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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2012-CP-24-0576

IOS, LLC.,

Appellant-Respondent,

v.

Lander University,

Respondent-Appellant.

**REPLY TO RETURN TO PETITION FOR EMERGENCY WRIT OF
SUPERSEDEAS AND PETITION TO LIFT THE EMERGENCY STAY
GRANTED BY ORDER DATED DECEMBER 3, 2021**

Appellant-Respondent files this Reply to Respondent-Appellant's Return to Petition for an Emergency Writ of Supersedeas and Petition to Lift the Emergency Stay granted by Order dated December 3, 2021.

BACKGROUND

IOS, LLC ("IOS") owned and operated the Inn on the Square ("Inn") in Greenwood, South Carolina. IOS was induced by Lander University ("Lander") to enter into a Lease Agreement ("Lease") for the Inn to be used as a dormitory based upon Lander's promise to purchase the Inn. Lander made significant and damaging alterations to the Inn, *inter alia*, filling

in the pool with concrete, nailing the windows shut, removing, and disposing of the industrial washers and dryer, removing the bar and all its equipment, and damaging, walls, carpet, and furniture throughout the Inn. Lander reneged on their promise to purchase the Inn. The impact of the alterations and damages of more than \$500,000.00 made the building unusable as an Inn but fit as a dorm. IOS could not afford the repairs to restore the Inn and continue operations. Lander's actions forced IOS into foreclosure.

IOS filed its Complaint May 29, 2012, asserting causes of action against Lander for (1) Breach of Oral Contract for Sale of Property, (2) Breach of Contract and Specific Performance, (3) Promissory Estoppel, (4) Negligent Misrepresentation, (5) Negligence, and (6) Breach of Lease Agreement. (See Complaint attached hereto) Each of these causes of action are based on the same transaction and occurrence. Each cause of action is not pled in the alternative.

ARGUMENT

RESPONDENT-APPELLANT IS NOT PREJUDICED

The Respondent-Appellant alleges that they would be prejudiced if trial in this case is delayed pending Appellant-Respondent's appeal of the grant of Summary Judgment on all but one cause of action in their Complaint. However, the Respondent-Appellant cannot be prejudiced by a delay procured by their own hand. Prior to the Orders appealed herein, all continuances requested and granted were based upon well settled law and supported by the facts. Indeed, Appellant-Respondent does not object to the thirty-three (33) month period of time it took the Respondent-Appellant to submit the proposed Summary Judgment Order. Respondent-Appellant's counsel is an excellent attorney and the raising of the thirty-three (33) month period is not an attack. It is simply a fact asserted as powerful evidence that there is no prejudice to the Respondent-Appellant by adjudicating this appeal before moving forward with trial. Any

prejudice would be suffered by Appellant-Respondent should a trial be commenced prior to the adjudication of their appeal, in that such would require them to try their case piecemeal and await an appellate determination on other non-mutually exclusive causes of action, likely requiring two trials based on the same set of facts, resulting in an unnecessary expenditure of time and money.

Furthermore, although the Respondent-Appellant would have this court believe that they are prejudiced by the adjudication of the Appellant-Respondent's appeal before trial on the sole remaining cause of action, their argument describing such prejudice is specious. The word "prejudice" appears only once in Respondent-Appellant's twelve (12) page brief. To support their assertion of "substantial prejudice," Respondent-Appellant devotes no more than one conclusory sentence, "...Respondent-Appellant will be substantially prejudiced by a stay in this matter, particularly the expiration of the foreclosure deficiency judgment on May 2, 2022, which *may* render issues raised by the case moot." [Emphasis Added.] Respondent-Appellant is not a party to the referenced foreclosure and has no right or interest in the foreclosure. Respondent-Appellant has no standing to assert the rights of this third-party as its own to claim that Appellant-Respondent's appeal should not be decided prior to trial on the merits. Furthermore, if Respondent-Appellant believes that "the expiration of the foreclosure deficiency judgment on May 2, 2022 may render issues raised by the case moot," then it would be the Appellant-Respondent who would be prejudiced by the passage of time. However, that is not the case, and neither is it the case that the Respondent-Appellant is prejudiced by the expiration of a judgment to which it is not a party.

LOWER COURT ORDER IS FLAWED

The Lower Court's Form 4 Order dated March 7, 2019 ("Form 4 Order") granted

Respondent-Appellant summary judgment on Appellant-Respondent's causes of action for Breach of Contract, Breach of Oral Promise to Purchase, Promissory Estoppel, Negligent Misrepresentation and Negligence and denied summary judgment for Breach of Lease Agreement. Respondent-Appellant's counsel was "requested to prepare a more formal, detailed order within sixty (60) days..." (See Form 4 Order).

The formal detailed Order filed November 2, 2021¹ ("Formal Order") incorrectly states that Appellant-Respondent consented to the dismissal of the Breach of an Oral Contract cause of action. Appellant-Respondent in its Brief in Opposition to Respondent-Appellant's Motion for Summary Judgment maintains their cause of action for breach of an oral contract which falls within the estoppel exception to the statute of frauds. This error misstating the action of the Appellant-Respondent and not addressing an essential cause of action in the Formal Order that was referenced in the Form 4 Order demonstrates that the Formal Order itself is flawed such that this appeal must be adjudicated in the interest of judicial economy before a trial on the merits can take place.

In reviewing the Formal Order Appellant-Respondent noted that the lettering in the Formal Order skips from B to D which could signal an accidental omission of a paragraph addressing the Court's decision on breach of an oral contract cause of action. Appellant-Respondent filed a Motion to Reconsider on November 12, 2021, asking the court to not only reconsider its ruling, but also to clarify its Order. On December 2, 2021, the Lower Court denied Appellant-Respondent's Motion to Reconsider without explanation.

¹ On October 14, 2021, Respondent-Appellant's counsel sent the proposed Summary Judgment Order to the Lower Court for consideration. Appellant-Respondent's counsel was not provided an opportunity to review the draft proposed Summary Judgment order prior to it being delivered to the Lower Court.

From the time between the Form 4 Order and the Formal Order, Appellant-Respondent was anticipating the need to appeal this decision because of its potential impact on the trial of this matter. For reasons provided in greater detail in the argument regarding appealability below, the appealed causes of action arise from the same transaction and occurrence, are not pled in the alternative, are not mutually exclusive and provide different measures of damages. A trial of this matter would provide the Appellant-Respondent with a potential post-trial, pre-verdict election of remedies given the differing damages that are recoverable under each cause of action. Proceeding to trial on all available non-mutually exclusive causes of action would be in the interest of judicial economy and would avoid piecemeal litigation.

THE FORMAL ORDER IS APPEALABLE

Generally, orders granting partial summary judgment may be immediately appealable under either the “involving the merits” or “substantial right” categories of section 14–3–330(1) and (2)(c). See Link v. Sch. Dist. of Pickens County, 302 S.C. 1, 6, 393 S.E.2d 176, 178–79 (1990) (holding an order granting partial summary judgment may be appealable under either category). “An order granting a motion for partial summary judgment is immediately appealable. See S.C. Code Ann. § 14-3-330 (1976); Nauful v. Milligan, 258 S.C. 139, 143, 187 S.E.2d 511, 513 (1972).” Lucas v. Rawl Family Ltd. Partn. (S.C. 2007) (Opinion No. 2007-MO-058)

Appellant-Respondent brought causes of action against Respondent-Appellant for (1) Breach of Oral Contract for Sale of Property, (2) Breach of Contract and Specific Performance, (3) Promissory Estoppel, (4) Negligent Misrepresentation, (5) Negligence, and (6) Breach of Lease Agreement. Each of these causes of action are based on the same transaction and occurrence. Each cause of action is not pled in the alternative, and they are not mutual exclusive remedies. ““An order striking a portion of a pleading is immediately appealable.” 287 S.C. at

633, 340 S.E.2d at 565 (citing Harbert, 74 S.C. at 16, 53 S.E. at 1002)." Thornton v. South Carolina Electric & Gas Corp. (SCE & G), 391 S.C. 297, 705 S.E.2d 475 (S.C. App. 2011). The Summary Judgment decision reflected in the Form 4 Order and the Formal Order ends all but one cause of action involving the merits of Appellant-Respondent's case and eliminates a substantial right by ending both tort and contract causes of action.

"[A]n order that is not directly appealable will nonetheless be considered if there is an appealable issue before the [c]ourt and a ruling on appeal will avoid unnecessary litigation." [756 S.E.2d 164]..." Watson v. Underwood, 407 S.C. 443, 756 S.E.2d 155 (S.C. App. 2014). The same facts alleged give rise to causes of action in tort and contract. Whether the case arises in contract or tort is a question for review in this appeal. The Lower Court in its Form 4 Order stated "one may not recover in tort where the underlying basis for the action is breach of contract" however, the Lower Court granted summary judgment on both tort and contract causes of action, when far more than a scintilla of evidence was provided for each cause of action.

The Lower Court's Summary Judgment Order should be considered on appeal to avoid unnecessary litigation. A reading of the allegations makes it clear that there would be no Lease to breach if there was not a breach of oral contract to purchase. The representation made by Respondent-Appellant to purchase the Inn induced Appellant-Respondent to sign the Lease. The same transaction and occurrence support both causes of action for Breach of Lease Agreement and Breach of Oral Contract. The lease agreement and damage done to the Inn are both evidence of detrimental reliance and partial performance exceptions to the statute of frauds supporting the allegations of a Breach of Oral Contract as well as evidence of a breach of the provisions of the Lease requiring the tenant to return the property in the condition it was when it was first rented. The difference in the damages recoverable from each cause of action is substantial. Breach of

Lease is limited to Lease related damages. Breach of Oral Contract would include the foreclosure losses and other loss of revenue.

To deny an appellate review of the Formal Order would result in piecemeal litigation, resulting in potentially inconsistent results, require unnecessary expense, allow more than one bite of the apple by providing multiple trials and prejudice my client by premature disclosure of trial strategy.

For the foregoing reasons, Appellant-Respondent respectfully requests the Court of Appeals to continue the stay implemented by operation of the Appellate Rules and this Court's Order dated December 3, 2021, and consider the appeal filed by Appellant-Respondent.

December 13, 2021

s-James E. Smith, Jr.
James E. Smith, Jr.
James E. Smith, Jr., PA
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Columbia, South Carolina 29250
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Other Counsel of Record:
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IOS, LLC)

FILED COMMON PLEAS)
8TH JUDICIAL CIRCUIT)
GREENWOOD, SC)

CIVIL ACTION COVERSHEET

2012-CP-24-00574

vs.)
2012 MAY 29 PM 1 17)

LANDER UNIVERSITY, LANDER COLLEGE, AND THE)
LANDER FOUNDATION)

Defendant(s))

(Please Print)

Submitted By: James E. Smith, Jr.

Address: 1422 Laurel St., Columbia, SC 29201

SC Bar #: 7833

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NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- JURY TRIAL demanded in complaint. NON-JURY TRIAL demanded in complaint.
- This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
- This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|--|---|
| <p>Contracts</p> <ul style="list-style-type: none"> <input type="checkbox"/> Constructions (100) <input type="checkbox"/> Debt Collection (110) <input type="checkbox"/> Employment (120) <input type="checkbox"/> General (130) <input checked="" type="checkbox"/> Breach of Contract (140) <input type="checkbox"/> Other (199) | <p>Torts - Professional Malpractice</p> <ul style="list-style-type: none"> <input type="checkbox"/> Dental Malpractice (200) <input type="checkbox"/> Legal Malpractice (210) <input type="checkbox"/> Medical Malpractice (220) Previous Notice of Intent Case #
20__-CP-____- <input type="checkbox"/> Notice/ File Med Mal (230) <input type="checkbox"/> Other (299) | <p>Torts - Personal Injury</p> <ul style="list-style-type: none"> <input type="checkbox"/> Assault/Slander/Libel (300) <input type="checkbox"/> Conversion (310) <input type="checkbox"/> Motor Vehicle Accident (320) <input type="checkbox"/> Premises Liability (330) <input type="checkbox"/> Products Liability (340) <input type="checkbox"/> Personal Injury (350) <input type="checkbox"/> Wrongful Death (360) <input checked="" type="checkbox"/> Other (399) | <p>Real Property</p> <ul style="list-style-type: none"> <input type="checkbox"/> Claim & Delivery (400) <input type="checkbox"/> Condemnation (410) <input type="checkbox"/> Foreclosure (420) <input type="checkbox"/> Mechanic's Lien (430) <input type="checkbox"/> Partition (440) <input type="checkbox"/> Possession (450) <input type="checkbox"/> Building Code Violation (460) <input type="checkbox"/> Other (499) |
| <p>Inmate Petitions</p> <ul style="list-style-type: none"> <input type="checkbox"/> PCR (500) <input type="checkbox"/> Mandamus (520) <input type="checkbox"/> Habeas Corpus (530) <input type="checkbox"/> Other (599) | <p>Judgments/Settlements</p> <ul style="list-style-type: none"> <input type="checkbox"/> Death Settlement (700) <input type="checkbox"/> Foreign Judgment (710) <input type="checkbox"/> Magistrate's Judgment (720) <input type="checkbox"/> Minor Settlement (730) <input type="checkbox"/> Transcript Judgment (740) <input type="checkbox"/> Lis Pendens (750) <input type="checkbox"/> Transfer of Structured Settlement Payment Rights Application (760) <input type="checkbox"/> Other (799) | <p>Administrative Law/Relief</p> <ul style="list-style-type: none"> <input type="checkbox"/> Reinstate Driver's License (800) <input type="checkbox"/> Judicial Review (810) <input type="checkbox"/> Relief (820) <input type="checkbox"/> Permanent Injunction (830) <input type="checkbox"/> Forfeiture-Petition (840) <input type="checkbox"/> Forfeiture-Consent Order (850) <input type="checkbox"/> Other (899) | <p>Appeals</p> <ul style="list-style-type: none"> <input type="checkbox"/> Arbitration (900) <input type="checkbox"/> Magistrate-Civil (910) <input type="checkbox"/> Magistrate-Criminal (920) <input type="checkbox"/> Municipal (930) <input type="checkbox"/> Probate Court (940) <input type="checkbox"/> SCDOT (950) <input type="checkbox"/> Worker's Comp (960) <input type="checkbox"/> Zoning Board (970) <input type="checkbox"/> Public Service Commission (990) <input type="checkbox"/> Employment Security Comm (991) <input type="checkbox"/> Other (999) |
| <p>Special/Complex /Other</p> <ul style="list-style-type: none"> <input type="checkbox"/> Environmental (600) <input type="checkbox"/> Automobile Arb. (610) <input type="checkbox"/> Medical (620) <input type="checkbox"/> Other (699) <input type="checkbox"/> Pharmaceuticals (630) <input type="checkbox"/> Unfair Trade Practices (640) <input type="checkbox"/> Out-of State Depositions (650) <input type="checkbox"/> Motion to Quash Subpoena in an Out-of-County Action (660) <input type="checkbox"/> Sexual Predator (510) | | | |

Submitting Party Signature: 

Date: 5/29/12

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Clarendon, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lee, Lexington, Pickens (Family Court Only), Richland, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.

STATE OF SOUTH CAROLINA
8TH JUDICIAL CIRCUIT
COUNTY OF GREENWOOD GREENWOOD, SC

2012 MAY 29 PM 3 17

IOS, LLC,

Plaintiffs,

vs.

LANDER UNIVERSITY ET AL.,

Defendants,

CERTIFICATE OF
EXEMPTION/WITHDRAWAL
FROM ARBITRATION

DOCKET NO. **12CP24** 00574

I CERTIFY THAT THIS ACTION IS EXEMPT FROM ARBITRATION BECAUSE:

- monetary relief requested in this case exceeds \$25,000;
- this is a class action;
- there is a substantial claim for injunction or declaratory relief requested in this case;
- this case involves (check one or more of the following)
 - title to real estate;
 - will, trusts and decedents' estates;
 - mortgage foreclosure;
 - partition;
- this is a special proceeding or action seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
- monetary relief requested in this case is unspecified but exceeds \$25,000;
- this case is a companion or related to similar actions pending in other courts with which the action might be consolidated but for lack of jurisdiction of venue;
- this action is appellate in nature;
- this is a post-conviction relief matter;
- this is forfeiture proceeding brought by the State; or
- this is a contempt of court proceeding.

Date:

5/29/2012

Attorney for Plaintiff

NOTE: Motion must be presented to the court, a hearing held, and a finding made, for exemption or withdrawal from arbitration for "strong and compelling reason" sought pursuant to Rule 1(d), Rules of Circuit Court Arbitration.

STATE OF SOUTH CAROLINA (HONORABLE) IN THE COURT OF COMMON PLEAS
8TH JUDICIAL CIRCUIT
COUNTY OF GREENWOOD (GREENWOOD) SOUTH CAROLINA IN THE EIGHTH JUDICIAL CIRCUIT

2012 MAY 29 PM 1 17

IOS, LLC.)
)
 Plaintiffs,)
)
 vs.)
)
 LANDER UNIVERSITY, LANDER)
 COLLEGE and THE LANDER)
 FOUNDATION,)
)
 Defendants.)

Civil Action No. 2012-CP-2400576

SUMMONS

FILED
8TH JUDICIAL CIRCUIT
GREENWOOD, SC
2012 MAY 29 PM 1 18

TO: THE DEFENDANT ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint upon the subscribers at their offices, 1422 Laurel Street, Columbia, SC 29201, within thirty (30) days after service hereof, exclusive of the day of service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in said Complaint.

JAMES E. SMITH, JR., P.A.

By: 

James E. Smith, Jr.
Dylan W. Goff
1422 Laurel Street
Columbia, SC 29201
Telephone (803) 933-9800
Facsimile (803) 933-9801

Attorneys for Plaintiff

Columbia, South Carolina

May 29, 2012

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
8TH JUDICIAL CIRCUIT
COUNTY OF GREENWOOD GREENWOOD, SC THE EIGHTH JUDICIAL CIRCUIT

2012 MAY 29 PM 1 18

IOS, LLC.)

Plaintiff,)

vs.)

LANDER UNIVERSITY, LANDER)
COLLEGE and THE LANDER)
FOUNDATION,)

Defendants.)

Civil Action No. 2012-CP-2400574

COMPLAINT

Plaintiff, IOS, LLC, hereby asserts the following Complaint against Defendants Lander University, Lander College and The Lander Foundation and avers as follows:

PARTIES

1. Plaintiff, IOS, LLC, is a Domestic Limited Liability Corporation incorporated in the State of South Carolina (hereinafter referred to as "IOS").
2. Upon information and belief, Lander University is the successor in interest and if not, the same entity as Lander College which became a part of the South Carolina system of higher education in 1973. Lander University is an agency, institution and political subdivision of the State of South Carolina.
3. Upon information and belief, Lander College is a Domestic Non-Profit Corporation incorporated in the State of South Carolina. (Hereinafter Lander University and Lander College are collectively referred to as "Lander").
4. Upon information and belief, Defendant the Lander Foundation is a Domestic Non-Profit Corporation incorporated in the State of South Carolina. (Hereinafter referred to as the "Foundation").

5. That all acts complained of herein and performed by the Defendants were done so by and through their agents, officers, employees and/or servants while they were acting within the course and scope of their employment and/or agency relationship with Defendants.

6. This Court has personal jurisdiction over the parties and subject matter jurisdiction over this action.

7. Venue in this action is properly before this Court.

GENERAL ALLEGATIONS

8. Plaintiff re-alleges paragraphs 1 through 7 as if stated herein verbatim.

9. In August 2009, Diane Newton was employed by Lander as Lander University Vice President of Business and Administration.

10. Also in August 2009, Douglas Bell was Lander's attorney as well as he and Ms. Newton was represented to be members of the Foundation board.

11. In August 2009, the Inn on the Square, located at 104 East Court Avenue, Greenwood, South Carolina 29646 (hereinafter referred to as the "Inn") was owned and operated by IOS. IOS had the Inn listed for sale at a price of \$3,300,000.00.

12. Lander, by and through its authorized representative, Diane Newton entered into negotiations with IOS' representative John Huffman, to purchase the Inn from IOS. An oral contract for the sale of the Inn from IOS to Lander was agreed upon at a sales price of \$2,300,000.00 (hereinafter referred to as the "Sale").

13. It was further agreed between Lander and IOS those monies to purchase the Inn would either come through the approval of the South Carolina Budget and Control Board ("SCBCB") or the Foundation. Ms. Newton and Mr. Bell assured IOS that regardless of the outcome before the

SCBCB, Lander was committed to purchase the Inn. It was stated by Ms. Newton and Mr. Bell that if the SCBCB did not approve the sale, the Foundation agreed to fund the purchase price at \$2,300,000.00.

14. It was further agreed that the Sale closing date would be no later than April 2010 after SCBCB approvals of first reading December 2009, another reading by March 2010 with final approval and closing April 2010.

15. IOS was talking with other parties who were also interested in purchasing the Inn and in reliance on the oral agreement made by Lander and the Foundation to purchase the Inn, IOS agreed to enter into a temporary lease agreement at the request of Lander so that student could move in immediately.

16. In further reliance upon Lander's and the Foundation's oral contract for the purchase of the Inn, IOS cancelled all booked and pending events at the Inn as well as closed the Pub on the first floor of the Inn.

17. In further and additional reliance upon Lander's and the Foundation's oral contract for the purchase of the Inn, IOS allowed significant modifications to the Inn converting it from a boutique Inn and Pub into student dormitories, Lander's intended use of the property.

18. It was at Lander's insistence that a lease agreement be entered into before the contract for sale could be approved because Lander needed the space for student housing immediately.

19. In reliance upon the representations made by Lander and the Foundation that they would purchase the Inn regardless of SCBCB approval, IOS entered into a lease with Lander University dated August 12, 2009 (hereinafter "Lease").

20. The initial Lease term ran from August 15, 2009 to June 14, 2010 to only accommodate the time necessary for SCBCB Sale approval process. The contract for sale was anticipated to be delivered in September 2009.

21. During the lease term and after the Defendants took possession of the Inn, IOS suffered significant damages and loss to the Inn.

FOR A FIRST CAUSE OF ACTION
(BREACH OF ORAL CONTRACT FOR THE SALE OF PROPERTY)

22. Plaintiff reiterates and re-alleges paragraphs 1 through 21 above as if set forth herein verbatim, and further alleges;

23. Defendants' statements to Plaintiff as set forth above constituted an unambiguous oral contract for the sale of the Inn establishing specific terms for the sale that include the purchase price, the property to be purchased and the date of closing on the sale.

24. Plaintiff reasonably relied on Defendants oral contract for sale and indeed it was the reason IOS was induced into the Lease.

25. This reliance on the part of Plaintiff was reasonable, justifiable, expected and encouraged by Defendants.

26. Indeed, the Defendants have partly performed the sale of the Inn inasmuch (1) as they have taken possession of the Inn; (2) made significant alterations to the Inn, which would not have approved by Plaintiff, if Defendants were not going to purchase the Inn; (3) paid a portion of the purchase price; and (4) told the public that the Defendants had purchased the Inn from the Plaintiff.

27. Plaintiff was injured by relying on Defendant's promise and oral contract for sale in the loss of the Inn as a result of foreclosure, loss of business, unnecessary expenses and in other such particulars in an amount to be shown at the trial of this matter. Plaintiff is seeking specific

performance of the oral contract or damages including the benefit of its bargain with the Defendants.

FOR A SECOND CAUSE OF ACTION
(BREACH OF CONTRACT AND SPECIFIC PERFORMANCE)

28. Plaintiff reiterates and re-alleges paragraphs 1 through 27 above as if set forth herein verbatim and further alleges.

29. The offer made by the Defendants and part performance on behalf of the Plaintiff establish an enforceable contract for the sale of the Inn.

30. The real property at issue, the Inn, is unique and it further has hundreds of thousands of dollars of investment and work by Plaintiff which was altered changed by Defendants so significantly that an action for damages at law is inadequate and thereby entitles Plaintiff to equitable relief.

31. Plaintiff is informed and believes that it is entitled to an Order of this Court providing for specific performance of the Oral Contract.

32. In the event that it is shown that Defendants' failure to perform on the Contract was accompanied by fraud, Plaintiff is informed and believes that it is entitled to punitive damages in an amount to be determined by the trier of fact and attorneys' fees.

FOR A THIRD CAUSE OF ACTION
(PROMISSORY ESTOPPEL)

33. Plaintiff reiterates and re-alleges paragraphs 1 through 32 above as if set forth herein verbatim, and further alleges;

34. Defendants' statements to Plaintiff as set forth above, constituted an unambiguous promise to purchase the Inn.

35. Plaintiff reasonably relied on Defendants' promise by entering into a Lease

Agreement, foregoing other sale opportunities, closing the Inn and Pub to other bookings and events and allowing Defendants to alter the property in significant ways to convert a boutique Inn into a college dormitory.

36. This reliance on the part of Plaintiff was reasonable, justifiable, expected and encouraged by Defendants.

37. Plaintiff was injured by relying on Defendant's promise in loss of business, damage to the Inn, unnecessary expenses and in other such particulars in an amount to be shown at the trial of this matter.

FOR A FOURTH CAUSE OF ACTION
(NEGLIGENT MISREPRESENTATION)

38. Plaintiff reiterates and re-alleges paragraphs 1 through 37 above as if set forth herein verbatim, and further allege;

39. Defendants made a false representation to Plaintiff regarding the intent and/or willingness to purchase the Inn.

40. Defendants had a pecuniary interest in making the statement to Plaintiff in order to induce Plaintiff into signing the Lease thereby ensuring Defendants had dormitory space available to students that was needed immediately.

41. Defendants owed a duty to Plaintiff to use due care to see that Defendants communicated truthful information to the Plaintiff.

42. Defendants breached that duty by failing to exercise due care.

43. Plaintiff justifiably relied on Defendants' representations and Defendants offered assurances and encouraged Plaintiff to rely of Defendants' statements.

44. The Plaintiff suffered significant pecuniary loss as the proximate result of its reliance

upon the Defendants representation.

FOR A FIFTH CAUSE OF ACTION
(NEGLIGENCE)

45. Plaintiff repeats and reiterates the allegations contained above as though fully repeated herein verbatim.

46. Defendants owed Plaintiff a duty of due care in surrendering the Inn to Plaintiff at the conclusion of the Lease.

47. Defendants breached that duty in one or more of the following particulars:

- a. Failing to restore alterations to the Inn;
- b. Failing to surrender the Inn and instead abandoning the Inn leaving it open and unsecure;
- c. Failing protect the Inn from damage and loss to furniture; rooms; facilities and equipment;
- d. Failing to surrender the Inn in good order and condition.

48. The Inn suffered several hundreds of thousands of dollars in damages and property loss all proximately caused by the Defendants' negligence and abandonment of the Inn.

FOR A SIXTH CAUSE OF ACTION
(BREACH OF LEASE AGREEMENT)

49. Plaintiff repeats and reiterates the allegations contained above as though fully repeated herein verbatim.

50. Defendants Lease of the Inn provided in pertinent part that the "Tenant shall surrender the Demised Premises to Landlord in good order and condition..."

51. Defendants breached the Lease agreement in one or more of the following particulars:

- a. Failing to restore alterations to the Inn;
- b. Failing to surrender the Inn and instead abandoning the Inn leaving it open and unsecure;
- c. Failing protect the Inn from damage and loss to furniture; rooms; facilities and equipment;
- d. Failing to surrender the Inn in good order and condition.

52. As a direct and proximate result of Defendants' breach, Plaintiff has suffered actual and consequential damages to be proven at a trial of this matter.

DAMAGES

53. Plaintiff has suffered significant damages proximately caused by the Defendants through various actions of omission and commission to include but not limited to damages to the Inn facility, equipment, furniture, real and personal property, loss of economic advantage and opportunities, denial of the benefit of his bargain, actual and consequential damages, punitive damages and attorneys' fees and costs and such other and further damages as may be proven at a trial of this matter.

WHEREFORE, having fully set forth in its Complaint, Plaintiff respectfully prays for the following relief: Judgment against the Defendants and in favor of Plaintiff for all of the foregoing causes of action to include but not limited to specific performance, actual, consequential and punitive damages as proven at trial and attorneys' fees and costs and for such other and further relief as the Court deems just and proper.

JAMES E. SMITH, JR., P.A.

By: 

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May 29, 2012

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Dec 13 2021

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM GREENWOOD COUNTY
Court of Common Pleas

Frank R. Addy, Jr., Circuit Court Judge

Case No. 2012-CP-24-0576

IOS, LLC.,

Appellant-Respondent,

v.

Lander University,

Respondent-Appellant.

CERTIFICATE OF SERVICE

The undersigned attorney of James E. Smith Jr., P.A., counsel for the Appellant IOS, LLC., does hereby certify that service of the Reply to Respondent-Appellant's Return to Petition for an Emergency Writ of Supersedeas and Petition to Lift the Emergency Stay granted by Order dated December 3, 2021 in the above-captioned matter was made upon all counsel of record via email and first class us mail at the listed addresses below the 13rd day of December 2021.

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