RECEIVED
AUG 16 2021
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

The Honorable W. Haigh Porter, Special Referee

Appellate Case No. 2021-000340

Avatar Partners, CT, LLC, Respondent,

v.

HSGCHG Investments, LLC, f/k/a Carolina Entertainment Complex, LLC, Partners 95 LLC, Oil Barons, Inc., and Robert D. Hartmann, Sr., Appellants.

INITIAL BRIEF OF RESPONDENT

Magalie A. Creech (S.C. Bar 78855)
FINKEL LAW FIRM LLC
4000 Faber Place Drive, Suite 450
N. Charleston, South Carolina 29405
Telephone: (843) 577-5460
mcreech@finkellaw.com
Attorneys for Respondent

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Statutes:

Rules:

Treatises:

STATEMENT OF ISSUES ON APPEAL

I. Did the Circuit Court properly deny Appellants' Motion to Dismiss or in the Alterative for an Equitable Stay because there is no commonality of jurisdiction between the Connecticut and South Carolina Actions and the relief sought is not the same?

II. Did Special Referee correctly determine that Appellants' defense of marshalling assets was not supported under South Carolina law?

III. Did the Special Referee correctly conclude that Respondent had standing to foreclose the mortgage?

IV. Did the Special Referee properly exercise his discretion in admitting Respondent's payoff of the subject loan into evidence?

V. Did the Special Referee appropriately conclude that Respondent's statutory and contractual rights to foreclose the mortgage defeated any equitable argument by Appellants to sell the property in lots or parcels?

STATEMENT OF THE CASE

This is an appeal from two orders in a commercial mortgage foreclosure. The first appealed order is an Order denying Appellants' Motion to Dismiss the foreclosure action (the "South Carolina Action") under Rule 12(b)(8), SCRCP, on the grounds that a foreclosure action between Respondent and Appellants involving the same commercial note and guaranty was pending in Connecticut (the "Connecticut Action").[1] Alternatively, Appellants sought an equitable stay of the South Carolina Action pending the conclusion of the Connecticut Action. The second appealed order is the Order and Judgment of Foreclosure and Sale entered after the case was tried before the Honorable W. Haigh Porter as Special Referee for Marion County.

Respondent commenced a commercial mortgage foreclosure action against Appellants by the filing of a Lis Pendens, Summons, and Complaint on December 17, 2019. (Initial Pleadings, R. ___). The property encumbered by the mortgage is approximately 248.52 acres in Marion County formerly known as the Carolina Amphitheatre, and is owned by Appellant HSGCHG Investments, LLC. (Lis Pendens, R. ___). Respondent's Complaint alleged that Appellants Partners 95, LLC, Oil Barons Inc., and HSGCHG Investments, LLC executed and delivered a promissory note in the amount of $2,000,000.00 to Avatar Capital Finance, LLC. (Compl. ¶6, R. ___). The Complaint further alleged the note was secured by a guaranty from Appellant Robert D. Hartmann (Compl. ¶ 19-20, R. ____) and a mortgage given by Appellant HSGCHG Investments, LLC (Compl. ¶ 7, R. ____). Through a series of assignments, Avatar Capital Finance, LLC assigned its interest in the mortgage to a number of individuals, who subsequently assigned their interests to Respondent, Avatar Partners, CT, LLC. (Compl. ¶10(a)-(d), R. ___;

[1] Respondent commenced a foreclosure action against Appellants in the Superior Court, New Haven Judicial District on June 20, 2019. Appellants answered and asserted counterclaims.

Judgment ¶7(f)(i)-(iv), ¶22 R. ___).[2] The parties modified the terms of the agreement, which increased the unpaid principal balance to $3,500,000.00 and extended the maturity date to June 30, 2018. (Compl. ¶11, R. ___). The loan matured pursuant to its terms without payment from Appellants, and Respondent declared the entire balance due and payable. (Comp. ¶ 15, R. ___).

Appellants moved to dismiss the foreclosure pursuant to Rule 12(b)(8), SCRCP or, alternatively, sought an equitable stay pending a ruling in the Connecticut Action. (Motion to Dismiss, R. ¶ ___). After considering the parties' submissions and oral argument (Response, R. ___; Reply to Response, R. __), the circuit court denied Appellants' Motion. (Order Denying Motion to Dismiss, R. ___).

On July 14, 2020, Appellants filed an Answer admitting the execution of the loan instruments and default in payments, but citing insufficient information regarding the amounts due and owing. (Answer ¶5, 7, 13-14, R. ___). The Answer raised "marshaling assets" and "order of sale" as Appellants' only defenses, based on the allegation that the subject property's value is "vastly greater than the debt." (Answer ¶23-32, R. ___). With respect to the defense of "marshaling assets," Appellants requested that Respondent be required to accept the subject property in full satisfaction of the note rather than to force a sale. (Answer ¶30, R. ___). Alternatively, Appellants asked that the subject property be sold before Respondent attempts to sell the properties at issue in the Connecticut Action. (Answer ¶30, R. ___). Regarding Appellants' defense titled "order of sale," they repeated the same allegations in the preceding defense but requested that Respondent be required to satisfy the Connecticut mortgages if the subject property is sold and is of sufficient value to satisfy the debt. (Answer ¶32, R. ___).

[2] The amounts assigned and execution dates of the assignments form the basis of Appellants' third issue on appeal, and are addressed in further detail in section III.

The case was referred to the Honorable W. Haigh Porter as Special Referee for Marion County (Order of Reference, R. ___) and tried on December 14, 2020. The Special Referee entered an Order and Judgment of Foreclosure and Sale establishing the debt amount at $5,378.468.34. (Judgment ¶ 42, R. ___).

Appellants filed a Notice of Appeal of the Order Denying Appellants' Motion to Dismiss and the Order and Judgment of Foreclosure and Sale on April 8, 2021. (Not. Appeal, R. ___).

STANDARD
(Issues I, II, III, and V)

"A mortgage foreclosure is an action in equity." *United States Bank Trust Nat'l Ass'n v. Bell*, 385 S.C. 364, 373, 684 S.E.2d 199, 204 (Ct. App. 2009). "In an appeal from an action in equity, tried by a judge alone, this Court may find facts in accordance with its own view of the preponderance of the evidence." *Lowcountry Open Land Trust v. Charleston Southern Univ.*, 376 S.C. 399, 407, 656 S.E.2d 775, 779 (Ct. App. 2008). "However, this broad scope of review does not require an appellate court to disregard the findings below or ignore the fact that the trial judge is in the better position to assess the credibility of the witnesses." *Bell*, 385 S.C. at 373, 684 S.E.2d at 204 (*quoting Pinckney v. Warren*, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001)). "Moreover, the appellant is not relieved of his burden of convincing the appellate court the trial judge committed error in his findings." *Id.*

STANDARD
(Issue IV)

"The admission of evidence is within the trial court's discretion, and the trial court's decision will not be reversed on appeal absent an abuse of discretion." *Magnolia North Property Owners' Ass'n v. Heritage Communities, Inc.*, 397 S.C. 348, 360, 725 S.E.2d 112, 119 (Ct. App. 2012). "An abuse of discretion occurs when the decision of the trial court is unsupported by the

evidence or controlled by an error of law." *Maybank v. BB&T Corp.*, 416 S.C. 541, 567, 787 S.E.2d 498, 31 (2016).

ARGUMENT

I. The Circuit Court properly denied Appellants' Motion to Dismiss or in the Alterative for an Equitable Stay because there is no commonality of jurisdiction between the Connecticut and South Carolina Actions and the relief sought is not the same.

While the South Carolina and Connecticut Actions center upon the same commercial promissory note and guaranty, the security instruments recorded in each state are separate and distinct and can only be foreclosed within their respective jurisdiction. The Circuit Court correctly found a dismissal under Rule 12(b)(8) was not appropriate because no commonality of jurisdiction existed and the claims in both actions are not the same.

In South Carolina, dismissal under Rule 12(b)(8) may be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim. See Rule 12(b)(8), SCRCP. "[A]n action may be pleaded in abatement of a second suit only when between the same parties and in the same jurisdiction and with the same object." *Poston v. Homes Ins. Co. of N.Y.*, 191 S.C. 314, 317–18, 4 S.E.2d 261, 262 (1939). Rule 12(b)(8) has historic ties to a former statute permitting a defendant an opportunity to demur; a statute which our Supreme Court interpreted narrowly, stating that it "only applied when there was identity of the parties, causes of action and relief." *Capital City Ins. Co v. BP Staff, Inc.*, 283 S.C. 92, 105-6, 674 S.E.2d 524, 531 (Ct. App. 2009); s*ee also Cricket Cove Ventures, LLC v. Gilliland*, 390 S.C. 312 (Ct. App. 2010) (reversing 12(b)(8) dismissal where civil conspiracy claim against party in its individual capacity was neither "precisely the same" nor "substantially the same" as any claim in the first proceeding).

Appellants' argument that the "only difference between the two lawsuits is the collateral - property in South Carolina and Connecticut" is incorrect: the security instruments, jurisdiction, and relief requested are different in both cases and therefore preclude application of Rule 12(b)(8) by its very language. In denying Appellants' alternative request for an equitable stay, the Circuit Court aptly noted that South Carolina law may provide the parties different claims and defenses than are available in Connecticut and the foreclosure of the Marion County mortgage must necessarily be adjudicated by a South Carolina court. *See United States v. Little Lake Misere Land Co.*, 412 U.S. 580, 93 S.Ct. 2389, 37 L.E.2d 187 (S.Ct. 1973) (recognizing that state law governs real property transactions); *see also Butner v. United States*, 440 U.S. 48, 99 S. Ct. 914, 59 L. Ed.2d 136 (1979) (for proposition that state law governs the determination of property rights, including the nature, validity, and perfection of security interests in personal property). Thus, the Circuit Court appropriately determined that Appellants were not prejudiced by having to litigate in South Carolina.

Finally, Appellants' argument that the commencement of the Connecticut Action almost six months before the instant foreclosure and the parties' engagement in "extensive motion practice" and discovery in Connecticut warranted a dismissal or stay of the South Carolina action on prejudice grounds is incongruous. While the Connecticut case may have had a head start, it continues to languish after multiple motions have been heard as of the date of this appeal. Conversely, the South Carolina action was tried in December, and there is no indication that the Connecticut action is near conclusion. Neither dismissing nor staying this case would be warranted.

For these reasons, the Circuit Court Order Denying Appellants' Motion to Dismiss or in the Alternative for an Equitable Stay must be affirmed.

II. The Special Referee correctly determined that Appellants' defense of marshalling assets was not supported under South Carolina law.

The testimony upon which Appellants rely to support their argument that the Special Referee could and should have ordered Respondent to marshal the collateral was either excluded by the Special Referee or was given little to no weight. The Special Referee correctly found that the value of the property was irrelevant to the claim for foreclosure. (Judgment ¶31, R. ___). Appellant Robert Hartmann's testimony that the collateral was worth "over $50 million" if improved was speculative, unfounded, and self-serving. (Transcript p. 102 ln. 18-21, R. ___). The testimony of Appellants' witness, Joe McMillan, that the property could be worth $42,080,000.00 after improvements which concededly were not made was properly excluded by the Special Referee. (Transcript p. 86 ln. 17-19, R. ___). Mr. McMillan further admitted that he is unaware of *any* property in Marion County that is worth $170,000.00 per square foot, which represents the approximate price of the property per square foot using his estimated value of $42,080,000.00. (Transcript p. 87 lin. 4-23, R. ___). **Importantly, Appellants failed to present any evidence at trial of the property's current value.** As such, the evidentiary record gave the Special Referee no basis upon which to determine that any or all of the property was of sufficient value to satisfy the debt.

There is not a single South Carolina case in which a court has ordered a mortgagee to marshal its collateral. The Special Referee correctly determined that no authority supported Appellants' defense, and that no facts supported their equitable argument in favor of this doctrine.

III. The Special Referee correctly concluded that Respondent had standing to foreclose the mortgage.

"Standing refers to a party's right to make a legal claim or seek judicial enforcement of a duty or right." *Bank of America v. Draper*, 405 S.C. 214, 219, 746 S.E.2d 478, 480 (Ct. App. 2013). Standing is defined as "a personal stake in the subject matter of a lawsuit." *Sea Pines Ass'n for the Prot. Of Wildlife, Inc. v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 600, 550 S.E.2d 287, 291 (2001). "The United States Supreme Court has set forth the "irreducible constitutional minimum of standing," which consists of three elements: (1) the plaintiff must have suffered an "injury in fact;" (2) there must be a causal connection between the injury and the conduct complained of; and (3) it must be likely, as opposed to merely speculative, that the injury will be "redressed by a favorable decision." *Sea Pines Ass'n for Prot. of Wildlife, Inc.*, 345 S.C. at 601, 550 S.E.2d at 291 (*quoting Lujan v. Defenders of Wildlife*, 504 U.S. 555, 559-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)). A party seeking to establish standing carries the burden of demonstrating each element. *Id.* (*citing Lujan*, 504 U.S. at 561).

> Rule 17(a) of the South Carolina Rules of Civil Procedure requires that every action be prosecuted "in the name of the real party in interest". . . The South Carolina rule with respect to the real party in interest requirement is patterned after the comparable federal rule, which has been regarded as embodying the concept that an action shall be prosecuted "in the name of the party who, by the substantive law, has the right sought to be enforced." It is ownership of the right sought to be enforced which qualifies one as a real party in interest, *rather than absolute ownership of specific property.*

Draper, 405 S.C. at 220, 746 S.E.2d 481 (citing S.C. Jur. Action § 23 (1991) (emphasis added).

South Carolina law does not require assignments of mortgage to be recorded. *See Union National Bank of Columbia v. Cook*, 110 S.C. 99, 96 S.E. 484 (1918). The Supreme Court noted in *Cook* that,

> The transfer of a promissory note as security for another note of the assignor makes the assignee a bona fide holder for value of the collateral security. The assignment and delivery of the note carries with it the mortgage securing the same. The note is the

> principal and the mortgage is the incident ***and follows the note in its delivery from one person to another***. When a negotiable note payable to order is indorsed generally by the payee the note and its incidents pass in the commercial world by delivery.

Id. (emphasis added) (internal citations omitted). Section 36-3-301 of the South Carolina Code provides that the "person entitled to enforce" an instrument includes "(i) the holder of the instrument." Holder means "the person in possession of a negotiable instrument that is payable either to bearer or an identified person that is the person in possession." S.C. Code. Ann. § 36-1-201(b)(21)(A) (Supp. 2018). "Transfer of an instrument, whether or not the transfer is a negotiation, vests in the transferee any right of the transferor to enforce the instrument . . . " S.C. Code. Ann. § 36-1-203(b) (Supp. 2018).

Appellants contend that Respondent did not prove its standing to foreclose because it failed to demonstrate at trial that it was the assignee of 100% of the subject mortgage. While a nominal fractional interest in the mortgage remained outstanding in the public record, this argument is entirely unavailing because South Carolina law does not require an assignment of mortgage. *Cook*, 110 S.C. 99, 96 S.E. 484. Further, Respondent possessed the original note, which Appellants reviewed to their satisfaction at trial. (Judgment ¶22, R. ___). At trial, Appellants claimed that an outstanding 3.457167% interest had not been assigned to Respondent. (Transcript p. 51 ln. 16-19, R. ___). Appellants now modify their claim by asserting in their Initial Brief that the actual outstanding interest at the time of trial was 0.7143%. Respondent's witness testified that it was Respondent's belief that all interests in the mortgage had been assigned to Respondent at the time the foreclosure was commenced, and that it was due to administrative oversight and not the intent of the parties if any fractional interest remained outstanding. (Transcript p. 63 ln. 23 - p. 64 ln 1, R. ___). The Judgment also includes a finding that the outstanding 0.7143% interest was subsequently assigned to Respondent by assignment

sent for recording with the Marion County Clerk of Court's Office. (Judgment ¶22, R. ___). As this case sounds in equity, it is appropriate here to regard substance over form with respect to the fractional outstanding interest in the mortgage. *See Regions Bank v Wingard Props.* 394 S.C. 241, 715 S.E.2d 348 (Ct. App. 2011) (applying maxims that "equity applies substance over form" and "equity abhors a forfeiture").

Finally, Appellants erroneously frame this argument as a failure of proof rather than lack of standing. Respondent presented proof at trial that it is the party who has the right sought to be enforced; namely, foreclosure of the mortgage. This proof established that Respondent was the owner and holder of the note and mortgage at the time of trial but was only a 99.2857% assignee of the mortgage. *See Bell*, 385 S.C. 365, 684 S.E.2d 199 (the party seeking foreclosure has the burden of establishing the existence of the debt and the mortgagor's default on that debt). Appellants' distinction is without difference because the evidence presented at trial leaves no question that Respondent is the real, beneficial, owner of the mortgage debt. The Special Referee's order should be affirmed for this reason.

IV. The Special Referee properly exercised his discretion in admitting Respondent's payoff of the subject loan into evidence.

Appellants argue that it was an abuse of discretion to admit a payoff and corresponding letter from Respondent's counsel as a business record under the Rule 803(6), SCRCP exception to hearsay because Respondent allegedly failed to lay a proper foundation. Appellants are mistaken because: (1) Respondent's testimony provided a satisfactory foundation that the payoff was in fact a payoff prepared by Respondent's servicer in its regular course of business; and (2) the corresponding letter from Respondent's counsel was in fact the transmittal document prepared by Respondent's law firm, at Respondent's request, which is Respondent's regular business practice when a loan is involved in active litigation.

A party offering evidence must meet "[t]he requirement of authentication ... as a condition precedent to admissibility." Rule 901(a), SCRE. The authentication requirement "is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Id. "[T]he burden to authenticate ... is not high" and requires only that the proponent "offer[ ] a satisfactory foundation from which the jury could reasonably find that the evidence is authentic." *Deep Keel, LLC v. Atlantic Private Equity Group*, 413 S.C. 58, 64, 773 S.E.2d 607, 610 (Ct. App. 2015).

Business records are admissible under Rule 803(6), SCRCE and S.C. Code §19-5-510 "as long[ ] as they are (1) prepared near the time of the event recorded; (2) prepared by someone with or from information transmitted by a person with knowledge; (3) prepared in the regular course of business; (4) identified by a qualified witness who can testify regarding the mode of preparation of the record; and (5) found to be trustworthy by the court". *Deep Keel*, 413 S.C. at 72, 773 S.E.2d 614, *citing Ex parte Dep't of Health & Envtl. Control,* 350 S.C. 243, 249-50, 565 S.E.2d 293, 297 (2002).

First, Appellants erroneously claim that Respondent's Exhibit 12 is the only basis for Respondent's proof of the debt. Respondents' Exhibits 10 and 11 were also offered in support of the debt. Exhibit 10 included itemized breakdowns of the loan amounts advanced and the application of payments to principal, interest and reserves (Transcript p. 20 ln. 13-22, R. ___; Exhibit 10, R. ___). Exhibit 11 set forth an accounting of rents received and expenses paid relative to the loan segregated by the entities who are borrowers. (Transcript p. 21 ln. 24 – p. 22 ln. 5, R. ___; Exhibit 10, R. ___).

Second, Appellants erroneously claim that Respondent failed to offer any testimony that Exhibit 12 was prepared in the regular course of business. At the outset of trial, Respondent's

witness, Jerry Zevenbergen, testified that he is the manager of Respondent, which is a single purpose entity created for the purpose of holding the subject loan as an asset. (Transcript p. 10 ln. 12-19, R. ___). Mr. Zevenbergen also testified that he is the 50% owner and manager of the loan's originator and exclusive servicer, Avatar Capital, LLC[3], since it was formed in 2012. ("Avatar Capital"). (Transcript p. 7 ln. 15 - p. 9 ln. 12, R. ___). Mr. Zevenbergen specified that he is familiar with the subject account; has access to Avatar Capital's servicing records which he reviews in the course of his duties at Avatar Capital; that Avatar Capital's records for the loan are normally kept by Avatar Capital in the course of its commercial mortgage business; that it is Avatar Capital's practice to make those records at or near the time of the occurrence or events reflected in those records; and that it is Avatar Capital's regular practice for those records to be made by a person of knowledge or from information transmitted by a person of knowledge - here, that person being Mr. Zevenbergen who has personal involvement and oversees two accountants who perform this work for Avatar Capital. (Transcript p. 7 ln. 23 - p. 8 ln. 24, R. ___).

When questioned specifically about the payoff included in Exhibit 12, Mr. Zevenbergen testified that it was prepared in the ordinary course of Respondent's servicer's business and that it was Respondent's regular practice to prepare such a document. (Transcript p. 25 ln. 1 – p. 26 ln. 16.; p. 28 ln. 12 – p. 29 ln. 2). The corresponding transmittal letter from Respondent's counsel does not negate the payoff's designation as a business record; Respondent's testimony further highlights that it is part of Respondent's regular business practice to have payoffs remitted to debtors by Respondent's counsel when they are engaged in litigation.

Respondent's testimony clearly established that the payoff and corresponding letter from counsel were in fact a payoff and corresponding letter from counsel. Respondent's testimony

[3] The complete entity name is Avatar Capital Finance, LLC.

also demonstrated that both records were prepared in the ordinary course of Respondent's business and that it was Respondent's regular practice to prepare such a document.

The Special Referee did not abuse his discretion in admitting Respondent's Exhibit 12.

V. The Special Referee appropriately concluded that Respondent's statutory and contractual rights to foreclose the mortgage defeated any equitable argument by Appellants to sell the property in lots or parcels.

When land is used as collateral for a debt, the lender's statutory right of recourse to the property is through judicial foreclosure. See generally, S.C. Code §§ 29-3-610 to 29-3-790; *Perpetual Bldg. & Loan Ass'n of Anderson v. Braun*, 270 S.C. 338, 242 S.E.2d 407, 408 (1978). A court must enforce a contract as agreed between the parties and not make a new contract for them. *Jordan Security Group, Inc.*, 311 S.C. 227, 230, 428 S.E.2d 705, 707 (1993).

Appellants' request to divide and sell the property as separate parcels was properly denied because Appellants presented no evidence regarding the current value of the property. While it is possible to order a sale of the property by lots or parcels, the very authority Appellants cite for this proposition clearly states that such property be "necessary to satisfy the mortgage debt, costs, and expenses." *Watson v. Fowler*, 165 S.C. 288, 297, 163 S.E.2d 640, 643 (1932). Nothing in the evidentiary record established that the property or any portion of it is sufficient to satisfy the debt.

Moreover, Appellants' argument sounds in equity, and the Special Referee correctly prioritized Respondent's statutory and contractual right to foreclose. The note and mortgage impose no duty on Respondent to accept the property in full satisfaction of the debt or to sell the property in parcels absent evidence of its current value. The loan instruments unambiguously state that the makers of the note shall be liable for payment and for full performance of their obligations, covenants, and agreements under the various mortgages securing the note to the full

extent of the mortgagors' interests in the Connecticut and South Carolina properties. The subject mortgage specifies that in the event the mortgaged property is comprised of more than one parcel of real property, the mortgagor waives any right to require the mortgagee to foreclose or exercise any of its other remedies against all of the mortgaged property as a whole or to require the mortgagee to foreclose or exercise such remedies against one portion of the mortgaged property prior to the exercise of said remedies against other portions of the mortgaged property. (Mortgage ¶6.03, R. ___). Upon any default by the makers of the note, the lender was entitled to declare the entire balance of the debt due and payable and to proceed to enforce its right in a foreclosure action. After the loan matured without payment, Respondent had an absolute right to seek payment first from the foreclosure and sale of the property securing the loan. That is the agreement of the parties, and Appellants cannot now require Respondent to secure payment in any other fashion.

The Special Referee appropriately determined that Respondent's statutory and contractual rights to foreclose the mortgage trumped Appellants' equitable argument to sell the property in lots or parcels.

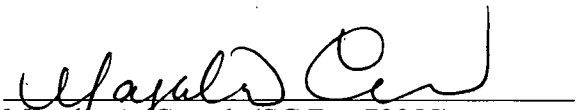
CONCLUSION

For all the reasons set forth herein, this Court should affirm the circuit court's Order Denying Appellants' Motion to Dismiss and the trial court's Order and Judgment of Foreclosure and Sale.

(SIGNATURE PAGE FOLLOWS)

Respectfully submitted,

FINKEL LAW FIRM LLC



Magalie A. Creech (SC Bar 78855)
4000 Faber Place Drive, Suite 450
N. Charleston, South Carolina 29405
Telephone: (843) 577-5460
mcreech@finkellaw.com
Attorneys for Respondent

Dated: August 12, 2021

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

RECEIVED
AUG 16 2021
SC Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

The Honorable W. Haigh Porter, Special Referee

Appellate Case No. 2021-00340

Avatar Partners, CT, LLC, Respondent,

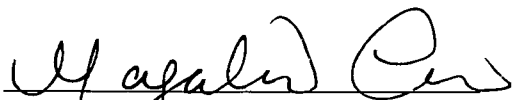
v.

HSGCGH Investments, LLC, f/k/a Carolina Entertainment Complex, LLC, Partners 95 LLC, Oil Barons, Inc., and Robert D. Hartmann, Sr., Appellants.

PROOF OF SERVICE

I certify that on August 12, 2021, I have served the *Respondent's Initial Brief and Designation of Matter* by email to Appellants' counsel, pursuant to S.C. Supreme Court Order Dated June 4, 2020, as amended on May 29, 2021, and by depositing a copy of same in the United States Mail, postage prepaid, addressed to Appellants' counsel as follows:

Louis H. Lang, Esq.
CALLISON TIGHE & ROBINSON, LLC
Post Office Box 1390
Columbia, SC 29202-1390
Attorneys for Appellants



Magalie A. Creech (SC Bar 78855)
4000 Faber Place Drive, Suite 450
N. Charleston, South Carolina 29405
Telephone: (843) 577-5460
mcreech@finkellaw.com
Attorneys for Respondent

FINKEL
LAW FIRM LLC

MAGALIE A. CREECH
MCREECH@FINKELLAW.COM

REPLY TO:
CHARLESTON LITIGATION

August 12, 2021

Via Email To: ctappfilings@sccourts.org
The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: Avatar Partners CT, LLC vs. HSGCHG Investments, *et al.*
Appellate Case No.: 2021-00340
Our File No.: 90039.54728

Dear Ms. Kitchings:

Enclosed for filing is the *Respondent's Initial Brief and Designation of Matter* and related *Proof of Service* in the above-referenced case, which we kindly ask you to file and return in the attached, self-addressed, stamped envelope.

Should you have any questions concerning this matter, please do not hesitate to contact our office at your earliest convenience.

With kind personal regards, we are

Yours very truly,

FINKEL LAW FIRM

Magalie A. Creech

CC: Louis H. Lang, Esquire *(via email and regular mail)*

COLUMBIA
1201 Main Street, Suite 1800
Post Office Box 1799 (29202)
Columbia, SC 29201
Tel: (803) 765-2935
Fax: (803) 252-0786

CHARLESTON
LITIGATION, REAL ESTATE & REO
4000 Faber Place Drive, Suite 450
North Charleston, SC 29405
Tel: (843) 577-5460
Fax: (843) 577-5135

CHARLESTON
FORECLOSURE
4000 Faber Place Drive, Suite 450
Post Office Box 71727 (29415)
North Charleston, SC 29405
Tel: (843) 577-5460
Fax: (843) 725-0015

FINKEL
LAW FIRM LLC

Magalie A. Creech, Esquire
4000 Faber Place Drive, Suite 450
North Charleston, SC 29405

MAC/aet54728

The Honorable Jenny Abbot Kitchings
Clerk, South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211