

Three Rivers Legal Services, Inc.

1000 N.E. 16th Ave., Bldg. I, Suite B • Gainesville, FL 32601 - 4541

Telephone: (352) 372-0519 • Fax: (352) 375-1631 • www.trls.org

November 8, 2023

Melissa Garber, Administrative Supervisor
cc: Joel Foreman, County Attorney
Columbia County Building and Zoning
135 NE Hernando Avenue, Ste. B-21
Lake City, FL 32055
mgarber@columbiacountyfla.com
joel@foreman.law

Sent by email and regular U.S. mail

RE: Tona Morris, 309 SE Piute Way, Lake City, FL 32025 and Utility Services (Inspection)

Ms. Garber and Mr. Foreman,

I am writing to you today concerning my client, Tona Morris, and her ongoing efforts to secure an inspection from Columbia County to enable the restoration of utility services at her home. Ms. Morris is the owner of the home located at 309 SE Piute Way, Lake City, FL 32055 (“Home”), holding equitable title to the home since March 31, 2022. Unfortunately, due to the unlawful and criminal acts of several persons, Ms. Morris’s utility services at her home were cut off due to severe damage to the electric meter and box. Despite her efforts in repairing the box, Ms. Morris has advised me that she has been unable to get Columbia County’s Building and Zoning Department to inspect the box and determine that the repairs meet code requirements, a necessary step to restoring utility services via a private utility provider. I write to you today in the hopes of resolving this issue.

On March 31, 2022, Ms. Morris purchased her Home from Lori Fuller, purportedly acting on behalf of “309 SE PIUTE Way, LAKE CITY 32025 land trust.” We doubt such a recorded trust exists, but nevertheless, Ms. Fuller’s capacity as the seller and lienholder has been established conclusively by her later acts. I have attached Ms. Morris’s Agreement to Purchase Real Estate (“Agreement for Deed”), signed by her and Ms. Fuller (along with the title clarification documents regarding Fuller). Ms. Morris’s Agreement for Deed is, for all purposes, a mortgage under Florida law in which she acquired present equitable title and the right to possession. § 697.01(1), Fla. Stat. As you are likely aware, Florida law treats contracts like the Agreement for Deed as mortgages – “[a]ll conveyances, obligations conditioned or defeasible, bills of sale or *other instruments of writing conveying or selling property*, either real or personal, for the purpose or with the intention of securing the payment of money . . . shall be *deemed* and held *mortgages*, and shall be subject to the same rules of foreclosure and to the same regulations, restraints and forms as are prescribed in relation to mortgages.” *Id.* (emphasis added). The express intent of the Agreement for Deed indicates the mutual desire to sell and purchase property, and indicates no term commonly applicable to possessory contracts. Minalla v. Equinamics Corp., 954 So. 2d 645, 647 – 48 (Fla. 3d DCA 2007) (substance of contract controls over form when considering the legal effect of a real estate transaction); see also Bernstein v. New Beginnings Trustee, LLC, 988 So. 2d 90, 94 (Fla. 4th DCA 2008). As a result, there is no question that Ms. Morris is the owner of the property for the purposes of receiving the benefit of property tax exemptions, § 196.031(1)(a), Fla. Stat., or inspections to determine whether the Home is suitable for the restoration of utility services.



Civil Legal Aid since 1978

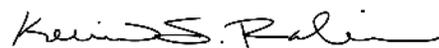


The current circumstances in which Ms. Morris finds herself are the direct result of a criminal act. The Agreement for Deed is one of many land sale fraud contracts in which Ms. Fuller and her partner, Derek Snead, have sought to extort money out of people who believe they are purchasing homes. You will note that several of the terms of the contract are unenforceable under Florida law, and provided Ms. Fuller and Mr. Snead leverage to utilize inappropriate remedies to seize money from the homeowners and remove them through improper remedial tools like eviction or ejectment. Our offices have represented many of their victims in the past few years. In late 2022, Ms. Fuller filed a federal lawsuit against Ms. Morris seeking ejectment and breach of contract, manufacturing diversity jurisdiction to avoid the scrutiny of the Third Judicial Circuit's judiciary, who have largely ruled against Ms. Fuller and Mr. Snead of their illegal efforts. Shortly after service of that lawsuit, Ms. Morris filed a Chapter 13 bankruptcy to ensure a bankruptcy trustee's oversight over the equitable mortgage, and she has made plan payments for the better part of the last year towards her Chapter 13 plan. The federal court presiding over the ejectment suit brought by Ms. Fuller has dismissed her suit, and Ms. Morris continues to make payments.

However, on May 31, 2023, Mr. Snead, through an agent Cody Cimiotta, sought to illegally remove Ms. Morris by damaging the electric meter box located at Ms. Morris's home, removing critical wiring from the box, and returning the stolen items to Mr. Snead's home. Mr. Cimiotta has been convicted by plea of Grant Theft, Criminal Mischief, Dealing in Stolen Property, and Unlawful Use of a Two-Way Communication Device in Case No. 12-2023-CF-000586. Mr. Snead is currently charged with the same crimes in the same case, though his part is moving towards trial. Ms. Morris has expended her own money to repair the electric meter box, but cannot get an inspection to help her restore utility services via a private utility provider. She has instead had to rely upon a gas generator at considerable expense.

We are respectfully requesting your office conduct any necessary county code inspection of the electric meter box and related wiring, notify Ms. Morris and myself of the result of the inspection, and if it passes inspection, notify any utility provider accordingly. We are requesting your cooperation in these efforts to help mitigate the harm created by Mr. Snead's illegal acts, and we are happy to answer any questions or coordinate in whatever way will aid the county in discharging its inspection duties. Please contact me at (352) 415-2317 or kevin.rabin@trls.org regarding any questions about the title to the Home or the inspection process.

Sincerely,



Kevin S. Rabin, Esq.
Attorney for Tona Morris

KSR/ksr

Enclosures: (1) Agreement to Purchase Real Estate; (2) Arrest Report Case No. 12-2023-CF-000586; (3) Federal Court Order Dismissing Fuller's Case (3:22-cv-1108-HES-PDB)

AGREEMENT TO PURCHASE REAL ESTATE

The undersigned (herein "Purchaser") hereby offers to purchase from the owner (herein "Seller") the real estate located at **309 SE Piute Way Lake City, FL 32025** County of **Columbia** State **FLORIDA**, the legal description of which is:

Parcel: 09-4S-17-08301-056 (30173)

Legal Description

LOT 6 HICKORY THICKET S/D & COMM NE COR OF LOT 2 HICKORY THICKET S/D, RUN N ALONG BNDRY OF S/D 382.14 FT FOR POB, CONT N 209.86 FT TO NE COR LOT 7, RUN E 423.58 FT, S 209.86 FT, W 423.58 FT TO POB. 517-255, 759-14, 770-1561, WD 889-378, PB 1439-2481, PB 1439-2438, DC 1447-144, DC 1447-145, WD 1447-148

CONDITIONS.

1. Purchase Price and Conditions of Payment

The purchase price shall be **Eighty Five Thousand Dollars (\$85,000.00)** to be paid in accordance with Addendum A schedule.

A: Cash Subject to Existing outstanding balance. The purchase price shall be paid in cash at the time of closing the sale after deducting from the purchase price the then outstanding balance due and owing under the existing money owed in favor of "309 SE PIUTE Way, LAKE CITY 32025", in the original amount of **\$85,000.00**; of such money debt is approximately **\$8500** down by **4/1/2022**, with **\$76,500** financed at **18%** over **10** years as of **4/1/2022**. **\$1231.97** per month there is no prepayment option.

2. Real Estate Taxes, Assessments, and Adjustments

Real Estate Taxes accrued against the property shall be paid by the buyer. Rents, if any, shall be prorated through the date of closing and all rent deposits shall be transferred to Purchaser. Existing casualty insurance shall be canceled/prorated through the date of closing.

3. Title to the Property

Seller shall provide purchaser once contract is complete a quit claim deed.

4. Possession of the Property

Purchaser shall be given possession of the property on **4/1/2022**.

5. Risk of Loss

The risk of loss by destruction or damage to the property by fire or otherwise prior to the closing of the sale is that of Seller. If all or a substantial portion of the improvements on the property are destroyed or damaged prior to the closing and transfer of title this agreement shall be void at Purchaser's option and in the event Purchaser elects to avoid this agreement the earnest money deposited shall be promptly refunded.

6. Improvements and Fixtures Included

This offer to purchase includes all improvements, buildings and fixtures presently on the real estate and agree to by buyer all in as is condition.

7. General Conditions

It is expressly agreed that this agreement to purchase real estate includes the entire agreement of Purchaser and Seller. This agreement shall be binding upon the heirs, personal representatives, successors and assigns of both Purchaser and Seller. This agreement shall be interpreted and enforced in accordance with the laws of the State of Florida with buyer paying any and all legal cost for both parties.

8. Special Conditions

A. Buyer agrees to maintain liability and property insurance equal to purchase price with Seller as named beneficiary within 5 days of sale. A copy of said policy shall be mail or emailed to Seller. Failure to procure or maintain insurance will result in default and \$250.00 added for each month buy does not have insurance added to the balance.

B. Buyer agrees to pay all taxes. Failure to do so will result in default and the seller will pay the taxes and a \$250 fee will be added to the balance for each month of default..

C. Buyer agrees to maintain property as to not acquire any fines, lien and or encumbrances. Failure to will result in default, seller paying the fines and a \$250 fee will be added to the balance for each month of default

D. Buyer agrees and accepts property in as is condition.

E. Payments to be made on **1st** of every month, **this is strictly enforced**. A late fee of \$100 dollars and \$20 dollars a day will be assessed as additional principle to the balance. The is a fifty percent penalty of the outstanding balance if property is paid off early.

F. Any dispute or controversy arising under or in connection with this Agreement shall be settled exclusively by arbitration, conducted in accordance with the rules of the American Arbitration Association then in effect. Buyer agrees not to utilize Andrew Decker, III or IV, Anthony Chauncey, Three Rivers Legal or Aimee Stalnaker in any proceeding against this trust or it affiliated members. Judgment may be entered on the arbitrator's award in any court having jurisdiction; the expense of such arbitration shall be borne by the Buyer with a venue of **COLUMBIA** County Florida. None of the parties mentioned in this paragraph shall disparage at any time, directly or indirectly, make, publish, or communicate to any person or entity or in any public forum any defamatory or disparaging remarks, comments, or statements concerning the name or reputation of any other party or Derek Snead or a party's related business entity. A violation of this provision shall entitle the disparaged party to commence a legal action for damages in the amount of ten thousand dollars per violation and associated legal costs. Property is not to be rented or subleased and will result in default

9. In the event of Default seller can at any time commence trespassing, eviction remedies and or foreclosure proceedings if the default via certified mailing of notice if not remedied in 15 days. In the event of need for certified mailing the cost plus an administrative fee of \$50 will be billed to buyer as additional principle to balance.

10. Time for Acceptance and Closing

This offer is void if not accepted by Seller in writing on or before 7 P.M. of the 18th day of March, 2022

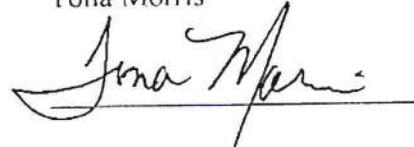
11. Seller responsibility-None

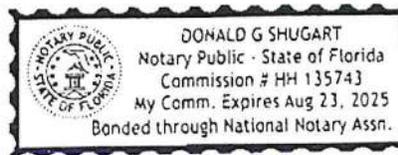
12. Buyer understands that anything outside the scope of #11 Seller Responsibility.

State of Florida
 County of Columbia

Sworn to or affirmed and subscribed before me this 31 day of
MARCH, 2022
 By Tona Morris

Personally Known _____ Notary Public
 Produced Identification My Commission Expires 8-23-2025
 Type of ID Produced FIDL
Physically Appeared

Tona Morris

 (PURCHASER)

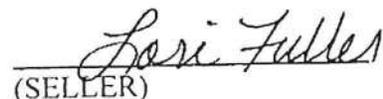


"309 SE PIUTE Way, LAKE CITY 32025
 and trust"

State of Florida
 County of Columbia

Sworn to or affirmed and subscribed before me this 31 day of
MARCH, 2022
 By Lori Fuller

Personally Known _____ Notary Public
 Produced Identification My Commission Expires 8-23-2025
 Type of ID Produced FIDL
Physically Appeared


 (SELLER)
 LORI Fuller

Assignment of Contract For Purchase of Real Estate

For value received, I, D. Wright tt "309 SE PIUTE Way, LAKE CITY 32025 land trust", as assignor, hereby transfer and assign to Lori Fuller, as assignee, his heirs and assigns, all rights and interest in that contract between D. Wright tt "309 SE PIUTE Way, LAKE CITY 32025 land trust", seller, and assignor Tona Morris, as purchaser dated the 31 day of March, 2022 for the sale of premises known as 309 SE Piute Way Lake City, FL 32025, more particularly described in said contract, subject to the covenants, conditions, and payments contained in said contract. I authorize and empower assignee, on his performance of all the above mentioned covenants, conditions, and payments to demand and receive of seller the deed covenanted to be given in the contract hereby assigned in the same manner and with the same affect as I could have done had this assignment not been made.

Dated: 10/10, 2022

D. Wright tt "309 SE PIUTE Way, LAKE CITY 32025 land trust"
Purchaser/Assignor

D. Wright
Purchaser/Assignor

Acceptance by Assignee

I, Lori Fuller, accept the above assignment of that contract made the 3 day of 31, 2022. I agree to perform all obligations to be performed by assignor under the contract, and to indemnify assignor against any liability arising from the performance or nonperformance of such obligations.

Dated: 10/10, 2022

Lori Fuller
Assignee

Lori Fuller
Assignee

Prepared by: Lori Fuller
40 Anderson Branch RD
Murphy NC 28906

Quitclaim Deed

The Quit Claim Deed executed this 10 day of OCT, 2022, by first party, Grantor, "309 SE Piute Way Lake City, FL 32025 trust with D Wright trustee services as trustee of the trust"

whose post office address is 9169 W State St #1942 Garden City ID 83714

to second party, Grantee Lori Fuller

whose post office address is 40 Anderson Branch RD Murphy NC 28906

Witnesseth, that the said first party, for the sum of \$ 10.00, and other good and valuable consideration paid by the second party, the receipt whereof is hereby acknowledged, does hereby remise, release and quitclaim unto the said second party forever, all the right, title, interest and claim which the said first party has in and to the following described parcel of land, and improvements, and appurtenance thereto in Columbia County, Florida to wit:

Parcel: 09-4S-17-08301-056 (30173) Legal Description (click for full description)
09-4S-17 0200/02002.04 Acres LOT 6 HICKORY THICKET S/D & COMM NE COR OF LOT 2 HICKORY THICKET S/D, RUN N ALONG BNDRY OF S/D 382.14 FT FOR POB, CONT N 209.86 FT TO NE COR LOT 7, RUN E 423.58 FT, S 209.86 FT, W 423.58 FT TO POB 517-255, 759-14, 770-1561, WD 889-573, PB 1439-2481, PB 1439-2438,

In witness whereof, the said first party has signed and sealed these presents the day and year first above written, sealed and delivered in presence of:

BB
Witness Signature

[Signature]
Grantor Signature

Brittany Trancome
Printed Name

D Wright
Printed Name

[Signature]
Witness Signature

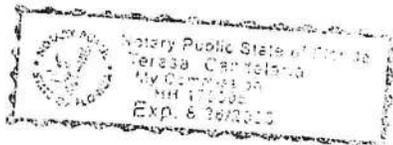
[Signature]
Grantor Signature

Stephanie Collins
Printed Name

[Signature]
Printed Name

County of: Columbia State of: Florida

Sworn to and subscribed before me this 11th day of October, 22. The Party of the first part appeared, personally known to me/produced a valid ID, and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity (ies), and that by his/her/their signature(s) on the instrument the person(s) upon behalf of which the person(s) acted, executed the instrument. Witness my hand and official seal.



[Signature]
Notary signature



Arrest Report

COLUMBIA COUNTY SO
4917 E US HWY 90
LAKE CITY, FL 32055

23-586-CF-BX
1202027376

Report Date / Time 5/31/2023 04:47 PM	Report Number CCSO00006328M	Case Number/Cad Number CCSO23OFF002337 / CCSO23CAD021633	Reporting Officer Name ALFORD, CHRISTOPHER
Originating Agency ORI FL0120000	Occur Date Time Range 05/31/2023 11:00:30 -	Jurisdiction In Jurisdiction	
OBTS Number	Other Number	Clearance	

Location of Occurrence

County COLUMBIA	Location Type RESIDENCE	Location Description 309 SE PIUTE Way	Columbia County Clerk FL 2023 JUN 26 PM 1:28		
Street Number 309	Street SE PIUTE Way	Apt/Lot/Bldg	City LAKE CITY	State FL	Zip Code 32025

Suspect

First Name DEREK	Middle Name LAWRENCE	Last Name SNEAD	Suffix	Race W	Sex M	Height 6'02"	Weight 230	Hair BAL	Eyes HZZ
MNI # CCSO18MNI001977	SSN [REDACTED]	Date of Birth	Age	ID Type	Drivers License or ID	State	Agency ID 327		
Place of Birth:	CLEARWATER FL UNITED STATES								
Address * RESIDENCE / 1439 NE VOSS RD , LAKE CITY, FL 32055									

Arrest

Arrest Date/Time 6/25/2023 8:05:42 AM	Arrest Location [REDACTED]	Arrest Description [REDACTED]		
Street Number	Street NW BAYVIEW DR	City LAKE CITY	State FL	Zip Code 32025

Charge : STATE

Counts 1	Charge 812.014.2c1	Bond Amount \$0.00	<input type="checkbox"/> No Bond
Charge Degree THIRD	Charge Level FELONY		
General Offense Code COMPLETED	Arrest Offense Code GRAND THEFT		
Charge Description GRAND THEFT 750 LESS THAN 5K DOLS			
Administrative Code - Description -			

Charge : STATE

Counts 1	Charge 806.13.1b3	Bond Amount \$0.00	<input type="checkbox"/> No Bond
-------------	----------------------	-----------------------	----------------------------------

Report Date / Time 5/31/2023 04:47 PM	Report Number CCSO00006328M	Case Number/Cad Number CCSO23OFF002337 / CCSO23CAD021633	Reporting Officer Name ALFORD, CHRISTOPHER
Originating Agency ORI FL0120000	Occur Date Time Range 05/31/2023 11:00:30 -	Jurisdiction In Jurisdiction	
OBTS Number	Other Number	Clearance	

Charge Degree THIRD	Charge Level FELONY
General Offense Code COMPLETED	Arrest Offense Code DAMAGE PROP-CRIM MISCH
Charge Description 1000 DOLS OR MORE	
Administrative Code - Description -	

Charge : STATE

Counts 1	Charge 934.215	Bond Amount	<input type="checkbox"/> No Bond
-------------	-------------------	-------------	----------------------------------

Charge Degree THIRD	Charge Level FELONY
General Offense Code COMPLETED	Arrest Offense Code PUBLIC OR...
Charge Description USE 2 WAY COMM DEVICE TO FACIL FELONY	
Administrative Code - Description -	

Charge : STATE

Counts 1	Charge 812.015	Bond Amount \$0.00	<input type="checkbox"/> No Bond
-------------	-------------------	-----------------------	----------------------------------

Charge Degree FIRST	Charge Level FELONY
General Offense Code COMPLETED	Arrest Offense Code STOLEN PROP-DEAL IN
Charge Description ORGANIZED DEALING TRAFFIC STOLEN PROP	
Administrative Code - Description -	

Probable Cause

On May 31, 2023 at approximately 1453 hours, I responded to 309 SE Piute way in reference to [REDACTED] (victim) reporting a theft of her electric meter box. Once on scene, I made contact with victim.

[REDACTED] stated via verbal and written statement that she returned home today and observed her

Report Date / Time 5/31/2023 04:47 PM	Report Number CCSO00006328M	Case Number/Cad Number CCSO23OFF002337 / CCSO23CAD021633	Reporting Officer Name ALFORD, CHRISTOPHER
Originating Agency ORI FL0120000	Occur Date Time Range 05/31/2023 11:00:30 -	Jurisdiction In Jurisdiction	
OBTS Number	Other Number	Clearance	

son, [REDACTED], DOB: [REDACTED] (witness) standing on the front porch of her residence. [REDACTED] informed me that she arrived at the residence at approximately 2:00 PM and her outside electric meter box was open with the wires and parts cut out. [REDACTED] stated that her daughter, [REDACTED] (witness) informed her that a man in a black truck was outside. [REDACTED] stated [REDACTED] told her it was a white man with tattoos that came to the residence in a black truck (possibly a Ford). [REDACTED] informed me that she has had issues with Derek Snead (suspect) who is somehow connected to Lori Fuller.

According to [REDACTED] she bought the residence from Lori in March of 2020. [REDACTED] informed me that she has previously had issues with Derek breaking into her residence on two separate occasions. According to [REDACTED], Derek stole her AC Unit twice. [REDACTED] stated [REDACTED] is financing the residence and has placed 10% down payment toward the property. [REDACTED] is not coming from Derek Snead and he is not a property manager or landlord. (Reference case number CCSO220000074 AND CCSO23OFF000707.)

After speaking with [REDACTED] I spoke to [REDACTED] [REDACTED] told me she observed a black truck with a white object in the back of the truck. [REDACTED] stated the white object appeared to be a wash machine or something. [REDACTED] stated that she did not want to approach a stranger so she did not go outside to the truck. After speaking with [REDACTED] [REDACTED] spoke with [REDACTED].

[REDACTED] stated a white male with tattoos in a black truck came to the residence and turned the power off. I asked [REDACTED] if he knew what kind of truck it was and [REDACTED] stated that it was possible a Ford.

On June 15, 2023, I placed Derek Snead under arrest for charges in reference to case CCSO23OFF000707. Corporal Douglas seized Derek's cell phone and submitted it into CCSO evidence pending a search warrant in reference to an unrelated case. On June 23, 2023, Detective Cortese obtained a lawful search warrant of Derek Snead's cell phone.

Report Date / Time 5/31/2023 04:47 PM	Report Number CCSO00006328M	Case Number/Cad Number CCSO23OFF002337 / CCSO23CAD021633	Reporting Officer Name ALFORD, CHRISTOPHER
Originating Agency ORI FL0120000	Occur Date Time Range 05/31/2023 11:00:30 -	Jurisdiction In Jurisdiction	
OBTS Number	Other Number	Clearance	

While reviewing Derek Snead's search warrant return on Derek's cellular device, I located evidence against Cody Cimiotta and Derek Snead via Cody's cell phone number, 386-344-3104 and Derek's email (mem335@gmail.com) that is attached to Derek's Snead's cell phone. In the conversation, Cody text Derek and tells him that he is on the way to [REDACTED] residence. Cody states that he has wire cutters for the meter box. Cody sends Derek several pictures of the meter box that is clearly at [REDACTED] residence. I observed the pictures, and from experience of being on scene [REDACTED] residence several times, I immediately recognize the residence and the meter box to [REDACTED]. Cody further tells Derek, that he is done and sends pictures of the property that include the meter box and Cody's truck which is present on the property.

Cody sent the following messages to [REDACTED] Snead on May [REDACTED]. The messages are as follows:

Message 1: I brought [REDACTED] with me so we can [REDACTED] two birds with one stone. I'm paying him, don't worry about him [REDACTED] na walk into [REDACTED] like this by myself not knowing who all is there. I'm some dumb, not [REDACTED] dumb. I needed [REDACTED] me to watch my back.

Message 2: Yes we are [REDACTED] with them yet I got a "shit" ton of screws that would look great in their drive way. Will get that [REDACTED] back one way or the other. So we gonna make a delivery in their drive way on our way out. You have anything else I can might do before the day is out.

Message 3: Tho I do appreciate you giving me the opportunity to do this I am sorry the way it turned out and they do have a camera on the front of the trailer under the yard light.

After reviewing the cell phone evidence, Corporal Douglas and I responded to CCDF to make contact with Cody Cimiotta. Post Miranda, Cody Cimiotta agreed to speak with me on this case. Cody

Report Date / Time 5/31/2023 04:47 PM	Report Number CCSO00006328M	Case Number/Cad Number CCSO23OFF002337 / CCSO23CAD021633	Reporting Officer Name ALFORD, CHRISTOPHER
Originating Agency ORI FL0120000	Occur Date Time Range 05/31/2023 11:00:30 -	Jurisdiction In Jurisdiction	
OBTS Number	Other Number	Clearance	

stated that he doesn't know the name of the guy that hired him because the guy didn't give him a name and only used a text now service. (Based on the email listed above, it is known that the email belongs to Derek Snead and is attached to his cell phone).

Cody stated that he was paid to damage the electric meter box by cutting the wires. Cody informed me that the person told him the residence belongs to him and it may cost him some money but the tenant is causing him "problems." Cody stated that the person paid him \$100 for damaging the meter box and asked him to take pictures of the property afterward.

Cody stated that after cutting the wires and the [redacted] of the meter box, he took the stolen parts to a residence located on Voss road. Cody informed me [redacted] he gave the [redacted] parts to a white lady with a short hair cut as directed by the person who hired him.

The email (mem335@ymail.com) [redacted] used in the [redacted] [redacted] attached to Derek's cell phone and it is known that the email [redacted] to Derek Snead. Derek also is known to reside at 1439 NE Voss Road.

Derek ordered and paid Cody [redacted] to damage the electric meter box, steal the wiring and deliver it to Derek's residence. [redacted] Snead has a pattern of committing such crimes against tenants past and present. Derek [redacted] to damage the meter box, leaving Tona without power so that she would move from the residence. Derek is being charged with Grand theft, Criminal Mischief, Organizing Dealing in Stolen Property, and Unlawful use of a Two Way Device. Derek's charges will be further explained in the report.

I have reviewed the evidence in Derek Snead's cell phone and interviewed Cody who confirmed the evidence in Derek's cell phone. Cody confirmed that he (meaning Cody) cut the wires and damaged the electric meter box by order of Derek Snead and delivered the stolen parts to Derek Snead's residence post Miranda.

Report Date / Time 5/31/2023 04:47 PM	Report Number CCSO00006328M	Case Number/Cad Number CCSO23OFF002337 / CCSO23CAD021633	Reporting Officer Name ALFORD, CHRISTOPHER
Originating Agency ORI FL0120000	Occur Date Time Range 05/31/2023 11:00:30 -	Jurisdiction In Jurisdiction	
OBTS Number	Other Number	Clearance	

On June 25, 2023 I conducted a traffic stop on Derek Snead and located him in the driver seat. Derek was taken into custody. Derek was arrested and transported to CCDF without incident. While in the booking process, Derek did not claim injury, sickness, or to be suicidal. CCDF staff were present and are aware.

Officer Name Rank / ID #	Involvement On Report / Reporting Role	Officer Agency
ALFORD, CHRISTOPHER DEPUTY 1159	REPORTING OFFICER	COLUMBIA COUNTY CCSO

The undersigned certifies and swears that he/she has just and personally observed the above named Defendant, committed violation(s), of law, on the below date(s) and time(s), and that the probable cause associated with this report:

Reporting Officer

Officer Name	Office Rank	Sworn and Subscribed before me, the undersigned authority
ALFORD, CHRISTOPHER	DEPUTY	This is on <u>June</u> , 2023
Officer Agency	THE COURT, NOTARY OR LAW ENFORCEMENT	
COLUMBIA COUNTY SO		
Officer Signature <i>Chris Alford</i>	<i>H.P. #929</i>	

<input type="radio"/> No Bill / Petition	<input type="radio"/> Issue Warrant	<input type="checkbox"/> Prosecution Approved	Signature of Assistant State Attorney	Date
--	-------------------------------------	---	---------------------------------------	------

Defendant Qualifies As:
 High Risk Sex Offender: Yes No
 VFOSC: Yes No
 Signature: *H.P. #929* Date: *6/25/23*

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

LORI FULLER,
Plaintiff,

v.

Case No. 3:22-cv-1108-HES-PDB

TONA MORRIS
Defendant.

ORDER

This cause comes before this Court on Plaintiff's "Motion to Reopen the Case" (Dkt. 38). This Court administratively closed the case on April 12, 2023, because Defendant filed a petition for bankruptcy (Dkt. 37). In the motion, Fuller represents that the automatic stay in the bankruptcy case is terminated and she may proceed with the requested remedies in this action (Dkt. 38). After review of the record, however, this Court finds subject matter jurisdiction is lacking.

Federal courts may decide only cases over which they have jurisdiction, and they must independently determine whether jurisdiction exists. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 514 (2006). If a court determines jurisdiction is lacking, the court must dismiss the action. Fed. R. Civ. P. 12(h)(3). The dismissal must be without prejudice because it is not a judgment on the merits.

Stalley ex rel. United States v. Orlando Reg'l Healthcare Sys., Inc., 524 F.3d 1229, 1232 (11th Cir. 2008).

Plaintiff, Lori Fuller (“Plaintiff”) filed this action on October 14, 2022, based on diversity jurisdiction (Dkt. 1-4). Diversity jurisdiction permits a federal district court to exercise jurisdiction over a civil action between citizens of different states involving an amount in controversy exceeding \$75,000. 28 U.S.C. § 1332(a).

Plaintiff pleads that she is a resident of Georgia and the Defendant, Tona Morris, (“Morris”) is a resident of Florida. Thus, diversity of citizenship is met. But the second prerequisite—amount in controversy—is not. Plaintiff brings a claim of breach of contract (count I) and a claim for ejectment (count II).¹ On the breach of contract claim, Plaintiff alleges damages exceed 75,000 because Morris did not pay the full purchase price of the property of \$85,000 as stated in the Agreement to Purchase Real Estate (“Agreement”) (Dkt. 1, ¶¶ 6, 12; Dkt. 1-1 (the Agreement)).

The Agreement is a rent-to-own home agreement. The title to the property is not transferred to Morris until the full amount is paid (Dkt. 1-1,

¹ This Court need not address whether the demand for damages of the full purchase price of the property and ejectment is double recovery because it is without jurisdiction. But Plaintiff appears to seek double recovery to which she is not entitled. *MCA Television Ltd. v. Pub. Int. Corp.*, 171 F.3d 1265, 1272 (11th Cir. 1999)

¶3). Morris was required to pay \$8,500 down by April 1, 2022, with \$76,500 financed at the maximum interest rate allowed under Florida law (18%) (Dkt. 1-1, ¶1). There is a monthly payment of \$1,231.07 and no prepayment option. The Agreement was executed by Plaintiff and Morris on March 31, 2022. Morris was to take possession of the property on April 1, 2022. At an undetermined time, Plaintiff alleges that Morris failed to make to make timely payments (Dkt. 1, ¶11). On October 14, 2022, Plaintiff sued for breach of contract and ejectment.

At first glance the Complaint would seem to satisfy the amount in controversy requirement. Yet, the Agreement contains no choice of law provision. Federal courts sitting in diversity apply the forum state's choice-of-law rules. *Boardman Petroleum, Inc. v. Federated Mut. Ins. Co.*, 135 F.3d 750, 752 (11th Cir.1998) ("Federal courts sitting in diversity apply the forum state's choice-of-law rules."). In Florida, courts determine what state law controls by applying the significant relationships test. *Sturiano v. Brooks*, 523 So. 2d 1126, 1129 (Fla. 1988). Courts consider several factors to determine which state has the most contacts with the action such as (a) the place of contracting; (b) place of negotiation of the contract; (c) place of performance; (d) the location of the subject matter of the contract; and (e) the domicile of the parties. *Id.* Further contacts are evaluated "according to their relative importance with respect to the particular issue." *Id.* Here, the place of performance, location of the

contract, and the Defendant are in Florida, so the scale tips in favor of applying Florida law.

Plaintiff alleges that because Morris failed to make all payments, she is damaged by not being paid the full purchase price of the property. Damages “must compensate for damages resulting from the breach.” *Goldblatt v. C.P. Motion, Inc.*, 77 So. 3d 798, 801 (Fla. 3d DCA 2011). Actual damages are “[r]eal, substantive and just damages, or the amount awarded to a complainant in compensation for his actual and real loss or injury.” *Kehoe v. Fid. Fed. Bank & Tr.*, 421 F.3d 1209, 1213 (11th Cir. 2005) (quoting *McMillian v. F.D.I.C.*, 81 F.3d 1041, 1055 (11th Cir. 1996)). It is well settled, however, that parties can stipulate to a fixed amount in the event of a breach. *Lefemine v. Baron*, 573 So. 2d 326, 328 (Fla. 1991). But no damages provision can act as a penalty. *Hyman v. Cohen*, 73 So. 2d 393, 399 (Fla. 1954). In other words, a damages provision intended to deter a breach or induce a party to fully perform is impermissible under Florida law. *Id.*

Plaintiff has not plead actual damages, instead she pleads that she is owed the full purchase price of the property. Yet the Agreement has no acceleration or liquidated damages provision. But even if the parties had agreed to the stipulated amount of the full purchase price of the property such a damages provision is void under Florida law. *Lefemine*, 573 So. 2d at 328;

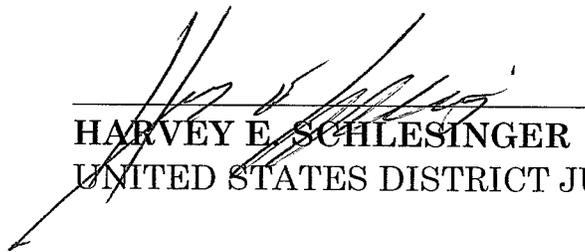
Rusniaczek v. Tableau Fine Art Grp., Inc., 139 So. 3d 355, 358 (Fla. 3d DCA 2014).

Plaintiff seeks a penalty that would induce the party to fully perform under the contract. But Plaintiff's claim for the full purchase price of the property because of the breach of contract is void and unenforceable as a matter of law. *Lefemine*, 573 So. 2d at 328; *Rusniaczek*, 139 So. 3d at 358. The remaining ejectment count cannot be reduced to a monetary sum for the purposes of determining the amount of controversy. *See Parks as Tr. of Frank Sawyer Revocable Tr. v. Caribbean Crossings, Ltd., Inc.*, No. 19-80284-CIV-MARRA, 2019 WL 13256089 at *3 (S.D. Fla. May 14, 2019). Because Plaintiff failed to demonstrate the amount in controversy is met this Court lacks subject-matter jurisdiction over this action under 28 U.S.C. § 1332.

Accordingly, it is hereby **ORDERED**:

1. The "Motion to Reopen the Case" (Dkt. 38) is **DENIED** as moot;
2. This case is **DISMISSED without prejudice**; and
3. The Clerk of Court is directed to terminate all pending motions and deadlines as moot and close the file.

DONE AND ORDERED at Jacksonville, Florida, this 20~~1~~ day of
October, 2023.



HARVEY E. SCHLESINGER
UNITED STATES DISTRICT JUDGE

Copies to:
Peter J. Solnick, Esq.
Tona Morris
Kevin Skyler Rabin, Esq.