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THE STATE OF SOUTH CAROLINA
In the Supreme Court

S.C. SUPREME COURT

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 5826 (S.C. Ct. App. Filed June 23, 2021)

Charleston Development Company, LLC, Charleston Housing Company, LLC and NotSo
Hostel, LLC,

Petitioners,

v.

Younesse Alami, Simon M. Adell, Matthew Anderson, Matthew Asher, Daniel Baker, Marie Baker, Matthew and Christina Bare, Andre Bauer, Peter Bierce, Brandon Blount, Barbara Brass, Richard T. Brewer, Sigrid Anne Eilertson, Reginald P. Brown IV, Mary Cahill, Ryan Cockrell, Kevin and Virginia Conlon, Anne Marie Crevar, Christina Cross, Darryl J Damico, Labar Daniel, Stephen Darwak, Lindsay Davenport, Mary Dickerson, Maxwell Streeter, Kathleen Dougherty, David Dressman, Anna Dressman, Michael Elder, Christopher Scott Farley, Michele Ghastin, Timnah Giller, Virginia Geller, Ryan Gilreath, Sonya Gilreath, Kimberly Glenn, Shaun Halsor, Josephine Rex, Arthur Halvorson, Andrew Halvorson, Linda Hancock, Laura Hyatt, Mike Hartel, Nathan Herring, James Hicks Jr., Laurie Hicks, Preston G Hipp, Colin Jones, Matthew F. Jones, Robert C. Jones, Robin Joseph, Molly Keeler, John Kenny, Mandi Walters, Abigail King, Aaron Kless, Laurie Kramer, Robert Kramer, Allison Kreutzer, Benjamin Levitt, Richard Levitt, Jesse Lutz, Nikou Manouchehri, Thomas Naselaris, Zoe Naselaris, Beau O'Steen, Cori O'Steen, Lance Parr, Brandon Perdue, Amanda Lee Raymer, Hadassah Rothenberg, Daniel Ryan, Kimberly Bowlin, Kevin Schnittker, Ginger Scofield, Inderjit Singh, Avtar Singh, Alecia Stevens, Lee Stevens, Justin Swan, Merrick Teichman, John Van Vlack, Jr, William Waterhouse, Jennifer Waterhouse, Anne Wohlfeil, Bryan Young, AJB Trust, Anthony & Jacqueline Bradley, Trustees, Hartshorn Family Trust, Helene Kenny / Bridget Kenny Revocable Trust, Wilhelmina M. Wieters Life Estate Childrens Trust, 33 Bogard Street LLC, 249 Cumming, LLC, 253 Coming Street LLC, 259 East Bay LLC, 259 East Bay 10 B LLC, 272 D Coming St. LLC, Café International, Inc., Corner At Old Canton, LLC, Geer Interests LLC, Kit Properties LLC, Lambert-Weiss LLC, The Naws LLC, New Lease Capital LLC, One Henrietta LLC, Periwinkle Partners, LLC, Porch Properties LLC, Westbury Properties, LLC, and Westendorff Hardware LLC,

Defendants,

Of whom

Younesse Alami, Simon M. Adell, Matthew Anderson, Matthew Asher, Andre Bauer, Peter Bierce, Brandon Blount, Reginald P. Brown IV, Mary Cahill, Ryan Cockrell, Kevin and Virginia Conlon, Anne Marie Crevar, Darryl J Damico, Stephen Darwak, Lindsay Davenport, Mary Dickerson, Maxwell Streeter, Kathleen Dougherty, David Dressman, Lindsay Davenport, Kathleen Dougherty, David Dressman, Anna Dressman, Michael Elder, Christopher Scott Farley, Michele Ghastin, Ryan Gilreath, Sonya Gilreath, Kimberly Glenn, Shaun Halsor, Josephine Rex, Laura Hyatt, Nathan Herring, James Hicks Jr., Laurie Hicks, Preston G Hipp, Colin Jones, Matthew F. Jones, Robert C. Jones, Robin Joseph, Molly Keeler, John Kenny, Abigail King, Aaron Kless, Laurie Kramer, Robert Kramer, Allison Kreutzer, Jesse Lutz, Thomas Naselaris, Zoe Naselaris, Beau O'Steen, Cori O'Steen, Lance Parr, Brandon Perdue, Hadassah Rothenberg, Daniel Ryan, Kimberly Bowlin, Kevin Schnittker, Ginger Scofield, Alecia Stevens, Justin Swan, Merrick Teichman, John Van Vlack, Jr, William Waterhouse, Jennifer Waterhouse, Anne Wohlfeil, Bryan Young, Helene Kenny / Bridget Kenny Revocable Trust, 259 East Bay LLC, 259 East Bay 10 B LLC, Corner At Old Canton, LLC, Kit Properties LLC, The Naws LLC, One Henrietta LLC, Periwinkle Partners, LLC, Porch Properties LLC, Westbury Properties, LLC, and Westendorff Hardware LLC are

Respondents.

APPENDIX

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
Charleston Development Company, LLC, Charleston Housing Company, LLC and NotSo Hostel, LLC,	)	Case No.: 2015-CP-10-5415
Plaintiffs,	)	
vs.	)	
Younesse Alam, <i>et al.</i> ,	)	
Defendants.	)	

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT**

FILED
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JULIE J. STROTH
CLERK OF COURT

Defendants' Motion for Summary Judgment was heard by the Court on June 7, 2018. Present at the hearing were Counsel for the Plaintiff Sean Trundy and the following counsel for Defendants: Nancy Bloodgood, Mary Lee Briggs, Dan Boles, David Marvel, Christopher Murphy, Lucy Sanders, and Greg Voigt. Based on filed pleadings and documents, State statutes and City Ordinances, memoranda and oral argument of counsel, I make the following Findings of Fact and Conclusions of Law.

FINDINGS OF FACT

1. This is an action arising out of Plaintiffs' allegations of violations of the City of Charleston Zoning Ordinance.
2. Plaintiffs filed this lawsuit in 2015 regarding Defendants' use of popular Internet websites such as Home Away, Vacation Rental By Owner and Airbnb. These Internet websites provide a platform for renters (also known as "guests") and landlords (also known as "hosts") to meet and arrange for rental of real property. Rentals can be for any period of time agreed upon

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by the parties including periods less than thirty days. Users can rent a room in their house or rent an entire house to anyone seeking a rental unit.

3. This Court initially granted summary judgment on November 4, 2016 to the defendants in four (4) previous cases with similar facts and then granted Plaintiffs leave to amend. (2015-CP-10-5415; 2015-CP-10-5900; 2016-CP-10-1117; and 2016-CP-10-1118) (hereafter "previous cases"). In all four (4) of these cases, the Plaintiff was a trust named Global Real Property Trust.

4. Here, the three (3) named Plaintiffs are LLC's and each LLC Plaintiff in this case is owned by Global Real Property Trust. (Bob Holt Depo., pp. 9, 13, 80.)

5. In the previous cases, Defendants' Motion for Summary Judgment was granted from the bench on October 19, 2016; an Order was signed on November 4, 2016 and filed on November 17, 2016. Subsequently, an Order filed December 16, 2016 consolidated the cases as one case, 2015-CP-10-5415, and granted Plaintiffs' Motion to Amend and vacated the previously filed Order granting summary judgment to the Defendants.

6. Bob Holt's deposition was taken on May 16, 2018. (Bob Holt Depo., p. 5.)

7. Bob Holt is the Trustee of Global Real Property Trust and the Chairman of each of the three (3) LLC Plaintiffs. (*Id.* at 9, 12.)

8. Mr. Holt testified he is the person most knowledgeable about the allegations in this lawsuit. (*Id.* at 61.)

9. Plaintiffs are involved in the short-term rental business.

10. The Plaintiffs own short-term rental property in the City of Charleston. Specifically, Plaintiff Charleston Development Company, LLC owns 106 A and B Cannon

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Street; Plaintiff Charleston Housing Company, LLC owns 5 and 6 Tulley Alley and 179 D and E St. Philip Street; and Plaintiff NotSoHostel, LLC owns 156 Spring Street and 33 Cannon Street. (Am. Compl. ¶¶ 3-6.)

11. The City of Charleston Zoning Ordinance regulates the use of real property and provides a definition of short-term rentals as a lease in duration between 1 and 29 days. A thirty-day or longer lease is not a short-term rental.

12. In 2012, the City created a special overlay zone district to allow short-term rentals. Most other areas of the City prohibit short-term rentals.

13. Plaintiffs allege Defendants are engaged in short-term renting in violation of the City's zoning ordinance.

14. Plaintiffs' Amended Complaint has four (4) causes of action: Nuisance, Violation of City Zoning Ordinance; Unfair Trade Practices Act, and Unjust Enrichment.

15. Plaintiffs have not appealed any decision of the City of Charleston Zoning Administrator to the City of Charleston Board of Zoning Appeals. (*Id.* at 128, 158.)

16. There is no contractual relationship between the parties. (*Id.* at 198-199.)

17. Mr. Holt testified there is no sum certain amount of money owed to Plaintiffs as damages for their South Carolina Unfair Trade Practices Act (SCUTPA). (*Id.* at 140.)¹

18. Mr. Holt testified none of the properties Plaintiffs own have decreased in value because they are all located in downtown Charleston. (*Id.* at 220-221.)

¹ This Court is not relying on an Affidavit filed by Mr. Bob Holt after his deposition was taken regarding money damages as the Affidavit contains Mr. Holt's opinions but he was not identified as an expert witness. Additionally, Mr. Holt's Affidavit fails to indicate any nexus between Defendants' actions and Plaintiffs' damages, fails to state any evidence that Defendants' actions were the proximate cause of Plaintiffs' damages, and fails to offer any evidence that any damage any of the three Plaintiffs contend they suffered was caused by any specific Defendant.

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19. Mr. Holt testified that the basis for Plaintiffs' unjust enrichment claim is that when anyone makes money from an illegal act is a party who is unjustly enriched. (*Id.* at 141, 197.)

20. There is no evidence in the record of probable cause; specifically, Plaintiffs have produced no evidence that any of the Defendant's actions were the proximate cause of any damage to any of the three (3) named Plaintiffs.

STANDARD OF REVIEW

A party is entitled to a grant of summary judgment where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to summary judgment as a matter of law. Rule 56(c), SCRCP. "The purpose of summary judgment is to obviate delay where there is no material issue of fact involved." *Manley v. Manley*, 291 S.C. 325, 329, 353 S.E.2d 312, 314 (Ct. App. 1987). "The trial court should grant summary judgment against a party who has failed to make a showing sufficient to establish the existence of an essential element of that party's case." *Harris v. Rose's Stores, Inc.*, 315 S.C. 344, 433 S.E.2d 905, 906 (Ct. App. 1993). "Summary judgment is proper where plain, palpable, and indisputable facts exist on which reasonable minds cannot differ." *Adamson v. Richland County School Dist. One*, 332 S.C. 121, 124, 503 S.E.2d 752, 753-754 (Ct. App. 1998). In determining whether any triable issues of fact exist, the evidence and all inferences, which can be reasonably drawn from the evidence, must be viewed in the light most favorable to the nonmoving party. *Hancock v. Mid-South Mgt. Co.*, 381 S.C. 326, 329-330, 673 S.E.2d 801, 802 (2009). However, "[a] conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue

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of fact for purposes of resisting summary judgment." *Shupe v. Settle*, 315 S.C. 510, 516-517, 445 S.E.2d 651, 655 (Ct. App. 1994).

CONCLUSIONS OF LAW

I. Zoning Ordinance Violation

Plaintiffs' Amended Complaint includes a cause of action alleging a zoning violation, specifically, as explained in their Response to Defendant's Motion for Summary Judgment, Plaintiffs allege they have standing and are entitled to injunctive relief pursuant to City Ordinance 54-905.

Pertinent Zoning Laws

The City's Zoning Ordinance is developed pursuant to state law. *S.C. Code § 6-29-340*. The South Carolina Local Government Comprehensive Planning Enabling Act (the "Planning Act") states in pertinent part:

In case a building, structure, or land is or is proposed to be used in violation of any ordinance adopted pursuant to this chapter, the zoning administrator or other appropriate administrative officer, municipal or county attorney, or other appropriate authority of the municipality or county *or an adjacent or neighboring property owner who would be specially damaged by the violation may in addition to other remedies, institute injunction, mandamus, or other appropriate action* or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate the violation, or to prevent the occupancy of the building, structure, or land. *S.C. Code Ann. § 6-29-950 (emphasis added.)*

There are two sections of the City of Charleston Zoning Ordinance that reflect and implement this state statute, Ordinance No. 54-904 and Ord. No. 54-905. Ordinance 54-904, entitled "Procedure when enforcement or interpretation questioned; appeals to court" states:

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It is the intent of this Chapter that all questions arising in connection with the enforcement or interpretation of this Chapter, except as otherwise provided, shall be presented to the Board of Zoning Appeals, and, that from decisions of the Board of Zoning Appeals, recourse shall be to the courts as provided by law. (*Id.*)

A second City Ordinance addresses City officials and property owners obtaining an injunction in Court to remedy violations. Ordinance 54-905 states:

Whenever a building or structure is demolished, erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of this Chapter, the city engineer or any other appropriate authority, or any property owner, who would be damaged by such violations, in addition to other remedies, may institute injunction, mandamus, or other appropriate action in proceeding to prevent the violation in case of such building, structure or land.

The Plaintiffs lack standing.

The case of *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 753 S.E. 2d 846 (2014), is on point with the facts in this case, as it was in the previous cases, and makes clear the requirements for standing to sue under the theory of a zoning violation. In *Carnival*, the Plaintiffs brought several causes of action, including unfair trade practices and private nuisance claims, based on alleged zoning violations. 407 S.C. at 78, 753 S.E. 2d at 852. Plaintiffs included citizens groups complaining of cruise line activities. The *Carnival* Plaintiffs' claims were all based on alleged violations of the City of Charleston ordinances, including violations of the City's noise ordinance, sign ordinance, height limitations as well as violations of the South Carolina Pollution Control Act. (*Id.*) The South Carolina Supreme Court, in its original jurisdiction, unanimously dismissed Plaintiffs' Complaint in its entirety. 407 S.C. at 81, 753 S.E. 2d at 853. The Court ruled that the Plaintiffs lacked standing to sue because Plaintiffs,

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including two nearby historic neighborhood associations and a non-profit organization leasing property near Defendant's conduct, were not "specially damaged" nor were they "adjacent or neighboring property owner[s]." 407 S.C. at 78-81, 753 S.E. 2d at 850-852.

The Supreme Court, interpreting S.C. Code §6-29-950, enunciated a two-part test to determine standing in the context of claims based on alleged zoning violations. 407 S.C. at 76, 753 S.E. 2d at 851. First, a Plaintiff must be "specially damaged" and second, a Plaintiff must be "an adjacent or neighboring property owner." A Plaintiff is "specially damaged" when it has suffered a particularized harm separate and apart from the harm that the public at large may experience. (*Id.*) A particularized harm occurs when the allegations "affect the Plaintiff in a personal and individual way." 407 S.C. at 75, 753 S.E. 2d at 850; *see also Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

In this case, Bob Holt testified:

"A. ... I'm not the only aggrieved party -- or not me, but the entities are not the only aggrieved parties. There are a lot of aggrieved parties. They simply haven't sued the Defendants operating illegally." (Bob Holt Depo., p. 56.)

Clearly, Plaintiffs are not affected in any personal and individual manner; they are damaged as any other property owner is who is renting their property out legally on a short term basis.

Plaintiffs also lack standing to sue because none of them are adjacent or neighboring property owners. Plaintiffs have admitted they are not adjacent property owners to Defendants. (*Id.* at 100.) Plaintiffs contend they are "neighboring properties" but this argument fails as a matter of law. Plaintiffs did not allege in their Amended Complaint that any of their short term rental property was "neighboring" to any Defendant's property. However, in his deposition Mr.

Holt testified that everyone who lives on the peninsula of Charleston are neighbors,² and then Mr. Holt testified he had no idea if any Defendant's property is located within 100 yards of any Plaintiff's property. (*Id.* at 160-161, 227.)

The term "neighboring property" is not defined in the City of Charleston Zoning Ordinance. The Ordinance clearly states, "It is the intent of this Chapter that *all questions* arising in connection with the enforcement *or interpretation* of this Chapter, except as otherwise expressly provided, shall be presented to the Board of Zoning Appeals..." *"City of Charleston Zoning Ordinance § 54-904 (emphasis added).* Mr. Holt testified in his deposition he has not appealed to the City Board of Zoning Appeals. (Bob Holt Depo., p. 158.) Therefore, Mr. Holt's personal belief as to what the term "neighboring property" means is irrelevant. There is no evidence in the record that any of Plaintiffs' property is a neighboring property to any Defendant's property.

Plaintiffs fail both parts of the two-part test set forth in *Carnival*. First, Plaintiffs are not "specially damaged" because the damages alleged in the Complaint are not particular to the Plaintiffs. There is no evidence Plaintiffs have suffered damages separate and apart from the public. No facts have been produced by Plaintiffs to support the contention that they have been damaged differently from any other short-term rental businesses, including hotels and bed & breakfasts, or property owners in general, that may be affected by the alleged conduct of the Defendants.

² Black's Law Dictionary defines a neighbor as "one who lives in close proximity to another" and Webster's II New Riverside University Dictionary defines a neighbor as "one who lives or is located near or next to another." The City of Charleston Zoning Ordinance does not define "neighboring properties."

In fact, there is no evidence in the record of any damages at all. Mr. Holt testified he has not yet hired an expert to determine damages and he does not know how an expert would determine damages. (Bob Holt Dep., p. 62.) Further, Mr. Holt has not had any recent appraisals done of Plaintiffs' property. (*Id.* at 109.) At the time Plaintiffs filed suit, during the last three (3) years, and currently, Plaintiffs cannot ascertain their damages other than Mr. Holt's belief that it is "reasonable" to assume Defendants' actions have caused Plaintiffs damages. (*Id.* at 196.) Mr. Holt's conjecture is insufficient as a matter of law to establish damages. There is simply no evidence in the record of any nexus between Plaintiffs' allegations of damages and any act on the part of any named Defendant.

As in *Carnival*, Plaintiffs are the only ones to bring suit but that fact does not set the alleged damages apart from the public in any way. A Court cannot possibly provide complete relief to these parties if the Defendants would be subject to suits for damages by neighboring property owners, bed and breakfasts businesses, other short term rental businesses or hotels even after the termination of the present litigation. Therefore, the damages alleged to have been suffered by Plaintiffs (assuming *arguendo* they could ever be proven with any specificity) are not particular to these Plaintiffs and are not separate and apart from generalized damages that affect the community at large so Plaintiffs have no standing.

There is no issue of public importance in this case.

The public importance exception to standing does not apply in this case to grant standing as Bob Holt testified as follows regarding the issue of public importance:

"Q. Do you contend that this case involves a matter of public importance?

A. I think so.

Q. What is it? What is that matter of public importance?

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A. I think that the wholesale ignoring of the zoning ordinance is not good for society. I think we try to be a nation of laws. And I think that once people are aware, become aware, that they are doing something that is not what they should be doing that they stop.

Q. Anything else?

A. Not off the top of my head, no." (Bob Holt Depo., pp. 105-106.)

As the Court held in *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 669 S.E.2d 337

(2008):

For a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance. There is nothing *public* about ATC's concern with a competing cell-phone tower. Here, a local government followed proper procedure and rezoned a single piece of property for a narrow purpose and the only complaint comes from a nonadjoining landowner which just happens to be a competitor." 380 S.C. at 199-200, 669 S.E.2d at 341.

Mr. Holt testified he believes he has standing to file suit due to Defendants' illegal competition. (Bob Holt Dep., p. 101.) Mr. Holt testified that the value of the property Plaintiffs own was diminished by increased competition and it is the illegal competition that harms him. (*Id.* at 114.) However, "An owner of commercial property generally does not have standing in a zoning enforcement action if special damages amount to a loss of business due to the position of the violating use as a competing business, but a commercial property owner may be specially damaged if he alleges adverse impact on his business *other than by increased competition.*" *Connor Holdings, LLC v. Cousins*, 373 S.C. 81, 83, 644 S.E.2d 58, 59 (2007) (emphasis added.)

As was the case of *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 669 S.E. 2d 337 (2008), there is nothing of public importance about Plaintiffs' contention that they are damaged by illegal short term renters unfairly competing with them. The Supreme Court held in *ATC South*:

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The key to the public importance analysis is whether a resolution is needed for future guidance. It is this concept of "future guidance" that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance.

380 S.C. at 199, 669 S.E. 2d at 341, citing *Baird v. Charleston County*, 333 S.C. 519, 531, 511 S.E.2d 69, 75 (1999)

The Supreme Court further noted in *Baird* that although zoning is a matter of public importance, the same may be said of most legislative and executive actions. (*Id.*) Here, Plaintiffs do not allege, and have offered no evidence, indicating the Court's decision regarding the City of Charleston's failure to enforce its short term rental ordinance is matter that must be decided in order to provide future guidance to the Court.

The Plaintiffs have not exhausted their administrative remedies.

Persons disagreeing with zoning matters of interpretation and enforcement must first exhaust administrative remedies before appealing to the Circuit Courts. *See, e.g., Moore v. Sumter County Council*, 387 S.E. 2d 455 (1990). In the previous cases, Plaintiffs focused on City Ordinance No. 54-904 which requires a person aggrieved to seek enforcement of a zoning ordinance first through the Zoning Administrator, with an appeal to the Board of Zoning Appeals and then to Circuit Court. Plaintiffs failed to exhaust their administrative remedies in the previous cases, which was one reason they were initially summarily dismissed by Order of this Court. Plaintiffs here admit they have also not appealed any decision of the Zoning Administrator to the Board of Zoning Appeals. (Bob Holt Dep., p. 128.) Therefore, all of the

reasons the previous cases were dismissed for failure to exhaust their administrative remedies pursuant to City Ordinance No. 54-904, apply here.³

In Plaintiffs' Memorandum in Support of their Response to Defendants' Motion for Summary Judgment, Plaintiffs assert that in this case they are relying on a different section of the City Ordinance, Section 54-905, which permits persons damaged by another person's use of their property to seek injunctive relief. Plaintiffs cannot rely on this section of the City's Ordinance to address enforcement of a zoning violation as enforcement of the zoning ordinance is governed by Ordinance No. 54-904, not Ordinance 54-905. Plaintiffs admit that in their zoning cause of action they are asking a court to enforce the short term rental ordinance because the City is not enforcing it. (Bob Holt Dep., pp. 114-115, 131, 174.) The enforcement of a zoning ordinance is addressed in Ordinance No. 54-904 and requires the exhaustion of administrative remedies prior to seeking relief in circuit court, which Plaintiffs admit they have not done. Plaintiffs cannot circumvent the exhaustion of administrative remedies requirement by seeking to challenge the enforcement of a zoning ordinance under Ordinance 54-905 rather than Ordinance 54-904 which is the ordinance that addresses enforcement.

³ In short, the legislative intent of the State Planning Act was that an administrative agency such as a local zoning department and its Board of Zoning Appeals, interpret, apply and administer land use regulations within their local jurisdictions. S.C. Code Ann. § 6-29-720. The *City of Charleston Zoning Ordinance* states: "It is the intent of this Chapter that *all questions* arising in connection with the enforcement or interpretation of this Chapter, except as otherwise expressly provided, shall be presented to the Board of Zoning Appeals, and, that from decisions of the Board of Zoning Appeals, recourse shall be to the courts as provided by law." *City of Charleston Zoning Ordinance* § 54-904 (emphasis added). Plaintiffs in the previous cases submitted a FOIA response from the City of Charleston demonstrating the Plaintiff's complaints to the City zoning officials. The Zoning Administrator considered the Plaintiff's complaints and made decisions regarding the dozens of property owners Plaintiff submitted complaints about. The Plaintiff could have appealed the Zoning Administrator's decision to the Board of Zoning Appeals and then to the Circuit Court per the ordinance's administrative remedies but failed to do so. *City of Charleston Zoning Ordinance* §54-904; 54-926; 54-930.

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Even assuming *arguendo* that Ordinance 54-905 of the City Ordinance could be used by Plaintiffs to challenge the enforcement of the short term rental ordinance, the only relief afforded to them by this section is injunctive relief⁴ and a necessary element of injunctive relief is irreparable harm. Mr. Holt testified in his deposition that he was not sure if any irreparable injury was suffered by Plaintiffs (Bob Holt Dep., pp. 131-132) and he also asserted Plaintiffs were entitled to monetary damages. (*Id.* at 150.) As Plaintiffs admit they are not sure they have irreparable damages and that they are seeking monetary damages, they are not entitled to injunctive relief and they cannot prevail under City Ordinance No. 54-905. For all of these reasons, Plaintiffs' zoning cause of action fails.

II. SCUTPA Violations.

Plaintiffs also allege a cause of action pursuant to the South Carolina Unfair Trade Practices Act (SCUTPA.) SCUTPA §39-5-40 (a) exempts conduct already regulated by law. This regulatory exception provides:

Nothing in this Article shall apply to (a) Actions or transactions permitted under laws administered by any regulatory body or officer acting under statutory authority of this State or the United States or actions or transactions permitted by any other South Carolina State Law.

There have been a series of cases in which the Supreme Court and the Appellate Court of South Carolina have interpreted the regulatory exception provision of the UTPA. In 1980, the South Carolina Supreme Court ruled that conduct regarding the sale of securities is regulated by

⁴ Ordinance 54-905 allows a property owner to seek injunctive relief "to prevent the violation." To the extent the Ordinance states "other remedies" are available in addition to injunctive relief, the term "other remedies" is also modified by the term "to prevent the violation." The other remedies that are available in the City's Zoning Ordinance are enforcement through Ordinance 54-904, which requires an appeal to the Board of Zoning Appeals. There is no indication in Ordinance 54-905 that the term "other remedies" includes monetary relief as Plaintiffs contend.

R. O. B.

the South Carolina Uniform Securities Act and the Securities and Exchange Commission. *State ex rel. McLeod v. Rhoades*, 275 S.C. 104, 107, 267 S.E.2d 539, 541 (1980). The Court noted that "[V]iolation of these regulations subjects an offender to liability" and, therefore, the regulatory exception of UTPA applied and the UTPA claim was dismissed. *Id.*

In 1987, the Court of Appeals applied the Supreme Court's ruling from *McLeod* to the case of *Scott v. Mid Carolina Homes, Inc.*, 293 S.C. 191, 359 S.E. 2d 251 (Ct. App. 1987). In *Scott*, the plaintiff brought a breach of contract claim for the sale of a mobile home complaining that the defendant's conduct was a violation of the regulations governing the sale of mobile homes. (*Id.*) The defendant argued that the regulatory exemption barred the plaintiff's SCUTPA claim. 293 S.C. at 199, 359 S.E. 2d at 296. The Court of Appeals agreed and noted the Supreme Court's ruling from *McLeod*. The Court of Appeals concluded, "... the sale of mobile homes is an activity exempt from the Act because it is subject to regulatory control and the imposition of penalties by the Manufactured Housing Board." 293 S.C. at 200, 359 S.E. 2d at 296-97.

In 1991, the South Carolina Supreme Court modified the rule regarding the regulatory exception under the SCUTPA in a consumer versus retailer case. *Ward v. Dick Dyer and Associates Inc.*, 304 S.C. 152, 403 S.E.2d 310 (1991). *Ward* involved a consumer complaint regarding the sale of a used car. 304 S.C. at 154, 403 S.E.2d at 311. The defendant argued, relying on the *McLeod* and *Scott* cases that the regulatory exemption of the SCUTPA claim applied because of the licensing requirements for a car sales lot are regulated by the State. (*Id.*) The Supreme Court modified its previous interpretation of the regulatory exemption and allowed a consumer complaint regarding the sale of a car because the regulatory scheme relied upon by the defendant did not regulate the specific conduct complained of, the sale of a car. 304 S.C. at

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155, 403 S.E.2d at 311-12. The regulating agency referred to by the defendant merely provided review and approval of the licensing requirements for car sales lots and did not provide regulations for the actual sale of cars. 304 S.C. at 156, 403 S.E.2d at 313; *see also InMed Diagnostic Services, LLC v. Medquest Associates, Inc.*, 358 S.C. 270, 594 S.E.2d 592 (Ct. App. 2004). The *Ward* Court concluded that the standard to be applied is a more exacting one stating "[W]e believe that the exemption is intended to exclude those actions or transactions which are allowed or authorized by regulatory agencies or other statutes." 304 S.C. at 155, 403 S.E.2d at 312.

InMed Diagnostic Services, LLC v. Medquest Associates, Inc., 358 S.C. 270, 594 S.E.2d 552 (Ct. App. 2004) is a competitor versus competitor case. In *InMed*, the plaintiff brought numerous claims including a SCUTPA claim regarding defendant's purchase of medical equipment regulated by DHEC. 358 S.C. at 272, 594 S.E.2d at 553. The SCUTPA claim was tried by a jury that found in favor of the plaintiff. 358 S.C. at 274, 594 S.E.2d at 554. However, the Court of Appeals reversed the jury verdict and dismissed the SCUTPA claims based on the regulatory exception of the Act. 358 S.C. at 275, 594 S.E. 2d at 554. The Court of Appeals provides the progeny of relevant case law and a precise analysis of when the regulatory exception of the SCUTPA applies.

The plaintiff in *InMed*, argued that the regulatory exemption should not apply to the defendant because defendant's conduct was not an activity permitted under the DHEC regulations. (*Id.*) Plaintiff alleged that the defendant engaged in illegal conduct in its presentation to the regulatory body, in violation of the regulations. However, the Court of Appeals concluded that plaintiff's argument was "an unduly narrow interpretation of the law" because there were

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administrative procedures available to the Plaintiff regarding the conduct complained of. 358 S.C. 278-79, 594 S.E.2d 556. The Court pointed out that DHEC is the agency responsible for regulating the conduct complained of (sale of medical equipment), that the purpose of the ConAct regulating the sale of medical products promotes cost containment, prevents unnecessary duplication of health care services, guides the industry, and serves the public needs for quality services and facilities. 358 S.C. at 277, 594 S.E. 2d at 555. The Court pointed to regulations adopted by the administrative agency regarding the same conduct complained of by the plaintiff. (*Id.*) The Court also distinguished the *InMed* case from the *Ward* case, noting among other things that the consumer complaint in *Ward* regarding the sale of a car was not conduct regulated by the state licensing agency whereas the complaint in *InMed*, regarding the purchase of medical equipment, was conduct regulated by DHEC. (*Id.*) The Court held that the issue of whether the defendant's conduct was a violation of the DHEC regulations was an issue the plaintiff should have taken up through the administrative process available to him and not through a SCUTPA claim. 358 S.C. at 278-79, 594 S.E.2d at 556. The Court of Appeals held:

We agree with MedQuest that the regulatory exemption in Section 39-5-40(a) is based on the concept that the Legislature has determined certain matters are appropriate for resolution by administrative agencies with particular expertise, rather than by the general jurisdiction of a trial court. This concept is consistent with the Supreme Court's reasoning in *Ward* that the exemption "is intended to exclude those actions or transactions which are... authorized by regulatory agencies.... 358 S.C. 277, 594 S.E.2d 555-56.

The Court concluded: "To allow a jury in the court of common pleas to make the determination that MedQuest had submitted misleading information in support of its application" and in violation of the regulations, would undermine the purpose of the regulatory exception in the SCUTPA. *Id.*

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Similarly, here the Plaintiffs allege that Defendants are competitors. Plaintiffs complain that rental of Defendants' properties is a regulatory violation similar to the claim in *InMed*. Am. Compl. ¶¶ 162, 165. The conduct complained of by the Plaintiffs (short-term rentals) is regulated by the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 and the City of Charleston Zoning Ordinance. *S.C. Code Ann. § 6-29-310 et seq.* (1994); *City of Charleston Zoning Ordinance* §54-120; 54-202; 54-208; 54-208.1; 54-220; 54-904; Part 3 Table of Permitted Uses; 54-901 *et seq.*; Appendix C to the *City of Charleston Zoning Ordinance*.

Finally, it appears based on Plaintiffs' Motion for Partial Summary Judgment that Plaintiffs contend this Court can on its own initiative make zoning enforcement decisions; it cannot. First, this Court cannot legislate or act as the enforcement arm of any political subdivision. Second, the enforcement of laws is discretionary and that discretion belongs to the political entity that enacted the law, not the judiciary. When the Comprehensive Planning and Zoning Act establishes who has standing to question a zoning decision or interpretation, and the process for doing has been codified, individuals cannot ignore or circumvent state law by asking the judiciary to act on behalf of or in the place of any political subdivision. As the regulatory exemption to the SCUTPA applies, Plaintiffs' SCUTPA cause of action fails as a matter of law.

III. Unjust Enrichment

Plaintiffs' cause of action for unjust enrichment also fails as unjust enrichment requires a contractual or quasi-contractual relationship between the parties as a matter of law. The elements of an unjust enrichment claim are a benefit conferred on the defendant by the plaintiff, the realization of that benefit, and the retention of the benefit by the defendant under

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circumstances that make it unjust to retain the benefit without paying for its value. *Columbia Wholesale Co., Inc. v. Scudder May N.V.*, 312 S.C. 259, 440 S.E.2d 129 (1994). The absence of any legal duty between the parties is fatal to Plaintiffs' unjust enrichment claim. *Pitts v. Jackson Nat'l Life Ins. Co.*, 352 S.C. 319, 338, 574 S.E.2d 502, 511 (Ct. App. 2002). Here, Mr. Holt admits there is no contractual relationship between the parties and, as a matter of law, Plaintiffs have conferred no benefit on Defendants.

Mr. Holt testified Plaintiffs have no contractual relationship with any Defendant other than a contract with two (2) former Defendants regarding the sale of parking spaces. (Bob Holt Depo. at 198-199.) However, Mr. Holt testified that Plaintiffs have conferred the benefit of "cover" on Defendants and explained that by "cover" he meant that the City's passage of a short-term rental ordinance resulted in some properties being legal and some illegal and that such a situation makes enforcement by the City more difficult which provides "cover" to Defendants from enforcement. (*Id.* at 169-171.) This strained attempt to turn enforcement of a zoning ordinance by the City into a benefit conferred by Plaintiffs on Defendants fails as a matter of law. First, the decision whether or not to enforce an ordinance is a discretionary decision that belongs to the City, not to Plaintiffs. Second, there is no evidence in the record that the reason the City is not enforcing its zoning ordinance against the named Defendants has anything to do with Plaintiffs. In fact, Bob Holt testified as follows:

"Q. Have you gotten any reassurances from the City that they are going to enforce their zoning ordinance?

A. Yeah. At public meetings the mayor before our -- at our neighborhood meeting six months ago. Yeah, a lot.

Q. But -- but you never followed up to determine whether any of these Defendants were subject to a city enforcement action?

A. No. I have nothing to do with the city's enforcement action." (Bob Holt Depo., p. 159.)

Plaintiffs did not pass the short term rental ordinance; the City did. Plaintiff's argument that when an ordinance is difficult to enforce, a benefit is conferred on those against whom it is not enforced, makes no sense. Even if it did, the person is conferring a benefit on Defendants from failing to enforce the short term rental ordinance, it is the City, not Plaintiffs. As no facts exist to support the first element of unjust enrichment, Plaintiffs' unjust enrichment cause of action fails and Defendants are entitled to summary judgment on this cause of action.

IV. Public Nuisance

Plaintiffs' Amended Complaint contains a cause of action captioned "common law nuisance." Although Plaintiffs allege in Paragraph 143 of their Amended Complaint that Defendants' illegal activities "*affect the public.....*" (emphasis added), in their Response to Defendants' Motion for Summary Judgment, Plaintiffs clarify their nuisance cause of action is only for a private nuisance.⁵

⁵ Although Plaintiffs now only bring a private nuisance claim, a public nuisance cause of action also fails as a matter of law. "[A] public nuisance affects the public at large, while a private nuisance affects one or a limited number of individuals only. In other words, to be considered public, the nuisance must affect an interest common to the general public." 58 Am. Jur. 2d *Nuisances* § 32 (2002). A plaintiff alleging a public nuisance must prove damages different in kind, not degree, from the damage the general public shares. *See generally Huggin v. Gaffney Dev. Co.*, 229 S.C. 340, 92 S.E.2d 883 (1956); *Brown v. Hendricks*, 211 S.C. 395, 45 S.E.2d 603 (1947); 66 C.J.S. *Nuisances* §§ 2, 76, 78-79 (1998); Restatement (Second) of Torts, § 821C (1979). Plaintiffs allege in Paragraph 137 of their Amended Complaint that they "suffered damages which only they can claim and are individual to them, including decreased rental income and diminution of property values." This type of damage is insufficient as a matter of law to establish damages due to a public nuisance as decreased rental income and diminution of property values attributable to Defendants' actions are not an injury unique to these Plaintiffs. In fact, when Bob Holt was asked what injury he suffered distinct from the public's interest, he testified he was not the only aggrieved party and that there are a lot of aggrieved parties, they just didn't file a law suit. "*I'm not the only aggrieved party – or not me, but the entities are not the only aggrieved parties. There are a lot of aggrieved parties.*" (Bob Holt Depo., p. 56) (emphasis added.) Plaintiffs admit "there are a lot of aggrieved parties" injured in the same

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"A private nuisance is anything done to the hurt or annoyance of the lands, tenements, or hereditaments of another." *Deason v. Southern R. Co.*, 142 S.C. 328, 334, 140 S.E. 575, 577 (1927). Tenements are buildings and hereditaments are physical objects that are inherited along with land and buildings. Here, Mr. Holt testified that Plaintiffs' ability as LLC's to make money is the damage they have suffered under their nuisance cause of action. Again, there are no facts in the record to support any nexus between Defendants' actions and Plaintiffs' argument that their land would be worth more today than it is were it not for Defendants' actions. There is no evidence of any nexus between Defendants' actions and Plaintiffs' belief regarding damages.

Specifically, Mr. Holt testified when asked if he contended that Defendants' use of their property invaded the Plaintiffs' right of enjoyment of their property, "The ability to earn income is an enjoyment of property and very clearly the Defendants have affected the income of ... of the Plaintiffs." (Bob Holt Dep., p. 112.) Loss of income is not the type of damage encompassed in a private nuisance claim.⁶

CONCLUSION

Plaintiffs do not have standing to challenge the City's zoning enforcement decisions because they are not adjacent or neighboring property owners. Further, the conduct complained of, short-term rentals, is regulated by the State Planning Act, the City of Charleston Zoning Ordinance, the City Zoning Administrator, and the Board of Zoning Appeals. Plaintiffs have failed to pursue any appeal to the Board of Zoning Appeals so they have failed to exhaust their

manner as they are, so as a matter of law Plaintiffs have suffered no specialized injury and a public nuisance cause of action would also fail.

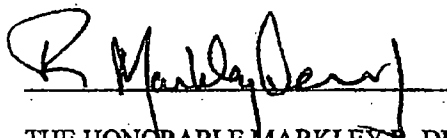
⁶ Further, the *Carnival* case is dispositive as to this cause of action as *Carnival* involved a cause of action for a private nuisance.

prop

administrative remedies, and have failed to set forth any facts of irreparable harm which would entitle them to injunctive relief. Further, the regulatory exception of the SCUTPA applies so there is no viable SCUTPA cause of action. Plaintiffs' unjust enrichment cause of action fails as there is no contractual relationship between the parties and as a matter of law the City of Charleston's failure to enforce a zoning ordinance is not a benefit Plaintiffs have conferred on Defendants. Plaintiffs' private nuisance claim fails as Plaintiffs allege the injury they have suffered is their ability to make income, not any injury to their land.

Therefore, Defendants are entitled to summary judgment on all of Plaintiffs' causes of action and Defendants' Motion for Summary Judgment is GRANTED in full. I order that all of Plaintiffs' causes of action be dismissed with prejudice as to all Defendants.

AND IT IS SO ORDERED!



THE HONORABLE MARKLEY R. DENNIS, JR.
CIRCUIT COURT JUDGE
NINTH JUDICIAL CIRCUIT

Charleston, South Carolina

Date: August 6, 2018

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-10-5415

FILED

Global Real Property Trust

2016 APR 18 AM 10:38

Barry J. Damico, et al

PLAINTIFF(S)

JULIE J. ARMSTRONG
CLERK OF COURT

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: This matter came before the Court on Plaintiff's Motion for Partial Summary Judgment filed on January 29, 2016 and argued before the Court on March 30, 2016. Plaintiff's Motion for Partial Summary Judgment is denied and Defendants have 30 days to answer requests to admit.

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

Date

4/15/16

STATE OF SOUTH CAROLINA,

COUNTY OF CHARLESTON

Global Real Property Trust,

Plaintiff

vs.

Darryl D'Amico, et al.

Defendants.

IN THE CIRCUIT COURT

**ORDER FOR CASE ASSIGNMENT
TO THE BUSINESS COURT
PILOT PROGRAM**

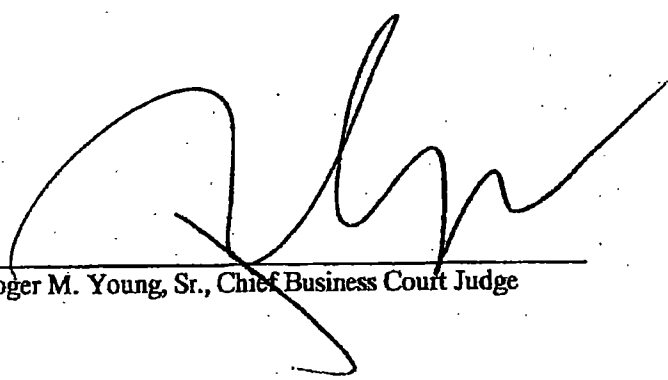
FILED
2016 JUN 21 PM 4:02
JULIE J. ARMSTRONG
CLERK OF COURT

CASE NO.: 2015-CP-10-5415

☒ It is hereby ordered that assignment to the Business Court Pilot Program for Charleston County is **granted**. It is further ordered that exclusive jurisdiction over this case be assigned to the Honorable R. Markley Dennis, Jr. to hear and handle all pretrial motions and other matters pertaining to this case.

☐ It is hereby ordered that assignment to the Business Court Pilot Program for County is **denied**.

And it is SO ORDERED.



Roger M. Young, Sr., Chief Business Court Judge

This 14th day of June, 2016

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Global Real Property Trust,

Plaintiff

vs.

Daryl J. Damico et. al,

Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO. 2015-CP-10-5415

**FINAL ORDER GRANTING
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

FILED
2016 NOV 17 PM 3:01
CLERK OF COURT
JULIE R. HARTSHORN

Date of Hearing:
Presiding Judge:
Plaintiff's Attorney:
Defendants' Attorney:

October 19, 2016
The Honorable R. Markley Dennis, Jr.
Sean Trundy, Esquire
Christopher S. Inglese, Esquire
Mary Lee Hutson, Esquire
Phyllis Norton

Court Reporter:

THIS MATTER IS BEFORE THE COURT on Motion for Summary Judgment by the DEFENDANTS, Adell Simon, Michael Elder, Paula Garrett, Hartshorn Family Trust, Preston G. Hipp, Robin Joseph, Helene Kenny / Bridget Kenny Revocable Trust, Hadassah Rothenberg, Robert Bruce Murphy Jr., Brandon Perdue, Kenneth G. Welborn Jr., One Henrietta, LLC, Bryan Young, Sonya & Ryan Gilreath, (the "Defendants Case 1") case number 2015-CP-10-5415, and by DEFENDANTS Matthew Anderson, Brandon Blount, Ryan Cockrell, Kevin and Virginia Conlon, Kathleen Dougherty, Molly Keeler and Ginger Scofield, (the "Defendants Case 2") by and through their undersigned attorneys Mary Lee Hutson, Esquire and Christopher S. Inglese, Esquire. Present in the courtroom are for the Plaintiff, Mr. Sean Trundy, Esquire and for the Defendants, Mr. Christopher Inglese, Esquire Ms. Mary Lee Hutson, Esquire, and Mr. Colin Snow, Esquire. Attorneys representing other Defendants present in the courtroom are David

Marvel, Esquire and Christopher Murphy, Esquire. The Court has reviewed the file, including supporting memorandum submitted by the Defendants' counsel, an opposing memorandum by Plaintiff's counsel and a reply memorandum by Defendants' counsel. All are hereby made a part of the record and thereby incorporated into this hearing by reference hereto. After considering the pleadings, motions, affidavits, memoranda, and arguments of counsel, the Court makes the following findings of fact and conclusions of law:

BACKGROUND AND ANALYSIS

This is an action arising out of Plaintiff's allegations of violations of the City of Charleston Zoning Ordinance. Plaintiff has filed four lawsuits naming over one hundred (100) Defendants regarding Defendants' use of popular Internet websites Vacation Rental By Owner (VRBO) and Airbnb. The Internet websites provide a platform for renters (also know as "guests") and landlords (also know as "hosts") to meet and arrange for rental of real property. Rentals can be for any period of time agreed upon by the parties including periods less than thirty days. Users can rent a room in their house or rent an entire house to anyone seeking a rental unit. The City of Charleston Zoning Ordinance regulates the use of real property and provides a definition of short-term rentals as a lease in duration between 1 and 29 days. A thirty-day or longer lease is not a short-term rental. Plaintiff is involved in the short-term rental business. In 2012 the City created a special overlay zone district to allow short-term rentals. Most other areas of the City prohibit short-term rentals. Plaintiff alleges Defendants are engaged in short-term renting in violation of the City's zoning ordinance. Plaintiff makes four (4) claims: Nuisance, Unfair Trade Practices Act, Unjust Enrichment and Injunction.

AMG 9/2

Plaintiff served Defendants, with the Summons and Complaint and a request to settle for payment of between \$2500 and \$3500. Defendants' allege through counsel that the settlement offers were an attempt to coerce the Defendants into payment under the duress of litigation. Plaintiff's memorandum did not deny the representations by Counsel. Plaintiff also served Requests to Admit and Requests for Production on Defendants with the Summons and Complaint. Defendants have timely replied to Plaintiff's Discovery Request. Defendants have served multiple Discovery requests on Plaintiff, made diligent efforts to get Discovery and have filed a Motion to Compel.

Defendants filed a 12b Motion to Dismiss which was summarily denied by Judge Hood. Plaintiff filed a Summary Judgment Motion which was summarily denied by Judge Nicholson. On motion of the Plaintiff, Judge Young assigned these cases to the Business Court Pilot Program in Charleston County on June 14, 2016 and assigned Judge R. Markley Dennis, Jr. exclusive jurisdiction to hear all matters pertaining to these cases. Defendants' pending Motion to Compel was not heard due to the case being dismissed on Summary Judgment for the following reasons:

FINDINGS OF FACT

I find as a matter of fact that the Plaintiff is a Trust organized and operating under the laws of South Carolina. Plaintiff does not own any real property in Charleston County. Plaintiff is not an adjacent or neighboring property owner. The Defendants have presented an affidavit by Mr. Charles Feeley, Esquire stating that a search of the County record of deeds revealed that there is no real property owner named Global Real Property Trust. The Feeley affidavit is uncontroverted by the Plaintiff. Furthermore, Plaintiff has admitted in its reply to Defendants'

RMDJ/3

Request to Admit that Plaintiff has no real property titled in its' name. I find that there are no genuine issues of fact regarding the issue of whether Plaintiff is an adjacent or neighboring property and find that the Plaintiff is not an adjacent or neighboring property owner. Therefore, Defendants are entitled to judgment as a matter of law. I also find as a matter of fact that Plaintiff has not been specially damaged in an individual way. Plaintiff pled in the Complaint that Plaintiff was specially damaged because the alleged activity of the Defendants deprive the City of revenue, deprive government of taxes, cause the loss of property values, and loss of rental income. Presuming the allegations in the light most favorable to the non-moving party (Plaintiff), I find nothing in the record to support Plaintiff's claims that it is somehow specially damaged, or that his damages are peculiar or individualized in any way. In reviewing the Plaintiff's complaint, I find Plaintiff fails to sufficiently allege facts that demonstrate a concrete, particularized harm, and thus lacks standing. Plaintiff has had almost a year since the filing of the first Complaint to produce something in support of its' allegations of specialized harm yet has failed to do so.

CONCLUSIONS OF LAW

I. STANDING

The rule regarding standing is derived from statutory law and case law. The statute comes from South Carolina Local Government Comprehensive Planning Enabling Act (the "Planning Act"). The Planning Act says "In case a building, structure, or land is or is proposed to be used in violation of any ordinance adopted pursuant to this chapter, the zoning administrator or other appropriate administrative officer, municipal or county attorney, or other appropriate authority of the municipality or county or an adjacent or neighboring property owner

LMO 8/4

who would be specially damaged by the violation may in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate the violation, or to prevent the occupancy of the building, structure, or land." S.C. Code Ann. § 6-29-950.

I find the South Carolina Supreme Court case *Carnival* is on point and makes clear the requirements for standing to sue under the theory of a zoning violation and pursuant to S.C. Code § 6-29-950. *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 753 S.E. 2d 846, 852 (2014). In *Carnival*, the Plaintiffs brought numerous causes of action based on alleged zoning violations. *Id.*, at 846. Plaintiffs included citizens groups complaining of cruise line activities. The *Carnival* Plaintiffs' claims included private nuisance claims based on alleged violations of the City of Charleston ordinances, including violations of the City's noise ordinance, sign ordinance, height limitations as well as violations of the South Carolina Pollution Control Act. *Id.* The South Carolina Supreme Court, in its original jurisdiction, unanimously dismissed Plaintiffs' Complaint in its entirety. *Id.* at 853. The Court ruled that the Plaintiffs lacked standing to sue because Plaintiffs, including two nearby historic neighborhood associations and a non-profit organization leasing property near Defendant's conduct, were not "specially damaged" nor were they "adjacent or neighboring property owner[s]." *Id.*, at 850-852.

The Supreme Court interpreting §6-29-950 enunciated a two-part test to determine standing in the context of claims based on alleged zoning violations. *Id.*, at 851. First, a Plaintiff must be "specially damaged" and second, a Plaintiff must be "an adjacent or neighboring property owner." A Plaintiff is "specially damaged" when it has suffered a particularized harm

RMG 8/5

separate and apart from the harm that the public at large may experience. *Id.* A particularized harm occurs when the allegations, if true, "affect the Plaintiff in a personal and individual way." *Id.*, at 850; see also *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

The Court also interpreted the meaning of "an adjacent or neighboring property owner" *Carnival*, at 852. *Carnival* Plaintiffs included a non-profit organization that leased property near the Carnival Cruise terminal as well as another organization with conservation easements on properties close to the Carnival Cruise terminal. The Court placed emphasis on "property owner" to point out that a beneficial interest such as a leasehold interest, or an interest in a conservation easement was not a sufficient interest to meet the "property owner" requirement for standing. *Id.* And finally, the *Carnival* Court also made clear that there are appropriate actions for the resolution of a zoning violation. The Supreme Court in *Carnival* provided a thorough analysis of S.C. Code 6-29-950 and concluded that "[I]n short, under section 6-29-950 a specially damaged, adjacent or neighboring property owner can bring an action for an injunction based on an alleged violation of a zoning ordinance." *Carnival* at 852. The language of the Court is consistent with the statutory and ordinance language that limits a Plaintiff's remedies to abating, correcting or preventing a zoning violation. *See supra.* This Court finds Plaintiff's UTPA claim is not an appropriate action. The language of the South Carolina Supreme Court supports my conclusion that a UTPA claim is not an appropriate remedy under the circumstances of this case. *See infra.*

A. Plaintiff is not "specially damaged."

I find as a matter of law that the Plaintiff fails both parts of the two-part test. First, Plaintiff is not "specially damaged" because the damages alleged in the Complaint are not

RMD J/C

particular to the Plaintiff. Defendants are entitled to judgment as a matter of law because no evidence exists to support the factual allegations that Plaintiff has suffered damages separate and apart from the public. For example, the Plaintiff complains that Defendants' alleged activity deprives the city of revenue, deprives government of taxes, causes the loss of property values, and loss of rental income. Compl. ¶ 47-58 Case No. 15-CP-10-5415. Even assuming the allegations in the light most favorable to the Plaintiff, the grievances complained of effect the public at large. Nothing alleged sets the Plaintiff apart from other short-term rental businesses, including hotels and bed & breakfasts, or property owners in general, that may be affected by the alleged conduct of the Defendants. The Plaintiff has not pled any fact nor provided any evidence of damage that is particular to him that is separate and apart from damage to the government, the public at large or any other legally operating short-term rental business, bed and breakfast, hotel or other accommodations use. The allegations of the complaint are mere conclusory statements. The loss of tax revenue, deprivation of property values, and the loss of rental income, if true, are damages that generally affect the community. Plaintiff has had nearly a year since the filing of its first Complaint to establish facts to support the allegations that it is "specially damaged" yet has not produced anything to controvert Defendants' position presented in the Summary Judgment motion. Plaintiff would like to proceed because, in Plaintiff's view, he is the only one that has brought suit. Being the only Plaintiff to bring suit does not amount to "specially damaged." The Plaintiffs in *Carnival* were the only ones to bring suit but that did not set the alleged damages apart from the public in anyway. I conclude as a matter of law, Plaintiff could not be "specially damaged" as required by the Supreme Court in *Carnival* even if the allegations of the Plaintiff are presumed true and in the light most favorable to it. The Court could not

AM D&T

possibly provide complete relief to these parties if the Defendants would be subject to suits for damages by neighboring property owners, bed and breakfasts businesses, other short term rental businesses or hotels even after the termination of the present litigation.

Therefore, the damages alleged are not particular to this Plaintiff and it is not "specially damaged" separate and apart from generalized damages that affect the community at large.

B. Plaintiff is not an adjacent or neighboring property owner:

I find as a matter of law that Plaintiff is not an adjacent or neighboring property owner. Plaintiff is not an adjacent or neighboring property owner because:

1. Plaintiff's response to Request for Admissions include: Defendants' Request to Admit: "1. Admit that Plaintiff, GLOBAL REAL PROPERTY TRUST, does not own property in its own name in Charleston County, South Carolina." Plaintiff's Response: "Plaintiff admits that there is no real property titled in the name of Global Real Property Trust."
2. South Carolina does not recognize a Trust as an entity that can own property. *Manning, Claire T, Handbook for South Carolina Dirt Lawyers, 2nd Edition, p. 269.*
3. An affidavit of Charles Feeley, Esq. a licensed attorney with expertise in title examinations states Plaintiff is not a property owner in Charleston County and is uncontroverted by the Plaintiff.

Plaintiff alleges Global Real Property Trust is a Trust, formed and operating under the laws of South Carolina. Compl. ¶ 1 Case No. 15-CP-10-5415. Plaintiff is not capable of having an ownership interest in real property as a matter of law. *Manning, Claire T, Handbook for South Carolina Dirt Lawyers, 2nd Edition, p. 269.* There can be no genuine issue of material fact regarding whether or not Plaintiff, a Trust, is an "adjacent or neighboring property owner"

RWD J/8

because 1) as a matter of law Plaintiff does not have the capacity to own property, 2) because the Plaintiff has admitted the Trust has no property titled in its name and 3) because the affidavit in support of this fact is uncontroverted by the Plaintiff.

Therefore, the Plaintiff does not have standing to sue because he has not been specially damaged different from any damage to the public at large. Plaintiff is not specially damaged because the damages complained of, even if true, effect the community at large. The Plaintiff has failed to establish that it has been damaged in a particular or individual way separate and apart from the community at large.

Plaintiff lacks standing to sue because he is not an "adjacent or neighboring property owner." Plaintiff is not an adjacent or neighboring property owner 1) because he admits he is not an adjacent or neighboring property owner and 2) the uncontroverted supporting affidavit demonstrates that Plaintiff is not an adjacent or neighboring property owner; and 3) because South Carolina law does not recognize a Trust as an entity that may own real property. The South Carolina Supreme Court has ruled that even if the Plaintiff Trust has an "interest" in real property, an "interest" in real property does not amount to being an adjacent or neighboring property owner for the purpose of standing.

- II. Defendants are entitled to Summary Judgment as a matter of law because Plaintiff's claims under the Unfair Trade Practices Act (UTPA) are prohibited by the regulatory exception and is an inappropriate remedy for resolving alleged zoning violations. The regulations applicable to the conduct complained of require Plaintiff to exhaust administrative remedies before appealing to the Circuit Court. Plaintiff admits he has not sought the necessary administrative appeal.**

RMD J/9

Defendants are persuasive on all points submitted for Summary Judgment. The Court concludes as a matter of law that the regulatory exception of UTPA does apply and bars Plaintiff's UTPA claim.

The rule is that UTPA §39-5-40(a) exempts conduct already regulated by law. The regulatory exception provides:

Nothing in this Article shall apply to (a) Actions or transactions permitted under laws administered by any regulatory body or officer acting under statutory authority of this State or the United States or actions or transactions permitted by any other South Carolina State Law.

A. Summary of Case Law on UTPA Regulatory Exception.

There have been a series of cases in which the Supreme Court and the Appellate Court of South Carolina have interpreted the regulatory exception provision of the UTPA. In 1980, the South Carolina Supreme Court ruled that conduct regarding the sale of securities is regulated by the South Carolina Uniform Securities Act and the Securities and Exchange Commission. *State ex rel. McLeod v. Rhoades*, 275 SC 104, 107(1980). The Court noted that "[V]iolation of these regulations subjects an offender to liability" and therefore the regulatory exception of UTPA applied and the UTPA claim was dismissed. *Id.*

In 1987 the Court of Appeals applied the Supreme Court's ruling from *McLeod v. Rhoades* to *Scott v. Mid Carolina Homes, Inc.*, 293 S.C. 191 (Ct. App. 1987). In *Scott*, the Plaintiff brought a breach of contract claim for the sale of a mobile home complaining that the Defendant's conduct was a violation of the regulations governing the sale of mobile homes. *Id.* at 191. The Defendant argued that the regulatory exemption barred the Plaintiff's UTPA claim. *Id.* at 199. The Court of Appeals agreed and noted the Supreme Court's ruling from *McLeod*. The Court of Appeals concluded, "... the sale of mobile homes is an activity exempt from the

END 9/10

Act because it is subject to regulatory control and the imposition of penalties by the Manufactured Housing Board." *Id.* at 200.

In 1991, the South Carolina Supreme Court modified the rule regarding the regulatory exception under the UTPA in a consumer versus retailer case. *Ward v. Dick Dyer and Associates Inc.*, 304 S.C. 152 (1991). *Ward* presented a consumer complaint regarding the sale of a used car. *Id.* at 154. The Defendant argued, relying on the *Rhoades* and *Scott* cases, that the regulatory exemption of the UTPA prohibited Plaintiff's UTPA claim because the licensing requirements for a car sales lot is regulated by the State. *Id.* at 154. The South Carolina Supreme Court modified its previous interpretation of the regulatory exemption and allowed a consumer complaint regarding the sale of a car because the regulatory scheme relied upon by the Defendant did not regulate the specific conduct complained of, the sale of a car. *Id.* at 155. The regulating agency referred to by the Defendant merely provided review and approval of the licensing requirements for car sales lots and did not provide regulations for the actual sale of cars. *Id.* at 156; see also *Inmed Diagnostic Services, LLC v. Medquest Associates, Inc.*, 358 S.C. 270, 278 (Ct. App. 2004). The Court concluded that the standard to be applied is a more exacting one stating "[W]e believe that the exemption is intended to exclude those actions or transactions which are allowed or authorized by regulatory agencies or other statutes." *Id.* at 155.

InMed is a 2004 competitor versus competitor case. *InMed Diagnostic Services, LLC v. Medquest Associates, Inc.*, 358 S.C. 270 (Ct. App. 2004). I find the 2004 *Inmed* case to be persuasive regarding the regulatory exception of the UTPA and its application to the parties herein. The *InMed* Plaintiff brought numerous claims including an UTPA claim regarding

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Defendant's purchase of medical equipment regulated by DHEC. *Id.* at 272. The UTPA claim was tried by a jury that found in favor of the Plaintiff. *Id.* at 274. However, the Court of Appeals reversed the jury verdict and dismissed the UTPA claims based on the regulatory exception of the Act. *Id.* at 275. The Court of Appeals provides the progeny of relevant case law and a precise analysis of when the regulatory exception of the UTPA applies. *Id.*

B. Application of Regulatory Exception to *InMed* case.

The Plaintiff *InMed*, argued that the regulatory exemption should not apply to the Defendant because Defendant's conduct was not an activity permitted under the DHEC regulations. *Id.* Plaintiff alleged that the Defendant engaged in illegal conduct in its presentation to the regulatory body, in violation of the regulations. *Id.* However, the Court of Appeals concluded that Plaintiff's argument is "an unduly narrow interpretation of the law" because there are administrative procedures available to the Plaintiff regarding the conduct complained of. *Id.* The Court pointed out that DHEC is the agency for regulating the conduct complained of (sale of medical equipment), that the purpose of the ConAct regulating the sale of medical products promotes cost containment, prevents unnecessary duplication of health care services, guides the industry and serves the public needs for quality services and facilities. *Id.* at 277. The Court points to regulations adopted by the administrative agency regarding the conduct complained of by the Plaintiff, *InMed*. *Id.* The Court also distinguished the *Inmed* case from the *Ward* case, noting among other things, that the consumer complaint in *Ward* regarding the sale of a car was not conduct regulated by the state licensing agency whereas the complaint in *Inmed*, regarding the purchase of medical equipment, was precisely the conduct regulated by DHEC. *Id.* The issue of whether the Defendant's conduct was a violation of the DHEC regulations was an issue

read 8/12

the Plaintiff should have taken up through the administrative process available to him and not through an UTPA claim. *Id.* at 278. In the words of the Court of Appeals:

"We agree with MedQuest that the regulatory exemption in section 39-5-40(a) is based on the concept that the legislature has determined certain matters are appropriate for resolution by administrative agencies with particular expertise, rather than by the general jurisdiction of a trial court. This concept is consistent with the supreme court's reasoning in *Ward* that the exemption "is intended to exclude those actions or transactions which are... authorized by regulatory agencies...." *Id.*

The Court further concluded: "To allow a jury in the court of common pleas to make the determination that MedQuest had submitted misleading information in support of its application" and in violation of the regulations, would undermine the purpose of the regulatory exception in the UTPA. *Id.*

C. Application of the regulatory exception in this case and relevant regulations governing the alleged conduct complained of by Plaintiff.

Similarly, in the case before this Court, the Plaintiff, Global Real Property Trust, alleges that Defendant is a competitor. Plaintiff, Global Real Property Trust, complains that rental of Defendants' property is a regulatory violation similar to the claim in *InMed* (see *supra*). Compl. ¶ 50-52. The conduct complained of by the Plaintiff (short term rentals) is regulated by both the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 (hereinafter "the Planning Act") and more specifically by the City of Charleston Zoning Ordinance. S.C. Code Ann. § 6-29-310 et. seq. (1994); and *City of Charleston Zoning Ordinance* §54-120; 54-202; 54-208; 54-208.1; 54-220; Part 3 Table of Permitted Uses; 54-901 et. seq.; and Appendix C to the *City of Charleston Zoning Ordinance*.

Like the ConAct in the *InMed* case, the legislative intent of the Planning Act was that an administrative agency such as a local zoning department and its Board of Zoning Appeals,

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interpret, apply and administer land use regulations within their local jurisdictions. S.C. Code Ann. § 6-29-720. The *City of Charleston Zoning Ordinance* states: "It is the intent of this Chapter that *all questions* arising in connection with the enforcement or interpretation of this Chapter, except as otherwise expressly provided, shall be presented to the Board of Zoning Appeals, and, that from decisions of the Board of Zoning Appeals, recourse shall be to the courts as provided by law." *City of Charleston Zoning Ordinance* § 54-904 (*emphasis added*).

And finally, like the ConAct in *InMed*, any aggrieved party may appeal to the Circuit Court after administrative remedies have been exhausted. S.C. Code Ann. § 6-29-820; *City of Charleston Zoning Ordinance* Article 9; see also *Moore v. Sumter County Council*, 387 S.E. 2d 455 (1990).

Similar to the ConAct in *InMed*, and the act regulating the sale of mobile of homes in *Scott v. Mid Carolina Homes, Inc.* (*see supra*), the Zoning Ordinance provides penalties for violations of the regulations. *City of Charleston Zoning Ordinance* §54-901 et. seq. Section 54-901 of the Zoning Ordinance provides "[T]he duty to administer and to enforce the provisions of this Chapter is hereby conferred upon the zoning administrator, herein referred to as the administrative officer of the Zoning Ordinance." Penalties for violations of the zoning ordinance are provided in Section 54-950 and include misdemeanor criminal violations, withholding permits, fines, and other appropriate action to prevent, correct, or abate a zoning violation. *City of Charleston Zoning Ordinance* § 54-950. A Plaintiff's relief is limited to *preventing, correcting or abating a zoning violation*. S.C. Code Ann. § 6-29-950(A); *City of Charleston Zoning Ordinance* §54-950; see also, *City of Charleston Zoning Ordinance* §54-905 wherein the only remedy available is an action to "prevent" a violation.

RMD 9/14

The Zoning Department and the Board of Zoning Appeals are the administrative arms of the government appropriately situated to determine if a zoning violation has occurred and to take corrective action. The Zoning professionals have the "particular expertise" for resolution of the matter, as is the legislative intent of the regulatory exception of the UTPA articulated by the Court in *InMed* (*see supra*). The Plaintiff may seek relief from the Administrative Officer and in fact has sought relief from the Zoning Administrator. Defendants submitted a FOIA response from the City of Charleston demonstrating Plaintiff's complaints to the City zoning officials. Plaintiff did not object to the FOIA response. The Zoning Administrator considered the Plaintiff's complaints and in his discretion the Zoning Administrator has made decisions regarding the dozens of property owners Plaintiff submitted complaints about. The Plaintiff could have appealed the Zoning Administrator's decision to the Board of Zoning Appeals and then to the Circuit Court per the ordinance's administrative remedies. *City of Charleston Zoning Ordinance* §54-904; 54-926; 54-930. Similar to the *InMed* case, the Plaintiff in this case has failed to pursue its available administrative remedies. In Defendants' Request to Admit to the Plaintiff #5: "Admit that you have not sought an appeal to the Board of Zoning Appeals regarding the zoning administrator's decision not to enforce the City of Charleston Zoning ordinance against Defendant's property." Response: "This request is nonsensical and the Plaintiff does not admit any of the facts that the Request assumes or implies, but Plaintiff does admit that it has not "sought an appeal to the Board of Zoning Appeals" (Plaintiff's admission #5). And finally, it would undermine the regulatory exemption of the UTPA to substitute a jury for the particular knowledge and expertise of the zoning professionals.

LMD 8/15

I conclude as a matter of law that the legislative intent of the zoning ordinance and the Comprehensive Planning Enabling Act is that matters of interpretation and enforcement must first exhaust administrative remedies before appealing to the Circuit Courts. My conclusion is supported by *Moore v. Sumter County Council*, 387 S.E. 2d 455 (1990) and the plain language of the Planning Act and the City of Charleston Zoning Ordinance. I further conclude that the plain language of the statute and ordinance limit a Plaintiff's remedies to an injunction, or a writ or appropriate action and that such remedies are limited to correcting, or abating, or preventing a zoning violation. I conclude that a claim under the UTPA is not appropriate under the circumstances of this case.

CONCLUSION

The *Carnival* case applies. Pursuant to *Carnival*, Plaintiff does not have standing to sue because it is not specially damaged and because it is not an adjacent or neighboring property owner. The Plaintiff is not specially damaged because it has failed to plead or establish an injury that is particular to it or that it has been affected in a personal or individual way separate and apart from the community at large. Plaintiff is not an adjacent or neighboring property owner because it admits it is not, because a Trust does not have capacity to own real property and because the facts established by affidavit are uncontroverted by the Plaintiff.

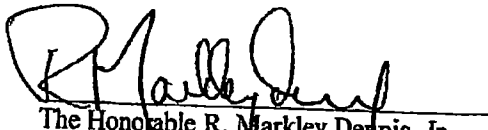
InMed applies to the case at hand. The conduct complained of, short-term rentals, is regulated by the Planning Act, City of Charleston Zoning Ordinance, the zoning administrator, and the Board of Zoning Appeals. The regulatory scheme provides for liability through penalties, fines, and injunctive relief. The determination of complex zoning regulations, such as whether a violation has occurred, should be left to the particular knowledge and expertise of the

RMD J/16

zoning administrative officer and the Board of Zoning Appeals as is the legislative intent of the regulatory exception of the UTPA as well as the Comprehensive Planning Enabling Act and the City of Charleston Zoning Ordinance. The statutory scheme and the regulatory ordinance limit a Plaintiff's remedy in the case of a violation to "prevent, correct, or abate a zoning violation." And finally, Plaintiff has failed to pursue an appeal of the administrative decision to the Board of Zoning Appeals as required by the ordinance and case law before filing suit in circuit court. Therefore, Defendants are entitled to judgment as a matter of law denying Plaintiff's UTPA claim.

Plaintiff moved for the four cases referenced in the caption to be assigned to Business Court. Pursuant to an order signed by Judge Young, all cases were assigned to Judge R. Markley Dennis, Jr. Counsel for Plaintiff and Defendants concurred that the facts and circumstances in all four cases are substantially the same and that the only difference is the names of the Defendants. Although only some Defendants moved for Summary Judgment, this order shall apply to all four cases identified in the caption and be available to all parties.

IT IS SO ORDERED!


The Honorable R. Markley Dennis, Jr.
Ninth Judicial Circuit

November
October 3, 2016
Charleston, South Carolina

RMD 8/17

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

CASE NO. 15-CP-10-5415
15-CP-10-5900
16-CP-10-1117
16-CP-10-1118

Global Real Property Trust,

Plaintiff,

vs.

Darryl J Damico, et al.,

Defendants.

ORDER

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2016 DEC 16 PM 12:21
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Charleston County Case Numbers 15-5415, 15-5900, 16-1117 and 16-1118 were assigned to the undersigned pursuant to the Business Court Program.

On October 19, 2016, the Court, from the bench, granted summary judgment to several Defendants. On October 28, 2016, the Plaintiff filed motions for reconsideration or rehearing and to amend the complaints. On November 4, 2016, the Court signed a written order granting summary judgment. That order was filed on November 17, 2016.

The Court held a hearing on December 8, 2016 on the Plaintiff's motions. Present were Sean Trundy for the Plaintiff, Greg Voigt for certain Defendants, and Chris Inglese for certain Defendants. David Marvel and Christopher Murphy were excused from the hearing, having agreed that their clients would be bound by the Court's decision.

The Court has considered all of the pleadings, memoranda, affidavits, exhibits and oral arguments provided by the parties. In this order, the Court hereby **GRANTS** Plaintiff's motions for reconsideration or rehearing and to amend, and **VACATES** its previously filed order granting summary judgment to the Defendants. The Court's rationale can be found in the documents of

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record and the transcript of the December 8 hearing.

The Clerk of Court is instructed to file the two attached amended complaints.

The Court's decisions herein are without prejudice to the Defendants' rights to assert any and all defenses going forward.

ENTRIES OF DEFAULT

The Plaintiff filed several Entries of Default, none of which were reduced to judgment, against Defendants who had not answered the complaints. In light of the Court's most recent rulings, those Entries of Default are of no further effect and thus are vacated. The following Defendants are affected by this ruling:

Nancy H Breeden	Case No. 15-5415
Wilhelmina M Wieters Life Estate Childrens Trust	Case No. 15-5415
Mike Hartel	Case No. 15-5900
Kit Properties LLC	Case No. 15-5900
33 Bogard Street LLC	Case No. 15-5900
272 D Coming St. LLC	Case No. 16-1118
Daniel & Marie Baker	Case No. 16-1118
Justin Coggins Callen, Trustee of the Charleston Trust	Case No. 16-1118
Shirley Eaton	Case No. 16-1118

CONSOLIDATION & AMENDMENT

The Court on its own motion, having previously been assigned each of these cases pursuant to the South Carolina Business Court Pilot Program as created by Order 2007-09-07-01 and expanded by Order 2014-01-03-02, finds that cases 15-5415, 15-5900 and 16-1118 address a

Amf 2

commonality of issues and facts such that consolidation of said cases would enhance judicial efficiency, so ORDERS that they be and are consolidated under case number 2015-CP-10-5415 and that all future pleadings herein should contain that case number and the caption "*Charleston Development Company, LLC v. Younesse Alami, et al.*"

Case No. 16-CP-10-1117 retains that number and the attached amended complaint is allowed to be filed.

JUDICIAL NOTICE

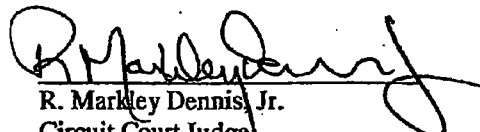
With the consent of the parties, the Court hereby takes judicial notice of the City of Charleston's interactive zoning map, <http://gis.charleston-sc.gov/interactive/zoning/>. The zoning classifications of real properties are obviously important to this dispute. It is not necessary for the parties to bring a City employee to testify about zoning. The interactive zoning map shows the zoning classification for each property, identified by street address and/or tax map number. If there is a dispute about any particular property that the parties cannot resolve, they may bring that to the Court's attention.

In addition, the Court will take judicial notice of the City of Charleston's ordinances.

IT IS SO ORDERED!

December 15, 2016

Charleston, South Carolina


R. Markley Dennis, Jr.
Circuit Court Judge

and

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-10-5415

CHARLESTON DEVELOPMENT
COMPANY, LLC ET AL.
PLAINTIFF(S)

YOUNESSE ALAMI, ET AL.

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: PLAINTIFFS' MOTION FOR RECONSIDERATION IS DENIED WITHOUT A HEARING.

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

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

2060
Judge Code

9/5/18
Date

SCRCP Form 4C (02/2017)

Page 1 of 4

STATE OF SOUTH CAROLINA)

COURT OF COMMON PLEAS

COUNTY OF CHARLESTON)

CASE NO. 15-CP-10-5415

Charleston Development Company, LLC,)
Charleston Housing Company, LLC and NotSo)
Hostel, LLC,)

Plaintiffs,)

vs.)

FIRST AMENDED COMPLAINT
(Jury Trial Demanded)

Younesse Alami, Deidre Alexander, Simon M)
Adell, Matthew Anderson, Matthew Asher, Daniel)
Baker, Marie Baker, Matthew and Christina Bare,)
Michelle Barnwell, Andre Bauer, Stevenson B.)
Bennett, Peter Bierce, Brandon Blount, Barbara)
Brass, Nancy H Breeden, Richard T. Brewer,)
Sigrid Anne Eilertson, Reginald P. Brown IV,)
Mary Cahill, Ralph Capasso, Ryan Cockrell,)
Kevin and Virginia Conlon, Sydney Cook, Anne)
Marie Crevar, Christina Cross, Darryl J Damico,)
Labar Daniel, Stephen Darwak, Nawabi M. Daud,)
Lindsay Davenport, Isabelle De Fleurac, Lynette)
Dennis, Mary Dickerson, Maxwell Streeter,)
Kathleen Dougherty, David Dressman, Anna)
Dressman, Shirley Eaton, Michael Elder, Richard)
Ellerkmann, Ariane Cometa, Christopher Scott)
Farley, Gregory Field, Paula Garret, Michele)
Ghastin, Timnah Giller, Virginia Geller, Ryan)
Gilreath, Sonya Gilreath, Kimberly Glenn, Shaun)
Halsor, Josephine Rex, Arthur Halvorson, Andrew)
Halvorson, Linda Hancock, Laura Hyatt, Zsolt)
Haraszit, Mike Hartel, Nathan Herring, James Hicks)
Jr., Laurie Hicks, Preston G Hipp, Sarah Jacks,)
Thomas Jermyn, Colin Jones, Matthew F. Jones,)
Robert C. Jones, Robin Joseph, Molly Keeler,)
John Kenny, Mandi Walters, Abigail King, Aaron)
Kless, Laurie Kramer, Robert Kramer, Scott Joseph)
Kramer, Allison Kreutzer, Glenda Holmes Ladson,)
Glen Landon, Janet Landon, Benjamin Levitt,)
Richard Levitt, Jesse Lutz, Letitia Lynn, Nikou)
Manouchehri, Robert McCarthy, Mary McCarthy,)
Robert Bruce Murphy Jr., Thomas Naselaris, Zoe)
Naselaris, Beau O'Steen, Cori O'Steen, Lance Parr,)

1

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JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Brandon Perdue, Amanda Lee Raymer, Hadassah)
 Rothenberg, Daniel Ryan, Kimberly Bowlin, Kevin)
 Schnittker, Ginger Scofield, Inderjit Singh, Avtar)
 Singh, Alecia Stevens, Lee Stevens, Justin Swan,)
 Merrick Teichman, John Van Vlack, Jr, William)
 Waterhouse, Jennifer Waterhouse, Kenneth G.)
 Welborn Jr., Anne Wohlfeil, Bryan Young, 68)
 Broad Legacy Trust, Linda C. Ravenel, Trustee,)
 AJB Trust, Anthony & Jacqueline Bradley, Trustees,)
 Justin Coggins Callen, Trustee of the Charleston)
 Trust, Hartshorn Family Trust, Helene Kenny /)
 Bridget Kenny Revocable Trust, Wilhelmina M.)
 Wieters Life Estate Childrens Trust, 14 Benson)
 Street LLC, 33 Bogard Street LLC, 249 Cumming,)
 LLC, 253 Coming Street LLC, 259 East Bay LLC,)
 259 East Bay 10 B LLC, 272 D Coming St. LLC,)
 Beachcruiser LLC, Café International, Inc., Corner)
 At Old Canton, LLC, Geer Interests LLC, Kit)
 Properties LLC, Lambert-Weiss LLC, Line Street)
 Properties LLC, The Naws LLC, New Lease)
 Capital LLC, One Henrietta LLC, Periwinkle)
 Partners, LLC, Porch Properties LLC, Slambovia)
 LLC, Three Fists LLC, Westbury Properties, LLC,)
 and Westendorff Hardware LLC,)
 Defendants.)

Plaintiffs, by and through their undersigned attorney, complain of the Defendants as follows:

JURISDICTIONAL ALLEGATIONS

1. Plaintiffs Charleston Housing Company, LLC, Charleston Development Company, LLC and NotSo Hostel, LLC are South Carolina limited liability companies which do business and enter into contracts in Charleston County.
2. All of the following properties mentioned in this Complaint, and relevant to this dispute, are located on the peninsula of the City of Charleston
3. Charleston Housing Company, LLC owns 5 Tully Alley, 6 Tully Alley, 33

Cannon St., 156 Spring St., 179D St. Philip St. and 179E St. Philip St., and operates short-term rental businesses at those locations.

4. Charleston Development Company, LLC owns 2 Charles St. and 106 A&B Cannon St. and operates short-term rental businesses at those locations.

5. NotSo Hostel, LLC is the company which runs and administrates the short-term rental businesses at 33 Cannon St. and 156 Spring St.

6. Charleston Housing Company, LLC is the company which runs and administrates the short-term rental businesses at 5 Tully Alley, 6 Tully Alley, 179D St. Philip St., 179E St. Philip St. and 2 Charles St.

7. Charleston Development Company, LLC, Charleston Housing Company, LLC and NotSo Hostel, LLC will collectively be referred to as "Plaintiffs."

8. Defendant Simon M Adell is a Charleston resident who owns and rents out 70 1/2 Nassau Street Apartments B and C, Charleston, SC, or portions thereof.

9. Defendant Younesse Alami is a Charleston resident who owns and rents out 11 Dingle Street, Charleston, SC, or portions thereof.

10. Defendant Deidre Alexander is a Charleston resident who owns and rents out 2 Wagner Avenue, Charleston, SC, or portions thereof.

11. Defendant Matthew Anderson is a Charleston resident who owns and rents out 36 Poplar Street, Charleston, SC, or portions thereof.

12. Defendant Matthew Asher is a Charleston resident who owns and rents out 110 Peachtree St, Charleston, SC, or portions thereof.

13. Defendants Daniel Baker and Marie Baker are Virginia residents who own and rent out 23 Queen St. Unit G, Charleston, SC, or portions thereof.

14. Defendants Matthew and Christina Bare are Mount Pleasant residents who own and rent out 22 Rose Lane, Charleston SC and 259 Coming Street, Charleston, SC, or portions thereof.
15. Defendant Michelle Barnwell is a Charleston resident who owns and rents out 21 Charlotte St, Charleston, SC, or portions thereof.
16. Defendant Andre Bauer is a Charleston resident who owns and rents out 10 Stolls Alley, Charleston, SC, or portions thereof.
17. Defendant Stevenson B. Bennett is a Charleston resident who owns and rents out 97 Rutledge Avenue, Charleston, SC, or portions thereof.
18. Defendant Peter Bierce is a Charleston resident who owns and rents out 49 Amherst St., Charleston, SC, or portions thereof.
19. Defendant Brandon Blount is a Charleston resident who owns and rents out 11 Bogard St, Apt A, Charleston, SC, or portions thereof.
20. Defendant Barbara Brass is a Charleston resident who owns and rents out 61 Montagu Street Apartment B, Charleston, SC, or portions thereof.
21. Defendant Nancy H Breeden is a Columbia resident who owns and rents out 259 East Bay Street Apartment 10C, Charleston, SC, or portions thereof.
22. Defendants Richard T. Brewer and Sigrid Anne Eilertson are Charleston residents who own and rent out 2 Larnes St., Charleston, SC, or portions thereof.
23. Defendant Reginald P Brown IV is a Charleston resident who owns and rents out 49 Radcliffe St., Charleston, SC, or portions thereof.
24. Defendant Mary Cahill is a Georgia resident who owns and rents out 9 West Street Unit 5, Charleston, SC, or portions thereof.

25. Defendant Ralph Capasso is a Mount Pleasant, SC resident who owns and rents out 21 Sires St., Charleston, SC, or portions thereof.

26. Defendant Ryan Cockrell is a Charleston resident who owns and rents out 55 Darlington Ave, Charleston, SC, or portions thereof.

27. Defendants Kevin and Virginia Conlon are Charleston residents who own and rent out 49 Darlington Ave., Charleston, SC, or portions thereof.

28. Defendant Sydney Cook is a Charleston resident who owns and rents out 8 St. Margaret St., Charleston, SC, or portions thereof.

29. Defendant Anne Marie Crevar is a Charleston resident who owns and rents out 229 Grove Street, Charleston, SC, or portions thereof.

30. Defendant Christina Cross is a Charleston resident who owns and rents out 60 Bogard Street, Charleston, SC, or portions thereof.

31. Defendant Darryl J. Damico is a Florida resident who owns and rents out 9 West Street Unit 6, Charleston, SC, or portions thereof.

32. Defendant Labar Daniel is a Charleston resident who owns and rents out 371 Huger Street, Charleston, SC, or portions thereof.

33. Defendant Stephen Darwak, using the host name "Quinn," is a Charleston resident who owns and rents out 57 Columbus St., Charleston, SC or portions thereof.

34. Defendant Nawabi M. Daud is an Isle of Palms resident who owns and rents out 251 Meeting Street, Unit 8, Charleston, SC, or portions thereof.

35. Defendant Lindsay Davenport is a Charleston resident who owns and rents out 38 Warren St, Charleston, SC, or portions thereof.

36. Defendant Isabelle De Fleurac, using the host names "Marlee & Zach," is a

Charleston resident who owns and rents out 178 Saint Margaret St., Charleston, SC, or portions thereof.

37. Defendant Lynette Dennis is a Charleston resident who owns and rents out 9 Smith St., Charleston, SC, or portions thereof.

38. Defendants Mary Dickerson and Maxwell Streeter are Charleston residents who own and rent out 43 Reid St., Charleston, SC, or portions thereof.

39. Defendant Kathleen Dougherty is a Charleston resident who owns and rents out 368 President St, Charleston, SC, or portions thereof.

40. Defendants David Dressman and Anna Dressman are Kentucky residents who own and rent out 251 Meeting St., Unit 3, Charleston, SC, or portions thereof.

41. Defendant Shirley Eaton is a Connecticut resident who owns and rents out 29 Pendleton St., Charleston, SC, or portions thereof.

42. Defendant Michael Elder is a Charleston resident who owns and rents out 130 Darlington Avenue, Charleston, SC, or portions thereof.

43. Defendants Richard Ellerkmann and Ariane Cometa are Maryland residents who own and rent out 295 Sumter St., Charleston, SC, or portions thereof.

44. Defendant Christopher Scott Farley is a Charleston resident who owns and rents out 294 Congress Street, Charleston, SC 29403, or a portion thereof.

45. Defendant Gregory Field is a Johns Island resident who owns and rents out 511 Rutledge Ave., Charleston, SC, or portions thereof.

46. Defendant Paula Garret owns and rents out 7.5 Kracke Street, Unit B, Charleston, SC, or portions thereof.

47. Defendants Timnah Geller and Virginia Geller, using the host names "Smith &

Silas," are Charleston residents who own and rent out 44 Pitt St., Charleston, SC, or portions thereof.

48. Defendant Michele Ghastin is a Charleston resident who owns and rents out 448 Huger Street, Charleston, SC, or portions thereof.

49. Defendants Ryan and Sonya Gilreath are Goose Creek residents who own and rent out 168 Tradd Street, Charleston, SC, or portions thereof.

50. Defendant Kimberly Glenn is a Charleston resident who owns and rents out 53 Logan St., Charleston, SC, or portions thereof.

51. Defendants Shaun Halsor and Josephine Rex are Charleston residents who own and rent out 842 Rutledge Ave, Charleston, SC, or portions thereof.

52. Defendants Arthur Halverson and Andrew Halvorson are Maryland residents who _____ own and rent out 102 America Street, Charleston, SC, or portions thereof.

53. Defendant Linda Hancock is a Charleston resident who rents a house on Gordon St., Charleston, SC to use as her home, and sub-lets out portions of that house to others.

54. Defendant Zsolt Haraszit is a Charleston resident who owns and rents out 701 King Street, Charleston, SC, or portions thereof.

55. Defendant Mike Hartel is a Charleston resident who owns and rents out 289 Coming St, Charleston, SC, or portions thereof.

56. Defendant Nathan Herring is a Charleston resident who owns and rents out 382 Race Street Unit D, Charleston, SC, or portions thereof.

57. Defendants James Hicks Jr. and Laurie Hicks are Columbia, SC residents who own and rent out 8 Woolfe St., Charleston, SC, or portions thereof.

58. Defendant Preston G. Hipp is a Charleston resident who owns and rents out 204

Ashley Avenue, Charleston, SC, or portions thereof.

59. Defendant Laura Hyatt is a Mount Pleasant resident who owns and rents out 16 Anson St., Charleston, SC, or portions thereof.

60. Defendant Sarah Jacks is a Texas resident who owns and rents out 11 Poplar St., Charleston, SC, or portions thereof.

61. Defendant Thomas Jermyn is a Charleston resident who owns and rents out 16 Cedar Street, Charleston, SC, or portions thereof.

62. Defendant Colin Jones is a Charleston resident who owns and rents out 158 Gordon St., Charleston, SC, or portions thereof.

63. Defendants Robert C. Jones and Matthew F. Jones are residents of Charleston, SC who own and rent out 257 Ashley Avenue, Charleston, SC, or portions thereof.

64. Defendant Robin Joseph is a Charleston resident who owns and rents out 45 Gadsden Street, Charleston, SC, or portions thereof.

65. Defendant Molly Keeler is a Charleston resident who owns and rents out 54 Darlington Ave, Charleston, SC, or portions thereof.

66. Defendants John Kenny and Mandi Walters are Charleston residents who own and rent out 7 Aiken Street, Charleston, SC, or portions thereof.

67. Defendant Abigail King is a Charleston resident who owns and rents out 24 Charlotte St., Unit A, Charleston, SC, or portions thereof.

68. Defendant Aaron Kless is a Massachusetts resident who owns and rents out 10 Dewey Street, Charleston, SC, or portions thereof.

69. Defendants Laurie Kramer and Robert Kramer are Charleston residents who own and rent out 11 Gadsden St., Charleston, SC, or portions thereof.

70. Defendant Scott Joseph Kramer is a Charleston resident who owns and rents out 79 Alberta Ave, Charleston, SC, or portions thereof.

71. Defendant Allison Kreutzer is a Charleston resident who owns and rents out 11 Carondolet St., Charleston, SC, or portions thereof.

72. Defendant Glenda Holmes Ladson is a Charleston resident who owns and rents out 9 Magnolia Ave., Charleston, SC, or portions thereof.

73. Defendants Glen Landon and Janet Landon are Charleston residents who own and rent out 30 Cleveland St., Charleston, SC, or portions thereof.

74. Defendants Benjamin Levitt and Richard Levitt are Charleston residents who own and rent out 239 1/2 Ashley Avenue, Charleston, SC, or portions thereof.

75. Defendant Jesse Lutz is a Charleston resident who owns and rents out 16 Orr's Court, Charleston, SC, or portions thereof.

76. Defendant Letitia Lynn is a Charleston resident who owns and rents out 18 Queen Street, Charleston, SC, or portions thereof.

77. Defendant Nikou Manouchehri, using the host name "James," is a Charleston resident who owns and rents out 390 Huger St., Charleston, SC, or portions thereof.

78. Defendants Robert McCarthy and Mary McCarthy, using the host name "David," are Mount Pleasant residents who own and rent out 35 Bogard St., Charleston, SC, or portions thereof.

79. Defendant Robert Bruce Murphy Jr. is an Illinois resident who owns and rents out 84 Church Street, Charleston, SC, or portions thereof.

80. Defendants Thomas and Zoe Naselaris are Charleston residents who own and rent out 158 San Souci St, Charleston, SC, or portions thereof.

81. Defendants Beau O'Steen and Cori O'Steen are Aiken residents who own and rent out 4 Beaufain St., Suite 203, Charleston, SC, or portions thereof.
82. Defendant Lance Parr is a Charleston resident who owns and rents out 4 Fields Place, Charleston, SC, or portions thereof.
83. Defendant Brandon Perdue is a Charleston resident who owns and rents out 87 America St., Charleston, SC, or portions thereof.
84. Defendant Hadassah Rothenberg is a Charleston resident who owns and rents out 18 Oswego Street, Apt. B, Charleston, SC, or portions thereof.
85. Defendants Daniel Ryan and Kimberly Bowlin are Charleston residents who own and rent out 120 Sans Souci St., Charleston, SC, or portions thereof.
-
- ~~86. Defendant Kevin Schnittker is a Charleston resident who owns and rents out 3 Achurch Ave., Charleston, SC, or portions thereof.~~
87. Defendant Ginger Scofield is a Charleston resident who owns and rents out 9 Laurel Ave., Charleston, SC, or portions thereof.
88. Defendants Inderjit Singh and Avtar Singh are Mount Pleasant residents who own and rent out 229 Rutledge Ave., Units A and B, Charleston, SC, or portions thereof.
89. Defendants Lee Stevens and Alecia Stevens are Minnesota residents who own and rent out 14 Elizabeth St., Charleston, SC, or portions thereof.
90. Defendant Justin Swan is a Connecticut resident who owns and rents out 243 Rutledge Ave., Charleston, SC, or portions thereof.
91. Defendant Merrick Teichman is a Charleston resident who owns and rents out 32 Vendue Range, Apt 201, Charleston, SC, or portions thereof.
92. Defendant John Van Vlack, Jr is a Charleston resident who owns and rents out 21

Engel St, Charleston, SC, or portions thereof.

93. Defendants William Waterhouse and Jennifer Waterhouse are Charleston residents who own and rent out 125 Simons St., Charleston, SC, or portions thereof.

94. Defendant Kenneth G Welborn Jr. is a Charleston resident who owns and rents out 103 Bogard Street, Unit B, Charleston, SC, or portions thereof.

95. Defendant Anne Wohlfeil is a Charleston resident who owns and rents out 177 Fishburne St, Charleston, SC, or portions thereof.

96. Defendant Bryan Young is a Charleston resident who owns and rents out 590 Rutledge Avenue, Charleston, SC, or portions thereof.

97. Defendant 68 Broad Legacy Trust, Linda C. Ravenel, Trustee is, upon ~~information and belief, a South Carolina trust which owns and rents out 68 Broad St.,~~
Charleston, SC, or portions thereof.

98. Defendant AJB Trust, Anthony & Jacqueline Bradley, Trustees, using the host name "Matt Erickson," is, upon information and belief, a South Carolina or Illinois trust which owns and rents out 2 Saint Margaret St., Charleston, SC, or portions thereof.

99.. Defendant Justin Coggins Callen, Trustee of the Charleston Trust is a Georgia resident who owns and rents out 103 Broad Street, Charleston, SC, or portions thereof.

100. Defendant Hartshorn Family Trust is a trust which owns and rents out 19 West Street, Charleston, SC 29401, or portions thereof.

101. Defendant Helene Kenny/Bridget Kenny Revocable Trust is a trust which owns and rents out 176 Smith Street, Charleston, SC, or portions thereof.

102. Defendant Wilhelmina M Wieters Life Estate Childrens Trust is a trust which owns and rents out 28 Gadsden Street, Charleston, SC, or portions thereof.

103. Defendant 14 Benson Street LLC is a South Carolina limited liability company which owns and rents out 14 Benson St., Charleston, SC, or portions thereof.
104. Defendant 33 Bogard Street LLC is a South Carolina limited liability company which owns and rents out 33 Bogard St, Charleston, SC, or portions thereof.
105. Defendant 249 Cumming, LLC is a Georgia limited liability company and Defendant Amanda Lee Raymer is a Charleston resident. Together, these Defendants own and rent out 249 Coming St., Charleston, SC, or portions thereof.
106. Defendant 253 Coming Street LLC is a New York limited liability company which owns and rents out 253 Coming Street, Charleston, SC, or portions thereof.
107. Defendant 259 East Bay LLC is a South Carolina limited liability company which ~~owns and rents out 259 East Bay Apartment 9B, Charleston, SC, or portions thereof.~~
108. Defendant 259 East Bay 10 B LLC is a South Carolina limited liability company which owns and rents out 259 East Bay Apartment 10B, Charleston, SC, or portions thereof.
109. Defendant 272 D Coming St. LLC is a South Carolina limited liability company which owns and rents out 272D Coming St., Charleston, SC, or portions thereof.
110. Beachcruiser LLC, using the host name "Matthew J.," is a South Carolina limited liability company which owns and rents out 50 Bogard St., Charleston, SC, or portions thereof.
111. Defendant Corner At Old Canton, LLC is a limited liability company whose state of organization is unknown and Defendant Periwinkle Partners, LLC is a Georgia limited liability company. Together, these Defendants own and rent out 151 Wentworth St., 1C, Charleston, SC, or portions thereof.
112. Defendant Geer Interests LLC is a South Carolina limited liability company which owns and rents out 181 Queen St., Charleston, SC, or portions thereof.

113. Defendant Kit Properties LLC is a South Carolina limited liability company which owns and rents out 25 Broad Street, Charleston, SC, or portions thereof.

114. Defendant Lambert-Weiss LLC is a South Carolina limited liability company which owns and rents out 270 Rutledge Ave., Charleston, SC, or portions thereof.

115. Defendant Line Street Properties LLC is a South Carolina limited liability company which owns and rents out 306 Race St., Charleston, SC, or portions thereof.

116. Defendant The Naws LLC is a South Carolina limited liability company which owns and rents out 251 Meeting St., Unit 4, Charleston, SC, or portions thereof.

117. Defendant New Lease Capital LLC is a South Carolina limited liability company which owns and rents out 191 West Poplar St., Charleston, SC, or portions thereof.

~~118. Defendant One Henrietta LLC is a South Carolina limited liability company~~
which owns and rents out 1 Henrietta Street, Charleston, SC, or portions thereof

119. Defendant Porch Properties LLC is a South Carolina limited liability company which owns and rents out 132 Queen Street, Charleston, SC, or portions thereof.

120. Slambovia LLC is a South Carolina limited liability company which owns and rents out 242 Ashley Ave., Charleston, SC, or portions thereof.

121. Defendant Three Fists LLC is a South Carolina limited liability company which owns and rents out 20 Engel St., Charleston, SC, or portions thereof.

122. Defendant Westbury Properties, LLC, using the host name "Jay," is a South Carolina limited liability company which owns and rents out 45 Tradd St., Charleston, SC, or portions thereof.

123. Defendant Westendorff Hardware LLC is a South Carolina limited liability company and Defendant Cafe International, Inc. is a South Carolina corporation. Together, these

Defendants own and rent out 114 Saint Philip St. Unit B, or portions thereof.

124. This suit arises out of the Defendants' business activities in Charleston County and concerns real property located in Charleston County and owned by the Defendants.

125. This Court has subject matter jurisdiction over this case, personal jurisdiction over the Defendants, and venue is proper in this Court.

FACTUAL ALLEGATIONS

126. Plaintiffs' properties are located in the City's Short Term Rental, ST Overlay Zone ("ST Overlay Zone"), as designated by Charleston Ord. Sec. 54-227 ("the Ordinance").

127. Plaintiffs' properties are legally rented out on a short-term (less than 30 days) basis.

128. ~~In addition to and as part of owning property located in the ST Overlay Zone, and~~
rented legally pursuant to the Ordinance, Plaintiffs comply with the law by paying for business licenses and paying accommodation taxes to the City of Charleston ("the City"), as well as complying with other requirements imposed by the City and the Ordinance.

129. Defendants own real property/real estate which is not located in the ST Overlay Zone, or if in the ST Overlay Zone, is not zoned commercial (general business, limited business, etc.) as required by the Ordinance.

130. Defendants rent out their real estate/real property (or portions thereof) on a short-term (less than 30 days) basis.

131. Defendants' short-term rental of their real estate violates the City's ordinances.

132. By renting their real estate illegally, Defendants are able to save money by not paying for business licenses, not complying with regulatory requirements for accommodations rentals, not having to pay the additional capital cost of acquiring legally zoned accommodations

rental property, and not paying all or some accommodation taxes.

133. Because of those illegal savings, Defendants are able to rent out their property at lower prices than the Plaintiffs can, because Plaintiffs pays the extra expenses that the law requires.

134. Due to Defendants' illegal business activity,

(a) the City is being deprived of revenue that the Ordinance entitles it to;

(b) Plaintiffs are being deprived of some rental income, and is making less profit on the rentals that it does have; and

(c) Defendants are benefitting from their under-taxed and under-expensed revenue.

135. Because Plaintiffs operate their short-term rental properties legally and with full disclosure, they pay the required amount of taxes to the State of South Carolina and the United States Internal Revenue Service.

136. Upon information and belief, Defendants do not pay any amount of taxes to the State of South Carolina, the County of Charleston or the United States Internal Revenue Service out of their illegal rental revenue.

137. While the government is affected detrimentally by the Defendants' illegal businesses, the Plaintiffs have suffered damages which only they can claim and are individual to them, including decreased rental income and diminution of property values.

138. Defendants' illegal activity and refusal to pay the required governmental entities the required taxes out of their illegal rental income enables Defendants to compete unfairly with Plaintiffs.

FOR A FIRST CAUSE OF ACTION

(Common Law Nuisance)

139. The allegations of the preceding paragraphs are realleged as if repeated verbatim.
140. Plaintiffs have suffered an injury-in-fact which is a concrete, particularized, and an actual invasion of their legally protected interests.
141. This injury includes the Plaintiffs' loss of rental income and diminution in the value of their properties.
142. This concrete, individualized injury is different from and in addition to the general injury to the public, such as increased traffic and parking issues, etc.
143. While the Defendants' illegal activities do affect the public and the City in ways ~~different from the effects on the Plaintiffs, the Plaintiffs seek only injunctive relief and to recover~~ their damages, which are unique to the Plaintiffs, not shared by anybody else, anywhere.
144. The Plaintiffs' individualized injuries were and are caused by the Defendants' illegal activities.
145. A favorable decision will redress the Plaintiffs' injuries.
146. Defendants' illegal use of their property constitutes a nuisance and invades the Plaintiffs' rights to the use and enjoyment of their property.
147. Plaintiffs' injury to their property interests takes the form of reduced rents and diminished property values.
148. Plaintiffs are entitled to legal and equitable relief as a result of the Defendants' nuisance.

FOR A SECOND CAUSE OF ACTION

(Violation of City Ordinances)

149. The allegations of the preceding paragraphs are realleged as if repeated verbatim.

150. As set forth above, the Defendants' short-term rental businesses are illegal under the City of Charleston ordinances.

151. The Defendants' properties are being used in violation of the City ordinances.

152. Plaintiffs are property owners who have been, are being, and will be damaged by the Defendants' violations of the City ordinances.

153. Under City of Charleston Ordinance Sec. 54-905, Plaintiffs are entitled to injunctive relief preventing the Defendants from continuing to violate the City ordinances.

154. Plaintiffs are also entitled to legal remedies including damages.

FOR A THIRD CAUSE OF ACTION

(Unfair Trade Practices)

155. The allegations of the preceding paragraphs are realleged as if repeated verbatim.

156. Plaintiffs have suffered an injury-in-fact which is a concrete, particularized, and actual invasion of their legally protected interests.

157. This injury includes the Plaintiffs' loss of rental income and diminution in the value of their properties.

158. This concrete, individualized injury is different from and in addition to the general injury to the public, such as increased traffic and parking issues, etc.

159. While the Defendants' illegal activities do affect the public and the City in ways different from the effects on the Plaintiffs, the Plaintiffs seek only injunctive relief and to recover their damages, which are unique to the Plaintiffs, not shared by anybody else, anywhere.

160. The Plaintiffs' individualized injuries were and are caused by the Defendants' illegal activities.

161. A favorable decision will redress the Plaintiffs' injuries.
162. Defendants' illegal use of their properties violates S.C. Code Ann. § 39-5-10 *et seq.* because it violates the City's ordinances and is offensive to the public policy.
163. Defendants' illegal activities are not permitted, authorized or allowed by any governmental or regulatory body, and constitute unfair trade practices and unfair competition.
165. Defendants' unfair trade practices have an adverse effect on the public interest because they violate public law, have been repeated, and will continue to be repeated unless redressed by this Court.
166. Defendants' unfair trade practices are the cause of damages to the Plaintiffs.
167. Plaintiffs are entitled to actual damages, treble damages, attorneys' fees and costs.

FOR A FOURTH CAUSE OF ACTION

(Unjust Enrichment)

168. The allegations of the preceding paragraphs are realleged as if repeated verbatim.
169. Plaintiffs have suffered an injury-in-fact which is a concrete, particularized, and actual invasion of their legally protected interests.
170. This injury includes the Plaintiffs' loss of rental income and diminution in the value of their properties.
171. This concrete, individualized injury is different from and in addition to the general injury to the public, such as increased traffic and parking issues, etc.
172. While the Defendants' illegal activities do affect the public and the City in ways different from the effects on the Plaintiffs, the Plaintiffs seek only injunctive relief and to recover their damages, which are unique to the Plaintiffs, not shared by anybody else, anywhere.
173. The Plaintiffs' individualized injuries were and are caused by the Defendants'

illegal activities.

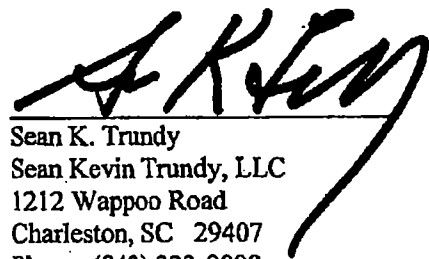
174. A favorable decision will redress the Plaintiffs' injuries.

175. Defendants have been unjustly enriched, retaining and benefitting from their violations of the law, to the detriment of the Plaintiffs.

176. It is unfair that the Defendants retain the benefit of their illegal acts to the detriment of the Plaintiffs.

177. Plaintiffs are entitled to actual damages and prejudgment interest.

WHEREFORE, having fully complained of the Defendants, Plaintiffs pray for actual damages, treble damages, attorneys' fees, costs, prejudgment interest, equitable and injunctive relief, and such other and further relief as the Court may deem appropriate.



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ATTORNEY FOR PLAINTFFS

January 5, 2017

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Charleston Development Company, LLC,
Charleston Housing Company, LLC, and
NotSoHostel, LLC,

Plaintiffs

vs.

Younesse Alami, et al.,

Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO. 2015-CP-10-5415

AMENDED ANSWER &
COUNTERCLAIM
(Jury Trial Requested)

FILED
2017 FEB -6 PM 3:35
JULIE J. ARMSTRONG
CLERK OF COURT

COMES NOW, Simon Adell, Matthew Anderson, Brandon Blount, Ryan Cockrell, Kevin and Virginia Conlon, Kathleen Dougherty, Michael Elder, Paula Garrett, Sonya and Ryan Gilreath, Harthorn Family Trust, Preston Hipp, Robin Joseph, Molly Keeler McNeill, Helène Kenny/Bridget Kenny Revocable Trust, Hadassah Levenson, Bruce Murphy, Brandon Perdue, Ginger Scofield, Kenneth Welborn, One Henrietta, LLC, and Brian Young (hereinafter as "Defendants"), by and through the undersigned counsel, answering and defending against Plaintiff's Complaint in the above-styled action and responding as follows. Defendant denies each allegation that is not specifically admitted below:

1. Defendants lack sufficient information at this time to admit or deny the allegations contained in Paragraphs 1 through 7 of Plaintiff's Complaint.
2. Defendant, Simon Adell, denies the allegations of Paragraph 8 of the Plaintiff's Complaint in that Defendant is a resident of Charleston County. Defendant admits that he owns and rents out 70 Nassau Street, Apartments B and C, Charleston, SC.

3. Defendants lack sufficient information at this time to admit or deny the allegations contained in Paragraphs 9 and 10 of Plaintiff's Complaint.
4. Defendant, Matthew Anderson, admits the allegations of Paragraph 11 of the Plaintiff's Complaint in that Defendant is a resident of Charleston County and owns and rents 36 Poplar Street, Charleston, SC.
5. Defendants lack sufficient information at this time to admit or deny the allegations contained in Paragraphs 12 through 18 of Plaintiff's Complaint.
6. Defendant, Brandon Blount, admits the allegations of Paragraph 19 of the Plaintiff's Complaint in that Defendant is a resident of Charleston County. Defendant denies that he owns and rents 11 Bogard Street, Apt A, Charleston, SC.
7. Defendants lack sufficient information at this time to admit or deny the allegations contained in Paragraphs 20 through 25 of Plaintiff's Complaint.
8. Defendant, Ryan Cockrell, admits the allegations of Paragraph 26 of the Plaintiff's Complaint in that Defendant is a resident of Charleston County and owns and rents 55 Darlington Avenue, Charleston, SC. Defendant admits that he rents out 55 Darlington Avenue, Charleston, SC on a long-term (over 30 days at a time) basis.
9. Defendants, Kevin and Virginia Conlon, admit the allegations of Paragraph 27 of the Plaintiff's Complaint in that Defendants are residents of Charleston County and own and rent 49 Darlington Avenue, Charleston, SC.
10. Defendants lack sufficient information at this time to admit or deny the allegations contained in Paragraphs 28 through 38 of Plaintiff's Complaint.

11. Defendant, Kathleen Dougherty, admits the allegations of Paragraph 39 of the Plaintiff's Complaint in that Defendant is a resident of Charleston County but denies that she owns or rents 368 President Street, Charleston, SC.
12. Defendants lack sufficient information at this time to admit or deny the allegations contained in Paragraphs 40 and 41 of Plaintiff's Complaint.
13. Defendant, Michael Elder, admits the allegations of Paragraph 42 of the Plaintiff's Complaint in that Defendant is a resident of Charleston County and owns and rents 130 Darlington Avenue, Charleston, SC.
14. Defendants lack sufficient information at this time to admit or deny the allegations contained in Paragraphs 43 through 45 of Plaintiff's Complaint.
15. Defendant, Paula Garrett, admits the allegations of Paragraph 46 of the Plaintiff's Complaint in that Defendant is a resident of Charleston County and owns and rents 7.5 Kracke Street, Unit B, Charleston, SC.
16. Defendants lack sufficient information at this time to admit or deny the allegations contained in Paragraphs 47 and 48 of Plaintiff's Complaint.
17. Defendants, Sonya and Ryan Gilreath, admit the allegations of Paragraph 49 of the Plaintiff's Complaint in that Defendants are residents of Goose Creek and own 168 Tradd Street, Charleston, SC. Defendants deny that they rent 168 Tradd Street, Charleston, SC.
18. Defendants lack sufficient information at this time to admit or deny the allegations contained in Paragraphs 50 through 57 of Plaintiff's Complaint.

19. Defendant, Preston Hipp, admits the allegations of Paragraph 58 of the Plaintiff's Complaint in that Defendant is a resident of Charleston County and owns 204 Ashley Avenue, Unit B, Charleston, SC.

20. Defendants lack sufficient information at this time to admit or deny the allegations contained in Paragraphs 59 through 63 of Plaintiff's Complaint.

21. Defendant, Robin Joseph, admits the allegations of Paragraph 64 of the Plaintiff's Complaint in that Defendant is a resident of Charleston County and owns and rents out 45 Gadsden Street, Charleston, SC.

22. Defendant, Molly Keeler, admits the allegations of Paragraph 65 of the Plaintiff's Complaint in that Defendant is a resident of Charleston County and owns 54 Darlington Avenue, Charleston, SC. Defendant denies that she rents out the property.

23. Defendants lack sufficient information at this time to admit or deny the allegations contained in Paragraphs 66 through 78 of Plaintiff's Complaint.

24. Defendant, Robert Bruce Murphy, Jr., admits the allegations of Paragraph 79 of the Plaintiff's Complaint in that Defendant is a resident of Illinois but denies that he owns 84 Church Street, Charleston, SC. Defendant denies that he rents out 84 Church Street, Charleston, SC.

25. Defendants lack sufficient information at this time to admit or deny the allegations contained in Paragraphs 80 through 82 of Plaintiff's Complaint.

26. Defendant, Brandon Perdue, admits the allegations of Paragraph 83 of the Plaintiff's Complaint in that Defendant is a resident of Charleston and rents out 87 America Street, Charleston, SC but denies that he owns 87 America Street, Charleston, SC. Defendant further states that the owner is now Realty Initiatives, LLC.

27. Defendant, Hadassah Rothenberg, admits the allegations of Paragraph 84 of the Plaintiff's Complaint in that Defendant is a resident of Charleston and owns 18 Oswego Street, Apt. B, Charleston, SC.
28. Defendants lack sufficient information at this time to admit or deny the allegations contained in Paragraphs 85 and 86 of Plaintiff's Complaint.
29. Defendant, Ginger Scofield, admits the allegations of Paragraph 87 of the Plaintiff's Complaint in that Defendant is a resident of Charleston and admits that Defendant owns and rents 9 Laurel Avenue, Charleston, SC.
28. Defendants lack sufficient information at this time to admit or deny the allegations contained in Paragraphs 88 through 93 of Plaintiff's Complaint.
29. Defendant, Kenneth Welborn, denies the allegations of Paragraph 94 of the Plaintiff's Complaint in that Defendant is a resident of Charleston. Defendant admits that he owns 103 Bogard Street, Unit B, Charleston, SC. Defendant admits that he rents out 103 Bogard Street, Unit B, Charleston, SC on a long-term (over 30 days at a time) basis.
30. Defendants lack sufficient information at this time to admit or deny the allegations contained in Paragraph 95 of Plaintiff's Complaint.
31. Defendant, Bryan Young, admits the allegations of Paragraph 96 of the Plaintiff's Complaint in that Defendant is a resident of Charleston and owns and rents 590 Rutledge Avenue, Charleston, SC.
32. Defendants lack sufficient information at this time to admit or deny the allegations contained in Paragraphs 97 through 99 of Plaintiff's Complaint.

33. Defendant, Hartshorn Family Trust, admits the allegations of Paragraph 100 of the Plaintiff's Complaint in that Defendant owns and rents 19 West Street, Charleston, SC.

34. Defendant, Helene Kenny/Bridget Kenny Revocable Trust, admits the allegations of Paragraph 101 of the Plaintiff's Complaint in that Defendant owns and rents 176 Smith Street, Charleston, SC.

35. Defendants lack sufficient information at this time to admit or deny the allegations contained in Paragraphs 102 through 117 of Plaintiff's Complaint.

34. Defendant, One Henrietta, LLC, admits the allegations of Paragraph 118 of the Plaintiff's Complaint in that Defendant is a South Carolina Limited Liability Company and owns 1 Henrietta Street, Charleston, SC. Defendant admits that it rents out 1 Henrietta Street on a long-term (over 30 days at a time) basis.

35. Defendants lack sufficient information at this time to admit or deny the allegations contained in Paragraphs 119 through 123 of Plaintiff's Complaint.

36. The allegations contained in Paragraphs 124 and 125 are legal conclusions and require no response. To the extent a response is required Defendants deny the allegations.

37. Defendants lack sufficient information at this time to admit or deny the allegations contained in Paragraphs 126 through 129 of Plaintiff's Complaint.

38. As to paragraph 130, Defendants admit only that the property has been rented out for less than thirty (30) days on at least one occasion. As to any other allegations concerning any other Defendant, these Defendants lack sufficient knowledge or information in order to form an opinion as to the truth of the allegations contained in this Paragraph and therefore deny the same.

39. The allegations contained in Paragraph 131 are legal conclusions and thus require no response. To the extent that a response is required, the Defendants deny the allegations as to property in which they have an ownership interest. As to any other allegations concerning any other Defendant, these Defendants lack sufficient knowledge or information in order to form an opinion as to the truth of the allegations contained in this Paragraph and therefore deny the same.
40. As to Paragraphs 132 through 136, the Defendants deny the allegations as to property in which they have an ownership interest. As to any other allegations concerning any other Defendant, these Defendants lack sufficient knowledge or information in order to form an opinion as to the truth of the allegations contained in this Paragraph and therefore deny the same.
41. The allegations contained in Paragraph 137 are denied.
42. As to Paragraph 138, the Defendants deny the allegations as to property in which they have an ownership interest. As to any other allegations concerning any other Defendant, these Defendants lack sufficient knowledge or information in order to form an opinion as to the truth of the allegations contained in this Paragraph and therefore deny the same.
43. As to Paragraph 139, to the extent that the Plaintiff re-alleged proceeding paragraphs, Defendants repeat and incorporate such answers as previously given as if fully set forth herein.
44. The allegations contained in Paragraphs 140 through 148 are denied.
45. As to Paragraph 149, to the extent that the Plaintiff re-alleged proceeding paragraphs, Defendants repeat and incorporate such answers as previously given as if fully set forth herein.
46. The allegations contained in Paragraphs 150 through 154 are denied.
47. As to Paragraph 155, to the extent that the Plaintiff re-alleged proceeding paragraphs, Defendants repeat and incorporate such answers as previously given as if fully set forth herein.

48. The allegations contained in Paragraphs 156 through 167 are denied.
49. As to Paragraph 168, to the extent that the Plaintiff re-alleged proceeding paragraphs, Defendants repeat and incorporate such answers as previously given as if fully set forth herein.
50. The allegations contained in Paragraphs 169 through 177 are denied.

DEFENDANT'S STATEMENT OF FACTS

51. Upon information and belief, Plaintiffs are companies owned by Robert Holt a disbarred attorney pursuant to South Carolina Supreme Court Opinion No. 24708.
52. Robert Holt has been engaged in an ongoing effort to provide the City of Charleston enforcement department with information regarding a number of named defendants. Apparently his dissatisfaction with the City's enforcement has resulted in this lawsuit.
53. Defendants did not receive any written notice from Plaintiff or their counsel prior to filing suit regarding any nuisance.
54. Plaintiffs/Robert Holt engaged the City in creating a special zone district in which his properties would receive an unfair advantage for use as a short term rental.
55. Plaintiffs/Robert Holt has received violations from the City of Charleston for his illegal use of real property as short term rentals.
56. Upon information and belief Plaintiffs and/or Robert Holt own properties which are currently being short term rented without a business license.
57. Plaintiffs' properties are not adjacent or neighboring properties to the Defendants.
58. The City of Charleston has created a task force and is considering regulating the use of short term rentals making the Plaintiff's claims moot.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE (Failure to State a Claim for Relief)

59. Defendant restates the above as if fully set forth herein.
60. Plaintiffs' Complaint fails to state a claim for relief for which this Honorable Court can provide relief under the South Carolina Rules of Civil Procedure Rule 12(b)(6).

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Standing)

61. Defendant restates the above as if fully set forth herein.
62. Plaintiffs are not adjacent or neighboring property owners to the Defendants.
63. Additionally, even if Plaintiff were an adjacent or neighboring property owner, Plaintiff is only entitled to seek court intervention to "prevent" or "correct" a zoning violation and is not entitled to a private cause of action for damages.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Unclean Hands)

66. Defendant restates the above as if fully set forth herein.
67. Plaintiff's recovery is barred by the Plaintiff's unclean hands.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Additional Defenses)

68. Defendant restates the above as if fully set forth herein.
69. Defendant hereby gives notice that it intends to rely upon other affirmative defenses that may become available or apparent during the course of discovery, and thus reserves the right to amend its Answer to assert such defenses.
70. Defendant specifically denies all allegations not specifically admitted.

FURTHER ANSWERING AND AS AN AFFIRMATIVE DEFENSE
(Failure to Join Indispensable Parties)

71. Defendant restates the above as if fully set forth herein.

72. Plaintiffs' recovery is barred by Plaintiff's failure to join indispensable parties.

FURTHER ANSWERING AND AS A DEFENSE
(SC CODE §15-43-120)

73. Defendant restates the above as if fully set forth herein.
74. Plaintiffs did not give Defendant the required written notice pursuant to South Carolina Code of Laws Section 15-43-120.

FURTHER ANSWERING AND AS A DEFENSE
(SC CODE §6-29-800(A)(1) et. seq.)

75. Defendant restates the above as if fully set forth herein.
76. Plaintiff has failed to exhaust his administrative remedies by seeking an opinion from the Zoning Administrator and appealing the Zoning Administrator's decision to the Board of Zoning Appeals as required by South Carolina Code of Laws Section 6-29-800(A)(1) et. seq. and the City of Charleston Zoning Ordinance Section 54-900 et. seq.

FURTHER ANSWERING AS A COUNTERCLAIM AGAINST PLAINTIFF, GLOBAL
REAL PROPERTY TRUST, DEFENDANT ALLEGES AND SAYS:

AS A FIRST COUNTERCLAIM AGAINST PLAINTIFF(S)
(FRIVOLOUS CIVIL PROCEEDINGS SANCTIONS ACT, SC CODE §15-36-10 et. seq.)

77. Defendants restates the above as if fully set forth herein.
78. Plaintiffs filed a lawsuit in violation of SC Code Sect. 15-36-10 et. seq.

AS A SECOND COUNTERCLAIM AGAINST PLAINTIFF(S)
(ABUSE OF PROCESS)

79. Defendants restates the above as if fully set forth herein.

80. Plaintiffs has abused the litigation process by failing to make a good faith effort to resolve the case with Defendants, by failing to seek administrative remedies, and by including an offer of settlement in the service of Defendants' Summons and Complaint.

AS A THIRD COUNTERCLAIM AGAINST PLAINTIFF(S)
(SC CODE §39-3-10 et. seq.)

81. Defendant restates the above as if fully set forth herein.

82. Plaintiffs are engaged in the interference of competition contrary to public policy.

83. Plaintiffs are attempting through this lawsuit to monopolize the short term rental market in a defined geographic region of downtown Charleston.

AS A FOURTH COUNTERCLAIM AGAINST PLAINTIFF(S)
(HARASSMENT)

84. Defendant restates the above as if fully set forth herein.

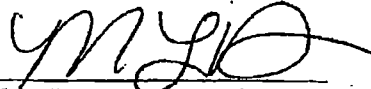
85. Plaintiffs have gone to great lengths to troll vacation rental sites to find Defendant. Plaintiff would have no knowledge of Defendant if not for this "witch hunt."

86. Upon information and belief Plaintiffs contacted the City of Charleston via email to report that Defendants were possibly violating a city ordinance. Plaintiffs then filed this lawsuit due to the City of Charleston's lack of interest in enforcing the ordinance.

WHEREFORE DEFENDANT demands that the Plaintiff's Complaint be dismissed; the counterclaims be upheld by this Honorable Court and damages awarded, including attorney's fees and costs; and Defendant be granted any such other relief as this Honorable Court deems appropriate and in favor of the Defendant.

DEFENDANTS HEREBY REQUEST A JURY TRIAL.

Respectfully submitted,



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COUNSEL FOR THE DEFENDANTS

Charleston, SC

February 6, 2017

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

CHARLESTON DEVELOPMENT COMPANY, : CIVIL ACTION NO.
LLC, CHARLESTON HOUSING COMPANY, : 15-CP-10-5415
LLC AND NOTSO HOSTEL, LLC, :

Plaintiffs, :

vs. :

YOUNESSE ALAMI, DEIDRE ALEXANDER, :
SIMON M. ADELL, MATTHEW ANDERSON, :
MATTHEW ASHER, DANIEL BAKER, MARIE :
BAKER, MATTHEW AND CHRISTINA BARE, :
MICHELLE BARNWELL, ANDRE BAUER, :
STEVENSON B. BENNETT, PETER BIERCE, :
BRANDON BLOUNT, BARBARA BRASS, :
NANCY H. BREEDEN, RICHARD T. BREWER :
SIGRID ANNE EILERTSON, REGINALD P. :
BROWN IV, MARY CAHILL, RALPH :
CAPASSO, RYAN COCKRELL, KEVIN AND :
VIRGINIA CONLON, SYDNEY COOK, ANNE :
MARIE CREVAR, CHRISTINA CROSS, :
DARRYL J. DAMICO, LABAR DANIEL, :
STEPHEN DARWAK, NAWABI M. DAUD, :
LINDSAY DAVENPORT, ISABELLE DE :
FLEURAC, LYNETTE DENNIS, MARY :
DICKERSON, MAXWELL STREETER, :
KATHLEEN DOUGHERTY, DAVID DRESSMAN, :
ANNA DRESSMAN, SHIRLEY EATON, :
MICHAEL ELDER, RICHARD ELLERKMANN, :
ARIANE COMETA, CHRISTOPHER SCOTT :
FARLEY, GREGORY FIELD, PAULA GARRET :
MICHELE GHASTIN, TIMNAH GILLER, :
VIRGINIA GELLER, RYAN GILREATH, :
SONYA GILREATH, KIMBERLY GLENN, :
SHAUN HALSOR, JOSEPHINE REX, :
ARTHUR HALVORSON, ANDREW HALVORSON, :
LINDA HANCOCK, LAURA HYATT, ZSOLT :
HARASZIT, MIKE HARTEL, NATHAN :
HERRING, JAMES HICKS, JR, :
LAURIE HICKS, PRESTON G. HIPPI, :
SARAH JACKS, THOMAS JERMYN, COLIN :
JONES, MATTHEW F. JONES, ROBERT C. :

1 JONES, ROBIN JOSEPH, MOLLY KEELER, :CIVIL ACTION NO.
2 JOHN KENNY, MANDI WALTERS, ABIGAIL :15-CP-10-5415
3 KING, AARON KLESS, LAURIE KRAMER, :
4 ROBERT KRAMER, SCOTT JOSEPH KRAMER, :
5 ALLISON KREUTZER, GLENDA HOLMES :
6 LADSON, GLEN LANDON, JANET LANDON, :
7 BENJAMIN LEVITT, RICHARD LEVITT, :
8 JESSE LUTZ, LETITIA LYNN, NIKOU :
9 MANOUCHEHRI, ROBERT MCCARTHY, MARY :
10 MCCARTHY, ROBERT BRUCE MURPHY, JR., :
11 THOMAS NASELARIS, ZOE NASELARIS, :
12 BEAU O'STEEN, CORI O'STEEN, LANCE :
13 PARR, BRANDON PERDUE, AMANDA LEE :
14 RAYMER, HADASSAH ROTHENBERG, DANIEL :
15 RYAN, KIMBERLY BOWLIN, KEVIN :
16 SCHNITTKER, GINGER SCOFIELD, :
17 INDERJIT SINGH, AVTAR SINGH, ALECIA :
18 STEVENS, LEE STEVENS, JUSTIN SWAN, :
19 MERRICK TEICHMAN, JOHN VAN VLACK, :
20 JR., WILLIAM WATERHOUSE, JENNIFER :
21 WATERHOUSE, KENNETH G. WELBORN, JR. :
22 ANNE WOHLFEIL, BRYAN YOUNG, 68 :
23 BROAD LEGACY TRUST, LINDA C. :
24 RAVENEL, TRUSTEE, AJB TRUST, :
25 ANTHONY & JACQUELINE BRADLEY, :
TRUSTEES, JUSTIN COGGINS CALLEN, :
TRUSTEE OF THE CHARLESTON TRUST, :
HARTSHORN FAMILY TRUST, HELENE :
KENNY/BRIDGET KENNY REVOCABLE TRUST :
WILHELMINA M. WIETERS LIFE ESTATE :
CHILDRENS TRUST, 14 BENSON STREET, :
LLC, 33 BOGARD STREET, LLC, 249 :
CUMMING, LLC, 253 COMING STREET, :
LLC, 259 EAST BAY, LLC, 259 EAST :
BAY 10 B LLC, 272 D COMING STREET, :
LLC, BEACHCRUISER LLC, CAFE :
INTERNATIONAL, INC., CORNER AT OLD :
CANTON, LLC, GEER INTERESTS, LLC, :
KIT PROPERTIES, LLC, LAMBERT-WEISS, :
LLC, LINE STREET PROPERTIES, LLC, :
THE NAWs, LLC, NEW LEASE CAPITAL, :
LLC, ONE HENRIETTA, LLC, PERIWINKLE :
PARTNERS, LLC, PORCH PROPERTIES, :
LLC, SLAMBOVIA, LLC, THREE FISTS, :
LLC, WESTBURY PROPERTIES, LLC, AND :
WESTENDORFF HARDWARE, LLC, :
Defendants. :
CP

DEPOSITION OF ROBERT HOLT

DATE TAKEN: TUESDAY, MAY 15, 2018
TIME BEGAN: 9:00 A.M.
TIME ENDED: 2:59 P.M.
LOCATION: BLOODGOOD & SANDERS, LLC
242 MATHIS FERRY ROAD, SUITE 201
MOUNT PLEASANT, SOUTH CAROLINA

REPORTED BY: DEIRDRE J. WEYER, RPR

1 trustee of the trust which owns the entities.

2 Q Okay. And we'll go over that in more
3 detail later.

4 All right. What is your full name, for
5 the record?

6 A Robert Holt.

7 Q And your current address?

8 A I live at both 101C Westheimer Road,
9 Houston, Texas 77006, and I live at 6 Tully Alley in
10 Charleston, South Carolina 29403.

11 Q And how much time do you spend between in
12 each residence?

13 A I spend probably two-thirds of my time in
14 Charleston and a third of my time in Houston,
15 roughly. It varies.

16 Q Okay. Are you a South Carolina resident?

17 A I consider myself one, but I am a Texas
18 resident.

19 Q Do you have a Texas driver's license?

20 A I do indeed.

21 Q Do you vote in Texas?

22 A I do indeed.

23 Q And how long have you been a Texas
24 resident?

25 A Since 1996.

1 Q How about BiblioLabs? Who owns that?

2 A BiblioLabs is owned by -- I think we have
3 seven or eight members -- eight -- nine -- nine
4 members, I believe. Oh. I'm a chairman of
5 Charleston Technology Company. Charleston Technology
6 Company holds an interest in BiblioLabs.

7 Q Okay. What kind of corporation is
8 BiblioLabs?

9 A Those are all limited liability companies,
10 all of those.

11 Q Including Creative Media?

12 A Yes.

13 Q And Charleston Tech Company?

14 A Yeah.

15 Q And Ellaora?

16 A Yep, all of them.

17 Q Okay. So BiblioLabs -- my question was,
18 Is BiblioLabs owned by Global Real Properties?

19 A I don't know what you're asking me because
20 it owns an interest in. Are you asking me is it the
21 majority owner? Are you asking -- I don't
22 understand.

23 Q I want to know BiblioLabs' relationship to
24 Global Real Property?

25 A Global -- well, none.

1 A So -- and that is -- that lists all of the
2 names of everyone who stayed, the day they stayed,
3 and the amount.

4 Q Okay.

5 A So with the exception of that, to the
6 extent we have it -- if you want me to go through
7 here and tell you one -- the ones we don't have and
8 that -- so, for instance, tax record, item number 5,
9 does not exist, right. So we did not file a loss
10 on -- on anything.

11 Q All right.

12 A Item number 4, that's in the possession
13 of -- that's in the possession of the Defendants.
14 The documents necessary in order to calculate that is
15 in the possession of the Defendants.

16 Q And which documents would those be,
17 specifically? What are you referring to when you say
18 they're in the --

19 A What has -- what has occurred with their
20 property. So, for instance, I don't know as to any
21 particular Plaintiff when their property was rented,
22 the specificity. I don't know when their property
23 was rented, I don't know how much it was rented for,
24 I don't know the number of days, and so I can't
25 compare our similar properties for the days that we

1 were -- that we did not rent our property that that
2 one that is next door and illegal or down the street
3 and illegal but is a similar property.

4 So that is in the possession of the
5 Defendants. We have -- to the best of my knowledge,
6 we haven't received any responsive documents from any
7 Defendants. So...

8 Q So how are you going to prove Plaintiffs'
9 loss of rental income associated with each of the
10 properties that they own?

11 A Well, it is my fervent hope that the
12 Defendants will produce the documents that we are
13 producing so, with those same documents, we could
14 prove it. So if the Defendants gave us what we have
15 given the Defendants, we will be able to prove our
16 loss.

17 Q And what is it that you want from the
18 Defendants that you say you have not been provided?

19 A Precisely what we have given: The number
20 of days that they rented, the amount that they
21 rented. And you have another question about taxes
22 here.

23 Q And how will you take that information and
24 calculate the loss of rental income?

25 A Well, without -- without that information,

1 we've been unable to retain an economist, a forensic
2 accountant, any expert because we don't have
3 anything -- we have half the story. So we can't hire
4 an expert because we have half the story.

5 Q The expert doesn't care what the numbers
6 are. The expert's going to have a theory, right?

7 A I don't know.

8 Q Why would you have to wait --

9 A I don't know.

10 Q -- until you have the exact number?

11 A I'm not an expert, but you -- but we have
12 half the story. We know what has occurred at our
13 property and we have an idea of what has occurred at
14 the Defendants' properties, but we do not know as a
15 matter of certainty. And that is absolutely
16 necessary for us in order to calculate and determine
17 our damages.

18 Q But how are you going to calculate and
19 determine your damages?

20 A Well, I'm not. An economist, a forensic
21 accountant, an expert is. I know that I have been
22 damaged. I do not know the extent of the damage. I
23 have half the information.

24 Q Who is the expert that you're going to
25 retain?

1 competing with someone?

2 A No, I have not.

3 Q So number 4, you say you don't have --

4 A If I'm -- I'm sorry. If I'm competing
5 with someone --

6 Q You said you're only damaged by
7 people -- you're not damaged by people you compete
8 with. Is that your testimony?

9 A Legal. Legal competition. I'm
10 not -- that is the nature of business. It is the
11 illegals that have caused damage.

12 Q Not the legals?

13 A The legals it's competition, correct.

14 Q Okay. And what is the basis of your -- of
15 that statement?

16 A My 58 years of knowledge and -- knowledge
17 of businesses and how things operate in the world.
18 That is my basis.

19 Q And just let me understand this because I
20 am not a transactional lawyer. Your testimony is
21 that the only property owners in city of Charleston
22 who are damaging you are the illegal short-term
23 renters not the legal short-term renters?

24 A That is correct.

25 Q Okay.

1 Q -- asked if you know. You're the -- you
2 are the person most knowledgeable about the
3 Plaintiffs in this case.

4 A That is correct. That is correct.

5 Q So what -- if the Plaintiffs are provided
6 the numbers from the Defendants today --

7 A Right.

8 Q -- you still cannot tell me --

9 A Numbers and dates.

10 Q -- your losses, can you?

11 A Numbers and dates. I can --

12 Q The Plaintiffs cannot tell me their
13 losses, correct?

14 A The Plaintiffs can give you a hypothesis
15 as to their losses, but the Plaintiffs are not
16 experts and do not have an expert on staff that would
17 review this --

18 Q Okay.

19 A -- and -- and would -- so supply and
20 demand. That's an economic theory. How did the X
21 demand affect rates in general. I -- I don't have
22 that data.

23 Q Okay.

24 A An economist will have that data. That
25 is, in fact, what they do. So -- so, no, I

1 Q You're -- I'm only interested in the
2 Plaintiffs. I am not interested in all of Charleston
3 County. You have three named Plaintiffs, and so my
4 questions are only pertaining to the three named
5 Plaintiffs. So how are those -- and that was my
6 problem if I asked the question improperly. But how
7 do the three named Plaintiffs -- how have they been
8 damaged?

9 A Okay. They are part of the pool of
10 damaged people. The precise extent of that can only
11 be determined by looking at precise numbers as to
12 what your Defendants did on any given day. That's
13 the point. So they are part of a pool. So if we
14 have five properties and --

15 Q Who has five properties, the Plaintiffs?

16 A The Plaintiffs. The Plaintiffs.

17 Q Okay.

18 A If the Plaintiffs have five properties --

19 Q Okay.

20 A -- and the entire pool of legal properties
21 is 20, right, and the properties fall into
22 categories -- single rooms, single rooms with a
23 shared bath, single rooms with their own ensuite
24 bath, two bedrooms, three bedrooms, four
25 bedrooms -- and they fall into categories. And so

1 you look and you say, well, clearly a shared bedroom,
2 if someone is in the market for a shared bedroom,
3 they're not going to rent a three- or four-bedroom.
4 So that's not viable competition. So you look and
5 you say who has shared bedrooms, that is legal. And
6 the pool of people who have shared bedrooms is
7 incredibly small.

8 So you would say if you have two folks
9 that legally have shared bedrooms and you have 50
10 illegals with shared bedrooms, I think you could
11 reasonably anticipate that half of that ill-gotten
12 gain, to me not an economist. Now, an economist may
13 factor things in and say, well, those people may have
14 stayed in a hotel or they may have stayed -- I
15 don't -- I don't have that --

16 Q In a bed and breakfast?

17 A They may have stayed in a bed and
18 breakfast.

19 Q And that -- so that's my next question.
20 When you use the term "viable competition," what do
21 you mean?

22 A Somebody offering a similar product.

23 Q What if I allow a family member to come
24 stay at the house because it's cheaper than going to
25 NotSo Hostel? Are you damaged by that?

1 A You already asked me about that.

2 Q Okay. Are there any other properties that
3 the Plaintiffs have mortgages on, to your knowledge?

4 A Yeah. The Plaintiffs have -- have
5 properties not related to this, yeah. We have
6 long-term rental properties. It's a
7 different -- it's a different business but yeah.

8 Q Okay. And then 16 asks for bank
9 statements.

10 A Right.

11 Q I saw some bank statements.

12 A So what I got you -- what you have is all
13 of the online bank statements that go back two years.
14 We have requested the bank statements and we'll
15 hopefully have those in a week or two weeks. They
16 couldn't give us an exact time. So for the preceding
17 three years, we should have that shortly. We do all
18 our banking online so we don't -- can't go to a file
19 and get physical copies of anything.

20 Q What type of a trust is Global Real
21 Property Trust?

22 A It's an irrevocable trust, an irrevocable.

23 Q And who has the trust document -- who has
24 possession of the trust documents?

25 A I do. The trust certificate is filed with

1 Q Do you contend you have standing because
2 you're a taxpayer?

3 A We have numerous causes of action, so are
4 you asking me in particular with regard to any cause
5 of action?

6 Q Yes, any of them. Do --

7 A Not because I am a taxpayer, no. I do not
8 believe that confers status upon me. But I believe I
9 have standing -- not me. I believe the
10 Defendants -- the Plaintiffs have standing for all
11 cause of actions which were brought.

12 Q And why do you believe that?

13 A Because it meets the requirements of the
14 statute governing the particular cause of action.

15 Q Which statute?

16 A Well, with regard to the zoning
17 regulations, the zoning -- the statutes governing
18 zoning with regard to the Unfair Trade Practices Act,
19 the statute governing the Unfair Trade Practices Act,
20 and those statutes.

21 Q And you have standing in those statutes
22 why? The Plaintiffs do, why?

23 A Because they meet the test for standing
24 from the statute themselves. But I have counsel that
25 will give you a legal -- or the Defendants -- the

1 try to be a nation of laws. And I think that once
2 people are aware, become aware, that they are doing
3 something that is not what they should be doing that
4 they stop.

5 Q Anything else?

6 A Not off the top of my head, no.

7 Q Do you contend that a decision in this
8 lawsuit is necessary for any reason other than to
9 address the Plaintiffs' monetary issues?

10 A Necessary? I don't know that it -- I
11 don't know whether it is or it is not necessary.

12 Q Do you contend that you have authority to
13 enforce a city ordinance or that -- when I say "you,"
14 I mean the Plaintiffs.

15 A I contend that the Plaintiffs have a
16 remedy under the zoning ordinance and that is one of
17 the causes of action brought by the Plaintiffs. It
18 is not all of the causes of action, it is one. But
19 yes.

20 Q Okay. My question was, Do you contend
21 that the Plaintiffs can enforce a city ordinance?

22 A I contend that my reading of the zoning
23 ordinance provides that the Plaintiffs can seek an
24 injunction against people violating the zone
25 ordinance, yes.

1 only appraisals that you are going to provide are
2 appraisals from three years ago?

3 A Well, it is my hope that the expert that
4 we hire appraises the property as is today and then
5 says, Here is what the property would be worth if
6 there were not all these illegals, if the Defendants
7 were not doing what the Defendants were doing. That
8 is my hope. If I were the expert, that is one of the
9 things that I would do. So presumably we will have
10 more appraisals, hopefully. If that's -- if that's a
11 methodology the expert employs, then we'll give you
12 those appraisals.

13 Q And how are you going to differentiate the
14 damage that one Defendant has done -- allegedly done
15 to you versus another Defendant?

16 A Well, I'm not an expert; but I believe
17 that if I -- if I were the expert, the approach that
18 I would take would be to basket the Defendants by the
19 type of property and basket the Plaintiffs by the
20 type of property and compare those and come up
21 with -- with a number. So in other words -- and I
22 think we've talked about this earlier -- if you have
23 someone who is renting a room in their house, that is
24 not the same as someone who has a four-bedroom house
25 that they're renting. So it seems to me a reasonable

1 but that is one.

2 Q Do you know whether the enforcement of a
3 city ordinance is discretionary?

4 A No, I don't.

5 Q Do you contend that Defendants' rent of
6 their property adversely affects the public?

7 A I don't -- I'm not sure whether it does or
8 it doesn't adversely affect the public. Well, it
9 depends on what public you're talking about.
10 Certainly the societal interest of people abiding
11 by -- by the -- by the zoning ordinance and by rules,
12 I think that's -- that is an important thing for the
13 public. So, yeah. I mean, that's --

14 Q So the public interest is people obeying
15 the law?

16 A That is a public interest. I don't know
17 that that's the exclusive public interest -- I'd have
18 to really dwell on it. But that's one that comes to
19 mind readily. I know that in a lot of neighborhoods
20 where these illegals are, because I've been to
21 neighborhood meetings where people have decried the
22 party houses in their neighborhood, which they had
23 not expected. So I think they certainly feel that
24 it's -- that it's negative.

25 Q Is the public's interest different than

1 the Plaintiffs' interest?

2 A I think it is, yes.

3 Q Is that because the public's interest is
4 not monetary and the Plaintiffs' is?

5 A Well, I was about to say I think the
6 Plaintiff does care about law and order as much as
7 members of the public, but there is an added
8 dimension to the Plaintiffs. And yes, one added
9 dimension would be monetary. I don't know all of
10 them.

11 Q So do you contend that you have a legally
12 protected interest or right in a business to make
13 money?

14 A Oh, absolutely not, I do not contend that;
15 but you have a right to try and make money. You have
16 a right not to have people illegally compete with
17 you.

18 Q Do you have -- when you say you have a
19 right to have people not illegally compete with you,
20 isn't that the City's job to enforce its laws?

21 MR. TRUNDY: Object to the form.

22 THE WITNESS: I -- I think the City is one
23 party. I think in the zoning ordinance the City has
24 said they are not the exclusive party. So I think
25 the City does have a responsibility but not the sole

1 responsibility. And I think -- and we're a nation of
2 laws. So if we're going to be a nation of laws and
3 in a democracy, then I think everyone should care
4 about that.

5 BY MS. BLOODGOOD:

6 Q Caring is a little different than suing
7 somebody to enforce the law, isn't it?

8 MR. TRUNDY: Object to the form.

9 THE WITNESS: There are -- yes. And I
10 don't believe the general public has filed a lawsuit
11 against these Defendants. And if it were merely I
12 have -- you know, whether the City decides to close a
13 street or not, I -- I have an interest in the public
14 that I might be inconvenienced. Or I might enjoy it.
15 I don't know. That is markedly different that this
16 lawsuit and it is not that general interest that
17 we're talking about.

18 BY MS. BLOODGOOD:

19 Q The public's general interest is markedly
20 different than the Plaintiffs' interest in this
21 lawsuit?

22 A In my opinion, it is, yeah. Although the
23 Plaintiffs do care about things that the general
24 public cares about, the Plaintiffs being citizens of
25 this state also.

1 Q Is it your contention that the allegations
2 you make in your lawsuit have to be resolved for some
3 public purpose?

4 MR. TRUNDY: Object to the form.

5 THE WITNESS: I don't -- I -- I have
6 not -- this lawsuit is not being brought in the
7 public interest. So if -- if this helps the public,
8 that's great. If it helps society, that's great.
9 This lawsuit was brought because the Plaintiffs have
10 been damaged. Specifically the Plaintiffs have been
11 damaged. There are, in my belief, other people who
12 have been damaged. And I don't know if this is -- if
13 their damage is actionable or not. Certainly the
14 neighbors at these party houses are damaged. Whether
15 they choose to do something about that or not is up
16 to them.

17 BY MS. BLOODGOOD:

18 Q Are any of the Plaintiffs associations?

19 A What do you mean? They're limited
20 liability companies.

21 Q Do you know what an association is? Like
22 a group of people who get together.

23 MR. TRUNDY: I'll object to the form.

24 BY MS. BLOODGOOD:

25 Q Would you consider them -- any of them

1 Q And you're the trustee. And neither of
2 you live adjacent to any Defendant property, correct?

3 A I don't -- I don't know. I don't think
4 so, but I don't know. I haven't -- I have not gone
5 back and looked at all the list of the Defendants.

6 Q You live at 6 Tully Alley?

7 A I do indeed.

8 Q And is that property adjacent to any
9 Defendant property?

10 A I do not believe it is.

11 Q Does a property owner in Charleston who
12 charges more than you do cause you harm --

13 A I believe so.

14 Q -- for short-term rentals?

15 A If they're illegal, yes, I believe so.

16 Q How?

17 A Because they have taken -- a person -- my
18 experience is that a person who seeks a short-term
19 rental, a whole house rental, likes that type of
20 rental. My wife and I when we travel, we like to
21 have a -- our own ensuite. We used to stay in hotels
22 and we don't anymore. So we look and we see -- in
23 whatever the particular area is, we look. And we see
24 and we would only stay at a hotel if there were no
25 rentals -- no whole house rentals available. We like

1 a kitchen.

2 So to the extent that there are people who
3 are taking that particular person and having them
4 rent their property, regardless of the price, they
5 are damaging the legals who are of that same
6 property. So if -- if we were going with -- if we
7 were traveling with my brother and, you know, and my
8 family and we wanted a four-bedroom house, we're
9 going to look for Airbnb, HomeAway, for four-bedroom
10 houses. So we don't know whether something is legal
11 or not in the particular city. So -- so --

12 Q If --

13 A -- whatever -- if we rented an illegal, we
14 would have rented a legal if that illegal had not
15 been there. So yes.

16 Q If you have two comparable houses as
17 you've described --

18 A Uh-huh.

19 Q -- putting things in baskets --

20 A Yep.

21 Q You have two comparable houses you're
22 looking to rent --

23 A Correct.

24 Q -- say you own house A and I own house

25 B --

1 A No. It's difficult but it certainly is
2 not impossible, because when you look at a
3 place -- and I've done this. We have rented places
4 and you look and you say, okay, what is available and
5 where is it. And so you have comparable properties.
6 And, in fact, the services will feed you comparable
7 properties. They'll say, Here's what you put in and
8 here are the properties that are comparable to each
9 other. Pick.

10 Q And if I have a nicer house than you
11 have --

12 A Uh-huh.

13 Q -- for rental --

14 A Yes.

15 Q -- and I can charge a thousand dollars
16 more than you can, \$500 more than you can --

17 A Yes.

18 Q -- would you consider these comparable
19 rentals?

20 A I don't know -- I don't if they're
21 comparable or not. I mean, there's a lot more data
22 about the houses in order for me to make that -- a
23 mere determination of nicer in the price is not
24 sufficient for me to give you an answer on that.

25 Q Have you been inside any of the

1 Plaintiffs were entitled to injunctive relief.
2 On what basis do you think the Plaintiffs are
3 entitled to injunctive relief?

4 A Under the zoning ordinance that provides
5 that as a relief.

6 Q There's a state statute that talks about
7 enforcement of zoning ordinances, which is South
8 Carolina Code section 6-29-950. And it states that
9 an adjacent or neighboring property owner can -- can
10 get an injunction. We've established you're not an
11 adjacent property owner, none of the Plaintiffs are,
12 correct?

13 A No. We haven't established that. I've
14 told you I do not believe that's the case. But I
15 don't believe that we pled a state statute. I
16 believe that my remedy is from a City ordinance that
17 specifically provides for that remedy. So I
18 don't -- I'm not aware of the state statute. I have
19 not attempted to avail -- the Plaintiffs have not
20 attempted to avail themselves of a state statute. It
21 wasn't pled --

22 Q Do you understand that the only way that
23 municipalities and counties have zoning is through
24 state enabling legislation called the State Planning
25 Act?

1 Q Okay.

2 (Mr. Murphy enters the deposition room.)

3 BY MS. BLOODGOOD:

4 Q Okay. So what injunctive relief do the
5 Plaintiffs want from the court, assuming our arguendo
6 that they would have standing to ask for an
7 injunction?

8 A That the Defendants cease their illegal
9 activity. That's it.

10 Q You want a court to -- to enforce a city
11 zoning ordinance?

12 A That is correct.

13 Q Okay.

14 A As is provided.

15 Q What irreparable harm have you suffered?

16 MR. TRUNDY: I'll object to the form.

17 THE WITNESS: Yeah. I don't -- I don't
18 know.

19 BY MS. BLOODGOOD:

20 Q Okay. If you want me to phrase that
21 question in another way, do you know what irreparable
22 harm means?

23 A Harm that cannot be repaired.

24 Q Yeah. Have you suffered any irreparable
25 harm?

1 A I'm not sure.

2 Q Why aren't you sure?

3 A Because I haven't given it a lot of
4 thought since we filed this. I don't know that
5 that's an element --

6 Q An element of what?

7 A I don't know that that is an element of
8 the ordinance that provides for injunctive relief.

9 Q I didn't ask you anything about any
10 ordinance that you think there is that provides
11 injunctive relief. I just asked you have your
12 Plaintiffs suffered any irreparable injury?

13 A I've told you I do not know.

14 Q Okay. Do you contend that money damages
15 are not sufficient to -- as a remedy for the
16 Plaintiffs?

17 A They are absolutely not because the
18 activity would continue, and so I'd be filing
19 lawsuits against the same people every single week or
20 month or whatever.

21 Q Why aren't you filing a lawsuit against
22 the City? They're the ones that aren't enforcing the
23 ordinance.

24 MR. TRUNDY: Object to the form.

25 THE WITNESS: I don't know that they're

1 not enforcing the ordinance.

2 BY MS. BLOODGOOD:

3 Q So if the City is enforcing the ordinance,
4 you're going to sue the property owners anyway?

5 A The property owners who have been sued are
6 property owners who are engaging in illegal activity
7 and the City has not, to the best of my knowledge,
8 stopped the activity because the activity persists.
9 I do not know why the City -- in what the Mayor has
10 said, in what City officials have said in public
11 forums is that it's hard and they're going to be
12 dedicating the resources in the future.

13 Q Okay.

14 A And they have been saying that for the
15 last three years, and so it --

16 Q So we're right back to the question, On
17 what statute ordinance gives you the right -- gives
18 these Plaintiffs, LLCs, the right to enforce or to
19 require enforcement of a city ordinance because the
20 City is not?

21 MR. TRUNDY: Object to the form.

22 THE WITNESS: Well, there are multiple
23 causes of action. The -- the enforcement of the
24 zoning ordinance is only one. There's also the
25 Unfair Trade Practices Act.

1 is an unjust enrichment. Now, is that an unjust
2 enrichment that is recoverable by us? I believe that
3 to the extent that we have been damaged it's
4 recoverable. A court may determine that it's more
5 than that. I don't know.

6 Q And why is it unjust?

7 A The ill-gotten gains from illegal
8 activities I believe are unjust.

9 Q It's unjust because they're not zoned
10 short-term rental?

11 A It's zoned (as spoken) because they're
12 engaged in illegal activity and they are taking money
13 from folks who are legal.

14 Q Illegal activity means they're violating a
15 zoning ordinance, right?

16 A It means they're violating -- in this
17 particular case, that is what it means --

18 Q Okay. In this particular case, unjust
19 means violating a zoning ordinance?

20 A Unjust means diverting money from folks
21 who are legal. That's what's unjust, because
22 of -- because they are violating a zoning ordinance.

23 Q If you can prove actually money was
24 diverted from you. Your premise is that somebody is
25 diverting money from you?

1 A Defendants have not provided us with full
2 discovery.

3 Q Some of the Defendants have and I have
4 checked and I did provide you with the Airbnb
5 information a long time ago, or my predecessor did.

6 A Well, we received some discovery through,
7 I think, 2015 for some Defendants. It's obviously
8 2018.

9 Q Right.

10 A So a lot has transpired. And I don't
11 believe that was updated. I don't believe we've
12 received that. But also we have -- I don't believe
13 we received any tax returns showing this income on
14 anyone's --

15 Q I produced all the schedule Cs to you.
16 Were they not shown to you?

17 A I mean, I've seen some Schedule Cs but not
18 all. I don't know -- I mean, Sean can address the
19 completion or incompleteness. There is no Defendant
20 that has provided all discovery. I know that as a
21 matter of fact.

22 Q So even though you've had Airbnb
23 information, Schedule C tax information since -- some
24 of it since 2015, you still have not obtained an
25 expert?

1 Q Okay. Have you gotten any reassurances
2 from the City that they are going to enforce their
3 zoning ordinance?

4 A Yeah. At public meetings the mayor before
5 our -- at our neighborhood meeting six months ago.
6 Yeah, a lot.

7 Q But -- but you never followed up to
8 determine whether any of these Defendants were
9 subject to a city enforcement action?

10 A No. I have nothing to do with the city's
11 enforcement action.

12 Q Okay. Do you know which of the Defendants
13 have paid state and federal taxes on income they
14 received from renting their property?

15 A No, I do not. We have requested tax
16 returns from all of the Defendants and have not
17 received tax returns from all Defendants.

18 Q You have received, for the record,
19 Schedule Cs from my Defendants.

20 A Okay. Current?

21 Q The new lawsuit?

22 A No. Current. Current.

23 Q Yes.

24 A All -- all current.

25 Q Has -- do you know if any of the

1 Plaintiffs' property?

2 A No, I cannot.

3 Q Can you identify any Defendant who has
4 neighboring property to any of the Plaintiffs'
5 property?

6 A Well, all of them, because I define
7 neighboring as on The Peninsula. So yes. If you
8 defined it differently, if you say within a hundred
9 yards, I have no idea. But yes, neighboring, to me,
10 is The Peninsula.

11 Q Can you identify which Defendants have
12 damaged, as you allege, Charleston Development
13 Company versus which have damaged Charleston Housing
14 Company versus which have damaged NotSo Hostel?

15 A No, not by looking at their names. We can
16 identify them by the type of property that they have.
17 So looking at their listings and their names, I
18 absolutely could.

19 Q How will you determine personal harm to
20 each of these three Plaintiffs?

21 MR. TRUNDY: Object to the form.

22 THE WITNESS: What do you mean by
23 "personal harm"? Damages?

24 BY MS. BLOODGOOD:

25 Q How are you -- okay. So if one of the

1 Q You're talking in general. I want to
2 know -- we have three Plaintiffs in this lawsuit, so
3 the questions are as to the three Plaintiffs.

4 A Yep.

5 Q What evidence -- besides what you think,
6 what evidence do you have that any named Defendant
7 wanted to deceive these three Plaintiffs by putting
8 their listings as you say they did?

9 A The -- the first bit of evidence that we
10 have is the listing itself. It speaks for itself as
11 to whether it is intended to deceive. I believe the
12 Defendants -- the Plaintiffs are in a group of people
13 that they sought to deceive. So, yes, that is how
14 they sought to deceive the Plaintiffs. I believe
15 that we haven't deposed any Defendants.

16 THE WITNESS: Have we, Sean?

17 MR. TRUNDY: No.

18 THE WITNESS: So we will be able to
19 question the Defendants directly as to their motive,
20 which I believe, as you've said, I think it's
21 relevant. So I think an appropriate examination of
22 every Defendant will reveal exactly what was in their
23 mind when they placed the listing.

24 BY MS. BLOODGOOD:

25 Q Which of the three Plaintiffs conferred a

1 benefit on any defendant?

2 A All of them.

3 Q How?

4 A Because the -- without the ordinance -- so
5 the Plaintiffs worked with the city, lobbied the
6 city, in order to legalize short-term rental in the
7 city of Charleston in a way that Airbnb and VRBO
8 doesn't. Had that not happened, every short-term
9 rental in the city would be illegal and enforcement
10 would be incredibly easy. It is not easy because
11 it's hard to determine -- when people attempt to
12 obfuscate, it's hard to determine what is legal and
13 what is not.

14 So the Defendants -- the benefit the
15 Defendants confer is cover. That is the benefit.

16 Q What's the cover?

17 A Cover.

18 Q The ordinance?

19 A The fact that --

20 Q The question is what did the Plaintiffs --

21 A That's -- and I believe I answered that.
22 If you'd like me to explain it some more, I'm happy
23 to.

24 Q So if I understand your answer, the
25 enactment of a short-term rental ordinance by the

1 City is a benefit that was conferred by these three
2 Plaintiffs on each Defendant?

3 A The answer is two-pronged. Those three
4 Plaintiffs worked with the City to have an ordinance
5 passed in Elliotborough-Cannonborough that would make
6 this activity legal. That has benefited the
7 Plaintiffs because when you have --

8 Q Benefited the Plaintiffs or the
9 Defendants?

10 A I'm sorry. Benefited the Defendants in
11 this way: When you have legal and illegal people on
12 a platform where it is difficult to differentiate who
13 is legal and who is not, it confers a benefit.
14 Because if nobody was legal, it would be real easy to
15 shut everybody down. But it's not. And it's not
16 because the legals provide cover. Their existence
17 provides a benefit to people seeking to do it
18 illegally.

19 Q You understand that an ordinance is
20 enacted by a political body elected by the populous
21 and not by your three Plaintiffs, correct?

22 A Oh, I do, yes.

23 Q Okay. Now, if your three Plaintiffs had
24 gotten the City to enact an ordinance where all
25 short-term rentals were legal, that would have been a

1 much better benefit to confer upon the Defendants,
2 wouldn't it have?

3 A The Plaintiffs attempted that. That was,
4 in fact, the proposal that the Plaintiffs put forth
5 to the City. The City suggested going to every
6 neighborhood, and every neighborhood threw up on the
7 idea calling the whole notion turning The Peninsula
8 into Disney Land, we were destroyers of culture -- I
9 can't remember all of the indignities that were
10 hurled upon us by that suggestion. So
11 Elliotborough-Cannonborough was the only neighborhood
12 that wanted it, and that's why.

13 Q How could remaining illegal be a benefit
14 to the Defendants?

15 MR. TRUNDY: Object to the form.

16 BY MS. BLOODGOOD:

17 Q The ordinance you just said that your
18 Plaintiffs lobbied for --

19 A Yeah.

20 Q -- resulted in --

21 A Worked for, yes.

22 Q -- in your Plaintiffs' being legal and
23 various other people being illegal. How could being
24 illegal short-term renters be a benefit that was
25 conferred?

1 A They're -- well, they get a benefit every
2 day that their place is rented, and the
3 benefit -- they do. It's money. And the benefit
4 that was conferred upon them by the Plaintiffs is the
5 cover that was provided because the Plaintiffs worked
6 very hard, among other people who also worked very
7 hard, to get the ordinance passed to make the
8 properties in Elliotborough-Cannonborough legal.
9 Without that cover, no one would be legal in the city
10 and enforcement would be a piece of cake.

11 Enforcement is not a piece of cake because
12 it is hard to distinguish legals and illegals and the
13 illegals seek to make that harder.

14 Q So the City having trouble enforcing an
15 ordinance is conferring a benefit on the Defendants?

16 A Absolutely. Having cover for -- having
17 cover for your illegal activity by a legal activity
18 is conferring a benefit. When people plant marijuana
19 in a field with corn, the corn -- the corn --

20 Q Benefits?

21 A -- confers a benefit of cover.

22 MR. MARVEL: Plus you can make Doritos out
23 of it.

24 MR. TRUNDY: Which you might want after
25 you smoke pot.

1 THE WITNESS: Making the field less
2 discoverable. And that is precisely the benefit that
3 was conferred. And we may find other, more suitable
4 for trial vegetables --

5 BY MS. BLOODGOOD:

6 Q Is that the Plaintiffs' who conferred that
7 benefit or the City of Charleston when it enacted the
8 ordinance that conferred that benefit?

9 A No. If -- if no one availed themselves of
10 the ordinance, there would be no cover. If -- if --

11 Q I'm talking about the Plaintiffs. What
12 did the Plaintiffs --

13 A No.

14 Q -- not everyone in the world.

15 A No, no. It is -- it is --

16 Q What did those three Plaintiffs do?

17 A I believe I've answered that, but let
18 me -- let me -- let me reiterate that. If the City
19 passed this ordinance and it dropped like a lead
20 balloon and absolutely no one took them up on it but
21 the illegals decided, well, we're going to keep doing
22 it, we're not going to jump through whatever hoops it
23 is to make it legal, we're going to -- we're just
24 going to go ahead and do it, you would have no
25 illegals (as spoken) and everyone would be illegal

1 A Yes.

2 Q And now that there is a confidentiality
3 order in this case, have you communicated with anyone
4 in the City of Charleston since the time that that
5 order was signed by the court, which would be early
6 February?

7 A I have not corresponded with the City with
8 regard to any existing Plaintiffs or Defendants in
9 this case. I don't remember if I sent Ana an email
10 asking her about the -- the latest round that we have
11 done, and I would have asked her the same question.

12 Q You understand that you cannot communicate
13 with the City of Charleston regarding these
14 Defendants, correct?

15 A I do. I understand there's a
16 confidentiality order and I have not turned over
17 anything to the City after that order.

18 MS. BLOODGOOD: I think that is all the
19 questions I have. There may be others.

20 THE WITNESS: Can I go to the restroom --

21 MS. BLOODGOOD: Sure.

22 (A break was taken from 1:33 p.m. to
23 1:35 p.m.)

24

25

25

EXAMINATION
EXAMINATION

1 testified that you lobbied or your corporations
2 lobbied -- I'm not sure if there's a
3 distinction -- lobbied that your neighborhood be
4 essentially the geographic equivalent of the overlay
5 district; is that correct?

6 A That is incorrect. What I said was that
7 we sought to have this legal everywhere on The
8 Peninsula because that's what we thought was a really
9 good idea: In the commercial areas to have
10 whole-home rental and in the residential areas to
11 have bed and breakfasts. And a lot of the city has
12 been shut out of bed and breakfasts and there were no
13 legal whole-home rentals. So that's what we sought.

14 The City went to the neighborhoods and
15 asked the neighborhoods what they thought about that,
16 and all the neighborhoods except our neighborhood --
17 I live in Elliotborough-Cannonborough. I'm active in
18 Elliotborough-Cannonborough since 1985. Our
19 neighborhood thought it was a really good idea.
20 We're the only ones who thought it was a real good
21 idea. And Mayor Riley, in his address when this was
22 being passed, said, Let all the other neighborhoods
23 look at what happens in Elliotborough-Cannonborough.
24 And if they like it, come to the City and the City
25 will extend it to that neighborhood.

1 To my knowledge, they -- no other
2 neighborhood has come to the City asking for
3 anything. But that -- so we did not go in
4 asking -- we believe -- I still believe to this day
5 that The Peninsula is the area that is appropriate
6 for this type of activity in the way having
7 whole-home rental and commercially zoned property and
8 having bed and breakfasts or bed and breakfast-like
9 thing, which is, I think, what they ended up passing
10 for the residential neighborhoods. So we did not go
11 and lobby the City for Elliotborough-Cannonborough.
12 Absolutely not.

13 Q Okay. So at no point did -- so there was
14 never -- that distinction was never brought to the
15 City either by you personally or by any committee
16 that you were a part of?

17 A That is correct. The City, after meeting
18 with all of the other neighborhoods, said you guys
19 are the only once that want it.

20 Q Okay. After the creation of the overlay
21 district, did you make economic -- when I say "you,"
22 I mean the NotSo Hostel --

23 A Yeah.

24 Q -- Charleston Development Corporation,
25 Charleston Housing Authority (as spoken). Did you

1 you're discount -- I would like to be full every day
2 and I would like to get as much money as I can every
3 day. So that's -- that's what we -- that's what we
4 focus on. Whether I ended up at 70 percent or 80
5 percent or 65 percent is really relevant to the
6 dollar. So --

7 Q So you'd rather have two people pay \$500
8 than three people pay \$200, that sort of thing?

9 A Correct. Right. It's not a metric we
10 track.

11 Q It is tracked in the hospitality industry,
12 isn't it?

13 A I believe hotels track it as a very
14 important metric.

15 Q Okay. Is it -- it is not important to the
16 hostel business at all?

17 A No.

18 Q Does the hostel vary its rates on
19 availability? And I'm not talking about seasonal and
20 that sort of thing. I imagine you vary your rates
21 for seasonal purposes?

22 A We dynamically price. So if we have -- so
23 we try to fill our rooms -- so if -- we try to fill
24 our rooms. So if it's Sunday and we have a
25 availability Monday, Tuesday, Wednesday, Thursday,

1 we'll discount those rooms --

2 Q Okay.

3 A -- to try and fill them, absolutely.

4 Q Okay. And that's a -- that's a
5 industry-wide practice now, isn't it?

6 A I believe it is.

7 Q Okay. So it's not -- you're not doing
8 anything that nobody else in the hospitality business
9 is doing?

10 A I believe everyone is doing that.

11 Q That's fine.

12 A Well, if they're not -- if they're not,
13 they should. That's my opinion. But yes, it's
14 common.

15 Q Let me just look through my notes because
16 I may -- like I said, she hit most...

17 You talked a little bit about settlements,
18 and I just want to talk touch on this lightly. You
19 said that they were commiserate (as spoken) with
20 earnings. What did you mean by that?

21 MR. TRUNDY: Object to the form.

22 THE WITNESS: I'm not sure what's
23 privileged and what's not privileged.

24 MR. TRUNDY: There's -- there's no
25 privilege to it.

1 And so the -- the lady who owned it and
2 opened the hostel wanted to sell it to someone who
3 would maintain it as a hostel. And I said, you know,
4 this is a beautiful development property. I'm not an
5 innkeeper; however, I will tell you that if this
6 hostel makes money, I will keep it open. If it stops
7 making money, I'm going to develop this land as
8 something else.

9 Q All right. Let me ask you this: If you
10 said you would not have bought those properties --

11 A Correct.

12 Q -- if you paid fair market value for the
13 properties --

14 A Yes.

15 Q -- then what would be your loss? How
16 would you -- how would you lose not getting them?

17 A Right. So I don't invest at 5 percent cap
18 rates. I develop properties.

19 Q Okay.

20 A So I buy properties like an empty lot and
21 I build on it, and so I add value to properties. And
22 there was a -- the ordinance gave an opportunity to
23 add value to 106A and B Cannon and number 2 Charles
24 because those properties were being rented long-term.
25 They were not being rented -- now, I paid a premium

1 because there was a potential. This was one of the
2 available activities, so I paid a premium. But I
3 didn't pay a premium -- in one of the answers I
4 believe that that -- as an example, 106A and B I
5 bought for around 800,000 and I believe the value
6 today is 1.2. And I believe if there was no
7 competition the value would be closer to 1.5.

8 So it's not that the property is -- the
9 property -- I can tell you every one of the
10 properties is worth more than any appraisal I've ever
11 had.

12 Q All right. So none of the properties went
13 down in value at all?

14 A No. It's downtown Charleston. No.

15 Q So in your Complaint where you allege the
16 properties have depreciated in value, that's not
17 true?

18 A I did not -- I have -- I did not allege
19 that, to the best of my knowledge. There's a
20 diminution in value from what the -- that property
21 should be worth 1.5 because it should be generating
22 more money.

23 Q Okay.

24 A So that's -- that's the diminution.
25 That's -- that's that part of it.

1 go over --

2 MR. MARVEL: I'm not sure I understood it
3 before. If you don't mind --

4 THE WITNESS: Okay. So yes, I believe
5 they are impacting. I believe -- I believe that
6 anyone who rents an illegal property over a legal
7 property is impacting the business. They are taking
8 the customer away whether they pay a thousand dollars
9 or not. People aren't -- when I rent something,
10 right -- and I think -- I think I think like most
11 people -- you look at what's available, you look at
12 what the best deal is, right, weighing all the
13 different factors, and that's what you go with. It
14 not, you know, you you may have someone who wants to
15 be south of Broad, right, and so they'll pay the
16 thousand dollars a night even though the place south
17 of Broad is illegal.

18 If they couldn't rent south of Broad, they
19 may rent in Elliotborough-Cannonborough. I believe
20 they would. They wouldn't go to a hotel. We're
21 talking about, like, whole-house rental. If it was
22 the one room, they may go to a hotel. But if you're
23 looking for a place for your family, right, your
24 family's coming down, there are eight of you, right,
25 a hotel is a really bad option. So you're going to

1 look among what's available and you're going to say,
2 What's my best option here? And that's what you're
3 going to take. And if your best option is an
4 illegal, even if that illegal is higher priced for
5 that particular night, it's still taking you out of
6 and has affected the legals.

7 BY MR. MURPHY:

8 Q All right. Now, the example you give of
9 eight people, none of the places that you're renting
10 cater to eight people, do they?

11 A Yes, they do.

12 Q Which ones?

13 A 179E caters to ten.

14 Q All right. But I thought you said you
15 rent those individually, those rooms?

16 A No, I didn't. The only rooms -- no, not
17 at all. So the only rooms that are rented
18 individually, we have --

19 Q There's four bedrooms in 179E, correct?

20 A Yes.

21 Q All right. So you would be renting that
22 as a whole unit?

23 A Correct.

24 Q I gotcha.

25 A And 179D.

1 thousand or two thousand bucks and then there's a
2 percentage or a dollar amount for every thousand
3 thereafter. And you depend on -- depending on your
4 category depends on what that is.

5 Q Okay. So it is based on revenue, correct?

6 A Based on revenue and category, yeah. So
7 they tax different businesses differently.

8 Q Okay. Now, as of the filing of this
9 Complaint, did you have any evidence as to any of the
10 Defendants that they were underreporting their income
11 based on what they were earning on short-term
12 rentals?

13 A Yes.

14 Q Okay. Who -- which Defendants would those
15 be?

16 A All of them.

17 Q And how did you acquire that information?

18 A It is my belief based on experience that
19 you cannot file accommodations tax returns without a
20 license number. And if you do not file an
21 accommodations tax return, you cannot pay
22 accommodations tax. Now, Airbnb cut a deal with the
23 State about a year ago to pay directly the State for
24 Airbnb rentals that they did not cut a deal with the
25 county to pay the county and city.

1 So with regard to every Defendant without
2 a license, it is my belief that they cannot
3 obtain -- they do not have the ability to pay
4 accommodations taxes to the county and some of the
5 them state. So anything that was listed on VRBO and
6 HomeAway, they do not have a deal with the state to
7 remit those.

8 Q Okay.

9 A So yeah.

10 Q All right. So that -- but that
11 only -- that applies to accommodations taxes,
12 correct?

13 A Correct. I have no information with
14 regard to other taxes other than we have identified a
15 group of folks who are doing whole-home rental and
16 paying the county at a 4 percent assessment instead
17 of a 6 percent.

18 Q Okay. Understood. All right. But as far
19 as federal income tax --

20 A No.

21 Q -- you have no idea what anybody reported,
22 correct?

23 A Correct. Yeah.

24 Q All right. And as to state income tax,
25 you have no idea what anybody reported?

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Global Real Property Trust,

Plaintiff

vs.

Daryl J Damico et. al,

Defendants.

IN THE COURT OF COMMON PLEAS
CASE NO. 2015-CP-10-5415

MEMORANDUM IN SUPPORT OF
DEFENDANTS' JOINT MOTION FOR
SUMMARY JUDGEMENT

FILED
18 JUN -1 AM 9:01
JULIE A. ARISTEGUI
CLERK OF COURT

Defendants, by and through their undersigned attorneys, respectfully submit this Memorandum of Law supporting Defendants' request for an Order granting the Defendants Summary Judgment against the Plaintiffs. This Memorandum supplements Defendants' Motion for Summary Judgment filed May 17, 2018.

BACKGROUND

This is an action arising out of Plaintiffs' allegations of violations of the City of Charleston Zoning Ordinance. Plaintiffs filed this lawsuit in 2015 regarding Defendants' use of popular Internet websites such as Home Away, Vacation Rental By Owner and Airbnb. These Internet websites provide a platform for renters (also known as "guests") and landlords (also known as "hosts") to meet and arrange for rental of real property. Rentals can be for any period of time agreed upon by the parties including periods less than thirty days. Users can rent a room in their house or rent an entire house to anyone seeking a rental unit.

The City of Charleston Zoning Ordinance regulates the use of real property and provides a definition of short-term rentals as a lease in duration between 1 and 29 days. A thirty-day or longer lease is not a short-term rental. Plaintiffs are involved in the short-term rental business.

In 2012, the City created a special overlay zone district to allow short-term rentals. Most other areas of the City prohibit short-term rentals. Plaintiffs allege Defendants are engaged in short-term renting in violation of the City's zoning ordinance. Plaintiffs' Amended Complaint has four (4) causes of action: Nuisance, Violation of City Zoning Ordinance; Unfair Trade Practices Act, and Unjust Enrichment.

This Court granted summary judgment on November 4, 2016 to Defendants in four (4) similar cases (2015-CP-10-5415; 2015-CP-10-5900; 2016-CP-10-1117; and 2016-CP-10-1118).

In those cases, the Plaintiff was a Trust. Here, the three (3) named Plaintiffs are LLC's.

Each LLC is owned by an irrevocable trust called Global Real Property Trust. (Bob Holt Depo., pp. 9, 13, 80.) Bob Holt is the Trustee of Global Real Property Trust and the Chairman of each of the three (3) LLC Plaintiffs. (*Id.* at 9, 12.) The Plaintiffs own short-term rental property in the City of Charleston. Specifically, Plaintiff Charleston Development Company, LLC owns 106 A and B Cannon Street; Plaintiff Charleston Housing Company, LLC owns 5 and 6 Tulley Alley and 179 D and E St. Philip Street; and Plaintiff NotSoHostel, LLC owns 156 Spring Street and 33 Cannon Street. (Am. Compl. ¶¶ 3-6.)

Bob Holt's deposition was taken on May 16, 2018. (Bob Holt Depo., p. 5.) Mr. Holt testified he is the person most knowledgeable about the allegations in this lawsuit. (*Id.* at 61.) Based on Mr. Holt's testimony, Defendants believe that there are no additional facts which would alter a finding by this Court that all of Plaintiffs' causes of action fail as a matter of law and the case should be dismissed. Summary judgment is appropriate in this case also for the same reasons the previous cases were summarily dismissed. Specifically,

- 1) Plaintiffs admit they are not adjacent property owners to any Defendant and, as a matter of law, Plaintiffs' properties are not "neighboring properties" to any Defendant so they have no standing to bring a zoning claim;
- 2) Plaintiffs admit there is no issue of public importance in this case so they have no standing under that exception to bring a zoning claim;
- 3) Plaintiffs admit they have not exhausted their administrative remedies so they cannot bring a zoning claim;
- 4) Plaintiffs' SCUTPA claim is barred by the regulatory exemption; and
- 5) Plaintiffs' unjust enrichment claim fails as Plaintiffs admit there is no contractual relationship between the parties and Plaintiffs have conferred no benefit on Defendants; and
- 6) There are no facts to support Plaintiffs' allegation that they have been specially injured or suffered any concrete injury so Plaintiffs' public nuisance claim fails.

STANDARD OF REVIEW

A party is entitled to a grant of summary judgment where the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to summary judgment as a matter of law. Rule 56(c), SCRPC. "The purpose of summary judgment is to obviate delay where there is no material issue of fact involved." *Manley v. Manley*, 291 S.C. 325, 329, 353 S.E.2d 312, 314 (Ct. App. 1987). "The trial court should grant summary judgment against a party who has failed to make a showing sufficient to establish the existence of an essential element of that party's case." *Harris v. Rose's Stores, Inc.*, 315 S.C. 344, 433 S.E.2d 905, 906 (Ct. App. 1993). "Summary judgment is proper where plain, palpable, and indisputable facts exist on which reasonable minds cannot differ." *Adamson v. Richland County School Dist. One*, 332 S.C. 121, 124, 503 S.E.2d 752, 753-754 (Ct. App. 1998). In determining whether any triable issues of fact exist, the evidence and all inferences, which can be reasonably drawn from the evidence, must be viewed in the light most favorable to the nonmoving party. *Hancock v.*

Mid-South Mgt. Co., 381 S.C. 326, 329-330, 673 S.E.2d 801, 802 (2009). However, “[a] conclusory statement as to the ultimate issue in a case is not sufficient to create a genuine issue of fact for purposes of resisting summary judgment.” *Shupe v. Settle*, 315 S.C. 510, 516-517, 445 S.E.2d 651, 655 (Ct. App. 1994).

LEGAL ARGUMENTS

I. Zoning Ordinance Violation

- A. Plaintiffs admit they are not adjacent property owners to any Defendant and, as a matter of law, Plaintiffs’ properties are not “neighboring properties” to any Defendant so they have no standing to bring a zoning claim.

Plaintiffs’ second cause of action alleges a zoning violation, specifically, a violation of the South Carolina Local Government Comprehensive Planning Enabling Act (the “Planning Act”). The Planning Act states, “In case a building, structure, or land is or is proposed to be used in violation of any ordinance adopted pursuant to this chapter, the zoning administrator or other appropriate administrative officer, municipal or county attorney, or other appropriate authority of the municipality or county or an adjacent or neighboring property owner who would be specially damaged by the violation may in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate the violation, or to prevent the occupancy of the building, structure, or land.” *S.C. Code Ann. § 6-29-950*.

The case of *Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n*, 407 S.C. 67, 753 S.E. 2d 846 (2014) is on point and makes clear the requirements for standing to sue under the theory of a zoning violation. In *Carnival*, the Plaintiffs brought numerous causes of action

based on alleged zoning violations. 407 S.C. at 78, 753 S.E. 2d at 852. Plaintiffs included citizens groups complaining of cruise line activities. The *Carnival* Plaintiffs' claims included private nuisance claims based on alleged violations of the City of Charleston ordinances, including violations of the City's noise ordinance, sign ordinance, height limitations as well as violations of the South Carolina Pollution Control Act. *Id.* The South Carolina Supreme Court, in its original jurisdiction, unanimously dismissed Plaintiffs' Complaint in its entirety. 407 S.C. at 81, 753 S.E. 2d 846 at 853. The Court ruled that the Plaintiffs lacked standing to sue because Plaintiffs, including two nearby historic neighborhood associations and a non-profit organization leasing property near Defendant's conduct, were not "specially damaged" nor were they "adjacent or neighboring property owner[s]." 407 S.C. 78-81, 753 S.E. 2d. at 850-852.

The Supreme Court, interpreting S.C. Code §6-29-950, enunciated a two-part test to determine standing in the context of claims based on alleged zoning violations. 407 S.C. at 76, 753 S.E. 2d at 851. First, a Plaintiff must be "specially damaged" and second, a Plaintiff must be "an adjacent or neighboring property owner." A Plaintiff is "specially damaged" when it has suffered a particularized harm separate and apart from the harm that the public at large may experience. *Id.* A particularized harm occurs when the allegations "affect the Plaintiff in a personal and individual way." 407 S.C. 75, 753 S.E. 2d at 850; see also *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

In this case, Bob Holt testified:

"A. ... I was damaged by illegal ones. And so were the other legal ones. I wasn't the only -- I'm not the only aggrieved party -- or not me, but the entities are not the only aggrieved parties. There are a lot of aggrieved parties. They simply haven't sued the Defendants operating illegally." (Bob Holt Depo., p. 56)

Clearly, Plaintiffs are not affected in any personal and individual manner.

Plaintiffs also lack standing to sue because none of them are adjacent or neighboring property owners. Plaintiffs have admitted they are not adjacent property owners. (Bob Holt Depo. at 100.) Plaintiffs contend they are "neighboring properties" but this contention is without basis in fact. Plaintiffs did not allege in their Amended Complaint that any of their short term rental property was "neighboring" property to any Defendant's property, however in his deposition Mr. Holt testified that everyone who lives on the peninsula of Charleston are neighbors,¹ and then Mr. Holt testified he had no idea if any Defendant property is located within 100 yards of any Plaintiff's property. (*Id.* at 160-161, 227.)

The term "neighboring property" is not defined in the *City of Charleston Zoning Ordinance*, the Ordinance clearly states, "It is the intent of this Chapter that all questions arising in connection with the enforcement or interpretation of this Chapter, except as otherwise expressly provided, shall be presented to the Board of Zoning Appeals..." *"City of Charleston Zoning Ordinance § 54-904 (emphasis added).* Mr. Holt testified in his deposition he has not appealed to the City Board of Zoning Appeals. (Bob Holt Depo. at 158.) Therefore, Mr. Holt's personal belief as to what the term "neighboring property" means is irrelevant. There is no evidence in the record that any of Plaintiffs' property is a neighboring property to Plaintiffs'.

The *Carnival* Court addressed the meaning of "an adjacent or neighboring property owner." 407 S.C. 78, 753 S.E. 2d at 852. The Supreme Court in *Carnival* provided a thorough analysis of S.C. Code 6-29-950 and concluded that "[I]n short, under section 6-29-950 a

¹ Black's Law Dictionary defines a neighbor as "one who lives in close proximity to another" and Webster's II New Riverside University Dictionary defines a neighbor as "one who lives or is located near or next to another." The City of Charleston Zoning Ordinance does not define "neighboring properties."

“specially damaged, adjacent or neighboring property owner can bring an action for an injunction based on an alleged violation of a zoning ordinance.” (*Id.*)

Plaintiffs fail both parts of the two-part test set forth in *Carnival*. First, Plaintiffs are not “specially damaged” because the damages alleged in the Complaint are not particular to the Plaintiffs. There is no evidence Plaintiffs have suffered damages separate and apart from the public. No facts have been produced by Plaintiffs to support the contention that they have been damaged differently from any other short-term rental businesses, including hotels and bed & breakfasts, or property owners in general, that may be affected by the alleged conduct of the Defendants.

In fact, there is no evidence of any damages at all. Mr. Holt does not know what the actual amount of Plaintiffs damages are. (*Id.* at 254.) Mr. Holt testified he has not yet hired an expert to determine damages and he does not know how an expert would determine damages. (*Id.* at 62.) Mr. Holt has not had any recent appraisals done of Plaintiffs’ property. (*Id.* at 109.) Mr. Holt testified he cannot put a number on his damages. At the time Plaintiffs filed suit, during the last three years, and currently, Plaintiffs cannot ascertain their damages other than Mr. Holt believes it is “reasonable” to assume Defendants’ actions have caused Plaintiffs damages. (*Id.* at 196.) This is insufficient as a matter of law to establish damages.

The Plaintiffs in *Carnival* were the only ones to bring suit but that did not set the alleged damages apart from the public in anyway. A Court cannot possibly provide complete relief to these parties if the Defendants would be subject to suits for damages by neighboring property owners, bed and breakfasts businesses, other short term rental businesses or hotels even after the termination of the present litigation. Therefore, the damages alleged to have been suffered by

Plaintiffs (assuming *arguendo* they could ever be proven with any specificity) are not particular to these Plaintiffs and are not separate and apart from generalized damages that affect the community at large so Plaintiffs have no standing.

B. Plaintiffs admit there is no issue of public importance in this case so they have no standing under that exception to bring a zoning claim

The public importance exception to standing does not apply in this case as Bob Holt testified as follows regarding the issue of public importance:

"Q. Do you contend that this case involves a matter of public importance?

A. I think so.

Q. What is it? What is that matter of public importance?

A. I think that the wholesale ignoring of the zoning ordinance is not good for society. I think we try to be a nation of laws. And I think that once people are aware, become aware, that they are doing something that is not what they should be doing that they stop.

Q. Anything else?

A. Not off the top of my head, no." (Bob Holt Depo., pp. 105-106.)

As was the case of *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 669 S.E. 2d 337 (2008), there is nothing of public importance about Plaintiffs' contention that they are damaged by illegal short term renters unfairly competing with them.

The key to the public importance analysis is whether a resolution is needed for future guidance. It is this concept of "future guidance" that gives meaning to an issue which transcends a purely private matter and rises to the level of public importance. *Baird*, 333 S.C. at 531, 511 S.E.2d at 75 ("[A] court may confer standing upon a party when an issue is of such public importance as to require its resolution for future guidance.") (citations omitted) Of course zoning is a matter of public importance, but the same may be said of most legislative and executive actions. For a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance. *ATC South, Inc. v. Charleston County*, 669 S.E.2d at 341 (internal citations omitted.)

C. Plaintiffs admit they have not exhausted their administrative remedies so they cannot bring a zoning claim

Persons disagreeing with zoning matters of interpretation and enforcement must first exhaust administrative remedies before appealing to the Circuit Courts. *See, e.g., Moore v. Sumter County Council*, 387 S.E. 2d 455 (1990). Further, the plain language of the statute and ordinance limit Plaintiffs' remedies to an injunction, or a writ or appropriate action and those remedies are limited to correcting, or abating, or preventing a zoning violation if and only if they are adjacent or neighboring property owners. Here, Plaintiffs are not adjacent or neighboring property owners.

The legislative intent of the State Planning Act was that an administrative agency such as a local zoning department and its Board of Zoning Appeals, interpret, apply and administer land use regulations within their local jurisdictions. S.C. Code Ann. § 6-29-720. The *City of Charleston Zoning Ordinance* states: "It is the intent of this Chapter that *all questions* arising in connection with the enforcement or interpretation of this Chapter, except as otherwise expressly provided, shall be presented to the Board of Zoning Appeals, and, that from decisions of the Board of Zoning Appeals, recourse shall be to the courts as provided by law." *City of Charleston Zoning Ordinance* § 54-904 (*emphasis added*).

Section 54-901 of the Zoning Ordinance provides "[T]he duty to administer and to enforce the provisions of this Chapter is hereby conferred upon the zoning administrator, herein referred to as the administrative officer of the Zoning Ordinance." Penalties for violations of the zoning ordinance are provided in Section 54-950 and include misdemeanor criminal violations, withholding permits, fines, and other appropriate action to prevent, correct, or abate a zoning

violation. *City of Charleston Zoning Ordinance* § 54-950. A plaintiff's relief is limited to preventing, correcting or abating a zoning violation. S.C. Code Ann. § 6-29-950(A); *City of Charleston Zoning Ordinance* §54-950; see also, *City of Charleston Zoning Ordinance* §54-905 wherein the only remedy available is an action to "prevent" a violation.

The Zoning Department and the Board of Zoning Appeals are the administrative arms of the government appropriately situated to determine if a zoning violation has occurred and to take corrective action. The Zoning professionals have the "particular expertise" for resolution of the matter. Plaintiffs may seek relief from the Administrative Officer and have in previous cases.² Here, Bob Holt testified he did not testify to the City of Charleston Board of Appeals about any Defendant. (Bob Holt Depo. at 158.)

As Plaintiffs are not adjacent or neighboring property owners, have suffered no special damages, and failed to exhaust their administrative remedies, their cause of action for a zoning violation fails as a matter of law.

II. SCUTPA Violations.

Plaintiffs' third cause of action is brought under the South Carolina Unfair Trade Practices Act (SCUTPA.) SCUTPA §39-5-40(a) exempts conduct already regulated by law. This regulatory exception provides:

² Defendants in the earlier four (4) cases mentioned above in which summary judgment was granted in Defendants' favor submitted a FOIA response from the City of Charleston demonstrating the Plaintiff's complaints to the City zoning officials. Plaintiff did not object to the FOIA response. The Zoning Administrator considered the Plaintiff's complaints and in his discretion the Zoning Administrator has made decisions regarding the dozens of property owners Plaintiff submitted complaints about. The Plaintiff could have appealed the Zoning Administrator's decision to the Board of Zoning Appeals and then to the Circuit Court per the ordinance's administrative remedies but failed to do so. *City of Charleston Zoning Ordinance* §54-904; 54-926; 54-930.

Nothing in this Article shall apply to (a) Actions or transactions permitted under laws administered by any regulatory body or officer acting under statutory authority of this State or the United States or actions or transactions permitted by any other South Carolina State Law.

There have been a series of cases in which the Supreme Court and the Appellate Court of South Carolina have interpreted the regulatory exception provision of the UTPA. In 1980, the South Carolina Supreme Court ruled that conduct regarding the sale of securities is regulated by the South Carolina Uniform Securities Act and the Securities and Exchange Commission. *State ex rel. McLeod v. Rhoades*, 275 S.C. 104, 107, 267 S.E.2d 539, 541 (1980). The Court noted that "[V]iolation of these regulations subjects an offender to liability" and therefore the regulatory exception of UTPA applied and the UTPA claim was dismissed. *Id.*

In 1987, the Court of Appeals applied the Supreme Court's ruling from *McLeod v. Rhoades* to *Scott v. Mid Carolina Homes, Inc.*, 293 S.C. 191, 359 S.E. 2d 251 (Ct. App. 1987). In *Scott*, the plaintiff brought a breach of contract claim for the sale of a mobile home complaining that the defendant's conduct was a violation of the regulations governing the sale of mobile homes. *Id.*... The defendant argued that the regulatory exemption barred the plaintiff's SCUTPA claim, 293 S.C. at 199, 359 S.E. 2d at 296. The Court of Appeals agreed and noted the Supreme Court's ruling from *McLeod*. The Court of Appeals concluded, "... the sale of mobile homes is an activity exempt from the Act because it is subject to regulatory control and the imposition of penalties by the Manufactured Housing Board." 293 S.C. at 200, 359 S.E. 2d at 296-97.

In 1991, the South Carolina Supreme Court modified the rule regarding the regulatory exception under the SCUTPA in a consumer versus retailer case. *Ward v. Dick Dyer and*

Associates Inc., 304 S.C. 152, 403 S.E.2d 310 (1991). *Ward* involved a consumer complaint regarding the sale of a used car. 304 S.C. at 154, 403 S.E.2d at 311. The defendant argued, relying on the *Rhoades* and *Scott* cases, that the regulatory exemption of the SCUTPA claim because the licensing requirements for a car sales lot are regulated by the State. *Id.* The Supreme Court modified its previous interpretation of the regulatory exemption and allowed a consumer complaint regarding the sale of a car because the regulatory scheme relied upon by the defendant did not regulate the specific conduct complained of, the sale of a car. 304 S.C. at 155, 403 S.E.2d at 311-12. The regulating agency referred to by the defendant merely provided review and approval of the licensing requirements for car sales lots and did not provide regulations for the actual sale of cars. 304 S.C. at 156, 403 S.E.2d at 313; see also *InMed Diagnostic Services, LLC v. Medquest Associates, Inc.*, 358 S.C. 270, 594 S.E.2d 592 (Ct. App. 2004). The *Ward* Court concluded that the standard to be applied is a more exacting one stating "[W]e believe that the exemption is intended to exclude those actions or transactions which are allowed or authorized by regulatory agencies or other statutes." 304 S.C. at 155, 403 S.E.2d at 312.

InMed Diagnostic Services, LLC v. Medquest Associates, Inc., 358 S.C. 270, 594 S.E.2d 552 (Ct. App. 2004) is a competitor versus competitor case. In *InMed*, Plaintiff brought numerous claims including a SCUTPA claim regarding Defendant's purchase of medical equipment regulated by DHEC. 358 S.C. at 272, 594 S.E.2d at 553. The SCUTPA claim was tried by a jury that found in favor of the Plaintiff. 358 S.C. at 274, 594 S.E.2d at 554. However, the Court of Appeals reversed the jury verdict and dismissed the SCUTPA claims based on the regulatory exception of the Act. 358 S.C. at 275, 594 S.E.2d at 554. The Court of Appeals

provides the progeny of relevant case law and a precise analysis of when the regulatory exception of the SCUTPA applies.

The plaintiff *InMed*, argued that the regulatory exemption should not apply to the defendant because defendant's conduct was not an activity permitted under the DHEC regulations. *Id.* Plaintiff alleged that the defendant engaged in illegal conduct in its presentation to the regulatory body, in violation of the regulations. However, the Court of Appeals concluded that plaintiff's argument was "an unduly narrow interpretation of the law" because there were administrative procedures available to the Plaintiff regarding the conduct complained of. 358 S.C. 278-79, 594 S.E.2d 556. The Court pointed out that DHEC is the agency responsible for regulating the conduct complained of (sale of medical equipment), that the purpose of the ConAct regulating the sale of medical products promotes cost containment, prevents unnecessary duplication of health care services, guides the industry, and serves the public needs for quality services and facilities. 358 S.C. 277, 594 S.E.2d 555. The Court pointed to regulations adopted by the administrative agency regarding the same conduct complained of by the plaintiff. *Id.* The Court also distinguished the *Inmed* case from the *Ward* case, noting among other things that the consumer complaint in *Ward* regarding the sale of a car was not conduct regulated by the state licensing agency whereas the complaint in *Inmed*, regarding the purchase of medical equipment, was conduct regulated by DHEC. *Id.* The Court held that the issue of whether the defendant's conduct was a violation of the DHEC regulations was an issue the plaintiff should have taken up through the administrative process available to him and not through a SCUTPA claim. 358 S.C. 278-79, 594 S.E.2d 556. The Court of Appeals held:

We agree with MedQuest that the regulatory exemption in Section 39-5-40(a) is based on the concept that the Legislature has determined certain matters are

appropriate for resolution by administrative agencies with particular expertise, rather than by the general jurisdiction of a trial court. This concept is consistent with the Supreme Court's reasoning in *Ward* that the exemption "is intended to exclude those actions or transactions which are... authorized by regulatory agencies.... 358 S.C. 277, 594 S.E.2d 555-56.

The Court concluded: "To allow a jury in the court of common pleas to make the determination that MedQuest had submitted misleading information in support of its application" and in violation of the regulations, would undermine the purpose of the regulatory exception in the SCUTPA. *Id.*

Similarly, here the Plaintiffs allege that Defendants are competitors. Plaintiffs complain that rental of Defendants' properties is a regulatory violation similar to the claim in *InMed. Am. Compl.* ¶¶ 162, 165. The conduct complained of by the Plaintiffs (short-term rentals) is regulated by both the South Carolina Local Government Comprehensive Planning Enabling Act of 1994 and more specifically by the City of Charleston Zoning Ordinance. *S.C. Code Ann.* § 6-29-310 *et seq.* (1994); *City of Charleston Zoning Ordinance* §54-120; 54-202; 54-208; 54-208.1; 54-220; Part 3 Table of Permitted Uses; 54-901 *et seq.*; Appendix C to the *City of Charleston Zoning Ordinance*.

As this Court has already held, the regulatory exception to the SCUTPA applies to the facts in this case so, as a matter of law, this cause of action fails.

Additionally, it appears based on Plaintiffs' Motion for Partial Summary Judgment that Plaintiffs contend this Court can on its own initiative make zoning enforcement decisions; it cannot. First, this Court cannot legislate or act as the enforcement arm of any political subdivision. Second, the enforcement of laws is discretionary and that discretion belongs to the political entity that enacted the law, not the judiciary. When a law such as the Comprehensive

Planning and Zoning Act establishes who has standing to question a zoning decision or interpretation, and the process for doing so is codified, individuals cannot ignore or circumvent the law by asking the judiciary to act on behalf of or in lieu of any political subdivision.

III. Unjust Enrichment

A. Plaintiffs' SCUTPA claim is barred by the regulatory exemption

Plaintiffs' fourth cause of action is for unjust enrichment. Unjust enrichment or *quantum meruit* requires a contractual or quasi-contractual relationship between the parties. "[Q]uantum meruit is an equitable doctrine to allow recovery for unjust enrichment." *Columbia Wholesale Co. v. Scudder May N.V.*, 312 S.C. 259, 261, 440 S.E.2d 129, 130 (1994). The absence of any legal duty between the parties is fatal to Plaintiffs' unjust enrichment claim. *Pitts v. Jackson Nat'l Life Ins. Co.*, 352 S.C. 319, 338, 574 S.E.2d 502, 511 (Ct. App. 2002). "Absent an express contract, recovery under *quantum meruit* is based on quasi-contract, the elements of which are: (1) a benefit conferred upon the defendant by the plaintiff; (2) realization of that benefit by the defendant; and (3) retention by the defendant of the benefit under conditions that make it unjust for him to retain it without paying its value." *Id.*

B. Plaintiffs' unjust enrichment claim fails as Plaintiffs admit there is no contractual relationship between the parties and Plaintiffs have conferred no benefit on Defendants

Here, Mr. Holt testified Plaintiffs have no contractual relationship with any Defendant other than there was a contract with two (2) former Defendants regarding the sale of parking spaces. (Bob Holt Depo. at 198-199.) However, Mr. Holt testified that Plaintiffs have conferred the benefit of "cover" on Defendants and explained that by "cover" he meant that the City's passage of a short-term rental ordinance resulted in some properties being legal and some illegal

and that such a situation makes enforcement by the City more difficult which provides "cover" to Defendants from enforcement. (*Id.* at 169-171.) This strained attempt to turn enforcement of a zoning ordinance by the City into a benefit conferred by Plaintiffs fails as a matter of law. First, the decision whether or not to enforce an ordinance is a discretionary decision that belongs to the City, not to Plaintiffs. Second, there is no evidence in the record that the reason the City is not enforcing its zoning ordinance against the named Defendants has anything to do with Plaintiffs. In fact, Bob Holt testified as follows:

"Q. Have you gotten any reassurances from the City that they are going to enforce their 3 zoning ordinance?"

A. Yeah. At public meetings the mayor before our -- at our neighborhood meeting six months ago. Yeah, a lot.

Q. But -- but you never followed up to determine whether any of these Defendants were subject to a city enforcement action?

A. No. I have nothing to do with the city's enforcement action." (Bob Holt Depo. at 159.)

Third, Plaintiffs did not pass the ordinance, the City did. Plaintiff's argument is that passage of the ordinance and the fact that the ordinance only applies to certain property owners was the benefit conferred on Defendants yet the City passed the ordinance, not Plaintiffs.

IV. Public Nuisance

A. There are no facts to support Plaintiffs' allegation that they have been specially injured or suffered any concrete injury so Plaintiffs' public nuisance claim fails

Plaintiffs allege a public nuisance in Paragraph 143 of their Amended Complaint, "Defendants' illegal activities *do affect the public*....." (emphasis added) (*Id.*) "[A] public nuisance affects the public at large, while a private nuisance affects one or a limited number of individuals only. In other words, to be considered public, the nuisance must affect an interest common to the general public." 58 Am. Jur. 2d *Nuisances* § 32 (2002).

A plaintiff alleging a public nuisance must prove damages different in kind, not degree, from the damage the general public shares. See generally *Huggin v. Gaffney Dev. Co.*, 229 S.C. 340; 92 S.E.2d 883 (1956); *Brown v. Hendricks*, 211 S.C. 395, 45 S.E.2d 603 (1947); 66 C.J.S. Nuisances §§ 2, 76, 78-79 (1998); Restatement (Second) of Torts, § 821C (1979). Plaintiffs allege in Paragraph 137 of their Amended Complaint that they "suffered damages which only they can claim and are individual to them, including decreased rental income and diminution of property values." This type of damage is insufficient as a matter of law to establish damages due to a public nuisance as decreased rental income and diminution of property values attributable to Defendants' actions are not an injury unique to these Plaintiffs. In fact, when Bob Holt was asked what injury he suffered distinct from the public's interest, he testified he was not the only aggrieved party and that there are a lot of aggrieved parties, they just didn't file a law suit. "I'm not the only aggrieved party -- or not me, but the entities are not the only aggrieved parties. There are a lot of aggrieved parties." (Bob Holt Depo., p. 56) (emphasis added.) Plaintiffs admit "there are a lot of aggrieved parties" injured in the same manner as they are, so as a matter of law Plaintiffs have suffered no specialized injury and their nuisance cause of action fails.

Additionally, Plaintiffs have no standing to maintain this nuisance cause of action because they have not suffered any injury in fact.

The principle of standing under the United States Constitution is "an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992). The Supreme Court has provided a three-part test to establish standing:

"First, the plaintiff must have suffered an 'injury in fact'-an invasion of a legally protected interest which is (a) concrete and particularized, and (b) 'actual or imminent, not 'conjectural' or

'hypothetical,' " Second, there must be a causal connection between the injury and the conduct complained of-the injury has to be "fairly . . . trace[able] to the challenged action of the defendant, and not . . . th[e] result [of] the independent action of some third party not before the court." Third, it must be "likely," as opposed to merely "speculative," that the injury will be "redressed by a favorable decision." *ATC South, Inc. v. Charleston County*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008)

As the Court held in *Overcash v. S.C. Elec. & Gas Co.*, 364 S.C. 569, 575, 614

S.E.2d 619, 622 (2005):

We conclude the special or particular injury requirement necessary for an individual to maintain a cause of action for public nuisance is satisfied only by injury to the individual's real or personal property. For the protection of the person, South Carolina has well developed tort-based doctrines which can redress wrongs resulting in personal injuries sustained by an individual. The addition of personal injury to public nuisance actions in South Carolina would perpetuate the erosion of any semblance of doctrinal consistency in the common law of nuisance.

Here, three (3) years after filing suit, Plaintiffs have nothing to prove there is a case or controversy at stake other than their conjecture. As Mr. Holt testified:

"A. I don't know the specificity of any of the damages. I know that I have been damaged. That goes to all them [causes of action].

Q. That's just your belief, correct?

A. That is, in fact, my belief.

Q. You cannot give me a number sitting here today?

A. I cannot give you a number." (Bob Holt Depo. at 141.)

and

Q. Okay. Sitting here today, you cannot give me a number as to the diminution of the value of any of Plaintiffs' property due to the alleged actions of the Defendants, correct?

A. The number is greater than zero and I do not know the precise number greater than zero.

Q. Okay. And you also cannot give me the lost profits that the Plaintiffs have suffered?

A. The lost profits would be -- would closely approximate whatever that number is above zero that I cannot give you definitively. So that is correct." (*Id.* at 150.)

Although Mr. Holt cannot state a monetary amount of his damages, he testified he believes he has standing to file suit due to Defendants' illegal competition. (*Id.* at 101.) Mr. Holt testified that the value of the property they owned was diminished by increased competition and it was the illegal competition that harms him. (*Id.* at 114.) However, "An owner of commercial property generally does not have standing in a zoning enforcement action if special damages amount to a loss of business due to the position of the violating use as a competing business, but a commercial property owner may be specially damaged if he alleges adverse impact on his business *other than by increased competition.*" *Connor Holdings, LLC v. Cousins*, 373 S.C. 81, 83, 644 S.E.2d 58, 59 (2007) (emphasis added.)

As Plaintiffs admit they have been injured in the same manner as other legal short-term renters and they cannot prove damages different in kind than anyone else in the general public who rent their properties on a short-term basis other than increased competition, and they cannot put a monetary amount on their damages, they cannot bring a public nuisance claim.

CONCLUSION

Plaintiffs do not have standing to sue because they are not adjacent or neighboring property owners, the conduct complained of, short-term rentals, is regulated by the Planning Act, City of Charleston Zoning Ordinance, the zoning administrator, and the Board of Zoning Appeals (not Plaintiffs) and Plaintiffs have failed to pursue an appeal to the Board of Zoning Appeals as required by the ordinance, the regulatory exception of the UTPA applies, and Plaintiffs have suffered no special or concrete damages due to the alleged public nuisance.

Therefore, Defendants are entitled to judgment as a matter of law as to all of Plaintiffs' causes of action and Plaintiffs respectfully request this matter be dismissed with prejudice.

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Date: June 1, 2018

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Charleston Development Company, LLC,
Charleston Housing Company, LLC and NotSo
Hostel, LLC,

Plaintiffs,

vs.

Younnesse Alami, et al.,

Defendants.

COURT OF COMMON PLEAS

CASE NO. 15-CP-10-5415

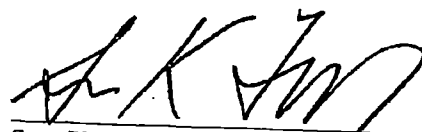
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JULIE J. JENNISTROHG
CLERK OF COURT
BY

Plaintiffs hereby move to compel full and complete responses to their Interrogatories and Requests for Production. All Defendants were served with identical discovery requests and no Defendant has fully responded.

The crux of the Plaintiffs' requests is information regarding the Defendants' advertisements on internet platforms. Every Defendant which has used those platforms is able to easily produce reports in the form attached. Likewise, every Defendant can easily provide information regarding his or her revenue from short-term rental business.

Finally, if any Defendants have received any information via subpoena or FOIA request, that information should be produced.


Sean K. Trundy
Sean Kevin Trundy, LLC
1212 Wappoo Road
Charleston, SC 29407

Phone: (843) 323-9098
strundy@trundylawfirm.com
ATTORNEY FOR PLAINTFFS

January 11, 2018

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Charleston Development Company, LLC,
Charleston Housing Company, LLC and NotSo
Hostel, LLC,

Plaintiffs,

vs.

Younesse Alami, et al.,

Defendants.

COURT OF COMMON PLEAS

CASE NO. 15-CP-10-5415

**PLAINTIFFS'
INTERROGATORIES
TO DEFENDANTS**

TO: EACH DEFENDANT:

YOU ARE REQUESTED to respond to the following Interrogatories within the time permitted by Rule 33, SCRPC. For purposes of these Requests, "the Property" is defined as the address you are alleged to own and rent out in the attached First Amended Complaint.

1. Give the names and addresses of persons known to you or your attorney to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.
2. Set forth a list of photographs, plats, sketches or other prepared documents in your possession that relate to the claims or defenses in the case.
3. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claims and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.
4. List the names and addresses of any expert witnesses you propose to use as a

witness at the trial of the case.

5. For each person known to you or your counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the Plaintiffs of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

6. If you are counterclaiming against the Plaintiffs, set forth an itemized statement of all damages you claim, and for each element of damage, describe in detail how the alleged damages were computed.

7. Identify by account number, account number, and name and address of the bank, any bank accounts whose information you have shared with any advertising platform, including but not limited to www.airbnb.com, www.vrbo.com, www.flipkey.com and www.homeaway.com.

8. Set forth any platform identification number, host name, or member name you have with any advertising platform, including but not limited to www.airbnb.com, www.vrbo.com, www.flipkey.com and www.homeaway.com.

These Interrogatories shall be deemed to continue until the time of the trial of this case.

Sean K. Trundy
Sean Kevin Trundy, LLC
1212 Wappoo Road
Charleston, SC 29407
Phone: (843) 323-9098
strundy@trundylawfirm.com

ATTORNEY FOR PLAINTFFS

January 5, 2017

Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	CASE NO. 15-CP-10-5415
	)	
Charleston Development Company, LLC,	)	
Charleston Housing Company, LLC and NotSo	)	
Hostel, LLC,	)	
	)	
Plaintiffs,	)	
	)	PLAINTIFFS' REQUESTS
vs.	)	FOR PRODUCTION
	)	TO DEFENDANTS
Younesse Alami, et al.,	)	
	)	
Defendants.	)	

TO: EACH DEFENDANT:

YOU ARE REQUESTED to respond to the following Requests within the time permitted by Rule 34, SCRCP. For purposes of these Requests, "the Property" is defined as the address you are alleged to own and rent out in the attached First Amended Complaint. Further, all of these Requests are limited temporally to January 1, 2012 to the present. "Documents" and "correspondence" include electronic documents and electronic mail.

1. Please produce any and all statements and documents, whether written, recorded, or otherwise, having any bearing upon the present litigation. This request includes, but is not limited to, any and all property management agreements with any person or entity that has ever managed the Property when rented for a period of less than 30 days.

2. Please produce any and all documents referencing, evidencing, or connected with any revenue generated by, out of, or because of the Property. This request includes but is not limited to reports from all property listing services such as Airbnb, VRBO, HomeAway, etc., bank statements, deposit slips, invoices, receipts, rental agreements, leases, or tax returns.

3. Please produce all business licenses that have been issued to you and/or are associated with the Property.
4. Please produce all correspondence, between you and any property manager, renter, prospective renter or visitor regarding the Property, and all correspondence, electronic or otherwise, between you and any property listing service such as Airbnb, VRBO, HomeAway, etc.
5. Please produce all the documents requested in 1-4 above for any and all properties you own or manage in the City of Charleston that have ever been rented for a period of fewer than 30 days.
6. Please produce any and all documents referencing, evidencing, or connected with your payment of taxes (federal, state, county or city) related to any revenue generated by, out of, or because of the Property. This request includes but is not limited to 1040s, K-1s, 1065s, ST-388s.
7. Please produce any and all documents referencing, evidencing, or connected with any damages you are claiming from the Plaintiffs.
8. Please produce a copy of any and all applications made to the City of Charleston Zoning Administrator for approval of the use of the Property as a short-term rental, bed and breakfast or accommodations use, and the approval or denial of the application.

Please produce for inspection and/or copying the above-listed documents to the undersigned, at the undersigned address, within the time provided by SCRCF; in lieu of the production of the originals for inspection and/or copying, please forward copies of the above-listed documents to the undersigned, at the undersigned address.

Sean K. Trundy
Sean Kevin Trundy, LLC
1212 Wappoo Road
Charleston, SC 29407
Phone: (843) 323-9098
strundy@trundylawfirm.com

ATTORNEY FOR PLAINTFFS

January 5, 2017

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Charleston Development Company, LLC,
Charleston Housing Company, LLC and NotSo
Hostel, LLC,

Plaintiffs,

vs.

Younnesse Alami, et al.,

Defendants.

COURT OF COMMON PLEAS

CASE NO. 15-CP-10-5415

**PLAINTIFFS' NOTICE OF
MOTION AND MOTION TO
COMPEL VIDEO-TAPED
DEPOSITIONS**

FILED
2018 MAY 17 AM 8:37
J. J. ARMSTRONG
CLERK OF COURT

Robert Holt has been deposed.

Plaintiffs have subpoenaed many of the Defendants for video-taped depositions. Some or all of the Defendants object to the depositions being video-taped. (Exh. 1).

Depositions may be video-taped in cases where "the prayer for relief involves an amount of one hundred thousand dollars or more" or "the court has granted permission for the use of videotape by court order." Rule 32(h), SCRPC.

The Plaintiffs did not pray for ANY certain amount in their First Amended Complaint. Had they simply written that they believe they are entitled to more than \$100,000, they would be AUTOMATICALLY entitled to video-tape the Defendants' depositions. Under the rule, no proof or evidence of their damages would be necessary.

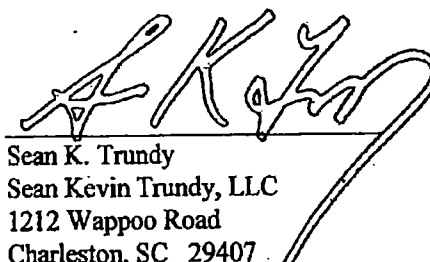
The Plaintiffs' research (admittedly cursory as of this writing) has not revealed an appellate case interpreting this aspect of Rule 32(h). The Defendants, as of this writing, have not explained why they do not want to testify under oath while on camera. The Plaintiffs' motivation is obvious:

the Defendants' testimony may be presented in Plaintiffs' case-in-chief, and video is far more impactful and persuasive than the written word.

The Plaintiffs' respectfully request that the Court order that they are allowed to video-tape the Defendants' depositions. While the Plaintiffs assert that no evidence or proof is required, in case the Court disagrees, the initial analysis of one of the web host's partial subpoena responses reveals that just 8 of the scores of Defendants, together, have made more than \$700,000 in illegal rental income.

253 Coming Street, LLC	\$198,563.43	(includes 2014)
259 East Bay LLC	\$70,812.50	
259 East Bay 10B LLC	\$95,180.00	
Simon Adell	\$12,757.05	+ \$12,209.22
Westendorff Hardware, LLC	\$22,956.22	
Darryl D'Amico	\$22,169.00	
Hartshorn Family Trust	\$34,066.46	
Kit Properties, LLC	\$299,957.94	(includes 2013 and 2014)

Finally, and as alternative relief, if the Court holds that the Plaintiffs must amend their prayer in order take video-taped depositions, the Plaintiffs will do so. Attached is such an amendment. (Exh. 2). No other amendment to the Complaint would be necessary, and, in the interest of judicial economy, the Plaintiffs would agree to accept the Defendants' current Answers to the amended prayer.



Sean K. Trundy
Sean Kevin Trundy, LLC
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strundy@trundylawfirm.com
ATTORNEY FOR PLAINTIFFS

May 16, 2018
Charleston, South Carolina

EXHIBIT 1

NANCY BLOODGOOD EMAIL

Sean Trundy

From: Nancy Bloodgood <nbloodgood@bloodgoodsanders.com>
Sent: Wednesday, May 16, 2018 9:51 AM
To: Sean Trundy
Cc: greg@voigtmurphy.com; David B. Marvel (dave@marvel.lawyer); Mary Lee Briggs; dan@boleslawfirmllc.com; chris@chrismurphyllawfirm.com
Subject: depositions and motion for summary judgment

Sean, You will have to file a Motion for Court permission to take videotaped depositions as your prayer does not ask for more than 100k of damages as required by SCRC Rule 30 (h). As Mr. Holt's deposition is now complete, Defendants will file a Motion for Summary Judgment this week and ask Judge Dennis to schedule a hearing before June 11th. (Also, I decided we need an expedited copy of the transcript, so I'll obtain that.) We may be able to avoid the time and cost of all of the depositions you have noticed if Judge Dennis is willing to hear our Motion for Summary Judgment before June 11th. Meanwhile, I will notify my clients of the June 11th date. In the event Judge Dennis cannot hear your motion or our motion before June 11th, please confirm that the noticed depositions will not be video-taped. Thanks, Nancy

Nancy Bloodgood, Partner
Bloodgood & Sanders, LLC
242 Mathis Ferry Road, Suite 201
Mt. Pleasant, SC 29464
office: 843-972-0313
nbloodgood@bloodgoodsanders.com

EXHIBIT 2

PROPOSED AMENDED PRAYER

illegal activities.

174. A favorable decision will redress the Plaintiffs' injuries.

175. Defendants have been unjustly enriched, retaining and benefitting from their violations of the law, to the detriment of the Plaintiffs.

176. It is unfair that the Defendants retain the benefit of their illegal acts to the detriment of the Plaintiffs.

177. Plaintiffs are entitled to actual damages and prejudgment interest.

WHEREFORE, having fully complained of the Defendants, Plaintiffs pray for actual damages, treble damages, attorneys' fees, costs, prejudgment interest, equitable and injunctive relief, and such other and further relief as the Court may deem appropriate. Plaintiffs pray for damages in excess of \$100,000.00.

Sean K. Trundy
Sean Kevin Trundy, LLC
1212 Wappoo Road
Charleston, SC 29407
Phone: (843) 323-9098
strundy@trundylawfirm.com

ATTORNEY FOR PLAINTFFS

January __, 2017

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Charleston Development Company, LLC,
Charleston Housing Company, LLC and NotSo
Hostel, LLC,

Plaintiffs,

vs.

Younnesse Alami, et al.,

Defendants.

COURT OF COMMON PLEAS

CASE NO. 15-CP-10-5415

**PLAINTIFFS' MEMORANDUM
IN OPPOSITION TO MOTIONS
TO DISMISS**

FILED
2018 MAY 11 PM 1:51
JULIE J. ARMSTRONG
CLERK OF COURT

"The [Defendants] doth protest too much, methinks."

Queen Gertrude, Hamlet, Act III, Scene 2.

The righteous indignation from the Defendants in their motions to dismiss and for sanctions is unwarranted. The Defendants call the Plaintiffs' conduct "particularly egregious" and thus request the "harshest sanctions." Preposterous. The Plaintiffs will now respectfully show the Court why the Defendants' motions should be denied.

THE MOST IMPORTANT FACTS REGARDING THESE MOTIONS

First, the Plaintiffs have responded to discovery. They responded to interrogatories back before the order of consolidation and reference to the Business Court, and their recent written discovery responses spanned nearly 50 pages. Plaintiffs' initial document production consisted of more than 200 pages.

Second, there are presently more than 80 Defendants in this case. Every single Defendant was served with Interrogatories, Requests for Production and Requests for Admissions with the

EXHIBIT 1

LIST OF DEFENDANTS WHO HAVE NOT ANSWERED INTERROGATORIES OR REQUESTS FOR PRODUCTION

Younesse Alami
Deidre Alexander
Matthew Asher
Andre Bauer
Peter Bierce
Reginald P Brown IV
Mary Cahill
Anne Marie Crevar
Darryl J. Damico
Stephen Darwak,
Lindsay Davenport
David Dressman and Anna Dressman
Christopher Scott Farley
Michele Ghastin
Shaun Halsor and Josephine Rex
Linda Hancock
Nathan Herring
James Hicks Jr. and Laurie Hicks
Colin Jones
Robert C. Jones and Matthew F. Jones
John Kenny and Mandi Walters
Aaron Kless
Laurie Kramer and Robert Kramer
Thomas and Zoe Naselaris
Beau O'Steen and Cori O'Steen
Lance Parr
Daniel Ryan and Kimberly Bowlin
Justin Swan
John Van Vlack, Jr
William Waterhouse and Jennifer Waterhouse
Anne Wohlfeil
249 Cumming, LLC
259 East Bay LLC
259 East Bay 10 B LLC
Corner At Old Canton, LLC
Kit Properties LLC
Westbury Properties, LLC
The Naws, LLC
Merrick Teichmann

EXHIBIT 2

EXAMPLES OF WHAT THE "PRODUCING DEFENDANTS" HAVE PRODUCED

Simon M. Adell: NO ROGG RESPONSES, 1 PAGE FROM 2014 RETURN, 1 PAGE FROM 2015 RETURN

Matthew Anderson: 1 SPREADSHEET REDACTED, FOR 3 MONTHS IN 2016, 1 ENTIRELY REDACTED TAX FORM, SEVERAL PAGES WITH NO IDENTIFICATION

Brandon Blount: 1 PRINTOUT OF EARNINGS SUMMARY FOR 2015 AND 2016 FOR MARION MOZLEY; SCHEDULE E FOR 2015

Ryan Cockrell: 1 MANAGEMENT AGREEMENT, UNDEFINED REDACTED SPREADSHEET; 2015 SCHEDULE C, AIRBNB EARNINGS SUMMARY FOR 2015

Kevin & Virginia Conlon: UNDEFINED SHEETS WITH NUMBERS, CURIOUSLY IDENTICAL TO SEVERAL OTHERS; 2015 REDACTED 1040; 2016 AIRBNB EARNINGS SUMMARY

Kathleen Dougherty: ONE PAYOUT SHEET FROM JANUARY TO OCTOBER 2015

Michael Elder: ONE DOCUMENT WITH 4 NUMBERS; THERE HAS TO BE BACKUP; SCHED E 2014 AND 2015

Ryan and Sonya Gilreath: THEY SAY THEY HAVE A BUSINESS LICENSE, ATTACHED; THERE IS NONE; SOME INFO ABOUT PAYMENT OF TAXES, BUT NOTHING ABOUT OCCUPANCY, REVENUE ETC.

Kimberly Glenn: AIRBNB EARNINGS SUMMARY 2016

Hartshorn Family Trust: SEVERAL BANK STATEMENTS, BUT NOTHING FROM THE PLATFORMS

Preston G. Hipp: THREE HOMEMADE WORD DOCUMENTS; NOTHING FROM PLATFORMS

Robin Joseph: SCHEDULE C FROM 2010 TO 2015

Molly Keeler McNeill: SCHEDULE E 2015, EARNINGS SUMMARY 2015 AND 2016

Helene Kenny/ Bridget Kenny Revocable Trust: SCHEDULE E 2015, EARNINGS SUMMARY 2015 AND 2016

One Henrietta LLC: COUPLE OF TAX DOCUMENTS; HOMEMADE WORD DOCUMENT

Hadassah Rothenberg Levenson: AIRBNB PAYOUTS 2015 AND 2016

Kevin Schnittker: AIRBNB PAYOUT 2016

Mary Dickerson and Maxwell Streeter: 2016 tax summary; ROGGS THEY GIVE ONE PLATFORM ID NUMBER BUT CLAIM TO HAVE NO OTHER INFO

Ginger Scofield: HOMEAWAY AND AIRBNB PAYOUT DOCUMENTS

Westendorff Hardware LLC: ADMITS THAT IT RENTED OUT SHORT TERM, BUT CLAIMS TO HAVE ZERO DOCUMENTS

Bryan Young: HOMEMADE WORD DOCUMENTS; A FEW TAX DOCUMENTS

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Global Real Property Trust,

Plaintiff,

vs.

Darryl J Damico, Mary Cahill, Fitzhugh L
and Ann M Stout, Michele Ghastin, Robin
Joseph, Kira and Aaron Golub, Michael
Elder, Younesse Alami, Lance Parr, Bryan
Young, Hadassah Rothenberg, Paula Garret,
Brandon Perdue, Deidre Alexander, Sarita
Ellerkmann, Adell M Simon, Christina
Cross, Helene Kenny/Bridget Kenny
Revocable Trust, Christopher Scott Farley,
Anne Marie Crevar, Stevenson B Bennett,
Hartshorn Family Trust, Kenneth G
Welborn Jr., One Henrietta LLC, Virginia
Bailey, Barbara Brass, Robert Bruce
Murphy Jr., Nathan Herring, Brenda
Anderson, Ryan and Sonya Gilreath, Emily
Durlach, 259 East Bay LLC, 259 East Bay
10 B LLC, James J Licari and Vickie L
Truchan, Theresa Sanders, 253 Coming
Street LLC, Porch Properties LLC, Preston
G Hipp, Zsolt Haraszit, Mordenai R Hirsch,
Wilhelmina M Wieters Life Estate Childrens
Trust, and Nancy H Breeden,

Defendants.

COURT OF COMMON PLEAS

CASE NO. 15-CP-10-5415

AFFIDAVIT OF ROBERT HOLT

FILED
2016 OCT 28 PM 4:15
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

PERSONALLY, APPEARED BEFORE ME, Robert Holt, who after first being duly sworn
deposes and states as follows:

1. I am over the age of 18 and make this affidavit of my personal knowledge.
2. I am the Trustee of the Global Real Property Trust ("the Trust") and have served in

that position since the Trust was created.

3. The Trust is the sole member of Charleston Housing Company, LLC ("CHC") and Charleston Development Company, LLC ("CDC"). CHC is the sole member of NotSoHostel, LLC ("NSH"). All of these LLCs (CDC, CHC, NSH) are member managed LLCs, and as the sole member the Trust controls all aspects of these LLCs.

4. CHC owns the following properties, which are located in the short-term rental overlay district on the Charleston peninsula: 5 Tully Alley, 6 Tully Alley, 33 Cannon St., 179D St. Philip St. and 179E St. Philip St. All of those properties are zoned General Business. CHC also owns 156 Spring St., which is located in the short-term rental overlay district and zoned Limited Business. CDC owns 2 Charles St., and 106 A&B Cannon St. which are located in the short-term rental overlay district and zoned General Business.

5. NSH operates the short-term rental businesses at 33 Cannon St., and 156 Spring St. CHC operates the short-term rental businesses at 5 Tully Alley, 6 Tully Alley, 179D St. Philip St., 179E St. Philip St., 106 A&B Cannon St., and 2 Charles St.

6. The Trust is the beneficial owner of each of those properties. By that I mean that if the LLC/property is profitable, that profit goes to the Trust; if the LLC/property loses money, the Trust takes the loss and funds any shortfall. For ease of reference, I will refer to the Trust, CHC, CDC and NSH as "the Plaintiffs."

7. The Defendants have been sued because their actions or transactions are not permitted under laws administered by any regulatory body or officer acting under statutory authority.

8. By operating in violation of the law and without authorization by any government or

regulatory body, the Defendants (a) compete unfairly with the Plaintiffs' businesses and other legally operating short-term businesses, which in turn costs the Plaintiffs income and (b) reduces the available residential rental housing stock; which in turns displaces residents and drives up the cost of housing.

9. Damage from the Defendants' illegal competition is not the sole source of the Plaintiffs' damages. The Defendants have caused the Plaintiffs' real properties to lose value. The current market value of 5 Tully Alley is approximately \$200,000. If the Defendants were not carrying on their illegal businesses, it would be worth \$500,000 because it would be one of the few properties in the City where short-term rentals could take place. The reason for the loss of value is that no potential buyer will pay a premium for a property in the short-term rental overlay district as long as every property on the peninsula has the unfettered ability to be rented out on a short-term basis regardless of compliance with local zoning, and fire safety codes. The Plaintiffs have paid a premium of approximately 20% on their properties because they are located in the overlay district. The Defendants have not paid any such premiums, yet they are still getting the benefit of short-term rental income.

10. I have reviewed the discovery and pleadings in these cases. Nearly all of the moving Defendants admit, in their answers or responses to requests for admissions, that they rent their properties out on a short-term basis. The legal market for short-term rentals downtown is restricted to commercially zoned properties in the very small overlay district comprised of the Elliotborough Cannonboro Neighborhood. The Defendants are operating illegally and without regulation or restrictions, and their illegal activity has affected the Plaintiff's income and property values. A favorable result in this case will redress the Plaintiff's injuries by (1) compensating the Plaintiff for

its financial damages and (2) preventing the Defendants from continuing to damage the Plaintiff by enjoining the Defendants from violating the law.

11. The Plaintiffs have been damaged in several ways: (1) reduced bookings; (2) reduced profits due to the Defendants' pricing advantages; (3) diminished property values. These damages are particular to the Plaintiffs, concrete and individualized. Although there may be other persons legally operating short-term rental businesses in the short-term rental overlay district, if there are, the possible universe of damaged persons, is minute (likely fewer than 50 persons) compared to all of Charleston or even all of the peninsula. And even within that tiny universe of damaged persons, the Plaintiffs' damages are its own, and unique to the Plaintiffs.

12. There is nobody in the world except for the Plaintiffs who are affected by the diminution in value of 5 Tully Alley, for example.

13. While the Plaintiffs' damages are individualized and unique, the Defendants' illegal activities have affected the market. As I noted above, the City's intent (obvious from the ordinances) was to limit short-term rental market to the very small overlay district. The Defendants have upset the marketplace by taking all of the benefits of short-term rentals while paying none of the expenses that the Plaintiffs have incurred. The Defendants have rented out their properties for several years, and continue to do so, and will continue to do so unless they face some consequence for violating the law.

14. Moreover, Defendants not only engage in unfair methods of competition but also engage in unfair deceptive trade practices by asserting to the users of various listing sites that they are legally permitted to rent their property on a short-term basis. Many of the Defendants use Airbnb as their listing site, and as member of the Airbnb the Terms of Service to which the Defendants have

agreed and consented to clearly and unambiguously state in all caps and bold the following:

" PLEASE READ THESE TERMS OF SERVICE CAREFULLY AS THEY CONTAIN IMPORTANT INFORMATION REGARDING YOUR LEGAL RIGHTS, REMEDIES AND OBLIGATIONS. THESE INCLUDE VARIOUS LIMITATIONS AND EXCLUSIONS, A CLAUSE THAT GOVERNS THE JURISDICTION AND VENUE OF DISPUTES, AND OBLIGATIONS TO COMPLY WITH APPLICABLE LAWS AND REGULATIONS.

IN PARTICULAR, HOSTS SHOULD UNDERSTAND HOW THE LAWS WORK IN THEIR

RESPECTIVE CITIES. SOME CITIES HAVE LAWS THAT RESTRICT THEIR ABILITY TO HOST PAYING GUESTS FOR SHORT PERIODS. THESE LAWS ARE OFTEN PART OF A CITY'S ZONING OR ADMINISTRATIVE CODES. IN MANY CITIES, HOSTS MUST REGISTER, GET A PERMIT, OR OBTAIN A LICENSE BEFORE LISTING A PROPERTY OR ACCEPTING GUESTS. CERTAIN TYPES OF SHORT-TERM BOOKINGS MAY BE PROHIBITED ALTOGETHER. LOCAL GOVERNMENTS VARY GREATLY IN HOW THEY ENFORCE THESE LAWS. PENALTIES MAY INCLUDE FINES OR OTHER ENFORCEMENT. HOSTS SHOULD REVIEW LOCAL LAWS BEFORE LISTING A SPACE ON AIRBNB.

Further Airbnb Terms of Services in Paragraph 14 User Conduct states the following .

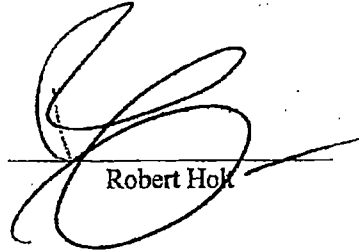
You understand and agree that you are solely responsible for compliance with any and all laws, rules, regulations, and Tax obligations that may apply to your use of the Site, Application, Services and Collective Content. In connection with your use of the Site, Application, Services and Collective Content, you may not and you agree that you will not:

violate any local, state, provincial, national, or other law or regulation, or any order of a court, including, without limitation, zoning restrictions and Tax regulations;"

15. The Defendants repeatedly and continually not only violate Airbnb Terms of Services and conduct requirements but also continually engage in misrepresenting to Airbnb and the general public that they conform to the local and state laws, including zoning restrictions and tax regulations.

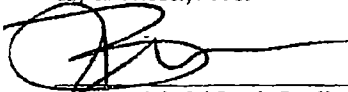
The matters in this affidavit are true and correct as to all four of the suits filed by the Trust.

FURTHER AFFLIANT SAYETH NOT!


Robert Holt

Sworn to before me this 28th

day of October, 2016.



Notary Public for South Carolina

My Commission expires: 11/14/22

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Charleston Development Company, LLC,
Charleston Housing Company, LLC and
NotSo Hostel, LLC,

Plaintiffs,

vs.

Younesse Alami, et al.,

Defendants.

COURT OF COMMON PLEAS

CASE NO. 15-CP-10-5415

AFFIDAVIT OF ROBERT HOLT

FILED
2017 MAY -9 PM 2:06
JULIE J. ARMSTRONG
CLERK OF COURT

PERSONALLY APPEARED BEFORE ME, Robert Holt, who after first being duly sworn deposes and states as follows:

1. I am over the age of 18 and make this affidavit of my personal knowledge.
2. My role in, and familiarity with, this lawsuit were set out in my previously filed affidavit.
3. I will here address additional ways that the Defendants' illegal businesses have damaged the Plaintiffs. The Plaintiffs' businesses have numerous repeat customers. If a guest stays somewhere and enjoys the experience, he or she will very often return.
4. I am certain that the Defendants would agree, and that they too have had repeat or recurring customers. The problem is that the Defendants have earned those repeat customers by operating illegally. Their customers, like the Plaintiffs', are people who for whatever reason have chosen AirBnB type properties over hotels. If the Defendants were not competing illegally, the available pool of AirBnB type properties would be much, much smaller and the Plaintiffs would have more business. The Plaintiffs have lost countless potential repeat customers, and continue to do

so. That harm is very difficult to quantify and is irreparable.

6. Additionally, negative experiences of a guest of an illegal short-term rental, because of things such as a failure to provide building code required health and safety protections, tarnish the reputation of all short-term rentals. A guest has no practical way of determining what short-term rental is illegal or legal, and the hosts of illegal short-term rentals do not disclose their illegal status in their listings. This harm is very difficult to quantify and is irreparable.

5. I have been buying, selling and investing in real estate on the Charleston peninsula for approximately 33 years. I have participated in over 69 real estate transactions on the Charleston peninsula. Those transactions have included many different types of properties, including residential, commercial, and properties legally zoned to permit short-term rentals.

6. I stay abreast of the current state of the real estate market on the peninsula. On the basis of my background, experience and research, it is my opinion, to a reasonable degree of certainty, that the Defendants' illegal short-term rental businesses have negatively impacted the value of the Plaintiffs' legal short-term rental properties.

7. Short-term rentals, less than 30 days, are legal in Charleston residences in only the very small short-term rental overlay district. Owners of commercially zoned properties in that district, who comply with all of the City's requirements, can rent portions of their properties out on a short-term basis, and most or all of them use online platforms such as www.airbnb.com, www.vrbo.com, and www.homeaway.com.

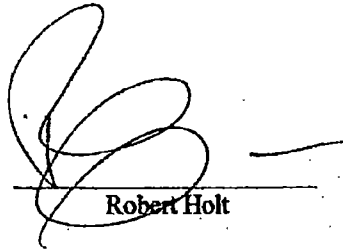
8. The value of any property is heavily dependent on what that property can be used for, and the desirability of those uses in the area where the property is located. The peninsula of Charleston is an area of high demand for visitors to our City. Areas where accommodations uses are

legal have heretofore been highly desired and valuable. The scarcity of properties which can legally engage in short-term rentals should make those properties more valuable by virtue of their high demand. For instance, as a general matter, a 2000 square foot home on the peninsula which can be used to generate short-term rental income should be more expensive than a similar home, in a similar area, which cannot be so used.

9. However, in practice short-term rentals have not been limited to the small number of commercially zoned properties in the legal overlay district. A quick review of online platforms reveals that short-term rentals can be found almost everywhere on the peninsula in great numbers. So, if a buyer is interested in obtaining a property to use for a short-term rental business, there is no reason for that buyer to pay a premium for a property zoned commercially in the overlay district. There appears to be no consequence to operating such businesses without legal approval from the City. As the number of illegal short-term rentals increases, the value of legal short-term rentals decrease either as a gross number, or in relation to what the value would be, if there were no illegal short-term rentals competing with the legal short-term rentals.

10. The result is that illegal short-term rental businesses have deprived the legal businesses of increased value they would otherwise have.

FURTHER AFFIANT SAYETH NOT!



Robert Holt

Sworn to before me this 5th

day of May, 2017.



Notary Public for South Carolina

My Commission expires: Nov. 19, 2022

AFFIDAVIT OF ROBERT HOLT

PERSONALLY APPEARED BEFORE ME, Robert Holt, who after first being duly sworn deposes and states as follows:

1. I make this affidavit of my own personal knowledge.
2. I am the Chairman of, and speak for, the three Plaintiffs in this action.
3. Based on my experience as a real estate investor in downtown Charleston and my experience in short-term rentals, I have opinions about the values of properties owned by the Plaintiffs, and how those values have been affected by the illegal competition presented by the Defendants in this case.
4. The current approximate value of 5 Tully Alley is \$600,000. Its current approximate value if there was no illegal competition would be \$720,000. The present-day diminution in value of this property is approximately \$120,000.
5. The current approximate value of 6 Tully Alley is \$1,200,000. Its current approximate value if there was no illegal competition would be \$1,500,000. The present-day diminution in value of this property is approximately \$300,000.
6. The current approximate value of 33 Cannon Street is \$1,300,000. Its current approximate value if there was no illegal competition would be \$1,600,000. The present-day diminution in value of this property is approximately \$300,000.
7. The current approximate value of 156 Spring Street is \$3,000,000. Its current approximate value if there was no illegal competition would be \$3,600,000. The present-day diminution in value of this property is approximately \$600,000.
8. The current approximate value of 2 Charles Street is \$500,000. Its current approximate value if there was no illegal competition would be \$600,000. The present-day

diminution in value of this property is approximately \$100,000.

9. The current approximate value of 179D St. Philip Street is \$600,000. Its current approximate value if there was no illegal competition would be \$700,000. The present-day diminution in value of this property is approximately \$100,000.

10. The current approximate value of 179E St. Philip Street is \$1,200,000. Its current approximate value if there was no illegal competition would be \$1,500,000. The present day diminution in value of this property is approximately \$300,000.

11. The current approximate value of 106A&B Cannon Street is \$1,700,000. Its current approximate value if there was no illegal competition would be \$2,100,000. The present day diminution in value of this property is approximately \$400,000.

12. The total diminution in value of all the properties is \$2,200,000.00

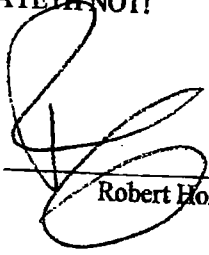
13. As of this writing, I have not received a copy of my deposition, taken on May 15, 2018.

14. Without having my deposition transcript, I will summarize my testimony in response to the question where I was asked to describe what benefit the Plaintiffs have conferred on the Defendants. I answered that the Plaintiffs by operating legally, have made enforcement of the Ordinance by the City more difficult than it would be if every short-term rental business was illegal. If there were no legally operating short-term rentals, the City would easily be able to determine who was operating illegally; everyone operating would be operating illegally. The Plaintiffs have unwillingly provided cover to the Defendants for their illegal activity. Defendants have eluded detection by effectively obfuscating their precise location and thereby avoided prosecution by the City. They have used this "cover" provided by the Plaintiffs to make money

illegally. This benefit is in addition, of course, to the fact the Plaintiffs were the progenitors behind the very creation of the short-term rental market in Charleston.

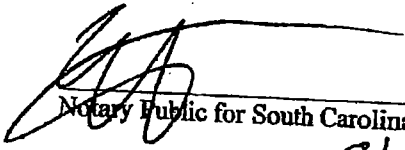
15. Once we finally received data on some of the Defendant's illegal rental revenue from Airbnb and HomeAway, I instructed the Plaintiffs' lawyer to tabulate the raw data to determine how much money in toto the Defendants have been paid. Just from the approximately 59 Defendants where we have data provided by Airbnb, the number exceeds \$3,852,522. This is no small illegal activity. Examples of those summary charts, are being provided to the Court under seal as they contain evidence subject to the Court's confidentiality order.

FURTHER AFFIANT SAYETH NOT!


Robert Holt

Sworn to before me this 4th

day of June, 20018.


Notary Public for South Carolina

My Commission expires: 8/17/2020

EXHIBIT 1

SUMMARY CHARTS OF DEFENDANTS' ILLEGAL REVENUE

HOMEAWAY/VRBO	
Defendants	259 East Bay LLC
Platform ID:	297959
First Reservation Date	10/3/2013
Last Reservation Date	1/15/2018
Total No. of Reservations	258
Avg. Nightly Stay	5.42

DEFENDANTS REVENUE & TAX PAYMENTS			
YEAR	Revenue	Homeaway	You
Year 2011			
Year 2012			
Year 2013	\$12,900.00		
Year 2014	\$21,875.00		
Year 2015	\$41,337.50		
Year 2016	\$29,475.00		
Year 2017			
Year 2018			
TOTALS	\$105,587.50	\$0.00	\$0.00

HOMEAWAY/VRBO	
Defendants	259 East Bay 10 B LLC
Platform ID:	433033
First Reservation Date	10/22/2013
Last Reservation Date	11/3/2017
Total No. of Reservations	208
Avg. Nightly Stay	6.48

DEFENDANTS REVENUE & TAX PAYMENTS			
YEAR	Revenue	Homeaway	You
Year 2011			
Year 2012			
Year 2013	\$12,300.00		
Year 2014	\$28,825.00		
Year 2015	\$49,825.00		
Year 2016	\$37,600.00		
Year 2017	\$7,755.00		
Year 2018			
TOTALS	\$136,305.00	\$0.00	\$0.00

AIRBNB	
Defendants	Lance & Youness Alami
Platform ID:	2857782
First Reservation Date	5/23/2014
Last Reservation Date	4/19/2018
Total No. of Reservations	163
Avg. # of Nigts Rented	3.64

DEFENDANTS REVENUE & TAX PAYMENTS			
YEAR	Revenue	Homeaway	You
Year 2011			
Year 2012			
Year 2013			
Year 2014	\$18,115.00		
Year 2015	\$38,446.00		
Year 2016	\$32,225.00		
Year 2017	\$31,341.00		
Year 2018	\$7,084.00		
TOTALS	\$127,211.00	\$0.00	\$0.00

AIRBNB	
Defendants	Matthew Anderson
Platform ID:	626135
First Reservation Date	1/17/2013
Last Reservation Date	10/7/2017
Total No. of Reservations	227
Avg. # of Nigts Rented	2.41

DEFENDANT'S REVENUE & TAX PAYMENTS			
YEAR	Revenue	Homeaway	You
Year 2011			
Year 2012			
Year 2013	\$8,522.00		
Year 2014	\$14,949.00		
Year 2015	\$12,731.00		
Year 2016	\$13,673.00		
Year 2017	\$9,387.00		
Year 2018			
TOTALS	\$59,262.00	\$0.00	\$0.00

AIRBNB	
Defendants	Matthew Asher
Property Address:	110 Peachtree St
Platform ID:	993753
Host ID:	5418460
First Reservation Date	3/29/2013
Last Reservation Date	5/19/2017
Total No. of Reservations	48
Avg. # of Nigts Rented	2.44

DEFENDANT'S REVENUE & TAX PAYMENT	
YEAR	Revenue
Year 2011	
Year 2012	
Year 2013	
Year 2014	\$3,540.00
Year 2015	\$6,503.00
Year 2016	\$8,636.00
Year 2017	\$5,993.00
Year 2018	\$1,092.00
TOTALS	\$25,764.00

HOMEAWAY/VRBO	
Defendants	Andre Bauer
Platform ID:	777041
First Reservation Date	1/1/2016
Last Reservation Date	10/4/2016
Total No. of Reservations	25
Avg. Nightly Stay	7.4

DEFENDANT'S REVENUE & TAX PAYMENTS			
YEAR	Revenue	Homeaway	You
Year 2011			
Year 2012			
Year 2013			
Year 2014			
Year 2015			
Year 2016	\$12,500.00		
Year 2017	\$10,862.00		
Year 2018			
TOTALS	\$23,362.00	\$0.00	\$0.00

AIRBNB	
Defendants	Peter Bierce
Property Address:	49 Amherst St
Platform ID:	11253095
Host ID:	58715353
First Reservation Date	3/5/2016
Last Reservation Date	3/29/2018
Total No. of Reservations	42
Avg. # of Nigts Rented	3.31

DEFENDANT'S REVENUE	
YEAR	Revenue
Year 2011	\$0.00
Year 2012	\$0.00
Year 2013	\$0.00
Year 2014	\$0.00
Year 2015	\$0.00
Year 2016	\$4,735.00
Year 2017	\$25,900.00
Year 2018	\$4,186.00
TOTALS	\$34,822.00

HOMEAWAY

Defendants **Mary Cahill**
Platform ID: **497500**
First Reservation Date **9/3/2013**
Last Reservation Date **2/18/2018**
Total No. of Reservations **323**
Avg. Nightly Stay **4.04**

DEFENDANTS REVENUE & TAX PAYMENTS

YEAR	Revenue	Taxes paid by Homeaway	Taxes paid by You
Year 2011	\$0.00	\$0.00	\$0.00
Year 2012	\$0.00	\$0.00	\$0.00
Year 2013	\$5,950.00	\$0.00	\$0.00
Year 2014	\$46,637.00	\$0.00	\$0.00
Year 2015	\$33,653.33	\$0.00	\$0.00
Year 2016	\$44,879.00	\$0.00	\$0.00
Year 2017	\$48,521.50	\$0.00	\$0.00
Year 2018	\$9,068.99	\$0.00	\$0.00
TOTALS	\$188,709.82	\$0.00	\$0.00

AIRBNB	
Defendants	Anne Marie Crevar
Property Address:	229 Grove St
Platform ID:	4223886
Host ID:	21848831
First Reservation Date	10/4/2014
Last Reservation Date	4/19/2018
Total No. of Reservations	645
Avg. # of Nigts Rented	2.13

DEFENDANT'S REVENUE & TAX PAYMENT	
YEAR	Revenue
Year 2011	\$0.00
Year 2012	\$0.00
Year 2013	\$0.00
Year 2014	\$5,351.00
Year 2015	\$43,878.00
Year 2016	\$43,734.00
Year 2017	\$41,905.00
Year 2018	\$10,062.00
TOTALS	\$144,929.00

HOMEAWAY/VRBO	
Defendants	Darryl Damico
Platform ID:	575745
First Reservation Date	4/20/2014
Last Reservation Date	2/17/2018
Total No. of Reservations	140
Avg. Nightly Stay	3.68

DEFENDANT'S REVENUE & TAX PAYMENTS			
YEAR	Revenue	Homeaway	You
Year 2011			
Year 2012			
Year 2013			
Year 2014	\$9,396.00		
Year 2015	\$5,200.00		
Year 2016	\$7,200.00		
Year 2017	\$8,569.00		
Year 2018	\$1,290.00		
TOTALS	\$31,565.00	\$0.00	\$0.00

AIRBNB	
Defendants	Mary Dickerson & Maxwell Streeter
Platform ID:	9612435
First Reservation Date	11/25/2015
Last Reservation Date	4/20/2018
Total No. of Reservations	205
Avg. # of Nigts Rented	2.47

DEFENDANTS REVENUE & TAX PAYMENTS			
YEAR	Revenue	Homeaway	You
Year 2011			
Year 2012			
Year 2013			
Year 2014			
Year 2015			
Year 2016	\$54,226.00		
Year 2017	\$50,295.00		
Year 2018	\$16,332.00		
TOTALS	\$121,445.00	\$0.00	\$0.00

HOMEAWAY/VRBO	
Defendants	Mike Elder
Listing Title	
Platform ID:	330245
First Reservation Date	8/31/2012
Last Reservation Date	4/12/2013
Total No. of Reservations	26
Avg. Nightly Stay	4.23

DEFENDANT'S REVENUE & TAX PAYMENTS			
YEAR	Revenue	Homeaway	You
Year 2011			
Year 2012			
Year 2013			
Year 2014			
Year 2015			
Year 2016			
Year 2017	\$26,747.00		
Year 2018	\$3,541.00		
TOTALS	\$30,288.00	\$0.00	\$0.00

AIRBNB	
Defendants	Christopher Farley
Property Address:	294 Congress St
Platform ID:	3933022
Host ID:	20377091
First Reservation Date	8/30/2014
Last Reservation Date	4/14/2018
Total No. of Reservations	222
Avg. # of Nigts Rented	2.55

DEFENDANT'S REVENUE & TAX PAYMENT	
YEAR	Revenue
Year 2011	\$0.00
Year 2012	\$0.00
Year 2013	\$0.00
Year 2014	\$10,751.00
Year 2015	\$36,239.00
Year 2016	\$33,155.00
Year 2017	\$29,003.00
Year 2018	\$6,844.00
TOTALS	\$115,992.00

AIRBNB	
Defendants	Michele Ghastin
Platform ID:	1816531
First Reservation Date	12/16/2013
Last Reservation Date	3/8/2018
Total No. of Reservations	74
Avg. # of Nigts Rented	2.85

DEFENDANTS REVENUE & TAX PAYMENTS			
YEAR	Revenue	Homeaway	You
Year 2011			
Year 2012			
Year 2013			
Year 2014	\$22,272.00		
Year 2015	\$18,450.00		
Year 2016	\$25,566.00		
Year 2017	\$9,142.00		
Year 2018	\$2,701.00		
TOTALS	\$79,068.00	\$0.00	\$0.00

AIRBNB	

Defendants	Shaun Halsor & Josephine Rex
Property Address:	842 Rutledge Ave
Platform ID:	2586576
Host ID:	13244210
First Reservation Date	5/16/2014
Last Reservation Date	11/12/2016
Total No. of Reservations	104
Avg. # of Nigts Rented	2.82

DEFENDANTS REVENUE & TAX PAYMENT	
YEAR	Revenue
Year 2011	
Year 2012	
Year 2013	
Year 2014	
Year 2015	\$9,057.00
Year 2016	\$15,800.00
Year 2017	\$9,287.00
Year 2018	
TOTALS	\$34,144.00

AIRBNB	
Defendants	Linda Hancock
Property Address:	182 Gordon St
Platform ID:	5073952
Host ID:	26201697
First Reservation Date	2/14/2015
Last Reservation Date	4/19/2018
Total No. of Reservations	442
Avg. # of Nigts Rented	1.82

DEFENDANT'S REVENUE & TAX PAYMENT	
YEAR	Revenue
Year 2011	\$0.00
Year 2012	\$0.00
Year 2013	\$0.00
Year 2014	\$0.00
Year 2015	\$12,581.00
Year 2016	\$23,248.00
Year 2017	\$21,160.00
Year 2018	\$5,701.00
TOTALS	\$62,690.00

HOMEAWAY/VRBO	
Defendants	Claudia Hartshorn
Platform ID:	228318
First Reservation Date	10/14/2013
Last Reservation Date	1/6/2018
Total No. of Reservations	333
Avg. Nightly Stay	5.41

DEFENDANT'S REVENUE & TAX PAYMENTS			
YEAR	Revenue	Homeaway	You
Year 2011	\$5,654.25		
Year 2012	\$14,162.46		
Year 2013	\$17,711.99		
Year 2014	\$25,791.35		
Year 2015	\$14,471.47		
Year 2016	\$8,594.99		
Year 2017	\$10,937.50		
Year 2018			
TOTALS	\$97,386.51	\$0.00	\$0.00

AIRBNB	
Defendants	Colin Jones
Platform ID:	7949182
First Reservation Date	9/4/2015
Last Reservation Date	4/20/2018
Total No. of Reservations	85
Avg. # of Nigts Rented	2.72

DEFENDANT'S REVENUE & TAX PAYMENTS			
YEAR	Revenue	Homeaway	You
Year 2011			
Year 2012			
Year 2013			
Year 2014			
Year 2015	\$10,233.00		
Year 2016	\$36,192.00		
Year 2017	\$7,266.00		
Year 2018	\$7,672.00		
TOTALS	\$61,362.00	\$0.00	\$0.00

HOMEAWAY/VRBO	
Defendants	Kit Properties LLC
Platform ID:	405642
First Reservation Date	2/20/2018
Last Reservation Date	6/3/2018
Total No. of Reservations	25
Avg. Nightly Stay	3.12

DEFENDANTS REVENUE & TAX PAYMENTS			
YEAR	Revenue	Homeaway	You
Year 2011			
Year 2012			
Year 2013			
Year 2014	\$59,483.25		
Year 2015	\$53,176.19		
Year 2016	\$69,347.00		
Year 2017	\$56,872.00		
Year 2018	\$51,607.50		
TOTALS	\$299,957.94	\$0.00	\$0.00

AIRBNB	
Defendants	James & Laurie Hicks
Property Address:	8 Woolfe St
Platform ID:	8504894
Host ID:	44783725
First Reservation Date	10/9/2015
Last Reservation Date	5/12/2016
Total No. of Reservations	13
Avg. # of Nigts Rented	2.15

DEFENDANTS REVENUE	
YEAR	Revenue
Year 2011	\$0.00
Year 2012	\$0.00
Year 2013	\$0.00
Year 2014	\$0.00
Year 2015	\$1,866.00
Year 2016	\$4,887.00
Year 2017	\$0.00
Year 2018	\$0.00
TOTALS	\$6,753.00

AIRBNB	
Defendants	Thomas & Zoe Naselaris
Platform ID:	3116132
First Reservation Date	7/3/2014
Last Reservation Date	8/2/2017
Total No. of Reservations	31
Avg. # of Nigts Rented	4.52

DEFENDANTS REVENUE & TAX PAYMENTS			
YEAR	Revenue	Homeaway	You
Year 2011	\$0.00		
Year 2012	\$0.00		
Year 2013	\$0.00		
Year 2014	\$4,073.00		
Year 2015	\$6,308.00		
Year 2016	\$7,859.00		
Year 2017	\$7,911.00		
Year 2018	\$0.00		
TOTALS	\$26,149.00	\$0.00	\$0.00

AIRBNB	
Defendants	Brandon Perdue
Property Address:	87 America St
Platform ID:	6026107
Host ID:	31277631
First Reservation Date	5/21/2015
Last Reservation Date	2/28/2018
Total No. of Reservations	92
Avg. # of Nigts Rented	3.08

DEFENDANT'S REVENUE	
YEAR	Revenue
Year 2011	\$0.00
Year 2012	\$0.00
Year 2013	\$0.00
Year 2014	\$0.00
Year 2015	\$22,805.00
Year 2016	\$23,550.00
Year 2017	\$9,773.00
Year 2018	\$2,454.00
TOTALS	\$58,582.00

AIRBNB	
Defendants	Hadassah Rothenberg
Property Address:	18 Oswego B
Platform ID:	6727429
Host ID:	35228643
First Reservation Date	6/10/2015
Last Reservation Date	4/17/2018
Total No. of Reservations	264
Avg. # of Nigts Rented	3.65

DEFENDANT'S REVENUE	
YEAR	Revenue
Year 2011	
Year 2012	
Year 2013	
Year 2014	
Year 2015	
Year 2016	\$16,407.00
Year 2017	\$35,705.00
Year 2018	\$36,543.00
	\$9,777.00
TOTALS	\$98,432.00

AIRBNB	
Defendants	Kevin Schnlittkner
Platform ID:	10570109
First Reservation Date	2/27/2016
Last Reservation Date	4/19/2018
Total No. of Reservations	138
Avg. # of Nigts Rented	2.64

DEFENDANT'S REVENUE & TAX PAYMENTS			
YEAR	Revenue	Homeaway	You
Year 2011			
Year 2012			
Year 2013			
Year 2014			
Year 2015			
Year 2016	\$21,187.00		
Year 2017	\$20,849.00		
Year 2018	\$7,722.00		
TOTALS	\$49,558.00	\$0.00	\$0.00

AIRBNB	
Defendants	Ginger Scofield
Platform ID:	2611378
First Reservation Date	5/23/2014
Last Reservation Date	4/10/2018
Total No. of Reservations	229
Avg. # of Nigts Rented	3.45

DEFENDANT'S REVENUE & TAX PAYMENTS			
YEAR	Revenue	Homeaway	You
Year 2011	\$0.00		
Year 2012	\$0.00		
Year 2013	\$0.00		
Year 2014	\$21,670.00		
Year 2015	\$41,218.00		
Year 2016	\$41,352.00		
Year 2017	\$29,668.00		
Year 2018	\$7,059.00		
TOTALS	\$140,967.00	\$0.00	\$0.00

AIRBNB	
Defendants	John Van Vlack, Jr
Property Address:	21 Engel St
Platform ID:	7781126
Host ID:	439196
First Reservation Date	8/25/2015
Last Reservation Date	4/19/2018
Total No. of Reservations	183
Avg. # of Nigts Rented	2.63

DEFENDANTS REVENUE	
YEAR	Revenue
Year 2011	\$0.00
Year 2012	\$0.00
Year 2013	\$0.00
Year 2014	\$0.00
Year 2015	\$12,560.00
Year 2016	\$41,319.00
Year 2017	\$38,909.00
Year 2018	\$14,287.00
TOTALS	\$107,075.00

AIRBNB	
Defendants	Bryan Young
Platform ID:	694513
First Reservation Date	1/6/2013
Last Reservation Date	9/28/2017
Total No. of Reservations	281
Avg. # of Nigts Rented	2.54

DEFENDANT'S REVENUE & TAX PAYMENTS			
YEAR	Revenue	Homeaway	You
Year 2011			
Year 2012			
Year 2013			
Year 2014	\$18,260.00		
Year 2015	\$18,180.00		
Year 2016	\$21,451.00		
Year 2017	\$23,916.00		
Year 2018	\$18,434.00		
TOTALS	\$100,241.00	\$0.00	\$0.00

1 STATE OF SOUTH CAROLINA)
) Court of Common Pleas
 2 COUNTY OF CHARLESTON) Case No. 2015-CP-10-5415
)
 3)
 4 GLOBAL REAL PROPERTY TRUST, et al,)
)
 5 Plaintiffs,)
)
 6 vs.) Transcript of Record
)
 7 DARRYL DAMICO, et al,)
)
 8 Defendant.) DATE: February 1, 2016
)

9
 10 B E F O R E:

11 THE HONORABLE ROBERT E. HOOD

12 A P P E A R A N C E:

13 SEAN KEVIN TRUNDY, LLC
 14 Attorney for the Plaintiff

15 CHRISTOPHER SANTINO INGLESE and MARY LEE HUTSON
 Attorneys for Defendants, Elder, Ellerkmann, Sarita,
 16 Garret, Gilreaths, Golubs, Hartshorn Family Trust, Hipp,
 Joseph, Murphy, Robert, One Henrietta LLC, Perdue,
 17 Rothenberg, Simon, Slambovia LLC, Welborn,
 Young

18 GREGORY KENNETH VOIGT
 Attorney for the Defendants,
 19 259 East Bay, LLC and East Bay 10B, LLC

20 DAVID MARVEL
 Attorney for the Defendant, Anne Marie Crevar and
 21 Matthew Asher

22 SONYA GILREATH, Pro se

23 ORIGINAL TRANSCRIPT ORDERED BY:
 Sean Kevin Trundy, LLC
 24

25 Karen V. Andersen, RMR, CRR
 Circuit Court Reporter

1 administrative remedies, for lack of standing, for lack of
2 personal jurisdiction, lack of subject-matter jurisdiction,
3 several reasons.

4 THE COURT: All right. Let's start one at a time.

5 MR. INGLESE: Thank you. Christopher Inglese on
6 behalf of several of the defendants. And just by way of
7 introduction, Your Honor, I have spent nine years in this
8 area as a planner on the regulatory side of this with the
9 City of North Charleston. So I come to this with a strong
10 background in planning, land use, zoning and legal experience
11 to offer the Court today and in our memorandum of law.

12 The plaintiffs filed an action. They've got four
13 causes of action: Unfair trade practices; nuisance, unjust
14 enrichment and injunction. And I will start with my
15 conclusion, which is that the case should be dismissed. And
16 at the very least, the private causes of action for nuisance,
17 unfair trade practices and unjust enrichment should be
18 dismissed with prejudice. And possibly the Court could
19 keep -- should dismiss the injunction without prejudice, in
20 other words, if the plaintiff makes some pleading correction
21 to satisfy the standing requirement, they might be able to
22 come back for an injunction. But the other three definitely
23 need to go away with prejudice.

24 They brought the action -- this is one defendant
25 under the name of a trust against 60 defendants in the two

1 It talks about other appropriate actions; however,
2 those other appropriate actions are limited to prevent or
3 correct the zoning violation.

4 That's the meat, though, of the motion to dismiss.
5 That's should be enough to get rid of the three claims for
6 damages. And it should go ahead and dismiss the injunctive
7 relief claim until the plaintiff properly pleads that he's an
8 adjacent or neighboring property owner. Then he might be
9 able to come back.

10 And here's the other thing, is that "adjacent" or
11 "neighboring" hasn't really been defined. In the *Carnival*
12 case, the neighborhood bringing the suit were literally a
13 couple hundred feet from where the *Carnival Cruise* ships were
14 there. And they said that doesn't establish adjacent or
15 neighboring property owner. So we don't know the proximity
16 from this plaintiff to each of the defendants' property.
17 Some of them are probably miles away from each other and
18 definitely not fall within the adjacent or neighboring
19 standard that the statute and *Carnival Cruise* case tell us is
20 required of a plaintiff.

21 THE COURT: Okay.

22 MR. INGLESE: I will quickly go through the others,
23 because I think that's essential and enough to get rid of
24 case. The administrative remedies provided in the
25 Comprehensive Planning Enabling Act define the parameters of

1 that the Comprehensive Enabling Act puts in place to sort of
2 filter these kinds of cases before they get to the Court.

3 I think the unfair trade practices claim is governed
4 by -- well, there's a couple of problems with unfair trade
5 practices claim. The biggest one, I believe, is governed by
6 the *Dema* case, *Dema v. Physicians*. And this was a case where
7 the unfair trade practices claim statute has a regulatory
8 exception that says if in conduct complained of, it is
9 otherwise governed by regulation, than it's exempt from
10 unfair trade practices. That is is *Dema v. Tenet Physician*
11 *Services*, 383 S.C. 115. And it goes on to say that if the
12 defendants could get -- what happened in that case was, some
13 physicians were performing procedures that they didn't have a
14 license for. They were otherwise regulated by the CON Act.
15 And the CON Act regulated that conduct or that procedure. So
16 the physicians could have gotten license, they could have
17 become compliant, but they failed to. But just because they
18 failed to become licensed, didn't open the door for unfair
19 trade practices because otherwise this is conduct otherwise
20 regulated by an administrative agency.

21 And we have the same thing in this case where
22 short-term rentals is illegal use of property. And it's
23 legal in some places in the city, but in other places, the
24 defendants could seek a use variance or they could get a
25 rezoning. They could otherwise go through those regulatory

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STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON 2015-CP-10-5415

CHARLESTON	)	
DEVELOPMENT PROPERTY,	)	
	)	TRANSCRIPT OF RECORD
PLAINTIFF,	)	
VS.	)	MAY 11, 2017
	)	CHARLESTON, SC
YOUNESSE ALAMI.	)	
ET AL.,	)	
DEFENDANTS.	)	

B E F O R E:

HONORABLE R. MARKLEY DENNIS, JUDGE

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

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Attorney for the Plaintiff

GREG VOIGT, ESQUIRE
NANCY BLOODGOOD, ESQUIRE
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HAMLIN O'KELLEY, ESQUIRE
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MICHAL WHITSITT, ESQUIRE
Attorneys for the Defendants

* * * * *

Ruth C. Weese, RDR

1 we granted and they didn't go anywhere else. They
2 were gone. That got rid of some problems.

3 Again, I am not suggesting this is one
4 of them. This is a very interesting, very complex
5 situation that needs to be addressed, folks. I
6 understand for all of the reasons you have
7 enumerated. It really does. And we will at one
8 point in time address those things and I will look
9 forward to that.

10 So I'm denying the motion to dismiss
11 for that reason primarily. Okay? Now, does the --
12 there is a motion for partial summary judgment.

13 MR. TRUNDY: Your Honor, if there is no
14 objection I would suggest that my -- I made a
15 motion to strike and to dismiss and for summary
16 judgment as to certain Defendants counterclaims.

17 THE COURT: Yes.

18 MR. TRUNDY: May I be heard on that?

19 THE COURT: Yes, sir.

20 MR. TRUNDY: Your Honor, the motion to
21 strike just as to one line. It will have some
22 relevance.

23 THE COURT: By Mr. Holt.

24 MR. TRUNDY: By Mr. Holt.

25 THE COURT: You know what? You and I

1 we'll go from your base and we'll see what it says okay?

2 MR. TRUNDY: Yes, sir. Judge, if I may go to the
3 next one it's a Motion to Compel discovery responses.

4 THE COURT: All right.

5 MR. TRUNDY: Now I come with unclean hands but with
6 this confidentiality order I've got to throw a deluge on
7 my friends of all our information. Rather than going ---

8 THE COURT: --- why don't you do this. Let's hold
9 that because my three questions are pretty standard.
10 Probably you've heard them, a lot of people have and some
11 people don't. I ask three questions to comply with Rule
12 11. Number one, what is it you want? Why do they say
13 they won't give it to you? Not why you think they won't,
14 not why you suspect they won't but what did they tell you
15 they won't and the third one is why are you legally
16 entitled to it. So why don't you hold that one and
17 y'all talk among yourselves and I'm available.

18 MR. TRUNDY: Okay.

19 THE COURT: Folks, at least until July I can assure
20 you where I will be. I'll be in this courthouse
21 somewhere. I can promise you that and I'll be happy to
22 accommodate you whether I'm in trial or whether I'm in a
23 non-jury. As you will note the schedule I have I think
24 it's two weeks on for trial or pleas and two weeks non-
25 jury and I'll be happy to deal with it anytime. So I'm

1 30 days don't do it. If the City changes the law next
2 week ---

3 THE COURT: --- there appears to be some movement
4 in that direction ---

5 MR. TRUNDY: --- it's going to change somehow, true
6 Your Honor ---

7 THE COURT: --- hopefully ---

8 MR. TRUNDY: --- so that's why I tried to make it
9 very narrow.

10 THE COURT: Let me ask you a question just for the
11 sake of -- why is it necessary to do this at this time?
12 I mean obviously the damage but from the standpoint of
13 the damage just as we have any temporary injunction can
14 you respond to damages? And if these people own property
15 they can respond to damages. So I don't know why -- I
16 mean whatever damages you're accruing every time they
17 rent it those damages have increased so they're just
18 setting themselves up for more damages.

19 MR. TRUNDY: You're right, Your Honor. From my
20 client's prospective number one the ordinance itself this
21 is not one, I don't know how I -- it's not a Rule 65
22 injunction where ---

23 THE COURT: --- well, I know it's not ---

24 MR. TRUNDY: --- it comes out of the ordinance.
25 The ordinance says that this can be done and my client

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON 2015-CP-10-5417

CHARLESTON DEVELOPMENT COMPANY, LLC, et al.,	)	
	)	
Plaintiffs,	)	TRANSCRIPT OF RECORD
-vs-	)	June 7, 2018
YOUNESSE ALAMI, et al.,	)	Charleston, South Carolina
Defendants.	)	

B E F O R E:

The Honorable R. Markley Dennis, Jr.

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

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David Marvel, Esquire
Nancy Bloodgood, Esquire
Lucy Sanders, Esquire
Mary Briggs, Esquire
Gregory Voigt, Esquire
Christopher Murphy, Esquire
Attorneys for the Defendants

Amanda K. Haffenden, RPR, CRR
Circuit Court Reporter

1 MS. BLOODGOOD: Thank you, Your Honor.

2 As a preliminary matter, there was an
3 affidavit that I just filed two days ago from Mr. Holt
4 after he had his deposition taken, and I just want to
5 point out for the record a few things.

6 First of all, paragraph three says these are
7 his opinions. He's not listed as an expert witness. He
8 is a fact witness. His opinions are irrelevant.
9 Secondly: To the extent he claims he didn't have the
10 deposition in front of him so his comments in the
11 affidavit may be incorrect. A draft deposition is all we
12 have. As of two hours ago, I think we got the real one,
13 but I have forwarded that to his attorney prior to the
14 time the affidavit was completed.

15 And, also, the deponent testified -- and I
16 think this is the most important, and I would just like
17 to go quickly through it, that he didn't know -- in his
18 deposition, he testified he did not know what his damages
19 were, but this affidavit then goes into detail about what
20 he thinks his affidavit -- his damages are, and it goes
21 from zero to 3.8 million, and I will leave this with you.

22 THE COURT: You don't need to. I have -- I
23 cannot believe how many times this has come up in my
24 career as a judge. Quite frankly, you just stated an
25 issue of fact, because the bottom line is, I had a case,

1 Judge Flores agreed with me, to my not representing -- I
2 made a motion for a directed verdict at the close before
3 it went to the jury on permanent injury because the
4 doctor testified both ways: He testified that he did
5 have and then on cross-examination he said he didn't have
6 permanent injury, so I made a motion.

7 The Supreme Court -- and I'll never forget,
8 Randy Bell was still alive because he asked me, he said,
9 why do you get to decide whether that's true or not? And
10 therein lies the problem, so thank you. I don't need --

11 MS. BLOODGOOD: You don't want to hear the
12 damages?

13 THE COURT: I don't want to hear the damages.
14 That's an issue of fact.

15 MS. BLOODGOOD: Just for the record, I do
16 believe it's a sham affidavit.

17 THE COURT: Again, Ms. Bloodgood, you're
18 wasting your breath. That has not a thing in the world
19 to do with the summary judgment. I appreciate it.
20 That's a great jury argument, but it doesn't impress me,
21 okay?

22 MS. BLOODGOOD: Judge -- there's four causes
23 of action.

24 THE COURT: As I said, I've incorporated it.
25 Let's don't restate your memorandum.

1 MS. BLOODGOOD: Okay. That's the zoning
2 issue.

3 On the South Carolina unfair trade practices
4 act issue, you've already ruled on that, Your Honor.
5 There was no motion to reconsider. There was no appeal.
6 There has been nothing that has changed.

7 He argues that because -- and we'll admit,
8 for purposes of summary judgment -- let me be very clear.
9 We will admit the defendants have violated a zoning
10 ordinance of the city of Charleston. I think it's --

11 THE COURT: There's no question they've done
12 that.

13 MS. BLOODGOOD: So that's admitted, but the
14 fact that they have done that doesn't take the regulatory
15 exemption of SCUTPA out of play, because what the cases
16 say is that if someone is subject to regulation under a
17 different statute or an entity, this is Carr v. United
18 Van Lines, which is a 1986 case, court of appeals, then
19 you can't come in and try to do it on your own. And you
20 have already ruled on that, and there is nothing
21 different in what has happened here.

22 There's no evidence in the record that the
23 enforcement action -- that there's any enforcement action
24 against any of the defendants, and he's not the zoning
25 administrator. The plaintiffs are not the zoning

1 law, that he's not qualified, even as a fact witness or a
2 plaintiff --

3 THE COURT: I would agree with you to an
4 extent, but certainly we've tried a number of cases over
5 the years where property owners are qualified to testify
6 to the loss of the value of their property. They don't
7 have to be experts. That's in condemnation cases all the
8 time.

9 MR. MARVEL: It still has to meet the
10 standard, have a factual basis --

11 THE COURT: You and I can agree to disagree
12 on that one.

13 MR. MARVEL: Thank you, Your Honor.

14 THE COURT: Forgive me for interrupting you.

15 MR. MARVEL: That's fine, Your Honor. I may
16 recall in a second.

17 THE COURT: No problem if it comes to you.

18 MR. MARVEL: The gist of it, I think, would
19 be -- at this late stage, you give us an order saying
20 when the defendant was supposed to produce an expert.
21 Clearly, from the testimony, they hadn't even begun that
22 process yet. There is no expert testimony, and there is
23 no way they can come up with damages that relate
24 directly, particularly not any of my clients, but any
25 defendants whatsoever.

1 a response before tomorrow, or by tomorrow.

2 MR. TRUNDY: I appreciate that, Your Honor.

3 THE COURT: And if we are, what is the
4 position on the video deposition if I deny? What's the
5 objection?

6 MS. BLOODGOOD: Well, the defendants are all
7 in town. They're all going to show up in court, so the
8 videotape deposition can only be used if they're not
9 showing up as witnesses.

10 THE COURT: What's the purpose of a video
11 deposition?

12 MS. BLOODGOOD: I don't know.

13 MR. TRUNDY: I can play it in my case in
14 chief, and it's more persuasive than reading the written
15 word, and, more importantly --

16 THE COURT: So these are the video
17 depositions of the defendant?

18 MR. TRUNDY: Yes...

19 THE COURT: No, sir. You can take that up
20 with the Supreme Court. I think that's a waste for
21 everybody. You do what everybody else does. I'm sorry.

22 MR. TRUNDY: I don't want to get in trouble
23 with the Court.

24 THE COURT: You're not in trouble with me.
25 I'll be the first person the Supreme Court says oh, no,

1 video depositions are available for any purpose
2 whatsoever, including the defendants. That's fine. I
3 just don't -- that doesn't make any sense to me because
4 video depositions typically are done, and the whole
5 creation was to benefit the medical profession, really.
6 That's where it started, and to avoid having that -- and
7 we know that, yeah, a video deposition is much more
8 effective, but it's typically where the person is not
9 present, so --

10 MR. TRUNDY: Your Honor, very respectfully --

11 THE COURT: Well, why is there an exception
12 here?

13 MR. TRUNDY: Because the rule says that if
14 \$100,000 or more is put in the prayer for relief, just
15 the prayer for relief, that automatically I can take it.
16 I didn't put 100 in there. I never put an amount in a
17 prayer unless I'm trying to avoid a person, so I've shown
18 you plenty of evidence that there's far more than
19 \$100,000 at stake here, and if I would have gotten the
20 automatic right, just by putting six digits in the
21 prayer, I don't see why not.

22 THE COURT: Are you saying any prayer, you
23 can take a video deposition of anyone? I need to look at
24 the rules of evidence.

25 MR. TRUNDY: I don't know if it says anyone,

1 but it certainly applies to a party, but -- colleagues,
2 tell me if I'm wrong: I believe the rule says if it's in
3 the prayer, you have the right to video.

4 THE COURT: I will be happy to look at that.
5 If you're right and it's any party, then I'll grant your
6 motion. If it's not, I'll deny it.

7 MR. MURPHY: And, Judge -- well, it
8 doesn't -- I think he's talking about medical testimony.

9 THE COURT: That's the only place I've ever
10 seen it, but I haven't read it for the purpose of seeing
11 does it apply to anyone.

12 MR. TRUNDY: And if I'm wrong, I'm not trying
13 to lie to the Court.

14 THE COURT: You don't need to apologize. I'm
15 not saying that. That comes as a shock to me, and in 24
16 years, only video depositions I've seen are persons that
17 are done because they know they're not going to be
18 available, number one, and I've certainly seen video
19 depositions other than medical doctors, but typically
20 it's medical doctors, and I think it's under that rule,
21 but I'll be happy to look at that.

22 MR. MARVEL: Our position on that would be
23 that even if the rule says what Mr. Trundy says it does,
24 it doesn't apply to this case just because all the
25 defendants are joining the same case, and even if that

1 approaches \$100,000, I think the rule should be read that
2 if you're going to require that kind of expense he ought
3 to be able to prove \$100,000 against each individual
4 defendant.

5 THE COURT: First of all, I've never seen the
6 rule be used. Just because a person -- nor would I have
7 let the Supreme Court say otherwise. Just because
8 somebody says it's worth \$100,000 doesn't mean it's worth
9 \$100,000, okay?

10 So, anyway.

11 MR. MURPHY: Thank you, Judge.

12 - - -

13 (Whereupon, the proceedings were concluded.)

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Sec. 7-122. - Fire safety requirements.

No person shall occupy as owner-occupant, or shall let to another for occupancy, any dwelling, multi-family dwelling, dwelling unit, rooming house, rooming unit, lodging house or lodging unit which does not comply with the applicable provisions of the fire prevention ordinances of the municipality.

(Code 1975, § 10-153)

Sec. 54-120. - Definitions.

For the purpose of this chapter, certain terms and words are herein defined.

Accessory Building. A subordinate building on the same lot as the principal building(s) or use. Accessory buildings may include but not be limited to pool houses, additional living space, storage sheds, garages, and additional dwelling units in zoning districts that permit additional dwelling units. Accessory buildings in SR (Single-family Residential) zone districts shall not include kitchens.

Accessory Dwelling Unit. A dwelling unit providing complete, independent living facilities for one or more persons that is separate from and subordinate to the principal dwelling unit. This definition includes garage apartments.

Accessory Use. A use of land or of a building or portion thereof customarily incidental and subordinate to the principal use of the land or building and located on the same lot with the principal use.

Agricultural Use, Bona Fide. Allowed primary uses on real property to raise, harvest or store crops, feed, breed or manage livestock, or to produce plants, trees, fowl or animals useful for human consumption, including the preparation of the products raised thereon for human consumption and disposed of by marketing or other means and which the subject property receives agricultural preferential assessment by the county assessor's office. Such uses include agriculture, grazing, horticulture, forestry, dairying and mariculture. Uses that do not qualify as bona fide agricultural uses include recreation, hunting clubs, fishing clubs, vacant land (land lying dormant), and any other similar uses. For lots zoned C, conservation, to have a bona fide agricultural use, at least fifty percent (50%) of the lot must be in active agricultural production.

Accommodations Uses. Commercial uses to provide living or sleeping units, for remuneration, to one or more individuals where the intended and/or usual occupancy would not exceed twenty-nine (29) consecutive days, including hotels, motels, inns, bed and breakfasts, short term rental units, rooming and boarding houses, hostels, lodging units, resort units, condominiums, cooperatives, apartments, units that are included in a "Vacation Timesharing Plan" as defined in S.C. Code Ann. § 27-32-10(7), and/or in a "Vacation Timesharing Lease Plan" as defined in S.C. Code Ann. § 27-32-10(8), as each may be amended from time to time, as well as any and all similar uses where the intended and/or usual occupancy is for periods not to exceed twenty-nine (29) consecutive days, and residence club uses. For purposes hereof, individual(s) mean a person, one who owns or receives an undivided interest in a premises, a partner in a partnership that owns a premises, a beneficiary in a trust that owns a premises, a shareholder in or member of a corporation that

Roof Peak. The point at the highest level of the roofline excluding all appurtenant parts, mechanical penthouses and elevated shafts.

Screening. Means the use of landscape planting, fences, walls or other structures to obscure vision of an unsightly or undesirable land use or structure and to minimize the intrusion of lighting on neighboring property.

Setback. An open unoccupied space, other than a court, between the building and any lot line.

Shipping Container Storage Uses. Outdoor storage of three (3) or more shipping containers that are not attached to a truck trailer chassis and may or may not be used for storage of materials.

Shoreline Frontage. Means the edge of high ground along a river, and its tributaries and creeks, which is visible from any part of the river channel at high tide.

Short-term Lender. A deferred presentment lender or a title loan lender.

Short Term Rental or STR. A conditional use to provide sleeping accommodations for a period of between one (1) and twenty-nine (29) consecutive days. This use is further defined in this section as either a commercial short term rental use or a residential short term rental use with different permitting and operational requirements for each type of short term rental use.

Short Term Rental, Commercial. A commercial short term rental is a conditional use whereby a conforming or legal nonconforming dwelling unit is converted into a fully-functioning, private accommodations use, which includes cooking, living, sanitary and sleeping facilities within one dwelling unit, to be rented to one (1) family for a period of between one (1) and twenty-nine (29) consecutive days. Distinguishing characteristics of a short term rental are: 1) it has all the attributes of a typical dwelling unit including cooking, living, sanitary and sleeping facilities, 2) is occupied by not more than four (4) unrelated people pursuant to the definition for family, and 3) is located on a commercially zoned property with a limited number of short term rental units, if more than one such unit is provided. A commercial short term rental shall only be permitted as a conditional use when a conforming or legal nonconforming dwelling unit is converted to such use in compliance with the procedures and conditions in Section 54-227 of the Zoning Ordinance and after a commercial STR permit is issued by the City.

Short Term Rental, Residential. A residential short term rental is a conditional use whereby the record owner of a property, who is also a resident of the property, uses one (1) or more rooms on the property for the purpose of providing sleeping accommodations for no more than four (4) adults (18 years and older) for a period of between one (1) and twenty-nine (29)

consecutive days. A residential short term rental shall only be permitted in compliance with the procedures and conditions in Section 54-208.1, 54-208.2 or 54-208.3 of the Zoning Ordinance and after a Category 1, Category 2, or Category 3 Residential STR Permit is issued by the City.

STR Permit. A Category 1, Category 2, or Category 3 Residential STR Permit, or Commercial STR Permit issued by the City upon approval of a new application, change of ownership or annual renewal. Each short term rental permit shall include a permit number, the maximum number of guests permitted during a rental and an expiration date.

Side Setback. A setback between the side line of the lot and the adjacent side line of the building, extending from the front yard to the rear yard. If there is no front yard, the side setback shall be considered as extending to the front line of the lot, and if there is no rear yard, the side setback shall be considered as extending to the rear line of the lot.

Sidewalk. The word "sidewalk" shall mean any portion of a street between the curblin and the adjacent property line, intended for the use of pedestrians.

Sign. Any device or representation for visual communication that is used for the purpose of bringing the subject thereof to the attention of others which is located on or attached to premises, real property, structures on real property, or a vehicle, and which is visible from a public street or way.

Types of Signs.

Abandoned Sign. A sign which was erected on property in conjunction with a particular use which has been discontinued for a period of ninety (90) days or more, or a sign the content of which pertains to a time, event or purpose which no longer applies.

Canopy Sign. A sign which is suspended from, attached to, supported from or forms a part of a canopy.

Dilapidated Sign. Any sign which is insecure or otherwise structurally unsound, has defective parts in the support, braces, guys and/or anchors or which is unable to withstand the wind pressure for which it was originally designed.

Directional and Warning Sign. (a) A traffic, directional or informational sign, permanently erected in the public right-of-way or on private property by a governmental agency and permitted signs in public rights-of-way; (b) off-premises signs which contain information regarding the time and place of regular meetings of civic or religious groups; and/or (c) an on-premises permanent sign located at the curb cuts of a commercial, industrial, or office establishment giving direction or information as to

Sec. 54-202. - Overlay zones.

- a. **Accommodations, A Overlay Zone.** The A Overlay Zone is intended to identify those areas within the City limits where accommodation uses are allowed. Accommodation uses are prohibited except within the A Overlay Zone, with the exception of bed and breakfasts that are approved in accordance with the provisions of Section 54-208.
- b. **Tour Boat, TB Overlay Zone.** The TB Overlay Zone is used only on the peninsula area of Charleston to identify waterfront areas suitable for the operation of tour boats.
- c. **Johns Island, JI Overlay Zone.** The JI Overlay Zone applies to all areas of Johns Island within the City limits. Within the JI Overlay Zone, additional restrictions may apply depending on the underlying base zoning district and the specific use. Restrictions of the JI Overlay Zone which are incorporated into the applicable sections of this Chapter include street frontage buffers, buffers for industrial uses, sign regulations, and curb cut requirements.
- d. **Amusement and Recreation Services, AR Overlay Zone.** The AR Overlay Zone applies to all areas of peninsula section of the city as bounded by the Ashley River, the Cooper River and Charleston Harbor.
- e. **Savannah Highway SH Overlay Zone.** The SH Overlay Zone is intended to allow office and neighborhood service uses in addition to the uses allowed in the base zoning district. Existing structures in the SH zone that are used for a non-residential use shall retain their residential appearance. Building additions and new structures shall be designed to look like the existing residential structures. Parking shall be restricted to the side or rear of the principal buildings and buffering from adjoining residential lots shall be required.
- f. **School S Overlay Zone.** The S Overlay Zone is intended to identify those areas within residential zoning districts where school uses are allowed. School uses are prohibited within residential zoning districts except within the S Overlay Zone.
- g. **Landmark LMK Overlay Zone.** The Landmark Overlay Zone is intended to effect and accomplish the protection, enhancement and perpetuation of structures or other improvements that have a special character or special historical, cultural, or aesthetic interest or value as part of the development, heritage or cultural characteristics of the city, state or nation or that are associated with an event of importance to the history of the city, state or nation, or that reflect the environment in an era characterized by a distinctive architectural style or that embodies those distinguishing characteristics of an architectural style or engineering specimen.
- h. **Short Term Rental, ST Overlay Zone.** The Short Term Overlay Zone is intended to permit commercial short term rentals, as defined herein, in specific base zoning districts within the ST Overlay Zone and Bed and Breakfasts, as defined herein, in all base zoning districts within the ST Overlay Zone.
- i. **General Business Late Night, GBLN Overlay Zone.** The General Business Late Night Overlay

Zone is intended to restrict certain uses, as specified herein, to only operate between 7:00 a.m. and 11:00 p.m.

- j. **Light Industrial Late Night, LILN Overlay Zone.** The Light Industrial Late Night Overlay Zone is intended to restrict certain uses, as specified herein, to only operate between 7:00 a.m. and 11:00 p.m.
- k. **Tech Corridor, TC Overlay Zone.** The Tech Corridor Overlay Zone is intended to enable high technology and technology-related industries to anchor new development in the district.
- l. **Gateway, G Overlay Zone.** The Gateway Overlay Zone is intended for sites in the City that are located at primary entrances to specifically defined or colloquially known districts and areas of the City. The purpose of the Gateway Overlay is to accommodate a more varied use matrix at these strategic locations by providing an opportunity for denser residential developments at commercially zoned properties by way of an optional set of development regulations that authorize higher residential density, and impose lot coverage requirements and certain height restrictions.
- m. **Folly Road, FR Overlay Zone.** The Folly Road Overlay Zone is intended to implement traffic safety measures, to improve the visual character of the corridor, and to create consistency between the City of Charleston and surrounding jurisdictions concerning land use and design standards.

(Ord. No. 1996-125, § 4, 7-16-96; Ord. No. 1998-112, § 1, 5-26-98; Ord. No. 1999-01, § 1, 1-12-99; Ord. No. 1999-95, § 1, 8-17-99; Ord. No. 2006-428, § 5, 9-26-06; Ord. No. 2006-463, § 2, 10-17-06; Ord. No. 2012-41, § 1, 1-24-12; Ord. No. 2014-08, § 1, 1-30-14; Ord. No. 2014-37, § 1, 3-25-14; Ord. No. 2015-060, § 2, 5-26-2015; Ord. No. 2016-079, § 1, 7-19-16; Ord. No. 2017-148, § 1, 12-11-17; Ord. No. 2018-043, § 5, 4-10-18)

Sec. 54-208. - The following provisions shall apply to all residential short term rentals ("STR").

- a. **General Requirements.** A residential short term rental use may be permitted as a Category 1, Category 2, or Category 3 STR Permit, if the zoning administrator determines the STR to be an accessory use to the principal residential use on a property which satisfies the requirements of Section 54-208.1, 54-208.2, or 54-208.3, as applicable, and issues a permit for such STR use.
- b. **Operational Requirements.** In all cases, Category 1, 2 or 3 STR uses shall adhere to the following operational requirements:
 1. The residential STR shall be operated by the record owner of the subject property who shall also be a resident of the subject property and who shall be residing overnight on the property while residential STR guests are present; and
 2. The property shall not contain signs advertising the STR use; and
 3. If meals are served by the resident owner, no meals other than breakfast may be served to the paying guests; and
 4. The record owner of the subject property must keep in full force and effect during all times the STR is operated a general liability policy with a company authorized to do business in the State of South Carolina insuring against personal injury (including death) and property damage with limits of no less than \$1,000,000.00 per occurrence; and
 5. The resident owner shall keep a current guest register including names, addresses, telephone numbers and dates of occupancy of all guests; and
 6. The resident owner shall comply with all business license and revenue collection laws of the City of Charleston, Berkeley County or Charleston County, whichever is applicable, and State of South Carolina; and
 7. The resident owner shall provide a rental packet containing applicable city rules and restrictions specified in the Residential STR Permit application materials, as well as pertinent unit safety information and contact information to guests when they book the STR and shall prominently display the STR Permit, rules, safety and contact information within the STR; and
 8. Each Category 1, 2, or 3 STR permittee is entitled to rent, list with a booking or listing service, advertise, make available for STR use, or otherwise market only one (1) STR unit; and
 9. The resident owner and the owner's agent shall list the Residential STR Permit number on all advertisements, listings with booking services, and marketing materials, including without limitation, Airbnb, VRBO/Homeaway, FlipKey, and any other online websites and listing or booking platforms or services.
 10. The residential STR shall not be expanded in any respect beyond the specific rooms

which were designated as part of a residential STR unit on plans relied upon by the city in approving a residential STR permit or beyond the maximum number of guests listed on the residential STR permit, nor shall the use be changed to any other use not permitted by the Zoning Ordinance without reapplication to and approval by the zoning administrator.

c. Application Procedure.

1. New Applications. Applications for new Category 1, 2 or 3 STR Permits shall be notarized and include the following:

- (a) The location and name of the record owner of the property; and
- (b) An application fee; and
- (c) Floor plans drawn to scale of the habitable structures on the property that clearly designate all rooms to be used by STR guests, and the specific room or rooms to be used by guests for sleeping; and
- (d) A site plan of the lot showing the location of the proposed Residential STR unit and the required off-street parking spaces and driveways; and
- (e) A photograph or photographs of the current principal view or views of the structure where the residential STR unit is to be located; and
- (f) A statement which the resident-owner must sign acknowledging that he or she has reviewed and understands the requirements of this section and the applicable section for the category of permit requested.

Upon receiving a complete application and prior to the issuance of a new STR permit, the zoning administrator shall cause notice to be posted on the property upon which the proposed STR use is to be located for fifteen (15) consecutive calendar days, advising that the Resident-owner of the property has applied for a zoning permit to establish a STR use at the location and supplying a phone number to call for further information. During this fifteen (15) calendar day period, the zoning administrator shall determine if the application meets the requirements as set forth in this section. If, at the end of the fifteen (15) day posting period, the zoning administrator determines that the application meets the requirements for the STR use requested, the zoning administrator shall notify the applicant that the application is approved and shall, after waiting an additional five business days to allow for appeals, issue the STR Permit, which shall be valid for one (1) year from the date of issuance, and shall be renewable annually unless revoked. Any appeals filed within the five-day period shall cause the issuance of the STR Permit to be stayed pending resolution of the appeal.

2. Renewal Applications:

- (a) For renewal of an STR permit, a property owner shall be required to recertify compliance with this section for the STR use with the zoning administrator. An application for annual recertification of the STR permit must include the

application fee, an affirmation by the applicant that the nature of the STR use at the property has not changed, and must be notarized, filed with, and approved by the zoning administrator to continue the STR use.

- (b) Upon a change in ownership of a property, and prior to the issuance of a new business license to allow continuation of an existing, permitted STR use upon said property, the new property owner shall be required to recertify compliance with this section for the STR use and submit plans reaffirming the specific room or rooms to be used for the STR unit with the zoning administrator. An application for recertification of the STR use must include the required plans and be notarized, filed with, and approved by the zoning administrator prior to the STR use by the new property owner.
- 3. On an annual basis the zoning administrator shall determine whether each STR use permitted under this section remains in compliance with all the terms of this chapter, and shall initiate such enforcement procedures as may be appropriate. All operators of STR uses permitted under this Section shall cooperate fully with the zoning administrator and his designees, including, but not limited to, providing pertinent information upon request and affording access to that portion of the property which is used for the STR use for reasonable site inspections.
- d. **Existing Approved Bed and Breakfast Uses.** All approved, legal bed and breakfast uses that are operating on the effective date of this ordinance or that are entitled to be in operation on the effective date of the ordinance from which this section derives on properties outside the Short Term Overlay Zone shall be issued a Category 1 or Category 2 STR Permit, depending on their location. Such previously approved uses shall adhere to the requirements of the Zoning Ordinance in effect prior to April 10, 2018.
- e. **Violations and Penalties.**
 - 1. Violations. It shall be a violation of this Chapter for an owner, his agent or manager to:
 - (a) Operate a Category 1, 2 or 3 STR use, a bed and breakfast use or other accommodations use without complying with the requirements of this Chapter and the Code of the City of Charleston; or
 - (b) Expand an STR use or bed and breakfast use without obtaining a new permit; or
 - (c) Advertise a property as being available for an STR use, bed and breakfast use or other accommodations use without first complying with the requirements of this Chapter; or
 - (d) Represent or submit for advertising or marketing, or to otherwise hold out an STR unit, bed and breakfast unit or other accommodations unit as being available for use or occupancy unless the STR or bed and breakfast has been permitted

pursuant to this Chapter and the permit number is displayed in the materials used to represent, advertise, market or otherwise hold out the property as available for STR or bed and breakfast use or occupancy; or

- (e) Represent or submit for advertising or marketing, or otherwise to hold out the availability of a STR or bed and breakfast for use or occupancy by more than the number of occupants that are permitted pursuant to this Chapter; or
- (f) Represent or submit for advertising, or marketing, or to otherwise hold out more STR or bed and breakfast units or other accommodations type units on a property than are permitted pursuant to this Chapter.

2. Penalties. A violation of this Chapter is a misdemeanor punishable by a fine and/or incarceration. Each day the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, use, or other violation under this Chapter continues is considered a separate offense. Any violation of this Chapter entitles the zoning administrator to revoke the STR or bed and breakfast permit.

(Ord. No. 2009-204, § 1, 10-13-09; Ord. No. 2011-11, § 2, 2-8-11; Ord. No. 2018-043, § 9, 4-10-18)

Sec. 54-220. - Accommodations overlay zone.

- a. Intent. The A Overlay Zone is intended to identify those areas within the City limits where accommodation uses are allowed. Accommodation uses are prohibited except within the A Overlay Zone, with the exception of bed and breakfasts that are approved in accordance with the provisions of Section 54-208 or 54-208.1, and short term rentals that are approved in accordance with the provisions of Section 54-227. The City places a high value on the preservation of the character of its residential neighborhoods. Potential negative impacts affecting residential neighborhoods shall be avoided or minimized to the greatest extent possible.
- b. Permitted uses. In any Accommodation overlay zoning district, land may be used and buildings or structures may be erected, altered or used for any purpose allowed by the underlying zoning district as listed in Article 2: Part 3, and the following uses subject to the approval of the Board of Zoning Appeals:
 1. Accommodation uses. The Board of Zoning Appeals may permit accommodation uses as an exception where it finds that:
 - (a) the elimination of housing units by the proposed facility, will not adversely affect the existing housing stock;
 - (b) the location of the facility will not significantly increase automobile traffic on streets within residential neighborhoods;
 - (c) the total square footage of interior and exterior floor area for restaurant and bar space in the proposed facility, including restaurant/bar patron use areas, bar areas, kitchen, storage, and bathroom facilities, shall not exceed 12 percent of the total interior, conditioned floor area in the facility, except that each facility shall be permitted to exempt from the calculation of total restaurant floor area one interior, ground floor restaurant tenant space if the total tenant space does not exceed 2,000 square feet, the restaurant tenant does not serve alcoholic beverages, and the exempt restaurant tenant space is clearly labeled with these restrictions on the floor plans submitted with the application for this zoning special exception;
 - (d) the proposed use is otherwise in character with the immediate neighborhood;
 - (e) the location and design of the proposed guest drop off and pick up area(s) has been reviewed by the Department of Traffic and Transportation and determined to be safe and not be an impediment to traffic; and
 - (f) in making these findings, the Board of Zoning Appeals shall consider the following information to be provided by the applicant in site plans, floor plans, building elevations, and a detailed written assessment report to be submitted with the application:
 - (1) the number of existing housing units on the property to be displaced by type of unit (rental or owner-occupied; single-family, duplex or multi-family; occupied or unoccupied), by income range and physical condition (sound, deficient, deteriorated or dilapidated);
 - (2) the effect of the displacement on the total available housing stock and on the housing stock of a particular type and income range in the service area;
 - (3) the location and design of guest drop off and pick up areas for the facility;
 - (4) the number of vehicle trips generated by the facility and the traffic circulation pattern serving the facility and efforts made to minimize traffic impacts;
 - (5) the distance of the main entrance and parking entrance of the facility from a road classified as an arterial or collector road;
 - (6) the development pattern and predominant land uses within five hundred feet (500') of the facility;
 - (7) the proximity of residential neighborhoods to the facility;
 - (8) the accessory uses proposed for the facility in terms of the size, impact on parking, and impact on traffic generation;
 - (9) the demonstrated provision of off-street parking at the rate of two spaces for each three sleeping units;
 - (10) the presence of industrial uses and uses which use, store, or produce toxic or hazardous materials in quantities in excess of those specified by the EPA listing of toxic and hazardous materials, within five

hundred feet (500') of the facility;

- (11) the commitment to environmental sustainability and recycling;
- (12) the distance of the facility from major tourist attractions;
- (13) the distance of the facility from existing or planned transit facilities;
- (14) the long term provision of on- or off-site parking for employees who drive vehicles to work, including an estimate of the number of employees that will drive to work during the maximum shift and the location of parking spaces to be provided; and the demonstrated provision of free transit passes or other incentives to encourage employee use of public transportation;
- (15) the location of the proposed facility will contribute to the creation of a diverse mixed-use community;
- (16) the number of rooms in the facility; provided however that the number of rooms in a facility shall not exceed 50 in areas designated "A-1" on the zoning map; 180 in areas designated "A-2" on the zoning map; 225 in areas designated "A-3" on the zoning map; 100 in areas designated "A-4" on the zoning map; 150 in areas designated "A-5" on the zoning map; 69 in areas designated "A-6" on the zoning map; and 175 in areas designated "A-7" on the zoning map; and further provided that within the portion of the area designated "A-1" bounded by King Street on the west, Meeting Street on the east, Mary Street on the south and Line Street on the north, the number of rooms in a facility may exceed 50 if the facility is a full-service hotel that provides 20,000 or more square feet of meeting and conference space, and an on-site restaurant that serves breakfast, lunch and dinner seven days a week;
- (17) the provision of shuttle bus services to and from the historic district by facilities with more than 50 rooms located outside the area designated "A-1" on the zoning map and not served by public transit;
- (18) the commitment to make affirmative, good faith efforts to see that construction and procurement opportunities are available to DBEs (disadvantaged business enterprise) and WBEs (women business enterprise) as outlined in Section 2-267 (D)(1), (2), and (3) of the Code of the City of Charleston;
- (19) the commitment to make affirmative, good faith efforts to hire personnel, representative of the population of the Charleston community, at all employment levels;

c. Violations and penalties.

- 1. Violations. It shall be a violation of this Chapter for an owner, his agent or manager to operate an accommodations use without complying with the requirements of this Chapter and the Code of the City of Charleston. It shall be a violation of this Chapter to expand an approved accommodations use without obtaining a new permit, or to advertise a property as being available for an accommodations use without first complying with the requirements of this Chapter. It shall be a violation of this Chapter to submit for advertising, marketing, representing or otherwise holding out an accommodations unit as being available for use or occupancy unless the accommodations unit has been approved pursuant to this Chapter. It shall be a violation of this Chapter to submit for advertising, marketing, representing or otherwise holding out more accommodations type units on a property than have permitted pursuant to this Chapter.
- 2. Penalties. A violation of this Chapter is a misdemeanor punishable by a fine and/or incarceration. Each day the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use continues is considered a separate offense.

(Ord. No. 1998-76, § 2, 4-28-98; Ord. No. 1999-02, §§ 3—5, 1-12-99; Ord. No. 1999-54, § 4, 4-27-99; Ord. No. 2006-428, §§ 6—8, 9-26-06; Ord. No. 2007-204, § 1, 11-20-07; Ord. No. 2012-41, § 5, 1-24-12; Ord. No. 2013-93, §§ 1—6, 9-24-13; Ord. No. 2013-93, §§ 1—6, 9-24-13; Ord. No. 2017-093, § 1, 8-15-17; Ord. No. 2018-008, § 1, 2-13-18; Ord. No. 2018-043, § 11, 4-10-18)

Sec. 54-227. - Short Term Rental, ST Overlay Zone.

- a. Intent. The Short Term Rental, ST Overlay Zone is intended to identify those areas within the City limits where Commercial short term rental uses and bed and breakfast uses, as herein defined, are allowed as a conditional use. Commercial short term rentals are prohibited except on commercially zoned properties within the ST Overlay Zone. Bed and breakfast uses are prohibited except on properties within the ST Overlay Zone. The City places a high value on the preservation of the character of its residential neighborhoods. Potential negative impacts affecting residential neighborhoods shall be avoided or minimized to the greatest extent possible.
- b. Commercial Short Term Rental Use.
 1. Accommodations Use. Subject to the conditions in Section 54-227, b. 2, a dwelling unit converted into a commercial short term rental may be rented to not more than four (4) unrelated people pursuant to the definition for family for a period of between one (1) and twenty-nine (29) days; provided, however, only one (1) family at a time may occupy and use a dwelling unit converted into a commercial short term rental.
 2. Conditions. A conforming or legal nonconforming dwelling unit may be converted into a commercial short term rental only when all of the following conditions are satisfied, as evidenced by an application, a site plan, and floor plans:
 - (a) The lot is located entirely within one or more of the following base zoning districts: CT, LB, GB, UC, MU-1, MU-1/WH, MU-2, or MU-2/WH; and
 - (b) The lot is commercially zoned and located entirely within the Short Term, ST Overlay Zone, as shown on the Zoning Map; and
 - (c) The dwelling unit being converted to a commercial short term rental is not designated as an affordable housing unit or a workforce housing unit; and
 - (d) The owner of the dwelling unit being converted into a commercial short term rental complies with all business license and revenue collections laws of the City of Charleston, Charleston County and the State of South Carolina; and
 - (e) Any commercial uses on the lot must be completely separate and independent operations, unrelated to the Commercial Short Term Rental; and
 - (f) There are no common areas or other areas serving more than one dwelling unit and/or commercial short term rental on the lot, except driveways; and
 - (g) There are no exterior signs for the commercial short term Rental use of the lot; and
 - (h) Existing parking spaces on the lot, if any, that satisfy the off-street parking requirements of this Chapter for the existing dwelling units being converted to short term rentals and all other uses on the lot shall be shown on the site plan

- submitted with the application. No additional parking spaces shall be required for the dwelling units being converted to short term rentals; and
- (i) No more than nine (9) dwelling units may be converted to short term rentals on any one (1) lot. Ten (10) or more short term rental units on one (1) lot shall require approval as an accommodations use pursuant to Section 54-220 of the Zoning Ordinance. This provision shall not be interpreted to permit an increase in the maximum density permitted under the base zoning district for dwelling units on the lot; and
3. Except as expressly stated otherwise in this Section 54-227, a dwelling unit converted into a commercial short term rental shall continue to be subject to the regulations for such a dwelling unit in the base zoning district, including without limitation the site regulations in Article 3 of the Zoning Ordinance.
 4. Impact on Nonconforming Uses. For the purposes of applying Section 54-110 concerning nonconforming uses, a commercial short term rental is considered a continuation of the nonconforming use of a legal nonconforming dwelling unit.
 5. Prohibition on Construction of Commercial Short Term Rentals. Nothing in this Section 54-227 shall be construed to permit a property owner to construct a commercial short term rental. A property owner seeking a conditional use for a commercial short term rental must construct a dwelling unit in accordance with applicable standards for the dwelling unit under the base zoning district for the subject property and then apply for the conversion of the conforming dwelling unit to a commercial short term rental use.
 6. Approved Short Term Rentals Within the ST Overlay Zone. All STR uses within the ST Overlay Zone that have City approval to operate on the effective date of this ordinance shall be issued a commercial STR permit, which shall be valid for one (1) year from the date of issuance and shall be renewable annually unless revoked. Permit holders shall adhere to the requirements of this Chapter.
 7. New Short Term Rentals Within the ST Overlay Zone, Permit. New STR uses within the ST Overlay Zone that receive City approval to operate shall be issued a commercial STR permit, which shall be valid for one (1) year from the date of issuance, and shall be renewable annually unless revoked. Permit holders shall adhere to the requirements of this Chapter.
 8. Annual Renewal. For renewal of a commercial STR permit, a property owner shall be required to recertify compliance with this section with the zoning administrator. An application for annual recertification of the commercial STR permit must include the application fee, an affirmation by the applicant that the nature of the STR use at the property has not changed, and must be notarized, filed with, and approved by the zoning administrator to continue the STR use.

c. Bed and Breakfast Use.

1. Accessory Use. Subject to the conditions in Section 54-227, c., 2, a bed and breakfast use may be established in a dwelling unit as an accessory to the principal residential use, on any property located within the ST Overlay Zone, and each approved bed and breakfast unit may be rented to one (1) family for a period of between one (1) and twenty-nine (29) consecutive days.
2. Conditions: A bed and breakfast may be approved only when all of the following conditions are satisfied, as evidenced by an application, a site plan, and floor plans:
 - (a) The number of bed and breakfast units shall not exceed four (4) units; except that a lot may have between four (4) and ten (10) bed and breakfast units if the total square footage of conditioned floor area in the building or buildings containing the bed and breakfast units is equal to or greater than the sum of the number of bed and breakfast units multiplied by 560, and all other requirements of this section are met. Each unit shall consist of one (1) or more rooms arranged for the purpose of providing sleeping accommodations for one (1) family for a period of between one (1) and twenty-nine (29) consecutive days; and
 - (b) The subject property is located entirely within the ST Overlay Zone; and
 - (c) The bed and breakfast shall be operated by the record owner of the subject property who also resides at the subject property at least 183 days each year; and
 - (d) The principal building on the property on which the bed and breakfast use will be located shall have been constructed 50 or more years ago although the bed and breakfast unit(s) may be located in a building that was not constructed 50 or more years ago; and
 - (e) Bed and breakfast unit(s) located in buildings constructed 50 or more years ago shall provide one (1) off street, maneuverable parking space on the subject property for each two (2) bed and breakfast units, or fraction thereof. Bed and breakfast unit(s) located in buildings not constructed 50 or more years ago shall provide one (1) off street, maneuverable parking space on the subject property for each bed and breakfast unit. Spaces required for the bed and breakfast unit(s) shall be in addition to providing, on the subject property, required off street parking for existing uses on the property; and
 - (f) The property shall be permitted to have one sign advertising the Bed and Breakfast. The permitted sign may have a maximum of two sides and no side shall exceed four (4) square feet in total sign face area; and
 - (g) The bed and breakfast shall be located on property which is in compliance with allowed uses for the zone district in which the property is located; and
 - (h) The bed and breakfast shall be operated by someone who has not had a bed and

Sec. 54-901. - Zoning administrator as administrative officer; inspections; enforcing agents.

The duty to administer and to enforce the provisions of this Chapter is hereby conferred upon the zoning administrator, herein referred to as the administrative officer of the Zoning Ordinance. The city building inspector shall inspect all construction or alteration for which permits are issued by the city engineer or as authorized by the Board of Zoning Appeals or as authorized by the Board of Architectural Review, as hereinafter provided, and shall make a weekly report in writing to the city engineer's office, listing all construction inspected and specifying any work observed by him which is not in accordance with permits issued, or which violates this chapter or any other ordinance of the city. The officers and patrolmen of the police department, so far as is practicable, shall inspect daily all construction in progress in the city, and shall report promptly to the chief of police who shall advise the city engineer's office of any construction whereon is not displayed a building permit, as required by ordinance. Any person to whom a building permit is issued shall notify the city engineer's office in writing, twenty-four hours before commencing work of the exact day upon which he intends to begin construction or alteration, so that the proper inspections can be made.

The city electrician, before authorizing the increase of electric meters on any premises or the cutting in of electrical current to be used directly or indirectly for the purposes of lighting or operating signs, shall consult with the administrative officer and see that the application has been approved for additional dwelling units or the application for signs has been applied for and granted as required by this Chapter.

The plumbing inspector, before authorizing the installation of additional sinks or bathrooms, shall consult with the administrative officer and see that the necessary application permits have been granted as required by this Chapter.

(Ord. No. 1999-54, § 4, 4-27-99)

Sec. 54-904. - Procedure when enforcement or interpretation questioned; appeals to court.

It is the intent of this Chapter that all questions arising in connection with the enforcement or interpretation of this Chapter, except as otherwise expressly provided, shall be presented to the Board of Zoning Appeals, and, that from decisions of the Board of Zoning Appeals, recourse shall be to the courts as provided by law.

(Ord. No. 1999-54, § 4, 4-27-99)

Sec. 54-905. - Remedies for violations.

Whenever a building or structure is demolished, erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of this Chapter, the city engineer or any other appropriate authority, or any property owner, who would be damaged by such violations, in addition to other remedies, may institute injunction, mandamus, or other appropriate action in proceeding to prevent the violation in the case of such building, structure or land.

APPENDIX C - Rules and Regulations of the BOARD OF ZONING APPEALS—ZONING BOARD OF ZONING APPEALS
—SITE DESIGN

Article I. - Organization

Section 1. - Rules.

These rules of procedure are adopted pursuant to S.C. Code 6-29-790 for the City of Charleston Board of Zoning Appeals—Zoning and Board of Zoning Appeals—Site Design, which consist of seven members each, appointed by City Council.

Section 2. - Office of the Boards.

The office of the Boards of Zoning Appeals shall be the Zoning Division office in the Department of Design, Development and Preservation, 3rd floor, 75 Calhoun Street, Charleston, South Carolina 29401.

Section 3. - Officers.

The Board shall elect one of its members chairman, who shall serve one year or until he or she is re-elected or his or her successor is elected and qualified. Each Board shall appoint a staff member of the City as secretary of the Board.

Section 4. - Chairman.

The chairman or, in his or her absence, the acting chairman, shall be a voting member of the Board and shall:

- a. Call meetings of the Board;
- b. Preside at meetings and hearings; and swear in witnesses;
- c. Act as spokesperson for the Board;
- d. Sign documents for the Board;
- e. Have orders of the Board served on parties; and
- f. Perform other duties approved by the Board.

Section 5. - Secretary.

The secretary shall:

- a. Provide and publish notice of appeals and meetings;

- b. Prepare the agenda;
- c. See that property involved in appeals for variances or special exception is properly posted;
- d. Keep recordings and minutes of meetings and hearings;
- e. Maintain Board records as public records;
- f. Serve Board decisions on parties;
- g. Attend to Board correspondence; and
- h. Perform other duties normally carried out by a secretary.

Article II. - Meetings

Section 1. - Time and Place.

The Board of Zoning Appeals—Zoning shall meet on the first and third Tuesdays of each month at 5:15 p.m., except for January and July when no meeting shall be held on the first Tuesday, and the Board of Zoning Appeals—Site Design shall meet on the first Wednesday of each month at 5 p.m., unless such day is a recognized holiday or election day. An annual schedule of regular meetings and submittal deadlines shall be published and posted at the Zoning Division office by December of each year. Special meetings may be called by the chairman upon 24 hours notice, posted and delivered to all members and local news media. Meetings shall be held at the place stated in the notices, and shall be open to the public. Board members shall not discuss the merits of appeals or applications pending before the Board with applicants or other interested parties prior to properly noticed meetings of the Board.

(Amendment of 2-16-16)

Section 2. - Agenda.

A written agenda shall be furnished by the secretary to each member of the Board and the news media, and shall be posted at least five (5) days prior to each regular meeting and at least twenty-four (24) hours prior to a special meeting. Items may be removed from the agenda or deferred at a meeting by majority vote.

Section 3. - Quorum.

A majority of the members of the Board shall constitute a quorum. A quorum shall be present before any business is conducted other than rescheduling the meeting.

Section 4. - Rules of Order.

Robert's Rules of Order shall govern the conduct of meetings except as otherwise provided by these Rules of Procedure.

Article III. - Appeal and Application Procedure

Section 1. - Appeal or Application Requirements, Time Limits and Fees.

Appeals from administrative or Board decisions, applications for variances, and applications for special exceptions shall be filed on forms approved by the Board and available to applicants in the Zoning Division office. The Board may require additional information deemed necessary. The failure to submit adequate information may be grounds for dismissal. Meeting agendas are limited to no more than twenty-five (25) new applications and appeals. Each application or appeal shall require a fee as set by City Council.

Section 2. - Time Limit for Appeal of an Administrative Decision.

An appeal from an administrative decision must be filed within ten (10) business days after actual notice of the decision by delivery of the approved appeal form and fee to the Zoning Division office.

Section 3. - Time Limit and Procedure for Appeal for Reconsideration of a Board Decision to the Board.

An appeal for reconsideration of a decision of the Board must be filed within five (5) business days from the date of the Board's decision, order, requirement or determination by delivery of the approved appeal form and fee to the Zoning Division office. To grant the appeal for reconsideration, the Board must find that it misapprehended or misconceived the question or questions involved, or that it erred in its finding or disposition of the appeal, application or matter. If such appeal is granted by the Board, the decision shall be withdrawn and the matter heard and considered de novo, as if no hearing, consideration or determination had been previously made or heard.

Section 4. - Agenda.

Appeals and applications shall be marked with the date of receipt and placed on the hearing agenda in the order in which received. Appeals and applications shall be heard in the order on the calendar unless otherwise set by the Board for good cause shown.

Section 5. - Withdrawal of Appeal or Application.

Any appeal or application may be withdrawn by written notice delivered to the secretary prior to action by the Board. An appeal which is withdrawn, may not be refiled after the time limit for appeal has expired.

Section 6. - Deferrals.

Parties filing appeals or applications may, after the application has been advertised as part of a meeting's agenda, request that the application be deferred, except in the case of an appeal for reconsideration of a Board decision, which may not be deferred after the application has been advertised as part of an agenda. A request for deferral must be in writing, signed by the applicant or agent, and must identify the meeting date when the application should be heard. Without an extraordinary and compelling reason only one (1) such deferral will be permitted.

Section 7. - Notice.

Public notice of a hearing of the Board shall be published in a local newspaper at least fifteen (15) days prior to the hearing. The notice shall contain a description of each matter to be heard and identify the property affected. Notice shall also be posted on or adjacent to the property affected at least five (5) days prior to the hearing. Such notice shall contain a description of the request, the identity of the property affected, the date, time and place of the hearing, and a phone number to call for more information.

Article IV. - Hearing Procedure

Section 1. - Appearances.

The applicant or any party in interest may appear in person or by agent or attorney. The Board may postpone or proceed to dispose of a matter on the records before it in the absence of an appearance on behalf of an applicant.

Section 2. - Witnesses.

Parties in interest may present testimony under oath. Witnesses may be compelled to attend by subpoena requested at least ten (10) days prior to a hearing and signed by the chairman. The Board may call its own witnesses when deemed appropriate.

Section 3. - Evidence.

Relevant documents, photographs, maps, plans, drawings, etc., will be received in the record without authentication in the form of legible copies. Relevant testimony, which is not cumulative, or hearsay will be received. The chairman will rule on all evidentiary matters. Evidence may be placed in the record with an objection noted.

Section 4. - Conduct of Hearing.

The normal order of hearing, except for motions for reconsideration of a Board decision, subject to modification by the chairman, shall be:

- a. Presentation by the secretary or designated member of City staff of matter to be heard with a recommendation of the zoning administrator or his/her designated staff member (if the recommendation of the zoning administrator or his/her designated staff member is in favor of the application and no objection has been filed with the Board and no one is present to oppose the matter, the Board may approve the matter without further presentation);
- b. Presentation by applicant or appellant and others in support of the application or appeal (10-minute limit);
- c. Presentation by opponents (10-minute limit);
- d. Rebuttal by applicant (3-minute limit);
- e. The Board may question participants at any point in the hearing;
- f. Matters in which additional time is granted may be moved to the end of the agenda.

The normal order of hearing for motions for reconsideration of a Board decision, subject to modification by the chairman, shall be:

- a. Presentation by the secretary of the matter to be heard with an explanation of the requirements that must be met by the applicant or appellant for the Board to grant the motion for reconsideration;
- b. Presentation by the applicant or appellant of the motion for reconsideration.
- c. The Board may question the applicant or appellant at any point in the hearing.

Section 5. - Disposition.

The Board may deliberate and make a final disposition of a matter by majority vote of members present at the hearing and qualified to vote; provided that not less than a quorum are present and qualified to vote. The vote may be taken at the same or a subsequent meeting. A member may not vote on a matter which the member has not heard. Deliberations shall be

conducted and voting shall be in public. When a member has a conflict of interest in a matter being heard, that member shall complete a conflict of interest form for that matter, abstain from voting and leave the room until the matter is disposed of.

Section 6. - Form of Order.

An order shall be issued disposing of a matter by granting or denying relief with such conditions as may be deemed necessary; or affirming, modifying, or reversing an administrative decision; or granting or denying an appeal for reconsideration of a Board decision. If an appeal for reconsideration of a Board decision is approved, the decision shall be withdrawn and the matter shall be heard de novo, as if no hearing, consideration or determination has been previously made or heard. A matter may be dismissed for lack of jurisdiction or prosecution. Findings of fact and conclusions of law shall be separately stated in an order.

Section 7. - Service of Order.

The secretary shall delivery a copy of an order to each party in interest by certified mail immediately after the five (5) business day appeal period of the Board's decision has expired.

Article V. - Records

Section 1. - Minutes.

The secretary shall record all meetings and hearings of the Board on tape which shall be preserved until final action is taken on all matters presented. The secretary shall have minutes of each meeting prepared and maintained as public records.

Section 2. - Orders and Documents.

The secretary shall assist in the preparation and service of all orders of the Board in appropriate form. Copies of all notices, correspondence, documentary evidence, orders and forms shall be maintained as public records.

Article VI. - Adoption and Amendment

Section 1. - Adoption.

These rules were adopted by vote of a majority of the members of the Board of Zoning Appeals—Zoning at a regular public meeting on December 7, 1999. These rules were amended by a vote of a majority of the members of the Board of Zoning Appeals—Zoning at a regular public meeting on November 16, 2004, and were further amended by a vote of a majority of the members of the Board of Zoning Appeals—Zoning at a regular public meeting on on August 5, 2008.

These rules were adopted by vote of a majority of the members of the Board of Zoning Appeals—Site Design at a regular public meeting on March 1, 2000. These rules were amended by a vote of a majority of the members of the Board of Zoning Appeals—Site Design at a regular public meeting on January 5, 2005, and were further amended by a vote of a majority of the members of the Board of Zoning Appeals—Zoning at a regular public meeting on August 6, 2008.

Section 2. - Amendment.

These rules may be amended at any regular meeting of the Board by majority vote of the members of the Board at least seven (7) days after the written amendment is delivered to all members.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

*****ROUGH DRAFT*****

CHARLESTON DEVELOPMENT COMPANY, : CIVIL ACTION
 NO. :
 LLC, CHARLESTON HOUSING COMPANY, : 15-CP-10-5415
 LLC AND NOTSO HOSTEL, LLC, :
 Plaintiffs,

vs.

YOUNESSE ALAMI, DEIDRE ALEXANDER, :
 SIMON M. ADELL, MATTHEW ANDERSON, :
 MATTHEW ASHER, DANIEL BAKER, MARIE :
 BAKER, MATTHEW AND CHRISTINA BARE, :
 MICHELLE BARNWELL, ANDRE BAUER, :
 STEVENSON B. BENNETT, PETER BIERCE, :
 BRANDON BLOUNT, BARBARA BRASS, :
 NANCY H. BREEDEN, RICHARD T. BREWER :
 SIGRID ANNE EILERTSON, REGINALD P. :
 BROWN IV, MARY CAHILL, RALPH :
 CAPASSO, RYAN COCKRELL, KEVIN AND :
 VIRGINIA CONLON, SYDNEY COOK, ANNE :
 MARIE CREVAR, CHRISTINA CROSS, :
 DARRYL J. DAMICO, LABAR DANIEL, :
 STEPHEN DARWAK, NAWABI M. DAUD, :
 LINDSAY DAVENPORT, ISABELLE DE :
 FLEURAC, LYNETTE DENNIS, MARY :
 DICKERSON, MAXWELL STREETER, :
 KATHLEEN DOUGHERTY, DAVID DRESSMAN, :
 ANNA DRESSMAN, SHIRLEY EATON, :
 MICHAEL ELDER, RICHARD ELLERKMANN, :
 ARIANE COMETA, CHRISTOPHER SCOTT :
 FARLEY, GREGORY FIELD, PAULA GARRET :
 MICHELE GHASTIN, TIMNAH GILLER, :
 VIRGINIA GELLER, RYAN GILREATH, :
 SONYA GILREATH, KIMBERLY GLENN, :
 SHAUN HALSOR, JOSEPHINE REX, :
 ARTHUR HALVORSON, ANDREW HALVORSON, :
 LINDA HANCOCK, LAURA HYATT, ZSOLT :
 HARASZIT, MIKE HARTEL, NATHAN :
 HERRING, JAMES HICKS, JR, :

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LAURIE HICKS, PRESTON G. HIPPI, :
SARAH JACKS, THOMAS JERMYN, COLIN :
JONES, MATTHEW F. JONES, ROBERT C. :
JONES, ROBIN JOSEPH, MOLLY KEELER, :
JOHN KENNY, MANDI WALTERS, ABIGAIL :
KING, AARON KLESS, LAURIE KRAMER, :
ROBERT KRAMER, SCOTT JOSEPH KRAMER, :
ALLISON KREUTZER, GLENDA HOLMES :
LADSON, GLEN LONDON, JANET LONDON, :
BENJAMIN LEVITT, RICHARD LEVITT, :
JESSE LUTZ, LETITIA LYNN, NIKOU :
MANOUCHEHRI, ROBERT MCCARTHY, MARY :
MCCARTHY, ROBERT BRUCE MURPHY, JR., :
THOMAS NASELARIS, ZOE NASELARIS, :
BEAU O'STEEN, CORI O'STEEN, LANCE :
PARR, BRANDON PERDUE, AMANDA LEE :
RAYMER, HADASSAH ROTHENBERG, DANIEL :
RYAN, KIMBERLY BOWLIN, KEVIN :
SCHNITTKER, GINGER SCOFIELD, :
INDERJIT SINGH, AVTAR SINGH, ALECIA :
STEVENS, LEE STEVENS, JUSTIN SWAN, :
MERRICK TEICHMAN, JOHN VAN VLACK, :
JR., WILLIAM WATERHOUSE, JENNIFER :
WATERHOUSE, KENNETH G. WELBORN, JR. :
ANNE WOHLFEIL, BRYAN YOUNG, 68 :
BROAD LEGACY TRUST, LINDA C. :
RAVENEL, TRUSTEE, AJB TRUST, :
ANTHONY & JACQUELINE BRADLEY, :
TRUSTEES, JUSTIN COGGINS CALLEN, :
TRUSTEE OF THE CHARLESTON TRUST, :
HARTSHORN FAMILY TRUST, HELENE :
KENNY/BRIDGET KENNY REVOCABLE TRUST :
WILHELMINA M. WIETERS LIFE ESTATE :
CHILDRENS TRUST, 14 BENSON STREET, :
LLC, 33 BOGARD STREET, LLC, 249 :
CUMMING, LLC, 253 COMING STREET, :
LLC, 259 EAST BAY, LLC, 259 EAST :
BAY 10 B LLC, 272 D COMING STREET, :
LLC, BEACHCRUISER LLC, CAFE :
INTERNATIONAL, INC., CORNER AT OLD :
CANTON, LLC, GEER INTERESTS, LLC, :
KIT PROPERTIES, LLC, LAMBERT-WEISS, :
LLC, LINE STREET PROPERTIES, LLC, :
THE NAWA, LLC, NEW LEASE CAPITAL, :
LLC, ONE HENRIETTA, LLC, PERTWINKLE :
PARTNERS, LLC, PORCH PROPERTIES, :
LLC, SLAMBOVIA, LLC, THREE FISTS, :
LLC, WESTBURY PROPERTIES, LLC, AND :
WESTENDORFF HARDWARE, LLC, :

Defendants. :

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DEPOSITION OF ROBERT HOLT

DATE TAKEN: TUESDAY, MARCH 16, 2018
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051518RH
TIME BEGAN: 9:00 A.M.
TIME ENDED: 2:59 P.M.
LOCATION: BLOODGOOD & SANDERS, LLC
242 MATHIS FERRY ROAD, SUITE 201
MOUNT PLEASANT, SOUTH CAROLINA

REPORTED BY: DEIRDRE J. WEYER, RPR

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1 APPEARANCES:

2

3

SEAN KEVIN TRUNDY, LLC
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Mt. Pleasant, South Carolina 29464
843.972.0313
nbloodgood@bloodgoodsanders.com

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22 say today under oath will be the same thing that
23 you'll say in court.

24 Do you have any questions?

25 A No. I would like to correct the record.

¶

9

1 I am not the owner of any of the entities. I am the
2 trustee of the trust which owns the entities.

3 Q Okay. And we'll go over that in more
4 detail later.

5 All right. What is your full name, for
6 the record?

7 A Robert Holt.

8 Q And your current address?

9 A I live at both 101C Westheimer Road,
10 Houston, Texas 77006. And I live at 6 Tully Alley in
11 Charleston, South Carolina 29403.

12 Q And how much time do you spend between in
13 each residence?

14 A I spend probably two-thirds of my time in
15 Charleston and a third of my time in Houston,
16 roughly.

17 It varies.

18 Q Okay. Are you a South Carolina resident?

19 A I consider myself one, but I am a Texas
20 resident.

21 Q Do you have a Texas driver's license?

22 A I do indeed.

23 Q Do you vote in Texas?

24 A I do indeed.

1 the witness? I can hear you great but I can't --
2 he's a little quiet.

3 MS. BLOODGOOD: Sure.

4 THE WITNESS: He is soft-spoken.

5 MS. BLOODGOOD: See if -- see if that's
6 better, David.

7 BY MS. BLOODGOOD:

8 Q My question was -- you were telling me
9 that you were a trustee, what your jobs are, what you
10 work at.

11 A I'm a trustee of a -- of a trust.

12 Q Okay.

13 A And I am the chairman of various companies
14 that the trust has an interest in.

15 Q Okay. What's the trust that you are the
16 trustee for?

17 A Global Real Property Trust.

18 Q Are you the trustee of any other trust?

19 A I am not aware that I am. When I was in
20 practice, I was the trustee of several irrevocable
21 insurance trusts for clients and I believe that the
22 trusteeship was transferred in the '90s. So as far
23 as I know, I am not the trustee of any other trust.

24 Q Okay. You said you're the chairman of
25 various corporations or companies. What are you the

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1 chairman of?

2 A I am the chairman of BiblioLabs. I'm thea
3 chairman of Creative Media.

4 Q How do you spell "Bibliolabs"?^{051518RH}
5 A B-I-B-L-I-O-L-A-B-S.
6 Q Okay.
7 A Chairman of Creative Media; the chairman
8 of NotSo Hostel; the chairman of Charleston Housing
9 Company; the chairman of Charleston Development
10 Company; the chairman of Ellaora?
11 Q LL Ora?
12 A Ella, E-L-L-A, one word, O-R-A. And I
13 believe that's it.
14 Q Do you have any other work other than
15 being the chairman of those companies and the trustee
16 of Global Real Properties?
17 A I do not.
18 Q I understand that NotSo Hostel, Charleston
19 Housing, and Charleston Development are all part of
20 or owned by Global Real Property Trust. Is that the
21 case?
22 A NotSo Hostel is owned by Charleston
23 Housing Company.
24 Q Okay.
25 A Charleston Housing Company and Charleston
‡

13

1 Development Company are owned by the Global Real
2 Property trust.
3 Q How about Bibliolabs? Who owns that?
4 A Bibliolabs is owned by -- I think we have
5 seven or eight members -- eight -- nine -- nine
6 members, I believe. Oh. I'm a chairman of
7 Charleston Technology Company. Charleston Technology
Page 11

25 A -- enforces --

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1 Q -- because they're -- it's not legal
2 because a zoning ordinance tells they can't do
3 something?

4 A Which is precisely what zoning is for. It
5 tells you what you can do with your property. And
6 you purchase property -- 106 Cannon and 2 Charles
7 Street, that property was purchased for more money
8 because it was zoned commercially than had I bought a
9 piece of property in Wagner Terrace --

10 Q Right.

11 A -- which is zoned residential.

12 Q And you could go to the zoning
13 administrator in Charleston County and complain that
14 the zoning ordinance is not being enforced properly,
15 couldn't you?

16 A The zoning administrator for the City of
17 Charleston. And -- and, yes -- well, his staff. I
18 have complained.

19 Q Have you gone to the Board of Appeals?

20 A I have no standing to go to the
21 board -- Zoning Board of Appeals.

22 Q You have no standing to do that?

23 A I don't -- I don't believe. I don't know.
24 I have not exercised -- if I do, I have not exercised
25 that option.

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THE WITNESS: -- answering why we do not

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1 have the documents that you have asked for.

2 BY MS. BLOODGOOD:

3 Q Okay. If I were to provide you the dates
4 and amounts of rental income from any of the
5 Defendants' properties, how would you calculate your
6 loss of rental income?

7 A I would not. I would -- an expert would
8 calculate that. I am not an economist, I am not a
9 forensic accountant. All I know is that I have been
10 damaged or these entities have been damaged and I
11 have a fiduciary duty to stop the damage.

12 Q And how -- if I were to provide you the
13 dates of occupancy and the rental income for legal
14 short-term rentals, is it your position you were not
15 damage by legal ones but only by illegal ones?

16 A I was -- no, I was not damaged by legal
17 ones. I compete with legal ones. That is not called
18 damage. So, no, I do not contend I was damaged. I
19 competed with legal ones. I was damaged by illegal
20 ones. And so were the other legal ones. I wasn't
21 the only -- I'm not the only aggrieved party -- or
22 not me, but the entities are not the only aggrieved
23 parties. There are a lot of aggrieved parties. They
24 simply haven't sued the Defendants operating
25 illegally.

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11 enforcement action.

12 Q Okay. Do you know which of the Defendants
13 have paid state and federal taxes on income they
14 received from renting their property?

15 A No, I do not. We have requested tax
16 returns from all of the Defendants and have not
17 received tax returns from all Defendants.

18 Q You have received, for the record,
19 Schedule Cs from my Defendants.

20 A Okay. Current?

21 Q The new lawsuit?

22 A No. Current. Current.

23 Q Yes.

24 A All -- all current.

25 Q Has -- do you know if any of the

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1 Defendants named in the 2015 lawsuit have rented
2 their property out at a lower price than the property
3 that the three Plaintiffs rent?

4 A In the 2015 lawsuit, no, I don't know. We
5 haven't been supplied that by the -- by the
6 Defendants. And we just got the Airbnb stuff, which
7 I have not analyzed.

8 Q Okay.

9 A We just got it.

10 Q Do you know -- if you looked at all the
11 list of Defendants, could you identify which ones
12 have property similar to, for instance, Plaintiff
13 Charleston Development's property or Plaintiff
14 Charleston Housing's property or NotSo Hostel's

15 losses, correct?

16 A The Plaintiffs can give you a hypothesis
17 as to their losses, but the Plaintiffs are not
18 experts and do not have an expert on staff that would
19 review this --

20 Q okay.

21 A -- and -- and would -- so supply and
22 demand. That's an economic theory. How did the X
23 demand affect rates in general. I -- I don't have
24 that data.

25 Q okay.

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1 A An economist will have that data. That
2 is, in fact, what they do. So -- so, no, I
3 can't -- I am not capable of answering that, which is
4 why it is our intention to hire an expert. However,
5 we cannot hire an expert and give him half the
6 information because that's pointless, and that's
7 where we are and that's what I said.

8 Q And sitting here today, you don't know how
9 the expert would determine damages, correct?

10 A I don't. You know, whatever I would tell
11 you may be wild off the mark. I'm not an economist
12 and I've never done this before.

13 Q And you would only be hypothesizing on
14 damages, the Plaintiffs?

15 A If you gave me that information and asked
16 me today to make a determination, yes. If I had 30
17 or 60 days and the consultation of not -- of domain

22 we'll figure something else out.

23 Q I received -- except for whatever are in
24 those thousands of documents last night, so far I've
25 only received two appraisals of property and they

?

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1 were both early appraisals.

2 A Yeah.

3 Q Have you had any recent appraisals -- and
4 when I say "recent," within the last year -- of
5 recent appraisals done of any property owned by the
6 Plaintiffs?

7 A I don't believe so. The -- you should
8 have -- I located the appraisals for 106 A and B. I
9 don't know if that was in the first ones that I gave
10 you or not. And I located the appraisal for 2
11 Charles and I gave that to Counsel. So if you
12 haven't gotten that in this tranche, you will.

13 Q Do you know approximately what year those
14 appraisals were?

15 A They were when we acquired the property,
16 which I believe was in 2015 or maybe 2016.

17 Q Have you done any appraisals of
18 Plaintiffs' property subsequent to the time the
19 properties were acquired?

20 A If -- if we refinanced. And I can't -- I
21 don't I don't recall if we refinanced. But the only
22 appraisals we've ever done of any property -- well,
23 we haven't done -- but has been done pursuant to a
24 bank, either a finance or refinance. So we've not

25 done independent appraisals. 051518RH

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1 Q Okay. So it's possible that the -- the
2 only appraisals that you are going to provide are
3 appraisals from three years ago?

4 A Well, it is my hope that the expert that
5 we hire appraises the property as is today and then
6 says, Here is what the property would be worth if
7 there were not all these illegals, if the Defendants
8 were not doing what the Defendants were doing. That
9 is my hope. If I were the expert, that is one of the
10 things that I would do. So presumably we will have
11 more appraisals, hopefully. If that's -- if that's a
12 methodology the expert employs, then we'll give you
13 those appraisals.

14 Q And how are you going to differentiate the
15 damage that one Defendant has done -- allegedly done
16 to you versus another defendant?

17 A Well, I'm not an expert; but I believe
18 that if I -- if I were the expert, the approach that
19 I would take would be to basket the Defendants by the
20 type of property and basket the Plaintiffs by the
21 type of property and compare those and come up
22 with -- with a number. So in other words -- and I
23 think we've talked about this earlier -- if you have
24 someone who is renting a room in their house, that is
25 not the same as someone who has a four-bedroom house

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11 them.

12 Q So do you contend that you have a legally
13 protected interest or right in a business to make
14 money?

15 A Oh, absolutely not. I do not contend
16 that. But you have a right to try and make money.
17 You have a right not to have people illegally compete
18 with you.

19 Q Do you have -- when you say you have a
20 right to have people not illegally compete with you,
21 isn't that the City's job to enforce its laws?

22 MR. TRUNDY: Object to the form.

23 THE WITNESS: I -- I think the City is one
24 party. I think in the zoning ordinance the City has
25 said they are not the exclusive party. So I think

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1 the City does have a responsibility but not the sole
2 responsibility. And I think -- and we're a nation of
3 laws. So if we're going to be a nation of laws and
4 in a democracy, then I think everyone should care
5 about that.

6 BY MS. BLOODGOOD:

7 Q Caring is a little different than suing
8 somebody to enforce the law, isn't it?

9 MR. TRUNDY: Object to the form.

10 THE WITNESS: There are -- yes. And I
11 don't believe the general public has filed a lawsuit
12 against these Defendants. And if it were merely I
13 have -- you know, whether the City decides to close a
14 street or not, I -- I have an interest in the public

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4 responding to that hypothetical. So the likelihood
5 of my damage is dependent upon how much legal
6 competition I have. So -- and that's -- that was my
7 comment about if I'm the only one, then any diversion
8 will take that away from me. Property is unique. So
9 if there is an illegal on Colonial Lake, that may be
10 more desirable than the legals in
11 Elliotborough/Cannonborough. So they may, in fact,
12 command a higher price and it affects because they
13 are taking customers from
14 Elliotborough/Cannonborough, the only place that
15 whole house rental is -- it is legal in the city.
16 Q Properties are extremely unique due to
17 their location?
18 A They are.
19 Q How many -- their condition, how many
20 rooms they have?
21 A Absolutely. Absolutely.
22 Q Almost impossible to compare one --
23 A No.
24 Q -- bedroom to another --
25 A No.
‡

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1 Q -- one-bedroom somewhere, isn't it?
2 A No. It's difficult but it certainly is
3 not impossible because when you look at a
4 place -- and I've done this. We have rented places
5 and you look and you say, okay, what is available and
6 where is it. And so you have comparable properties.
7 And, in fact, the services will feed you comparable
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4 in this lawsuit?

5 A By their listings on Airbnb or VRBO or
6 HomeAway.

7 Q And did you DO that prior to the time you
8 filed the lawsuit?

9 A Absolutely.

10 Q Did you do the identification or did
11 somebody else do that?

12 A At the initial lawsuit, I did it. And it
13 became so cumbersome that we hired a girl to do that.

14 Q Who was that?

15 A Courtney Wegner.

16 Q Is she still in Charleston?

17 A I believe she lives in Summerville, but
18 I'm not -- I'm not a hundred percent sure. But yeah.

19 Q Would Maybre have her address?

20 A I don't know. I can get her address.

21 Q Okay.

22 A I mean, that's not....

23 Q Has anyone been on any Defendants'
24 property at your request or as your agent --

25 A No.

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1 Q -- or as the Plaintiff's agent?

2 A No.

3 Q Have -- or do you know or have you made a
4 determination as to any Defendant regarding whether
5 or not the city of Charleston has instituted a zoning
6 and enforcement action against them?

7 A I have not.

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8 Q Have you complained to the City's Board of
9 Zoning Appeals about any Defendant in this case?

10 A No.

11 Q And when I say "you," that would include
12 your agent, the Plaintiffs, The Plaintiffs' agents?

13 A Not to the Board of Zoning Appeals. We
14 have complained to the City, and you have that
15 correspondence.

16 Q And to the City, you're just talking about
17 the City Planning?

18 A City staff, yeah, Anna Harp specifically.
19 And you guys have that correspondence with
20 spreadsheets.

21 Q Right. H-A-R-P-T?

22 A H-A -- I believe it's just "P."

23 Q Okay.

24 A It's in her email. I think it's just
25 "P."

‡

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1 Q Okay. Have you gotten any reassurances
2 from the City that they are going to enforce their
3 zoning ordinance?

4 A Yeah. At public meetings the mayor before
5 our -- at our neighborhood meeting six months ago.
6 Yeah, a lot.

7 Q But -- but you never followed up to
8 determine whether any of these Defendants were
9 subject to a city enforcement action?

10 A No. I have nothing to do with the city's

4 Q How do you contend that Defendants' use of
5 their property constitutes a nuisance?

6 A I'm -- I don't recall the elements of
7 nuisance, so I don't -- I can't really speak to that.
8 I -- prior to this suit being filed, Counsel
9 consulted with the Plaintiffs and it was determined
10 at that time and I don't have a recollection of the
11 precise --

12 Q Okay.

13 A -- damage. We felt it was appropriate.

14 Q Do you contend that the Defendants' use of
15 their property invades the Plaintiffs' right of
16 enjoyment of their property in any manner?

17 A Yeah. Absolutely. I mean, the ability to
18 earn income is an enjoyment of a property and very
19 clearly the Defendants have affected the income
20 of -- of the Plaintiffs.

21 Q So your contention is that your right to
22 use and enjoy your property is associated with the
23 amount of money that you make on it -- from it?

24 A That is one -- that is one benefit
25 of -- that's one of the enjoyments of property. It

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1 certainly is not the exclusive enjoyment of property,
2 but that is one.

3 Q Do you know whether the enforcement of a
4 city ordinance is discretionary?

5 A No, I don't.

6 Q Do you contend that Defendants' rent all
7 their property adversely affects the public?

8 A I don't -- I'm not sure whether it does or
9 it doesn't adversely affect the public. Well, it
10 depends on what public you're talking about.
11 Certainly the societal interest of people abiding
12 by -- by the -- by the zoning ordinance and by rules,
13 I think that's -- that is an important thing for the
14 public. So, yeah. I mean, that's --

15 Q So the public interest is people obeying
16 the law?

17 A That is a public interest. I don't know
18 that that's the exclusive public interest -- I'd have
19 it really dwell on it. But that's one that comes to
20 mind readily. I know that in a lot of neighborhoods
21 where these illegals are, because I've been to
22 neighborhood meetings where people have decried the
23 party houses in their neighborhood, which they had
24 not expected. So I think they certainly feel that
25 it's -- that it's negative.

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1 Q Is the public's interest different than
2 the Plaintiffs' interest?

3 A I think it is, yes.

4 Q Is that because of public's interest is
5 not monetary and the Plaintiffs' is?

6 A Well, I was about to say I think the
7 Plaintiff does care about law and order as much as
8 members of the public, but there is an added
9 dimension to the Plaintiffs. And yes, one added
10 dimension would be monetary. I don't know all of

15 that I might be inconvenienced. Or I might enjoy it.
16 I don't know. That is markedly different that this
17 lawsuit and it is not that general interest that
18 we're talking about.

19 BY MS. BLOODGOOD:

20 Q The public's general interest is markedly
21 different than the Plaintiffs' interest in this
22 lawsuit?

23 A In my opinion, it is, yeah. Although the
24 Plaintiffs do care about things that the general
25 public cares about, the Plaintiffs being citizens of

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1 this state also.

2 Q Is it your contention that the allegations
3 you make in your lawsuit have to be resolved for some
4 public purpose?

5 MR. TRUNDY: Object to the form.

6 THE WITNESS: I don't -- I -- I have
7 not -- this lawsuit is not being brought in the
8 public interest. So if -- if this helps the public,
9 that's great. If it helps society, that's great.
10 This lawsuit was brought because the Plaintiffs have
11 been damaged. Specifically the Plaintiffs have been
12 damaged. There are, in my belief, other people who
13 have been damaged. And I don't know if this is -- if
14 their damage is actionable or not. Certainly the
15 neighbors at these party houses are damaged. Whether
16 they choose to do something about that or not is up
17 to them.

8 injunction?

9 A That the Defendants cease their illegal
10 activity. That's it.

11 Q You want a court to -- to enforce a city
12 zoning ordinance?

13 A That is correct.

14 Q Okay.

15 A As is provided.

16 Q What irreparable harm have you suffered?

17 MR. TRUNDY: I'll object to the form.

18 THE WITNESS: Yeah. I don't -- I don't
19 know.

20 BY MS. BLOODGOOD:

21 Q Okay. If you want me to phrase that
22 question in another way, do you know what irreparable
23 harm means?

24 A Harm that cannot be repaired.

25 Q Yeah. Have you suffered any irreparable

harm?

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1 harm?

2 A I'm not sure.

3 Q Why aren't you sure?

4 A Because I haven't given it a lot of
5 thought since we filed this. I don't know that
6 that's an element --

7 Q An element of what?

8 A I don't know that that is an element of
9 the ordinance that provides for injunctive relief.

10 Q I didn't ask you anything about any

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11 ordinance that you think there is that provides
12 injunctive relief. I just asked you have your
13 Plaintiffs suffered any irreparable injury?
14 A I've told you I do not know.
15 Q Okay. Do you contend that money damages
16 are not sufficient to -- as a remedy for the
17 Plaintiffs?
18 A They are absolutely not because the
19 activity would continue, and so I'd be filing
20 lawsuits against the same people every single week or
21 month or whatever.
22 Q Why aren't you filing a lawsuit against
23 the city? They're the ones that aren't enforcing the
24 ordinance.
25 MR. TRUNDY: Object to the form.

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1 THE WITNESS: I don't know that they're
2 not enforcing the ordinance.
3 BY MS. BLOODGOOD:
4 Q So if the City is enforcing the ordinance,
5 you're going to sue the property owners anyway?
6 A The property owners who have been sued are
7 property owners who are engaging in illegal activity
8 and the City has not, to the best of my knowledge,
9 stopped the activity because the activity persists.
10 I do not know why the City in what the Mayor has said
11 in what City officials have said in public forums is
12 that it's hard and they're going to be dedicating the
13 resources in the future.
14 Q Okay.

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15 A And they have been saying that for the
16 last three years, and so it --

17 Q So we're right back to the question, on
18 what statute ordinance gives you the right -- gives
19 these Plaintiffs, LLCs, the right to enforce or to
20 require enforcement of a city ordinance because the
21 city is not?

22 MR. TRUNDY: Object to the form.

23 THE WITNESS: Well, there are multiple
24 causes of action. The -- the enforcement of the
25 zoning ordinance is only one. There's also the

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1 Unfair Trade Practices Act.

2 BY MS. BLOODGOOD:

3 Q I'm just talking about enforcement of the
4 zoning ordinance now.

5 A Well, you asked me --

6 Q No.

7 A -- in general.

8 Q I'll rephrase it --

9 A Okay.

10 Q -- if it was a complicated question.

11 A I think it was.

12 Q What law -- do you know what that
13 means? -- or what ordinance gives the Plaintiffs the
14 right to enforce the city zoning ordinance --

15 MR. TRUNDY: Object to --

16 BY MS. BLOODGOOD:

17 Q -- instead of the City?

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11 property from all activities and sources.

12 Q Okay. Sitting here today, you cannot give
13 me a number as to the diminution of the value of any
14 of Plaintiffs' property due to the alleged actions of
15 the Defendants, correct?

16 A The number is greater than zero and I do
17 not know the precise number greater than zero.

18 Q Okay. And you also cannot give me the
19 lost profits that the Plaintiffs have suffered?

20 A The lost profits would be -- would closely
21 approximate whatever that number is above zero that I
22 cannot give you definitively. So that is correct.

23 Q And the same with the amount of illegal
24 income that each Defendant that has allegedly
25 received, you don't know that amount?

¶

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1 A Defendants have not provided us with full
2 discovery.

3 Q Some of the Defendants have and I have
4 checked and I did provide you with the Airbnb
5 information a long time ago, or my predecessor did.

6 A Well, we received some discovery through,
7 I think, 2015 for some Defendants. It's obviously
8 2018.

9 Q Right.

10 A So a lot has transpired. And I don't
11 believe that was updated. I don't believe we've
12 received that. But also we have -- I don't believe
13 we received any tax returns showing this income on
14 anyone's --

15 property?

16 A Not by looking at their name, but by
17 looking at all of the information that we have.
18 Because their listings will say "three bedrooms."
19 Their listing will say "shared bedroom." So by
20 looking at their names and their listings, I could.
21 But not -- their -- I mean, there are a lot of
22 defendants I don't remember off the top of my head.

23 Q And just -- I know we've -- I just want to
24 confirm, can you identify any Defendant who has
25 property -- who owns property adjacent to any of the

?

160

1 Plaintiffs' property?

2 A No, I cannot.

3 Q Can you identify any Defendant who has
4 neighboring property to any of the Plaintiffs'
5 property?

6 A Well, all of them, because I define
7 neighboring as on The Peninsula. So yes. If you
8 defined it differently, if you say within a hundred
9 yards, I have no idea. But yes, neighboring, to me,
10 is The Peninsula.

11 Q Can you identify which Defendants have
12 damaged, as you allege, Charleston Development
13 Company versus which have damaged Charleston Housing
14 Company versus which have damaged NotSo Hostel?

15 A No, not by looking at their names. We can
16 identify them by the type of property that they have.
17 So looking at their listings and their names, I

25 Q Okay. I'm going to ask you the same

?

253

1 question about 177 Fishburne.

2 A Do you want to go over all of them? It's
3 the same answer.

4 Q I'm going to go through my five.

5 A Okay. We do not.

6 Q Okay. I'm going to ask you the same
7 question as 27 Ashe.

8 A We do not.

9 Q I'm going to ask you the same question as
10 to 229 Grove.

11 A We do not.

12 Q And the final one, as to 110 Peachtree?

13 A We do not.

14 Q Okay. And I understand what your position
15 is and I understand that your testimony earlier was
16 that you've got to engage an expert to look at all
17 this stuff, but there are no damages that you can
18 articulate to me today that have been caused to the
19 Plaintiffs by any of these Defendants that I
20 represent?

21 A Oh, well, that's not what you asked me.

22 So --

23 Q I'm asking a different question.

24 A So absolutely the number's more than zero.
25 Those Plaintiffs have all caused damage -- those

?

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1 Defendants have all caused damage to the Plaintiff or
2 I would not have named them in the suit.

3 Q And --

4 A I simply don't know the specific number
5 and I need -- so an expert will tell me to a
6 reasonable degree of certainty what he believes that
7 that number is with regard to every Defendant. But
8 we need full information in order to give him for the
9 analysis. It is an analysis. It's an analysis that
10 God knows how much money an expert charges for this
11 but presumably, they are thorough.

12 Q Okay. Again, I'm going to ask you this
13 question in --

14 A More than zero, but I don't know.

15 Q Okay. You can't articulate any actual
16 damages, other than you believe it's more than zero,
17 as to any of the five Defendants that I represent?

18 A Correct. I cannot give you a sum certain.

19 Q And I take it this -- now I'm really
20 beating a dead horse. You can't describe any benefit
21 that you've directly conferred or any of the
22 Plaintiffs have directly conferred other than what
23 you described earlier about the -- the cover provided
24 by the licensed?

25 A Correct.

¶

1 Q okay.

2 A which I believe is a benefit.

3 Q And in response to Nancy's question

8 A That is an element of the damage in a
9 Unfair Trade Practices case. So that could determine
10 that. I could go pull --

11 Q Do you have any other damages other than
12 attorney's fees for your Unfair Trade Practices Act
13 claim?

14 A Oh, absolutely.

15 Q What are they?

16 A The same as everything else.

17 Q Which is?

18 A I do not have a sum certain.

19 Q Okay.

20 A And we require an expert to know the
21 extent to which we have been damaged and the extent
22 to which each individual defendant damaged us.

23 Q And what are your Plaintiffs' unjust
24 enrichment damages?

25 A Well, the unjust enrichment, they have all

+

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1 unjustly enriched themselves. Every dollar they get
2 is an unjust enrichment. Now, is that an unjust
3 enrichment that is recoverable by us? I believe that
4 to the extent that we have been damaged it's
5 recoverable. A court may determine that it's more
6 than that. I don't know.

7 Q And why is it unjust?

8 A The ill-gotten gains from illegal
9 activities, I believe, are unjust.

10 Q It's you have unjust because they're not

11 zoned short-term rental?

12 A It's zoned because they're engaged in
13 illegal activity and they are taking money from folks
14 who are legal.

15 Q Illegal activity means they're violating a
16 zoning ordinance, right?

17 A It means they're violating -- in this
18 particular case, that is what it means.

19 Q In this particular case, unjust means
20 violating a zoning ordinance?

21 A Unjust means diverting money from folks
22 who are legal. That's what's unjust, because
23 of -- because they are violating a zoning ordinance.

24 Q If you can prove actually money was
25 diverted from you. Your premise is that somebody is

¶

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1 diverting money from you?

2 A Absolutely. Absolutely.

3 Q Okay. So is there any difference between
4 nuisance damages and unfair trade practices damages
5 other than the attorneys fees?

6 A I'm not sure that there is. I mean, that
7 would be a legal analysis.

8 Q Same for -- are the nuisance damages
9 different than the unjust enrichment damages?

10 A I don't believe -- I don't believe so.
11 But again, that would be a legal decision.

12 Q How about unjust enrichment damages
13 different from Unfair Trade Practice Act damages?

14 A I don't believe that those would be

11 hide or evade their addresses or their identities?

12 A Almost all of them. The only ones who
13 didn't were the very few who weren't up on the
14 obfuscation game in 2015. Since that time, all of
15 them.

16 Q So it's your contention that they were
17 trying to hide from you?

18 A It's my contention that they were trying
19 to hide from a pool of people of which these
20 companies are included.

21 Q okay. All right.

22 A Which is people who they know they are
23 damaging.

24 Q And how do you know that they know them?

25 A I assumed that they are reasonable people,

♀

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1 and maybe that assumption's incorrect. And I guess
2 we'll find out in their deposition whether they are
3 or not. So I don't know that as a matter of fact.

4 Q And you assume that reasonable people
5 agree with you, that somehow your companies have been
6 damaged?

7 A I...

8 Q That's kind of what you said, isn't it?

9 A Yeah.

10 Q Yeah, it is --

11 A And I think -- I think that's accurate. I
12 think it would be very difficult for someone to look
13 at the volume of illegals versus the volume of legals
14 and not say that every one of the legals was harmed

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15 by illegal activity. So yes, I think it would be
16 patently unreasonable --

17 Q Okay.

18 A -- for someone to hold that position. Not
19 that -- and people can hold whatever position they
20 want. We have a president who holds interesting
21 positions.

22 Q Well, for example, you know, we talk about
23 what's reasonable in terms of what people believe.
24 And some people might think that in more than two
25 years of litigation you might have an actual number

‡

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1 as to what your damages might be. That might be
2 reasonable too, right?

3 A I'm certain you would find maybe three or
4 four people in this room who would think that. I
5 don't know. You could poll them. But I have no
6 idea.

7 Q Yeah. Let's talk a little bit about
8 unjust enrichment, all right. That's one of the four
9 causes of action that your three Plaintiffs alleged;
10 is that correct?

11 A I believe so.

12 Q Okay. And I think you asked -- you
13 answered Ms. Bloodgood's question -- and I'm not
14 trying to put words in your mouth or mischaracterize
15 what you said. But that to the extent that any of
16 these people who are operating outside of the either
17 operating in the zone without the proper licensing

25

051518RH
MR. TRUNDY: Object to the form.

¶

100

1

THE WITNESS: I don't believe I

2

have -- other than as a citizen going to a planning

3

commission hearing and making a public -- making my

4

public opinion known, I don't have any standing to

5

object to any zoning change that -- that anyone on

6

the planet would want to make to their property.

7

BY MS. BLOODGOOD:

8

Q Do you contend that you have standing to

9

bring this lawsuit due to increased competition?

10

A Increased illegal competition; yes, not

11

increased competition. I don't believe we've sued

12

anyone who's operating legally.

13

Q And is this your personal opinion that

14

when you differentiate between legal and illegal

15

competition, or do you have a basis for that belief?

16

MR. TRUNDY: I'll object to the form.

17

THE WITNESS: Do I have a basis for belief

18

of what an illegal competitor is?

19

BY MS. BLOODGOOD:

20

Q No. You say you have standing due to

21

increased illegal competition but not due to

22

increased competition -- legal competition.

23

A I don't believe -- I don't believe I could

24

sue a competitor of mine who is operating legally.

25

Q Okay.

¶

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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS
Global Real Property Trust

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NUMBER: 2015-CP-10-05415

Darryl J. Damico, et al

FILED

2016 MAR -3 PM 1:00

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

JULIE J. ARMSTRONG
CLERK OF COURT

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other Dismissed without prejudice
- ☐ **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:

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: Motion to Dismiss is DENIED.

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
		\$
		\$
		\$

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 [Signature] Judge Code 2164 Date February 22, 2016

For Clerk of Court Office Use Only

This judgment was entered on the ____ day of ____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this ____ day of ____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

Sean Kevin Trundy

Christopher Inglese
Paul Lynch
David Marvel

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

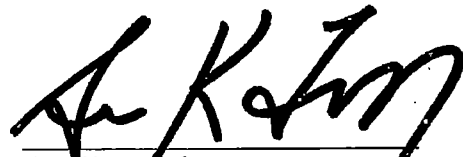
Court Reporter

Clerk of Court

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.

However, the undersigned cannot certify that the Record on Appeal complies with Rule 210, SCACR. Appellants and Respondents have disagreed on the content but agreed that the most efficient route is to address those disagreements after this Court has ruled.



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ATTORNEY FOR APPELLANTS

June 10, 2019

Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Charleston Development Company, LLC, Charleston
Housing Company, LLC and NotSo Hostel, LLC,
Appellants,

v.

Younesse Alami, Simon M. Adell, Matthew Anderson,
Matthew Asher, Daniel Baker, Marie Baker, Matthew
and Christina Bare, Andre Bauer, Peter Bierce, Brandon
Blount, Barbara Brass, Richard T. Brewer, Sigrid Anne
Eilertson, Reginald P. Brown, IV, Mary Cahill, Ryan
Cockrell, Kevin and Virginia Conlon, Anne Marie
Crevar, Christina Cross, Darryl J. Damico, Labar Daniel,
Stephen Darwak, Lindsay Davenport, Mary Dickerson,
Maxwell Streeter, Kathleen Dougherty, David Dressman,
Anna Dressman, Michael Elder, Christopher Scott
Farley, Michele Ghastin, Timnah Giller, Virginia Geller,
Ryan Gilreath, Sonya Gilreath, Kimberly Glenn, Shaun
Halsor, Josephine Rex, Arthur Halvorson, Andrew
Halvorson, Linda Hancock, Laura Hyatt, Mike Hartel,
Nathan Herring, James Hicks, Jr., Laurie Hicks, Preston
G. Hipp, Colin Jones, Matthew F. Jones, Robert C. Jones,
Robin Joseph, Molly Keeler, John Kenny, Mandi
Walters, Abigail King, Aaron Kless, Laurie Kramer,
Robert Kramer, Allison Kreutzer, Benjamin Levitt,
Richard Levitt, Jesse Lutz, Nikou Manouchehri, Thomas
Naselaris, Zoe Naselaris, Beau O'Steen, Cori O'Steen,
Lance Parr, Brandon Perdue, Amanda Lee Raymer,
Hadassah Rothenberg, Daniel Ryan, Kimberly Bowlin,
Kevin Schnittker, Ginger Scofield, Inderjit Singh, Avtar
Singh, Alecia Stevens, Lee Stevens, Justin Swan,
Merrick Teichman, John Van Vlack, Jr., William
Waterhouse, Jennifer Waterhouse, Anne Wohlfeil, Bryan
Young, AJB Trust, Anthony & Jacqueline Bradley,
Trustees, Hartshorn Family Trust, Helene Kenny/Bridget
Kenny Revocable Trust, Wilhelmina M. Wieters Life

Estate Childrens Trust, 33 Bogard Street LLC, 249 Cumming, LLC, 253 Coming Street LLC, 259 East Bay LLC, 259 East Bay 10 B LLC, 272 D Coming St. LLC, Café International, Inc., Corner At Old Canton, LLC, Geer Interests LLC, Kit Properties LLC, Lambert-Weiss LLC, The Naws LLC, New Lease Capital LLC, One Henrietta LLC, Periwinkle Partners, LLC, Porch Properties LLC, Westbury Properties, LLC, and Westendorff Hardware LLC, Defendants,

Of whom Younesse Alami, Simon M. Adell, Matthew Anderson, Matthew Asher, Andre Bauer, Peter Bierce, Brandon Blount, Reginald P. Brown, IV, Mary Cahill, Ryan Cockrell, Kevin and Virginia Conlon, Anne Marie Crevar, Darryl J. Damico, Stephen Darwak, Lindsay Davenport, Mary Dickerson, Maxwell Streeter, Kathleen Dougherty, David Dressman, Anna Dressman, Michael Elder, Christopher Scott Farley, Michele Ghastin, Ryan Gilreath, Sonya Gilreath, Kimberly Glenn, Shaun Halsor, Josephine Rex, Laura Hyatt, Nathan Herring, James Hicks, Jr., Laurie Hicks, Preston G. Hipp, Colin Jones, Matthew F. Jones, Robert C. Jones, Robin Joseph, Molly Keeler, John Kenny, Abigail King, Aaron Kless, Laurie Kramer, Robert Kramer, Allison Kreutzer, Jesse Lutz, Thomas Naselaris, Zoe Naselaris, Beau O'Steen, Cori O'Steen, Lance Parr, Brandon Perdue, Hadassah Rothenberg, Daniel Ryan, Kimberly Bowlin, Kevin Schnittker, Ginger Scofield, Alecia Stevens, Justin Swan, Merrick Teichman, John Van Vlack, Jr., William Waterhouse, Jennifer Waterhouse, Anne Wohlfeil, Bryan Young, Helene Kenny/Bridget Kenny Revocable Trust, 259 East Bay LLC, 259 East Bay 10 B LLC, Corner At Old Canton, LLC, Kit Properties LLC, The Naws LLC, One Henrietta LLC, Periwinkle Partners, LLC, Porch Properties LLC, Westbury Properties, LLC, and Westendorff Hardware LLC, are the Respondents.

Appellate Case No. 2018-001766

Appeal From Charleston County
R. Markley Dennis, Jr., Circuit Court Judge

Opinion No. 5826
Heard April 15, 2021 – Filed June 23, 2021

AFFIRMED

Sean Kevin Trundy, of Sean Kevin Trundy, LLC, of Charleston, for Appellants.

Mallary Lauren Scheer, of Mallary L. Scheer, Attorney at Law, LLC, of Charleston; Michael Ashley Whitsitt, of The Whitsitt Law Firm, of Mount Pleasant; Nancy Bloodgood, of Bloodgood & Sanders, LLC, of Mount Pleasant; Lucy Clark Sanders, of Bloodgood & Sanders, LLC, of Mount Pleasant; Mary Lee Briggs, of Briggs & Ingles, LLC, of North Charleston; Gregory Kenneth Voigt, of Voigt Murphy, LLC, of Charleston; David B. Marvel, of Marvel Et Al, LLC, of Charleston; Christopher L. Murphy, of Murphy Law Offices, LLC, of Charleston; Daniel Carson Boles, of Boles Law Firm, LLC, of Charleston; and Stafford John McQuillin, III, of Haynsworth Sinkler Boyd, PA, of Charleston, all for Respondents.

THOMAS, J.: This appeal arises from multiple lawsuits against property owners in Charleston alleging the owners' illegal short-term rental businesses damaged the legal short-term rental businesses of Charleston Development Company, LLC, Charleston Housing Company, LLC, and NotSo Hostel, LLC, (collectively, Appellants). Appellants appeal the trial court's grant of summary judgment to all defendants (some of whom are Respondents), arguing the trial court erred in granting summary judgment against their (1) claim under City of Charleston Ordinance § 54-905; (2) claim for violation of the South Carolina Unfair Trade Practices Act (SCUTPA); and (3) nuisance claim. They also argue they are entitled to the video-taped depositions of Respondents. We affirm.

FACTS

In 2012, the City of Charleston created a special overlay zone district to allow for short-term rentals via Ordinance § 54-120 and Ordinance § 54-202.¹ Most other areas of the City prohibit short-term rentals. The City's zoning ordinance defines a short-term rental as a lease in duration between 1 and 29 days.

Appellants filed four lawsuits in 2015 alleging Respondents violated the City's zoning ordinance regarding short-term rentals. Appellants asserted Respondents' unlicensed businesses damaged Appellants because Respondents competed unfairly with Appellants' businesses and other legally-operating short-term businesses, which cost Appellants income. They asserted the unlicensed businesses displaced residents and drove up the cost of housing. Appellants further asserted Respondents' businesses constituted a nuisance because they deprived Appellants of the full financial enjoyment of their properly-licensed properties.

After being transferred to the Business Court Pilot Program, the court granted summary judgment to Respondents in all four cases based on Appellants' lack of standing and allowed Appellants to amend and consolidate their complaints. Appellants filed an amended complaint, alleging causes of action for nuisance, unjust enrichment, and violations of the City's zoning ordinance and the SCUTPA.²

Respondents filed a joint motion for summary judgment. After a hearing, the trial court granted summary judgment to Respondents on all of Appellants' causes of action. The trial court found Appellants had not appealed any decision of the City of Charleston Zoning Administrator to the City of Charleston Board of Zoning Appeals. The court also found there was no contractual relationship between the parties, Appellants were not affected in any personal and individual manner, and Appellants were not damaged any more than any other property owner who legally rented their property on a short-term basis. Further, the court found Appellants lacked standing to sue because none of them were adjacent or neighboring property owners to Respondents.

¹ According to Appellants, prior to 2012 "no non-hotel private property owners, with the exception of a few bed & breakfast operators, were allowed to rent out their property for less than 30 days at a time."

² Appellants do not appeal the grant of summary judgment on their unjust enrichment cause of action.

Appellants' motion for reconsideration was denied without a hearing. This appeal followed.

STANDARD OF REVIEW

"When reviewing the grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRCP." *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). Summary judgment is proper if "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. "In determining whether any triable issues of fact exist for summary judgment purposes, the evidence and all the inferences that can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party." *Med. Univ. of S.C. v. Arnaud*, 360 S.C. 615, 619, 602 S.E.2d 747, 749 (2004). Our supreme court has established "[t]he plain language of Rule 56(c) mandates the entry of summary judgment . . . against a party who fails to make a showing sufficient to establish the existence of an element essential to the party's case, and on which that party will bear the burden of proof." *Hansson v. Scalise Builders of S.C.*, 374 S.C. 352, 357-58, 650 S.E.2d 68, 71 (2007) (alteration in original) (quoting *Baughman v. Amer. Tel. & Tel. Co.*, 306 S.C. 101, 116, 410 S.E.2d 537, 545-46 (1991)).

LAW/ANALYSIS

I. Ordinance § 54-905

Appellants argue the trial court erred in granting Respondents' motion for summary judgment on Appellants' claim under the City's Ordinance § 54-905. We disagree.

The City's Zoning Ordinances are developed pursuant to state law. *See* S.C. Code Ann. § 6-29-340(B)(2)(a) (2004) (providing "[i]n the discharge of its responsibilities, the local planning commission has the power and duty to: . . . (2) prepare and recommend for adoption to the appropriate governing authority or authorities as a means for implementing the plans and programs in its area: (a) zoning ordinances to include zoning district maps and appropriate revisions thereof . . ."). The South Carolina Local Government Comprehensive Planning Enabling Act (the "Planning Act") states in pertinent part:

In case a building, structure, or land is or is proposed to be used in violation of any ordinance adopted pursuant to this chapter, the zoning administrator or other appropriate administrative officer, municipal or county attorney, or other appropriate authority of the municipality or county or an adjacent or neighboring property owner who would be specially damaged by the violation may in addition to other remedies, institute injunction, mandamus, or other appropriate action or proceeding to prevent the unlawful erection, construction, reconstruction, alteration, conversion, maintenance, or use, or to correct or abate the violation, or to prevent the occupancy of the building, structure, or land.

S.C. Code Ann. § 6-29-950(A) (2004). "In short, under section 6-29-950 a specially damaged, adjacent or neighboring property owner can bring an action for an injunction based on an alleged violation of a zoning ordinance." *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 79, 753 S.E.2d 846, 852 (2014).

There are two sections of the City's Zoning Ordinance that reflect and implement this state statute, Ordinance § 54-904 and Ordinance § 54-905. Ordinance § 54-904, titled "Procedure when enforcement or interpretation questioned; appeals to court," states:

It is the intent of this Chapter that all questions arising in connection with the enforcement or interpretation of this Chapter, except as otherwise provided, shall be presented to the Board of Zoning Appeals, and, that from decisions of the Board of Zoning Appeals, recourse shall be to the courts as provided by law.

Ordinance § 54-905, titled "Remedies for violations," states:

Whenever a building or structure is demolished, erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is used in violation of this Chapter, the city engineer or any other appropriate authority, or any property owner, who would be damaged by such violations, in addition to other

remedies, may institute injunction, mandamus, or other appropriate action in proceeding to prevent the violation in case of such building, structure or land.

In *Carnival*, several citizens groups filed suit against Carnival, a cruise ship operator, alleging nuisance and zoning claims and seeking an injunction. 407 S.C. at 71, 753 S.E.2d at 848. The plaintiffs' claims were based on alleged violations of the City of Charleston's ordinances, including violations of the City's noise ordinance, sign ordinance, height limitations, and impermissible use, as well as violations of the South Carolina Pollution Control Act. *Id.* at 73, 753 S.E.2d at 849. Our supreme court, in its original jurisdiction, unanimously dismissed the plaintiffs' complaint in its entirety. *Id.* at 81, 753 S.E.2d at 853. The court held the plaintiffs lacked standing to sue because the plaintiffs, including two nearby historic neighborhood associations and a non-profit organization, were not specially damaged nor were they adjacent or neighboring property owners. *Id.* at 78-79, 753 S.E.2d at 852. The court, interpreting S.C. Code Ann. § 6-29-950, thus enunciated a two-part test to determine standing in the context of claims based on alleged zoning violations. *Id.* at 79, 753 S.E.2d at 852. First, a plaintiff must be "specially damaged" and second, a plaintiff must be "an adjacent or neighboring property owner." *Id.* A plaintiff is "specially damaged" when it has suffered a particularized injury distinct from that suffered by the public generally. *Id.* A particularized harm occurs when the allegations "affect the [p]laintiff in a personal and individual way." *Id.* at 75, 753 S.E.2d at 850.

The trial court found the facts in this case were similar to *Carnival*. It then found Appellants failed both parts of the two-part standing test set forth in *Carnival*. First, Appellants were not "specially damaged" because the damages alleged in their complaint were not particular to Appellants, and there was no evidence Appellants suffered damages separate and apart from the public. The court stated, "No facts have been produced by [Appellants] to support the contention that they have been damaged differently from any other short-term rental businesses, including hotels and bed & breakfasts, or property owners in general, that may be affected by the alleged conduct of [Respondents]." In fact, the court found there was no evidence in the record of any damages at all. Bob Holt, the Trustee of Global Real Property Trust and the Chairman of each of the Appellants, testified he had not yet hired an expert to determine the damages and he did not know how an expert would determine damages. Further, Holt had not had any recent appraisals done of Appellants' properties. The court stated, "At the time [Appellants] filed suit, during the last three years, and currently, [Appellants] cannot ascertain their damages other than [Holt]'s belief that it is 'reasonable' to

assume [Respondents'] actions have caused [Appellants'] damages." Thus, the court held "Holt's conjecture [was] insufficient as a matter of law to establish damages," and "[t]here [was] simply no evidence in the record of any nexus between [Appellants'] allegations of damages and any act on the part of any named [Respondent]." The court concluded, "A [c]ourt cannot possibly provide complete relief to these parties if [Respondents] would be subject to suits for damages by neighboring property owners, bed and breakfast[] businesses, other short term rental businesses or hotels even after the termination of the present litigation. Therefore, the damages alleged to have been suffered by [Appellants] (assuming arguendo they could ever be proven with any specificity) are not particular to [Appellants] and are not separate and apart from generalized damages that affect the community at large so [Appellants] have no standing."

Second, the trial court found none of the Appellants were "adjacent or neighboring property owners," and Appellants admitted they are not adjacent property owners to Respondents. The court noted Appellants contended they were "neighboring properties," but found this argument failed as a matter of law. Appellants did not allege in their amended complaint that any of their short-term rental property was "neighboring" to any of Respondents' properties. Holt testified in his deposition that everyone who lives on the peninsula of Charleston are neighbors, and he had no idea if any of Respondents' properties were located within 100 yards of any of Appellants' properties. The court noted the term "neighboring property" is not defined in the City's Zoning Ordinance. However, Ordinance § 54-904 states, "It is the intent of this Chapter that all questions arising in connection with the enforcement or interpretation of this Chapter, except as otherwise expressly provided, shall be presented to the Board of Zoning Appeals" The court stated Holt testified in his deposition he did not appeal to the City Board of Zoning Appeals. Therefore, the court found Holt's personal belief as to what the term "neighboring property" means was irrelevant, and there was no evidence in the record that any of Appellants' properties were a neighboring property to any of Respondents' properties.

Additionally, the trial court found the public importance exception to standing did not apply in this case to grant Appellants standing. "For a court to relax general standing rules, the matter of importance must, in the context of the case, be inextricably connected to the public need for court resolution for future guidance." *ATC S., Inc. v. Charleston Cnty.*, 380 S.C. 191, 199, 669 S.E.2d 337, 341 (2008). "The key to the public importance analysis is whether a resolution is needed for future guidance." *Id.* "It is this concept of 'future guidance' that gives meaning to an issue which transcends a purely private matter and rises to the level of public

importance." *Id.* Holt testified this case was a matter of public importance because "the wholesale ignoring of the zoning ordinances is not good for society." The trial court stated there was nothing of public importance about Appellants' contention that they were damaged by illegal short-term renters unfairly competing with them. Further, the court found Appellants did not allege and offered no evidence indicating the court's decision regarding the City's failure to enforce its short-term rental ordinance was a matter that must be decided to provide future guidance to the court.

Finally, the trial court found Appellants had not exhausted their administrative remedies because they had not appealed any decision of the Zoning Administrator to the Board of Zoning Appeals. Ordinance § 54-904 requires a person aggrieved to seek enforcement of a zoning ordinance first through the Zoning Administrator, with an appeal to the Board of Zoning Appeals and then to Circuit Court. Appellants asserted they were relying on § 54-905, which permits persons damaged by another person's use of their property to seek injunctive relief. However, the trial court found Appellants could not rely on § 54-905 to address enforcement of a zoning violation because enforcement of the zoning ordinance is governed by § 54-904, not § 54-905. Appellants admitted they were asking the court to enforce the short-term rental ordinance because the City was not enforcing it. Thus, the court held Appellants "cannot circumvent the exhaustion of administrative remedies requirement by seeking to challenge the enforcement of a zoning ordinance under [§] 54-905 rather than [§] 54-904[,] which is the ordinance that addresses enforcement." Furthermore, the court found even if § 54-905 could be used by Appellants to challenge the enforcement of the short-term rental ordinance, the only relief afforded to them by this section is injunctive relief and a necessary element of injunctive relief is irreparable harm. Holt testified in his deposition that he was not sure if any irreparable injury was suffered by Appellants, and he also asserted Appellants were entitled to monetary damages. Because Appellants admitted they were not sure if they had irreparable damages and they were seeking monetary damages, the court found they were not entitled to injunctive relief and could not prevail under § 54-905.

We find Appellants failed to present evidence of their damages. Holt was deposed and testified he was the person most knowledgeable about the allegations in the lawsuit. Appellants assert Holt's testimony about the value of Appellants' properties and the diminution in their value was admissible because he is the chairman of each of the Appellants. In his deposition, Holt stated, "We know what has occurred at our property and we have an idea of what has occurred at [Respondents'] properties, but we do not know as a matter of certainty. And that is

absolutely necessary for us in order to calculate and determine our damages." Holt testified, "[I]t is my hope that the expert that we hire appraises the property as is today and then says, [h]ere is what the property would be worth if there were not all these illegals, if [Respondents] were not doing what [Respondents] were doing. That is my hope." He testified the only property owners in the City that were damaging Appellants were the illegal short-term renters, not the legal short-term renters. Appellants' attorney asked Holt, "Sitting here today, you cannot give me a number as to the diminution of the value of any of [Appellants'] property due to the alleged actions of [Respondents], correct?" Holt responded, "The number is greater than zero and I do not know the precise number greater than zero." Appellants' attorney then asked Holt, "And you also cannot give me the lost profits that [Appellants] have suffered?" Holt answered, "The lost profits would be — would closely approximate whatever that number is above zero that I cannot give you definitively. So that is correct."

However, Holt stated in an affidavit submitted a month after his deposition that in his personal opinion, the total diminution in value of all the Appellants' properties was \$2,200,000 as a result of illegal competition by Respondents. The trial court stated it did not rely on Holt's affidavit because he was not identified as an expert witness, it failed to indicate any nexus between Respondents' actions and Appellants' damages, failed to state any evidence that Respondents' actions were the proximate cause of any of Appellants' damages, and failed to offer evidence that any damage Appellants contend they suffered was caused by any specific Respondent.

"No peculiar ability or specialized training is required to enable a witness to testify as to his opinion of the value of property with which he is acquainted." *S.C. State Highway Dep't v. Hines*, 234 S.C. 254, 259, 107 S.E.2d 643, 645 (1959). The "[d]ecision as to his competency in such a matter rests largely in the discretion of the trial judge, the extent of his experience going not so much to his competency as to the weight of his testimony." *Id.* "For people other than the owner of real property to give their opinion as to the value of real property, it must be shown they are competent." *Oaks at Rivers Edge Prop. Owners Ass'n v. Daniel Island Riverside Devs., LLC*, 420 S.C. 424, 448, 803 S.E.2d 475, 488 (Ct. App. 2017). "[T]he source of his knowledge must be revealed to remove his opinion from the realm of mere conjecture. A bare declaration of his knowledge of the value of the property is insufficient." *Rogers v. Rogers*, 280 S.C. 205, 209, 311 S.E.2d 743, 746 (Ct. App. 1984). "The fact finder must determine the weight to be accorded the testimony of the witnesses, and accept or reject their valuations." *Dixon v. Besco Eng'g, Inc.*, 320 S.C. 174, 181, 463 S.E.2d 636, 640 (Ct. App. 1995).

Viewing the evidence in the light most favorable to Appellants, we find Appellants failed to present evidence of their damages. Although Holt may testify to the value of property, he provided no explanation for how he determined what the approximate value of the property would be if there was no illegal competition. Therefore, the trial court did not err in granting Respondents' motion for summary judgment on Appellants' claim under Ordinance § 54-905.

II. SCUTPA

Appellants argue the trial court erred in granting Respondents' motion for summary judgment on Appellants' claim for violation of the SCUTPA. We disagree.

"An action for damages may be brought under SCUTPA for 'unfair methods of competition and unfair or deceptive acts or practices' in the conduct of trade or commerce." *Camp v. Springs Mortg. Corp.*, 310 S.C. 514, 517, 426 S.E.2d 304, 306 (1993) (quoting S.C. Code Ann. § 39-5-20(a) (1985)). "Any person who suffers any ascertainable loss of money or property, real or personal, as a result of the use or employment by another person of an unfair or deceptive method, act or practice declared unlawful by § 39-5-20 may bring an action individually, but not in a representative capacity, to recover actual damages." S.C. Code Ann. § 39-5-140(a) (1985).

The trial court found Holt testified there was no sum certain amount of money owed to Appellants as damages for their claim under the SCUTPA. Holt testified none of the Appellants' properties have decreased in value because they are all located in downtown Charleston. The trial court also found Appellants produced no evidence that any of the Respondents' actions were the proximate cause of any damage to any of the Appellants.

Viewing the evidence in the light most favorable to Appellants, we find Appellants failed to present evidence of their damages. Therefore, the trial court did not err in granting Respondents' motion for summary judgment on Appellants' claim for violation of the SCUTPA.

III. Nuisance Claim

Appellants argue the trial court erred in granting Respondents' motion for summary judgment on Appellants' private nuisance claim. We disagree.

"A private nuisance is anything done to the hurt or annoyance of the lands, tenements, or hereditaments of another. It produces damage to but one or two persons, and cannot be said to be public."³ *Deason v. Southern Ry. Co.*, 142 S.C. 328, 334, 140 S.E. 575, 577 (1927); *see also Babb v. Lee Cnty. Landfill SC, LLC*, 405 S.C. 129, 138, 747 S.E.2d 468, 473 (2013) (stating a nuisance is a real injury to a man's lands and tenements and a private nuisance is anything done to the hurt or annoyance of the lands, tenements, or hereditaments of another); *Blanks v. Rawson*, 296 S.C. 110, 113, 370 S.E.2d 890, 892 (Ct. App. 1988) ("A nuisance has been defined as 'anything which works hurt, inconvenience, or damages; anything which essentially interferes with the enjoyment of life or property.'" (quoting *Strong v. Winn-Dixie Stores*, 240 S.C. 244, 253, 125 S.E.2d 628, 632 (1962))). "Generally, a private nuisance is that class of wrongs that arises from the unreasonable, unwarrantable, or unlawful use by a person of his own property, personal or real." *O'Cain v. O'Cain*, 322 S.C. 551, 561, 473 S.E.2d 460, 466 (Ct. App. 1996).

"[A] use of property which does not create a nuisance cannot be enjoined or a lawful structure abated merely because it renders neighboring property less valuable." *Winget v. Winn-Dixie Stores, Inc.*, 242 S.C. 152, 164, 130 S.E.2d 363, 369 (1963) (citation omitted). "If there is no public or private nuisance created in the use of property, no recovery of damages can be allowed for the diminution in value of the property by reason of the lawful use of such property made by a near-by owner." *Id.*; *see also Strong*, 240 S.C. at 257, 125 S.E.2d at 634 ("The trial court found that the value of the plaintiffs' property for residential purposes will be depreciated. Such findings, standing alone, and not supported by other findings showing that the defendant is maintaining, or is about to maintain, a nuisance, will not support the judgment. In many instances in populous neighborhoods the property of one person is depreciated by the near proximity of the property of another. Such burdens are ordinary incidents to residence and ownership in a city." (quoting *Dean v. Powell Undertaking Co.*, 203 P. 1015, 1018 (Cal. Dist. Ct. App. 1921))).

The trial court found Holt testified at his deposition that Appellants' ability to make money is the enjoyment of their property, and the Respondents' rentals which affected their income is the damage they suffered under their nuisance cause of action. The court found there was no evidence in the record to support any nexus

³ According to Black's Law Dictionary, a tenement is "a house or other building used as a residence" and a hereditament is "real property; land." *Black's Law Dictionary* (7th ed. 1999).

between Respondents' actions and Appellants' argument that their land would be worth more today were it not for Respondents' actions. Thus, the court found Appellants' private nuisance claim failed.

Viewing the evidence in the light most favorable to Appellants, we find Appellants failed to present evidence of their damages. Appellants claimed their properties were worth less money because of the Respondents' short-term rentals; however, Appellants presented no evidence to support their argument. Therefore, the trial court did not err in granting Respondents' motion for summary judgment on Appellants' claim for a private nuisance.

IV. Video-Taped Depositions

Appellants argue they are entitled to the video-taped depositions of Respondents. We decline to address this issue.

Appellants filed a motion to compel video-taped depositions of Respondents. After a hearing, the trial court granted summary judgment to Respondents, on all causes of action, without ruling on Appellants' motions to compel discovery responses and to compel the video-taped depositions of Respondents. The trial court denied Appellants' motion for reconsideration without a hearing. Appellants state the trial court held in abeyance Appellants' motion to compel discovery responses from Respondents. That motion has not been ruled upon by the trial court.

Appellants request this court, in the interest of judicial economy, rule they are entitled to take video-taped depositions of Respondents because if this court reverses the trial court's order, this video-tape deposition issue will arise again. Because we affirm the trial court's grant of Respondents' motion for summary judgment, we need not address this issue. *See Futch v. McAllister Towing of Georgetown, Inc.*, 335 S.C. 598, 613, 518 S.E.2d 591, 598 (1999) (holding an appellate court need not review remaining issues when its determination of another issue is dispositive of the appeal).

CONCLUSION

Accordingly, the decision of the trial court is

AFFIRMED.

WILLIAMS and HILL, JJ., concur.

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Jr., Circuit Court Judge

Case No. 15-CP-10-5415

Charleston Development Company, LLC, Charleston Housing Company, LLC and NotSo
Hostel, LLC,

Appellants,

v.

Younesse Alami, Simon M. Adell, Matthew Anderson, Matthew Asher, Daniel Baker, Marie Baker, Matthew and Christina Bare, Andre Bauer, Peter Bierce, Brandon Blount, Barbara Brass, Richard T. Brewer, Sigrid Anne Eilertson, Reginald P. Brown IV, Mary Cahill, Ryan Cockrell, Kevin and Virginia Conlon, Anne Marie Crevar, Christina Cross, Darryl J Damico, Labar Daniel, Stephen Darwak, Lindsay Davenport, Mary Dickerson, Maxwell Streeter, Kathleen Dougherty, David Dressman, Anna Dressman, Michael Elder, Christopher Scott Farley, Michele Ghastin, Timnah Giller, Virginia Geller, Ryan Gilreath, Sonya Gilreath, Kimberly Glenn, Shaun Halsor, Josephine Rex, Arthur Halvorson, Andrew Halvorson, Linda Hancock, Laura Hyatt, Mike Hartel, Nathan Herring, James Hicks Jr., Laurie Hicks, Preston G Hipp, Colin Jones, Matthew F. Jones, Robert C. Jones, Robin Joseph, Molly Keeler, John Kenny, Mandi Walters, Abigail King, Aaron Kless, Laurie Kramer, Robert Kramer, Allison Kreutzer, Benjamin Levitt, Richard Levitt, Jesse Lutz, Nikou Manouchehri, Thomas Naselaris, Zoe Naselaris, Beau O'Steen, Cori O'Steen, Lance Parr, Brandon Perdue, Amanda Lee Raymer, Hadassah Rothenberg, Daniel Ryan, Kimberly Bowlin, Kevin Schnittker, Ginger Scofield, Inderjit Singh, Avtar Singh, Alecia Stevens, Lee Stevens, Justin Swan, Merrick Teichman, John Van Vlack, Jr, William Waterhouse, Jennifer Waterhouse, Anne Wohlfeil, Bryan Young, AJB Trust, Anthony & Jacqueline Bradley, Trustees, Hartshorn Family Trust, Helene Kenny / Bridget Kenny Revocable Trust, Wilhelmina M. Wieters Life Estate Childrens Trust, 33 Bogard Street LLC, 249 Cumming, LLC, 253 Coming Street LLC, 259 East Bay LLC, 259 East Bay 10 B LLC, 272 D Coming St. LLC, Café International, Inc., Corner At Old Canton, LLC, Geer Interests LLC, Kit Properties LLC, Lambert-Weiss LLC, The Naws LLC, New Lease Capital LLC, One Henrietta LLC, Periwinkle Partners, LLC, Porch Properties LLC, Westbury Properties, LLC, and Westendorff Hardware LLC,

Defendants,

Of whom

Younesse Alami, Simon M. Adell, Matthew Anderson, Matthew Asher, Andre Bauer, Peter Bierce, Brandon Blount, Reginald P. Brown IV, Mary Cahill, Ryan Cockrell, Kevin and Virginia Conlon, Anne Marie Crevar, Darryl J Damico, Stephen Darwak, Lindsay Davenport, Mary Dickerson, Maxwell Streeter, Kathleen Dougherty, David Dressman, Lindsay Davenport, Kathleen Dougherty, David Dressman, Anna Dressman, Michael Elder, Christopher Scott Farley, Michele Ghastin, Ryan Gilreath, Sonya Gilreath, Kimberly Glenn, Shaun Halsor, Josephine Rex, Laura Hyatt, Nathan Herring, James Hicks Jr., Laurie Hicks, Preston G Hipp, Colin Jones, Matthew F. Jones, Robert C. Jones, Robin Joseph, Molly Keeler, John Kenny, Abigail King, Aaron Kless, Laurie Kramer, Robert Kramer, Allison Kreutzer, Jesse Lutz, Thomas Naselaris, Zoe Naselaris, Beau O'Steen, Cori O'Steen, Lance Parr, Brandon Perdue, Hadassah Rothenberg, Daniel Ryan, Kimberly Bowlin, Kevin Schnittker, Ginger Scofield, Alecia Stevens, Justin Swan, Merrick Teichman, John Van Vlack, Jr, William Waterhouse, Jennifer Waterhouse, Anne Wohlfeil, Bryan Young, Helene Kenny / Bridget Kenny Revocable Trust, 259 East Bay LLC, 259 East Bay 10 B LLC, Corner At Old Canton, LLC, Kit Properties LLC, The Naws LLC, One Henrietta LLC, Periwinkle Partners, LLC, Porch Properties LLC, Westbury Properties, LLC, and Westendorff Hardware LLC are

Respondents.

APPELLANTS' PETITION FOR REHEARING

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CITATION OF AUTHORITIES

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I. INTRODUCTION.

The Court of Appeals should grant a rehearing, withdraw its June 23, 2021 decision (“the Opinion”), and reverse the trial court, because several points have been overlooked or misapprehended by the Court and because the Opinion’s holdings are in conflict with prior decisions of the South Carolina Supreme Court.

While the trial court listed numerous reasons for granting summary judgment, and this Court has extensively quoted the Order, the Opinion rests on only one ground: “Viewing the evidence in the light most favorable to Appellants, we find Appellants failed to present evidence of their damages.” The Court has applied this erroneous conclusion to all three of the Plaintiffs’ separate causes of action.

The Court’s Opinion conflicts with Supreme Court precedent in the following ways:

- (1) The Opinion misapprehends the standard of review by overlooking the “mere scintilla of evidence” rule and misapplying the “light most favorable” rule.
- (2) The Opinion misapprehends a property owner’s right to testify about damages and misapprehends the standard regarding affidavits.
- (3) The Opinion overlooks the fact that the Plaintiffs’ motion to compel discovery responses, pivotal to the Plaintiffs’ ability to calculate the full extent of their damages, was never ruled upon.
- (4) The Opinion overlooks or misapprehends the City of Charleston’s decision to enact an ordinance which gives the Plaintiffs statutory standing.

The Opinion conflicts with clear and longstanding Supreme Court precedent, usurps the provinces of the jury and of the City of Charleston, and has the effect of sanctioning admittedly

illegal business activity.

II. THE OPINION CONFLICTS WITH SUPREME COURT RULINGS REGARDING THE STANDARD OF REVIEW.

At the hearing, the trial court correctly analyzed the damages issue at the summary judgment stage:

And, also, the deponent testified -- and I think this is the most important, and I would just like to go quickly through it, that he didn't know -- in his deposition, he testified he did not know what his damages were, but this affidavit then goes into detail about what he thinks his affidavit -- his damages are, and it goes from zero to 3.8 million, and I will leave this with you.

THE COURT: You don't need to. I have -- I cannot believe how many times this has come up in my career as a judge. **Quite frankly, you just stated an issue of fact, . . .**
(R. p. 213, lines 15-25; emphasis added).

The Supreme Court -- and I'll never forget, Randy Bell was still alive because he asked me, he said, why do you get to decide whether that's true or not? And therein lies the problem, so thank you. I don't need --

MS. BLOODGOOD: You don't want to hear the damages?

THE COURT: I don't want to hear the damages. **That's an issue of fact.**

MS. BLOODGOOD: Just for the record, I do believe it's a sham affidavit.

THE COURT: Again, Ms. Bloodgood, you're wasting your breath. That has not a thing in the world to do with the summary judgment. I appreciate it. That's a great jury argument, but it doesn't impress me, okay?
(R. p. 214, lines 7-21; emphasis added).

The trial court's oral statement was accurate. Its written order and this Court's Opinion are in conflict with S.C. Supreme Court precedent.

A. The Opinion conflicts with the Supreme Court's rulings regarding a mere scintilla of evidence.

In both Turner v. Milliman, 392 S.C. 116, 708 S.E.2d 766 (2011) and Hancock v. Mid-South Management Co., Inc., 381 S.C. 326, 673 S.E.2d 801, 803 (2009), the South Carolina Supreme Court reversed this Court's affirmance of summary judgment orders. In both cases, the Supreme Court held that "[i]n order to withstand a motion for summary judgment in cases

applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence.” Accord, Zurich American Ins. Co. v. Tolbert, 387 S.C. 280, 692 S.E.2d 523, 524 (2010) (“In our view, respondents presented a scintilla of evidence through Tolbert’s affidavit, sufficient to withstand summary judgment, that there may be coverage under the SCUIM endorsement.” (Emphasis added.))

“Mere” and “scintilla” are words chosen by the Supreme Court. “Mere” means “being nothing more nor better than.” Black’s Law Dictionary defines “scintilla” as “[a] spark; a remaining particle; the least particle.” The Opinion does not use the word “scintilla” even once.

The Record contains far more than a mere scintilla of evidence of the Plaintiffs’ damages.

The total diminution in value to the Plaintiffs’ properties as a result of the Defendants’ activities is \$2,200,000. (R. p. 173).

A sampling of approximately 59 Defendants (out of _), where the Plaintiffs have data provided by AirBnB, shows that the Defendants’ illegal revenue exceeds \$3,852,522. (R. p. 174).

The Defendants’ illegal STR businesses have greatly enlarged the pool of properties available to AirBnB-type customers, thus expanding the supply and diluting competitive rental rates. (R. pp. 86-87, 96-97, 120-121, 168-170). The Plaintiffs have had to reduce their rental rates in order to compete with the Defendants’ illegal businesses. (R. pp. 116-117).

The illegally-operating Defendants compete unfairly because they can price their rentals without incurring the expenses of being legal. The Plaintiffs pay 6% in property taxes on their commercially-zoned properties, which are more expensive than the Defendants’ residentially-zoned properties, which are taxed at 4%. The business licenses cost money, and require that the Plaintiffs comply with fire and safety codes to protect their customers. (R. pp. 164-165, 221).

The Opinion overlooks or misapprehends all of this evidence.

B. The Opinion conflicts with the Supreme Court’s rulings regarding the light most favorable standard.

“In determining whether any triable issue of fact exists, the evidence and all inferences

which can be reasonably drawn therefrom must be viewed in the light most favorable to the nonmoving party. If triable issues exist, those issues must go to the jury.” Worsley Companies, Inc. v. Town of Mount Pleasant, 339 S.C. 51, 528 S.E.2d 657, 659-660 (2000) (citations omitted; emphasis added).

Summary judgment is not appropriate where further inquiry into the facts of the case is desirable to clarify the application of the law. Even when there is no dispute as to evidentiary facts, but only as to the conclusions or inferences to be drawn from them, summary judgment should be denied. . . . All ambiguities, conclusions, and inferences arising from the evidence must be construed most strongly against the movant.

The party seeking summary judgment has the burden of clearly establishing the absence of a genuine issue of material fact. For summary judgment to be granted, it must be perfectly clear no issue of fact is involved. Because it is a drastic remedy, summary judgment should be cautiously invoked so no person will be improperly deprived of a trial of the disputed factual issues. Moriarty v. Garden Sanctuary Church of God, 334 S.C. 150, 511 S.E.2d 699, 702 (Ct. App. 1999), aff’d, 341 S.C. 320, 534 S.E.2d 672 (2000) (citations omitted).

Although the Opinion repeatedly states that it is applying the standard of “in the light most favorable to the non-moving party,” it actually does the opposite. The Opinion states: “Appellants admitted they were asking the court to enforce the short-term rental ordinance because the City was not enforcing it.” The Record tells a different story:

Q. Do you contend that you have authority to enforce a city ordinance or that -- when I say "you," I mean the Plaintiffs.

A. I contend that the Plaintiffs have a remedy under the zoning ordinance and that is one of the causes of action brought by the Plaintiffs. It is not all of the causes of action, it is one. But yes.

Q. Okay. My question was, Do you contend that the Plaintiffs can enforce a city ordinance?

A. I contend that my reading of the zoning ordinance provides that the Plaintiffs can seek an injunction against people violating the zone ordinance, yes. (R. p. 90, ll. 12-25).

Q. Do you have -- when you say you have a right to have people not illegally compete with you, isn't that the City's job to enforce its laws?

A. I -- I think the City is one party. I think in the zoning ordinance the City has said they are not the exclusive party. So I think the City does have a responsibility but not the sole responsibility.
(R. pp. 93, 1.18 - 94, 1. 1).

The Opinion states:

Appellants' attorney asked Holt, 'Sitting here today, you cannot give me a number as to the diminution of the value of any of [Appellants'] property due to the alleged actions of [Respondents], correct?' Holt responded, 'The number is greater than zero and I do not know the precise number greater than zero.' Appellants' attorney then asked Holt, 'And you also cannot give me the lost profits that [Appellants] have suffered?' Holt answered, 'The lost profits would be -- would closely approximate whatever that number is above zero that I cannot give you definitively. So that is correct.'¹

The Opinion does not quote the *very next* exchange in the Record:

Q. And the same with the amount of illegal income that each Defendant that has allegedly received, you don't know that amount?

A. Defendants have not provided us with full discovery.

Q. Some of the Defendants have and I have checked and I did provide you with the Airbnb information a long time ago, or my predecessor did.

A. Well, we received some discovery through, I think, 2015 for some Defendants. It's obviously 2018.

Q. Right.

A. So a lot has transpired. And I don't believe that was updated. I don't believe we've received that. But also we have -- I don't believe we received any tax returns showing this income on anyone's --

(R. p. 269).

The Opinion overlooks several other pieces of testimony:

A. So absolutely the number's more than zero. Those Plaintiffs have all caused damage -- those Defendants have all caused damage to the Plaintiff or I would not have named them in the suit.

Q. And --

¹ Appellants' attorney did not ask either of these questions, and there is nothing in the Record to suggest he did. The Certificate of Counsel (R. p. 279) shows that the parties disagreed about the construction of the Record. Rather than involve this Court over a relatively minor issue, Appellants agreed to add the matters Respondents requested, in the order Respondents requested them. Respondents insisted on using an expedited draft of the Holt deposition, out of order. For example, page 277 of the Record has the numbers "100" and "101" and "Page 89."

A. I simply don't know the specific number and I need -- so an expert will tell me to a reasonable degree of certainty what he believes that that number is with regard to every Defendant. But we need full information in order to give him for the analysis. It is an analysis. It's an analysis that God knows how much money an expert charges for this; but, presumably, they are thorough.

Q. Okay. Again, I'm going to ask you this question in a particular way --

A. More than zero, but I don't know.

Q. Okay. You can't articulate any actual damages, other than you believe it's more than zero, as to any of the five Defendants that I represent?

A. Correct. I cannot give you a sum certain.

(R. p. 272).

The Opinion states that Mr. Holt "testified he had not yet hired an expert to determine the damages" but does not address the reason -- the trial court did not rule on the Plaintiffs' motion to compel production of data showing the massive amount of illegal revenue the Defendants have made.

A. I'm not an expert, but you -- but we have half the story. We know what has occurred at our property and we have an idea of what has occurred at the Defendants' properties, but we do not know as a matter of certainty. And that is absolutely necessary for us in order to calculate and determine our damages.

Q. But how are you going to calculate and determine your damages?

A. Well, I'm not. An economist, a forensic accountant, an expert is. I know that I have been damaged. I do not know the extent of the damage. I have half the information.

(R. p. 83, ll. 11-23).

It is true that the Plaintiffs cannot calculate their exact damages because the trial court did not compel the Defendants to disclose their revenue information, but it is a gross mischaracterization to find that Mr. Holt asserts that the Defendants are not liable for any amount of money.

Using the same language as the trial court's order, the Opinion states, "Holt testified none of the Appellants' properties have decreased in value because they are all located in downtown Charleston." The Record shows that what Mr. Holt actually testified to is that the Plaintiffs'

properties are worth less than they should be, due to the Defendants' illegal businesses:

Q All right. So none of the properties went down in value at all?

A No. It's downtown Charleston. No.

Q So in your Complaint where you allege the 16 properties have depreciated in value, that's not true?

A I did not -- I have -- I did not allege that, to the best of my knowledge. There's a diminution in value from what the -- that property should be worth 1.5 because it should be generating more money.

(R. p. 119, lines 12-22).

By cherry-picking incomplete portions of Mr. Holt's testimony and then reading them out of context, the Opinion viewed the evidence in the light most favorable to the moving parties, the Defendants. This is in conflict with the Supreme Court's clear admonitions.

III. THE OPINION CONFLICTS WITH SUPREME COURT RULINGS REGARDING THE SUFFICIENCY OF AFFIDAVITS AND AN OWNER'S RIGHT TO TESTIFY ABOUT DAMAGES TO PROPERTY.

The South Carolina Supreme Court has held that an owner's testimony regarding the value of damaged property is sufficient to sentence a person to prison.

The foregoing authority is clear that a property owner is competent to testify regarding the value of damaged or stolen property. To the extent there is confusion, we take this opportunity to clarify that a property owner's testimony alone is sufficient to support a conviction for grand larceny.

State v. Brown, 402 S.C. 119, 740 S.E.2d 493 (2013).

This Court has now held in a published opinion that a property owner's testimony regarding the value of damaged property, sufficient to deprive South Carolinians of their liberty, is not sufficient to reach the "mere scintilla of evidence" standard to avoid summary judgment in a civil case between businesses. The trial court got it right at the summary judgment hearing. "[P]roperty owners are qualified to testify to the loss of the value of their property. They don't have to be experts." (R. p. 216, lines 5-7). This Court's Opinion misapprehends this principle of South Carolina law.

The South Carolina Rules of Civil Procedure set forth what an affidavit must contain in order to establish an issue of fact sufficient to defeat a motion for summary judgment. Rule 56(e), SCRCP provides that “[s]upporting and opposing affidavits shall be made on personal knowledge, shall set forth such facts as would be admissible in evidence, and shall show affirmatively that the affiant is competent to testify as to the matters stated therein.”

Mr. Holt’s affidavits and his deposition show that his declarations are made on personal knowledge. South Carolina law establishes that his testimony is admissible in evidence and that that he is competent to testify as to the matters therein.

In very, very rare circumstances, a property owner’s² testimony regarding value and damages may be inadmissible. This case does not present those circumstances.

Both of the landowners testified in their behalf, and each gave his opinion of the value of the land taken and special damages to the remaining property. Seaboard contends that it was error to allow either of them to do so because it was conclusively shown that neither was familiar with the property or its value and that each opinion was founded upon hearsay.

Ours is in accord with the general rule that a landowner, who is familiar with his property and its value, is allowed to give his estimate as to the value of the land and damages thereto, even though he is not an expert. South Carolina State Highway Dept. v. Wilson, 254 S.C. 360, 175 S.E. (2d) 391 (1970). Where it appears that the owner does not know the value of the property, there is a division in the authorities. Some courts hold that his opinion as to value is not admissible, while others have concluded that such lack of knowledge goes to the weight, but not to the competency, of his testimony. 32 C.J.S. Evidence § 546 (116) (1964).

² The Opinion quotes a case which addresses testimony of “people other than the owner of real property.” Each of the Plaintiffs is owned by the Global Real Property Trust. (R. p. 2). Robert Holt is the Trustee of the Trust and the Chairman of each of the three Plaintiffs. (R. p. 2). Corporate entities must speak through human beings. Barfield v. Dillon Motor Sales, Inc., 233 S.C. 26, 103 S.E.2d 416 (1958) (“A corporation must speak and act through its officers”; citation omitted). If Mr. Holt cannot testify to the Plaintiffs’ damages, then nobody can and any tortfeasor or law-breaker may harm the Plaintiffs without consequence.

Any exception to the general rule of admissibility should be, and apparently has been, applied only in extreme cases. **Unless the landowner's want of qualification is so complete that his testimony is entirely worthless, it is for the jury to assess the value of his opinion.** As stated in 3 Wigmore, Evidence § 716 (Chadbourn Rev. 1970). **'The owner of an article, whether he is generally familiar with such values or not, ought certainly to be allowed to estimate its worth; the weight of his testimony (which often would be trifling) may be left for the jury; and courts have usually made no objections to this policy.'**

While it is true, as pointed out by Seaboard, that neither of the Harrelsons was cognizant of the purchase price of other property in the vicinity, each testified that he had been familiar with the land in question, which they had inherited from their father, all of his life. While it is also true that their estimate of value and damages was the same as that of R.E. Wilder, a realtor who testified in their behalf, this fact, standing alone, does not demonstrate that they merely parroted the opinion of Wilder, especially in view of the additional fact that each expressed that his opinion was his own.

Seaboard Coast Line Railroad v. Harrelson, 262 S.C. 43, 202 S.E.2d 4 (1974) (some citations omitted; emphasis added; affirming a jury verdict for the property owner).

The Opinion, without saying it directly, holds that Mr. Holt's "want of qualification is so complete that his testimony is entirely worthless." The Opinion reaches this erroneous conclusion by overlooking voluminous evidence.

Mr. Holt made his affidavit on his own personal knowledge. (R. pp. 168, 172). Before giving his property valuations, he swore:

Based on my experience as a real estate investor in downtown Charleston and my experience in short-term rentals, I have opinions about the values of properties owned by the Plaintiffs, and how those values have been affected by the illegal competition presented by the Defendants in this case.
(R. p. 172).

Robert Holt's affidavit is sufficient on its own, but is bolstered by other testimony in the Record.

And so the -- the lady who owned it and opened the hostel wanted to sell it to someone who would maintain it as a hostel. And I said, you know, this is a beautiful development property. I'm not an innkeeper; however, I will tell you

that if this hostel makes money, I will keep it open. If it stops making money, I'm going to develop this land as something else.

Q All right. Let me ask you this: If you said you would not have bought those properties --

A Correct.

Q -- if you paid fair market value for the properties --

A Yes.

Q -- then what would be your loss? How would you -- how would you lose not getting them?

A Right. So I don't invest at 5 percent cap rates. I develop properties.

Page 220, ll. 1-18.

Robert Holt, in addition to being the chairman of the three Plaintiff landowners, is a property developer. He is competent to opine on his own properties' values.

The Opinion completely overlooks Mr. Holt's May 9, 2017 affidavit. In that document, he testified at length about "ways that the Defendants' illegal businesses have damaged the Plaintiffs." (R. p. 168). He testified:

5. I have been buying, selling and investing in real estate on the Charleston peninsula for approximately 33 years. I have participated in over 69 real estate transactions on the Charleston peninsula. Those transactions have included many different types of properties, including residential, commercial, and properties legally zoned to permit short-term rentals.

6. I stay abreast of the current state of the real estate market on the peninsula. On the basis of my background, experience and research, it is my opinion, to a reasonable degree of certainty, that the Defendants' illegal short-term rental businesses have negatively impacted the value of the Plaintiffs' legal short-term rental properties.

(R. p. 169-171).

By overlooking the Record, the Opinion is in irreconcilable conflict with Supreme Court precedent and the Rules of Civil Procedure. The Opinion usurps the province of a South Carolina jury. "Unless the property owner's lack of knowledge of the value of his property is so complete so as to render it worthless, it is for a jury to assess the probative value of his testimony." Austin v. Stokes-Craven Holding Corp., 387 S.C. 22, 691 S.E.2d 135 (2010)

(citations omitted; appeal from a jury verdict). “[T]he jury is the tribunal to determine the weight to be accorded the testimony of the witnesses and accept or reject the valuations placed thereupon.” S.C. State Highway Dep’t v. Grant, 265 S.C. 28, 216 S.E.2d 758, 759-60 (1975).

The Opinion cites Dixon v. Besco Eng’g, Inc., 320 S.C. 174, 463 S.E.2d 636, 640 (Ct. App. 1995) for the principle that “[t]he fact finder must determine the weight to be accorded the testimony of the witnesses, and accept or reject their valuations.” Absolutely correct. But the trial court in this case was not sitting as a fact finder; it was sitting as a court considering whether there was a mere scintilla of evidence to defeat summary judgment. In Dixon, the court was sitting as a fact finder, determining damages in a default case.

A jury will have the right to reject Mr. Holt’s testimony that the Plaintiffs’ property values have been damaged. But neither this Court nor the trial court has that right. Both courts have usurped the jury’s authority and weighed the evidence rather than acknowledging the existence of evidence.

In Whisenant v. James Island Corp., 277 S.C. 10, 281 S.E.2d 794 (1981), the Supreme Court reversed a directed verdict in favor of the defendants.

We believe that *an implication may reasonably be* drawn from the testimony that the building in question was worth about \$20,000 when the sublease was acquired, this amount being the difference between the two franchises purchased by the appellants at roughly the same time in the same area. The major distinction between the two leases assumed was that the one at issue provided for ownership of the premises. The *testimony of the building mover at trial suggests* that the ownership of the store implied more than ownership of mere salvage. *The jury thus could find that the appellants suffered destruction of a valuable property and from the evidence determine a reasonable value* for the building at the time of its destruction.

Id. (emphasis added; citing, generally, 22 Am.Jur.2d, Damages § 139 (1965)).

Whisenant also illustrates how the Opinion misapprehends the standard of review.

The Opinion is in irreconcilable conflict with a recent Supreme Court ruling which also deals with property issues in downtown Charleston. In Preservation Society of Charleston vs. S.C. Dept. of Health and Environmental Control, 430 S.C. 200, 845 S.E.2d 481 (2020), the Supreme Court reversed this Court's holding that the plaintiffs did not have standing to seek a contested case hearing regarding Carnival's passenger cruise facility at the Union Pier Terminal in downtown Charleston.

[T]he court of appeals acknowledged Petitioners presented affidavits from individual members expressing concern over their reduced quality of life arising from the effects upon them individually, such as pollution and health effects, traffic congestion, property values, effects on their businesses in the area, and effects on the historical integrity of the area where they resided. For example, a member of the Coastal Conservation League stated in her affidavit that smoke emitting from cruise ships already physically impacted her and required her to retreat indoors when the ships were in town and that a larger facility, which would be much closer to her home, would only increase this adverse effect. Others attested to soot on and in their homes. Nevertheless, the court of appeals, relying on Carnival Corp., agreed with the ALC that the claims of possible environmental and personal harm were purely speculative or were merely generalized grievances equally affecting the public as a whole. Id. at 488.

Here, this Court has held: "Viewing the evidence in the light most favorable to Appellants, we find Appellants failed to present evidence of their damages. Although Holt may testify to the value of property, he provided no explanation for how he determined what the approximate value of the property would be if there was no illegal competition." Either the Supreme Court's decision in Preservation Society is erroneous, or this Court's opinion in this case is erroneous. They cannot be reconciled.

If the Supreme Court had applied this Court's standard in Preservation Society, the Supreme Court would have required an "explanation" for many questions:

How has your life suffered a "reduced quality"?

Where is a physician's opinion that you have suffered "health effects"?

Where is your traffic study to support your claim of "traffic congestion"?

What are the "effects" on your "businesses in the area"?

What analyses have you conducted to support your claim regarding "property values"?

How exactly has a cruise ship affected "the historical integrity of the area where" you reside?

How has an effect "on the historical integrity of the area where" you reside damaged you?

How did a member of the Coastal Conservation League explain that it was "smoke emitting from cruise ships" that "physically impacted her"?

How did that same member of the Coastal Conservation League explain that it was "smoke emitting from cruise ships" that "required her to retreat indoors" rather than smoke from any other source?

How was that same member of the Coastal Conservation League qualified to opine "that a larger facility, which would be much closer to her home, would only increase this adverse effect"?

How did "others" explain that "soot on and in their homes" come from a cruise ship?

How did those same others explain that "soot on and in their homes" actually damaged them?

Where are the affidavits from environmental, industrial, or other air quality experts opining that the smoke and soot the residents complain of came from the terminal?

Where are the affidavits from pulmonologists along with medical bills?

Where are the affidavits from professional cleaners testifying about how they cleaned the "soot" and how much they charged?

The Supreme Court did not require the Preservation Society plaintiffs to make any of

these explanations. Instead, it reversed this Court and held that the affidavits were sufficient to overcome a summary judgment motion challenging whether the plaintiffs had shown they were "affected persons" entitled to seek a contested case hearing. It is for a jury, not the courts, to weigh Mr. Holt's testimony.

Robert Holt's testimony, via deposition and affidavits, is far more than sufficient to reach the "mere scintilla" of evidence standard.

IV. THE OPINION CONFLICTS WITH SUPREME COURT RULINGS REGARDING PREMATURELY GRANTING SUMMARY JUDGMENT.

"Since it is a drastic remedy, summary judgment 'should be cautiously invoked so that no person will be improperly deprived of a trial of the disputed factual issues.' This means, among other things, that summary judgment must not be granted until the opposing party has had a full and fair opportunity to complete discovery." Baughman v. American Tel. and Tel. Co., 306 S.C. 101, 410 S.E.2d 537, 544 (1990) (citations omitted).

The Opinion completely overlooks the importance of the trial court granting summary judgment without first addressing the Plaintiffs' Motion to Compel Discovery Responses. (R. pp. 144-151).

This case involves illegal and unfair business competition and there are four sources of evidence of the Plaintiffs' damages: (1) the Plaintiffs' revenue stream; (2) the Defendants' comparative revenue streams; (3) the diminution in value of the Plaintiffs' real property; and (4) data from the online short-term rental platforms (www.airbnb.com, www.homeaway.com, *et al.*) that all the parties to this case use.

The Plaintiffs issued discovery asking the Defendants, in essence, on what dates did they rent their properties out for less than 30 days (which they admit violates the City's zoning laws)

and how much money they made. Very few of the Defendants responded at all. Those who did respond offered paltry, incomplete responses. (R. pp. 158-161).

In contrast, the Plaintiffs produced to the Defendants exactly the information that the Plaintiffs sought from the Defendants: information about when the Plaintiffs' properties were rented, for what length of time, and how much money was made. (R. pp. 81-82). The online platforms allow a landlord to produce a revenue report with just a few keystrokes. The Plaintiffs have produced the easily retrieved AirBnB and Homeaway reports which specify when a property was rented, for how long and for how much money. The Defendants have refused to share their comparative reports. (R. pp. 81-83). That refusal prevented the Plaintiffs from showing the full measure of their damages to oppose the summary judgment motion.

On January 22, 2018, the trial court held the motion to compel discovery responses in abeyance. (R. p. 210, lines 8-17). That motion has still not been ruled upon. The trial court's failure to compel the Defendants to produce their financial data impaired the Plaintiffs' ability to show the entirety of their particularized losses. The Opinion overlooks this important issue.

"Plaintiffs were not dilatory in seeking discovery on the issue of causation, but have been reasonably diligent in pursuit of a qualified expert to substantiate their claims." Baughman, 410 S.E.2d at 544 (citations omitted). "[T]wo years into the litigation, Plaintiffs had not yet received satisfactory responses to their interrogatories regarding the substances emitted from the Nassau plant, information critical to their obtaining expert opinion evidence concerning causation." Id. at 544. The Plaintiffs here are in the same position: "I'm not an expert, but you -- but we have half the story. We know what has occurred at our property and we have an idea of what has occurred at the Defendants' properties, but we do not know as a matter of certainty. And that is

absolutely necessary for us in order to calculate and determine our damages.” (R. p. 83, ll. 11-17).

“Where the wrongdoer creates the situation that makes proof of the exact amount of damages difficult, he must realize that in such cases ‘juries are allowed to act upon probable and inferential as well as direct and positive proof.’” Powers v. Calvert Fire Ins. Co., 216 S.C. 309, 57 S.E.2d 638, 644 (1950). The Opinion denies the Plaintiffs their right to a jury trial and allows the Defendants to “take advantage of the uncertainty created by [their] own wrongdoing.” Champion v. Whaley, 280 S.C. 116, 311 S.E.2d 404, 407 (Ct. App. 1984). “Where the wrongful act of the defendant is of such nature as to prevent determination of the exact amount of damages, the defendant is not allowed to insist on absolute certainty, but only that the evidence show lost profits by reasonable inference.” Minter v. GOCT, Inc., 322 S.C. 525, 473 S.E.2d 67, 70 (Ct. App. 1996) (citations omitted).

This is not a case where a party claims, “Given more time, who knows what I could have discovered?!” This is a case where the Plaintiffs made a timely motion asking the trial court to require the Defendants to produce exactly the same data that the Plaintiffs produced, but the trial court declined to even address that motion and instead gave the Defendants a victory at the summary judgment stage. We know what would be produced when the trial court grants the motion to compel;³ the Record in this case shows that with a sampling of approximately one-third of the Defendants received more than three million dollars in illegal revenue.

³ The motion must be granted. Several of the Defendants have already produced the evidence of their ill-gotten gains (although not completely). There is no privilege involved and the information is highly relevant.

V. THE OPINION CONFLICTS WITH SUPREME COURT RULINGS REGARDING STATUTORY STANDING.

The Opinion does not mention the principle of statutory standing. It does parrot the trial court's references to Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n, 407 S.C. 67, 753 S.E.2d 846 (2014), S.C. Code Ann. § 6-29-950 and standing based on public importance, none of which has any applicability to this case.

Q. There's a state statute that talks about enforcement of zoning ordinances, which is South Carolina Code section 6-29-950. And it states that an adjacent or neighboring property owner can -- can get an injunction. We've established you're not an adjacent property owner, none of the Plaintiffs are, correct?

A. No. We haven't established that. I've told you I do not believe that's the case. But I don't believe that we pled a state statute. I believe that my remedy is from a City ordinance that specifically provides for that remedy. So I don't -- I'm not aware of the state statute. I have not attempted to avail -- the Plaintiffs have not attempted to avail themselves of a state statute. It wasn't pled -- (R. p. 99, ll. 6-21).

The Opinion states that "Appellants asserted they were relying on § 54-905, which permits persons damaged by another person's use of their property to seek injunctive relief." The Opinion misapprehends the Ordinance, which actually allows any owner "who would be damaged" to seek injunctive relief "in addition to other remedies."

Whenever a building or structure is demolished, erected, constructed, reconstructed, altered, repaired, converted, or maintained, or any building, structure or land is **used in violation of this Chapter**, the city engineer or any other appropriate authority, **or any property owner, who would be damaged by such violations, in addition to other remedies**, may institute **injunction**, mandamus, or other appropriate action in proceeding to prevent the violation in the case of such building, structure or land.
(R. p. 238; emphasis added.)

"Standing may be acquired: (1) through the rubric of 'constitutional standing'; (2) under the 'public importance' exception; or (3) by statute." Freemantle v. Preston, 398 S.C. 186, 728 S.E.2d 40, 43 (2012). "The traditional concepts of constitutional standing are inapplicable when

standing is conferred by statute.” Id., at 44 (plaintiffs lacked constitutional standing but were given statutory standing by the FOIA: “Any citizen of the State may apply to the trial court for either or both a declaratory judgment and injunctive relief to enforce the provisions of this chapter in appropriate cases....”); see also, Taylor v. Aiken County Assessor, 402 S.C. 559, 741 S.E.2d 31 (Ct. App. 2013) (plaintiff had statutory standing as a property taxpayer to challenge appraisal and tax assessment); Bevivino v. Town of Mount Pleasant Zoning Appeals, 402 S.C. 57, 737 S.E.2d 863 (Ct. App. 2013) (plaintiffs had statutory standing to sue over the town’s approval of a communications tower).

The Opinion does not acknowledge the Ordinance’s choice of language: “Would be damaged.” Instead, the Opinion conflates this cause of action with the nuisance and UTPA claims and holds that the Plaintiffs have not provided even a mere scintilla of evidence of damages. The Opinion’s conclusion regarding damages is erroneous, but is especially so in light of the language of the Ordinance.

The City of Charleston has chosen to open the courthouse doors to “any property owner” who “would be damaged” by another citizen’s illegal use of his or her property. The Plaintiffs are property owners and the Defendants admit they are using their properties illegally. There is no proximity requirement and there is actually no requirement that there be existing damage. “Would be damaged” will suffice. The Opinion misapprehends the Ordinance by importing principles from a state statute which was not pled and has no application to this case.

The Opinion emasculates the Ordinance, rendering it meaningless. This Court has substituted its judgment for that of the City of Charleston and held that the City’s law has no effect. This Court has overlooked the fact that there is far more than a mere scintilla of evidence

that the Plaintiffs' legal businesses "would be damaged" by the Defendants' illegal businesses.

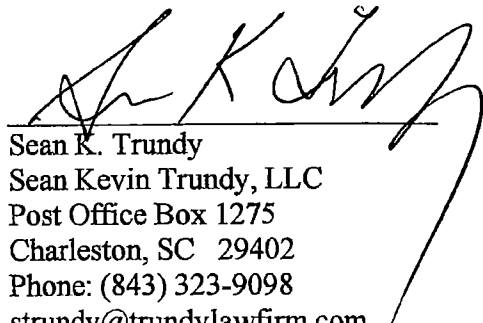
Robert Holt's affidavits and deposition, the production from www.airbnb.com and www.homeaway.com, and the scant financial information provided by a few of the Defendants constitute evidence of the Plaintiffs' damages, which include loss of rental revenue and diminished property values, caused by the Defendants' use of their properties in violation of the zoning ordinances. (R. pp. 164-165, 168-170, 172-174). At a bare minimum, the Defendants' competitive pricing advantages, due to not paying the correct amount of taxes or the expenses of fire code compliance and business licenses, establish damage to the Plaintiffs. (R. pp. 164-165).

Having been granted statutory standing by the Ordinance, it is not necessary for the Plaintiffs to undergo the traditional analysis of constitutional standing. Freemantle, 728 S.E.2d at 44.

VI. CONCLUSION.

The points overlooked and misapprehended in the Opinion are linked and overlap. When the evidence is taken in the light most favorable to the non-moving parties, Robert Holt's testimony provides far more than "a mere scintilla" of evidence of the Plaintiffs' damages. Applying the Baughman rule regarding discovery shows that summary judgment was premature. Application of the Supreme Court's admonitions about the sufficiency of affidavits shows that Mr. Holt is eminently qualified to testify about damages.

For the reasons stated above, this Court should grant this Petition for Rehearing, withdraw its Opinion, and reverse the trial court's order.



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July 6, 2021

Charleston, South Carolina

The South Carolina Court of Appeals

Charleston Development Company, LLC, Charleston
Housing Company, LLC and NotSo Hostel, LLC,
Appellants,

v.

Younesse Alami, Simon M. Adell, Matthew Anderson,
Matthew Asher, Daniel Baker, Marie Baker, Matthew
and Christina Bare, Andre Bauer, Peter Bierce, Brandon
Blount, Barbara Brass, Richard T. Brewer, Sigrid Anne
Eilertson, Reginald P. Brown, IV, Mary Cahill, Ryan
Cockrell, Kevin and Virginia Conlon, Anne Marie
Crevar, Christina Cross, Darryl J. Damico, Labar Daniel,
Stephen Darwak, Lindsay Davenport, Mary Dickerson,
Maxwell Streeter, Kathleen Dougherty, David Dressman,
Anna Dressman, Michael Elder, Christopher Scott
Farley, Michele Ghastin, Timnah Giller, Virginia Geller,
Ryan Gilreath, Sonya Gilreath, Kimberly Glenn, Shaun
Halsor, Josephine Rex, Arthur Halvorson, Andrew
Halvorson, Linda Hancock, Laura Hyatt, Mike Hartel,
Nathan Herring, James Hicks, Jr., Laurie Hicks, Preston
G. Hipp, Colin Jones, Matthew F. Jones, Robert C. Jones,
Robin Joseph, Molly Keeler, John Kenny, Mandi
Walters, Abigail King, Aaron Kless, Laurie Kramer,
Robert Kramer, Allison Kreutzer, Benjamin Levitt,
Richard Levitt, Jesse Lutz, Nikou Manouchehri, Thomas
Naselaris, Zoe Naselaris, Beau O'Steen, Cori O'Steen,
Lance Parr, Brandon Perdue, Amanda Lee Raymer,
Hadassah Rothenberg, Daniel Ryan, Kimberly Bowlin,
Kevin Schnittker, Ginger Scofield, Inderjit Singh, Avtar
Singh, Alecia Stevens, Lee Stevens, Justin Swan,
Merrick Teichman, John Van Vlack, Jr., William
Waterhouse, Jennifer Waterhouse, Anne Wohlfeil, Bryan
Young, AJB Trust, Anthony & Jacqueline Bradley,
Trustees, Hartshorn Family Trust, Helene Kenny/Bridget
Kenny Revocable Trust, Wilhelmina M. Wieters Life

Estate Childrens Trust, 33 Bogard Street LLC, 249 Cumming, LLC, 253 Coming Street LLC, 259 East Bay LLC, 259 East Bay 10 B LLC, 272 D Coming St. LLC, Café International, Inc., Corner At Old Canton, LLC, Geer Interests LLC, Kit Properties LLC, Lambert-Weiss LLC, The Naws LLC, New Lease Capital LLC, One Henrietta LLC, Periwinkle Partners, LLC, Porch Properties LLC, Westbury Properties, LLC, and Westendorff Hardware LLC, Defendants,

Of whom Younesse Alami, Simon M. Adell, Matthew Anderson, Matthew Asher, Andre Bauer, Peter Bierce, Brandon Blount, Reginald P. Brown, IV, Mary Cahill, Ryan Cockrell, Kevin and Virginia Conlon, Anne Marie Crevar, Darryl J. Damico, Stephen Darwak, Lindsay Davenport, Mary Dickerson, Maxwell Streeter, Kathleen Dougherty, David Dressman, Anna Dressman, Michael Elder, Christopher Scott Farley, Michele Ghastin, Ryan Gilreath, Sonya Gilreath, Kimberly Glenn, Shaun Halsor, Josephine Rex, Laura Hyatt, Nathan Herring, James Hicks, Jr., Laurie Hicks, Preston G. Hipp, Colin Jones, Matthew F. Jones, Robert C. Jones, Robin Joseph, Molly Keeler, John Kenny, Abigail King, Aaron Kless, Laurie Kramer, Robert Kramer, Allison Kreutzer, Jesse Lutz, Thomas Naselaris, Zoe Naselaris, Beau O'Steen, Cori O'Steen, Lance Parr, Brandon Perdue, Hadassah Rothenberg, Daniel Ryan, Kimberly Bowlin, Kevin Schnittker, Ginger Scofield, Alecia Stevens, Justin Swan, Merrick Teichman, John Van Vlack, Jr., William Waterhouse, Jennifer Waterhouse, Anne Wohlfeil, Bryan Young, Helene Kenny/Bridget Kenny Revocable Trust, 259 East Bay LLC, 259 East Bay 10 B LLC, Corner At Old Canton, LLC, Kit Properties LLC, The Naws LLC, One Henrietta LLC, Periwinkle Partners, LLC, Porch Properties LLC, Westbury Properties, LLC, and Westendorff Hardware LLC, are the Respondents.

Appellate Case No. 2018-001766

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

H. B. Vane

J.

Paul W. Thomas

J.

D. Man li

J.

Columbia, South Carolina

cc:

Sean Kevin Trundy, Esquire
Mary Lee Briggs, Esquire
Nancy Bloodgood, Esquire
Daniel Carson Boles, Esquire
Gregory Kenneth Voigt, Esquire
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Lucy Clark Sanders, Esquire
Robert Holt
Beau O'Steen
Cory O'Steen
Allison Kreutzer
Robert Kramer
Laurie Kramer
The Honorable R. Markley Dennis, Jr.

FILED

Aug 04 2021