

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)
)
DAVID A. JOHNSON, SUSAN)
WEISENBURGER, JOHN TERMAN,)
JR., DARCY A. TERMAN, PAUL)
FARESE, JAMES FARESE,)
DENNIS DUCATE, JOAN)
MCLELLAN, DAVID A. DEMER,)
CHRISTINE A. DEMER, and)
GINGER METTS RICHARDSON,)

Plaintiffs,)

vs.)

SVI HOSPITALITY, LLC and)
NATIONAL BANK OF SOUTH)
CAROLINA)

Defendants.)

and)

SVI HOSPITALITY, LLC,)
HARICHARAN J. MISHRA AND ILLA)
A. MISCHRA,)

Third Party Plaintiffs,)

vs.)

SUPERIOR CONSTRUCTION)
CORPORATION,)

Third Party Defendants.)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO. 2008-CP-26-7956

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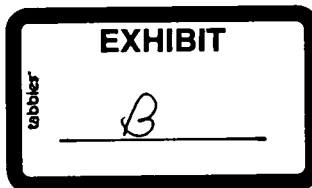
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**ORDER GRANTING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT
AGAINST THE DEFENDANT, SVI HOSPITALITY, LLC**

This matter comes before me pursuant to Cross-Motions for Summary Judgment by the Plaintiffs, filed on July 13, 2011, and National Bank of South Carolina (NBSC)



filed on December 15, 2010. The Plaintiffs also seek Summary Judgment against the Defendant, SVI Hospitality, LLC(SVI).

The case between Plaintiffs and NBSC is before me, as Special Referee, pursuant to an Order of Reference signed by the Honorable Larry B. Hyman, dated June 21, 2010. The Plaintiffs, David A. Johnson, Susan Weisenburger, John Terman, Jr., Darcy A. Terman, Paul Farese, James Farese, Dennis Ducate, Joan McLellan, David A. Demer, Christine A. Demer and Ginger Metts Richardson (hereinafter collectively "Plaintiffs") seek judgment against the Defendants, SVI Hospitality, LLC (hereinafter "SVI") and National Bank of South Carolina (hereinafter "NBSC") jointly and severally, for recovery of earnest money paid as deposits on condominium units which were not delivered to them in accordance with the contract between the Plaintiffs and SVI. A separate Order Granting Partial Summary Judgment against the Defendant, National Bank of South Carolina has been signed and entered by me. The Defendant SVI Hospitality, LLC did not attend the hearing on the Plaintiffs' Motion for Summary Judgment against it, nor did it contest the motion or file any affidavits or documentation which would support denial of the Motion.

This decision is based upon the stipulations of the Parties, deposition portions submitted and other documents submitted to me prior to or at the hearing on the cross motions.

Under the facts of this case, the issue presented is whether SVI Hospitality, LLC is liable to the Plaintiffs for refund of their earnest money deposits on the failed Atlantic Palms project.

Statement of the Case

The above captioned matter arises from the failed condominium project known as the Atlantic Palms Resort Horizontal Property Regime (hereinafter "Atlantic Palms"). The Plaintiffs entered into pre-construction purchase agreements (hereinafter collectively "Purchase Agreements") with the developer SVI for the purchase of units at the Atlantic Palms Resort. Each Plaintiff paid earnest money deposits to SVI with the execution of their Purchase Agreements. The Plaintiffs filed their action in an effort to recover their earnest money deposits as a result of SVI's breach of the Purchase

Agreements, including the failure to complete construction of or close the sale of the Units as required by the Purchase Agreements. The Defendant NBSC was the construction lender for SVI, and the Plaintiffs claim that NBSC, as the holder of the earnest monies, is liable to them because NBSC benefited from the use of the Plaintiffs' earnest monies.

In their Amended Complaint, filed on September 3, 2010, the Plaintiffs state causes of action against the Defendant SVI for breach of contract, equitable lien, quantum meruit/unjust enrichment, constructive trust, violation of the Federal Interstate Land Sales Full Disclosure Act and violation of the South Carolina Unfair Trade Practices Act. The pleading makes claims against NBSC for breach of contract, equitable lien, quantum meruit/unjust enrichment and constructive trust. The Plaintiffs' claims against the Defendant NBSC are addressed in a separate order.

In the Defendant SVI's Answer, Cross-Claim, Counterclaim and Third Party Complaint, it denies the Plaintiffs' claims and counterclaims against the Plaintiffs for breach of contract. It also cross-claims against the Defendant NBSC for indemnity, alleging that the losses were the fault of the Defendant NBSC, and the Defendant NBSC should reimburse SVI for any damages it incurs. The Defendant SVI also brought a Third Party Complaint against Superior Construction Corporation, alleging Superior is at fault for any losses. SVI's claims against Superior have been dismissed by Consent Order dated July 19, 2010. By agreement, the Defendant SVI did not file an Answer to the Plaintiffs' Amended Complaint, and its original Answer serves as its responsive pleading.

The parties have exchanged written discovery, and the 30(b)(6) depositions of the Defendant SVI and the Defendant NBSC have been taken. The Plaintiffs and Defendant NBSC have filed Cross-Motions for Summary Judgment supported by affidavits and by joint Stipulations. Additionally, the Plaintiffs submitted documents prior to and at the hearing on the Cross Motions for Summary Judgment, including portions of depositions taken and other documents produced in discovery.

Findings of Fact

Based upon the evidence submitted, I find as material facts the following:

1. Each of the Plaintiffs entered into separate Purchase Agreements (hereinafter "Purchase Agreements") with the defendant SVI Hospitality, LLC (hereinafter "SVI") for the purchase of Unit(s) (hereinafter "Units") at a project known as the Atlantic Palms Resort Horizontal Property Regime (the "Project"). Copies of the Purchase Agreements and copies of each of Plaintiffs' cleared earnest money deposit checks, were attached to the stipulations of the parties collectively as Exhibit A-1 to Exhibit A-8. A summary of the Purchase Agreements is as follows:

Plaintiff	Unit #	Date of Purchase Agreement	Deposit Amount	Date of Deposit Check
Demer, Christine and David	807 ¹	December 5, 2005, as amended by contract dated February 18, 2006	\$31,980.00	December 5, 2005 (\$2,000; January 10, 2006 (\$29,980)
Ducate, Dennis and Joan McLellan	511	June 30, 2005	\$16,990.00	June 11, 2005 (\$5,000); July 7, 2005 (\$11,990)
Farese, James	416	July 9, 2005	\$14,990.00	June 17, 2005 (\$5,000); July 11, 2005 (\$9,990)
Farese, Paul	511	June 30, 2005	\$16,990.00	June 16, 2005 (\$5,000); July 7, 2005 (\$11,990)
Johnson, David A.	313	August 29, 2005	\$14,990.00	August 30, 2005
Richardson, Ginger Metts	607	August 16, 2005	\$16,990.00	August 4, 2005

¹ The Demers originally had contracts for Units 513 and 509, but they amended their contracts to purchase Unit 807 instead.

Terman, John and Darcy A.	309 ²	July 5, 2005, as amended by contract dated July 20, 2006, as amended by contract dated July 17, 2007	\$28,990.00	July 5, 2005
Weisenburger, Susan	423	March 27, 2006	\$21,000.00	March 27, 2006

2. Each Plaintiff paid their earnest money deposit, in the amounts set forth above, to SVI. Plaintiff's earnest money deposits total \$162,920.00.

3. SVI deposited each Plaintiff's earnest money deposit checks into a checking account maintained by SVI, in the name of SVI, at Beach First National Bank ("Beach First Account"). Each of Plaintiff's earnest money deposits was, at all times, comingled with the earnest money deposits of other prospective Unit purchasers (who are not parties to this action), and comingled with other funds in the Beach First Account.

4. Defendant National Bank of South Carolina (hereinafter "NBSC") did not sign any of the Purchase Agreements. NBSC is not named in the Purchase Agreements. The Purchase Agreements refer to lender or lenders, but do not specifically name NBSC.

5. While the parties stipulate that the Purchase Agreements in their entirety speak for themselves, the parties called the following paragraphs to the Court's attention:

A. With respect to the disposition of the Plaintiffs' deposits, each Purchase Agreement provides the following:

Purchase Agreements, ¶ 2.

At any time after the closing by Seller [SVI] of its construction loan for the construction of the Project, the Seller shall be free to use any or all of the Purchaser's Deposit, together with any interest earned thereon, if any, at any

² The Termans originally had contracts for Units 813 and 600, but they amended their contracts to purchase Unit 309 instead.

time prior to the Purchaser's closing on the Unit, for land acquisition, architectural and engineering fees, building permits, plan review fees, legal fees, construction costs and other costs associated with the Project. The Purchaser hereby waives any claim of a lien equitable or otherwise, on the Property by virtue of Purchaser's payment of the Deposit or its use in the Project to the degree that any such lien may exist, Purchaser agrees that any equitable lien which Purchaser may now or hereafter possess in the Property or the Project is hereby subordinated and made junior to any right or lien of the Seller's construction lender, including specifically, but not limited to, a mortgage lien given by Seller to any financial institution to secure a loan for land acquisition or for construction of the Project.

B. Paragraph 8 of each Purchase Agreement provides:

Subject to Seller's right to terminate this Contract as set out above, and subject to delays caused by acts of God, war, acts of terrorism, labor or material shortages, strikes or other reasons beyond Seller's control, Seller shall complete construction of the improvements and tender a Deed to the Unit to the Purchaser within two (2) years of the date of the full execution of this Contract.

C. Paragraph 16 of each Purchase Agreement provides:

This Agreement shall inure to the benefit of, and be binding upon the parties and their respective heirs, successors, assigns, executors or administrators. **The rights of the Purchaser may not be assigned to any party, persons or entity, without the express written consent of the Seller, which consent may be withheld for any reason.** Seller may assign its rights and obligations pursuant to this Agreement. (Emphasis appears in Purchase Agreements.)

D. Paragraph 19 or 20 of each Purchase Agreement provides:

SUBORDINATION TO MASTER DEED AND CONSTRUCTION MORTGAGE:
The rights of Purchaser under this Purchase Agreement are subordinate to any construction or other mortgage granted by Seller, and in the event of foreclosure of that construction or other mortgage, or the receipt by the construction mortgage lender of a deed in lieu of foreclosure, Seller's construction lender may, at its option, terminate this agreement. Purchaser further agrees that this Purchase Agreement does not grant Purchaser any lien or other interest in the Property on which the project is being constructed and the Seller may record its Master Deed without any required action of the Purchaser.

E. Paragraph 17(b) of each Purchase Agreement provides:

If the Seller shall default under the terms and conditions hereof, and such default shall continue after 30 days written notice to Seller, the Purchaser may, as its sole remedy, elect to have all deposits hereunder returned, together with any

interest earned thereon, if any, as liquidated damages, this Contract then becoming null and void and neither party having further obligations to the other hereunder. Purchaser may not bring an action for actual or consequential damages beyond the return of the Deposit.

6. In December 2005 or January 2006, SVI entered into a contract with Superior Construction to construct the improvements for the Project. The Project involved the conversion and renovation of an existing motel, owned by Mike Mishra ("Mishra") into condominiums, and the addition of two new floors. Mishra's wife and son were the named members of SVI, and Mishra was the "Manager" of the LLC.

7. When it entered into the construction contract with Superior, SVI did not have in place lender financing to fund the Project, however SVI had discussed financing with Beach First National Bank.

8. Despite the fact that it did not have a construction loan in place, Mishra and SVI permitted Superior Construction to commence demolition and work on the Project in or around February 2006. Superior's work was funded, in part, by Mishra, and in part by \$1,144,996.92 in advances made by NBSC to Mishra pursuant to a modification of an outstanding promissory note owed by Mishra to NBSC ("Mishra Note"). The purchasers' deposits were not used at this time. The Mishra Note was secured by an existing first mortgage on the Property.

9. SVI presented the Project to several lenders, including Beach First. Beach First preliminarily approved financing of the project, but withdrew its commitment when demolition exposed additional necessary work that had not been anticipated. Beach First then advised Mishra/SVI that it could not provide financing because the size of the loan needed exceeded its lending limits.

10. During the late fall of 2005, SVI approached NBSC seeking funding for the Project.

11. In late 2005, SVI and NBSC entered into negotiations for a permanent construction loan.

12. NBSC eventually agreed to extend certain loans to SVI for the purpose of financing SVI's construction/remodeling of the Project.

13. As each contract was consummated, the earnest money deposit was

received and deposited into the SVI account at NBSC, and NBSC was provided with a copy of the completed contract. (Mishra Depo page 54, Lines 21-25, page 55, Lines 7-16).

14. In November 2005, SVI transferred the earnest money deposits of prospective Unit purchasers from its Beach First Account into a non-restricted checking account located at NBSC, account number 754-257-160-1 ("SVI Checking Account"). This money remained in the SVI Checking Account, intact and under SVI's control, until the August 22, 2006 closing, when it was swept into the Project at the closing of the construction loan.

15. When SVI deposited the funds from the Beach First Account into the SVI Checking Account, NBSC knew that the funds represented deposits made by prospective Unit purchasers and knew the terms of the Purchase Agreements.

16. NBSC's loans for the construction of the project are evidenced by Exhibits B-1 to B-12 to the Stipulations of the Parties:

- i. First Mortgage and Security Agreement dated August 22, 2006;
- ii. Loan Agreement dated August 22, 2006;
- iii. Promissory Notes dated August 22, 2006;
- iv. Assignment of Sales Contracts and Pledge of Deposit Accounts dated August 22, 2006 (hereinafter "Assignment");
- v. Collateral Assignment of Management Agreement dated August 22, 2006;
- vi. Assignment of Leases, Rents and Profits dated August 22, 2006;
- vii. Assignment of Construction Documents dated August 22, 2006;
- viii. Assignment of Contracts, Intangibles and Licenses dated August 22, 2006.
- ix. Loan Modification Agreement dated September 27, 2007;
- x. Mortgage and Security Agreement dated October 5, 2007;
- xi. Promissory Note dated October 5, 2007; and,
- xii. Assignment of Contracts of Sale and Earnest Monies dated October 5, 2007.

(collectively, "Loan Documents").

17. As part of the loan documents, NBSC required SVI to execute, inter alia, a Loan Agreement, a First Mortgage and Security Agreement, and an Assignment of Sales Agreement and Pledge of Deposits and Accounts. These loan documents address the Plaintiffs' earnest money deposits in the following ways:

- a) Sales Contracts for Units and applicable law permit the earnest money deposits to be used by Borrower (SVI) for construction of the improvements. (Loan Agreement, dated 8/22/06, Article II, Sec. 2.1 (I)).
- b) Lender acknowledges that earnest money deposits are to be held in trust until the terms and conditions of the Sales Contract have been met. Lender also sets up the procedure for deposits to be disbursed at closing of the units. "This Agreement is made subject to the terms of the Sales Contracts, and to the rights of the purchasers under the sales contracts or by law and the Lender shall consent to the release of any deposits that are required to be refunded to a Purchaser under the terms of the Sales Contract or by law." (Assignment of Sales Contracts and Pledge of Deposits and Accounts, dated 8/22/06, ¶ 3).
- c) "Sales Contracts say deposits can be used in construction... in the event a refund is required to be made... either before or after default... Such refund shall be added to the principal balance of the Secured Obligation, in such order as the lender shall elect..." (Assignment of Sales Contracts and Pledge of Deposits and Accounts, dated 8/22/06, ¶ 4).
- d) NBSC is granted a security interest in all present and future Purchase Agreements, all earnest monies deposited. The Agreement calls for NBSC to collect the proceeds under the Purchase Agreements, including the earnest money and apply those funds to the Note, interest and attorneys' fees and expenses in such order as the lender may elect, to the extent the Earnest Monies are not expended for development costs of the Project. (Assignment of Contracts of Sale and Earnest Monies, dated 10/5/07, ¶ ¶ 1, 2).

18. The Loan Agreement provides that all of the earnest money deposits be deposited upon receipt with the Lender [NBSC] in the Construction Account, and Borrower [SVI] authorizes Lender to make Construction Advances from the Construction Account pursuant to the provisions of the Loan Agreement. (Loan Agreement, Construction Rider 2 (l) (ii)).

19. The NBSC Commitment Letter dated July 27, 2006 provided that SVI's equity of \$1,650,000.00 would come from the purchaser's earnest money deposits. The Commitment Letter also provides that the Contracts for Sale and Purchase and Earnest Money deposits be assigned to NBSC as Lender as part of the Closing Requirements. (Commitment Letter, Exhibit A to NBSC's Commitment, of record).

20. Prior to the construction loan closing on August 22, 2006, the real property comprising the Atlantic Palms project was owned by Mike Mishra. As part of the August 22, 2006 closing, the property was transferred to SVI Hospitality, LLC.

21. On or about August 22, 2006, the NBSC loans to SVI, totaling \$16,300,000 were closed.

22. The HUD-1 settlement statement for the NBSC Loan closing, dated August 22, 2006, was attached as Exhibit C to the Stipulations of the Parties, shows the following:

- At closing, \$6,598,350.03 in loan proceeds was drawn from the \$16.3 Million loan from NBSC ("Initial Construction Loan Draw");
- The Initial Construction Loan Draw was combined with the \$1,750,000 from the SVI Checking Account (which contained deposits obtained by SVI from prospective Unit purchasers), for a total of \$8,348,650.03. This figure is shown on the HUD-1 as the gross amount due from SVI at the closing. From this amount:
 - (1) \$6,179,345.36 was used to pay off the existing indebtedness on the Property owed to NBSC;
 - (2) \$1,676,345.36 was paid to Superior for work completed up to the time of closing that had not already been paid for as described in paragraph 8, supra;

(3) \$300,000 was paid to Mishra to reimburse him for advances made on the Project; and

(4) \$192,559.67 went towards various closing costs.

23. As part of the loan approval process, NBSC reviewed the Purchase Agreements and was aware of the terms of the Purchase Agreements.

24. Paragraph 8 of the Purchase Agreements required SVI to tender a deed and title to the Unit no later than two years after the execution of the Purchase Agreements.

25. The August 22, 2006 Promissory Notes matured on August 22, 2007, and were not paid as agreed. On August 22, 2007, the Project was unfinished.

26. On September 20, 2007, SVI and NBSC entered into a Loan Modification Agreement which provided, among other things, that the Maturity Date for the August 22, 2006 Promissory Notes would be extended to February 2, 2008. *See supra* at ¶ 16(ix).

27. On or about October 5, 2007, NBSC loaned SVI an additional \$2,500,000 to fund the completion of the Project. *See supra* at ¶ 16(xi).

28. The City of Myrtle Beach issued a Certificate of Occupancy for the Parking Garage and Levels 1-6 of the Project on November 16, 2007. It issued a Certificate of Occupancy for the remaining two levels of the Project on December 4, 2007.

29. After finally receiving Certificates of Occupancy, SVI was preparing to schedule closings. Although there is no evidence that SVI sent notices to the purchasers to close after receiving the Certificates of Occupancy, it appears that several of the Purchasers attempted to close. One of the barriers to closing was the fact that in December 2007 and in early 2008, the General Contractor, Superior Construction Corporation, and several other subcontractors filed mechanics liens against the project.

30. Certain mechanic's liens were filed against SVI Hospitality, LLC that encumbered the Property at the time the Certificates of Occupancy were obtained by SVI, and further liens were filed after the Certificates of Occupancy were issued.

31. All of the Loans matured on February 2, 2008. Despite demand, they were not paid as agreed.

32. On February 28, 2008, NBSC commenced a foreclosure action for the Property.

33. Despite attempts to close on units in early 2008, SVI was unable to obtain the necessary approvals from NBSC close on the units. As a result, none of the pre-construction Purchase Agreements were closed. (Mishra deposition page 79, line 5 to page 81, line 19). It is undisputed that the delays for mechanics liens and costs overruns are not excusable delays under the Purchase Contracts or under the Federal Interstate Land Sales Full Disclosure Act. (Mishra deposition page 81, line 3 to page 82, line 5).

34. Another barrier to closings was the refusal of NBSC to consent to closing. This refusal to consent was due to the mechanics liens filed and due to economic considerations related to the project as a condominium. (Bill Short e-mail attached to Plaintiffs submissions as "Exhibit B" and Deposition of Wade King page 88, lines 6-10, page 94, line 10 – page 96, line 3; page 97, lines 7-23). Due to the downturn in the market for condominiums, it became apparent to NBSC that the property or the loan was more valuable for sale as an intact hotel, rather than a partially sold condominium project.

35. The Project was not completed as planned due, in large part, to a dispute between SVI Hospitality, LLC and its contractor, Superior Construction Corporation.

36. SVI did not deliver title to and did not deliver possession of the Units to any of the Plaintiffs or any other contracted purchaser.

37. At various times, Plaintiffs demanded SVI refund their deposits, but SVI did not refund the Plaintiffs' deposits.

38. Based upon an email submitted by Plaintiffs, in early 2008, one or more unit owners, including the one of the Plaintiffs (Weisenburger), were prepared to close on their units, but the Defendant, NBSC would not agree to allow the closing to take place due to the filing of mechanics liens.

39. From the 30(b)6 deposition of NBSC, it is evident that NBSC made a conscious decision not to allow closings at the project because it was economically detrimental to NBSC to allow a few closing to occur.

40. NBSC brought a foreclosure action against the Defendant SVI for the Atlantic Palms Resort based upon its default on the construction loans. Before the foreclosure was completed, NBSC sold the Atlantic Palms Resort, and it is currently being operated as a hotel by a non-affiliated third party. None of the purchasers, including the Plaintiffs, were named as parties or otherwise included in the foreclosure proceedings. SVI has no current interest in the property. (SVI deposition page 15, line 12 to page 16, line 4).

Standard of Review

Summary judgment is proper only when there is no genuine issue as to any material fact and... the moving party is entitled to judgment as a matter of law. See Baughman v. American Telephone and Telegraph Company, 306 S.C. 101, 401 S.E.2d 537 (1991). Under Rule 56 (c) S.C.R.C.P., the party seeking summary judgment has the initial responsibility of demonstrating the absence of a general issue of material fact. Id. In determining whether summary judgment is appropriate, the evidence and its reasonable inferences must be viewed in the light most favorable to the non-moving party. Id.

Legal Analysis and Conclusions of Law

In considering a breach of contract dispute, the court shall first consider the express language of the agreement itself. If the language contained therein is clear and unambiguous, the court shall determine the rights of the parties as a matter of law. Holden v. Alice Manufacturing, Inc., 317 S.C. 215, 220, 452 S.E.2d 628, 631 (Ct. App. 1994). Where an action presents a question as to the construction of a written contract and the language of the contract is clear and unambiguous, the question is one of law. J.T.M. Co., Inc. v. Vane, 283 S.C. 512, 323 S.E.2d 794 (Ct. App. 1984); see also Stuckey v. University of South Carolina, 284 S.C. 295, 325 S.E.2d 709 (Ct. App. 1985). Furthermore, the language used in a contract must be interpreted in its natural and ordinary sense. Twenty Ninth Avenue Corporation v. Great Atlantic & Pacific Tea, Co., Inc., 428 S.E.2d 734 (Ct. App. 1993); see also Holden v. Alice Manufacturing, Inc., 317 S.C. 215, 452 S.E. 2d 628 (Ct. App. 1994). A contract should receive sensible and reasonable construction and not such construction that will lead to absurd

consequences or unjust results. Holden v. Alice Manufacturing, 317 S.C. 215 452 S.E.2d. 628, 631; Eruce v. Blalock, 241 S.C. 155, 127 S.E. 2d 439 (1962).

It is clear that the Purchase Agreements were breached by SVI. SVI's failure to deliver the units upon receipt of the Certificate of Occupancy or within two (2) years from the date of each agreement is undeniably a breach of the agreement. None of the claims for delay due to disputes with the general contractor or the expanded scope of the project are defenses under the Purchase Agreements or under the applicable law. There is no evidence that the Plaintiffs breached the Purchase Agreements or in any way caused the breach by SVI.

The Purchase Agreements provide that if SVI, as seller, defaults under the contract, the Plaintiffs, as purchasers, are entitled to a refund of their earnest money deposits, together with any interest earned. (Purchase Agreements, ¶ 17(b)). The Purchase Agreements also provide that upon default by SVI, the contracts become null and void. Therefore, since SVI has defaulted under the Purchase Agreement, the Plaintiffs are entitled to judgment against the Defendant SVI for the amount of their earnest money deposits, plus pre-judgment interest.

THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that pursuant to the South Carolina Rules of Civil Procedure, the Plaintiffs, David A. Johnson, Susan Weisenburger, John Terman, Jr., Darcy A. Terman, Paul Farese, James Farese, Dennis Ducate, Joan McLellan, David A. Demer, Christine A. Demer and Ginger Metts Richardson, have judgment against the Defendant, SVI Hospitality, LLC, as follows:

1. (a) Plaintiff David A. Johnson is entitled to judgment against the Defendant NBSC in the amount of Fourteen Thousand Nine Hundred Ninety and No/100 (\$14,990.00) Dollars, plus pre-judgment interest at a rate of 8.75% from November 16, 2007 until December 15, 2011;
- (b) Plaintiff Susan Weisenburger is entitled to judgment against the Defendant NBSC in the amount of Twenty-One Thousand and No/100 (\$21,000.00) Dollars, plus pre-judgment interest at a rate of 8.75% from November 16, 2007 until December 15, 2011;
- (c) Plaintiffs John Terman, Jr. and Darcy Terman are entitled to

judgment against the Defendant NBSC in the amount of Twenty-Eight Thousand Nine Hundred Ninety and No/100 (\$28,990.00) Dollars, plus pre-judgment interest at a rate of 8.75% from November 16, 2007 until December 15, 2011;

(d) Plaintiff James Farese is entitled to judgment against the Defendant NBSC in the amount of Fourteen Thousand Nine Hundred Ninety and No/100 (\$14,990.00) Dollars, plus pre-judgment interest at a rate of 8.75% from November 16, 2007 until December 15, 2011;

(e) Plaintiff Paul Farese is entitled to judgment against the Defendant NBSC in the amount of Sixteen Thousand Nine Hundred Ninety and No/100 (\$16,990.00) Dollars, plus pre-judgment interest at a rate of 8.75% from November 16, 2007 until December 15, 2011;

(f) Plaintiffs Dennis Ducate and Joan McClellan are entitled to judgment against the Defendant NBSC in the amount of Sixteen Thousand Nine Hundred Ninety and No/100 (\$16,990.00) Dollars, plus pre-judgment interest at a rate of 8.75% from November 16, 2007 until December 15, 2011;

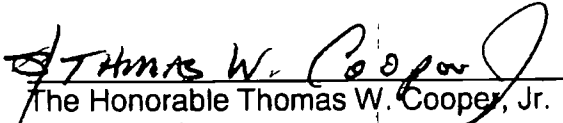
(g) Plaintiffs David A. Demer and Christine A. Demer are entitled to judgment against the Defendant NBSC in the amount of Thirty-One Thousand Nine Hundred Eighty and No/100 (\$31,980.00) Dollars, plus pre-judgment interest at a rate of 8.75% from December 4, 2007 until December 15, 2011; and

(h) Plaintiff Ginger Metts Richardson is entitled to judgment against the Defendants SVI and NBSC in the amount of Sixteen Thousand Nine Hundred Ninety and No/100 (\$16,990.00) Dollars, plus pre-judgment interest at a rate of 8.75% from November 16, 2007 until December 15, 2011.

2. Post-judgment interest at a rate of 7.25% from December 16, 2011 until paid in full.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that this action is ended.

AND IT IS SO ORDERED.


The Honorable Thomas W. Cooper, Jr.
Special Referee

Manning, South Carolina

December 12, 2012