

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS

R. Lawton McIntosh, Circuit Court Judge

Case No.: 2020-CP-04-02439

RECEIVED

JUL 25 2022

SC Court of Appeals

U.S. Foods, Inc., Respondent.

v.

Carlees Restaurant LLC and Ghassan Ashy, Defendants,

Of whom Carlees Restaurant, LLC is the Appellant.

RECORD ON APPEAL

William Norman Epps III, #73158
Post Office Box 2167
Anderson, South Carolina 29622
(864) 224-2111
(864) 224-3536, fax
Attorney for Appellant

June 13, 2022

Other Counsel of Record:

Cynthia M. Lover, Esq.
PO Box 1452
North Myrtle Beach, SC 29598
843-626-2029 (phone)
Attorney for Respondent

INDEX

Order Striking Answer of Carlees Restaurant, LLC and for Judgment filed September 1, 2021....1

Form 4 Order denying the Defendant, Carlees Restaurant, LLC Motion to Alter or Amend filed September 15, 2021.....8

Form 4 Order granting Plaintiff’s Motion to Strike the Defendant, Corporation’s Answer filed August 27, 2021.....11

Proposed Order Striking Answer of Carlees Restaurant, LLC and for Judgment.....14

Email to trial court dated August 27, 2021.....19

Summons and Complaint filed December 11, 2022.....22

Answer of Ghassan Ashy filed on May 4, 2021.....32

Answer of Carlees Restaurant, LLC filed on May 4, 2021.....33

Plaintiff’s Motion to Strike Defendant Carlees Restaurant, LLC’s answer and for Judgment filed on July 2, 2021.....34

Defendants Return to Plaintiff’s Motion and Motion to Amend Defendants Answers filed August 17, 2021.....45

Motion to Alter or Amend the Order Striking Answer and of Carlees Restaurant, LLC filed September 13, 2021.....50

Transcript of Record of Motion hearing on August 25, 2021 pp. 1-8.....53

Certificate of Counsel.....61

STATE OF SOUTH CAROLINA
County of: ANDERSON

IN THE COURT OF COMMON PLEAS
Case #: 2020-CP-04-02439

U.S. Foods, Inc.,

Plaintiff,

vs.

Carlees Restaurant LLC
and Ghassan Ashy,

Defendants.

)
)
) ORDER STRIKING ANSWER OF
) CARLEE'S RESTAURANT LLC
) AND FOR JUDGMENT
)
)
)
)
)
)
)
)

This matter came before me pursuant to a Motion to Strike Defendant's Answer and For Default and Default Judgment filed by the Plaintiff. Present at the hearing was Cynthia M. Lover, Attorney for the Plaintiff, William N. Epps, III, Attorney for the Defendants, and Ghassan Ashy.

Plaintiff's basis for its motion is South Carolina case law which holds that in legal matters, artificial entities must act through licensed attorneys. Travelers Ins. Co. v. Roof Doctor, Inc., 481 S.E.2d 451, 325 S.C. 614 (S.C. App., 1997), citing State v. Wells, 191 S.C. at 468, 480, 5 S.E. 2d 181, 186 (1939), and the Defendant Carlee's Restaurant LLC is a limited liability company, which is an artificial entity, and therefore the Answer filed on behalf of Carlee's Restaurant LLC by Ghassan Ashy, who is not an attorney, should be stricken, with the result being that said Defendant is in default, entitling the Plaintiff to an Order for Default Judgment.

Based on the pleadings and law cited by the Plaintiff in its motion, as well as counsel's arguments at the hearing, I make the following Findings of Fact and Conclusions of Law:

FINDINGS OF FACT

1. The Plaintiff is a Delaware corporation registered with the South Carolina Secretary of State.

2. Defendant Carlee's Restaurant LLC is a dissolved South Carolina limited liability company formerly conducting business in Anderson County, South Carolina.
3. Ghassan Ashy, registered agent for Carlees Restaurant LLC, with the Summons and Complaint on March 18, 2021. Mr. Ashy consulted attorney Chuck Anderson who requested of the Plaintiff, and was granted, a fifteen day extension of time. Ultimately, Mr. Ashy did not retain attorney Anderson, and on May 4, 2021, Mr. Ashy filed an Answer on behalf of Carlee's Restaurant LLC.
4. Ghassan Ashy is not an attorney licensed to practice law in South Carolina.
5. On May 10, 2021, Plaintiff's attorney mailed Mr. Ashy a letter advising him of the legal requirement that corporations be represented in Common Pleas actions by an attorney, and granted him an additional fifteen days in which to retain one.
6. No Notice of Appearance was filed, and on July 2, 2021, Plaintiff filed the Motion to Strike Defendant's Answer and for Default and Default Judgment. A copy was mailed to Mr. Ashy on July 9, 2021.
7. On July 29, 2021, Plaintiff's attorney notified Ghassan Ashy via certified mail that Plaintiff's Motion to Strike the Answer of Defendant Carlee's Restaurant LLC was scheduled to be heard on August 25, 2021.
8. On August 10, 2021, a Notice of Appearance was filed by William N. Epps, III..

CONCLUSIONS OF LAW

1. This court has subject matter jurisdiction to hear this case and personal jurisdiction over the Defendant, venue is established, and this matter is properly before the court.

2. The Defendant limited liability company was not represented by an attorney at the time it filed its Answer or at the time Plaintiff filed its Motion to Strike Defendant's Answer and For Default and Default Judgment.

3. A non-attorney is prohibited from representing an artificial entity, such as a corporation, in Common Pleas court. Traveler's Insurance Company, v. The Roof Doctor, 481 S.E.2d 451, 325 S.C. 614 (S.C. App. 1997).

4. The Answer submitted on behalf of the Defendant liability company by Ghassan Ashy, a non-attorney, is stricken as null and void.

AND IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS
 US Foods Inc

JUDGMENT IN A CIVIL CASE

CASE NO. 2020-CP-04-02439
 Carlees Restaurant LLC and Ghassan Ashy

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Cynthia M. Lover	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
---------------------------------------	--

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

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

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
 Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
US Foods Inc.	Carlees Restaurant LLC	\$21,501.26
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

Circuit Court Judge
 SCRPC Form 4C (02/2017)

Judge Code

Date



Anderson Common Pleas

Case Caption: U.S. Foods, Inc. VS Carlees Restaurant Llc , defendant, et al

Case Number: 2020CP0402439

Type: Order/Other

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2021-09-01 10:19:55 page 7 of 7

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.



Anderson Common Pleas

Case Caption: U.S. Foods, Inc. VS Carlees Restaurant Llc , defendant, et al
Case Number: 2020CP0402439
Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2021-09-15 10:44:45 page 3 of 3

ELECTRONICALLY FILED - 2021 Sep 15 10:52 AM - ANDERSON - COMMON PLEAS - CASE#2020CP0402439

FORM 4

**STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS**

**JUDGMENT IN A CIVIL CASE
CASE NO. 2020 CP-04-02439**

U.S. FOODS, INC.
PLAINTIFF(S)

CARLEES RESTAURANT, LLC.
DEFENDANT(S)

Submitted by:	Attorney for : <input type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
----------------------	---

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
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IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

PLAINTIFF'S MOTION TO STRIKE AS TO CORPORATE DEFENDANT BASED ON NON-ATTORNEY FILING AN ANSWER ON BEHALF OF THE CORPORATION IS GRANTED. AS SUCH, THERE IS NOTHING TO AMEND.

This order ends does not end the case.

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	Date
----------------------------	-------------------	-------------

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
CLERK OF COURT

Court Reporter:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

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Anderson Common Pleas

Case Caption: U.S. Foods, Inc. VS Carlees Restaurant Llc , defendant, et al
Case Number: 2020CP0402439
Type: Order/Form 4

S/R. LAWTON McINTOSH

S/R.LAWTON McINTOSH

Electronically signed on 2021-08-26 16:55:09 page 3 of 3

2. Defendant Carlee's Restaurant LLC is a dissolved South Carolina limited liability company formerly conducting business in Anderson County, South Carolina.
3. Ghassan Ashy, registered agent for Carlees Restaurant LLC, with the Summons and Complaint on March 18, 2021. Mr. Ashy consulted attorney Chuck Anderson who requested of the Plaintiff, and was granted, a fifteen day extension of time. Ultimately, Mr. Ashy did not retain attorney Anderson, and on May 4, 2021, Mr. Ashy filed an Answer on behalf of Carlee's Restaurant LLC.
4. Ghassan Ashy is not an attorney licensed to practice law in South Carolina.
5. On May 10, 2021, Plaintiff's attorney mailed Mr. Ashy a letter advising him of the legal requirement that corporations be represented in Common Pleas actions by an attorney, and granted him an additional fifteen days in which to retain one.
6. No Notice of Appearance was filed, and on July 2, 2021, Plaintiff filed the Motion to Strike Defendant's Answer and for Default and Default Judgment. A copy was mailed to Mr. Ashy on July 9, 2021.
7. On July 29, 2021, Plaintiff's attorney notified Ghassan Ashy via certified mail that Plaintiff's Motion to Strike the Answer of Defendant Carlee's Restaurant LLC was scheduled to be heard on August 25, 2021.
8. On August 10, 2021, a Notice of Appearance was filed by William N. Epps, III..
9. The Complaint in this matter is accompanied by a verified statement of account and the damages in this matter are liquidated.

CONCLUSIONS OF LAW

1. This court has subject matter jurisdiction to hear this case and personal jurisdiction over the Defendant, venue is established, and this matter is properly before the court.

2. The Defendant limited liability company was not represented by an attorney at the time it filed its Answer or at the time Plaintiff filed its Motion to Strike Defendant's Answer and For Default and Default Judgment.

3. A non-attorney is prohibited from representing an artificial entity, such as a corporation, in Common Pleas court. Traveler's Insurance Company, v. The Roof Doctor, 481 S.E.2d 451, 325 S.C. 614 (S.C. App. 1997).

4. The Answer submitted on behalf of the Defendant liability company by Ghassan Ashy, a non-attorney, is stricken as null and void.

5. As no Answer was filed by Defendant Carlees Restaurant LLC, said Defendant is in Default, the allegations of the Plaintiff's Complaint are admitted, and the Plaintiff is entitled to a judgment as a matter of law in keeping with the prayer of the Plaintiff in its Complaint.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED that Plaintiff's Motion to Strike Defendant's Answer and for Default and Default Judgment filed by the Plaintiff is hereby granted and that the Plaintiff is entitled to judgment as follows:

(a)	Amount	\$15,000.00
(b)	Interest at the contract rate of 1.5% per month from March 1, 2020 through August 25, 2021. . . .	3,995.00
(c)	Attorney's fees	2,250.00
(d)	Costs Expended	256.26
	Total	\$ 21,501.26

AND IT IS SO ORDERED.

JUDGE'S SIGNATURE PAGE TO FOLLOW

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON
IN THE COURT OF COMMON PLEAS
 US Foods Inc

JUDGMENT IN A CIVIL CASE

CASE NO. 2020-CP-04-02439
 Carlees Restaurant LLC and Ghassan Ashy

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Cynthia M. Lover	Attorney for : <input checked="" type="checkbox"/> Plaintiff <input type="checkbox"/> Defendant or <input type="checkbox"/> Self-Represented Litigant
--------------------------------	---

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- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRCP; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

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

IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment by the Court:

ORDER INFORMATION

This order ends does not end the case.
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Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
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US Foods Inc.	Carlees Restaurant LLC	\$21,501.26
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.**

Circuit Court Judge
 SCRCP Form 4C (02/2017)

Judge Code

Date

On Thu, Aug 26, 2021 at 4:50 PM Cynthia Lover, Attorney <loverlawfirm@aol.com> wrote:

CYNTHIA M. LOVER, P.A.

ATTORNEY AT LAW

POST OFFICE BOX 1452

NORTH MYRTLE BEACH, SC 29598

2411 N. Oak Street, The Founders Centre, Suite 305-D

Myrtle Beach, South Carolina 29577

OFFICE: 843-626-2029 FAX: 843-626-2451 EMAIL: LoverLawFirm@aol.com

Office of the Honorable R. Lawton McIntosh

attn: Tammy Jennings, Administrative Assistant, Grace Kerley, Law Clerk

via email: lmcintoshsc@sccourts.org, lmcintoshlc@sccourts.org

Re: Proposed Order

U.S. Foods, Inc.

v. Carlees Restaurant LLC and Ghassan Ashy

Case number: 2020-CP-04-02439

RESPOND TO OUR FILE NO.: 19-15967

Dear Ms. McIntosh and Ms. Kerley:

Judge McIntosh heard this motion yesterday morning, Wednesday, August 25, 2021. At that time, he granted Plaintiff's Motion to Strike the Answer of Defendant and for Default and Default Judgment, and instructed me to prepare an Order. At the time, I failed to inquire as to how he wanted me to send it to him, so I am emailing it to you as well as Mr. Epps, for his review.

My proposed Order is attached. I just e-filed my Affidavit of Attorney's Fees with the clerk.

If Judge McIntosh finds this Order to be appropriate, please e-file it with the clerk or email me back and instruct me to do so.

Very truly yours,

Cynthia M. Lover

CYNTHIA M. LOVER, P.A.

--
W. Norman Epps III
EPPS & EPPS, LLC
Attorneys and Counselors-at-Law
Post Office Box 2167
Anderson, South Carolina 29622
Tel.: 864-224-2111
Fax: 864-224-3536
e-mail: norman@eppslawfirm.net

~~~~ CONFIDENTIALITY NOTICE ~~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

**From:** lmcintoshlc@sccourts.org,

**To:** norman@eppsllawfirm.net, loverlawfirm@aol.com,

**Cc:** lmcintoshsc@sccourts.org,

**Subject:** RE: Non Jury Motions Wednesday, August 25 at 2:00 Case "2020CP0402439 U.S. Foods, Inc. VS Carlees Restaurant Llc ,et al

**Date:** Tue, Aug 31, 2021 2:42 pm

---

Good afternoon,

Judge McIntosh has edited the order. It will be uploaded and signed.

Thanks,

**Grace Calhoun Kerley**

Law Clerk to the Honorable Judge Lawton McIntosh

Phone: (864) 260-4059

Email: lmcintoshlc@sccourts.org

**From:** Norman Epps <norman@eppsllawfirm.net>

**Sent:** Friday, August 27, 2021 7:11 AM

**To:** Cynthia Lover, Attorney <loverlawfirm@aol.com>

**Cc:** McIntosh, Lawton Secretary (Tammy Jennings) <lmcintoshsc@sccourts.org>; McIntosh, Lawton Law Clerk (Grace Kerley) <lmcintoshlc@sccourts.org>

**Subject:** Re: Non Jury Motions Wednesday, August 25 at 2:00 Case "2020CP0402439 U.S. Foods, Inc. VS Carlees Restaurant Llc ,et al

**\*\*\* EXTERNAL EMAIL:** This email originated from outside the organization. Please exercise caution before clicking any links or opening attachments. \*\*\*

Judge McIntosh, Good morning, I am in receipt of Plaintiff's proposed order and respectfully object to the proposed findings and conclusions for entry of default and default judgment. The Court did not make a finding or ruling as to entry of default or default judgment as set forth in Plaintiff's proposed order. Also there is a motion to amend the answer of both defendants that is pending but that would have to be addressed by motion for reconsideration.

Respectfully submitted,

Norman Epps

STATE OF SOUTH CAROLINA  
County of: **Anderson**

IN THE COURT OF COMMON PLEAS  
Case #: 2020-CP-

U.S. Foods, Inc. )

Plaintiff, )

vs. )

Carlees Restaurant LLC )  
and Ghassan Ashy )

Defendants. )

SUMMONS  
(Non-Jury Roster)

TO THE DEFENDANT: Carlees Restaurant LLC  
and Ghassan Ashy  
111 Stratton Lane  
Anderson SC 29621

**YOU ARE HEREBY SUMMONED AND REQUIRED** to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint on the Plaintiff's Attorney listed below, at her office at:

**2411 North Oak Street, 305-D, Myrtle Beach, South Carolina 29577**

or

**Post Office Box 6774, Myrtle Beach, South Carolina, 29572,**

within Thirty (30) days after service hereof; exclusive of the day of such service; and if you fail to appear and defend, a judgment by default will be rendered against you for the relief demanded in the Complaint.

s/ Cynthia M. Lover  
Cynthia M. Lover  
Attorney For Plaintiff  
Post Office Box 1452  
North Myrtle Beach, SC 29598  
(843) 626-2029  
SC Bar #: 64844



6. That paragraph 4 of the Terms and Conditions of said Credit Application Form states: "Applicant agrees to pay interest in the amount of 1.5% per month, . . . on any payment considered past due until collected."

7. That paragraph 4 of the Terms and Conditions of said Credit Application Form states "Applicant agrees to pay all costs of collection incurred by Seller, including reasonable attorneys' fees and expenses, should a default in payment . . . occur."

8. That, on information and belief, in order to further induce the Plaintiff into extending credit to Carlees Restaurant LLC, Ghassan Ashy also executed a Personal Guaranty, a copy of which is attached to and thereby incorporated into this Complaint, whereby he unconditionally guaranteed payment of all indebtedness Carlees Restaurant LLC should owe to the Plaintiff.

9. That the Plaintiff, on the dates set forth on the itemized, sworn statement of account hereunto annexed as part of this Complaint, at the special instance, and request of Carlees Restaurant LLC, sold and delivered to said Defendant, on account, certain services, goods, wares and merchandise, as set forth and itemized on statement at the prices and on the terms shown thereon, and amounting in the whole sum of \$51,307.56.

10. That payments of \$36,307.56 have been made on the account, as appears on the verified statement of account and there is now due from Carlees Restaurant LLC, and Ghassan Ashy by virtue of his execution of the Personal Guaranty, to the Plaintiff, the amount of \$15,000.00, plus interest and attorney's fees.

11. That the damages in this matter are liquidated.

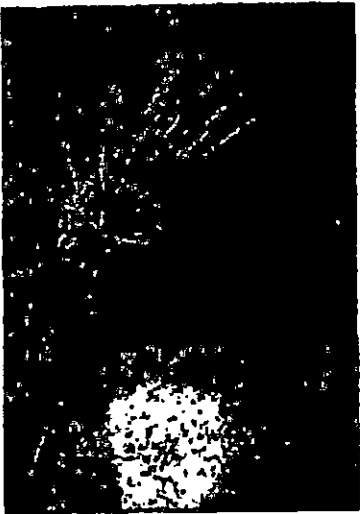
12. That although Plaintiff has demanded payment of the amount due from said Defendants, they have refused and continue to refuse to pay the balance due and Plaintiff is informed and believes it is entitled to judgment in the amount of \$15,000.00, as shown on the statement of account, a copy of which is attached and made a part hereof, plus interest at the contract rate of 1.5% per month on the unpaid balance from March 1, 2020 through date of entry of judgment, plus a reasonable attorney's fee.

WHEREFORE, the Plaintiff prays;

1. For judgment against the Defendants in the amount of \$15,000.00 ; and
2. For a reasonable attorney's fee; and
3. For interest at the contract rate of 1.5% per month from March 1, 2020 through date of entry of judgment; and
4. For the costs and disbursements of this action; and
5. For such other and further relief as this Honorable Court deems just and proper.

s/ Cynthia M. Lover  
Cynthia M. Lover  
Attorney For Plaintiff  
Post Office Box 1452  
North Myrtle Beach, SC 29598  
(843) 626-2029  
SC Bar #: 64844

30827869



X Brenda Dawney ..... 5/3/17  
X J. D. Augusty 5.3.17

### Customer Account Application

RECEIVED

MAY 02 2021

This Customer Application (this "Application") is made to US Foods, Inc., doing business as US Foods, and all of its affiliates, divisions, subsidiaries and assigns (collectively the "Sellers") for the purpose of inducing Sellers to extend credit accommodations to the Applicant named below:

#### SHIPPING AND BILLING INFORMATION

SHIP TO:  
**CARLEE'S RESTAURANT, LLC**  
Applicant Legal Name (INC, LLC, LP)  
**TONY'S ON MAIN**  
Trade Name/Doing Business As  
**7935 N MAIN ST**  
Delivery Address (Attach Location Sheet if More Than One)\*  
**ANDERSON** **SC** **29621**  
City State/Province Zip  
**ANDERSON** **USA**  
County Country  
**864-760-0192**  
Telephone Number

BILL TO:  
 Check Here if Billing Address is Same As Delivery Address  
 Billing Address \_\_\_\_\_  
 City \_\_\_\_\_ State/Province \_\_\_\_\_ Zip \_\_\_\_\_  
 Country \_\_\_\_\_  
**GOS RHY** **864-760-0192**  
Accounts Payable Contact Title Telephone Number  
 E-mail Address \_\_\_\_\_ Fax Number \_\_\_\_\_

\*Location sheet should include corresponding trade names

ELECTRONICALLY FILED - 2020 Dec 11 2:20 PM - ANDERSON - COMMONPLEAS - CASE#2020CD0429230

TELL US ABOUT YOUR OWNERSHIP

C-Corporation  S-Corp  Limited Liability Company (LLC)  Limited Partnership (LP)  Proprietorship  Non-Profit  Government  Other
State of Formation: SC
Government Funded?  Yes  No % of Revenue Gov't Funded
Medical/Medicare Funded?  Yes  No % of Revenue
Building/Facility:  Owned  Leased
Date Business Opened or Ownership Changed:
Federal ID Number: 61-1493994

OWNER/OFFICER/AUTHORIZED CORPORATE AGENT INFORMATION

Name: G. Hassan Ashy
Social Security Number:
Title:
Home Address: 111 Stratton Ln Anderson, SC 29621
City, State, Zip:
Driver's License Number:
Home Telephone Number: 864-702-2405
Cell Telephone Number:

WHO ELSE DO YOU DO BUSINESS WITH?

US FOODS
Vendor Name (Present Food Supplier) Account Number City/State Telephone No.
Vendor Name Account Number City/State Telephone No.
Vendor Name Account Number City/State Telephone No.
Bank City/State Contact Name Telephone No.
Checking Account # Loan Account #
DO YOU HAVE ANY OTHER EXISTING BUSINESSES?  Yes  No
DO YOU HAVE EXISTING OR PRIOR US FOODS ACCOUNTS?  Yes  No
Business Name: THE BOONDOUGLES
Address: ANDERSON SC
Account Number: 512 00053

DOCUMENTATION REQUESTS

- 1) RESALE OR EXEMPT TAX CERTIFICATE: TAX WILL BE CHARGED WITHOUT THESE DOCUMENTS
2) YOUR MOST RECENT TWO YEARS FINANCIAL STATEMENTS

APPLICANT'S CERTIFICATIONS

This customer account application ("Application") is being furnished by the undersigned ("Applicant") to US Foods, Inc. and each of its operating subsidiaries and affiliates (collectively, "Seller") for the purpose of inducing Seller to extend credit and/or provide goods/services to Applicant. Applicant certifies that the information furnished under this Application and any other transactions furnished in connection with this Application, is true, correct and complete. Applicant understands and agrees that Seller's acceptance of this Application shall in no way bind or permit Seller to extend credit and/or provide goods/services to Applicant. In support of this Application, Applicant represents and warrants that it is generally able to pay all debts as they become due and has capital sufficient to carry on Applicant's business. Applicant understands and agrees to be bound by the terms contained in this Application and all invoices and other documents furnished by Seller from time to time, all of which are incorporated in this Application by reference. Applicant understands that Seller retains the right to require the information contained in this Application or otherwise provided to Seller, and Applicant agrees to promptly advise Seller in writing via certified mail, of any material change in the information provided in this Application, including, but not limited to, change of ownership, change of location or address, address or telephone, Applicant understands that Seller will obtain this Application whether or not it is approved. Applicant's principal ("Principal") authorizes Seller to investigate from time to time Applicant's and Principal's business and personal credit or will so trade history, bank and personal references (whether or not listed in this Application) for currently credit information. Applicant agrees to provide a copy (paper, carbon photograph, electronic file or reproduction, etc.) of this application and signature(s) of the undersigned, shall be deemed to be the equivalent of the original and may be used so much to conduct the information credit and on this Application, including, but not limited to, creating a copy of this Application to the trade, bank and personal references, and to obtain information on other conditions regarding Applicant's credit operations with Seller. Applicant agrees to provide copies of current financial statements of Applicant and/or Principal(s) in form accessible to Seller at any time upon request by Seller. The Applicant understands Applicant's bank(s)/lender(s) to provide information about the Applicant, including credit accounts) opened, current checking, savings, account history, cash flow(s) statements, bank(s) of credit, availability under line(s) of credit, payment history, deposits and cash flow, and any security interests, along with any other information that may assist Seller in evaluating an open account and credit line. Seller agrees that information obtained will be kept in the strictest of confidence. THE UNDERSIGNED IS EXECUTING THIS APPLICATION IN HIS/HER CAPACITY AS AN OFFICER OF APPLICANT. APPLICANT UNDERSTANDS THAT THE TERMS AND CONDITIONS CONTAINED IN THIS APPLICATION ARE MATERIAL TO AND SPECIFICALLY MADE A PART THIS APPLICATION.

TERMS AND CONDITIONS

ELECTRONICALLY FILED - 2020 Dec 14 2:20 PM ANDERSON COMMON PLEAS CASE#2020CP0402439

of the extension of credit or the delivery of services by Seller to Applicant, Applicant agrees to the terms and conditions:

any payment considered past due until collected. Applicant agrees to pay all costs of collection incurred by Seller, including reasonable attorneys' fees and expenses.

ARBITRATE ANY CONTROVERSY OR CLAIM ARISING OUT OF OR RELATING TO THIS APPLICATION, ANY CREDIT EXTENDED BY SELLER TO APPLICANT OR ANY OTHER ISSUE WITH THE AMERICAN ARBITRATION ASSOCIATION OR ANY OTHER RECOGNIZED ARBITRATION GROUP IN ACCORDANCE WITH ITS COMMERCIAL ARBITRATION RULES, AND ANY JUDGMENT OR AWARD RENDERED IN CONNECTION WITH SUCH ARBITRATION SHALL BE ENTERED IN ANY COURT HAVING JURISDICTION THEREOF; (ii) CONSENTS TO SUCH ARBITRATION IN THE STATE OF ILLINOIS, AND TO THE APPLICATION OF DELAWARE LAW WITHOUT REGARD TO THE CONFLICTS OF LAW PROVISIONS OF THE STATE OF DELAWARE; AND (iii) AGREES TO PAY ITS COST AND EXPENSES IN CONNECTION WITH THE ARBITRATION, INCLUDING, BUT NOT LIMITED TO, ARBITRATORS' FEES, ADMINISTRATION FEES AND ATTORNEYS' FEES.

Applicant is approved, Seller, in Seller's sole discretion, may extend credit to Applicant, and notwithstanding any request of Applicant, will not extend credit to Applicant. Seller reserves the right to increase, decrease or terminate credit privileges under this Application at any time for notice to Applicant, except as otherwise provided.

5. This Application and all transactions between Applicant and Seller shall be governed by and interpreted in accordance with the laws and decisions of the State of Delaware, without regard to the conflicts of law provisions of the State of Delaware.

6. Applicant may not assign any relationship with Seller that arises out of this Application or any subsequent agreement without the prior written consent of Seller, which consent may be withheld for any reason. Applicant agrees to immediately notify Seller via certified mail of any sale of a significant portion of the assets or business of Applicant, or a sale of a substantial interest in the capital stock or other ownership interest of Applicant and Seller retains the right to immediately terminate Applicant's credit privileges upon receipt of such notice.

7. IF THIS APPLICATION IS NOT APPROVED IN FULL OR IF ANY OTHER ADVERSE ACTION IS TAKEN WITH RESPECT TO APPLICANT'S CREDIT WITH SELLER, APPLICANT HAS THE RIGHT TO REQUEST WITHIN 60 DAYS OF SELLER'S NOTIFICATION OF SUCH ADVERSE ACTION, A STATEMENT OF SPECIFIC REASONS FOR SUCH ACTION, WHICH STATEMENT WILL BE PROVIDED WITHIN 30 DAYS OF SAID REQUEST. The Federal Equal Credit Opportunity Act prohibits creditors from discrimination against credit applicants on the basis of race, color, religion, national origin, sex, marital status or age (provided that the applicant has the capacity to enter into a binding contract); because all or part of the applicant's income derives from any public assistance program; or because the applicant has in good faith exercised any right under the Consumer Credit Protection Act. The Federal agency that administers compliance with the law concerning the creditor is the Federal Trade Commission, Washington, D.C.

11. To secure the full and timely payment by Applicant to Seller of all now existing and later arising amounts due Seller, in addition to any other security Applicant may provide to Seller under any subsequent agreement, Applicant grants to Seller a security interest in all of Applicant's personal property, both now owned or at any time in the future acquired and wherever located, including, but not limited to accounts, goods, inventory, equipment, fixtures and vehicles, together with the proceeds and products of any of them. Applicant authorizes Seller to file and perfect any and all statutory lien rights and any rights under indemnity or performance bonds regardless of whether payment is then due to Seller. In addition, Applicant specifically authorizes Seller to prepare and file without Applicant's signature any Uniform Commercial Code ("UCC") financing statements, amendments to UCC financing statements and any other filings or recordings in all jurisdictions where Seller determines necessary or desirable, and authorizes Seller to describe the collateral in such filings in any manner as Seller determines appropriate.

8. Applicant irrevocably consents and submits to the non-exclusive jurisdiction of any state or federal court located in the State of Illinois in connection with any actions or proceedings arising from, relating to or in connection with Applicant's obligations to Seller or this Application. Applicant waives any right it may have to change the venue of any litigation brought against it by Seller.

9. Applicant agrees that all information as to source, quantity, and price of goods and services provided by Seller shall be maintained in confidence and shall not (without Seller's prior written consent, said consent not to be unreasonably withheld) be released to any private third party for any reason whatsoever other than pursuant to a validly issued subpoena from a court or governmental authority having jurisdiction over Applicant, pursuant to the rules, regulations or requirements of any state or federal agency or department or pursuant to a discovery request made under applicable court rules and to which Applicant is required to respond.

12. If Applicant ceases doing business with Seller for any reason, including Seller's termination of Applicant's credit privileges, Applicant will immediately purchase (or cause Applicant's approved third party to purchase) from Seller, on a "cash on delivery" basis, all remaining proprietary or special order items in Seller's inventory that were purchased or prepared for Applicant.

9. Applicant agrees that all information as to source, quantity, and price of goods and services provided by Seller shall be maintained in confidence and shall not (without Seller's prior written consent, said consent not to be unreasonably withheld) be released to any private third party for any reason whatsoever other than pursuant to a validly issued subpoena from a court or governmental authority having jurisdiction over Applicant, pursuant to the rules, regulations or requirements of any state or federal agency or department or pursuant to a discovery request made under applicable court rules and to which Applicant is required to respond.

10. APPLICANT (i) AGREES THAT SELLER MAY, AT SELLER'S SOLE OPTION, REQUIRE APPLICANT TO WAIVE OF JURY TRIAL. APPLICANT WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH THE SELLER AND THE APPLICANT MAY BE PARTIES, ARISING OUT OF OR IN ANY WAY PERTAINING TO (A) THIS APPLICATION; AND (B) ANY OTHER DOCUMENTS INCLUDING INVOICES AND SUBSEQUENT AGREEMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY THE APPLICANT AND THE APPLICANT REPRESENTS AND WARRANTS THAT NO REPRESENTATIONS OR FACTOR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. APPLICANT HEREBY ACKNOWLEDGES THAT THIS PROVISION IS A SPECIFIC AND MATERIAL ASPECT OF THIS APPLICATION AND THAT SELLER WOULD NOT CONSIDER ENTERING INTO ANY TRANSACTIONS WITH APPLICANT IF THIS PROVISION WERE NOT PART OF THIS APPLICATION.

13. Applicant acknowledges (i) that Seller may be required from time to time to disclose certain information contained in this Application or in subsequent agreements including in response to requests made by the Office for Foreign Assets Control ("OFAC"), and (ii) that any such disclosure shall not result in a breach of any Seller's obligation to Applicant under this Application or under any subsequent agreement, or result in any obligations or liability on the part of Seller.

14. This Agreement may be delivered by electronic transmission or facsimile which shall be deemed to be an original.

10. APPLICANT (i) AGREES THAT SELLER MAY, AT SELLER'S SOLE OPTION, REQUIRE APPLICANT TO WAIVE OF JURY TRIAL. APPLICANT WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH THE SELLER AND THE APPLICANT MAY BE PARTIES, ARISING OUT OF OR IN ANY WAY PERTAINING TO (A) THIS APPLICATION; AND (B) ANY OTHER DOCUMENTS INCLUDING INVOICES AND SUBSEQUENT AGREEMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY THE APPLICANT AND THE APPLICANT REPRESENTS AND WARRANTS THAT NO REPRESENTATIONS OR FACTOR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. APPLICANT HEREBY ACKNOWLEDGES THAT THIS PROVISION IS A SPECIFIC AND MATERIAL ASPECT OF THIS APPLICATION AND THAT SELLER WOULD NOT CONSIDER ENTERING INTO ANY TRANSACTIONS WITH APPLICANT IF THIS PROVISION WERE NOT PART OF THIS APPLICATION.

WAIVER OF JURY TRIAL. APPLICANT WAIVES TRIAL BY JURY IN ANY ACTION OR PROCEEDING TO WHICH THE SELLER AND THE APPLICANT MAY BE PARTIES, ARISING OUT OF OR IN ANY WAY PERTAINING TO (A) THIS APPLICATION; AND (B) ANY OTHER DOCUMENTS INCLUDING INVOICES AND SUBSEQUENT AGREEMENTS. IT IS AGREED AND UNDERSTOOD THAT THIS WAIVER CONSTITUTES A WAIVER OF TRIAL BY JURY OF ALL CLAIMS AGAINST ALL PARTIES TO SUCH ACTIONS OR PROCEEDINGS. THIS WAIVER IS KNOWINGLY, WILLINGLY AND VOLUNTARILY MADE BY THE APPLICANT AND THE APPLICANT REPRESENTS AND WARRANTS THAT NO REPRESENTATIONS OR FACTOR OPINION HAVE BEEN MADE BY ANY INDIVIDUAL TO INDUCE THIS WAIVER OF TRIAL BY JURY OR TO IN ANY WAY MODIFY OR NULLIFY ITS EFFECT. APPLICANT HEREBY ACKNOWLEDGES THAT THIS PROVISION IS A SPECIFIC AND MATERIAL ASPECT OF THIS APPLICATION AND THAT SELLER WOULD NOT CONSIDER ENTERING INTO ANY TRANSACTIONS WITH APPLICANT IF THIS PROVISION WERE NOT PART OF THIS APPLICATION.

Legal Name (Inc., LLC, etc.) CARLE'S RESTAURANT, LLC  
Signature: [Handwritten Signature] Title: [Handwritten Title]  
Signature: GHASSAN ASHY Date: 4/26/17  
Signature: [Blank] Title: [Blank]  
Signature: [Blank] Title: [Blank]

Terms Requested: \_\_\_\_\_ Terms Approved: \_\_\_\_\_

Use Only: \_\_\_\_\_

The undersigned, hereinafter referred to individually or collectively as "Guarantor", having a financial interest in Applicant, and hereinafter from the transactions contemplated by this Agreement, hereby personally and unconditionally guarantees the payment by Applicant to Sellers of all amounts due and owing now, and from time to time hereafter ("Liabilities"), from Applicant to Sellers. Guarantor expressly waives notice from Sellers of its acceptance and reliance on this Personal Guaranty (this "Guaranty"), notice of sales made to Applicant, and notice of default by Applicant. The obligations of Guarantor hereunder shall not be affected, excused, modified or impaired upon the happening, from time to time, of any event. No set-off, counter-claim or reduction of any obligation, or any defense of any kind or nature which Guarantor has or may have against Applicant or Sellers shall be available hereunder to Guarantor against Sellers. In the event of a default by Applicant on its obligations to Sellers, Sellers may proceed directly to enforce their rights hereunder and shall have the right to proceed first against Guarantor, without proceeding with or exhausting any other remedies it may have. Guarantor (i) hereby acknowledges that he or she may have rights of indemnification, contribution, reimbursement or exoneration from Applicant if Guarantor performs his or her obligations under this Guaranty collectively the "Rights"; (ii) understands the benefits of having such Rights. Guarantor authorizes Sellers to obtain from time to time a consumer credit report and essential search, in order to further evaluate the credit worthiness of Guarantor in connection with extension of credit under this Guaranty. Guarantor

irrevocably agrees to provide personal financial statements, historical tax returns or other similar financial documents as requested from Sellers from time to time, for continuing and ongoing consideration for extension of credit under this Guaranty. Guarantor agrees to pay all costs, expenses and fees, including reasonable attorneys' fees and expenses, which may be incurred by Sellers in enforcing this Guaranty or protecting their rights following any default on the part of Guarantor. Guarantor agrees that an interest charge of one and one-half (1 1/2%) percent per month, or the maximum rate that Guarantor may lawfully contract to pay, whichever is less, and in all events calculated in accordance with applicable law, shall be assessed on any amount due and owing to Sellers by Guarantor under this Guaranty until collected. This Guaranty shall be binding upon Guarantor, Guarantor's heirs, successors, assigns, and representatives and survivors, and shall inure to the benefit of Sellers, and each of them, jointly and severally, their successors, assigns, affiliates and shareholders and may be assigned by Sellers without notice to Guarantor. This Guaranty shall be governed by and interpreted with the laws and decisions of the State of Delaware. Guarantor irrevocably agrees, and hereby consents and submits to the non-exclusive jurisdiction of any state or federal court located in the state where Sellers' operating company which provided this Guaranty is located, without regard to the conflicts of law provisions thereof (the "Applicable State"), with regard to any actions or proceedings arising from, relating to or in connection with the Liabilities, this Guaranty or any collateral or security therefor. Guarantor hereby waives any

right Guarantor may have to transfer or change the venue of any litigation brought against it by Sellers and further waives any right to trial by jury. If more than one, the obligations of the undersigned shall be joint and several. This Guaranty may only be terminated upon the prior written notice of Guarantor delivered to Sellers via certified mail or upon the termination of the relationship of Applicant with Sellers provided that such notice of termination shall not release or affect any of Guarantor's liabilities existing as of the date Sellers receive such notice of termination. Guarantor hereby (a) agrees that Sellers may, at Sellers' sole option, require Guarantor to arbitrate any controversy or claim arising out of or relating to this Guaranty or any other issue with the American Arbitration Association in accordance with its Commercial Arbitration rules and any judgment or award rendered in connection therewith shall be entered in any court having jurisdiction thereof, (b) consents to the arbitration in the Applicable State, and to the application of Delaware law with the exception of Delaware conflicts of laws rules, and (c) agrees to pay all costs and expenses in connection with the arbitration, including, but not limited to, arbitrators' fees, administration fees and attorneys' fees. If there are more than one of the undersigned, each shall remain liable on this Guaranty until each has given separate written notice delivered via certified mail to Sellers. Guarantor shall immediately notify Sellers, in writing via certified mail, in the event of any sale of a significant portion of Guarantor's interest in the capital stock or other ownership interest of Applicant.

Signature lines for four individuals. The first line is signed by Ghassan Adaj and dated 4/26/17. Each line includes fields for Signature, Print Name, Social Security Number, Home Address, and Date.

(USE OF A CORPORATE TITLE SHALL IN NO WAY LIMIT THE PERSONAL LIABILITY OF THE SIGNATORY)

ACH AUTO-DEDUCT/DIRECT DEBIT ENROLLMENT

QUESTIONS? Call 800-253-0277 (Option 6)

Form fields for enrollment: EFFECTIVE DATE, CUSTOMER #, DIVISION, BUS. NAME, CONTACT NAME, BILLING STREET ADDRESS, E-MAIL, CITY, STATE, ZIP CODE, BEST PHONE NUMBER TO REACH YOU AT, FAX NUMBER. Includes boxes for ENTER BANK ACCOUNT NUMBER and ENTER 9 DIGIT ROUTING NUMBER.

ENTER BANK NAME:

Please Attach a Copy of a Blank Voided Check

Our company agrees to pay US Foods, Inc. by electronic funds transfer and hereby authorizes US Foods or its designated representative to periodically debit the undersigned bank account(s) in the amount of payment terms provided by US Foods. It is acknowledged that US Foods will have no authority to draw upon the bank accounts of the undersigned at any time prior to the due date based on your payment terms as indicated on your invoices. In no event will US Foods be authorized to withdraw any amounts in excess of the net invoice amount. Credits due and identified at the time of delivery will also be applied to the invoice prior to initiating the debit.

This agreement may be revoked by the undersigned or US Foods upon 30 days written notice to either party. This agreement may be revoked immediately by US Foods upon notification that any charge due has not been paid due to insufficient funds or is paid but reversed by any bank of notice to US Foods of the undersigned's bankruptcy.

In the event my electronic debit or transfer is returned, I agree that a \$25.00 return item fee will be electronically charged to my account. The undersigned agrees to provide a copy of this agreement to its bank or other depository from which the direct debits are to be made and shall request such bank to cooperate with US Foods in the payment of all charges.

To: US Foods, Inc. Attn: AR - Auto Deduct 8075 S. River Pkwy Tempe, AZ 85284. To the Undersigned: Company Name, Attention, Street, City, State, Zip.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_ Print Name and Title: \_\_\_\_\_

ELECTRONICALLY FILED - 2020 Dec 11 2:20 PM - ANDERSON - COMMON PLEAS - CASE#2020CP0402439

STATE OF South Carolina  
COUNTY OF Lexington

AFFIDAVIT  
OF  
CLAIM

In the City of Lexington, County of Lexington and State of State of South Carolina, comes the Plaintiff, US Foods, Inc., (incorporated in the State of Delaware, and registered in South Carolina), which avers that the Defendants, Carlees Restaurant LLC and Ghassan Ashyare, jointly and severally, justly indebted to the said US Foods, Inc., in the amount of ~~Sixteen~~ <sup>Fifteen</sup> Thousand Dollars (~~\$16,000.00~~ <sup>\$15,000.00</sup>), plus interest, reasonable attorney's fees, and court costs as provided for in the credit application and personal guaranty documents.

Affiant further states that the statement annexed and made a part of this Affidavit of Claim is true and correct and that there is, to his/her knowledge, now due and owing, unpaid, upon the said account, after allowing the Defendant(s) all just credits, deductions and setoffs, the sum herein above last mentioned.

CREDITOR US FOODS, INC.  
BY: [Signature]  
(signature)  
TITLE: Area Credit Manager

SWORN to and subscribed before me this 22 Day of Oct, 2020.

Sandy Libalay Sandy Libalay (LS)

Notary Public for the State of South Carolina

My Commission expires: Sept. 15, 2024

AR27  
SALTOURO

U.S. Foods, INC. TM

30827869.TXT 05/20/19

A/R ACCOUNT STATUS  
THRU 05/20/19

16:16:04

USF CUSTOMER # : 30827869 BDW TONY'S ON MAIN 6/19

DISTRICT: 2250 MUN: N/A SALES RT: 631 BRIAN L KAREKEL

A/R BAL: 16,000.00 TERMS: NET 7 DAYS

COLLECTION REP ID: 7046 ADJUSTER ID: 2250 NATIONAL CREDIT REP ID:

REF/CK# ITEM TYPE CUSTOMER DATE AGE AMOUNT NET DUE CUMUL AMT DUE DATE DAYS DIST INV

| REF/CK#  | ITEM TYPE | CUSTOMER | DATE     | AGE  | AMOUNT     | NET DUE   | CUMUL AMT | DUE DATE | DAYS | DIST | INV |
|----------|-----------|----------|----------|------|------------|-----------|-----------|----------|------|------|-----|
| 2992719  | DB MEMO   | 30827869 | 09/29/18 | 0233 | 51,307.56  | 16,000.00 | 16,000.00 | 10/06/18 | 226  | 2250 | DEB |
| 3117     | PAYMENT   | 30827869 | 10/31/18 | 0233 | -31,307.56 |           | 16,000.00 | 10/06/18 | 226  | 2250 | PMT |
| 2706     | PAYMENT   | 30827869 | 03/22/19 | 0233 | -1,000.00  |           | 16,000.00 | 10/06/18 | 226  | 2250 | PMT |
| 2718     | PAYMENT   | 30827869 | 04/15/19 | 0233 | -1,000.00  |           | 16,000.00 | 10/06/18 | 226  | 2250 | PMT |
| CASH0517 | PAYMENT   | 30827869 | 05/17/19 | 0233 | -1,000.00  |           | 16,000.00 | 10/06/18 | 226  | 2250 | PMT |
| CASH0517 | PAYMENT   | 30827869 | 05/17/19 | 0233 | -1,000.00  |           | 16,000.00 | 10/06/18 | 226  | 2250 | PMT |

AGE A/R

| CURRENT | 1-7 | 8-15 | 16-30 | >30    |
|---------|-----|------|-------|--------|
| 0       | 0   | 0    | 0     | 16,000 |

3/1/2020 Payment - 1,000 -  
#15,000.00

**GHASSAN J ASHY SCDL**  
111 STRATTON LANE  
ANDERSON, SC 28621

2693  
67-753/532

DATE 3/1/20 CHECK AMOUNT \$ 1000.00

PAY TO THE ORDER OF Cynthia Lowry U.S. Foods

One thousand DOLLARS

**THE PEOPLES BANK**  
www.PeoplesBankSC.com  
866-267-6709

FOR Maker \$15,000.00

THE IDEAL ACCOUNT

[Signature]

⑆053207533⑆ 2693

|                                                                                |                                         |
|--------------------------------------------------------------------------------|-----------------------------------------|
| STATE OF SOUTH CAROLINA<br>COUNTY OF ANDERSON                                  | IN THE COURT OF COMMON PLEAS            |
| U.S. Foods, Inc.<br><br>vs.<br><br>Carlees Restaurant LLC<br>And Ghassan Ashy, | C.A. No.<br>2020CP0402439<br><br>Answer |
| Plaintiff,<br><br><br>Defendant,                                               |                                         |

Defendant by way of Answer to Plaintiff's Complaint, would show unto this Honorable Court as follows:

**ANSWER**

1. Defendant denies each and every allegation of Plaintiff's Complaint not hereinafter specifically admitted, modified, or explained.
2. The allegations of paragraphs 1,2, and 4 are admitted.
3. The remaining allegations in paragraphs 3,5,6,7,8,9,10,11, and 12 are denied.

**DEMAND FOR JURY TRIAL**

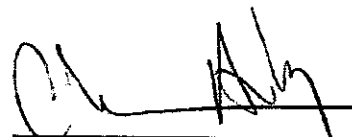
Defendant demands a trial by jury.

WHEREFORE, the Defendant prays:

1. For a jury trial;
2. That he be awarded the cost of this action; and
3. Any and all other relief this Court deems just and proper.

This the 4th day of May, 2021

'21 MAY 4 PM 3:22:19  
Anderson, SC COC. CP/GS

  
Ghassan Ashy  
Pro Se Defendant

|                                                               |                              |
|---------------------------------------------------------------|------------------------------|
| STATE OF SOUTH CAROLINA<br>COUNTY OF ANDERSON                 | IN THE COURT OF COMMON PLEAS |
| U.S. Foods, Inc.<br><br>Plaintiff,<br><br>vs.                 | C.A. No.<br>2020CP0402439    |
| Carlees Restaurant LLC<br>And Ghassan Ashy,<br><br>Defendant, | Answer                       |

Defendant by way of Answer to Plaintiff's Complaint, would show unto this Honorable Court as follows:

**ANSWER**

1. Defendant denies each and every allegation of Plaintiff's Complaint not hereinafter specifically admitted, modified, or explained.
2. The allegations of paragraphs 1,2, and 4 are admitted.
3. The remaining allegations in paragraphs 3,5,6,7,8,9,10,11, and 12 are denied.

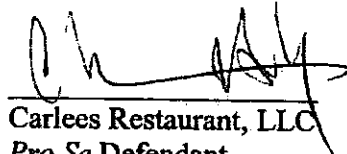
**DEMAND FOR JURY TRIAL**

Defendant demands a trial by jury.

WHEREFORE, the Defendant prays:

1. For a jury trial;
2. That he be awarded the cost of this action; and
3. Any and all other relief this Court deems just and proper.

This the 4th day of May, 2021

  
Carlees Restaurant, LLC  
Pro Se Defendant

111 Stratton Ln  
Anderson S.C 29621  
864-202-2425

'21 MAY 4 PM 3:22:15  
Anderson, SC COC, CP/GS



Mr. Ashy is not a licensed attorney. Thus, he is not qualified to file a responsive pleading on behalf of the Defendant limited liability company and his actions are the unauthorized practice of law. See Traveler's Insurance Co., v. The Roof Doctor, 481 S.E.2d 451, 325 S.C. 614 (S.C. App. 1997). Therefore, Plaintiff hereby moves that the court strike the Answer filed by Ghassan Ashy on behalf of Carlees Restaurant LLC, and that said Defendant be adjudged to be in default, and default judgment entered against it in favor of the Plaintiff in accordance with the prayer of the Plaintiff set forth in its Complaint.

s/ Cynthia M. Lover  
Cynthia M. Lover  
Attorney for Plaintiff  
P.O. Box 6774  
Myrtle Beach, South Carolina  
(843) 626-2029  
SC Bar #: 64844

EXHIBIT 1

**From:** canderson@kenyon-anderson.com,  
**To:** loverlawfirm@aol.com,  
**Subject:** RE: U.S. Foods, Inc. v. Carlees Restaurant LLC and Ghassan Ashy OUR FILE NO.: 19-15967 Case #: 2020-CP-04-02439  
**Date:** Fri, Apr 30, 2021 4:19 pm

Cynthia,

Mr. Ashy came to my office today and has decided not to retain me on this case. I apologize if my brief involvement has delayed your case and appreciate you working with me on this matter. I am assuming that he will probably attempt to represent himself. If there is anything I can help you with in the future as to this matter or any other assistance you need in Anderson, please feel free to give me a call.

Thank you again.

Sincerely yours,

Chuck Anderson

Kenyon & Anderson

P.O. Box 1286

Anderson, SC 29622

864-224-2597

EXHIBIT 2

**CYNTHIA M. LOVER, P.A.**  
**ATTORNEY AT LAW**  
**POST OFFICE BOX 6774**  
**MYRTLE BEACH, SC 29572**  
2411 N. Oak Street, The Founders Centre, Suite 305-D  
Myrtle Beach, South Carolina 29578-8026  
OFFICE: 843-626-2029 FAX: 843-626-2451 EMAIL: LoverLawFirm@aol.com

May 10, 2021

Carlees Restaurant LLC  
Registered agent: Ghassan Ashy  
111 Stratton Lane  
Anderson SC 29621

Re: U.S. Foods, Inc.  
v. Carlees Restaurant LLC and Ghassan Ashy  
RESPOND TO OUR FILE NO.: 19-15967  
Civil action number: 2020-CP-04-02439

FILED

Mr. Ashy:

I am in receipt of the Answer you filed on behalf of Carlees Restaurant LLC. As I am sure that attorney Chuck Anderson explained to you, only an attorney may represent a Defendant in Common Pleas court.

That means that you cannot file an Answer on behalf of Carlees Restaurant LLC. Instead, you must retain an attorney to represent the corporation. See the attached ruling from the SC Court of Appeals, The Travelers Insurance Company v. The Roof Doctor.

Therefore, I am giving you an additional fifteen days in which to retain an attorney to file an Answer or a Notice of Appearance on behalf of Carlees Restaurant LLC. Failure to do so will result in my filing a Motion to Strike the Answer of Carlees Restaurant LLC and for Default Judgment.

Very truly yours,

Cynthia M. Lover  
CYNTHIA M. LOVER, P.A.

ELECTRONICALLY FILED - 2021 JUN 02 11:39 AM - ANDERSON - COMMON PLEAS - CASE#2020CP0402439

Page 451

481 S.E.2d 451

325 S.C. 614

The TRAVELERS INSURANCE COMPANY (NC), Respondent,

v.

The ROOF DOCTOR, INC., Appellant.

Court of Appeals of South Carolina.

Jan. 31, 1997.

[325 S.C. 615] ORDER

The Travelers Insurance Company (Travelers) filed this action to collect on an account. The President of The Roof Doctor, Inc. submitted an answer on behalf of The Roof Doctor, Inc. The trial judge struck the answer as the President is not an attorney and the action of filing the answer constituted the unauthorized practice of law. The Roof Doctor, Inc. made no further appearance

Page 452

and in a subsequent order, the trial judge entered an order of default and judgment for Travelers. The President of The Roof Doctor, Inc. appeals on behalf of The Roof Doctor, Inc.

This Court notified The Roof Doctor, Inc. that a corporation may not be represented by a non-lawyer individual under In re: Unauthorized Practice of Law Rules, 309 S.C. 304, 422 S.E.2d 123 (1992), and requested The Roof Doctor, Inc. notify this Court regarding who would represent them for this appeal. Travelers filed a motion to dismiss the appeal as the President's purported representation of The Roof Doctor, Inc. is in violation of South Carolina law. The President responded arguing the requirement to obtain a lawyer to litigate this matter was tantamount to dismissing the appeal.

In State v. Wells, 191 S.C. 468, 5 S.E.2d 181 (1939), modified by In re: Unauthorized Practice of Law Rules, 309 S.C. 304, 422

S.E.2d 123 (1992), the Supreme Court held the appearance of an insurance adjuster before the South Carolina Industrial Commission on behalf of his company constituted the unauthorized practice of law. The adjuster argued that a person is authorized to represent himself, and a corporation acts through its agents, thus a corporation should be able to represent itself through one of its agents. The Supreme Court rejected this argument stating "A corporation is not a natural person. It is an artificial entity created by law. Being an artificial entity it cannot appear or act in person. It must act in all its affairs through agents or representatives. In legal matters, it must act, if at all, through licensed [325 S.C. 616] attorneys." State v. Wells, 191 S.C. at 480, 5 S.E.2d at 186 (citation omitted).

This rule was modified in In re: Unauthorized Practice of Law Rules, 309 S.C. 304, 422 S.E.2d 123 (1992) to allow a non-lawyer, officer, agent, or employee to represent a business entity under South Carolina Code Ann. § 40-5-80 (1986) in civil magistrate's court proceedings. The President's actions in this case constitute the unauthorized practice of law. Accordingly, the motion to dismiss the appeal is GRANTED.

IT IS SO ORDERED.

/s/William T. Howell, C.J.

/s/Jasper M. Cureton, J.

/s/Ralph King Anderson, J.



STATE OF SOUTH CAROLINA )  
 ) AFFIDAVIT OF SERVICE BY MAIL  
COUNTY OF HORRY )

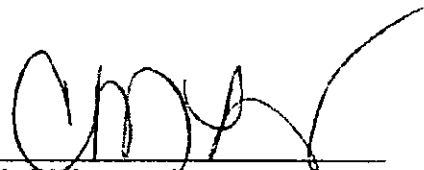
Cynthia M. Lover, being first duly sworn, states that she is the attorney for the Plaintiff, with an office being located at 2411 North Oak Street, Suite 305 Myrtle Beach, South Carolina, and that on May 10, 2021 she mailed via US mail, in a sealed envelope, postage prepaid, first class, certified return receipt requested:

Letter advising Defendant of requirement to retain attorney

Copy of Traveler's insurance Company v. the Roof Doctor

in Case Number 2020-CP-04-02439 to the following person to wit:

Carlees Restaurant LLC  
Registered Agent: Ghassan Ashy  
111 Stratton Lane  
Anderson SC 2962

  
\_\_\_\_\_  
Cynthia M. Lover

SWORN TO BEFORE me May 12, 2021



NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 03/04/2023

9120 6920 1000 0191 0202

**U.S. Postal Service™**  
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Anderson SC 29621

**OFFICIAL USE**

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|--------------------------------------------------------------|--------|------------|
| Certified Mail Fee                                           | \$3.60 | 0598       |
| Extra Services & Fees (check box, add fee)                   | \$2.85 | 03         |
| <input type="checkbox"/> Return Receipt (hardcopy)           | \$0.00 |            |
| <input type="checkbox"/> Return Receipt (electronic)         | \$0.00 |            |
| <input type="checkbox"/> Certified Mail Restricted Delivery  | \$0.00 |            |
| <input type="checkbox"/> Adult Signature Required            | \$0.00 |            |
| <input type="checkbox"/> Adult Signature Restricted Delivery | \$0.00 |            |
| Postage                                                      | \$0.55 |            |
| Total Postage and Fees                                       | \$7.00 | 05/10/2021 |

Postmark Here

Special To: *Carles*  
 GHASSAN ASHY Reg Agent; Restaurant  
 Street and Apt. No., or PO Box No. *111 Stratton Lane*  
 City, State, ZIP+4® *Anderson SC*

PS Form 3800, April 2015 PSN 7530-02-000-9057 See Reverse for Instructions

**SENDER: CO**

PLACE STICKER AT TOP OF ENVELOPE TO THE RIGHT

COMPLETE THIS SECTION ON DELIVERY

■ Complete items 1, 2, and 3.  
 ■ Print your name and address on the reverse so that we can return the card to you.  
 ■ Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:  
 GHASSAN ASHY  
 REG. AGENT: CARLES RESTAURANT LLC  
 111 STRATTON LANE  
 ANDERSON SC 29621

2. Article Number (Transfer from service label)  
 7020 1810 0001 0769 0318

3. Service Type  
 Adult Signature  
 Adult Signature Restricted Delivery  
 Certified Mail®  
 Certified Mail Restricted Delivery  
 Collect on Delivery  
 Collect on Delivery Restricted Delivery  
 Insured Mail  
 Insured Mail Restricted Delivery (over \$500)

Priority Mail Express®  
 Registered Mail™  
 Registered Mail Restricted Delivery  
 Return Receipt for Merchandise  
 Signature Confirmation™  
 Signature Confirmation Restricted Delivery

A. Signature  
 X *[Signature]*  Agent  Addressee

B. Received by (Printed Name) *GHASSAN ASHY* C. Date of Delivery *5-25-21*

D. Is delivery address different from item 1?  Yes  No  
 If YES, enter delivery address below:

9590 9402 5707 9346 2757 44

ANDERSON SC 29621  
 MAY 25 2021

PS Form 3811, July 2015 PSN 7530-02-000-9053 Domestic Return Receipt

## Certificate of Electronic Notification

### Recipients

**Cynthia Lover** - Notification transmitted on 07-02-2021 11:40:42 AM.

\*\*\*\*\* IMPORTANT NOTICE - READ THIS INFORMATION \*\*\*\*\*  
NOTICE OF ELECTRONIC FILING [NEF]

-

**A filing has been submitted to the court RE:** 2020CP0402439

**Official File Stamp:** 07-02-2021 11:39:57 AM

**Court:** CIRCUIT COURT

Common Pleas

Anderson

**Case Caption:** U.S. Foods, Inc. VS Carlees Restaurant Llc ,  
defendant, et al

**Document(s) Submitted:** Motion/Strike  
- Exhibit/Filing of Exhibits  
- Exhibit/Filing of Exhibits

**Filed by or on behalf of:** Cynthia Marie Lover

This notice was automatically generated by the Court's auto-notification system.

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**The following people were served electronically:**

Cynthia Marie Lover for U.S. Foods, Inc.

**The following people have not been served electronically by the Court. Therefore, they must be served by traditional means:**

Ghassan Ashy

Carlees Restaurant Llc

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

U.S. Foods, Inc.,

Plaintiff,

-vs-

Carlees Restaurant, LLC and Ghassan Ashy,

Defendants.

**RETURN TO PLAINTIFF'S MOTION  
TO STRIKE & FOR DEFAULT AND  
DEFAULT JUDGMENT & MOTION TO  
AMEND DEFENDANTS ANSWERS**

Case No.: 2020-CP-04-2439

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**TO: U.S. FOODS, INC., THE PLAINTIFF, BY AND THROUGH IT'S  
ATTORNEY, CYNTHIA M. LOVER:**

**PLEASE TAKE NOTICE** that the undersigned attorney for the Defendants will move before the Judge of the Circuit Court of Anderson County on August 25, 2021 at 2:00 pm or within ten (10) days after service of this motion, or as soon thereafter as counsel may be heard, for an Order allowing the defendants, Carlees Restaurant, LLC and Ghassan Ashy to amend their answer in that the undersigned has filed a notice of appearance on behalf of both defendants and the plaintiff would suffer no prejudice. This motion to amend is pursuant to Rule 15 of the South Carolina Rules of Civil Procedure (SCRCP). Pursuant to SCRCP Rule 15(c) whenever a claim or defense asserted in the amended pleading arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleadings, the amendment relates back to the date of the original pleading. The defenses that the Defendants are seeking to add arose out of the conduct, transaction or occurrence set forth or attempted to be set forth in the original pleading in this action and answers filed on May 4, 2021. (A copy of the proposed amended answer is attached hereto and incorporated herein by reference).

That further the defendants respectfully request that plaintiff's motion to strike and for default and default judgment be denied. As set forth above, the undersigned has filed a notice of appearance for both defendants, Carlees Restaurant, LLC and Ghassan Ashy and the plaintiff would suffer no prejudice if the relief were granted.

This motion is based upon the South Carolina Rules of Civil Procedure, the Law, Rules and Regulations of the State of South Carolina, pleadings, affidavits, memorandum of law and any other evidence which may be admissible by the Court.

**EPPS & EPPS, LLC**

**S/William N. Epps III**

**W.N. EPPS III, SC BAR #73158**

Post Office Box 2167

230 W. Whitner Street (29624)

Anderson, South Carolina 29622

(864) 224-2111

ATTORNEY FOR THE DEFENDANTS

Dated: August 17, 2021

At: Anderson, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

U.S. Foods, Inc.,  
  
Plaintiff,  
  
-vs-

**AMENDED ANSWER**  
**Jury trial demanded**

Carlees Restaurant, LLC and Ghassan Ashy,  
  
Defendants.

Case No.: 2020-CP-04-2439

COMES NOW the Defendants, Carlees Restaurant, LLC and Ghassan Ashy, would respectfully show unto the Court and allege the following:

**FOR A FIRST DEFENSE AND BY WAY OF ANSWER**

1. That the Defendants deny each and every allegation of the Complaint, not hereinafter admitted, modified or changed, and demand strict proof thereof.
2. The Defendants admit the allegations contained in Paragraph one and two of the Complaint.
3. The Defendants deny Paragraph three in that the Defendant Carlees Restaurant, LLC was dissolved with the Secretary of State on September 30, 2020 in File ID: 201001-1304539.
4. The Defendants admit the allegations contained in Paragraph four of the Complaint.
5. The Defendants admit the allegations of Paragraph five of the Complaint inasmuch as it states that Defendants applied for credit with the Plaintiff and executed and delivered to Plaintiff its credit application, as the documents speak for themselves.
6. The Defendants deny the allegations contained in Paragraphs six and seven of the Complaint and demands strict proof thereof. The Defendant would further show unto the Court that the terms of the Plaintiff customer account application, terms and conditions is a contract of adhesion and there no agreement on the amounts charged or price and there is no explanation of amounts charged or price in the customer account application, terms and conditions attached to the Complaint. The Defendants further deny that it/he owes Plaintiff the sum of \$15,000.00, plus interest and attorney fees as set forth in the Complaint and demand strict proof thereof.

7. The Defendants admit so much of Paragraph eight as alleges that a Guaranty was issued in writing on or about April 26, 2017. The remaining allegations of Paragraph eight are denied and the Defendants demand strict proof thereof.
8. The Defendants deny the allegations of Paragraphs nine, ten, eleven and twelve of the Complaint and demand strict proof thereof. The Defendants further deny that it owes Plaintiff the sum of \$15,000.00, plus interest and attorney fees as set forth in the Complaint or that it ever agreed to the amounts charged or the price and demands strict proof thereof. The Defendants would also show that the Plaintiff wrongfully raised its rates with the Defendants, to which Defendants notified Plaintiff that it did not agree with the amounts charged.

**FOR A SECOND DEFENSE**  
(South Carolina Rules of Civil Procedure 12(b)(6))

9. The Defendants reiterate and incorporate the allegations of the first defense and makes them a part herein by reference.
10. Your Defendants, upon information and belief, would show unto the Court that the Complaint fails to state a cause of action against the Defendants for which relief can be granted and that the Complaint should be dismissed as to this cause of action pursuant to SCRCF Rule 12(b)(6).

WHEREFORE, having answered the Complaint of the Plaintiff, the Defendants, Carlees Restaurant, LLC and Ghassan Ashy, respectfully pray as follows:

1. That the Plaintiff's complaint be dismissed with costs; and
2. For such other and further relief as this Court deems just and proper.

JURY TRIAL DEMANDED!

Respectfully submitted,

EPPS & EPPS, LLC

S/William N. Epps III  
William N. Epps, III  
230 West Whitner Street  
Post Office Box 2167  
Anderson, South Carolina 29622  
(864) 224-2111  
ATTORNEYS FOR THE DEFENDANTS

August 17, 2021  
Anderson, South Carolina

STATE OF SOUTH CAROLINA  
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

U.S. Foods, Inc.,

Plaintiff,

-vs-

Carlees Restaurant, LLC and Ghassan Ashy,

Defendants.

**MOTION TO ALTER OR AMEND  
ORDER STRIKING ANSWER OF  
CARLEE'S RESTAURANT LLC**

Case No.: 2020-CP-04-2439

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**TO: U.S. FOODS, INC., THE PLAINTIFF, BY AND THROUGH IT'S  
ATTORNEY, CYNTHIA M. LOVER:**

**PLEASE TAKE NOTICE** that the undersigned attorney for the Defendants will move before the Judge of the Circuit Court of Anderson County within ten (10) days after service of this motion, or as soon thereafter as counsel may be heard, for an Order pursuant to Rule 52(b) and Rule 59(e) of the South Carolina Rules of Civil Procedure to alter or amend the Order Striking the Answer of Carlee's Restaurant from a hearing held on August 25, 2021 and filed with the Anderson County Clerk of Court on September 1, 2021 and received by the Defendants on September 1, 2021 on the grounds:

That both Defendants had filed a return and motion to amend answers that was scheduled to be heard at the same time as the Plaintiff's motion to strike. That the Court did not address or make any findings as to the Defendant, Ghassan Ashy's motion to amend his answer that was timely filed on May 4, 2021. The Defendant, Ghassan Ashy respectfully requests that the Court amend it's Order to allow Defendant, Ghassan Ashy to file his amended answer pursuant to Rule 15 of the South Carolina Rules of Civil Procedure.

That further, the Defendant, Carlees Restaurant, LLC is a non-entity, as it was dissolved with the Secretary of State on September 30, 2020 in File ID: 201001-1304539 prior to this action being filed on December 11, 2020. The Order striking the Defendant, Carlees Restaurant, LLC's answer respectfully, was akin to a dismissal with prejudice and the Defendant should be allowed to fix the deficiency. While Plaintiff's motion to strike was pursuant to Rule 12 (f) of the South Carolina Rules of Civil Procedure, the same analysis should apply as to a dismissal under 12(b)(6).

Under *Skydive Myrtle Beach, Inc. v. Horry County*, our supreme court instructed:

A circuit court does not have “discretion” to dismiss a complaint with prejudice for failure to state a claim under Rule 12(b)(6) without at least considering whether to allow leave to amend under Rule 15(a). Under Rules 12(b)(6) and 15(a), the circuit court may not dismiss a claim with prejudice unless the plaintiff is given a meaningful chance to amend the complaint, and after considering the amended pleading, the court is certain there is no set of facts upon which relief can be granted. 426 S.C. 175, 189, 826 S.E.2d 585, 592 (2019).

Here the Defendant, Carlees Restaurant, LLC filed a motion to amend it's answer to fix the deficiency and respectfully should be allowed to fix it. *See id.* at 181, 826 S.E.2d at 588 (“[T]he time for requesting leave to amend to correct a Rule 12(b)(6) pleading defect is after the trial court has determined the original pleading was deficient.”). *See id.* (recognizing a plaintiff is “entitled to accept the court's ruling the original complaint was deficient, and replead in an attempt to fix the deficiency”). The Plaintiff would suffer no prejudice if the relief were granted, however the Defendant, Ghassan Ashy would suffer prejudice as he did timely answer the complaint.

That further and in the alternative, the Court amended the Plaintiff's proposed order striking the Defendant, Carlees Restaurant, LLC's answer and did not make any findings or ruling

as to entry of default or default judgment as set forth in the proposed order, and did remove said language. However, the Form 4 attached to the proposed order may have inadvertently been filed granting judgment to the Plaintiff in the amount of \$21,501.26. Therefore the Defendant, Carlees Restaurant, LLC respectfully requests that the Court amend it's Order removing the judgment contained in the Form 4 against the Defendant, Carlees Restaurant, LLC.

This motion is based upon the South Carolina Rules of Civil Procedure, the Law, Rules and Regulations of the State of South Carolina, pleadings, affidavits, memorandum of law and any other evidence which may be admissible by the Court.

EPPS & EPPS, LLC

S/William N. Epps III  
W.N. EPPS III, SC BAR #73158  
Post Office Box 2167  
230 W. Whitner Street (29624)  
Anderson, South Carolina 29622  
(864) 224-2111  
ATTORNEY FOR THE DEFENDANTS

Dated: September 13, 2021

At: Anderson, South Carolina

State of South Carolina  
 County of Anderson

Court of Common Pleas

|                         |   |                      |
|-------------------------|---|----------------------|
| U.S. Foods, Inc.        | ) |                      |
|                         | ) |                      |
| Plaintiff,              | ) | Transcript of Record |
| v.                      | ) | 2020-CP-04-02439     |
|                         | ) |                      |
| Carlees Restaurant LLC, | ) |                      |
|                         | ) |                      |
| _____Defendant.)        | ) |                      |

August 25, 2021  
 Anderson, South Carolina

B E F O R E:

The Honorable R. Lawton McIntosh, Judge.

A P P E A R A N C E S:

Cynthia Lover, Esquire  
 Attorney for the Plaintiff

Norman Epps III, Esquire  
 Attorney for the Defendant

Lisa Scott  
 Circuit Court Reporter

I N D E X

WITNESS

PAGE

No Witnesses.

E X H I B I T S

NO.

DESCRIPTION

ID.

EVD.

No Exhibits.

P R O C E E D I N G S

- - -

1 THE COURT: Good morning.

2 MR. EPPS: Good morning, Your Honor.

3 THE COURT: This is *U.S. Foods v. Carlees*  
4 *Restaurant LLC*; is that correct?

5 MS. LOVER: Yes, Your Honor.

6 THE COURT: Okay. And this is a motion to  
7 strike?

8 MS. LOVER: Yes, Your Honor.

9 THE COURT: Okay. I'll be glad to hear you.

10 MS. LOVER: Thank you. This is a debt  
11 collection case, Your Honor. There are two  
12 defendants. There is a limited liability company  
13 and a personal guarantor.

14 And when they -- they were served on March  
15 the 18th, and they consulted with a local attorney,  
16 Chuck Anderson, who contacted me and requested an  
17 extension of time to try and resolve this, and I  
18 granted him a 15-day extension of time.

19 THE COURT: How long?

20 MS. LOVER: Fifteen.

21 THE COURT: That was mighty generous.

22 MS. LOVER: He said that was all he needed.

23 THE COURT: Oh, okay. All right.

1 MS. LOVER: Yeah, yeah. The defense was served  
2 on March 18th. He contacted me on April the 12th  
3 and said he was trying to resolve this with his  
4 clients and he needed a couple of weeks, so I gave  
5 him 15 days.

6 THE COURT: Okay.

7 MS. LOVER: And -- and then at that -- you  
8 know, that's when he contacted me and said that his  
9 client was -- that Mr. Ashy had decided not retain  
10 him after all.

11 So I went forward, and that would've given him  
12 until April the -- no. Excuse me. I mean, May  
13 the 5th to file an answer, and they filed a pro se  
14 answer. Mr. Epps and Mr. Ashy filed a pro se answer  
15 for both himself and on behalf of the LLC. And I'm  
16 pretty sure that Mr. Anderson would've told me if he  
17 represented the LLC.

18 So I filed a motion to strike the answer that  
19 Mr. Ashy filed on behalf of the LLC because he was  
20 not an attorney, and I gave him 15 -- I gave him an  
21 additional 15 days after he filed the answer. I  
22 give him an additional 15 days to go get an  
23 attorney, and he didn't do that.

24 And then I filed this motion, and he did  
25 nothing until I advised him of the hearing that was

1 coming up for today. And I advised him of the  
2 hearing by certified mail. At that point in time,  
3 he retained Mr. Epps.

4 THE COURT: After this hearing was scheduled?

5 MS. LOVER: Yes, Your Honor.

6 THE COURT: Okay. Very good. So you're only  
7 seeking to strike the corporate?

8 MS. LOVER: The answer of the corporation, yes.  
9 The answer of the personal guarantor, that would  
10 remain because he was entitled to represent himself  
11 on that motion.

12 I just feel like he had plenty of time. He  
13 consulted with an attorney after he was served. I  
14 gave him additional time, and he chose not to retain  
15 the attorney. Then I gave him additional time after  
16 the motion was served to get an attorney and he  
17 didn't do it, so we notified him of today's hearing.

18 THE COURT: Okay. Thank you, Ms. Lover. All  
19 right. Mr. Epps.

20 MR. EPPS: Yes, sir, Your Honor. And I have  
21 also filed a return to defense motion to strike, as  
22 well as a motion to amend the defendant's answers.

23 THE COURT: Well, let me ask you this,  
24 Mr. Epps: Why did your client delay retaining  
25 somebody until after he'd been told at least by

1 Ms. Lover? I don't know what Mr. Anderson told him,  
2 that he couldn't represent the corporation.

3 MR. EPPS: Yeah, he was under the municipal  
4 branch -- inaudible -- this office in September of  
5 2020 before this case was filed. He was under the  
6 belief that the corporation being dissolved did not  
7 have to have an attorney. Right or wrong ---

8 THE COURT: Well, why didn't he -- if he  
9 believed that, then why didn't he file an answer  
10 himself if he didn't think he did anything ---

11 MR. EPPS: He answered for himself and the  
12 corporation.

13 THE COURT: I understand that, but if he didn't  
14 think anything was necessary, why didn't he bother  
15 with the filing? Even though it was not file -- not  
16 file -- if he couldn't do it, but if he didn't think  
17 it was necessary, why did he not?

18 MR. EPPS: Just because he understood that  
19 there was a time limit on filing the answer, so he  
20 went ahead on his own.

21 THE COURT: Right.

22 MR. EPPS: He didn't -- did not retain Chuck  
23 Anderson. He filed on his own and retained me  
24 August 10th. I filed this motion to seek to amend  
25 the defendant's answers. Again, I don't think it

1 prejudices Ms. Lover in any way, shape, or form.

2 We'd ask the Court pursuant to Rule 15, give --  
3 allow him to amend the answer. And then they  
4 actually -- his answer relates back to my motion.  
5 Your Honor, we'd allege that the conduct of the  
6 transaction had set forth in the complaint, as well  
7 as the answer that was filed on May 4th of 2021, and  
8 there's no prejudice. Your Honor, we'd ask the  
9 Court respectfully to allow us to file the answer in  
10 this matter.

11 THE COURT: All right. Thank you, sir. You  
12 know, Ms. Lover has given him plenty of time to  
13 respond to this case. She gave an extension to  
14 Mr. Anderson, and then gave your client an extension  
15 and he chose not to do anything until the time of  
16 this hearing. I'm going to grant the motion to  
17 strike the corporate answer.

18 Ms. Lover, would you prepare me a formal order,  
19 please, ma'am?

20 MS. LOVER: Yes, Your Honor.

21 THE COURT: All right. Thank you, gentlemen.  
22 Thank you, ladies.

23 (The proceedings concluded at 9:41 a.m.)

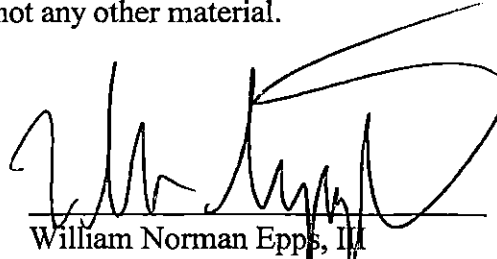
24 \* \* \* \* \*

25



CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



William Norman Epps, III  
Post Office Box 2167  
Anderson, South Carolina 29622  
(864) 224-2111  
Attorney for Appellant

June 13, 2022

**RECEIVED**

JUL 25 2022

SC Court of Appeals