to toxic and hazardous substances and other environmental matters (the "Laws"); (ii) no portion of the Premises is being used for the disposal, storage, treatment, processing or other handling of any hazardous or toxic substances, in a manner not in compliance with the Laws; (iii) the soil and any surface water and ground water which are a part of the Premises are free from any solid wastes, toxic or hazardous substance or contaminant and any discharge of sewage or effluent; and (iv) neither the federal government nor the State of New York Department of Environmental Conservation or any other governmental or quasi-governmental entity has filed a lien on the Mortgaged Property, nor are there any governmental, judicial or administrative actions with respect to environmental matters pending, or to the best of the Tenant's knowledge, threatened, which involve the Premises.

36.2 Agreement to Comply: If any environmental contamination is found on the Premises for which any removal or remedial action is required pursuant to Law, ordinance, order, rule, regulation or governmental action, Tenant agrees that it will at its sole cost and expense taken such removal or remedial action promptly and to Landlord's satisfaction.

36.3 Indemnification: Tenant agrees to defend, indemnify and hold harmless Landlord, its employees, agents, officers and directors from and against any claims, actions demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including, without limitation, attorney and consultant fees, investigations and laboratory fees, court costs and litigation expenses of whatever kind or nature known or unknown contingent or otherwise arising out of or in any way related to: (i) disposal, release or threatened release of any hazardous or toxic substances on the Premises; (ii) any personal injury (including wrongful death or property damage, real or personal) arising out of or related to such hazardous or toxic substances; (iii) any lawsuit brought or threatened, settlement reached or government order given relating to such hazardous or toxic substances; and/or (iv) any violation of any law, order, regulations, requirement, or demand of any government authority, or any policies or requirements of Landlord, which are based upon or in any way related to such hazardous or toxic substances.

36.4 Other Sites: Tenant knows of no on-site or off-site locations where hazardous or toxic substances from the operation of the facility on the Premises have been stored, treated, recycled or disposed of.

36.5 Leases: Tenant agrees not to sublease of the Premises to a subtenant whose operations may result in contamination of the Premises with hazardous or toxic substances.

36.6 Non-operation by Landlord: Tenant acknowledges that any action Landlord takes under this Lease shall be taken to protect Landlord's interest only; Landlord does not hereby intend to be involved in the operations of the Tenant.

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and

36.7 Compliance Determinations: Tenant acknowledges that any determinations Landlord makes under this Section regarding compliance with environmental laws shall be made for Landlord's benefit only and are not intended to be relied upon by any other party.

36.8 Survival of Conditions: The provisions of the is section shall be in addition to any other obligations and liabilities Tenant may have to Landlord at common law, and shall survive the transactions contemplated herein.

IN WITNESS WHEREOF, this agreement of Lease has been duly executed by the parties hereto on the ____ of December, 2012.

SIGNATORIES:

WITNESSED BY:

FOR THE LANDLORD:
~~TAMAR LANE INC.~~

By: _____

FOR THE TENANT:

WITNESSED BY:

~~FRANK PATEGGIA, INC.~~

By: _____

The obligations of the Tenant herein are hereby personally guaranteed by the undersigned.

WITNESSED BY:

~~FRANK PATEGGIA, Inc.~~ Guarantor

Robinson
Robinson
Anthony Fogler, Guarantor

Daniel De Haan, Guarantor

OPTION TO PURCHASE REAL ESTATE AGREEMENT

This Lease to Purchase Option Agreement ("Option to Purchase Agreement") is made on December 2, 2013 between RRJR, LLC and Robin M. Robinson (the "Buyers-Tenants") and Fine Housing, Inc. (Sellers-Landlords)

WHEREAS, Seller/Landlord is/are the fee owner of certain real property being, lying and situated in Charleston County, South Carolina, such real properties having addresses of 2470 Sol Legare Road, Charleston, SC 29412 and 2028 Pittsburgh Ave., North Charleston, SC 29405. And TMS Nos. of 3300800007 (Sol Legare) and 4661600011 (Pittsburgh)

WHEREAS, Seller/Landlord and Buyer/Tenant have together executed a prior lease agreement, the subject of which is the aforementioned Property (the "Lease Agreement").

NOW, THEREFORE, for and in consideration of the covenants and obligations contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Seller/Landlord hereby grants to Buyer/Tenant an exclusive option to purchase the aforementioned "Property." The parties hereto hereby agree as follows:

1. OPTION TERM. The option to purchase period commences on December 2, 2013 and expires at 11:59 PM November 30, 2016. The option to purchase must be exercised and the transaction completed on or before the above date. Buyer must give notice in form of certified letter to Seller at his address.

2. NOTICE REQUIRED TO EXERCISE OPTION. To exercise the Option to Purchase, the Buyer/Tenant must deliver to the Seller/Landlord written notice of Buyer/Tenant's intent to purchase. In addition, the written notice must specify a valid closing date. The closing date must occur before the original expiration date of the Lease Agreement, or the date of the expiration of the Option to Purchase Agreement designated in paragraph 1, whichever occurs later.

3. OPTION CONSIDERATION. As consideration for this Option to Purchase Agreement, the Buyer/Tenant shall pay the Seller/Landlord a non-refundable fee of \$5.00, FIVE DOLLARS, receipt of which is hereby acknowledged by the Seller/Landlord. This amount shall be credited to the purchase price at closing. If Buyer fails to purchase this property within the time allowed, this entire deposit shall be treated as a security deposit and MAY be refunded minus the amount of damage Buyer leaves, save normal wear and tear.

4. PURCHASE PRICE. The total purchase price for the Property is \$ONE MILLION ONE HUNDRED FIFTY THOUSAND DOLLARS (\$1,150,000.00). The total price must be paid to purchase both properties. The Seller will not sell just one of the two properties. **None of the lease payments of 12,750 each month shall go to the purchase price listed here.**

5. EXCLUSIVITY OF OPTION. This Option to Purchase Agreement is exclusive and non-assignable and exists solely for the benefit of the named parties above. Should Buyer/Tenant attempt to assign, convey, delegate, or transfer this option to purchase without the Seller/Landlord's express written permission, any such attempt shall be deemed null and void.

6. CLOSING AND SETTLEMENT. Buyer shall determine the attorney's office at which settlement shall occur and shall inform Buyer/Tenant of this location in writing. Buyer/Tenant agrees that closing costs in their entirety, including any points, fees, and other charges required by the third-party lender, shall be the sole responsibility of Buyer/Tenant, exclusive of the previous sentence. The only expense related to closing costs apportioned to Seller/Landlord shall be the pro-rated share of the ad valorem taxes due at the time of closing, for which Seller/Landlord is solely



responsible. Seller will also pay deed stamps and deed preparation. Seller will provide a tax-proration for the tax bill of the year that Buyer purchases the property.

7. FINANCING AVAILABILITY. SELLER/LANDLORD MAKES NO REPRESENTATIONS OR WARRANTIES AS TO THE AVAILABILITY OF FINANCING REGARDING THIS OPTION TO PURCHASE. BUYER/TENANT IS SOLELY RESPONSIBLE FOR OBTAINING FINANCING IN ORDER TO EXERCISE THIS OPTION. FAILURE OF BUYER TO OBTAIN FINANCING IN SPITE OF DILLIGENT EFFORTS TO DO SO DOES NOT ABSOLVE THE BUYER OF ANY RESPONSIBILITES OR DUTIES IN THIS CONTRACT.

8. FINANCING DISCLAIMER. The parties acknowledge that it is impossible to predict the availability of obtaining financing towards the purchase of this Property. Obtaining financing shall not be held as a condition of performance of this Option to Purchase Agreement. The parties further agree that this Option to Purchase Agreement is not entered into in reliance upon any representation or warranty made by either party.

9. REMEDIES UPON DEFAULT. If Buyer/Tenant defaults under this Option to Purchase Agreement or the Lease Agreement, then in addition to any other remedies available to Seller/Landlord at law or in equity, Seller/Landlord may terminate this Option to Purchase by giving written notice of the termination. If terminated, the Buyer/Tenant shall lose entitlement to any refund of rent or option consideration. For this Option to Purchase Agreement to be enforceable and effective, the Buyer/Tenant must comply with all terms and conditions of the Lease Agreement.

10. COMMISSION. No real estate commissions or any other commissions shall be paid in connection with this transaction.

11. RECORDING OF AGREEMENT. Buyer/Tenant shall not record this Option to Purchase Agreement on the Public Records of any public office without the express and written consent of Seller/Landlord. If this agreement is recorded, it will be null and void on December 1, 2015 and any title searcher may ignore same as void if the property has not been sold to Buyers.

12. ACKNOWLEDGMENTS. The parties are executing this Option to Purchase Agreement voluntarily and without any duress or undue influence. The parties have carefully read this Option to Purchase Agreement and have asked any questions needed to understand its terms, consequences, and binding effect and fully understand them and have been given an executed copy. The parties have sought the advice of an attorney of their respective choice if so desired prior to signing this Option to Purchase Agreement.

13. TIMING. Time is of the essence in this Option to Purchase Agreement. This option to purchase is complete and totally void if Buyer fails to close and fund its loan to purchase this property by November 30, 2015.

14. GOVERNING LAW AND VENUE. This Option to Purchase Agreement shall be governed, construed and interpreted by, through and under the Laws of the State of South Carolina. The parties further agree that the venue for any and all disputes related to this Option to Purchase shall be Dorchester County, South Carolina.

15. OPTION TO PURCHASE CONTROLLING. In the event a conflict arises between the terms and conditions of the Lease Agreement and the Option to Purchase Agreement, the Option to Purchase Agreement shall control.

16. ENTIRE AGREEMENT; MODIFICATION. This document sets forth the entire agreement and understanding between the parties relating to the subject matter herein and supersedes all prior

discussions between the parties. No modification of or amendment to this Option to Purchase Agreement, nor any waiver of any rights under this Option to Purchase Agreement, will be effective unless in writing signed by the party to be charged.

SELLER/LANDLORD:

V. OLA

V. OLA
FINE HOUSING, LLC

12/3/13

BY: VINCENT DeSTASO

Its: pres.

Before me personally appeared the undersigned witness and made oath that he-she saw the within named Seller-Landlord sign, seal and as his act and deed deliver the within document and that he-she with the other witness witnessed the execution thereto.

Joseph Kowalchuk Sr.

Notary Name Printed

Frank L. L...

Notary Signature

Frank L... 12/3/13

Witness Signature

Commission expires: 12/2/14

Joseph Kowalchuk Sr
Notary Public State of New York
Qualified in Westchester County
My Commission Expires 12/2/14

BUYER/TENANT:

Guicobert
Will

RRJ, LLC

BY:

Its:

Before me personally appeared the undersigned witness and made oath that he/she saw the within named Buyer-Tenant sign, seal and as his act and deed deliver the within document and that he/she with the other witness witnessed the execution thereto.

Will

Will

Notary Name Printed

Notary Signature

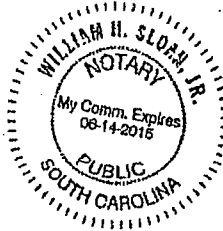
William H. Sloan, Jr.

Guicobert

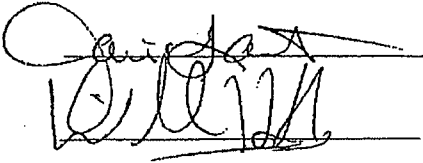
Witness Signature

Commission expires:

6/14/2015



BUYER/TENANT:

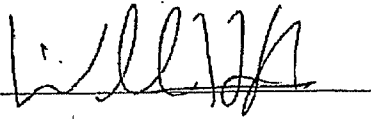



ROBIN M. ROBINSON

BY: 

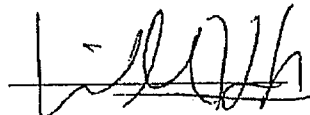
Its:

Before me personally appeared the undersigned witness and made oath that he-she saw the within named Buyer-Tenant sign, seal and as his act and deed deliver the within document and that he-she with the other witness witnessed the execution thereto.

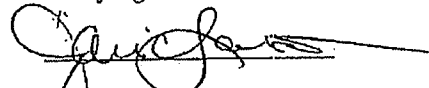


Notary Name Printed

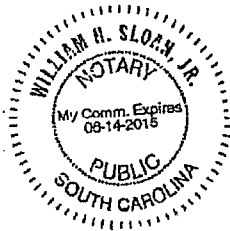
William H Sloan



Notary Signature


Witness Signature

Commission expires: 6/14/2015



Legal Description A

All that piece, parcel or lot of land, together with the buildings and improvements thereon, situate, and lying and being in Charleston County, James Island, known in the present street numbering as 2347 Sol Legare Road, one of said tracts being lettered X containing .20 acres, the other tract containing 3.18 acres, all as is more fully shown on a plat named, "PLAT OF GENERAL SURVEY OF NO. 23447 SOL LEGARE ROAD AND PARCEL x OWNED BY ADOLPH G HOLLINGS, JAMES ISLAND 3.38 ACRES TOTAL TMS 330-08-00-07" WHICH plat is recorded in the RMC Office for Charleston County Book M-239, Page 141. The plat was written by W.L. Gaillard dated September 1, 1993, revised February 24, 1994.

Also, all of the Seller's rights (title not insured) in and to that certain marsh shown on said plat containing 2.00 acres, the eastern boundary line of said marsh measuring 275' and having the following metes S33 degrees, 24'50" the western boundary line of said marsh measuring 180' and having the metes N00 degrees, 15'00" E.

Being the same premises conveyed to Fine Housing, Inc. by deed of RRJR, LLC, dated December 2, 2013 and recorded simultaneously herewith at the RMC Office for Charleston County.

TMS No. 3300800007

Property Address 2470 Sol Legare Road, Charleston, SC 29412

Legal Description B

All that piece, parcel or lot of land, together with the buildings and improvements thereon, situate, lying and being in Charleston County and being designated as "Tract A, 1.610 acres, Property of Group Investment Company, Inc. TMS No. 466-16-00-011 on a plat entitled "Plat Showing TMS 466-16-00-011" being subdivided into Tracts AB and AB1, property of Group Investments Company, Inc., located North Charleston Public Service District, Charleston County, SC" made by David and Floyd, Inc., dated January 19, 1989, and recorded in the RMC Office for Charleston County in Plat Book CB, Page 116; said tract having such size, shape, dimensions, buttings, boundings and borders as will be referenced to said plat more fully and at large appear.

Being the same premises conveyed to Fine Housing, Inc. by deed of RRJR, LLC, dated December 2, 2013 and recorded simultaneously herewith at the RMC Office for Charleston County.

TMS NO. 4661600011

Property Address: 2028 Pittsburgh Ave., North Charleston, SC 29405

REDACTED

-----Original Message-----

From: Bill Sloan <sloanlawfirm@yahoo.com>

To: Charlie Altman <CAltman@altmancoker.com>; Vin Destaso <vindestaso@aol.com>

Sent: Fri, Mar 21, 2014 12:43 pm

Subject: Re: Fine Housing, Inc. & Vincent Destaso / Robinson [141-352916];

Charlie and Vince: Enclosed please find a copy of the lease for the Sol Legare Property in favor of Barry Clarke which is for 1,000 a month and ends six years after his death. This was NOT picked up in the title search that Will sent me. Further, Will never advised me about this lease verbally and neither did Mrs. Robinson.

Mr. Clark's no. is 843-762-0866

Tommy Goldstein is Mr. Clark's attorney. I had a brief call with Mr. Goldstein and Mr. Clark and I did not gather who Mr. Clark is paying. There is a right of refusal to sell.

William H. Sloan
Sloan Law Firm PA
Post Office Box 85
Summerville, SC 29484
843-873-7531
Fax 843-873-7527

This e-mail is subject to attorney-client privilege. Destroy this e-mail if received in error.

From:



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Barry Clarke,

Plaintiff,

v.

Fine Housing, Inc. and RRJR, LLC,

Defendants.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO. 2015-CP-10-03038

**FINE HOUSING, INC.'S RESPONSE
TO PLAINTIFF'S FIRST REQUEST
FOR ADMISSION**

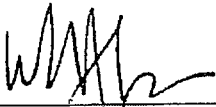
**TO: ASHLEY G. ANDREWS, ESQUIRE AND THOMAS R. GOLDSTEIN,
ESQUIRE, ATTORNEYS FOR THE PLAINTIFF:**

Pursuant to Rule 26 and 36 of the South Carolina Rules of Civil Procedure, the Defendant Deborah P. McCaskill ("Defendant"), by and through its undersigned counsel, hereby responds to the Plaintiff's First Set of Request for Admission as follows:

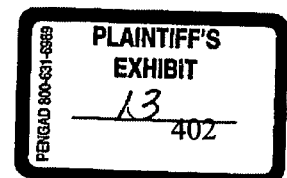
RESPONSE TO REQUESTS FOR ADMISSION

1. Admit that no shareholder, director, employee, attorney, or agent of Fine Housing, Inc. notified Barry Clarke of Fine Housing, Inc.'s intent to purchase 2028 Pittsburg Avenue, N. Charleston, SC 29405 from RRJR, Inc. on or before taking title to said property on December 2, 2015.

Answer: Admitted.


W. Cliff Moore, III (SC Bar No. 4067)
Adams and Reese LLP
PO Box 2285
Columbia, SC 29202
P: 803-254-4190
F: 803-779-4749
cliff.moore@arlaw.com
Attorney for Defendant Fine Housing, Inc.

November 9, 2016
Columbia, South Carolina



STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ROBIN M. ROBINSON and
RRJR, LLC,)

PLAINTIFFS,)

VERSUS)

FINE HOUSING, INC.,)

DEFENDANT.)

IN THE COURT OF COMMON PLEAS

C/A NO.: 2014-CP-10- 1035

SUMMONS

BY

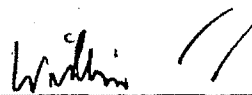
JULIE J. ARMSTRONG
CLERK OF COURT

2014 FEB 19 AM 10:00

FILED

TO: THE ABOVE-NAMED DEFENDANT:

YOU ARE HEREBY SUMMONED and required to answer the complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to this complaint upon the subscriber, at the address shown below, within thirty (30) days after service thereof, exclusive of the day of such service, and if you fail to answer the complaint, judgment by default will be rendered against you for the relief demanded in the complaint.


WILLIAM K. SWOPE, ESQUIRE
1525 Sam Rittenberg Blvd, Suite 208
Charleston, SC 29407
Ph.: (843) 852-4925
Fax: (843) 576-4654
E-Mail: swopelawfirm@comcast.net
Attorney for the Plaintiff

Charleston, South Carolina

February 18, 2014



STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ROBIN M. ROBINSON and
RRJR, LLC,)

PLAINTIFFS,)

VERSUS)

FINE HOUSING, INC.,)

DEFENDANT.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
C/A NO.: 2014-CP-10-1035

COMPLAINT

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2014 FEB 19 AM 10:00

FILED

TO THE ABOVE-NAMED DEFENDANT:

Comes now the above-named Plaintiff, by and through undersigned counsel, complaining of the above-named Defendant as follows.

1. That the individual Plaintiff is a citizen and resident of Charleston County, South Carolina and the entity Plaintiff is a limited liability company organized and existing pursuant to the laws of the State of South Carolina with its principle place of business located in Charleston County.
2. That upon information and belief the Defendant is a corporation duly organized and existing pursuant to the laws of the State of New York with its principle place of business in said state.
3. That none of the parties are in active military service.
4. That this case or controversy concerns title to real property located in Charleston County, South Carolina, more particularly described in Exhibits "A" and "B" attached hereto and incorporated herein fully by reference.
5. That upon information and belief this Honorable Court has subject matter jurisdiction over this case or controversy and personal jurisdiction over the parties.

FOR A FIRST CAUSE OF ACTION - BREACH OF CONTRACT

6. That each and every allegation contained in paragraphs 1 through the preceding paragraph is repeated, realleged and reiterated as if set forth herein fully verbatim.
7. That the parties entered into negotiations for a loan of Nine Hundred Thousand and 00/100s (\$900,000.00) Dollars in the summer of 2013 to be secured by the real property set forth in Exhibits "A" and "B".
8. That the Plaintiff was the Defendant in a foreclosure action, (2011-CP-10-6996), concerning the real property described in Exhibit "A".
9. That the agent for the Defendant herein demanded as a condition of the loan that both properties be titled in the name of the Defendant ostensibly to prevent tax liens or judgments against the Plaintiff herein from attaching to the real property.
10. That the real property described in Exhibit "A" has a county tax appraised value of One Million One Hundred Seventy Thousand and 00/100s (\$1,170,000.00) Dollars. The real property described in Exhibit "B" has a county tax appraised value of Five Hundred Forty Thousand and 00/100s (\$540,000.00) Dollars.
11. That four (4) days prior to the scheduled foreclosure sale in 2011-CP-10-6996 the agent for the Defendant disclosed for the first time that he would loan only Eight Hundred Thousand and 00/100s (\$800,000.00) Dollars and insisted that he wanted a premium of One Million Two Hundred Thousand and 00/100s (\$1,200,000.00) Dollars within two (2) years.
12. That over the course of the weekend agents for parties negotiated a loan of Eight Hundred Fifty Thousand and 00/100s (\$850,000.00) Dollars and a repayment of One Million One Hundred Fifty Thousand and 00/100s (\$1,150,000.00) Dollars.
13. That a transaction occurred on Monday, December 2, 2013 at the Sloan Law Firm in Summerville wherein the Plaintiff herein signed documents propounded by Sloan as counsel for the Defendant, including deeds to both properties, reflecting consideration of Seven Hundred Thousand and 00/100s (\$700,000.00) Dollars for Exhibit "A" and One Hundred

Fifty Thousand and 00/100s (\$150,000.00) Dollars for Exhibit "B" and a Lease/Option to Purchase Agreement.

12. That upon information and belief Sloan received into his client trust account less than Eight Hundred Fifty Thousand and 00/100s (\$850,000.00) Dollars from the Defendant, herein.
13. That upon information and belief Sloan continues to hold in excess of One Hundred Thirty Thousand and 00/100s (\$130,000.00) Dollars in his trust account.
14. That upon information and belief Thirty-Five Thousand and 00/100s (\$35,000.00) Dollars was retained by the Defendant herein or its agent(s).
15. That the first week in January 2014 Sloan was telephonically directed to disburse Twelve Thousand Seven Hundred and 00/100s (\$12,700.00) Dollars from his client trust account to the Defendant herein.
16. The Defendant's agent contacted Plaintiff's agent, immediately, to advise that he would not allow Sloan to release any funds from Sloan's client trust account.
17. That the Defendant herein retained Altman & Coker to prosecute an eviction of the Plaintiff herein, which resulted in a Notice being sent and subsequently the service of a Rule to Show Cause in Magistrate's Court.
18. That the Plaintiff by and through counsel on or about January 20, 2014 directed Sloan to transfer Twelve Thousand Seven Hundred and 00/100s (\$12,700.00) Dollars from his client trust account to his client as payment of the January 2014 loan payment.
19. That follow up on this task by agents of the Plaintiff revealed that Sloan had not done so; apparently at the direction of agents of the Defendant, herein, with no affirmative notice to Plaintiff's counsel of not transferring the payment or why.
20. That the Plaintiff then delivered certified funds on or about February 2, 2014 in the sum of Thirteen Thousand Five Hundred and 00/100s (\$13,500.00) Dollars to Altman & Coker, which took possession of the check at that time.
21. That South Carolina common law requires parties to a contract to act in good faith in performance of the agreement.

22. That the Defendant herein has acted in "bad faith" by failing:
- A- to pay the full loan amount to his agent for disbursement;
 - B- to accept/credit funds from his agents' possession on multiple occasions;
 - C- to inform the Plaintiffs or their agents of his refusal to accept funds for the January 2014 payment;
 - D- to institute an eviction action for failure to pay rent when the Plaintiff herein has attempted to make said payment on multiple occasions.
23. That each of these failures constitute a "bad faith" breach of contract.
24. That the Plaintiff has required the services of legal counsel to represent her interests herein and upon information and belief is entitled to an award of reasonable attorneys' fees incurred herein.
25. That the Plaintiff has been directly and proximately damaged by such breach(es) in an appropriate amount to be determined by the trier of fact herein.
26. That upon information and belief the Plaintiff is entitled to have the Defendant accept and properly credit the payment(s) made and/or directed to be made and/or funds already in the possession of the Defendant toward the monthly payment(s).

FOR A SECOND CAUSE OF ACTION - BREACH OF CONTRACT
WITH FRAUDULENT INTENT

27. That each and every allegation contained in paragraphs 1 through the preceding paragraph is repeated, realleged and reiterated as if set forth herein fully verbatim.
28. That upon information and belief the Defendant's "bad faith" is so egregious as to rise to the level of fraud.
29. That upon information and belief the Defendant represented:
- A- that he would pay consideration in the sum of Eight Hundred Fifty Thousand and 00/100s (\$850,000.00) Dollars in conjunction with his transaction with the Plaintiff herein;

- B- that he would hold an escrow of two or three months payments to be used when and if the Plaintiff had a "cash flow" issue;
- C- that he would accept monthly payments of Twelve Thousand Seven Hundred and 00/100s (\$12,700.00) Dollars when tendered;
- D- that Sloan would pay all liens on the real property when provided with proper payoff statements.
30. That upon information and belief the Plaintiff signed documents disclosing consideration of Eight Hundred Fifty Thousand and 00/100s (\$850,000.00) Dollars in reliance on said representation.
31. That such representation was material to the benefit of the bargain between the parties.
32. That upon information and belief the Defendant knew or should have known that it was required to pay the entire loan amount to or for the benefit of the Plaintiff in the transaction and knowingly did not do so.
33. That upon information and belief the Defendant intended that the Plaintiff rely on such representation(s).
34. That upon information and belief the Plaintiff was ignorant of the falsity of these representations.
35. That the Plaintiff was relying on the representations in the documents to the transaction.
36. That the Plaintiff had a reasonable right to rely on the representations in the documents and did so.
37. That the Plaintiff has been directly and proximately damaged by the Defendant's misrepresentation(s) in an appropriate amount to be determined by the trier of fact herein.
38. That upon information and belief the Plaintiff is entitled to an award of actual damages and/or an award of punitive damages in an appropriate amount for the Defendant's fraudulent conduct.

FOR A THIRD CAUSE OF ACTION - RESCISSION OF CONTRACT

39. That each and every allegation contained in paragraphs 1 through the preceding paragraph is repeated, realleged and reiterated as if set forth herein fully verbatim.
40. That upon information and belief the Defendant purposefully waited to disclose the ultimate terms of his loan to place the Plaintiff herein in a detrimental bargaining position to take advantage of her vulnerability.
41. That the Defendant has breached the parties' agreement from the outset by failing to pay the stated consideration as well as the previously herein denoted terms.
42. That upon information and belief the Plaintiffs are entitled to rescission of the entire agreement, including but not limited to a transfer of title to both properties to the prior record owner(s) and repayment of all funds made in connection with monthly installments.

FOR A FOURTH CAUSE OF ACTION - EQUITABLE REFORMATION/RESCISSION

43. That each and every allegation contained in paragraphs 1 through the preceding paragraph is repeated, realleged and reiterated as if set forth herein fully verbatim.
44. That upon information and belief it was the parties intention to engage in a loan transaction and protect the real property securing said loan from encumbrance beyond the control of the lender.
45. That upon information and belief the Court has the authority and obligation to reform the documents to reflect the parties' true intentions under South Carolina common law.
46. That upon information and belief to accomplish same would require a transfer of title back to the prior record owner(s) and the execution/reformation of the documents allegedly transferring title into the Defendant herein to be reformed as mortgages securing the respective properties.
47. That upon information ad belief the Plaintiff is entitled to this equitable remedy.

WHEREFORE, having fully complained of the above-named Defendant, the above-named Plaintiffs, by and through undersigned counsel, do hereby respectfully demand this Honorable Court issue its order finding the Defendant has breached the parties' agreement:

A. entitling the Plaintiff to actual money damages in an appropriate amount to be determined by the trier of fact herein; and/or

B. entitling the Plaintiff to a credit as payment(s) those funds in the possession of the Defendant and/or his agent, which are not necessary to clear a prior recorded encumbrance from the title to either property; and/or

C. rescinding the entire agreement between the parties, including but not limited to ordering or otherwise causing to be recorded deeds transferring record title to the properties in Exhibit "A" and Exhibit "B" back to their respective prior owner(s); and/or

D. reforming the parties' documents to reflect their intent; and/or

E. awarding the Plaintiffs the costs and disbursements of this action; and/or

F. awarding the Plaintiffs reasonable attorneys' fees incurred herein; and/or

G. for such other and further relief as this Honorable Court may deem just and proper.

Respectfully submitted,

SWOPE LAW FIRM, P.A.



WILLIAM K. SWOPE, ESQUIRE
(SC Bar No.: 00115168)
1525 Sam Rittenberg Blvd., Ste. 208
Charleston, SC 29407
Ph.: (843)852-4925
Fax: (843)576-4654
Email: swopelawfirm@comcast.net
Attorneys for Plaintiffs

Charleston, SC

February 18, 2014

Exhibit A

ALL that piece, parcel or tract of land situate, lying and being in Charleston County, South Carolina, known and designated as "Tract A, 1.610 Acres, Property of Group Investment Company, Inc., TMS 466-16-00-011" on a plat entitle "Plat Showing TMS 466-16-00-011, being subdivided into tracts 'AB' and 'AB.1', property of Group Investment Company, Inc., located North Charleston Public Service District, Charleston County, SC," made by David & Floyd, Inc., dated January 19, 1989 and recorded in the RMC Office for Charleston County in Plat Book CE, Page 116; said tract having such size, shape, dimensions, buttings and boundings as will be referenced to said plat more fully and at large appear.

BEING the same property conveyed to Fine Housing, Inc. by deed of RRJR, LLC dated December 2, 2013 and recorded December 9, 2013 in the RMC Office for Charleston County at Book 0377 at Page 843

TMS# 466-16-00-011

Exhibit B

ALL those pieces, parcels or tracts of land, situate, lying and being on James Island, Charleston County, South Carolina, known in the present street numbering as 2347 Sol Legare Road, one of said tracts being lettered X containing 0.20 acres, the other tract containing 3.18 acres, all as is more fully shown on a plat entitled "PLAT OF GENERAL SURVEY OF NO. 2347 SOL LEGARE ROAD AND PARCEL X OWNED BY ADOLPH G. HOLLINGS JAMES ISLAND 3.38 Ac. TOTAL T.M.S. 330-08-00-007," which plat was made by W. L. Gaillard, dated September 1, 1993, revised February 24, 1994 and is recorded in the RMC Office for Charleston County in Book M239 at Page 141

ALSO

ALL of the Seller's right, title and interest (title to which is not warranted by Seller) in and to that certain marsh shown on said plat containing 2.00 acres, the eastern boundary line of said marsh measuring 275' and having the following metes: S 33 degrees 24'50", the western boundary line of said marsh measuring 180' and having the following metes: N 00 degrees 15'00" E.

BEING the same property conveyed to Fine Housing, Inc. by deed of Robin M. Robinson dated December 2, 2013 and recorded December 9, 2013 in the RMC Office for Charleston County in Book 0377 at Page 842.

TMS# 330-08-00-007

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
Ninth Judicial Circuit

ROBIN M. ROBINSON and RRJR, LLC,
Plaintiffs,

C/A No.: 2014-CP-10-1035

v.

FINE HOUSING, INC.,
Defendant/Third Party
Plaintiff,

v.

ANTHONY FOGLE a/k/a ANTHONY LEE
FOGLE, DANIEL DEHAVEN and THE
UNITED STATES OF AMERICA acting
through the INTERNAL REVENUE
SERVICE and THE SOUTH CAROLINA
DEPARTMENT OF REVENUE

Third Party Defendants.

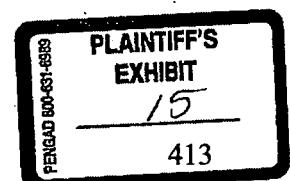
FILED
2015 JAN -9 PM 3:24
JULIE J. ARMSTRONG
CLERK OF COURT
BY *Je*

STIPULATION OF DISMISSAL

PURSUANT to Rule 41(a) SCRCPP, the undersigned Plaintiffs, Robin M. Robinson and RRJR, LLC, and the undersigned as attorneys for Defendant / Third Party Plaintiff, Fine Housing, Inc., and Third Party Defendants Anthony Fogle a/k/a Anthony Lee Fogle, Daniel Dehaven, The United States of America acting through the Internal Revenue Service, and The South Carolina Department of Revenue, hereby stipulate the captioned matter is dismissed with prejudice, pursuant to S.C. Code Ann. § 15-11-40.

WE SO STIPULATE:


Robin M. Robinson, Pro Se

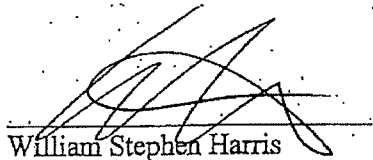


Robinson

Civil Action Number: 2014-CP-10-1035

Page 2 of 7

WE SO STIPULATE:



William Stephen Harris

Harris & Huge, LLC

180 Spring Street

Charleston, SC 29403

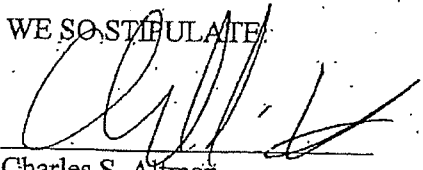
Attorney for RRJR, LLC

Robinson

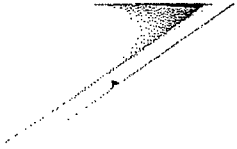
Civil Action Number: 2014-CP-10-1035

Page 3 of 7

WE SO STIPULATE:



Charles S. Altman
Altman & Coker, LLC
575 King Street, Suite A
Charleston, South Carolina 29403
Attorney for Fine Housing, Inc.



Robinson, et al, v. Fine Housing, et al.
Civil Action Number: 2014-CP-10-1035
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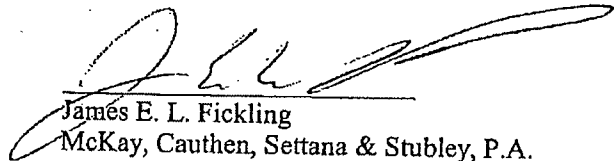
WE SO STIPULATE:

*NO SIGNATURE NECESSARY AS NO ANSWER
WAS FILED ON BEHALF OF ANTHONY FOGLE
AND HE WAS THEREFORE DISMISSED FROM
THE ACTION PURSUANT TO SCRCP 41(a)(1)*

Anthony Fogle a/k/a
Anthony Lee Fogle a/k/a
Anthony Fogler, *Pro Se*

Robinson, et al, v. Fine Housing, et al.
Civil Action Number: 2014-CP-10-1035
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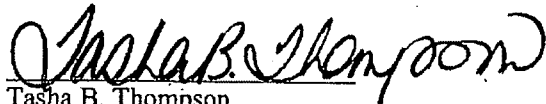
WE SO STIPULATE:



James E. L. Fickling
McKay, Cauthen, Settana & Stuble, P.A.
1303 Blanding Street
Columbia, SC 29201
Attorney for Daniel DeHaven

Robinson, et al, v. Fine Housing, et al.
-Civil Action Number: 2014-CP-10-1035
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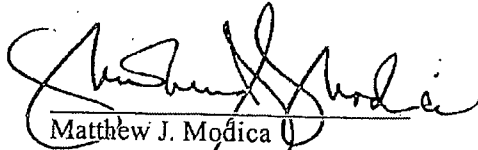
WE SO STIPULATE:



Tasha B. Thompson
Office of General Counsel for Litigation
PO Box 12265
Columbia, SC 29211
Attorney for S.C. Department of Revenue

Robinson, et al, v. Fine Housing, et al.
Civil Action Number: 2014-CP-10-1035
Page 7 of 7

WE SO STIPULATE:

A handwritten signature in black ink, appearing to read "Matthew J. Modica", is written over a horizontal line.

Matthew J. Modica
Assistant United States Attorney
151 Meeting Street, Suite 200
Charleston, SC 29402
Attorney for US IRS

Ashley Andrews

From: Ashley Andrews
Sent: Thursday, April 10, 2014 10:05 AM
To: 'vindestaso@aol.com'
Subject: 2028 Pittsburgh Ave, N. Charleston, SC
Attachments: Agreement for Purchase and Sale of Real Property.docx

Mr. Destaso:

I have attached the proposed Purchase Agreement for 2028 Pittsburgh Avenue for your review. The attachment is in Word format so that you and/or your attorney may redline it if necessary. Please contact me if you have any questions or concerns.

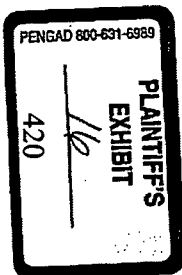
If you don't mind, please send me a short response to let me know you received this message.

Thank you and I look forward to working with you.

Ashley

Ashley G. Andrews
VA Accredited Attorney #21951
catherine e. lafond, pa
Elder Law | Real Estate

544 Savannah Highway, Charleston, South Carolina 29407
843.762.3554 (phone) 843.377.0111 (fax) www.lafondlaw.com



Ashley Andrews

From: Ashley Andrews
Sent: Monday, April 21, 2014 1:10 PM
To: vindestaso@aol.com
Subject: 2028 Pittsburgh Ave, N. Charleston, SC
Attachments: Agreement 4-21-14.docx

Mr. Destaso:

Thank you for taking the time to speak to Barry and me last week. Barry wanted me to convey to you that he is ready, willing, and able to purchase the property without owner financing and only mentioned that as an option if you were interested in it.

I have attached the most recent draft of the Agreement for Purchase and Sale. I made a few changes and I added a provision that would allow Barry to lease the property should the property become vacant during the time the contract is contingent (Section 17 and Exhibit B). Barry is concerned that if the property is vacant that the county and/or state may not issue liquor and business licenses in the future. What he proposes is that he lease the property for \$750.00 per month so that he can apply for the licenses. During the time he is leasing the property for \$750.00 he does not intend to operate a business there.

Please let me know if you have any questions for me. Also, please send me a copy of the current lease for 2028 Pittsburgh and the Sol Legare property so that we can review it.

Thanks,
Ashley

Ashley G. Andrews
VA Accredited Attorney #21951
catherine e. lafond, pa



BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobbaw@hotmail.com

Peggy M. Infinger
pinfinger@cobbaw.net

Thomas R. Goldstein
tgoldstein@cobbaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

April 7, 2014

Mr. Vincent Desaso
102 Lake Road
Congers, New York 10920

RE: Lease 2028 Pittsburgh

Dear Vincent,

Thank you for taking the time to talk to us about the lease on the property you acquired from RRJR. At the time we sent the lease payment to the former owner, we were not aware that you held title. Therefore, I will write to Ms. Robinson's lawyer and ask him to return the payment we made in December 2013. I am assuming Ms. Robinson did not pass along this payment to you, and if my assumption is correct, I enclose my client's check, #18487, in the amount of \$1,000.00 representing the 2014 annual rent for the parking lot. If, on the other hand, she did pass along our payment, please return this check to us. As I promised in our telephone call, I enclose a copy of the lease, recorded in the Charleston County R.M.C. Office on January 27, 1999, at Deed Book C 319 at Page 791. Please let me know if you have any questions or concerns. With kind regards, I am

Very truly yours,

BARRY CLARKE

18487

ENCLOSURE PLUS Check First
Provision & No Receipts

67-776-532

Date 4/7/14

Pay to the order of Five Housing, Inc.

\$1000⁰⁰

One Thousand

00
100

Dollars

ENCLOSURE PLUS Check First
Provision & No Receipts

WELLS FARGO BANK, N.A.
WELLSFARGO.COM

For Annual Lease 2028 Pittsburgh Ave

Barry Clarke

PLAINTIFF'S
EXHIBIT
22
422

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobbaw@hotmail.com

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

December 11, 2014

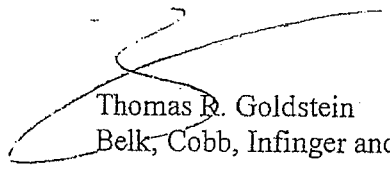
Mr. Vincent Desaso
102 Lake Road
Congers, New York 10920

RE: Lease 2028 Pittsburgh

Dear Vincent,

I enclose the lease payment for the parking lot for 2015. (Lease Recorded January 27, 1999, at Deed Book C 319 at Page 791) Please feel free to contact me if you have any questions or concerns. With kind regards, I am

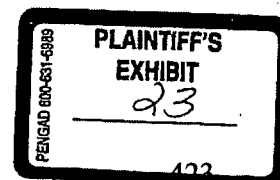
Very truly yours,


Thomas R. Goldstein
Belk, Cobb, Infinger and Goldstein, P.A.

TRG/

enclosure: check # 19347

cc: Barry Clarke (without enclosure)



19347

BARRY CLARKE

 WELLS FARGO BANK
Member FDIC

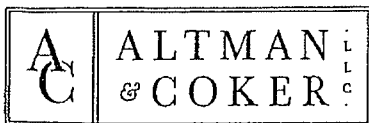
Date 12/11/14 67-776-532

Pay to the order of Five Housing INC \$ 1000.00

One Thousand & 00/100 Dollars  Security Features
Visible Only on Back

WELLS FARGO BANK, N.A.
WELLSFARGO.COM

For 2028 YEARLY LEASE Payment Barry Clarke DP



ATTORNEYS & COUNSELORS *at* LAW

Charles S. Altman
caltman@altmancoker.com

April 15, 2014

Via Email and U.S. Mail

Thomas R. Goldstein, Esquire
Belk, Cobb, Infinger & Goldstein, PA
Post Office Box 71121
Charleston, South Carolina 29415-1121

Re: *Our Client: Fine Housing, Inc. & Vincent Destaso / Robinson*
Your Client: Barry Clarke
Lease for 2028 Pittsburgh Avenue
Our File Number: [141-352916]

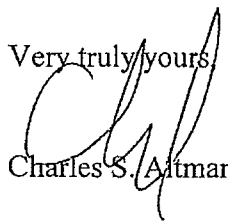
Dear Tommy:

Mr. Destaso has provided me with a copy of your letter dated April 7, 2014 regarding the referenced lease and the lease payment for 2014. Vin is in receipt of your client's check number 18487 in the amount of \$1,000.00 representing the 2014 annual rent for use of the parking lot pursuant to the recorded lease. We understand from the contents of your letter that Barry had previously paid the former owner of the property, RRJR, LLC, the rent for 2014. By accepting Barry's check, Vin is not accepting any responsibility for the repayment of the amount previously paid to RRJR, LLC and will not be involved in any attempts to have those funds repaid to Barry. However, in the event the payment previously paid by Barry is sent to our client, he will, of course, return that check to Barry.

I placed a call to you on April 15, 2014, to discuss some other aspects of the situation involving 2028 Pittsburgh Avenue and would appreciate you giving me a call at your convenience.

With kind regards, I am;

Very truly yours,


Charles S. Altman

CSA/mrg

cc: Vincent Destaso



843	tele 853-9907 fax 853-9838	WWW.ALTMANCOKER.COM	575 KING STREET	SUITE a	CHARLESTON · South Carolina	29403

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobbaw@hotmail.com

Peggy M. Infinger
pinfinger@cobbaw.net

Thomas R. Goldstein
tgoldstein@cobbaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

December 22, 2014

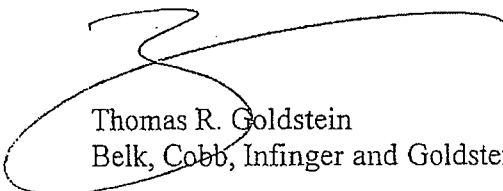
Mr. Vincent Desaso
102 Lake Road
Congers, New York 10920

RE: Lease 2028 Pittsburgh

Dear Vincent,

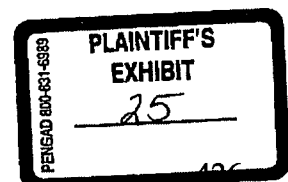
On December 11th, I sent you the lease payment for the parking lot to cover the rent for the year 2015. (Lease Recorded January 27, 1999, at Deed Book C 319 at Page 791) Barry pointed out to me that "2015" is not only the year, but also the address for his property at 2015 Pittsburgh. I hope the coincidence of these two numbers has not caused any confusion. My intent was to reference the year, not the street address. Please feel free to contact me if you have any questions or concerns. With kind regards, I am

Very truly yours,


Thomas R. Goldstein
Belk, Cobb, Infinger and Goldstein, P.A.

TRG/

cc: Barry Clarke





BP0601190

PGS:

5

New York
STATE OF SOUTH CAROLINA)
Rockland
COUNTY OF CHARLESTON)

LIMITED WARRANTY DEED

KNOW ALL MEN BY THESE PRESENTS: That Fine Housing Inc. ("Grantor") in the state aforesaid, in consideration of the sum of Five Hundred Thousand & 00/100 Dollars (\$500,000.00), to the Grantor in hand paid at and before the sealing of these presents by Lisa Jenkins and Colleen Lester, as tenants in common, ("Grantees"), the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said Grantees, their heirs and assigns, the following described real property, to wit:

SEE EXHIBIT "A" ATTACHED HERETO

Grantee's Address: *PO Box 1109*
Adams Run, SC 29426

TOGETHER with all and Singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the said premises before mentioned unto the said Grantee, their heirs and assigns forever, the herein described property.

AND the said Grantor hereby binds itself and its successors and assigns to warrant and forever defend all and singular the said premises unto the said Grantees, their heirs and assigns, against it, its successors and assigns lawfully claiming, or to claim the same, or any part thereof.

EXECUTED this 30 day of NOVEMBER, 2016.

Signed, Sealed and Delivered
in the Presence of:

FINE HOUSING, INC.

BY:

Name: Vincent Destaso

Its: President

ROBERT STORMS
Notary Public, State of New York
No. 01976113633
Qualified in Rockland County
Commission Expires August 2, 2020



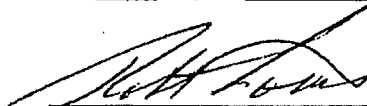
STATE OF NEW YORK)

COUNTY OF *Rockland*)

ACKNOWLEDGMENT

BEFORE me personally appeared Vincent Destaso, President of Fine Housing Inc., well known to be the person described herein, and who executed the foregoing instrument, and he acknowledged to and before me, an officer duly authorized in the state and county aforesaid to take acknowledgments, that they executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal this 30 day of November, 2016.



Notary Public for New York

My Commission Expires: 8/2/2020

ROBERT STORMS
Notary Public, State of New York
No. 01ST8113633
Qualified in Rockland County
Commission Expires August 2, 2020

EXHIBIT A

ALL those pieces, parcels or tracts of land, situate, lying and being on James Island, Charleston County, South Carolina, known in the present street numbering as 2347 Sol Legare Road, one of said tracts lettered X containing 0.20 acres, the other tract 3.18 acres, all as is more fully shown on a plat entitled "PLAT OF GENERAL SURVEY OF NO. 2347 SOL LEGARE ROAD AND PARCEL X OWNED BY ADOLPH G. HOLLINGS JAMES ISLAND 3.38 Ac. TOTAL T.M.S. 338-08-00-007," which plat was made by W.L. Gaillard, dated September 01, 1993, revised February 24, 1994 and is recorded in the RMC Office for Charleston County in Book M239 at Page 141

ALSO

All of the Seller's right, title and interest (title to which is not warranted by Seller) in and to that certain marsh shown on said plat containing 2.00 acres, the eastern boundary line of said marsh measuring 275' and having the following metes: S33 degrees 24'50", the western boundary line of said marsh measuring 180" and having ther following metes: N 00 degrees 15'00"E.

BEING the same property conveyed to Fine Housing, Inc. By deed of Robin M. Robinson dated December 2, 2013 and recorded December 09, 2013 in the RMC Office for Charleston County in Book 0377 at Page 842.

TMS# 330-08-00-007

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

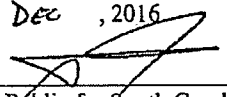
1. I have read the information on this Affidavit and I understand such information.
2. The property is being transferred by Fine Housing Inc., on Dec 2nd, 2016
To Lisa Jenkins and Colleen Lester
3. Check one of the following: *The DEED is* check one
(a) X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as distribution to a trust beneficiary.
(c) EXEMPT from the deed recording fee because (exemption# _____). (Explanation if required)

(If exempt, please skip items 4-6, and go to item 7 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
(a) x The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$500,000.00
(b) The fee is computed on the fair market value of the realty which is \$ _____
(c) The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____
5. Check YES__ or NO X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is \$ _____
6. The DEED Recording Fee is computed as follows:
(a) \$500,000.00 the amount listed in item 4 above
(b) 0.00 the amount listed in item 5 above (no amount place zero)
(c) \$500,000.00 Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Legal Representative.
8. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.



Grantor, Grantee, or Legal Representative
connected with this transaction

Sworn to before me this 2nd
day of Dec, 2016



Notary Public for South Carolina
My Commission Expires: 10-23-25

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document

**Filed By:**

DODDS HENNESSY & STITH, L.L.P.
ATTORNEYS AT LAW
P.O. BOX 298
CHARLESTON SC 29402

RECORDED

Date: December 5, 2016

Time: 9:26:20 AM

Book	Page	DocType
0601	190	Deed

Charlie Lybrand, Register
Charleston County, SC

MAKER:

FINE HOUSING INC

RECIPIENT:

JENKINS LISA AL

Note:

of Pages: 5

Recording Fee	\$ 10.00
State Fee	\$ 1,300.00
County Fee	\$ 550.00
Extra Pages	\$ -
Postage	\$ -
Chattel	\$ -
TOTAL	\$ 1,860.00

Original Book:**Original Page:**

AUDITOR STAMP HERE

RECEIVED
from RMC

DEC 06 2016

Peter J. Tecklenberg
Charleston County Auditor

PID VERIFIED BY ASSESSOR

REF- ASTRJB

DATE DEC 07 2016

4

DRAWER Drawer 5
CLERK ANF



0601
Book



190
Page



12/05/2016
Recorded Date



5
Pgs



Original Book



Original Page



D
Doc Type



09:26:20
Recorded Time

South Carolina Secretary of State Mark Hammond

Business Entities Online

File, Search, and Retrieve Documents Electronically

GROUP INVESTMENT COMPANY, INC.**Corporate Information**

Entity Type: Corporation

Status: Forfeited

Domestic/Foreign: Domestic

Incorporated South Carolina

State:

Important Dates

Effective Date 05/26/1987

Expiration N/A

Date:

Term End N/A

Date:

Dissolved 02/22/2000

Date:

Registered Agent

Agent: EDGAR L BELL

Address: 2028-A PITTSBURG AVE

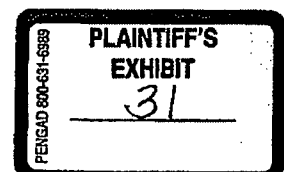
CHARLESTON, South Carolina 29405

Official Documents On File

Filing Type	Filing Date
Forfeiture	02/22/2000
Change of Agent or Office	12/18/1998
Incorporation	05/26/1987

For filing questions please contact us at 803-734-2158

Copyright © 2017 State of South Carolina



South Carolina Secretary of State Mark Hammond

Business Entities Online

File, Search, and Retrieve Documents Electronically

RRJR, LLC**Corporate Information**

Entity Type: Limited Liability Company

Status: Good Standing

Domestic/Foreign: Domestic

Incorporated South Carolina
State:**Registered Agent**

Agent: AGENT RESIGNED

Address:
, South Carolina**Important Dates**

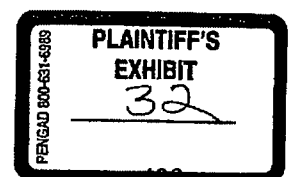
Effective Date 03/29/2007

Expiration N/A
Date:Term End N/A
Date:Dissolved N/A
Date:**Official Documents On File**

Filing Type	Filing Date
Resignation of Agent or Office	10/23/2013
Organization	03/29/2007

For filing questions please contact us at 803-734-2158

Copyright © 2017 State of South Carolina



THE MARTIN LAW FIRM
113 Wappoo Creek Drive
Charleston, SC 29412
843/762-2121

TITLE NOT EXAMINED BY THE MARTIN LAW FIRM

BKH 623PG181

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON) QUITCLAIM DEED

KNOW ALL PERSONS BY THESE PRESENTS, Group Investment Company, Inc., hereinafter referred to as Grantors, in consideration of Five and No/100 (\$5.00) Dollars, the receipt of which is hereby acknowledged, have granted, bargained, sold, and released, and by these presents do grant, bargain, sell and release unto RRJR, LLC, hereinafter referred to as Grantees, the following described property, to wit:

ALL that piece, parcel or tract of land, situate, lying and being in Charleston County, South Carolina, known and designated as "Tract A, 1.610 Acres, Property of Group Investment Company, Inc., TMS 466-16-00-011" on a plat entitled "Plat Showing TMS 466-16-00-011, being subdivided into Tracts "AB" and "AB.1", property of Group Investment Company, Inc., located North Charleston Public Service District, Charleston County, SC", made by David & Floyd, Inc., dated January 19, 1989 and recorded in the RMC Office for Charleston County in Plat Book CE, Page 116; said tract having such size, shape, dimensions, buttings and boundings as will be referenced to said plat more fully and at large appear.

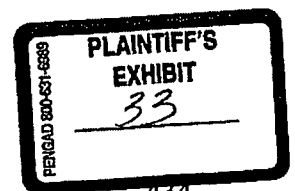
BEING the same premises conveyed to Group Investment Company, Inc., by deed of Cheryl Robinson, d/b/a C. R. Intermodel, dated and recorded in the RMC Office for Charleston County on February 18, 1997, in Book D-280, Page 27.

TMS NO. 466-16-00-011

Grantee's Address: 2028 Pittsburgh Avenue
N. Charleston, SC 29405

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to said Premises belonging or in any wise incident or appertaining.

TO HAVE AND TO HOLD, all and singular the premises before mentioned unto the Grantees, and the Grantees' Successors and Assigns, forever.



WITNESS the Grantors' hands and seal this 19th day of February, 2007.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

FIRST WITNESS

SECOND WITNESS

GROUP INVESTMENT COMPANY, INC.

BY:

ITS:

THE STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 19th day of February, 2007
by Group Investment Company, Inc., by John B. Robinson,
its President.

Kristin Roark Caudle (L.S.)

Notary Public for South Carolina

Commission Expires: 10/13/16

(SEAL)

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT

Date of Transfer of Title
Closing Date: 2/19/07

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property is being transferred BY Group Investment Company, Inc. to RRJR, LLC on 2/19/2007.
3. Check one of the following: The DEED is

- (A) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in Money or Money's worth.
- (B) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity or is a transfer to a trust or as a distribution to a trust beneficiary.
- (C) ☒ EXEMPT from the deed recording fee because (exemption # 1, No Consideration, same shareholders of grantor and grantee)

4. Check one of the following if either item 3(A) or item 3(B) above has been checked.
 - (A) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
 - (B) _____ The fee is computed on the fair market value of the realty, which is \$ _____.
 - (C) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____.

5. Check YES _____ or NO ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is \$ 0.

6. The DEED Recording Fee is computed as follows:
 - (A) \$ _____ the amount listed in item 4 above
 - (B) _____ the amount listed in item 5 above (no amount place zero)
 - (C) \$ _____ Subtract Line 6(b) from Line 6(a) and place the result.

7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Grantor(s).

8. Check if Property other than Real Property is being transferred on this Deed.
 - (A) _____ Mobile Home
 - (B) _____ Other

9. _____ DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT: Estate of _____, deceased
CASE NUMBER _____ Personally appeared before me the undersigned attorney who, being duly sworn, certified that he is licensed to practice law in the State of South Carolina; that he has prepared the Deed of Distribution for the Personal Rep. In the Estate of _____, deceased and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.

10. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

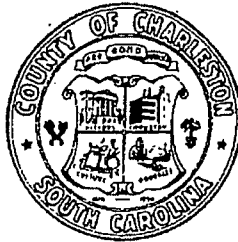
Sworn to before me this 19th day of February, 2007.
Jason Robert Canale
Notary Public for South Carolina
My Commission Expires: 11/16/14 (SEAL)

GROUP INVESTMENT COMPANY, INC.
[Signature]
BY: John F. Meub
ITS: attorney

BK H 623PG184

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



FILED

April 25, 2007

1:49:26 PM

BK H 623PG181

Charlie Lybrand, Register
Charleston County, SC

Filed By:

Martin Law Firm

113 Wappoo Creek Dr.

Charleston

SC 29412

Number of Pages:

4

AMOUNT

DESCRIPTION

Q/Claim

Recording Fee \$ 10.00

State Fee <Exempt>

County Fee <Exempt>

Postage

TOTAL

\$ 10.00

\$ Amount (in thousands):

DRAWER:

2 C - slw

AUDITOR STAMP HERE

RECEIVED FROM RMC

APR 30 2007

PEGGY A. MOSELEY
CHARLESTON COUNTY AUDITOR

PID VERIFIED BY ASSESSOR

REP

DATE APR 30 2007

DO NOT STAMP BELOW THIS LINE

TITLE NOT EXAMINED BY THE MARTIN LAW FIRM

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

QUITCLAIM DEED

ALL that piece, parcel or tract of land, situate, lying and being in Charleston County, South Carolina, known and designated as "Tract A, 1.610 Acres, Property of Group Investment Company, Inc., TMS 466-16-00-011" on a plat entitled "Plat Showing TMS 466-16-00-011, being subdivided into Tracts "AB" and "AB.1", property of Group Investment Company, Inc., located North Charleston Public Service District, Charleston County, SC", made by David & Floyd, Inc., dated January 19, 1989 and recorded in the RMC Office for Charleston County in Plat Book CE, Page 116; said tract having such size, shape, dimensions, buttings and boundings as will be referenced to said plat more fully and at large appear.

TMS NO. 466-16-00-011

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to said Premises belonging or in any wise incident or appertaining.

438

WITNESS the Grantors' hands and seal this 4th day of June, 2007.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

BK W628PG456

[Signature]
FIRST WITNESS

[Signature]
SECOND WITNESS

GROUP INVESTMENT COMPANY, INC.

[Signature]
BY: John B. Robinson
ITS: President

THE STATE OF SOUTH CAROLINA)

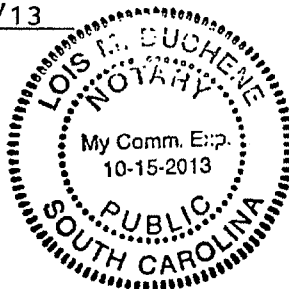
) ACKNOWLEDGMENT

COUNTY OF CHARLESTON)

The foregoing instrument was acknowledged before me this 4th day of
May, 2007 by Group Investment Company, Inc., by
John B. Robinson, its President

[Signature] (L.S.)
Notary Public for South Carolina

Commission Expires: 10/15/13
(SEAL)



STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

CONSIDERATION AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property is being transferred BY Group Investment Company, Inc., to RRRJ, LLC ON 6/4/07.
3. Check one of the following: The Deed is
 - (A) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in Money or Money's worth.
 - (B) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (C) X EXEMPT from the deed recording fee because (exemption #1, no consideration
(Explanation if required)
4. Check one of the following if either item 3(A) or item 3(B) above has been checked.
 - (A) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ _____.
 - (B) _____ The fee is computed on the fair market value of the realty, which is \$ _____.
 - (C) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____.
5. Check YES _____ or NO X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is \$ _____.
6. The DEED Recording Fee is computed as follows:
 - (A) \$ 0.00 the amount listed in item 4 above
 - (B) _____ the amount listed in item 5 above (no amount place zero)
 - (C) _____ Subtract Line 6(B) from Line 6(A) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Closing Attorney.
8. Check If Property other than Real Property is being transferred on this Deed.
 - (A) _____ Mobile Home
 - (B) _____ Other
9. DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT: Estate of _____ deceased CASE NUMBER _____. Personally appeared before me the undersigned attorney who, being duly sworn, certified that he is licensed to practice law in the State of South Carolina; that he has prepared the Deed of Distribution for the Personal Rep. In the above named estate that the grantee(s) therein are correct and conform to the estate file for the above named decedent.
10. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

JOHN F. MARTIN, Closing Attorney

Sworn to before me this 4th day of June, 2007

Lois M. Duchene
Notary Public for South Carolina
My Commission Expires: 10/15/13
(SEAL)



BK W628PG458

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



FILED

June 13, 2007

11:38:37 AM

BK W628PG455

Charlie Lybrand, Register
Charleston County, SC

Filed By:

Martin Law Firm

113 Wappoo Creek Dr.
Charleston

SC 29412

Number of Pages:

4

AMOUNT

DESCRIPTION	Q/Claim
Recording Fee	\$ 10.00
State Fee	<Exempt>
County Fee	<Exempt>
Postage	

TOTAL	\$ 10.00

\$ Amount (in thousands):

DRAWER:

A - BJA

AUDITOR STAMP HERE

JUN 15 2007

PID VERIFIED BY ASSESSOR

REP.

JUN 15 2007

DATE

AB - 466-16-00-011
AB.1 - 466-16-00-027

DO NOT STAMP BELOW THIS LINE

FILE 01776
(AC)

Re: 2470 Sol Legare Rd

Page 1 of 1

From: vindestaso <vindestaso@aol.com>
To: Jhamilton <jhamilton@prattandco.com>
Subject: Re: 2470 Sol Legare Rd
Date: Mon, Dec 23, 2013 2:39 pm

Jim,
We do have an agreement to get deed, we just ran into a title issue
will be done in 2 weeks, then we can list
we were thinking \$990k, what's your opinion on price?

Vin

—Original Message—
From: Jim Hamilton <jhamilton@prattandco.com>
To: vindestaso <vindestaso@aol.com>
Sent: Mon, Dec 23, 2013 2:04 pm
Subject: 2470 Sol Legare Rd

Mr. DiStaso,

I spoke with you before the Thanksgiving holiday regarding the property at 2470 Sol Legare Road in Charleston, SC.

At that time, you anticipated taking the deed back and listing the property for sale.

Please let me know if I can help with listing and marketing this property for sale.

I'd welcome the opportunity to speak with you more about a marketing plan to get this property sold.

Sincerely,

Jim

James B. Hamilton II, Realtor
Pratt & Co at
RE/MAX Pro Realty
9209 University Blvd
Charleston, SC 29406
843 270-4337 mobile

<https://mail.aol.com/webmail-std/en-us/PrintMessage>



442

SETTLEMENT AGREEMENT

THIS AGREEMENT made and entered into this ____ day of September, 2014 by and between FINE HOUSING, INC. a corporation organized and existing under the laws of the State of New York and authorized to do business in the State of South Carolina ("FHI") and ROBIN M. ROBINSON ("Robinson"), RRJR, LLC, a limited liability company organized and existing under the laws of the State of South Carolina, ANTHONY FOGLER ("Fogler") and DANIEL DEHAVEN ("DeHaven").

WITNESSETH

WHEREAS, on December 2, 2013, Robinson conveyed the property at 2347 Sol Legare Road, Charleston, South Carolina 29412 to FHI by deed recorded in the RMC Office for Charleston County on December 9, 2013 in Book 0377 at page 842; and

WHEREAS, on December 2, 2013, RRJR conveyed the property at 2028 Pittsburgh Avenue, North Charleston, South Carolina 29405 to FHI by deed recorded in the RMC Office for Charleston County on December 9, 2013 in Book 0377 at page 843; and

WHEREAS, at the time of the conveyances, either or both of the properties were subject to tax liens filed by the Internal Revenue Service ("IRS") and/or the South Carolina Department of Revenue ("DOR");

WHEREAS, at the time of the conveyances, Robinson and RRJR claimed they did not have the payoffs of the liens filed by the IRS and DOR but agreed to obtain the payoffs as quickly as possible through their agent and attorney William K. Swope ("Swope"); and

WHEREAS, on the same date, Robinson and RRJR leased both property from FHI with the option to purchase the properties at the termination of the lease on November 30, 2013; and



WHEREAS, Fogler and DeHaven agreed to guaranty performance of Robinson and RRJR under the Lease; and

WHEREAS, as of the date of this Agreement, Robinson and RRJR have not paid the rents due on the properties for the months of January, February, March, April, May, June, July, August and September 2014 and as a result Robinson, RRJR, Fogler and DeHaven are in default of their obligations under the Lease; and

WHEREAS, a dispute has arisen with the regard to the true obligations of the parties under the documents which were executed on December 2, 2013; and

WHEREAS, Robinson and RRJR has filed suit against FHI as a result as Case Number 2014-CP-10-1035, pending in the Court of Common Pleas for Charleston the ("Suit"); and

WHEREAS, FHI has filed for eviction of Robinson and RRJR from the properties subject to the Lease; and

WHEREAS, the parties desire to resolve the controversy which exists between them and wish to set forth their agreement with regard to the resolution in writing;

NOW, THEREFORE, in consideration of the above stated premises, the below stated mutual covenants and promises and the sum of Ten & 00/100 Dollars (\$10.00) to each paid, the sufficiency of which as consideration is specifically acknowledged and agreed, the parties agree as follows:

1. The above recitations are incorporated herein as if fully restated.
2. Robinson, RRJR, Fogler and DeHaven acknowledge they are in default in their obligations to FHI. In the event of any default under this Agreement or either Amended and Restated Lease beyond any cure date provided for in the Amended and Restated Lease,

Robinson, RRJR, Fogler and DeHaven acknowledge they are not entitled to any further notices of default and FHI may immediately take such action as allowed under applicable law.

3. Robinson, RRJR, Fogler and DeHaven, acknowledge the transaction between the parties on December 2, 2013 was a sale of the properties at 2347 Sol Legare Road, Charleston, South Carolina 29412 and 2028 Pittsburgh Avenue, North Charleston South Carolina 29405 and lease of the said properties and not a loan from FHI.

4. The parties acknowledge the Lease between FHI and Robinson and RRJR which is guaranteed by Fogler and DeHaven may not properly reflect the terms of the agreement between the parties with regard to the Lease and have agreed to execute Amended and Restated Leases for both properties in the forms attached hereto as Exhibits A and B with Robinson being the tenant for the property at 2347 Sol Legare Road and Robinson and RRJR being the tenant for the property at 2028 Pittsburgh Avenue and Fogler and Robinson being the guarantors on both leases. The amended and restated leases will be executed simultaneously with the execution of this Agreement.

5. At the time of the execution of this Agreement, Robinson, RRJR and Fine Housing, Fogler and DeHaven agree to dismiss claims in the Suit with prejudice.

6. At the time of the execution of this Agreement, Robinson, individually and the sole and/or managing member or shareholder of RRJR, LLC, Group Investment Company, Inc. and Polo Champ, LLC, and as representative of the Estate of John Robinson shall execute Power of Attorney forms for the Internal Revenue Service, Form 2848, and the South Carolina Department of Revenue, Form SC 2848, giving Charles S. Altman, Esquire the authority to contact the Internal Revenue Service and the South Carolina Department of Revenue to determine the amounts due the taxing authorities which affect title to the properties referred to

above. In the event the amount owed is equal to or less than the amount held in escrow by William Sloan, Esquire, FHI shall direct William Sloan to pay the liens in full and pay any excess to FHI to reduce the amount owed to it by Robinson and RRJR to reimburse FHI for its costs incurred, including attorneys' fees. In the event the amount owed to pay the tax liens in full is more than the amount held in escrow by William Sloan, Robinson and RRJR shall be notified of the excess amount due and shall deposit the balance due with William Sloan within fifteen (15) days of the date of the notice and William Sloan shall then immediately pay the liens in full.

7. Robinson shall pay to FHI the sum of \$1,570.00 at the time of the execution of this Agreement and the like sum on October 1, 2014 and November 1, 2014 as partial rent for the Sol Legare property. Commencing December 1, 2014 and continuing for a period of twelve (12) months, Robinson shall pay the regular monthly rental for the Sol Legare Property of Four Thousand & 00/100 Dollars (\$4,000.00) per month plus the sum of Three Thousand Two Hundred Seventy Four and 17/100 Dollars (\$3,274.17) plus the sum of One Thousand Two Hundred Fifty Six & 00/100 Dollars (\$1,256.00) for reimbursement of costs and legal fees incurred by FHI or a total of Eight Thousand Five Hundred Thirty and 17/100 Dollars (\$7,274.17) in order for Robinson to have paid all rent and other amounts due to FHI for the period from commencement of the Lease for the Sol Legare Property for the period from the Commencement of the Lease through November 30, 2015, Commencing with the payment due December 1, 2015, Robinson shall make the rental payments as called for in the Lease. Nothing contained herein shall be deemed to limit Robinson's obligation to make all other payments or

fulfill her obligations under the Amended and Restated Lease during the time the payments described herein are to be made.

8. RRJR shall pay to FHI the sum of \$3,430.00 at time of the execution of this Agreement and the like sum on October 1, 2014 and November 1, 2014 as partial rent for the Pittsburgh Avenue property. Commencing December 1, 2014 and continuing for a period of twelve (12) months, RRJR shall pay the regular monthly rental for the Pittsburgh Avenue Property of Eight Thousand Seven Hundred Fifty & 00/100 Dollars (\$8,750.00) per month plus the sum of Seven Thousand One Hundred Sixty Three and 34/100 Dollars (\$7,163.34) plus the sum of Two Thousand Seven Hundred Forty Four & 00/100 Dollars (\$2,744.00) for reimbursement of costs and legal fees incurred by FHI or a total of Eighteen Thousand Six Hundred Fifty Seven and 34/100 Dollars (\$18,657.34) in order for Robinson to have paid all rent and other amounts to FHI for the period from commencement of the Lease for the Pittsburgh Avenue Property for the period from the Commencement of the Lease through November 30, 2015. Commencing with the payment due December 1, 2015, Robinson shall make the rental payments a called for in the Lease. Nothing contained herein shall be deemed to limit Robinson's obligation to make all other payments or fulfill her obligations under the Amended and Restated Lease during the time the payments described herein are to be made.

9. Upon presentation by FHI of the bill for engineering expense of approximately \$800.00 incurred because of the Charleston County Zoning issue, RRJR shall within five (5) business days reimburse FHI for said cost.

10. The parties agree, on the date of the termination of the Leases being executed as part of the terms of this Agreement, November 30, 2016, Robinson and RRJR shall have the option to purchase the properties provided they are not in default of their obligations under the

Leases as of that date and the Leases have not been terminated as a result of a default by Robinson and RRJR under the terms of the Leases prior to November 30, 2016. The terms of the purchase are as follows:

- a. The purchase price for both properties shall be One Million One Hundred Fifty Thousand & 00/100 Dollars (\$1,150,000.00) to be paid in immediately available funds on the date of closing.
- b. Robinson and RRJR shall pay all costs with regard to the purchase, including but not limited to transfer fees required pursuant to SC Code Section 12-24-10 et seq (1976, as amended), recording fees, document preparation fees and all other closing costs. There shall be no proration of taxes or insurance as Robinson and RRJR are fully responsible for those costs pursuant to the Leases.
- c. In the event Robinson and/or RRJR which to exercise the option to purchase, either or both shall give FHI notice of the exercise of the option no later than sixty (60) days prior to November 30, 2016.
- d. The notice must be for the exercise of the option to purchase both properties.
- e. Time is of the essence with regard to the exercise of the option and the closing of the purchase.

11. The parties acknowledge they have retained the services of attorneys to represent their interest in the negotiation and execution of this Agreement and the Leases for the properties and are satisfied with the services rendered by their respective attorneys. The parties agree in the event of a controversy regarding the terms of the Agreement or the Leases they shall not be entitled to claim a defense regarding the drafting of this Agreement for the Leases.

12. Robinson, RRJR, Fogler and DeHaven acknowledge they have no claims against FHI or its shareholder as a result the transaction which closed on December 3, 2013 or the actions by FHI or its shareholder which occurred thereafter and they have no defenses to the

claims of FHI as a result of the said transaction and FHI's claims made based on the transaction.

In the event any such claim exists, Robinson, RRJR, Fogler and DeHaven waive the same.

13. This Agreement shall be interpreted under the laws of the State of South Carolina and solely enforceable in the Courts of the State of South Carolina located in Charleston County.

14. All notices to be given under the Agreement shall be given in writing and sent in some fashion which provides proof of deliver addressed as follows:

If to FHI:

Fine Housing, Inc.
102 Lake Road
Congers, NY 10920
Attn: Vincent DeStaso

With a copy to:

Charles S. Altman, Esquire
Altman & Coker, LLC
575 King Street, Suite A
Charleston, SC 29403

If to Robinson:

Robin Robinson
2347 Sol Legare Road
Charleston, SC 29412

If to RRJR:

RRJR, LLC
2028 Pittsburgh Avenue
North Charleston, SC 29405
Attention: Robin Robinson

If to Fogler

If to DeHaven

Daniel DeHaven
2028 Pittsburgh Avenue
North Charleston, SC 29405

On behalf of Robinson,
RRJR, and DeHaven
copies to:

Paul J. Doolittle, Esquire
Jekel-Doolittle, LLC

210 Wingo Way, Suite 201
Mt. Pleasant, SC 29464
P.O. Box 2579
Mt. Pleasant, SC 29465

15. This writing constitutes the entire agreement between the parties and shall not be altered or amended except in writing executed by all parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above mentioned.

IN THE PRESENCE OF:

FINE HOUSING, INC.

By: _____
Vincent Destaso, President

As to FHI

As to Robinson

Robin Robinson

RRJR, LLC

By: _____
Robin Robinson, Authorized Member

As to RRJR

Anthony Fogler

As to Fogler

As to DeHaven

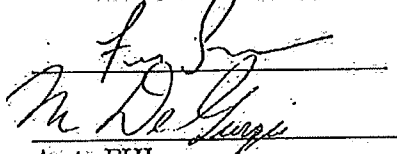
Daniel DeHaven

210 Wingo Way, Suite 201
Mt. Pleasant, SC 29464
P.O. Box 2579
Mt. Pleasant, SC 29465

15. This writing constitutes the entire agreement between the parties and shall not be altered or amended except in writing executed by all parties.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date first above mentioned.

IN THE PRESENCE OF:


As to FHI

FINE HOUSING, INC.

By: 
Vincent Destaso, President

As to Robinson

Robin Robinson

As to RRJR

RRJR, LLC

By: _____
Robin Robinson, Authorized Member

As to Fogler

Anthony Fogler

As to DeHaven

Daniel DeHaven

EXHIBIT A

ALL those pieces, parcels or tracts of land, situate, lying and being on James Island, Charleston County, South Carolina, known in the present street numbering as 2347 Sol Legare Road, one of said tracts being lettered X containing 0.20 acres, the other tract containing 3.18 acres, all as is more fully shown on a plat entitled "PLAT OF GENERAL SURVEY OF NO. 2347 SOL LEGARE ROAD AND PARCEL X OWNED BY ADOLPH G. HOLLINGS JAMES ISLAND 3.38 Ac. TOTAL T.M.S. 330-08-00-007," which plat was made by W.L. Gaillard, dated September 1, 1993, revised February 24, 1994, and is recorded in the RMC Office for Charleston County in Book M239 at Page 141.

ALSO

ALL of the Landlord's right, title and interest (title to which is not warranted by Landlord) in and to that certain marsh shown on said plat containing 2.00 acres, the eastern boundary line of said marsh measuring 275' and having the following metes: S 33 degrees 24'50"; the western boundary line of said marsh measuring 180' and having the following metes: N 00 degrees 15' 00" E.

BEING the same property conveyed to Fine Housing, Inc., by deed of Robin M. Robinson dated December 2, 2013, and recorded December 9, 2013, in the RMC Office for Charleston County, South Carolina in Book 0377 at Page 842.

TMS No. 330-08-00-007

EXHIBIT B

ALL that piece, parcel or tract of land situate, lying and being in Charleston County, South Carolina, known and designated as "Tract A, 1.610 Acres; Property of Group Investment Company, Inc., TMS 466-16-00-011" on a plat entitled "Plat Showing TMS 466-16-00-011, being subdivided into tracts 'AB' and 'AB.1', property of Group Investment Company, Inc., located in North Charleston Public Service District, Charleston County, SC," made by David & Floyd, Inc., dated January 19, 1989 and recorded in the RMC Office for Charleston County in Plat Book CE, Page 116; said tract having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

BEING the same property conveyed to Fine Housing, Inc., by deed of RRJR, LLC, dated December 2, 2013, and recorded December 9, 2013, in the RMC Office for Charleston County, South Carolina, in Book 0377 at Page 843.

TMS No. 466-16-00-011

Single Ledger Balance Report - Sorted By Ref/Ck Number

Selection Criteria		Trust Account Description: Real Estate Trust Account	
Trust Account: RE2		Client / Matter: Inc, Fire Housing	
File ID: 13-264		Ledger Comment:	
Responsible Party:		Property: 2028 Pittsburg Ave/2470 Sol Legare RD/C	
Settlement Date: 12/02/13		Ending Date:	
Starting Date:			

Ref/Ck No.	Transaction Date	Payee Name Memo	Medium	Cleared Date	Amount
Beginning Balance:					\$0.00
Deposits					
	12/02/13	ProForm generated incoming funds	wire	12/31/13	\$815,000.00
	08/20/14	Real Estate Closing			
		Charleston County User Fee / overpayment 466-1 check		08/30/14	\$3,574.71
		Ich			
Total of 2 Deposits					\$818,574.71
Checks					
17654	12/03/13	Stewart Title	check	08/30/14	\$720.00
17655	12/03/13	Donlan Title Agency	check	12/31/13	\$1,080.00
17656	12/03/13	Charleston County ROD Office	check	12/31/13	\$3,185.00
17658	12/03/13	Joseph Scaumato	check	12/31/13	\$3,500.00
17661	12/03/13	Robin M. Robinson and RRJR, LLC	Check		\$8,657.80
17662	12/03/13	Charleston County Fees	check	12/31/13	\$15,748.80
17664	12/03/13	Charleston Capital One	check	12/31/13	\$29,982.31
		Payoff Second Mortgage			
17665	12/03/13	Will Swope	check	12/31/13	\$50,500.00
17666	12/03/13	Charleston County Treasurer	check	12/31/13	\$80,320.00
17667	12/03/13	Charles Feeley	check	12/31/13	\$250.00
17668	12/03/13	Sloan Law Firm	check	12/31/13	\$2,950.00
		Settlement Agents Fees			
17669	12/03/13	SCDOR	check	12/31/13	\$5,539.04
17670	12/05/13	SCDOR	check	12/31/13	\$24,175.94
17671	12/08/13	Tamara Lane Inc	check	12/31/13	\$5,600.00
17672	12/11/13	The Cherie DuMez Agency	check	12/31/13	\$9,311.00
17673	12/16/13	Charleston County ROD Office	check	12/31/13	\$10.00
		Lost Mortgage Satisfaction (2			
Total of 16 Checks					\$221,309.89
Miscellaneous					
	12/03/13	Haynesworth Sinkler	wire	12/31/13	\$72,866.39
		Ich			
	12/03/13	Sci John Liatsis	wire	12/31/13	\$8,500.00
		Ich			
1540	12/03/13	Check	cashiers c	12/31/13	\$381,644.72
		Ich			
Total of 3 Miscellaneous Items					\$463,011.11
Report Totals:					
Balance:					\$134,253.71
Ending Balance:					\$134,253.71



AN LAW FIRM P.A.

TRUST ACCOUNT
1055 North Main Street, Suite F
Summerville, SC 29483
Phone: (843) 873-7531

NBSC

Member of NBS GROUP BANK
67-66-532

11072

TO THE
ER OF:

The Cherie DuMez Agency

December 11, 2013

\$ *****9,311.00

ie Thousand Three Hundred Eleven and 00/100

DOLLARS

The Cherie DuMez Agency
2470 Sol Legare Rd/ Fine Housing Inc
Hazzard Insurance

[Signature]
AUTHORIZED SIGNATURE

AN LAW FIRM P.A. TRUST ACCOUNT

17672

Check Number:

Date: December 11, 2013

File ID/Number: 13-264

Client/Matter: Inc, Fire Housing

Ledger Comment:

Responsible Party:

TAC: RE2

Pay To: The Cherie DuMez Agency

Check Amount: \$ 9,311.00

Memo:

*Fed EX
12/11/13
to
Cherie DuMez
Agency*

AN LAW FIRM P.A. TRUST ACCOUNT

17672

Check Number:

Date: December 11, 2013

File ID/Number: 13-264

Client/Matter: Inc, Fire Housing

Ledger Comment:

Responsible Party:

TAC: RE2

Pay To: The Cherie DuMez Agency

Check Amount: \$ 9,311.00

Memo:

DLT100 USE WITH 01063 ENVELOPE

MCBEE To Record: 1-800-662-2331 or www.mcbesinc.com

ALB

Fine Housing 000058

PLAINTIFF'S
EXHIBIT

5

455

Lexington Insurance Company
99 High Street
Boston, MA 02110-2103

Quote Confirmation

Quote Effective Date: 12/09/2014
Quote Number: 16789192 - 01

Issue Date: 11/06/2014

Broker:
Hull & Company, Inc. - Charlotte
11405 North Community House Rd.
Charlotte, NC 28277
Ph/Fax: 800-241-4855/
From: Hull & Company, Inc. - Charlotte

Sub-Broker:
THE CHERIE DUMEZ AGENCY
3336 MORNINGDALE DR
Mt Pleasant, SC 29466
Ph/Fax: 843-568-8100/
Attn:

RE: Applicant	Fine Housing Inc.	
Policy Type:	HO3	
Insured Location:	2347 SOL LEGARE RD	
	CHARLESTON, SC 29412-8542	

Coverage Part 1 - Homeowners	Coverage Part 2 - Personal Umbrella
- Coverage A: Dwelling	- Umbrella Limit
- Coverage B: Other Structures	- Self Insured Retention
- Coverage C: Personal Property	
- Coverage D: Loss Of Use	
- Loss Assessment Coverage	
- Coverage E: Personal Liability	
- Coverage F: Medical Payments to Others	

	Coverage Part 3 - Excess Flood
	- Building
	- Contents
	Coverage Part 4 - Scheduled Property
	- Total Scheduled Property

Homeowners Options*			
Replacement Cost Contents:	Yes	Extended Liability:	None
Special Coverage C:	No	Watercraft Liability:	No
Extended Replacement:	No	Home Business:	No
Personal Injury: (HO Only)	No	Business Property:	No
Special Limits Cov. C:	No	BR - Theft:	No
Water Back Up:	\$25,000	BR - Extended Cov:	No
Special Computer:	No	Golf Cart Coverage:	No
Identity Fraud:	No	Ordinance Or Law:	10%
Earthquake: (Prem:\$450)	Standard		

*This is a partial listing of available endorsements

Homeowners Deductibles:			
All Other Perils:	\$2,500	Earthquake:	5%
Wind Hail:	2%	Special: None	\$0
		Special: None	\$0

Premium, Tax and Fees:	
Coverage Part 1 - Homeowners	\$10,289
Coverage Part 2 - Umbrella	\$0
Coverage Part 3 - Flood	\$0
Coverage Part 4 - Property	\$0
Policy Premium:	\$10,289
Surplus Lines Broker Responsibility:	
Inspection Fee:	\$0.00
SL Broker Fee:	\$175.00
Surplus Lines Taxes:	\$627.84
Total Due:	\$11,091.84

*Unless surplus lines taxes are shown above, the Sub-Broker is the S/L Broker responsible for the collection and payment of all surplus lines taxes and fees.

NOTE(S) SECTION:

TERMS AND CONDITIONS:

This is not a Binder of Insurance. This indication is being offered on the basis indicated above. It does not necessarily provide the terms and/or coverages requested in your submission. No flat cancellations are permitted and a 25% minimum

SLOAN LAW FIRM P.A.

TRUST ACCOUNT
1055 North Main Street, Suite F
Summerville, SC 29483
Phone: (843) 673-7531

NESC

67-66-532

17658

PAY TO THE
ORDER OF

Joseph Scaumato

December 3, 2013

Three Thousand Five Hundred and 00/100

\$ 3,500.00

DOLLARS

Joseph Scaumato

MEMO

[Handwritten Signature]

ENDORSED SIGNATURE

SLOAN LAW FIRM P.A. TRUST ACCOUNT

17658

Check Number:

Date: December 3, 2013

File ID/Number: 13-264

Client/Matter: Inc, Fire Housing

Ledger Comment:

Responsible Party:

TAC: RE2

Pay To: Joseph Scaumato

Check Amount: \$ 3,500.00

Memo:

SLOAN LAW FIRM P.A. TRUST ACCOUNT

17658

Check Number:

Date: December 3, 2013

File ID/Number: 13-264

Client/Matter: Inc, Fire Housing

Ledger Comment:

Responsible Party:

TAC: RE2

Pay To: Joseph Scaumato

Check Amount: \$ 3,500.00

Memo:

*Fed-EX
to Vincent
12/6/13*

CT OUT 103 USE WITH 91643 ENVELOPE

MCBEE To Reorder: 1-800-662-2291 or www.mcbefirm.com



LOAN LAW FIRM P.A.

TRUST ACCOUNT
1055 North Main Street, Suite P
Summerville, SC 29483
Phone: (843) 873-7331

NBSC
a division of STONY LANE BANK
67-66-532

Signature of One Party
Permitted by Endorsement

December 3, 2013

PAY TO THE
ORDER OF AAA

Five Thousand Five Hundred and 00/100

\$ *****5,500.00

DOLLARS

AAA

AEMO Inspection Fee

AUTHORIZED

LOAN LAW FIRM P.A. TRUST ACCOUNT

17659

Check Number:
Date: December 3, 2013
File ID/Number: 13-264
Client/Matter: Inc, Fire Housing
Ledger Comment:
Responsible Party:

TAC: RE2

Pay To: AAA
Check Amount: \$ 5,500.00
Memo: Inspection Fee

LOAN LAW FIRM P.A. TRUST ACCOUNT

17659

Check Number:
Date: December 3, 2013
File ID/Number: 13-264
Client/Matter: Inc, Fire Housing
Ledger Comment:
Responsible Party:

TAC: RE2

Pay To: AAA
Check Amount: \$ 5,500.00
Memo: Inspection Fee

DO NOT WRITE USE WITH 91663 ENVELOPE

MCBEE To Reorder: 1-800-682-2331 or www.mcbesinc.com

Fire Housing 000043

PLAINTIFF'S
EXHIBIT

7
458

SLOAN LAW FIRM P.A.

TRUST ACCOUNT
1056 North Main Street, Suite F
Summerville, SC 29483
Phone: (843) 873-7531

NBSG

a Division of SECURITY FIRST
67-66-532

17671

TO THE
ORDER OF Tamara Lane Inc.

December 6, 2013

\$ *****5,500.00

Five Thousand Five Hundred and 00/100

DOLLARS

Tamara Lane Inc.

40

AUTHORIZED SIGNATURE

SLOAN LAW FIRM P.A. TRUST ACCOUNT

17671

Check Number:

Date: December 6, 2013

File ID/Number: 13-264

Client/Matter: Inc, Fire Housing

Ledger Comment:

Responsible Party:

Pay To: Tamara Lane Inc.

Check Amount: \$ 5,500.00

Memo:

TAC: RE2

SLOAN LAW FIRM P.A. TRUST ACCOUNT

17671

Check Number:

Date: December 6, 2013

File ID/Number: 13-264

Client/Matter: Inc, Fire Housing

Ledger Comment:

Responsible Party:

Pay To: Tamara Lane Inc.

Check Amount: \$ 5,500.00

Memo:

TAC: RE2

Ma
Fed-Ex to
Vincent
12/6/13

17 DLT103

USE WITH 01693 ENVELOPE

MCBEE To Record: 1-800-682-2331 or www.zschemo.com

ADA 221

Fine Housing 000057

PLAINTIFF'S
EXHIBIT

8

459

Ashley Andrews

From: Ashley Andrews
Sent: Thursday, May 15, 2014 11:58 AM
To: 'Vin Destaso'
Subject: RE: 2028 Pittsburgh Ave, N.
Charleston, SC/Barry Clarke

Sure. I'll call you then.

Ashley

Ashley G. Andrews
VA Accredited Attorney #21951
catherine e. lafond, pa
Elder Law | Real Estate

544 Savannah Highway, Charleston, South Carolina 29407
843.762.2554 (phone) 843.277.0111 (fax) www.lafondlaw.com

From: Vin Destaso [mailto:vindestaso@aol.com]
Sent: Thursday, May 15, 2014 11:18 AM
To: Ashley Andrews
Subject: Re: 2028 Pittsburgh Ave, N. Charleston, SC/Barry Clarke

Can we do 130

Sent from my iPhone

On May 15, 2014, at 11:06 AM, Ashley Andrews
<andrews@lafondlaw.com> wrote:

Mr. Destaso:

Will you be available at 12:30 today?

Thanks,
Ashley

Ashley G. Andrews
VA Accredited Attorney #21951
catherine e. lafond, pa
Elder Law | Real Estate

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843.762.2554 (phone) 843.277.0111 (fax) www.lafondlaw.com

From: vindestaso@aol.com
[mailto:vindestaso@aol.com]
Sent: Wednesday, May 14, 2014 6:56 PM
To: Ashley Andrews
Subject: Re: 2028 Pittsburgh Ave, N. Charleston,
SC/Barry Clarke

Thanks Ashley,

When you have a minute call me to discuss.

Vincent
845 406 2206

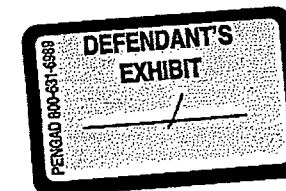
-----Original Message-----

From: Ashley Andrews <andrews@lafondlaw.com>
To: vindestaso <vindestaso@aol.com>
Sent: Wed, May 14, 2014 5:21 pm
Subject: 2028 Pittsburgh Ave, N. Charleston, SC/Barry
Clarke

Mr. Destaso:

Barry Clarke asked that I re-send the proposed buy/sell
agreement for the property located at 2028 Pittsburgh
Avenue. The draft that I forwarded to you on April 21st
is attached for your review. Please let me know if you
have any proposed changes. I look forward to hearing
from you.

Thanks,
Ashley



Ashley Andrews

From: Ashley Andrews
Sent: Thursday, June 19, 2014 5:08 PM
To: 'Vin Destaso'
Subject: RE: 2028 Pittsburgh Ave, N. Charleston, SC

Thank you.

Ashley G. Andrews
VA Accredited Attorney #21951
catherine e. lafond, pa
Elder Law | Real Estate

544 Savannah Highway, Charleston, South Carolina 29407
843.762.3554 (phone) 843.377.0111 (fax) www. lafondlaw.com

From: Vin Destaso [<mailto:vindestaso@aol.com>]
Sent: Thursday, June 19, 2014 2:44 PM
To: Ashley Andrews
Subject: Re: 2028 Pittsburgh Ave, N. Charleston, SC

no problem I'm available all day tomorrow

Sent from my iPhone

On Jun 19, 2014, at 2:41 PM, Ashley Andrews <andrews@lafondlaw.com> wrote:

Vincent:

I'm sorry to change the time on short notice but I've had to schedule a meeting this afternoon. Is there a time tomorrow that works with your schedule? I am free after 10:00 am.

Thanks,
Ashley

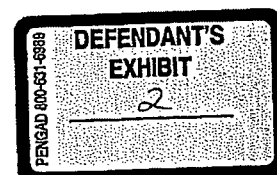
Ashley G. Andrews
VA Accredited Attorney #21951
catherine e. lafond, pa
Elder Law | Real Estate

544 Savannah Highway, Charleston, South Carolina 29407
843.762.3554 (phone) 843.377.0111 (fax) www. lafondlaw.com

From: vindestaso@aol.com [<mailto:vindestaso@aol.com>]
Sent: Thursday, June 19, 2014 1:18 PM
To: Ashley Andrews
Subject: Re: 2028 Pittsburgh Ave, N. Charleston, SC

yes

125



Clarke 000125
461

-----Original Message-----

From: Ashley Andrews <andrews@lafondlaw.com>
To: vindestaso <vindestaso@aol.com>
Sent: Thu, Jun 19, 2014 1:11 pm
Subject: RE: 2028 Pittsburgh Ave, N. Charleston, SC

Vincent:

Will you be available around 3:30 this afternoon?

Ashley

Ashley G. Andrews
VA Accredited Attorney #21951
catherine e. lafond, pa
Elder Law | Real Estate

544 Savannah Highway, Charleston, South Carolina 29407
843.762.3554 (phone) 843.377.0111 (fax) [www. lafondlaw.com](http://www.lafondlaw.com)

From: vindestaso@aol.com [<mailto:vindestaso@aol.com>]
Sent: Thursday, June 19, 2014 8:43 AM
To: Ashley Andrews
Subject: Re: 2028 Pittsburgh Ave, N. Charleston, SC

Ashley,

Give me a call

Vincent
845 406 2206

-----Original Message-----

From: Ashley Andrews <andrews@lafondlaw.com>
To: vindestaso <vindestaso@aol.com>
Sent: Mon, Apr 21, 2014 2:16 pm
Subject: 2028 Pittsburgh Ave, N. Charleston, SC

Mr. Destaso:

Thank you for taking the time to speak to Barry and me last week. Barry wanted me to convey to you that he is ready, willing, and able to purchase the property without owner financing and only mentioned that as an option if you were interested in it.

I have attached the most recent draft of the Agreement for Purchase and Sale. I made a few changes and I added a provision that would allow Barry to lease the property should the property become vacant during the time the contract is contingent (Section 17 and Exhibit B). Barry is concerned that if the property is vacant that the county and/or state may not issue liquor and business licenses in the future. What he proposes is that he lease the property for \$750.00 per month so that he can apply for the licenses. During the time he is leasing the property for \$750.00 he does not intend to operate a business there.

Please let me know if you have any questions for me. Also, please send me a copy of the current lease for 2028 Pittsburgh and the Sol Legare property so that we can review it.

Thanks,
Ashley

126

Ashley G. Andrews

Ashley Andrews

From: vindestaso@aol.com
Sent: Tuesday, July 08, 2014 5:46 PM
To: Ashley Andrews
Subject: Re: 2028 Pittsburgh Ave, N.
Charleston, SC/Barry Clarke

Ashley,

As discussed with Barry last week I have 2 potential buyers for both properties
1 for \$1.25 mil and 1 for \$1.45 (they have to take both and take overhand pay for litigation)

I need to know if Barry is willing to match at least the \$1.25 price
Please call me to discuss

Vincent

-----Original Message-----

From: Ashley Andrews <andrews@lafondlaw.com>
To: vindestaso <vindestaso@aol.com>
Sent: Wed, May 14, 2014 5:21 pm
Subject: 2028 Pittsburgh Ave, N. Charleston, SC/Barry Clarke

Mr. Destaso:

Barry Clarke asked that I re-send the proposed buy/sell agreement for the property located at 2028 Pittsburgh Avenue. The draft that I forwarded to you on April 21st is attached for your review. Please let me know if you have any proposed changes. I look forward to hearing from you.

Thanks,
Ashley

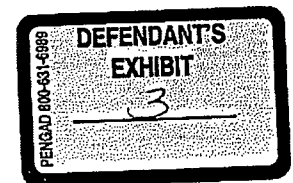
Ashley G. Andrews
VA Accredited Attorney #21951

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843.762.3554 (phone) 843.377.0111 (fax) [www. lafondlaw.com](http://www.lafondlaw.com)

128

Clarke 000128
463

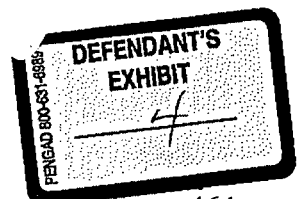


AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

This AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (this "Agreement") is made by and between FINE HOUSING, INC., a New York corporation ("Seller") and Barry Clarke, or his assigns ("Purchaser") as of the Acceptance Date as hereinafter defined. The Seller and Purchaser may be referred to herein individually as "Party" or collectively as "Parties."

For and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

1. Purchase and Sale. Subject to the terms and conditions of this Agreement, Seller hereby agrees to sell and convey to Purchaser, and Purchaser agrees to purchase from Seller, the following described property (the "Property"):
 - 1.1. Land. That certain tract of land (the "Land") consisting of approximately 1.610 acres and located in the North Charleston Public Service District and known as 2028 Pittsburgh Avenue, N. Charleston, South Carolina, being more particularly described in Exhibit A attached hereto and incorporated herein by reference.
 - 1.2. Improvements. All improvements ("Improvements") in and on the Land.
 - 1.3. Tangible Personal Property. All of Seller's right, title and interest in all appliances, fixtures, equipment, machinery, furniture, carpets, and other personal property located on or about the Land and the Improvements.
2. Purchase Price. The purchase price ("Purchase Price") for the Property shall be Six Hundred Fifty Thousand and No/100 (\$650,000.00) Dollars.
3. Earnest Money, Escrow Agent and Escrow Agreements. Purchaser shall pay by check to the Escrow Agent listed below the sum of Fifty Thousand and No/100 (\$50,000.00) Dollars ("Earnest Money") within two (2) days of the Acceptance Date. The Earnest Money shall be held by Catherine E. LaFond, PA, the "Escrow Agent" in a non-interest bearing account. The Earnest Money shall be applied as partial payment of the Purchase Price at Closing or as otherwise provided for herein. Prior to any disbursement by Escrow Agent other than at Closing or as provided in Section 18 below, Escrow Agent shall notify the parties hereto of Escrow Agent's intent to disburse. If Escrow Agent has not received a written objection to such disbursement within five (5) days after such notice, then the making of such disbursement shall discharge Escrow Agent of all further duties and liabilities hereunder. If any party disputes the proposed disbursement and Escrow Agent is unable to resolve the dispute to the Escrow Agent's satisfaction, then Escrow Agent may interplead such Earnest Money with the Clerk of Court of Common Pleas for Charleston County, South Carolina, and upon notifying both the Purchaser and Seller of such action, all duties of the Escrow Agent under the terms of this Agreement shall terminate, except to the extent of accounting for such escrow funds. The parties agree that it shall not constitute a conflict of interest for the Escrow Agent to represent one of the parties in connection with this Agreement. The parties agree that Escrow Agent shall not be liable for anything which it may do or refrain from doing in connection herewith provided that it acts in good faith, and without gross negligence, willful neglect or intentional breach of this Agreement. In the event that the Escrow Agent becomes involved in litigation relating to the Earnest Money, the non-prevailing Party shall be responsible for the payment of the Escrow Agent's reasonable attorney's fees and expenses and for the reasonable attorney's fees and expenses for the prevailing Party. The Earnest Money shall remain in the control of the Escrow Agent until consummation or termination of the sale transaction as contemplated in this Agreement. Purchaser and Seller will indemnify and hold the Escrow Agent harmless from any claims by them relating to the actions of Escrow Agent done in good faith while acting as Escrow Agent under the terms of this Agreement.
4. Acceptance Date. The date of this Agreement ("Acceptance Date") is the date that this Agreement has been fully executed by all parties hereto.



5. Existing Title Issues. The parties acknowledge that there are outstanding issues affecting the marketability of title to the Property. Purchaser shall have a preliminary title examination completed for the Property within thirty (30) days of the Acceptance Date. Purchaser shall then, within five (5) days of receipt of the results of the Title Search, provide Seller with a written notice of such items affecting title to which Purchaser objects. Seller shall then have the opportunity to cure such objections and provide proof of each cure to Purchaser within five (5) days of said cure. Seller shall have an obligation to use its best efforts to cure each and every title objection revealed by the preliminary title examination in a timely manner. Purchaser and Seller agree that if such objections are not cured within two (2) calendar years, that Purchaser may terminate this Agreement and be refunded the Earnest Money and any other amounts paid by Purchaser.
6. Inspection. Purchaser shall have one hundred twenty (120) days from the date the last preliminary title objection is cured to inspect the Property ("Inspection Period"). During the Inspection Period, Purchaser, at Purchaser's expense and discretion, may (i) approve or disapprove a commitment for the issuance of an Owner's Policy of Title Insurance; (ii) conduct a survey of the Property, (iii) obtain a commitment for financing the purchase of the Property, such financing to be accepted in the Purchaser's sole discretion; (iv) conduct economic and feasibility studies to determine, in the Purchaser's sole discretion, if the Property is feasible for Purchaser's intended use; (v) confirm zoning for the Property; (vi) obtain the necessary permits for any improvements to the Property necessary for Purchaser's intended purpose and any other required governmental approvals for the development of the Property for Purchaser's intended use; confirm the availability of utilities; (vii) and conduct such other investigations as the Purchaser, in Purchaser's sole discretion, shall determine to be necessary or appropriate. If Purchaser determines, for any reason or no reason, that the Property is not suitable for its purposes, Purchaser shall have the right to terminate this Agreement by written notice to Seller given on or prior to the expiration of the Inspection Period and have the Earnest Money refunded. The Inspection Period may be extended for up to two (2) thirty (30) day periods (the "Inspection Extension(s)") upon the delivery on or before the then-applicable date of expiration of the Inspection Period by the Purchaser to the Escrow Agent of Five Thousand and No/100 (\$5,000.00) Dollars, which amount shall be non-refundable except in the event of Seller default and to be applicable towards the amount of the Purchase Price, for each Inspection Extension exercised by Purchaser.
7. Seller Deliveries. Within five (5) days of the Acceptance Date, Seller shall deliver to Purchaser copies of the following, if any, in Seller's possession ("Seller Deliveries"): (i) copies of any title insurance policies, commitments and title exception documents; (ii) copies of any surveys, plats, tax maps and site plans; (iii) copies of all environmental reports and soil reports; (iv) copies of any zoning certificates; (v) copies of any letters regarding the availability of utilities; (vi) copies of any and all leases affecting the Property; (vii) any geotechnical reports; and (viii) copies of any and all third party approvals or restrictions applicable to the Property. Seller shall make available to Purchaser for review, at a mutually convenient time, any additional documents pertaining to the Property in Seller's possession.
8. Second Title Examination and Survey Objections. During the Inspection Period, Purchaser shall have a second title examination of the Property performed. Thereafter, Purchaser shall not be required to give notice of objection to liens, mortgages, or other items which may be satisfied by payment at Closing and Seller shall have the obligation to remove any liens which may be removed solely by the payment of money at Closing. In the event the Purchaser disapproves of any particular title or survey item, the Purchaser shall provide to Seller written notice during the Inspection Period of each item in which Purchaser disapproves. Within thirty (30) days after receipt of Purchaser's notice of objection, Seller shall either (i) cure Purchaser's objection to such item; or (ii) if Seller elects not to cure such objection, then Seller must notify Purchaser of such inability or unwillingness to cure in writing. In the event that Seller elects not to cure such objections, then Purchaser shall notify Seller within ten (10) days following Purchaser's receipt of Seller's written election not to cure as to whether Purchaser intends to either: (i) waive the particular objection and continue under the terms of this Agreement, provided that the Purchase Price shall be reduced by an amount equal to the diminution in value associated with the uncured objection; or (ii) terminate this Agreement and be refunded the Earnest Money and any other amounts paid by Purchaser.

9. Closing Date/Closing. The closing (the "Closing" or the "Closing Date") shall be held at the office of the Purchaser's attorney on or before the earlier of the following: (i) forty-five (45) days after the expiration of the Inspection Period and (ii) fifteen (15) days after Purchaser notifies Seller in writing of Purchaser's intent to close. Under mutual agreement of the Parties, the Closing may occur at a sooner date. The Closing Date may be extended for up to two (2) thirty (30) day periods ("the Closing Extension(s)") upon delivery on or before the then-applicable Closing Date by the Purchaser to the Escrow Agent of Five Thousand and No/100 (\$5,000.00) Dollars, which is non-refundable except in the event of Seller default and to be applicable towards the amount of the Purchase Price, for each Closing Extension exercised by Purchaser.
10. Seller's Deliveries at Closing. At closing, Seller shall deliver to Purchaser a General Warranty Deed executed by Seller and conveying the Property to Purchaser subject only to easements, reservations, rights of way, restrictive covenants of record, governmental statutes, ordinances, zoning, and regulations, and ad valorem property taxes not yet due and payable. Seller shall also deliver such other documents as may be reasonable and necessary in the opinion of the Purchaser or its counsel to consummate and close the purchase and sale contemplated herein pursuant to the terms and provisions of this Agreement.
11. Purchaser's Deliveries at Closing. At Closing Purchaser shall deliver to Seller the balance of the Purchase Price in certified and immediately available funds.
12. Closing Costs. Seller shall provide or pay for the preparation of the deed and customary Seller affidavits and certifications, any deed transfer taxes, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing Property.
- Purchaser shall pay the cost of recording the deed, property insurance, appraisal, survey, cost of obtaining loan, title examination, escrow deposits, and prepaid expenses for the Property.
- Any other closing costs shall be adjusted in accordance with local custom for Charleston County, South Carolina. Except as otherwise provided for herein, each Party shall be responsible for his/its own attorney's fees.
13. Prorations and Taxes. Except as otherwise provided herein, all rents, income, utilities, and all other operating expenses and income with respect to the Property, if any, for the month in which the Closing occurs, shall be prorated as of the Closing Date. Subsequent to the Closing, if any such item are actually paid or received, Purchaser and Seller agree to make appropriate adjustments after the Closing. Real estate and personal property taxes and other assessments with respect to the Property for the year in which Closing occurs shall be prorated as of the Closing Date. Property tax pro-rations pursuant to this Agreement are to be based on the most recently tax assessment issued by Charleston County. The payment of roll-back taxes, if any, shall be the responsibility of the Seller. The prorations described in this Section 13 shall be final at Closing.
14. Authority. Any individual executing this Agreement on behalf of a corporation, limited liability company, partnership, limited partnership, trust, estate, or in any other representative capacity: (a) represents and warrants that s/he has been duly authorized to execute and deliver this Agreement as a representative of the party for whom such individual is acting, and that such party has the power and authority to enter into and perform its obligations pursuant to this Agreement; and (b) agrees to deliver to the other party or parties, upon request, appropriate evidence of the existence, power, and authority of the party for whom such individual is acting.
15. Condition of Property. Seller warrants that at Closing the Property will be in the same condition as it is on the Acceptance Date, normal wear and tear excepted, and that Seller neither will do nor will suffer to be done anything that will affect the use of the Property except as otherwise provided in this Agreement. Nevertheless, should the Property be destroyed or substantially damaged in Purchaser's reasonable opinion either physically or through condemnation (or threat thereof) before Closing, then at the election of Purchaser:

(i) Purchaser may void this Agreement; or, (ii) Purchaser may consummate this Agreement and receive such insurance Proceeds or condemnation awards (if any) that are paid.

16. No Other Agreements. From and after the Acceptance Date, Seller hereby agrees that Seller shall not enter into any other agreements to sell, lease, or otherwise convey the Property or any interest in the Property.
17. Successors. This Agreement shall bind and inure to the benefit of the Parties and their respective heirs, executors, representatives, successors, and assigns. Purchaser reserves the right to assign his rights under this Agreement.
18. Termination. If this Agreement is terminated by Purchaser pursuant to the terms of this Agreement (including, without limitation, pursuant to Sections 5, 6, and 8 hereof), the Earnest Money will be refunded by the Escrow Agent to purchaser without further action by or notice to either party within two (2) business days following Escrow Agent's receipt of Purchaser's written notice of termination, and neither party shall have any further obligations under this Agreement except with respect to the obligations that expressly survive termination as provided herein.
19. Default. If Seller breaches this Agreement, Purchaser shall be entitled to the immediate return of the Earnest Money and Purchaser may pursue any and all legal and equitable remedies available to Purchaser, including specific performance. If Purchaser breaches this Agreement, Seller may, as Seller's sole remedy and relief hereunder, terminate this Agreement and thereupon be entitled to receive the Earnest Money as liquidated damages (and not as a penalty). Seller and Purchaser have made the above provision for liquid damages because it would be difficult to calculate, on the Acceptance Date, the amount of actual damages for such breach, and that these sums represent reasonable compensation to Seller for such breach. In the event that the Earnest Money is delivered to Seller as provided herein, upon the return or delivery of the same, the parties hereto shall have no further rights, obligations, or liabilities with respect to each other hereunder, except for such obligations which expressly survive termination as provided herein.
20. Notices. Any notices or deliveries that may be permitted or required hereunder shall be in writing, shall include a copy to all parties listed in this Section 20, and shall be deemed to have been duly given as the date and time that same are: (i) hand delivered; (ii) three (3) days after notice is deposited with the United States Postal Service, Certified Mail, return receipt requested, postage prepaid, and addressed to the parties hereto at the addresses below, or such other addresses as the parties hereto shall from time to time designate to the others by notice in writing and herein provided; or (iii) immediately, if sent via facsimile during regular business hours or at 8:30 a.m. local time on the next business day following an after business hours, weekend, or holiday transmission, provided that receipt of such facsimile is verified by the sender and followed by a notice sent in accordance with one of the other provisions of this Section 20. If any notice or performance date shall be required to be performed on a weekend or legal holiday, then such date automatically shall be extended until 5:00 p.m. Eastern Standard Time on the next regular business day.

Seller: Fine Home, Inc.
Attn: Vincent Destaso

with copy to:

Facsimile:

Facsimile:

Purchaser: Barry Clarke
2162 Westrivers Rd.
Charleston, SC 29412
Facsimile: 843.762.7557

with copy to: Ashley G. Andrews, Esq.
544 Savannah Hwy
Charleston, SC 29407
Facsimile: 843.377.0111

21. Applicable Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of South Carolina, and the parties hereto specifically

agree to submit to and be bound by the jurisdiction of the courts, either federal or state, of the State of South Carolina. Venue for any action brought to enforce this Exchange Agreement shall lie in Charleston County, South Carolina.

22. Time. Time is of the essence of each provision of this Agreement.
23. Facsimile and Other Electronic Means: The Parties agree that this Agreement and any addendum hereto, may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials, and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials, and handwritten or typewritten modifications were present on the documents in the handwriting of each Party.
24. Entire Agreement. This Agreement (including the attached Exhibits and any documents incorporated herein by reference) constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior or contemporaneous agreements or understandings, whether written or oral, which the Parties may have had relating to the subject matter hereof. No modification, alteration, or waiver of any term, condition, or covenant of this Agreement shall be valid unless in writing signed by both parties.
25. Severability. If any term, provision, or any portion thereof, of this Agreement is held to be invalid, void or otherwise unenforceable, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have entered into this Agreement for Purchase and Sale of Real Property effective as of the date it is fully executed by all parties hereto.

SELLER:

Fine Homes, Inc.

Witness

By: Vincent Destaso
Its: _____

PURCHASER:

Witness

Barry Clarke

Escrow terms acknowledged and agreed to by Catherine E. LaFond, PA, Escrow Agent and Escrow Agent acknowledge receipt of the Earnest Money in the amount of \$50,000.00

Witness

Catherine E. LaFond, PA, Escrow Agent
By: _____

6
135

Clarke 000135 469

EXHIBIT A
LEGAL DESCRIPTION

ALL that piece, parcel or tract of land situate, lying and being in Charleston County, South Carolina, known and designated as "Tract AB, 1.610 Acres, Property of Group Investment Company, Inc., TMS 466-16-00-00-011" on a plat entitled, "Plat Showing TMS 466-16-00-011, Being Sub-divided into Tracts 'AB' and 'AB.1,' Property of Group Investment Company, Inc., located North Charleston Public Service District, Charleston County, S.C.," made by Davis & Floyd, Inc., dated January 19, 1989 and recorded in the RMC Office for Charleston County in Plat Book CE, Page 116; said tract having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

BEING the same property conveyed to Fine Housing, Inc. by deed of RRJR, LLC dated December 2, 2013 and recorded December 9, 2013 in the RMC Office for Charleston County in Book 0377 at Page 843.

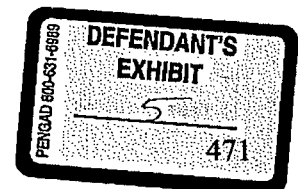
TMS No. 466-16-00-011

AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY

This AGREEMENT FOR PURCHASE AND SALE OF REAL PROPERTY (this "Agreement") is made by and between FINE HOUSING, INC., a New York corporation ("Seller") and Barry Clarke, or his assigns ("Purchaser"), as of the Acceptance Date as hereinafter defined. The Seller and Purchaser may be referred to herein individually as "Party" or collectively as "Parties."

For and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

1. Purchase and Sale. Subject to the terms and conditions of this Agreement, Seller hereby agrees to sell and convey to Purchaser, and Purchaser agrees to purchase from Seller, the following described property (the "Property"):
 - 1.1. Land. That certain tract of land (the "Land") consisting of approximately 1.610 acres and located in the North Charleston Public Service District and known as 2028 Pittsburgh Avenue, N. Charleston, South Carolina, being more particularly described in Exhibit A attached hereto and incorporated herein by reference.
 - 1.2. Improvements. All improvements ("Improvements") in and on the Land.
 - 1.3. Tangible Personal Property. All of Seller's right, title and interest in all appliances, fixtures, equipment, machinery, furniture, carpets, and other personal property located on or about the Land and the Improvements.
2. Purchase Price. The purchase price ("Purchase Price") for the Property shall be Six Hundred Fifty Thousand and No/100 (\$650,000.00) Dollars.
3. Earnest Money, Escrow Agent and Escrow Agreements. Purchaser shall pay by check to the Escrow Agent listed below the sum of Fifty Thousand and No/100 (\$50,000.00) Dollars ("Earnest Money") within two (2) days of the Acceptance Date. The Earnest Money shall be held by Catherine E. LaFond, PA, the "Escrow Agent," in a non-interest bearing account. The Earnest Money shall be applied as partial payment of the Purchase Price at Closing or as otherwise provided for herein. Prior to any disbursement by Escrow Agent other than at Closing or as provided in Section 19 below, Escrow Agent shall notify the parties hereto of Escrow Agent's intent to disburse. If Escrow Agent has not received a written objection to such disbursement within five (5) days after such notice, then the making of such disbursement shall discharge Escrow Agent of all further duties and liabilities hereunder. If any party disputes the proposed disbursement and Escrow Agent is unable to resolve the dispute to the Escrow Agent's satisfaction, then Escrow Agent may interplead such Earnest Money with the Clerk of Court of Common Pleas for Charleston County, South Carolina, and upon notifying both the Purchaser and Seller of such action, all duties of the Escrow Agent under the terms of this Agreement shall terminate, except to the extent of accounting for such escrow funds. The parties agree that it shall not constitute a conflict of interest for the Escrow Agent to represent one of the parties in connection with this Agreement. The parties agree that Escrow Agent shall not be liable for anything which it may do or refrain from doing in connection herewith, provided that it acts in good faith, and without gross negligence, willful neglect or intentional breach of this Agreement. In the event that the Escrow Agent becomes involved in litigation relating to the Earnest Money, the non-prevailing Party shall be responsible for the payment of the Escrow Agent's reasonable attorney's fees and expenses and for the reasonable attorney's fees and expenses for the prevailing Party. The Earnest Money shall remain in the control of the Escrow Agent until consummation or termination of the sale transaction as contemplated in this Agreement. Purchaser and Seller will indemnify and hold the Escrow Agent harmless from any claims by them relating to the actions of Escrow Agent done in good faith while acting as Escrow Agent under the terms of this Agreement.
4. Acceptance Date. The date of this Agreement ("Acceptance Date") is the date that this Agreement has been fully executed by all parties hereto.



5. Existing Title Issues. The parties acknowledge that there are outstanding issues affecting the marketability of title to the Property. Purchaser shall have a preliminary title examination completed for the Property within thirty (30) days of the Acceptance Date. Purchaser shall then, within five (5) days of receipt of the results of the Title Search, provide Seller with a written notice of such items affecting title to which Purchaser objects. Seller shall then have the opportunity to cure such objections and provide proof of each cure to Purchaser within five (5) days of said cure. Seller shall have an obligation to use its best efforts to cure each and every title objection revealed by the preliminary title examination in a timely manner. Purchaser and Seller agree that if such objections are not cured within two (2) calendar years, that Purchaser may terminate this Agreement and be refunded the Earnest Money and any other amounts paid by Purchaser.
6. Inspection. Purchaser shall have one hundred twenty (120) days from the date the last preliminary title objection is cured to inspect the Property ("Inspection Period"). During the Inspection Period, Purchaser, at Purchaser's expense and discretion, may (i) approve or disapprove a commitment for the issuance of an Owner's Policy of Title Insurance; (ii) conduct a survey of the Property, (iii) obtain a commitment for financing the purchase of the Property, such financing to be accepted in the Purchaser's sole discretion; (iv) conduct economic and feasibility studies to determine, in the Purchaser's sole discretion, if the Property is feasible for Purchaser's intended use; (v) confirm zoning for the Property; (vi) obtain the necessary permits for any improvements to the Property necessary for Purchaser's intended purpose and any other required governmental approvals for the development of the Property for Purchaser's intended use; confirm the availability of utilities; (vii) and conduct such other investigations as the Purchaser, in Purchaser's sole discretion, shall determine to be necessary or appropriate. If Purchaser determines, for any reason or no reason, that the Property is not suitable for its purposes, Purchaser shall have the right to terminate this Agreement by written notice to Seller given on or prior to the expiration of the Inspection Period and have the Earnest Money refunded. The Inspection Period may be extended for up to two (2) thirty (30) day periods (the "Inspection Extension(s)") upon the delivery on or before the then-applicable date of expiration of the Inspection Period by the Purchaser to the Escrow Agent of Five Thousand and No/100 (\$5,000.00) Dollars, which amount shall be non-refundable except in the event of Seller default and to be applicable towards the amount of the Purchase Price, for each Inspection Extension exercised by Purchaser.
7. Seller Deliveries. Within five (5) days of the Acceptance Date, Seller shall deliver to Purchaser copies of the following, if any, in Seller's possession ("Seller Deliveries"): (i) copies of any title insurance policies, commitments and title exception documents; (ii) copies of any surveys, plats, tax maps and site plans; (iii) copies of all environmental reports and soil reports; (iv) copies of any zoning certificates; (v) copies of any letters regarding the availability of utilities; (vi) copies of any and all leases affecting the Property; (vii) any geotechnical reports; and (viii) copies of any and all third party approvals or restrictions applicable to the Property. Seller shall make available to Purchaser for review, at a mutually convenient time, any additional documents pertaining to the Property in Seller's possession.
8. Second Title Examination and Survey Objections. During the Inspection Period, Purchaser shall have a second title examination of the Property performed. Thereafter, Purchaser shall not be required to give notice of objection to liens, mortgages, or other items which may be satisfied by payment at Closing and Seller shall have the obligation to remove any liens which may be removed solely by the payment of money at Closing. In the event the Purchaser disapproves of any particular title or survey item, the Purchaser shall provide to Seller written notice during the Inspection Period of each item in which Purchaser disapproves. Within thirty (30) days after receipt of Purchaser's notice of objection, Seller shall either (i) cure Purchaser's objection to such item; or (ii) if Seller elects not to cure such objection, then Seller must notify Purchaser of such inability or unwillingness to cure in writing. In the event that Seller elects no to cure such objections, then Purchaser shall notify Seller within ten (10) days following Purchaser's receipt of Seller's written election not to cure as to whether Purchaser intends to either: (i) waive the particular objection and continue under the terms of this Agreement, provided that the Purchase Price shall be reduced by an amount equal to the diminution in value associated with the uncured objection; or (ii) terminate this Agreement and be refunded the Earnest Money and any other amounts paid by Purchaser.

9. Closing Date/Closing. The closing (the "Closing" or the "Closing Date") shall be held at the office of the Purchaser's attorney on or before the earlier of the following: (i) forty-five (45) days after the expiration of the Inspection Period and (ii) fifteen (15) days after Purchaser notifies Seller in writing of Purchaser's intent to close. Under mutual agreement of the Parties, the Closing may occur on a sooner date. The Closing Date may be extended for up to two (2) thirty (30) day periods ("the Closing Extension(s)") upon delivery on or before the then-applicable Closing Date by the Purchaser to the Escrow Agent of Five Thousand and No/100 (\$5,000.00) Dollars, which is non-refundable except in the event of Seller default and to be applicable towards the amount of the Purchase Price, for each Closing Extension exercised by Purchaser.
10. Seller's Deliveries at Closing. At closing, Seller shall deliver to Purchaser a General Warranty Deed executed by Seller and conveying the Property to Purchaser subject only to easements, reservations, rights of way, restrictive covenants of record, governmental statutes, ordinances, zoning, and regulations, and ad valorem property taxes not yet due and payable. Seller shall also deliver such other documents as may be reasonable and necessary in the opinion of the Purchaser or its counsel to consummate and close the purchase and sale contemplated herein pursuant to the terms and provisions of this Agreement.
11. Purchaser's Deliveries at Closing. At Closing Purchaser shall deliver to Seller the balance of the Purchase Price in certified and immediately available funds.
12. Closing Costs. Seller shall provide or pay for the preparation of the deed and customary Seller affidavits and certifications, any deed transfer taxes, any recording charge based on value of property, and all costs necessary to deliver a marketable title, including recording of satisfactions and property taxes to the day of closing Property.
- Purchaser shall pay the cost of recording the deed, property insurance, appraisal, survey, cost of obtaining loan, title examination, escrow deposits, and prepaid expenses for the Property.
- Any other closing costs shall be adjusted in accordance with local custom for Charleston County, South Carolina. Except as otherwise provided for herein, each Party shall be responsible for his/its own attorney's fees.
13. Prorations and Taxes. Except as otherwise provided herein, all rents, income, utilities, and all other operating expenses and income with respect to the Property, if any, for the month in which the Closing occurs, shall be prorated as of the Closing Date. Subsequent to the Closing, if any such item are actually paid or received, Purchaser and Seller agree to make appropriate adjustments after the Closing. Real estate and personal property taxes and other assessments with respect to the Property for the year in which Closing occurs shall be prorated as of the Closing Date. Property tax pro-rations pursuant to this Agreement are to be based on the most recently tax assessment issued by Charleston County. The payment of roll-back taxes, if any, shall be the responsibility of the Seller. The prorations described in this Section 13 shall be final at Closing.
14. Authority. Any individual executing this Agreement on behalf of a corporation, limited liability company, partnership, limited partnership, trust, estate, or in any other representative capacity: (a) represents and warrants that s/he has been duly authorized to execute and deliver this Agreement as a representative of the party for whom such individual is acting, and that such party has the power and authority to enter into and perform its obligations pursuant to this Agreement; and (b) agrees to deliver to the other party or parties, upon request, appropriate evidence of the existence, power, and authority of the party for whom such individual is acting.
15. Condition of Property. Seller warrants that at Closing the Property will be in the same condition as it is on the Acceptance Date, normal wear and tear excepted, and that Seller neither will do nor will suffer to be done anything that will affect the use of the Property except as otherwise provided in this Agreement. Nevertheless, should the Property be destroyed or substantially damaged in Purchaser's reasonable opinion either physically or through condemnation (or threat thereof) before Closing, then at the election of Purchaser:

(i) Purchaser may void this Agreement; or, (ii) Purchaser may consummate this Agreement and receive such insurance Proceeds or condemnation awards (if any) that are paid.

16. No Other Agreements. From and after the Acceptance Date, Seller hereby agrees that Seller shall not enter into any other agreements to sell, lease, or otherwise convey the Property or any interest in the Property.
17. Purchaser's Option to Lease Property. The parties acknowledge that if the Property is vacant that it may affect Purchaser's ability to obtain permits and licenses, namely alcohol beverage licensing. For that reason, if the current tenant vacates the Property, Purchaser shall have the option to lease the Property according to the terms of Exhibit B attached hereto and incorporated herein by reference.
18. Successors. This Agreement shall bind and inure to the benefit of the Parties and their respective heirs, executors, representatives, successors, and assigns. Purchaser reserves the right to assign his rights under this Agreement.
19. Termination. If this Agreement is terminated by Purchaser pursuant to the terms of this Agreement (including, without limitation, pursuant to Sections 5, 6, and 8 hereof), the Earnest Money will be refunded by the Escrow Agent to purchaser without further action by or notice to either party within two (2) business days following Escrow Agent's receipt of Purchaser's written notice of termination, and neither party shall have any further obligations under this Agreement except with respect to the obligations that expressly survive termination as provided herein.
20. Default. If Seller breaches this Agreement, Purchaser shall be entitled to the immediate return of the Earnest Money and Purchaser may pursue any and all legal and equitable remedies available to Purchaser, including specific performance. If Purchaser breaches this Agreement, Seller may, as Seller's sole remedy and relief hereunder, terminate this Agreement and thereupon be entitled to receive the Earnest Money as liquidated damages (and not as a penalty). Seller and Purchaser have made the above provision for liquid damages because it would be difficult to calculate, on the Acceptance Date, the amount of actual damages for such breach, and that these sums represent reasonable compensation to Seller for such breach. In the event that the Earnest Money is delivered to Seller as provided herein, upon the return or delivery of the same, the parties hereto shall have no further rights, obligations, or liabilities with respect to each other hereunder, except for such obligations which expressly survive termination as provided herein.
21. Notices. Any notices or deliveries that may be permitted or required hereunder shall be in writing, shall include a copy to all parties listed in this Section 21, and shall be deemed to have been duly given as the date and time that same are: (i) hand delivered; (ii) three (3) days after notice is deposited with the United States Postal Service, Certified Mail, return receipt requested, postage prepaid, and addressed to the parties hereto at the addresses below, or such other addresses as the parties hereto shall from time to time designate to the others by notice in writing and herein provided; or (iii) immediately, if sent via facsimile during regular business hours or at 8:30 a.m. local time on the next business day following an after business hours, weekend, or holiday transmission, provided that receipt of such facsimile is verified by the sender and followed by a notice sent in accordance with one of the other provisions of this Section 20. If any notice or performance date shall be required to be performed on a weekend or legal holiday, then such date automatically shall be extended until 5:00 p.m. Eastern Standard Time on the next regular business day.

Seller: Fine Home, Inc.
Attn: Vincent Destaso

with copy to:

Facsimile: _____

Facsimile: _____

Purchaser: Barry Clarke
2162 Westrivers Rd.
Charleston, SC 29412
Facsimile: 843.762.7557

with copy to: Ashley G. Andrews, Esq.
544 Savannah Hwy
Charleston, SC 29407
Facsimile: 843.377.0111

22. Applicable Law. This Agreement and the rights and obligations of the parties hereunder shall be governed by and construed in accordance with the laws of the State of South Carolina, and the parties hereto specifically agree to submit to and be bound by the jurisdiction of the courts, either federal or state, of the State of South Carolina. Venue for any action brought to enforce this Exchange Agreement shall lie in Charleston County, South Carolina.
23. Time. Time is of the essence of each provision of this Agreement.
24. Facsimile and Other Electronic Means: The Parties agree that this Agreement and any addendum hereto, may be communicated by use of a fax or other secure electronic means, including but not limited to electronic mail and the internet, and the signatures, initials, and handwritten or typewritten modifications to any of the foregoing shall be deemed to be valid and binding upon the parties as if the original signatures, initials, and handwritten or typewritten modifications were present on the documents in the handwriting of each Party.
25. Confidentiality. Notwithstanding Section 26 below, without the prior written consent of the other party, neither Seller nor Purchaser will disclose to any person or entity, other than their legal counsel, a proposed lender, or other agents with a need to know such information, the terms or conditions of this Agreement.
26. Memorandum of Agreement. The parties agree to execute a memorandum of this Agreement in recordable form, and to cause the recordation of the same in the RMC Office for Charleston County, memorializing this Agreement.
27. Entire Agreement. This Agreement (including the attached Exhibits and any documents incorporated herein by reference) constitutes the entire agreement between the Parties with respect to the subject matter hereof and supersedes any prior or contemporaneous agreements or understandings, whether written or oral, which the Parties may have had relating to the subject matter hereof. No modification, alteration, or waiver of any term, condition, or covenant of this Agreement shall be valid unless in writing signed by both parties.
28. Severability. If any term, provision, or any portion thereof, of this Agreement is held to be invalid, void or otherwise unenforceable, the remainder of this Agreement shall not be affected thereby, and each term, provision, covenant or condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

IN WITNESS WHEREOF, the parties have entered into this Agreement for Purchase and Sale of Real Property effective as of the date it is fully executed by all parties hereto.

SELLER:

Fine Homes, Inc.

Date: _____

Witness _____

By: Vincent Destaso

Its: _____

PURCHASER:

Witness

Barry Clarke

Date: _____

Escrow terms acknowledged and agreed to by Catherine E. LaFond, PA, Escrow Agent and Escrow Agent acknowledge receipt of the Earnest Money in the amount of \$50,000.00

Witness

Catherine E. LaFond, PA, Escrow Agent
By: _____

Date: _____

EXHIBIT A
LEGAL DESCRIPTION

ALL that piece, parcel or tract of land situate, lying and being in Charleston County, South Carolina, known and designated as "Tract AB, 1.610 Acres, Property of Group Investment Company, Inc., TMS 466-16-00-00-011" on a plat entitled, "Plat Showing TMS 466-16-00-011, Being Sub-divided into Tracts 'AB' and 'AB.1,' Property of Group Investment Company, Inc., located North Charleston Public Service District, Charleston County, S.C.," made by Davis & Floyd, Inc., dated January 19, 1989 and recorded in the RMC Office for Charleston County in Plat Book CE, Page 116; said tract having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

BEING the same property conveyed to Fine Housing, Inc. by deed of RRJR, LLC dated December 2, 2013 and recorded December 9, 2013 in the RMC Office for Charleston County in Book 0377 at Page 843.

TMS No. 466-16-00-011

EXHIBIT B
LEASE FOR COMMERCIAL PROPERTY

THIS LEASE FOR COMMERCIAL PROPERTY, made and entered into this ____ day of _____, 201__, by and between Fine Homes, Inc. ("Landlord") and Barry Clarke, or his assigns ("Tenant"). The Landlord and Tenant may be referred to herein individually as "Party" or collectively as "Parties."

For and in consideration of the mutual covenants and agreements herein contained, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties hereby agree as follows:

1. Premises and Term. Landlord leases to Tenant the real property known as 2028 Pittsburgh Avenue, N. Charleston, South Carolina, being more particularly described in Exhibit A attached hereto and incorporated herein by reference, together with all improvements thereon, and all rights, and appurtenances thereto, for a term beginning on the ____ day of _____, 201__, and ending two (2) calendar years from said date. If this lease is still in full force and effect on the date of expiration of the then current term and Tenant has not defaulted in the fulfillment of its obligations pursuant to this lease, Tenant shall have the option to extend the term of this Lease for two (2) successive periods of two (2) calendar years.
2. Rent. Tenant agrees to pay Landlord as rent Seven Hundred Fifty and No/100 (\$750.00) Dollars per month, in advance, commencing on the ____ day of _____, 201__, and on the first (1st) day of each month thereafter, during the term of this lease. Rent for any partial month shall be prorated on a per diem basis. Any Rent or other payments due hereunder which are not received by Landlord within ten (10) days following the date specified herein, shall be subject to a late charge of ten (10%) percent of the amount then due, compounded monthly, and shall be deemed to be additional rent due hereunder.
3. Assignment and Subletting. No assignment or subletting shall be effective without the prior written consent of Landlord, which consent shall not be unreasonably withheld.
4. Insurance. Landlord and Tenant agree to insure their respective real and personal property for the full insurable value. To the extent permitted by their policies, Landlord and Tenant waive all rights of recovery against each other.
5. Liability for Damage. Each Party shall be liable to the other for all damage to the property of the other negligently, recklessly, or intentionally caused by that Party, their agents, employees, or invitees).
6. Tenant Default. Each of the following shall constitute an event of default by Tenant: 1) failure to pay rent when due; 2) failure to observe or perform any duties, obligations, agreements, or conditions pursuant to the terms of this lease; 4) institution of voluntary bankruptcy proceedings by Tenant
7. Notice of Default. Landlord shall give Tenant a written notice specifying the default and giving Tenant ten (10) days in which to cure the default. If there is a default (other than for nonpayment of a monetary obligation of Tenant, including rent) that cannot be remedied in ten (10) days by diligent efforts of Tenant, Tenant shall propose an additional period of time in which to remedy the default. Consent to additional time shall not be unreasonably withheld by Landlord
8. Landlord Remedies. In the event Tenant has not remedied a default in a timely manner, Landlord may proceed with all available remedies at law or in equity, including but not limited to termination

9. Notices. All payment of rent and notices shall be given to the Parties at the following addresses:

Landlord: Fine Home, Inc.
Attn: Vincent Destaso

with copy to:

Facsimile:

Facsimile:

Tenant: Barry Clarke
2162 Westrivers Rd.
Charleston, SC 29412
Facsimile: 843.762.7557

with copy to: Ashley G. Andrews, Esq.
544 Savannah Hwy
Charleston, SC 29407
Facsimile: 843.377.0111

10. Memorandum of Lease. The parties agree to execute a memorandum of this lease in recordable form, and to cause the recordation of the same in the RMC Office for Charleston County, memorializing this Agreement.

IN WITNESS WHEREOF, the parties have entered into this Lease for Commercial Property as of the date first written above.

Landlord:

Fine Homes, Inc.

Witness

By: Vincent Destaso

Its:

Tenant:

Witness

Barry Clarke

BELK, COBB, INFINGER AND GOLDSTEIN, P.A.

Harry C. Belk (1919-2003)

Dale T. Cobb, Jr.
dtcobb@att.net

Peggy M. Infinger
pinfinger@cobblaw.net

Thomas R. Goldstein
tgoldstein@cobblaw.net

ATTORNEYS AT LAW
2344 COSGROVE AVENUE
CHARLESTON, SC 29405

Mailing Address:
P.O. Box 71121
Charleston, SC
zip 29415-1121
Ph: (843) 554-4291
Fax: (843) 554-5566

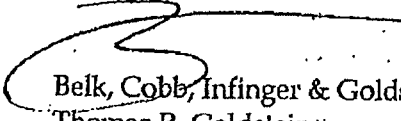
April 13, 2015

Mr. Charles S. Altman
Altman & Coker, L.L.C.
575 King Street
Suite A
Charleston, S. C. 29403

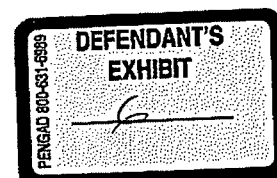
Dear Charlie,

I see that your litigation with Robin Robinson came to an end by consent stipulation of dismissal filed January 9, 2015. As you are aware, my client, Barry Clarke, has a lease. The lease (recorded January 27, 1999, at Deed Book C 319 at Page 791) a copy of which I enclose for your convenience, contains a right of first refusal to purchase the property. We were aware that Robin Robinson was contesting your client's purchase of the property. In her pleadings, she alleged that it was not a sale, but rather collateral to secure a loan. It appears that in light of the January 9th Stipulation of Dismissal, that legal issue has been laid to rest, and there is no longer a challenge to your client claiming he purchased the property from Robin rather than foreclosing on a loan as she raised in her answer in the *Robinson v. Fine Housing, Inc.* (2014-CP-10-1035) case. In the run-up to the *Robinson* case, I sent your client a copy of the lease, and therefore he is aware that the property is subject to my client's right of first refusal. We suspected that we might be drawn in to your litigation as a result of that, but we were not. Under the right of first refusal, we can demand that your client convey the property to us for \$150,001.00. Therefore, we are now exercising our right of first refusal, and we are prepared to tender to your client the sum of \$150,001.00. Please let us know when we can schedule a closing in order to avoid the potential for conflict between us and leave your client with a clear path to liquidating the waterfront property, which is far more valuable. Having been involved in a few adult businesses, I am assuming that your client will be relieved from the responsibility of attempting to monitor the activities of an adult business from a distance. Please look over the enclosed and let me know how you propose to address the right of first refusal. With kind regards, I am

Very truly yours,


Belk, Cobb, Infinger & Goldstein, P.A.
Thomas R. Goldstein

TRG/rt



Fine Housing 000145

08-4249

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

AFFIDAVIT OF BARRY CLARKE

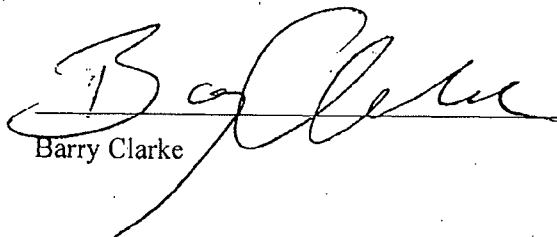
BY JULIE ARMSTRONG
CLERK OF COURT

2010 NOV 23 PM 4:24

FILED

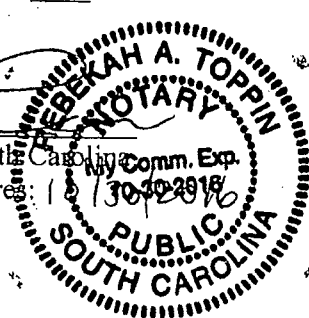
Personally appeared before me, being duly sworn, does depose and say that:

I am the tenant for a parking lot for which I entered into a written lease with the Defendant on January 8, 1999. Thereafter, the Defendant and I developed a disagreement, stemming from our inability to come to terms on another lease for premises located at 2015 Pittsburgh Avenue. When we could not come to terms on the 2015 Pittsburgh Avenue lease, the defendant retaliated by refusing to accept my rent payments for the parking lot and took the position that I had failed to pay the rent. In fact I have always paid the rent on time as copies of the attached checks show. Every month I would bring rent payment to Terry Hill, as manager of Diamonds, located at 2015 Pittsburgh Avenue for approximately 5 years. Always accepted and cashed payments every month though his manager, Terry Hill, until the \$1,000.00 payment in full for the year was paid up front and then the defendant went to great lengths to refuse to accept the rent payments and finally stopped cashing the rent checks. I have always paid the rent on time and have never been in arrearage. The only reason an arrearage exists is because the Defendant has refused to either accept the tender or to cash the check when tendered. Further your deponent sayeth not.


Barry Clarke

Sworn to before me this 19
November 2010


Notary Public for South Carolina
My Commission expires: 12/30/2016



THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge

Case No. 2015-CP-10-03038

FILED
2017 NOV -2 AM 11:13
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Barry Clarke,

Plaintiff/Respondent,

v.

Fine Housing, Inc. and RRJR,
LLC

Defendants

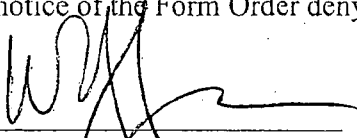
Of which Fine Housing, Inc. is the

Appellant.

NOTICE OF APPEAL

Fine Housing, Inc. appeals the Order of the Honorable J. C. Nicholson, Jr. dated September 28, 2017 and the SCRCR Rule 59(e) motion having been denied by Form Order on October 20, 2017. Appellant received written notice of the Form Order denying the SCRCR Rule 59(e) Motion on October 26, 2017.

October 31, 2017



W. Cliff Moore, III
Kirby D. Shealy III
Adams and Reese LLP
Post Office Box 2285
Columbia, S.C. 29202
P: 803-254-4190
Attorneys for Appellant

Other Counsel of Record:

Thomas R. Goldstein
Belk, Cobb, Infinger and Goldstein, P.A.
Post Office Box 71121
Charleston, S.C. 29415
P: 843-554-4291
Attorneys for Respondent

Ashley G. Andrews
LaFond Law Group, PA
544 Savannah Hwy.
Charleston, SC 29407
P: 843-762-3554

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge

Case No. 2015-CP-10-03038

FILED
31 NOV -2 AM 11:13
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Barry Clarke,

Plaintiff/Respondent,

v.

Fine Housing, Inc. and RRJR,
LLC

Defendants

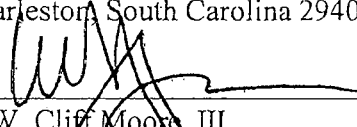
Of which Fine Housing, Inc. is the

Appellant.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal on Barry Clarke by depositing a copy of it in the United States Mail, postage prepaid, on October 31, 2017, addressed to his attorneys of record, Thomas R. Goldstein, Post Office Box 71121, Charleston, South Carolina, 29415, and Ashley G. Andrews, 544 Savannah Hwy., Charleston, South Carolina 29407.

October 31, 2017



W. Cliff Moore III
Kirby D. Shealy III
Adams and Reese LLP
Post Office Box 2285
Columbia, S.C. 29202
P: 803-254-4190
Attorneys for Appellant

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge

Case No.: ²⁰¹⁵2016-CP-10-03038

FILED
2017 NOV 14 PM 2:02
JULIE J. ARISTRONG
CLERK OF COURT

Barry Clarke,.....Respondent/Appellant,

v.

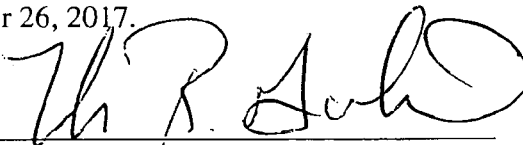
Fine Housing, Inc. and RRJR, L.L.C.
of whom

Fine Housing is the Appellant/Respondent.

NOTICE OF CROSS APPEAL

Barry Clarke cross appeals the Order of the Honorable J. C. Nicholson, Jr., dated September 28, 2017, the final order having been finally decided by Order dated October 20, 2017, received by counsel of record on October 26, 2017.

November 10, 2017



Thomas R. Goldstein, S. C. Bar #2186
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 71121
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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

J. C. Nicholson, Jr., Circuit Court Judge

Case No.: 2016-CP-10-03038
2015

FILED
2017 NOV 14 PM 2:02
JULIE A. ARMSTRONG
CLERK OF COURT
BY _____

Barry Clarke,.....Respondent/Appellant,

v.

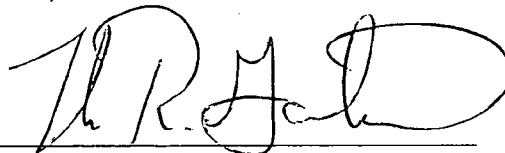
Fine Housing, Inc. and RRJR, L.L.C.
of whom

Fine Housing is the Appellant/Respondent.

CERTIFICATE OF SERVICE

I certify that I served the above Notice of Cross Appeal on the appellant, Fine Housing, Inc., by depositing a copy of it in the United States mail, postage prepaid, on November 10, 2017, addressed to its attorneys of record, W. Cliff Moore, III at Post Office Box 2285, Columbia, South Carolina 29202 this 10th day of November 26, 2017.

November 10, 2017



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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,



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