

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2022-000131
Case Nos. 2020-CP-21-1297/1296

Walter Parker Appellant,

v.

Florence Carpet & Tile, Inc., John Curl, and Mike Barker Respondents,

AND

Allison Parker Appellant,

v.

Florence Carpet & Tile, Inc., John Curl, and Mike Barker Respondents.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	Civil Action No. 2020-CP-21-01296
Allison Parker,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ORDER
	)	
Florence Carpet & Tile, Inc., John Curl,	)	
and Mike Barker,	)	
	)	
Defendants.	)	

This matter is before the Court on John Curl's and Mike Barker's motions for summary judgment as to all causes of action. The court heard argument on these motions on November 3, 2021. Present at the hearing were Jeffrey L. Payne, esquire attorney for the Defendants and J. Scott Kozacki, esquire attorney for the Plaintiff. At the hearing the Plaintiff announced that as to these defendants she was dismissing all claims except her claim under South Carolina's Payment of Wages Act, S.C. Code § 41-10-10(1) ("Act").

BACKGROUND

Plaintiff was an at-will, salaried employee of Florence Carpet & Tile, Inc. ("FCT") from May 1, 2007 until August 10, 2019. The Plaintiff was an officer of the Company. The Plaintiff's husband Walt Parker was the President of FCT and at all times was the Plaintiff's boss. As President, Walt Parker was in charge of the company's day-to-day operations, including FCT's payroll. John Curl was never an employee of FCT and had no involvement with the day to day operations of FCT, including its payroll.

At the time of Plaintiff's hire, John Curl and Walter Parker were the shareholders of FCT. Mr. Parker owned 47% of the company's shares while Mr. Curl owned 53%. Mike Barker has never been a shareholder of FCT.

Mike Barker began working for FCT in May 2014. He reported to Walter Parker and handled administrative duties. Mike Barker continued to report to Walter Parker until Walter Parker's employment ended on or about July 27, 2019. At no point during the Plaintiff's employment with FCT did Mike Barker serve as an officer of FCT, and at no point did he have the authority to approve or alter FCT's payroll. Only Walter Parker, as President, held that authority. Likewise, Walter Parker had the sole authority to approve commissions.

During her twelve-year employment with FCT, Plaintiff never received a commission check. In addition, while she was employee of FCT, Plaintiff never requested a commission check from Mike Barker, provided the documentation necessary to obtain a commission check, or spoke with Mike Barker regarding commission checks in any regard. The Plaintiff's husband Walter Parker approved all commission payments to FCT's sales people, and Walter Parker never told Mike Barker to pay Plaintiff a commission check.

Likewise, while the Plaintiff was employed by FCT, she never informed John Curl that she was owed a commission check by FCT. It was only after she filed her claim on September 5, 2019, with the South Carolina Department of Labor, Licensing and Regulation ("LLR") that either Mr. Curl or Mr. Barker knew of her claim for wages or commissions.

SUMMARY JUDGMENT STANDARD

When deciding a Summary Judgment Motion pursuant to Rule 56, SCRPC, a trial court must weigh the facts and inferences in a light most favorable to the non-moving party. *Hancock v. Mid-South Mgmt., Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 802 (2009). Summary judgment is appropriate when the pleadings, depositions, discovery, and affidavits show no

genuine issue of material fact exists. *Id.* Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Moore v. Weinberg*, 373 S.C. 209, 217, 644 S.E.2d 740, 744 (Ct. App. 2007). The non-moving party must come forward with specific facts showing a genuine issue for trial. *Id.*

ANALYSIS

Plaintiff's claims against all Defendants are based on the Act. Curl and Parker argue that they are entitled to summary judgment because the Plaintiff has presented no evidence that they knowingly allowed FCT to violate the Act.

Plaintiff alleges Defendants Barker and Curl failed to pay her the full amount of wages owed in violation of the Act. The Act defines "employer" as "every person, firm, partnership, association, corporation, receiver, or other officer of a court of this State, the State or any political subdivision thereof, and any agent or officer of the above classes employing any person in this State." S.C. Code Ann. § 41-10-10(1). The employer is required to pay all wages due and "shall not withhold or divert any portion of an employee's wages unless the employer is required or permitted to do so by state or federal law or the employer has given written notification to the employee of the amount and terms of deductions." S.C. Code Ann. § 41-10-40. Therefore, upon separation, an employer must pay its employees all wages due within forty-eight hours or the next regular payday, which may not exceed thirty days. S.C. Code Ann. § 41-10-50. The Act is remedial legislation, so employers who fail to pay employees in a manner that is consistent with it are responsible for any resulting underpayment. *Dumas v. InfoSafe Corp.*, 320 S.C. 188, 194, 463 S.E.2d 641, 645 (Ct. App. 1995).

In *Dumas v. InfoSafe Corp.*, 320 S.C. 188, 194, 463 S.E.2d 641, 645 (Ct. App. 1995), our Court of Appeals found that when adopting the Act, the legislature intended to impose individual liability only on those corporate agents and officers who knowingly permit the Act to be violated. *Id.* at 193-94, 463 S.E.2d at 644-45. (emphasis added)

Since that time, South Carolina courts have consistently noted several factors that are necessary to determine that an individual “knowingly” violated the Act. These factors include:

1. The individual knew that the employee was not getting paid while working for the employer;
2. The individual was actively involved with the employer and had knowledge of the employer’s payroll;
3. The individual misled the employee to continue to work for the employer; and
4. The individual was an owner or officer of the employer. See, *Id.*; *Allen v. Pinnacle Healthcare Sys., LLC.*, 394 S.C. 268, 272, 715 S.E.2d 362, 364 (Ct. App. 2011).

There is no genuine issue of material fact that could give rise to Mike Barker’s or John Curl’s individual liability to Plaintiff under the Act. As such, Barker and Curl are entitled to judgment as a matter of law in their favor.

In this case, the Plaintiff has failed to make a showing sufficient to establish that either John Curl or Mike Barker knowingly violated the Act such that they could be held individually liable for the Plaintiff’s claim of unpaid wages or commissions. Mike Barker during the time of Plaintiff’s employment was not an officer or owner of the employer FCT. His boss and the Plaintiff’s boss was the Plaintiff’s husband, Walt Parker. Walt Parker, as President of FCT and not Mike Barker had the ultimate responsibility for the payment of wages, commissions and other payroll duties. Mike Barker did not have the authority or ability to approve or alter employee compensation. Mike Barker, likewise, did not have the ability to approve or issue commission checks and was never asked by Plaintiff for one. Instead, FCT hired Mike Barker

seven years after Plaintiff was hired to work for FCT, at which point Plaintiff's compensation arrangements had been established. Barker reported to Plaintiff's husband, Walter Parker, and Walter Parker oversaw the day-to-day operations of FCT, including the review of payroll. Mike Barker did not oversee Plaintiff's compensation and was in no way responsible for ensuring the payment of her wages. In addition, Mike Barker had no knowledge that the Plaintiff claimed she was owed commissions while she was an employee of FCT. In fact it was not until the Plaintiff filed a claim with LLR over three weeks after she quit her job that the Plaintiff first made her claim against FCT for wages and commissions. While the Plaintiff has in opposition noted a document that Walt Parker provided to Mike Barker to sign indicating certain amounts being due to the Plaintiff, such a document does not indicate that Barker had any involvement with the FCT payroll or making sure she was paid her wages or commissions that would subject him to personal liability under the Act. To follow the Plaintiff's logic all employees that assist with the employer's payroll and sign a document requested by his boss can be subjected to personal liability if their employer fails to pay an employee her wages.

John Curl, while a shareholder and officer of FCT, was a passive owner of FCT. He was not involved with the day to day operation of FCT while the Plaintiff was an employee. He did not handle FCT's payroll and was not responsible for reviewing it. Walt Parker as president had that role. The Plaintiff never complained to him that she was owed a commission or wages until she filed her complaint with the LLR.

Based on the foregoing, there is no genuine issue of material fact that could give rise to Defendant Barker's or Curl's individual liability to Plaintiff under the Act. There is simply no evidence to indicate that they knowingly violated the Act. Consequently, pursuant to Rule

56 (c), the Court finds that Defendants Curl and Barker are entitled to judgment as a matter of law.

AND IT IS SO ORDERED

_____, 2021
Florence, SC

electronic signature to follow
Michael G. Nettles, Presiding Judge



Florence Common Pleas

Case Caption: Allison Parker VS Florence Carpet & Tile Inc , defendant, et al

Case Number: 2020CP2101296

Type: Order/Summary Judgment

So Ordered

s/ The Honorable Michael G. Nettles #2140

Electronically signed on 2021-12-02 09:15:46 page 7 of 7

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	Civil Action No. 2020-CP-21-01297
Walter Parker,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ORDER
	)	
Florence Carpet & Tile, Inc., John Curl,	)	
and Mike Barker,	)	
	)	
Defendants.	)	

This matter is before the Court on John Curl's and Mike Barker's motions for summary judgment as to all causes of action. The court heard argument on these motions on November 3, 2021. Present at the hearing were Jeffrey L. Payne, esquire attorney for the Defendants and J. Scott Kozacki, esquire attorney for the Plaintiff. At the hearing the Plaintiff announced that he was dismissing all claims against John Curl and Mike Barker except his claim under South Carolina's Payment of Wages Act, S.C. Code § 41-10-10(1) ("Act").

BACKGROUND

Plaintiff owns 47% of the outstanding shares of Florence Carpet & Tile, Inc. ("FCT") while John Curl owns the other 53%. From April 30, 2007 until July 27, 2019, Plaintiff was the President of FCT. As President, he was in charge of the company's day-to-day operations, including its payroll.

John Curl was never an employee of FCT and was not involved with the day to day operations of FCT, including its payroll, while the Plaintiff was employed by FCT.

Mike Barker began working for FCT in May 2014. He reported to his boss Walter Parker and handled administrative duties for FCT. Mike Barker continued to report to Walter Parker until Walter Parker's employment ended on or about July 27, 2019. At no point during

the Plaintiff's employment with FCT did Mike Barker serve as an officer of FCT, and at no time did he have the authority to approve or alter FCT's payroll. Only Walter Parker, as President, held that authority.

The Plaintiff never informed John Curl that he was owed any wages prior to filing a lawsuit against John Curl in November 2018. Even after filing this lawsuit, the Plaintiff continued to run FCT and handle the payroll of the company, including paying himself until July 27, 2019.

SUMMARY JUDGMENT STANDARD

When deciding a Summary Judgment Motion pursuant to Rule 56, SCRCP, a trial court must weigh the facts and inferences in a light most favorable to the non-moving party. *Hancock v. Mid-South Mgmt., Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 802 (2009). Summary judgment is appropriate when the pleadings, depositions, discovery, and affidavits show no genuine issue of material fact exists. *Id.* Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Moore v. Weinberg*, 373 S.C. 209, 217, 644 S.E.2d 740, 744 (Ct. App. 2007). The non-moving party must come forward with specific facts showing a genuine issue for trial. *Id.*

ANALYSIS

Plaintiff's claims against all Defendants are based on the Act. Curl and Parker argue that they are entitled to summary judgment because the Plaintiff has presented no evidence that they knowingly allowed FCT to violate the Act.

Plaintiff alleges Defendants Barker and Curl failed to pay him the full amount of wages owed in violation of the Act. The Act defines "employer" as "every person, firm, partnership,

association, corporation, receiver, or other officer of a court of this State, the State or any political subdivision thereof, and any agent or officer of the above classes employing any person in this State.” S.C. Code Ann. § 41-10-10(1). The employer is required to pay all wages due and “shall not withhold or divert any portion of an employee’s wages unless the employer is required or permitted to do so by state or federal law or the employer has given written notification to the employee of the amount and terms of deductions.” S.C. Code Ann. § 41-10-40. Therefore, upon separation, an employer must pay its employees all wages due within forty-eight hours or the next regular payday, which may not exceed thirty days. S.C. Code Ann. § 41-10-50. The Act is remedial legislation, so employers who fail to pay employees in a manner that is consistent with it are responsible for any resulting underpayment. *Dumas v. InfoSafe Corp.*, 320 S.C. 188, 194, 463 S.E.2d 641, 645 (Ct. App. 1995).

In *Dumas v. InfoSafe Corp.*, 320 S.C. 188, 194, 463 S.E.2d 641, 645 (Ct. App. 1995), our Court of Appeals found that when adopting the Act, the legislature intended to impose individual liability only on those corporate agents and officers who knowingly permit the Act to be violated. *Id.* at 193-94, 463 S.E.2d at 644-45. (emphasis added)

Since that time, South Carolina courts have consistently noted several factors that are necessary to determine that an individual “knowingly” violated the Act. These factors include:

1. The individual knew that the employee was not getting paid while working for the employer;
2. The individual was actively involved with the employer and had knowledge of the employer’s payroll;
3. The individual misled the employee to continue to work for the employer; and
4. The individual was an owner or officer of the employer. See, *Id.*; *Allen v. Pinnacle Healthcare Sys., LLC.*, 394 S.C. 268, 272, 715 S.E.2d 362, 364 (Ct. App. 2011).

There is no genuine issue of material fact that could give rise to Mike Barker's or John Curl's individual liability to Plaintiff under the Act. As such, Barker and Curl are entitled to judgment as a matter of law in their favor.

In this case, the Plaintiff has failed to make a showing sufficient to establish that either John Curl or Mike Barker knowingly violated the Act such that they could be held individually liable for the Plaintiff's claim of unpaid wages. During the time of Plaintiff's employment Mike Barker was not an officer of FCT. The Plaintiff as President of FCT was always his boss. The Plaintiff and not Mike Barker had the ultimate responsibility for the payment of wages and commissions and other payroll duties. Mike Barker did not have the authority or ability to approve or alter the Plaintiff's compensation. Mike Barker did not oversee Plaintiff's compensation and was in no way responsible for ensuring the Plaintiff, the President of FCT was paid his wages.

John Curl, while a shareholder and officer of FCT, was a passive owner of FCT. He had no involvement with the day to day operation of FCT while the Plaintiff was an employee. He did not handle FCT's payroll and was not responsible for reviewing it. The Plaintiff had that role. The Plaintiff could have paid himself any wages that FCT allegedly owed him. Further, the Plaintiff never complained to John Curl that he was owed wages prior to suing John Curl in October 2018 and even after that lawsuit was filed, the Plaintiff continued to operate FCT and oversee its payroll, including his own pay.

Based on the foregoing, there is no genuine issue of material fact that could give rise to Defendant Barker's or Curl's individual liability to Plaintiff under the Act. There is simply no evidence to indicate that they knowingly violated the Act. Consequently, pursuant to Rule

56 (c), the Court finds that Defendants Curl and Barker are entitled to judgment as a matter of law.

AND IT IS SO ORDERED

_____, 2021
Florence, SC

electronic signature to follow
Michael G. Nettles, Presiding Judge



Florence Common Pleas

Case Caption: Walter Parker VS Florence Carpet & Tile Inc , defendant, et al
Case Number: 2020CP2101297
Type: Order/Summary Judgment

So Ordered

s/ The Honorable Michael G. Nettles #2140

Electronically signed on 2021-12-02 09:16:46 page 6 of 6

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2101296

Allison Parker
PLAINTIFF(S)

Florence Carpet & Tile Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

After review of the pleadings and materials associated with this case, Plaintiff's Motion to Alter or Amend a Judgement filed on December 9, 2021, is denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 01/28/2022 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: 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 judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.



Florence Common Pleas

Case Caption: Allison Parker VS Florence Carpet & Tile Inc , defendant, et al
Case Number: 2020CP2101296
Type: Order/Electronic Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

Electronically signed on 2022-01-28 09:15:40 page 3 of 3

ELECTRONICALLY FILED - 2022 Jan 28 9:28 AM - FLORENCE - COMMON PLEAS - CASE#2020CP2101296

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2020CP2101297

Walter Parker
PLAINTIFF(S)

Florence Carpet & Tile Inc
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

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

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

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

After review of the pleadings and materials associated with this case, the Plaintiff's Motion to Alter or Amend a Judgement filed on December 9, 2021, is denied.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

☐ See Page 2 for additional information.

For Clerk of Court Office Use Only

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NAMES OF TRADITIONAL FILERS SERVED BY MAIL

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Florence Common Pleas

Case Caption: Walter Parker VS Florence Carpet & Tile Inc , defendant, et al
Case Number: 2020CP2101297
Type: Order/Electronic Form 4

So Ordered

s/ The Honorable Michael G. Nettles #2140

Electronically signed on 2022-01-28 09:18:00 page 3 of 3

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE TWELTH JUDICIAL CIRCUIT

ALLISON PARKER,)
)
Plaintiff,)
vs.)
)
FLORENCE CARPET & TILE,)
INC., JOHN CURL and MIKE)
BARKER,)
)
Defendants.)
_____)

CASE NO: 2020CP21

SUMMONS
(Jury Trial Demanded)

TO: THE DEFENDANTS ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscribers at their offices located at 248 W. Evans Street, PO Box 1909, Florence, South Carolina 29503-1909, within thirty (30) days after the service hereof, exclusive of the day of such service; and, if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

DATED at Florence, South Carolina, this 19th day of May 2020.

WILLCOX, BUYCK & WILLIAMS, P.A.

By: s/ J. Scott Kozacki
J. Scott Kozacki, Esquire
SC Bar No. 64137
PO Box 1909
Florence SC 29503-1909
(843) 662-3258 Telephone
(843) 662-1342 Facsimile
Email: skozacki@willcoxlaw.com
ATTORNEY FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)
IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

ALLISON PARKER,)
) CASE NO: 2020CP21
Plaintiff,)
vs.)
) **COMPLAINT**
) (Jury Trial Demanded)
FLORENCE CARPET & TILE,)
INC., JOHN CURL and MIKE)
BARKER,)
)
Defendants.)
_____)

Plaintiff Allison Parker ("Plaintiff"), by and through the undersigned legal counsel, does hereby complain of Defendants Florence Carpet & Tile, Inc. ("Corporation"), John Curl ("Curl") and Mike Barker ("Barker") as follows:

1. This civil action is being brought, in part, pursuant to the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10 *et seq.*
2. This Court has jurisdiction over this civil action, since the matters complained of allegedly violate South Carolina state law and involve South Carolina state residents.
3. Venue is proper in this judicial circuit, since the matters complained of occurred within the County of Florence, State of South Carolina.
4. The Plaintiff is a resident of the State of South Carolina.
5. Defendant Corporation owns property and transacts business within the County of Florence, State of South Carolina.
6. Defendant Corporation is a corporation duly organized and existing under the laws of the State of South Carolina and has its principal place of business within the County of Florence, State of South Carolina.
7. At all times relevant hereto, Defendants Curl and Barker were residents of the State of South Carolina, County of Florence.

8. At all times relevant hereto, Defendants Curl and Barker were agents, employees, and/or officers of the Corporation. Pursuant to the doctrine of respondeat superior, Corporation is liable for the actions of its' agents, employees, and/or officers, when the actions take place within the scope of employment.

FOR A FIRST CAUSE OF ACTION
(Failure to Pay Wages Pursuant to S.C. Code Ann. § 41-10-10 *et seq.*)

9. Plaintiff realleges and reiterates each and every allegation set forth above, as if fully set out herein.
10. Plaintiff was employed full-time by Corporation as an Inside Salesperson from on or about May 1, 2007, until her separation from full-time employment on or about August 13, 2019.
11. During the course of Plaintiff's employment with Corporation, all parties agreed that Plaintiff was to be paid wages in the amount of \$42,000 per year, a 2% commission of all sales and additional compensation, benefits, payments and/or monies.
12. During the course of Plaintiff's employment with Corporation, and continuing thereafter, Defendants willfully, wantonly, recklessly, arbitrarily, unilaterally, and without Plaintiff's consent, withheld payment of the Plaintiff's wages, commissions, compensation, benefits, payments and/or other monies. Specifically, Plaintiff has now not been paid rightfully due and owing wages, commissions, compensation, benefits, payments and/or other monies.
13. To date, Defendants have willfully, wantonly, recklessly, arbitrarily, and without Plaintiff's consent wrongfully and unlawfully refused to pay Plaintiff her rightfully due and owing wages, commissions, compensation, benefits, payments and/or other monies in an approximate amount of \$57,491.48.
14. Plaintiff has demanded on numerous occasions from the Defendants that she be paid her rightfully due and owing wages, compensation, benefits, payments and/or other monies.
15. Despite the Plaintiff's repeated demands for payment of her rightfully due and owing wages, compensation, benefits, payments and/or other monies, the Defendants have refused to pay such.
16. Defendants' refusal to pay Plaintiff her rightfully due and owing wages, compensation, benefits, payments and/or other monies, despite her numerous and repeated demands, was done in bad faith.
17. Defendants knowingly permitted and/or caused Defendant Corporation to violate the South Carolina Payment of Wages statutes, S.C. Code Ann. § 41-10-10 *et seq.* and are individually liable to the Plaintiff as a result thereof.

18. Defendants failed to notify the Plaintiff in writing at the time of hiring of the normal hours and wages agreed upon, the time and place of payment, and the deductions which would be made from the Plaintiff's wages as required by S.C. Code Ann. § 41-10-30(A).
19. Defendants failed to provide the Plaintiff, in writing, and at least seven calendar days before they became effective, of any changes in those terms of employment, as required by S.C. Code Ann. § 41-10-30(A).
20. Defendants withheld or diverted a portion Plaintiff's wages without permission to do so and without written notification to the Plaintiff as required in violation of S.C. Code Ann. § 41-10-40(C).
21. Defendants failed to pay the Plaintiff all wages due at the time and place designated as required by S.C. Code Ann. § 41-10-30(A) and in violation of S.C. Code Ann. § 41-10-40(D).
22. Defendants failed to pay the Plaintiff all due and owing wages within forty-eight (48) hours of the time of her separation from employment, or the next regular payday, in violation of S.C. Code Ann. § 41-10-50.
23. Plaintiff is now entitled to an award of her unpaid wages, compensation, benefits, payments and/or other monies, treble damages, reasonable attorney's fees, suit costs, expert witness fees, other litigation expenses, and pre-judgment interest on account of the Defendants' failure to pay wages.

FOR A SECOND CAUSE OF ACTION
(Failure to Pay Commissions Due Pursuant to the Sales Representative Act, S.C. Code § 39-65-10 et seq.)

24. Alternatively, Plaintiff realleges and reiterates each and every allegation set forth above, as if fully set out herein.
25. Alternatively, Plaintiff is a "Sales Representative" as defined by the Sales Representative Act, S.C. Code § 39-65-10 et seq. ("Sales Representative Act").
26. Alternatively, Defendants are "Principals" as defined by the Sales Representative Act.
27. Alternatively, Plaintiff entered into an employment agreement with Defendants to solicit orders in exchange for payment of wages, commissions, compensation, benefits, payments and/or other monies.
28. Alternatively, the employment agreement between the parties was terminated.

29. Alternatively, Defendants have willfully, wantonly, recklessly, arbitrarily, unilaterally and without Plaintiff's consent, failed to pay Plaintiff all wages, commissions, compensation, benefits, payments and/or other monies that have or will accrue under the employment agreement. Specifically, Plaintiff has now not been paid her rightfully due and owing wages, commissions, compensation, benefits, payments and/or other monies in the amount of \$57,491.48.
30. Alternatively, Plaintiff is entitled to an award of her wages, commissions, compensation, benefits, payments and/or other monies, punitive damages up to three times the amount of commissions due, reasonable attorney fees and costs pursuant to the Sales Representative Act.
31. Alternatively, Defendants Curl and Barker knowingly permitted and/or caused Defendants to violate the Sales Representative Act and are individually liable to the Plaintiff as a result thereof.

**FOR A THIRD CAUSE OF ACTION
(Breach of Contract)**

32. Plaintiff realleges and reiterates each and every allegation set forth above, as if fully set out herein.
33. An employment agreement existed between the parties. In particular, Plaintiff agreed to be employed by Corporation in exchange for certain wages, commissions, compensation, benefits, payments and/or other monies.
34. Defendants willfully, wantonly, recklessly, arbitrarily, unilaterally and without Plaintiff's consent, breached the terms of the parties' employment agreement. Specifically, Plaintiff has now not been paid wages, commissions, compensation, benefits, payments and/or other monies totaling \$57,491.48.
35. As a direct and proximate result of the Defendants' breach of the employment agreement, Plaintiff has been damaged, including her not being paid wages, commissions, compensation, benefits, payments and/or other monies totaling \$57,491.48.
36. As a direct and proximate result of the Defendants' breach of the employment agreement, Plaintiff has also been damaged by being forced to incur attorney's fees, suit costs, and/or other litigation expenses.
37. Plaintiff has performed her part of the employment agreement in full.

**FOR A FOURTH CAUSE OF ACTION
(Breach of the Implied Covenant of Good Faith and Fair Dealing)**

38. Plaintiff realleges and reiterates each and every allegation set forth above, as if fully set out herein.
39. There exists in every agreement an implied covenant of good faith and fair dealing.
40. An employment agreement existed between Plaintiff and Defendants. In particular, Plaintiff agreed to be employed by Corporation in exchange for wages, commissions, compensation, benefits, payments and/or other monies as detailed herein.
41. Defendants willfully, wantonly, recklessly, arbitrarily, unilaterally and without Plaintiff's consent, breached and/or caused to be breached, the implied covenant of good faith and fair dealing between the parties. Specifically, Plaintiff has now not been paid wages, commissions, compensation, benefits, payments and/or other monies totaling \$57,491.48.
42. As a direct and proximate result of the Defendants' breach and/or causing there to be a breach of the implied covenant of good faith and fair dealing between the parties, Plaintiff has been damaged, including her not being paid wages, commissions, compensation, benefits, payments and/or other monies totaling \$57,491.48.
43. As a direct and proximate result of the Defendants' breach and/or causing there to be a breach of the implied covenant of good faith and fair dealing between the parties, Plaintiff has also been damaged by being forced to incur attorney's fees, suit costs, and/or other litigation expenses.
44. Plaintiff is now entitled to an award of her unpaid wages, commissions, compensation, benefits, payments and/or other monies totaling \$57,491.48, treble/punitive damages, reasonable attorney's fees, suit costs, expert witness fees, other litigation expenses, and prejudgment interest on account of the Defendants' breach of the implied covenant of good faith and fair dealing.

**FOR A FIFTH CAUSE OF ACTION
(Quantum Meruit)**

45. Plaintiff realleges and reiterates each and every allegation set forth above, as if fully set out herein.
46. Plaintiff conferred a benefit upon the Defendants, as agreed, by providing her services.
47. Defendants realized the full benefit of the Plaintiff's services.

48. Retention of the benefit of the Plaintiff's services by the Defendants, without Plaintiff being paid her rightfully due and owing wages, commissions, compensation, benefits, payments and/or other monies totaling \$57,491.48 is inequitable.
49. Plaintiff has been damaged, including her not being paid her rightfully due and owing wages, commissions, compensation, benefits, payments and/or other monies totaling \$57,491.48.
50. Plaintiff has also now been damaged by being forced to incur attorney's fees, suit costs, and/or other litigation expenses.
51. Plaintiff is now entitled to an award of her unpaid wages, commissions, compensation, benefits, payments and/or other monies totaling \$57,491.48, treble/punitive damages, reasonable attorney's fees, suit costs, expert witness fees, other litigation expenses, and prejudgment interest on the basis of quantum meruit.

WHEREFORE, Plaintiff respectfully requests that he be awarded the following from the Defendants:

- a. \$57,491.48, in unpaid wages, commissions, compensation, benefits, payments and/or other monies;
- b. Treble/punitive damages, in an actual amount to be determined by a jury;
- c. Reasonable attorney's fees, suit costs, expert witness fees, and all other litigation expenses;
- d. Pre-judgment interest; and
- e. Such other relief as the Court deems just, equitable and proper.

WILLCOX, BUYCK & WILLIAMS, PA

By: s/ J. Scott Kozacki
 J. Scott Kozacki
 SC Bar No. 5456
 PO Box 1909
 Florence SC 29503-1909
 (843) 664-3364 - Tel
 Email: skozacki@willcoxlaw.com
 ATTORNEY FOR PLAINTIFF

May 19, 2020
 Florence, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	Civil Action No. 2020-CP-21-01296
	)	
Allison Parker,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	ANSWER
	)	(JURY TRIAL REQUESTED)
Florence Carpet & Tile, Inc., John Curl,	)	
and Mike Barker,	)	
	)	
Defendants.	)	
	)	
	)	

The Defendants, Florence Carpet & Tile, Inc., John Curl, and Mike Barker, hereby answer the Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE

1. Each and every allegation not hereinafter specifically admitted is denied.
2. The statements made in paragraph one of the complaint do not require a response. To the extent they do, the Defendants deny the statements.
3. The Defendants admit the allegations contained in paragraphs 2, 3, 4, 5, 6, and 7,
4. The Defendants deny the allegations contained in paragraph 8.
5. Answering the reallegations contained in paragraph 9 the Defendants reassert each and every defense previously stated herein.
6. The Defendants lack sufficient information at this time to answer the allegations contained in paragraphs 10.
7. The Defendants deny the allegations contained in paragraph 11.
8. The Defendants deny the allegations contained in paragraphs 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23.

9. Answering the reallegations contained in paragraph 24 the Defendants reassert each and every defense previously stated herein.
10. The Defendants deny the allegations contained in paragraphs 25, 26, 27, 28, 29, 30 and 31.
11. Answering the reallegations contained in paragraph 32 the Defendants reassert each and every defense previously stated herein.
12. The Defendants deny the allegations contained in paragraphs 33, 34, 35, 36 and 37.
13. Answering the reallegations contained in paragraph 38 the Defendants reassert each and every defense previously stated herein.
14. The Defendants deny the allegations contained in paragraphs 39, 40, 41, 42, 43 and 44.
15. Answering the reallegations contained in paragraph 45 the Defendants reassert each and every defense previously stated herein.
16. The Defendants deny the allegations contained in paragraphs 46, 47, 48, 49, 50 and 51.

FOR A SECOND DEFENSE
(Statute of Limitations)

17. Further, the Defendants allege the applicable statute of limitations (S.C. Code Ann. § 15-3-530) bars the claims.

FOR A THIRD DEFENSE
(Statute of Frauds)

18. The Defendants further allege the Plaintiff's contractual claims are barred by the South Carolina Statute of Frauds.

FOR A FOURTH DEFENSE
(Failure to State a Claim)

19. Although Defendant Mike Barker has filed a separate Motion to Dismiss, the Defendants assert the following 12(b)(6) defense and allege the allegations of the Complaint do not

state facts sufficient to constitute a cause of action upon which relief can be granted, and this Court should dismiss the Complaint pursuant to 12(b)(6), SCRCP.

FOR A FIFTH DEFENSE
(Punitive Damages)

20. The Defendants allege that any award of punitive damages in a civil action violates the due process clause of the Fourteenth Amendment to the United States Constitution; violates the equal protection of the laws clause of the Fourteenth Amendment to the United States Constitution; and denies the defendant the protection of the Fifth Amendment to the United States Constitution in that civil punitive damages are sufficiently criminal in nature to require criminal procedure safeguards.
21. Further, the Defendants plead all applicable statutory caps on punitive damages, including but not limited to, the caps described in S.C. Code Ann. § 15-32-530, *et seq.*, as amended.

FOR A SIXTH DEFENSE
(Failure to Mitigate)

22. Further, the Defendants allege to the extent the Plaintiff has failed to mitigate his damages, such damages, if any, must be reduced in whole or in part.

FOR A SEVENTH DEFENSE
(Waiver and Release)

23. The Defendants further allege the doctrines of waiver and release bar this lawsuit because Plaintiff's own actions, omissions, unsatisfactory performance, and/or misconduct created and/or caused all of the allegations raised in the Complaint.

FOR A EIGHTH DEFENSE
(Laches)

24. Further, the Defendants allege the Plaintiff's claims are barred by the Doctrine of

Latches.

FOR A NINTH DEFENSE
(Estoppel by Conduct)

25. Defendants further allege that Plaintiff by his actions, conduct, words or silence which amounts to a representation or other concealment of material facts, has caused the Defendants to alter their position to their prejudice or injury and should therefore be estopped from bringing the within claims by the foregoing conduct and such constitutes a complete defense to all claims.

FOR A TENTH DEFENSE
(At-will Employee)

26. Defendants further allege that at all times the Defendants employed Plaintiff on an at-will basis, and therefore Plaintiff had no contracts of employment.

FOR AN ELEVENTH DEFENSE
(Business Judgment Rule)

27. Defendants plead the business judgment rule.

FOR A TWELTH DEFENSE
(Good Faith and Fair Dealing)

28. Defendants deny any and all liability, but in the alternative, plead that at all times its actions were in good faith to serve and in furtherance of legitimate business purposes, and there existed a reasonable basis for these actions, such actions being for a proper purpose and by proper methods.

FOR A THIRTEENTH DEFENSE
(Jury Trial Demand)

29. Plaintiff is not entitled to a jury trial on equitable issues.

FOR A FOURTEENTH DEFENSE
(South Carolina Workers' Compensation Act)

30. The South Carolina Workers' Compensation Act provided the exclusive remedy, if any, for and barred/precluded any claims alleging fraud and negligent misrepresentation.

FOR A FIFTEENTH DEFENSE
(Reservation of Rights)

31. Defendants will rely upon all proper defenses lawfully available that may be disclosed by evidence and reserves the right to amend its Answer to state such other affirmative and additional defenses or to otherwise supplement this Answer upon discovery of facts of evidence rendering such action appropriate.

WHEREFORE, having answered the Plaintiff's Complaint, the Defendants ask this Court to dismiss the Complaint and to grant such other and further relief as this Court deems just and proper.

TURNER, PADGET, GRAHAM & LANEY, P. A.

s/ Jeffrey L. Payne

Jeffrey L. Payne, Esquire

Post Office Box 5478

Florence, South Carolina 29502

Direct: (843) 662-9008

Fax: (843) 667-0828

Email: jpayne@turnerpadget.com

Florence, South Carolina

August 3, 2020

ATTORNEYS FOR THE DEFENDANTS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	Civil Action No. 2020-CP-21-01296
Allison Parker,	)	
	)	
Plaintiff,	)	
	)	
v.	)	MOTION FOR SUMMARY JUDGMENT
	)	(Mike Barker)
Florence Carpet & Tile, Inc., John Curl,	)	
and Mike Barker,	)	
	)	
Defendants.	)	

TO J. SCOTT KOZACKI, ATTORNEY FOR THE PLAINTIFF, ALLISON PARKER:

You will please take notice that ten (10) days after service of this notice upon you or soon thereafter as counsel may be heard, counsel for the Defendant, Mike Barker, will move before the Florence County Court of Common Pleas for an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting summary judgment in favor of the Defendant, Mike Barker, as to all causes of action alleged against him. The grounds for this motion are as follows:

1. During the time Allison Parker worked for Florence Carpet & Tile, Inc. ("FCT") her husband Walter Parker was the President of the company and he was in charge of the company's payroll and the payment of any commissions owed to employees such as Allison Parker. Mike Barker did not start working for FCT until May 2013. When Mike Barker was hired, Allison Parker had already been employed by FCT for six years. Walter Parker was always Mike Barker's boss at FCT.
2. Mike Barker is not a shareholder of Florence Carpet & Tile, Inc. ("FCT") and he was not an officer or agent of FCT when Allison Parker was an employee of FCT.
3. Mike Barker is not an "employer" as is defined under SC Code § 41-10-40(A)

(Supp. 2010). (the “Act”) and would have no liability to the Plaintiff for any claim she brings under the Act. Moreover, Mike Barker did not enter into any employment agreement with the Plaintiff whereby he would be classified or defined as an employer pursuant to the Act. Any alleged agreement the Plaintiff had would have been with her employer FCT which could have only occurred many years before Mike Barker ever started working for FCT.

4. At no time did Mike Barker knowingly permit his employer FCT to violate the Act by failing to pay wages to the Plaintiff. Mike Barker had no control over whether any employee was paid. Walter Parker as President of FCT had this authority.

5. Mike Barker is not a “principal” as defined by the Sales Representative Act, SC Code § 39-65-10 (“Sales Representative Act”). He did not enter into an “oral contract” with the Plaintiff for her to solicit orders for himself or FCT. Consequently, he cannot be held liable for any alleged failure to pay commissions to the Plaintiff.

6. Mike Barker did not have any oral or written contract with the Plaintiff and therefore is not liable to the Plaintiff for any breach of contract. The Plaintiff received a W-2 from FCT each year. She did not receive a W-2 from Mike Barker. In addition, since the Plaintiff and Mike Barker lacked any contractual relationship, and there was no breach of any such contract, there can be no breach of the implied covenant of good faith and fair dealing.

7. Mike Barker did not receive any benefit as a result of the Plaintiff’s services to FCT. Mike Barker was simply an employee of FCT and is not subject to any claim for quantum meruit.

For the foregoing reasons, the Court should grant Mike Barker’s Motion for Summary Judgment and thereby dismiss the Plaintiff’s claim against him.

This motion is based upon the pleadings before the Court, the Affidavit of Mike Barker, the Affidavit of John Curl, and the substantive and procedural law of the State of South Carolina.

TURNER PADGET GRAHAM & LANEY, P.A.

August 25, 2021
Florence, South Carolina

s/ Jeffrey L. Payne
Jeffrey L. Payne, Esquire
SC Bar No.: 15136
P.O. Box 5478
Florence, South Carolina 29502
Telephone: (843) 662-9008
Email: jpayne@turnerpadget.com

ATTORNEY FOR DEFENDANTS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	Civil Action No. 2020-CP-21-01296
Allison Parker,	)	
	)	
Plaintiff,	)	
	)	
v.	)	MOTION FOR SUMMARY JUDGMENT
	)	(John Curl)
Florence Carpet & Tile, Inc., John Curl,	)	
and Mike Barker,	)	
	)	
Defendants.	)	

TO J. SCOTT KOZACKI, ATTORNEY FOR THE PLAINTIFF, ALLISON PARKER:

You will please take notice that ten (10) days after service of this notice upon you or soon thereafter as counsel may be heard, counsel for the Defendant, John Curl, will move before the Florence County Court of Common Pleas for an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting summary judgment in favor of the Defendant, John Curl, as to all causes of action alleged against him. The grounds for this motion are as follows:

1. Allison Parker was employed by Florence Carpet & Tile, Inc. ("FCT") from May 2007 until August 10, 2019. She was a salaried employee. During her employment period she was an officer of FCT and her husband Walter Parker was the President of the company who was in charge of the day to day operations of FCT.
2. John Curl had no involvement with the day to day operations of FCT. Walter Parker was responsible for FCT's payroll and paying FCT's employees including Allison Parker.
3. John Curl is not an "employer" as is defined under SC Code § 41-10-40(A)

(Supp. 2010). (the “Act”) and would have no liability to the Plaintiff for any claim she brings under the Act. Moreover, John Curl did not enter into any employment agreement with the Plaintiff whereby he would be classified or defined as an employer pursuant to the Act. Any alleged agreement the Plaintiff had would have been with her employer FCT.

4. At no time did John Curl knowingly permit FCT to violate the Act by failing to pay wages to the Plaintiff.

5. John Curl is not a “principal” as defined by the Sales Representative Act, SC Code § 39-65-10 (“Sales Representative Act”). He did not enter into any “oral contract” with the Plaintiff for her to solicit orders for himself. Consequently, John Curl cannot be held liable for any alleged failure to pay commissions to the Plaintiff.

6. John Curl did not have any oral or written contract with the Plaintiff and therefore is not liable to the Plaintiff for any breach of contract. The Plaintiff was employed by FCT and any obligation as alleged would not be owed by John Curl. The Plaintiff received a W-2 from FCT for each year. She did not receive a W-2 from John Curl. In addition, since the Plaintiff and John Curl lacked any contractual relationship and there was no breach of any such contract, there can be no breach of the implied covenant of good faith and fair dealing cause of action.

7. John Curl did not receive any benefit as a result of the Plaintiff’s services to FCT. John Curl was only a passive shareholder of FCT and had no involvement in the day to day operation of FCT. He is not subject to any claim of quantum meruit.

For the foregoing reasons, the Court should grant Defendant John Curl’s motion for summary judgment and thereby dismiss the Plaintiff’s Complaint against him.

This motion is based upon the pleadings before the Court, the Affidavit of Mike Barker, the Affidavit of John Curl, and the substantive and procedural law of the State of South Carolina.

TURNER PADGET GRAHAM & LANEY, P.A.

August 25, 2021
Florence, South Carolina

s/ Jeffrey L. Payne
Jeffrey L. Payne, Esquire
SC Bar No.: 15136
P.O. Box 5478
Florence, South Carolina 29502
Telephone: (843) 662-9008
Email: jpayne@turnerpadget.com

ATTORNEY FOR DEFENDANTS

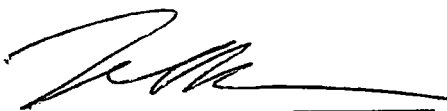
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	Civil Action No. 2020-CP-21-01296
	)	
Allison Parker,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AFFIDAVIT OF MIKE BARKER
	)	
Florence Carpet & Tile, Inc., John Curl,	)	
and Mike Barker,	)	
	)	
<u>Defendants.</u>	)	

----- Personally appeared before me, Mike Barker who first being duly sworn deposes and -----
states as follows:

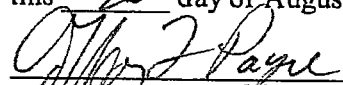
1. I began working for Florence Carpet & Tile, Inc. ("FCT") in May 2014 and I worked in the office handling a number of administrative duties for FCT. Walt Parker was always my boss at FCT until his employment was terminated on or about July 27, 2019.
2. I have never owned any shares in FCT.
3. During Walt Parker's employment period with FCT I was never an officer of FCT.
4. As my boss Walt Parker had the authority to approve and alter FCT's payroll. I had no such authority. John Curl was not involved with the day to day operation of FCT and did not review or approve payroll matters.
5. Walt Parker approved all commission payments to FCT's salespeople.
6. Walt Parker required the sales staff to satisfy a list of requirements before they could obtain a commission check. Allison Parker received a W-2 from FCT for the work she performed.
7. While Allison Parker was employed with FCT, she never asked me about receiving a commission check. She never told me she was entitled to a commission check and she never provided me with the required information in order to obtain a commission check from FCT.

8. During Allison Parker's employment with FCT, Walt Parker never told me to provide her with a commission check.

FURTHER AFFIANT SAYETH NOT.


Mike Barker

Sworn to before me
this 20 day of August, 2021.



Print Name: Jerry L. Payne

Notary Public for South Carolina

My Commission Expires: 1-14-2030

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	Civil Action No. 2020-CP-21-01296
Allison Parker,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AFFIDAVIT OF JOHN CURL
	)	
Florence Carpet & Tile, Inc., John Curl,	)	
and Mike Barker,	)	
	)	
Defendants.	)	

Personally, appeared before me, John Curl who first being duly sworn deposes and states as follows:

1. On or about April 30, 2007, Walt Parker and I purchased the outstanding shares of Florence Carpet & Tile, Inc. ("FCT").

2. At the time of the purchase, Walt Parker owned 47% of the shares of FCT and I owned 53%.

3. From April 30, 2007 until July 27, 2019, Walt Parker was the President of FCT and in charge of its day to day operations including handling the company's payroll.

4. I have never been an employee of FCT and I have never received a paycheck from FCT.

5. I was not involved with the day to day operations of FCT while Allison Parker was employed by FCT. Particularly, during this time, I did not review the payroll before payroll checks were issued to any FCT employees including Allison Parker.

6. Allison Parker was employed by FCT from May 1, 2007 until August 10, 2019 ("Employment Period") as a salaried employee. During that time she worked alongside her husband, Walt Parker, the president of FCT, who was also a salaried employee.

Affidavit of John Curl
C/A No.: 2020-CP-21-01296

7. Allison Parker was an officer of FCT during her Employment Period and she was authorized to sign checks on FCT's bank accounts.

8. Allison Parker was an "at-will" employee of FCT. She did not have an employment contract.

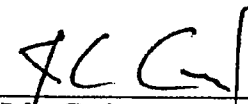
9. As President of FCT, Walt Parker was responsible for operating the business and making sure that the payroll for employees such as his wife Allison Parker was properly handled during the entire time of her twelve-year Employment Period except for the last week of her employment.

10. Allison Parker never received a commission from FCT during her entire twelve-year Employment Period.

11. Allison Parker never contacted me to tell me that FCT owed her any commissions or any wages.

12. Allison Parker did not provide any services to me as she alleges in her complaint. Any such services were provided to her employer FCT. I did not personally benefit from any of the alleged services that Allison Parker alleges she provided to FCT and I did not realize that I was personally benefitting from any of those services.

FURTHER AFFIANT SAYETH NOT.


 John Curl

Sworn to before me
 this 16th day of August, 2021.


 Print Name: Belva Powell
 Notary Public for South Carolina
 My Commission Expires: 02/15/24

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE TWELTH JUDICIAL CIRCUIT

ALLISON PARKER,)
))
Plaintiff,)
vs.)
))
FLORENCE CARPET & TILE,)
INC., JOHN CURL and MIKE)
BARKER,)
))
Defendants.)
_____)

CASE NO: 2020-CP-21-01296

**PLAINTIFF'S RESPONSE IN
OPPOSITION TO DEFENDANTS
CURL AND BARKER'S
MOTIONS FOR SUMMARY
JUDGMENT**

Introduction

Plaintiff Allison Parker ("Plaintiff" and/or "Mrs. Parker"), by and through the undersigned legal counsel does hereby respond in opposition to Defendants John Curl ("Defendant Curl and/or "Mr. Curl") and Mike Barker's ("Defendant Barker and/or "Mr. Barker") (collectively referred to herein as "these Defendants") pending motions for summary judgment. In particular, Plaintiff asserts that genuine issues of material fact exist for trial, which preclude the entry of summary judgment in this case. Accordingly, these Defendants' motions for summary judgment should be denied.

Relevant Factual Background

Plaintiff Allison Parker was employed by Defendant Florence Carpet & Tile, Inc. ("Defendant Carpet & Tile") from on or about May 1, 2007, until her final separation from employment on or about August 13, 2019 (Complaint ¶ 10; A. Parker Aff. ¶ 2; Curl Depo. p. 30 ; Barker Dep. p. 21). During the course of the Plaintiff's employment, Plaintiff was never provided with written notice of the terms and conditions of her employment, although she should have been (Curl Depo. p. 22 - 23; Barker Dep. p. 11; A. Parker Aff. ¶ 3). However, it was agreed that while

Mrs. Parker employed as an Inside Salesperson, she was to be paid wages in the amount of \$42,000 per year, a 2% commission on sales, plus benefits (Complaint ¶ 11; A. Parker Aff. ¶ 3).

At all times relevant hereto, Mrs. Parker dutifully and properly performed her job requirements for the company (A. Parker Aff. ¶ 4; Barker Depo. p. 14). Despite such, the Defendants have not paid Mrs. Parker her rightfully due and owing wages, compensation, commissions benefits, payments and/or other monies owed in an amount exceeding \$57,491.48 (Complaint ¶s 13, 15; A. Parker Aff. ¶ 5). In fact, Plaintiff was not paid all her commission, despite the agreement to the contrary (A. Parker Aff. ¶ 5; Barker Depo. p. 23). Defendant Barker further testified that he was unaware of any documentation indicating that the Plaintiff was not to receive commissions (Barker Depo. p. 33). Defendants Curl and Barker were/are also agents, employees, and/or officers of the Corporation who knowingly permitted and/or caused the Plaintiff's damages (Complaint ¶ 8, 17; A. Parker Aff. ¶ 8 ; Curl Depo. pp. 15-16; Barker Depo. p. 6). The Defendants were also aware of the Plaintiff's claims before the instant lawsuit was filed (A. Parker Aff. ¶ 6).

In fact, on or about May 4, 2019, and before the filing of this lawsuit, Defendant Mike Barker admittedly reviewed and signed a written statement indicating that:

...I have examined the records of [Defendant Florence Carpet & Tile, Inc.] as maintained in the ordinary course of business and have calculated the compensation due Allison Parker for her services rendered as an employee of the corporation. The balance currently due is \$57,461.48.

(Ex. 1 – Barker Written Statement; A. Parker Aff. ¶ 7; Barker Depo. p. 30).

Similarly, Defendants were undeniably aware of Plaintiff's claims for unpaid compensation, since Mr. Walt Parker and Mrs. had previously filed claims for unpaid compensation with the South Carolina Department of Labor, Licensing, and Regulation ("SCLLR") (Ex. 2 – SCLLR Documents; A. Parker Aff. ¶ 3). In reliance thereon, the Plaintiff filed the instant lawsuit for unpaid

compensation.

In her Complaint, the Plaintiff alleges the following causes of action against these Defendants: (1) violation of the South Carolina Payment of Wages Act; (2) failure to pay commissions due pursuant to the Sales Representative Act; (3) breach of contract; (4) breach of the implied covenant of good faith and fair dealing; and (5) quantum meruit.¹ The Defendants have filed an Answer denying the Plaintiff's claims. Defendants Barker and Curl have also now filed motions for summary judgment. This memorandum is submitted in opposition thereto.

Applicable Legal Standard

Pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure, summary judgment is proper if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c) S.C.R.C.P.; Opternative, Inc. v. S.C. Bd. of Med. Examiners, 859 S.E.2d 263, 2021 S.C. App. LEXIS 41, 2021 WL 1774528 (Ct. App. 2021) “In determining whether summary judgment is proper, the court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party.” Weston v. Kim’s Dollar Store, 399 S.C. 303, 308, 731 S.E.2d 864, 866 (2012) (quoting Byers v. Westinghouse Elec. Corp., 310 S.C. 5, 7, 425 S.E.2d 23, 24 (1992)); Est. of Mims v. S.C. Dep’t of Disabilities & Special Needs, 422 S.C. 388, 403-04, 811 S.E.2d 807, 815-16 (Ct. App. 2018) (“[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is

¹ Mrs. Parker elects to no longer pursue causes of action against Defendants Barker and Curl for (1) breach of contract; (2) breach of the implied covenant of good faith and fair dealing; (3) quantum meruit; and (4) failure to pay commissions due pursuant to the Sales Representative Act. Thus, Mrs. Parker agrees to voluntarily dismiss these claims against these Defendants.

only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” (quoting Hancock v. Mid-S. Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009))). Accordingly, summary judgment is appropriate only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Conner v. City of Forest Acres, 348 S.C. 454, 560 S.E.2d 606 (2002); Rule 56(c), SCRCP. In this same regard, since it is a drastic remedy, summary judgment must be cautiously invoked so that a litigant will not” be improperly deprived of trial on disputed factual issues.” Id.

Analysis

I. *These Defendants May be Held Individually Liable for Violations Under the South Carolina Payment of Wages Act.*

Initially, Defendants Barker and Curl may be held individually liable for violations under the South Carolina Payment of Wages Act (“SCPWA”), S.C. Code Ann. § 41-10-10, *et. seq.* No genuine issues of material fact exist in this regard. For this reason, these Defendants’ motions for summary judgment should be denied.

Importantly, Plaintiff has asserted a claim under the South Carolina Payment of Wages Act, which creates a cause of action against an employer by an employee for failure of the employer to pay wages as required under that Act. S.C. Code Ann. § 41-10-80(C). Plaintiff also claims that Defendants Barker and Curl violated this Act by knowingly permitting violations and are individually liable as a result (See eg., Complaint ¶¶ 12-17).

In this regard, the SCPWA provides that employers “shall pay all wages due to the employee within forty-eight hours of the time of separation or the next regular pay day which may not exceed thirty days.” S.C. Code Ann. § 41-10-50. The statute further provides as follows:

The Act, found in sections 41-10-10 to -110 of the South Carolina Code (Supp.2010), defines “employer” as “every person, firm, partnership, association, corporation, receiver, or other officer of a court of this State, the State or any political subdivision thereof, and any agent or officer of the above classes employing any person in this State.”

S.C. Code Ann. § 41-10-10(1) (emphasis added).

Defendants Curl and Barker undeniably fall within this definition of “employer.” No genuine issue of material fact exists in this regard. Therefore, summary judgment in favor of these Defendants should be denied.

In Dumas v. InfoSafe Corp., 320 S.C. 188, 195, 463 S.E.2d 641, 645 (Ct. App. 1995), the S.C. Court of Appeals interpreted the SCPWA, and clearly held that the legislature intended to impose individual liability on agents or officers of a corporation who knowingly permit their corporation to violate the Act. Id. “To hold otherwise would require us to ignore the words ‘and any agent or officer of the above classes.’ “ Id. Indeed, “[t]he South Carolina Payment of Wages Act is remedial legislation designed to protect working people and assist them in collecting compensation wrongfully withheld.” Id. at 194, 463 S.E.2d at 645; Allen v. Pinnacle Healthcare Sys., LLC, 715 S.E.2d 362, 364-65 (Ct. App. 2011). Other courts that have considered the issue of individual liability under the SCPWA have also similarly concluded that individuals, such as the Defendants, may be individually liable under the Act. *See eg.*, Wired Fox Techs., Inc. v. Estep, No. 15-331, 2017 WL 1135288, at *19 (D.S.C. Mar. 27, 2017) (“The [SCPWA] was ‘intended to impose individual liability on agents and officers of a corporation who knowingly permit their corporation to violate the Act.’”) (quoting Dumas, 463 S.E.2d at 645); Cool v. Ramaci, 12-02323, 2014 WL 12616090, at *3 (D.S.C. Dec. 9, 2014) (“Based on this definition, the South Carolina Court of Appeals has also held that the Act imposes ‘individual liability on agents or officers of a corporation who knowingly permit their corporation to violate the Act.’ E.g., Allen v. Pinnacle

Healthcare Sys., LLC, 715 S.E.2d 362, 365 (S.C. Ct. App. 2011)").

Viewing the evidence in the light most favorable to the Plaintiff in this case, as is legally required, Defendants Curl and Barker may also be held individually liable as officers and/or agents of Defendant Florence Carpet & Tile, Inc. Again, Defendants Curl and Barker undeniably were/are agents, employees, and/or officers of the Corporation who knowingly permitted and/or caused the Plaintiff's damages (Complaint ¶ 8, 17; A. Parker Aff. ¶ 8; Curl Depo. pp. 15-16; Barker Depo. p. 6). As well, on or about May 4, 2019, and before the filing of this lawsuit, Defendant Mike Barker admittedly reviewed and signed a written statement indicating that:

...I have examined the records of [Defendant Florence Carpet & Tile, Inc.] as maintained in the ordinary course of business and have calculated the compensation due Allison Parker for his services rendered as an employee of the corporation. The balance currently due is \$57,491.48.

(Ex. 1 – Barker Written Statement; A. Parker Aff. ¶ 7; Barker Depo. p. 30).

Similarly, Defendants were also undeniably aware of Plaintiff's claims for unpaid compensation, since the Plaintiff had previously filed with the South Carolina Department of Labor, Licensing and Regulation (Ex. 2 – SCLLR Documents; A. Parker Aff. ¶ 6). Despite such, the Defendants still have not paid Mrs. Parker her rightfully due and owing wages, compensation, commissions, benefits, payments and/or other monies owed in an amount exceeding \$57,491.48 (Complaint ¶s 13, 15; A. Parker Aff. ¶ 5). For this reason, these Defendants' motions for summary judgment should be denied.

II. Multiple Factors Weigh in Favor of Disregarding the Corporate Entity.

Next, multiple factors undeniably also weigh in favor of disregarding the corporate entity. No genuine issues of material fact exist in this regard. For this reason, these Defendants' motions for summary judgment should also be denied.

South Carolina's test for piercing the corporate veil requires that this court to find "a number," although not all, of the following factors weigh in favor of "disregard[ing] the corporate entity":

1. whether the corporation was grossly undercapitalized;
2. failure to observe corporate formalities;
3. non-payment of dividends;
4. insolvency of the debtor corporation at the time;
5. siphoning of funds of the corporation by the dominant stockholder;
6. non-functioning of other officers or directors;
7. absence of corporate records; and
8. the fact that the corporation was merely a facade for the operations of the dominant stockholder.

Dumas v. InfoSafe Corp., 320 S.C. 188, 463 S.E.2d 641, 644 (S.C. Ct. App. 1995). Similarly, the Plaintiff must prove "an element of injustice or fundamental unfairness if the acts of the corporation be not regarded as the acts of the [parent]." Sturkie v. Sifly, 280 S.C. 453, 313 S.E.2d 316, 318 (S.C. Ct. App. 1984). To demonstrate the presence fundamental unfairness, the Plaintiff may show that "(1) the defendant was aware of the plaintiff's claims against the corporation, and (2) thereafter, the defendant acted in a self-serving manner with regard to the property of the corporation and in disregard of the plaintiff's claim in the property." Dumas, 463 S.E.2d at 644. "However, for purposes of piercing the corporate veil, fundamental unfairness can exist in the absence of fraud, and may be proved by a lesser showing than reckless disregard." Id.

In Dumas v. InfoSafe Corp., a key case establishing South Carolina's veil-piercing criteria, the court found sufficient evidence to pierce the corporate veil and find its sole shareholder open to liability because: (1) the corporation had been undercapitalized since its inception; (2) it failed

to hold directors meetings and observe other corporate formalities; (3) it did not pay dividends; (4) it was insolvent and could not pay its employees' wages; (5) the corporations funds were "regularly transferred to [the sole shareholder and his wife], allegedly for repayment of certain loans to the company"; (6) the shareholder, as the corporation's president, made all the hiring decisions; and (7) the shareholder put about \$300,000 of his own money into the corporation and described his occupation as "entrepreneur." *Id.* Under those facts, the Court concluded that the facts clearly demonstrated that the President, as sole shareholder of the corporation, had created the corporation to act as a shield for his own personal business dealings in order to protect himself from liability. Under virtually identical facts, piercing of the corporate veil is also appropriate in this case.

As the record reflects, Defendant Florence Carpet and Tile ("Company") had been grossly undercapitalized since its inception (W. Parker Aff. ¶ 9; A. Parker Aff. ¶ 9; Shelton Aff. ¶ 7). In fact, the company has never been provided with sufficient capital to achieve the desired results of significant profitability (W. Parker Aff. ¶ 10; A. Parker Aff. ¶ 10; Shelton Aff. ¶ 8). Mr. Curl also refused to infuse sufficient monies into the company, despite their being severely needed for employees, merchandise, customer orders, vendors, repairs, building improvements and other business necessities (W. Parker Aff. ¶ 11; A. Parker Aff. ¶ 11; Shelton Aff. ¶ 9). The company often did not generate the profit that was expected (W. Parker Aff. ¶ 11; A. Parker Aff. ¶ 11; Shelton Aff. ¶ 9). Director's meetings were also not regularly held and corporate formalities were largely ignored, including employees regularly paying for necessary items out of their own pockets for business operation (W. Parker Aff. ¶ 12; A. Parker Aff. ¶ 12; Shelton Aff. ¶ 10). Likewise, the company did not regularly hold scheduled meetings, hold special meetings, keep accurate records,²

² For example, despite being the President, majority shareholder, Secretary and Treasurer of the company, Defendant Curl admittedly did not know where payroll records were located at, did not know whether they were produced to opposing legal counsel, the format in which they were

exercise fiduciary duties to the corporation, develop a planning routine and make all company purchases in the corporation's name (W. Parker Aff. ¶ 12; A. Parker Aff. ¶ 12; Shelton Aff. ¶ 10). In fact, employees were required to purchase items using their own monies and/or credit cards to keep the business operating (W. Parker Aff. ¶ 13; A. Parker Aff. ¶ 13; Shelton Aff. ¶ 12). The company would often not be able to pay employee wages on time (W. Parker Aff. ¶ 13; A. Parker Aff. ¶ 13; Shelton Aff. ¶ 12). Defendant Curl also admitted that although, he was the majority shareholder of the company during the relevant time period, he also was the owner/operator of other business, including Curl Properties, LLC, the lessor of the company's business property (Curl Depo. pp. 12-13). Unfortunately, corporate funds were often siphoned by Defendants Curl and Barker to first to pay rent to Curl Properties, LLC and/or to Defendant Curl, even before employee wages (W. Parker Aff. ¶ 14; A. Parker Aff. ¶ 14). Again, Defendants Curl and Barker were also fully aware of the Plaintiff's claims of failure to pay compensation, prior to the filing of this lawsuit.

Furthermore, it would also be "fundamentally unfair" to not hold the individual Defendants liable in this case. In particular, the undisputed record reflects that Defendants Curl and Barker were aware of the Plaintiff's claims prior to the filing of this lawsuit. Again, before the filing of this lawsuit, Defendant Mike Barker admittedly reviewed and signed a written statement indicating that:

...I have examined the records of [Defendant Florence Carpet & Tile, Inc.] as maintained in the ordinary course of business and have calculated the compensation due Allison Parker for her services rendered as an employee of the corporation. The balance currently due is \$57,491.48.

maintained and/or for how long they had even been maintained. (Curl Depo. pp. 13, 15-16, 18-19); see also, S.C. Code § 41-10-30(C) (mandating that "[e]very employer shall keep records of names and addresses of all employees and of wages paid each payday and deductions made for three years).

(Ex. 1 – Barker Written Statement; A. Parker Aff. ¶ 7; Barker Depo. p. 30).

Similarly, Defendants were also undeniably aware of Plaintiff's claims for unpaid overtime compensation, since Plaintiff had previously filed claims for unpaid compensation with the South Carolina Department of Labor, Licensing and Regulation (Ex. 2 – SCLLR Documents; A. Parker Aff. ¶ 6).

Hence, it is equally clear that the individual Defendants acted in a self-serving manner with regard to the property of the corporation and in disregard of the plaintiff's claim in the property.”. Dumas, 463 S.E.2d at 644. The individual Defendants also undeniably continue to prioritize and/or receive salary, profits and/or rents from the Defendant corporation, despite wages and compensation being owed to company employees. For this reason, it is fundamentally unfair to not hold the individual Defendants liable in this case.

Viewing these facts in the light most favorable to the Plaintiff, as is legally required, genuine issues of material fact also exist as to whether the corporate veil may be pierced. To conclude otherwise would be both erroneous as a matter of law and an abuse of discretion. For this reason, Defendant Curl and Barker's motions for summary judgment must also be denied.

Conclusion

For the foregoing reasons, Plaintiff's respectfully request that these Defendants' motions for summary judgment be denied and that this case be allowed to proceed to trial on its merits.

WILLCOX, BUYCK & WILLIAMS, P.A.

By: s/ J. Scott Kozacki
J. Scott Kozacki
SC Bar No. 64137

PO Box 1909
Florence SC 29503-1909
(843) 662-3258 Telephone
(843) 662-1342 Facsimile
Email: skozacki@willcoxlaw.com
ATTORNEY FOR THE PLAINTIFF

November 1, 2021
Florence, South Carolina

Carpet Florence Carpet & Tile, Inc.

GM
As comptroller of Florence Carpet & Tile, Inc., I have examined the records of that company as maintained in the ordinary course of business and have calculated the compensation, whether wages or commission, due Allison Parker for her services rendered as an employee of the corporation. The balance currently due is \$ 57,481.48.

May 4, 2019

Mike Barker *Gives Me Money*
Mike Barker, Comptroller of Florence
Carpet & Tile, Inc.

**S.C. DEPARTMENT OF LABOR, LICENSING AND REGULATION
DIVISION OF INVESTIGATIONS AND ENFORCEMENT/OFFICE OF WAGES AND CHILD LABOR**

Date: / /
Mo Day Yr

Case Number: 2019-

CLAIMANT INFORMATION

Name PARKER ALLISON Phone
Address Area Code
City or Box Number SSN
City County Date of Employment 5 / 1 / 2007
State Zip Separation 8 / 13 / 2019
Discharged Quit X Still Working

EMPLOYER INFORMATION

Company FLORENCE TILE, INC. Phone (843) 669-1851
Contact Person MIKE BARKER Title COMPANY MANAGER
Address 1706 PAMPLICO HWY. Type of Business FLOOR COVERING SALES & INSTALLATION
City FLORENCE County FLORENCE Number of Employees 13
State SC Zip 29505

ADDITIONAL INFORMATION

INCLUDES DEFERRED COMPENSATION AND A 27% COMMISSION

CLAIM INFORMATION

Employee Occupation INSIDE SALESMAN BASIS OF CLAIM
Rate of Pay: \$42,000 per YEAR Wages X Vacation Commission X
Other: Bad Check Other X 401(K)
Deductions: Yes X No UNPAID TIME WORKED: Hours
Fed. X State X FICA X Other Dates VARIABLE - ON FILE AT COMPANY
PAY PERIOD ADVANCE/Setoff: Yes No Amt \$
Weekly X Bi-weekly Net amount owed by employer: \$69,141.58
Monthly By the job or other CLAIMANT REQUESTED WAGES: Yes X No
SPECIFIC PAYDAY: FRIDAY Date: 8/19/2019
SPECIFIC PAY DATE: 8/16/2019 From Whom: JEFFREY L. PAYNE, ESQUIRE
Time & Place of Payment: DIRECT DEPOSIT CLAIMANT RECEIVED WRITTEN NOTIFICATION AS
Where work performed: FLORENCE REQUIRED BY 41-10-30(A) Yes No X
Investigator Claimant's Signature Date 9/5/19

WCL-3 (Rev. 9/05)

LABOR

PROGRAM: WAGES & CHILD LABOR

DATE: 9.9.19 OPEN: YES ☒ NO ☐

OTHER: _____

COMPLAINANT: Allison Parker

RESPONDENT Florence & Tile, Inc.

HOW RECEIVED: Mail ☐ Fax ☐ In Person ☐ Other ☒

INVESTIGATOR ASSIGNED: MM

SUPERVISOR: Chief Baldwin

CATEGORY: Wages Claim ☒ Child Labor ☐

ALLEGED ISSUES: Failure to pay Wages ☒ Recordkeeping ☐
Child Labor ☐

No Jurisdiction ☐

Referral ☐

Over One Year ☐

COMMENTS: _____



Henry D. McMaster
Governor

Emily H. Farr
Director

South Carolina
Department of Labor, Licensing and Regulation

Division of Professional and Occupational Licensing
Office of Investigations and Enforcement



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4470
FAX: (803) 896-4656

September 12, 2019

Ms. Allison Parker
[REDACTED]

Re: Employer: Florence & Tile, Inc.
Case No.: 2019-1122

Dear Ms. Parker:

I am in receipt of your wage complaint. As an Investigator, I investigate employee wage complaints to determine whether an employer is in compliance with the S.C. Payment of Wage Law. If during the investigation it is determined that the employer is in violation of the Wage Payment Statute, the appropriate sanctions will be issued to the employer. You will be notified of the outcome of your case once my investigation is complete.

The Office of Wages and Child Labor **does not** have the authority to collect your wages or make an employer pay you. You have self serve rights under Section 41-10-80(C) of the South Carolina Payment of Wages Law.

Section 41-10-80(C) of the Payment of Wages Law states:

"In case of any failure to pay wages due to an employee as required by Subsection 41-10-40 or 41-10-50, the employee **may recover** in a Civil Action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the court may allow. Any civil action for the recovery of wages must be commenced within three years after the wages become due."

Any action you take in regards to a civil action is independent and separate from the actions and responsibilities of the Department of Labor.

Sincerely,

Mary Ann Miller
Investigator
(803) 896-4378
maryann.miller@llr.sc.gov

ELECTRONICALLY FILED - 2021 Nov 01 1:00 PM - FLORENCE - COMMON PLEAS - CASE#2020CP2101296



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4470
FAX: (803) 896-4656

South Carolina
Department of Labor, Licensing and Regulation

Division of Professional and Occupational Licensing
Office of Investigations and Enforcement



Henry D. McMaster
Governor

Emily H. Farr
Director

September 19, 2019

Florence & Tile, Inc.
ATTN: Mike Barker
1706 Pamplico Hwy.
Florence SC 29505

Re: Wage Complaint: 2019-1122
Claimant: Allison Parker

Dear Mr. Barker:

As an investigator, I investigate employee wage claims in order to determine employer's compliance with the South Carolina Payment of Wages Law. This office has received a wage complaint against Florence & Tile, Inc. alleging non-payment of wages of Allison Parker for the dates listed on the complaint. Under the South Carolina Payment of Wages Law 41-10-40, this office may institute an investigation of the alleged violation. Please find enclosed a copy of the wage complaint received by this office. You will be required to respond within **three business days** to this complaint so that I can fully investigate this complaint.

In order to expedite the resolution of these allegations, please provide to me by either email or fax, copies of the following documents:

- 1) A copy of any **WRITTEN TERMS OF EMPLOYMENT** provided to the claimant. These terms would include any written notice of normal working hours, wages agreed upon, time and place of payment, and deduction policies.
- 2) **The Federal Tax ID** number for the business and the **number** of employees in South Carolina.
- 3) **Time records** for the employee and **copy of pay checks** that match the time records **Dates:** 06/01/2019 through 08/16/2019.
- 4) **Copy of company's pay policy** and any documentation that you are able to provide me that **explains this complaint.**
- 5) **Summary of your company's position to each allegation, with supporting documentation, on your company letterhead.**

Failure to respond to these allegations will result in our accepting the charges made by the claimant (as stated) as factual and appropriate Warnings/Citations being issued.

Sincerely,

Mary Ann Miller
Investigator II
(803) 896-4378

maryann.miller@llr.sc.gov

**S.C. DEPARTMENT OF LABOR, LICENSING AND REGULATION
DIVISION OF INVESTIGATIONS AND ENFORCEMENT/OFFICE OF WAGES AND CHILD LABOR**

Date: 9/19/19
Mo Day Yr

Case Number: 2019-1122

CLAIMANT INFORMATION

Name PARKER ALLISON Phone [REDACTED]
Address [REDACTED] SSN [REDACTED]
City [REDACTED] or Box Number County [REDACTED] Date of: Employment 5/1/2007
State [REDACTED] Zip [REDACTED] Separation 8/13/2019
Discharged Quit X Still Working [REDACTED]

EMPLOYER INFORMATION

Company FLORENCE TILE, INC. Phone (843) 664-1851
Contact Person MIKE PARKER Title COMPANY MANAGER
Address 1706 PADAPICO HWY. Type of Business FLOOR COVERING SALES & INSTALLATION
City FLORENCE County FLORENCE Number of Employees 13
State SC Zip 29505

ADDITIONAL INFORMATION

INCLUDES DEFERRED COMPENSATION AND A 2% COMMISSION

CLAIM INFORMATION

Employee Occupation INSIDE SALESMAN
Rate of Pay: \$42,000 per YEAR
Other: [REDACTED]
Deductions: Yes X No [REDACTED]
Fed. X State X FICA X Other [REDACTED]
PAY PERIOD
Weekly X Bi-weekly [REDACTED]
Monthly [REDACTED] By the job or other [REDACTED]
SPECIFIC PAYDAY: FRIDAY
SPECIFIC PAY DATE: 8/16/2019
Time & Place of Payment: DIRECT DEPOSIT
Where work performed: FLORENCE
Investigator M. Allen

BASIS OF CLAIM

Wages X Vacation [REDACTED] Commission X
Bad Check [REDACTED] Other X 401(K)
UNPAID TIME WORKED: Hours [REDACTED]
Dates VARIOUS - ON FILE AT COMPANY
ADVANCE/Setoff: Yes [REDACTED] No [REDACTED] Amt \$ [REDACTED]
Net amount owed by employer: \$69,141.58
CLAIMANT REQUESTED WAGES: Yes X No [REDACTED]
Date: 8/19/2019
From Whom: JEFFREY L. FAYNE, ESQUIRE
CLAIMANT RECEIVED WRITTEN NOTIFICATION AS
REQUIRED BY 41-10-30 (A) Yes [REDACTED] No X
Claimant's Signature [Signature] Date 9/15/19

WCL-3 (Rev. 9/05)

Investigator: Miller
 Report Number: 2019-1122
 Claimant: Allison Parker
 Type of Complaint: Unpaid Wages

Florence Carpet & Tile Inc
 1706 Pamplico Hwy.
 Florence, SC 29505

Findings:

The Claimant filed a complaint with this office alleging non-payment of commission. She claims she is owed 2% in deferred compensation in the amount of \$69,141.58.

On 09/19/2019, R/I contacted Mike Barker, the Manager of the company, via the telephone, regarding the wage complaint filed by the Claimant. R/I explained the details of the investigative process and requested the time records with matching payroll, terms of employment and company policies to address the allegations listed in the complaint.

On 09/24/2019, the Respondent provided the requested documents that stated that the Claimant is the wife of a part owner. During the term of the Claimant's employment, 2012 through 2019, she was the Vice President of the company. He said she never turned in any commissions sheets. There was an agreement between the two owners that the Claimant would not be paid commissions due to her unique relationship with the company that set her apart from the regular sales staff. He also stated that Mr. Parker asked him to prepare an estimate of what Ms. Parker's commissions would have been had she been eligible to receive the commission through the duration of her tenure. He went on to say that he believes the estimate made several assumptions and beyond eligibility factor that renders the results inaccurate when compared to the actual accounting of commissions. He said he believes the hypothetical document is being used for the basis for this claim (EXHIBIT 1).

The respondent also stated that although Ms. Parker abandoned her job, in good faith, she was paid a week salary that she did not work and a week paid vacation even though she was not owed.

The respondent admitted that there was nothing in written form and he believes the claimant was over paid.

There are 13 employees.

Cite this Employer for:

4 Violation(s) of SC Section 41-10-30(A) for failing to provide written terms of employment.
 A Warning will be issued upon closure of case.

No Violations of SC Section 41-10-40(D).



FLORENCE CARPET & TILE

September 24, 2019

Mary Ann Miller, Investigator II
SCDLLR
110 Centerview Dr.
Columbia, SC 29211

RE: Case # 2019-1122 – Allison Parker

Dear Ms. Miller:

In reply to your letter of September 19, 2019:

- There are no written terms of employment for Ms. Parker.
- Ms. Parker's husband, Walt Parker was President and part owner of the company during the term of Ms. Parker's employment, and Ms. Parker was Vice-President of the company. There was an agreement in place during the term of her employment between Mr. and Mrs. Parker and John Curl, the majority owner and current President of the company, that Ms. Parker would not be paid commissions due to her unique relationship with the company that set her apart from the regular sales staff.
- Bearing witness to that agreement was the fact that Ms. Parker did not turn in any commissions sheets, which is a main requirement for receiving commissions, except in the weeks immediately preceding her abandonment of her job. These requirements were set in place by Mr. Parker and were well known to Ms. Parker.
- As company president, Mr. Parker asked me to prepare an estimate of what Ms. Parker's commissions would have been *had she been eligible to receive them* through the duration of her tenure earlier this year. The prescribed parameters in the estimate make several assumptions above and beyond the eligibility factor that render the results inaccurate when compared to proper accounting of commissions. Apparently that hypothetical document is being used for the numeric basis for this claim.
- Although Ms. Parker abandoned her job without notice or further contact, in good faith she was paid for accrued vacation time, which amounted to 1 week's pay.

EXHIBIT 1

Phone (843) 669-1851

www.florencecarpetandtile.com

Fax (843) 661-2671

Post Office Drawer 13460

Florence, South Carolina 29504

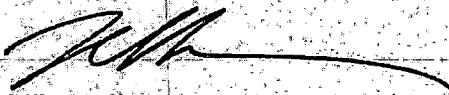
1706 Pamplico Highway

Page 2

- Our Federal Tax ID number is [REDACTED]
- Attached are the pay stubs requested. Ms. Parker was a salaried employee, and as such was not required to track her time worked. Accordingly there are no time records for her.

If you have any questions, please let me know.

Sincerely,



Mike Barker
General Manager

Attachments

EXHIBIT 1

Mary Ann Miller

From: Mike Barker [REDACTED]
Sent: Tuesday, September 24, 2019 11:33 AM
To: Mary Ann Miller
Subject: RE: case # 2019-1122
Attachments: Doc - Sep 24 2019 - 11-26 AM.pdf; AParkerCheckStubs(14).pdf
Importance: High

*** SCDLLR NOTICE ***

- This email is from an external email address. Please use caution when deciding whether to open any attachments or when clicking links.
- Personally Identifiable Information (PII) should not be included in e-mail text or attachments. Do not save or transmit PII unencrypted.

Please see our response attached. Thank you.

Mike Barker
General Manager

Florence Carpet and Tile
Different By Design

1706 Pamplico Hwy.
Florence, SC 29505
843-669-1851

From: Mary Ann Miller [mailto:[REDACTED]]
Sent: Thursday, September 19, 2019 3:20 PM
To: Mike Barker
Subject: case # 2019-1122

Thank you in advance for a three day response.

Mary Ann Miller
Investigator III
Office of Investigations & Enforcement
South Carolina Labor Licensing & Regulations
110 Centerview Drive
Columbia SC 29211-1329
Phone: (803) 896-4378
Fax: (803) 896-7680
Email: Maryann.miller@llr.sc.gov
Website: www.llronline.com

FLORENCE CARPET & TILE INC
PO BOX 13460
FLORENCE SC 29504

EE ID: [REDACTED]

ALLISON W PARKER
[REDACTED]

Payrolls by Paychex, Inc.

Payrolls by Paychex, Inc.

NOV 01 2021

PERSONAL AND CHECK INFORMATION			EARNINGS					
Allison W Parker			DESCRIPTION	HRS/UNITS	RATE	THIS PERIOD (\$)	YTD HOURS	YTD (\$)
[REDACTED]			Salary			141.35		21141.29
Soc Sec [REDACTED] Employee ID: [REDACTED]			Total Hours					
Home Department: 1002 Office			Gross Earnings			141.35		21141.29
Pay Period: 08/04/19 to 08/10/19			Total Hrs Worked					
Check Date: 08/16/19 Check #: 201			WITHHOLDINGS					
NET PAY ALLOCATIONS			DESCRIPTION	FILING STATUS		THIS PERIOD (\$)		YTD (\$)
DESCRIPTION	THIS PERIOD (\$)	YTD (\$)	Social Security			8.76		1310.76
Check Amount	0.00	2937.16	Medicare			2.05		306.55
Chkg 9215	94.89	11843.95	Fed Income Tax	S 0 +\$12.50		19.33		2539.25
NET PAY	94.89	14781.11	SC Income Tax	0 +\$12.50		16.32		1616.62
			TOTAL			46.46		5773.18
			DEDUCTIONS					
			DESCRIPTION			THIS PERIOD (\$)		YTD (\$)
			Advance					587.00
			TOTAL					587.00

Payrolls by Paychex, Inc.

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FLORENCE CARPET & TILE INC
PO BOX 13460
FLORENCE SC 29504

ALLISON W PARKER

Payrolls by Paychex, Inc.

Payrolls by Paychex, Inc.

PERSONAL AND CHECK INFORMATION			EARNINGS				WITHHOLDINGS		DEDUCTIONS	
Allison W Parker			DESCRIPTION	HRS/UNITS	RATE	THIS PERIOD (\$)	YTD HOURS	YTD (\$)		
[REDACTED]			Salary			807.69		20999.94		
Soc Sec #: [REDACTED] Employee ID: [REDACTED]			Total Hours							
Home Department: 1002 Office			Gross Earnings			807.69		20999.94		
Pay Period: 07/28/19 to 08/03/19			Total Hrs Worked							
Check Date: 08/09/19 Check #: 185			FILING STATUS		THIS PERIOD (\$)		YTD (\$)			
NET PAY ALLOCATIONS			Social Security			50.08		1302.00		
DESCRIPTION	THIS PERIOD (\$)	YTD (\$)	Medicare			11.71		304.50		
Check Amount	0.00	2937.16	Fed Income Tax S 0 +\$12.50			96.92		2519.92		
Chkg 9215	587.43	11749.06	SC Income Tax 0 +\$12.50			61.55		1600.30		
NET PAY	587.43	14686.22	TOTAL			220.26		5726.72		
			DESCRIPTION		THIS PERIOD (\$)		YTD (\$)			
			Advance				587.00			
			TOTAL				587.00			
NET PAY					THIS PERIOD (\$)		YTD (\$)			
					587.43		14686.22			

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Payrolls by Paychex, Inc.

ALLISON W PARKER

Payrolls by Paychex, Inc.

NON-NEGOTIABLE

PERSONAL AND CHECK INFORMATION Allison W Parker Soc Sec #: [REDACTED] Employee ID: [REDACTED] Home Department: 1002 Office Pay Period: 07/21/19 to 07/27/19 Check Date: 08/02/19 Check #: 171 NET PAY ALLOCATIONS <table border="1"> <thead> <tr> <th>DESCRIPTION</th> <th>THIS PERIOD (\$)</th> <th>YTD (\$)</th> </tr> </thead> <tbody> <tr> <td>Check Amount</td> <td>0.00</td> <td>2937.16</td> </tr> <tr> <td>Chkg 9215</td> <td>587.43</td> <td>11161.63</td> </tr> <tr> <td>NET PAY</td> <td>587.43</td> <td>14098.79</td> </tr> </tbody> </table>			DESCRIPTION	THIS PERIOD (\$)	YTD (\$)	Check Amount	0.00	2937.16	Chkg 9215	587.43	11161.63	NET PAY	587.43	14098.79	EARNINGS <table border="1"> <thead> <tr> <th>DESCRIPTION</th> <th>HRS/UNITS</th> <th>RATE</th> <th>THIS PERIOD (\$)</th> <th>YTD HOURS</th> <th>YTD (\$)</th> </tr> </thead> <tbody> <tr> <td>Salary</td> <td></td> <td></td> <td>807.69</td> <td></td> <td>20192.25</td> </tr> <tr> <td>Total Hours</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td>Gross Earnings</td> <td></td> <td></td> <td>807.69</td> <td></td> <td>20192.25</td> </tr> <tr> <td>Total Hrs Worked</td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> </tbody> </table>					DESCRIPTION	HRS/UNITS	RATE	THIS PERIOD (\$)	YTD HOURS	YTD (\$)	Salary			807.69		20192.25	Total Hours						Gross Earnings			807.69		20192.25	Total Hrs Worked					
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Chkg 9215	587.43	11161.63																																															
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Advance		587.00																																															
TOTAL		587.00																																															
NET PAY			THIS PERIOD (\$) 587.43		YTD (\$) 14098.79																																												

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FLORENCE SC 29504

ALLISON W PARKER

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Payroll by Paychex, Inc.

NON-NEGOTIABLE

PERSONAL AND CHECK INFORMATION			EARNINGS		WITHHOLDINGS		DEDUCTIONS	
Allison W Parker			DESCRIPTION	HRS/UNITS	RATE	THIS PERIOD (\$)	YTD HOURS	YTD (\$)
Soc Sec # [REDACTED] Employee ID: [REDACTED]			Salary			807.69		19384.56
Home Department: 1002 Office			Total Hours					
Pay Period: 07/14/19 to 07/20/19			Gross Earnings			807.69		19384.56
Check Date: 07/26/19 Check #: 158			Total Hrs Worked					
NET PAY ALLOCATIONS								
DESCRIPTION	THIS PERIOD (\$)	YTD (\$)						
Check Amount	0.00	2937.16						
Chkg 9215	587.43	10574.20						
NET PAY	587.43	13511.36						
			DESCRIPTION	FILING STATUS		THIS PERIOD (\$)		YTD (\$)
			Social Security			50.07		1201.84
			Medicare			11.72		281.08
			Fed Income Tax	S 0 +\$12.50		96.92		2326.08
			SC Income Tax	0 +\$12.50		61.55		1477.20
			TOTAL			220.26		5286.20
			DESCRIPTION			THIS PERIOD (\$)		YTD (\$)
			Advance					587.00
			TOTAL					587.00
NET PAY						THIS PERIOD (\$)		YTD (\$)
						587.43		13511.36

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Payrolls by Paychex, Inc.

ALLISON W PARKER

NON NEGOTIABLE

PERSONAL AND CHECK INFORMATION			EARNINGS					
Allison W Parker			DESCRIPTION	HRS/UNITS	RATE	THIS PERIOD (\$)	YTD HOURS	YTD (\$)
Soc Sec #: [REDACTED] Employee ID: [REDACTED]			Salary			807.69		18576.87
Home Department: 1002 Office			Total Hours					
Pay Period: 07/08/19 to 07/14/19			Gross Earnings			807.69		18576.87
Check Date: 07/19/19 Check #: 147			Total Hrs Worked					
NET PAY ALLOCATIONS			WITHHOLDINGS					
DESCRIPTION	THIS PERIOD (\$)	YTD (\$)	DESCRIPTION	FILING STATUS		THIS PERIOD (\$)		YTD (\$)
Check Amount	0.00	2937.16	Social Security			50.08		1151.77
Chkg 9215	587.43	9986.77	Medicare			11.71		269.36
NET PAY	587.43	12923.93	Fed Income Tax	S 0 +\$12.50		96.92		2229.16
			SC Income Tax	0 +\$12.50		61.55		1415.65
			TOTAL			220.26		5065.94
			DEDUCTIONS					
			DESCRIPTION			THIS PERIOD (\$)		YTD (\$)
			Advance					587.00
			TOTAL					587.00
NET PAY						THIS PERIOD (\$)		YTD (\$)
						587.43		12923.93

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ALLISON W PARKER

NON-NEGOTIABLE

NON-NEGOTIABLE

PERSONAL AND CHECK INFORMATION			EARNINGS					
Allison W. Parker			DESCRIPTION	HRS/UNITS	RATE	THIS PERIOD (\$)	YTD HOURS	YTD (\$)
Soc Sec # [REDACTED] Employee ID: [REDACTED]			Salary			807.69		17769.18
Home Department: 1002 Office			Total Hours					
Pay Period: 06/09/19 to 06/15/19			Gross Earnings			807.69		17769.18
Check Date: 06/21/19 Check #: 126			Total Hrs Worked					
NET PAY ALLOCATIONS			WITHHOLDINGS					
DESCRIPTION	THIS PERIOD (\$)	YTD (\$)	DESCRIPTION	FILING STATUS		THIS PERIOD (\$)		YTD (\$)
Check Amount	0.00	2937.16	Social Security			50.08		1101.69
Chkg 9215	587.43	9399.34	Medicare			11.71		257.65
NET PAY	587.43	12336.50	Fed Income Tax	S 0 +\$12.50		96.92		2132.24
			SC Income Tax	0 +\$12.50		61.55		1354.10
			TOTAL			220.26		4845.68
			DEDUCTIONS					
			DESCRIPTION			THIS PERIOD (\$)		YTD (\$)
			Advance					587.00
			TOTAL					587.00
NET PAY						THIS PERIOD (\$)		YTD (\$)
						587.43		12336.50

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ALLISON W PARKER

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PERSONAL AND CHECK INFORMATION

Allison W Parker

Soc Sec # [REDACTED] Employee ID: [REDACTED]

Home Department: 1002 Office

Pay Period: 06/02/19 to 06/08/19

Check Date: 06/14/19 Check #: 114

NET PAY ALLOCATIONS

DESCRIPTION	THIS PERIOD (\$)	YTD (\$)
Check Amount	0.00	2937.16
Chkg 9215	587.44	8811.91
NET PAY	587.44	11749.07

EARNINGS

DESCRIPTION	HRS/UNITS	RATE	THIS PERIOD (\$)	YTD HOURS	YTD (\$)
Salary			807.69		16961.49
Total Hours					
Gross Earnings			807.69		16961.49
Total Hrs Worked					

WITHHOLDINGS

DESCRIPTION	FILING STATUS	THIS PERIOD (\$)	YTD (\$)
Social Security		50.07	1051.61
Medicare		11.71	245.94
Fed Income Tax	S 0 +\$12.50	96.92	2035.32
SC Income Tax	0 +\$12.50	61.55	1292.55
TOTAL		220.25	4625.42

DEDUCTIONS

DESCRIPTION	THIS PERIOD (\$)	YTD (\$)
Advance		587.00
TOTAL		587.00

NET PAY

THIS PERIOD (\$)
587.44

YTD (\$)
11749.07

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FLORENCE SC 29504

Payrolls by Paychex, Inc.

ALLISON W PARKER

NON-NEGOTIABLE

PERSONAL AND CHECK INFORMATION			EARNINGS					
Allison W Parker			DESCRIPTION	HRS/UNITS	RATE	THIS PERIOD (\$)	YTD HOURS	YTD (\$)
Soc Sec #: [REDACTED] Employee ID: [REDACTED]			Salary			807.69		16153.80
Home Department: 1002 Office			Total Hours					
Pay Period: 05/26/19 to 06/01/19			Gross Earnings			807.69		16153.80
Check Date: 06/07/19 Check #: 102			Total Hrs Worked					
NET PAY ALLOCATIONS			WITHHOLDINGS					
DESCRIPTION	THIS PERIOD (\$)	YTD (\$)	DESCRIPTION	FILING STATUS		THIS PERIOD (\$)		YTD (\$)
Check Amount	0.00	2937.16	Social Security			50.08		1001.54
Chkg 9215	587.43	8224.47	Medicare			11.71		234.23
NET PAY	587.43	11161.63	Fed Income Tax	S 0 +\$12.50		96.92		1938.40
			SC Income Tax	0 +\$12.50		61.55		1231.00
			TOTAL			220.26		4405.17
			DEDUCTIONS					
			DESCRIPTION			THIS PERIOD (\$)		YTD (\$)
			Advance					587.00
			TOTAL					587.00
			NET PAY			THIS PERIOD (\$)		YTD (\$)
						587.43		11161.63

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FLORENCE CARPET & TILE

September 24, 2019

Mary Ann Miller, Investigator II
SCDLLR
110 Centerview Dr.
Columbia, SC 29211

RE: Case # 2019-1122 – Allison Parker

Dear Ms. Miller:

In reply to your letter of September 19, 2019:

- There are no written terms of employment for Ms. Parker.
- Ms. Parker's husband, Walt Parker was President and part owner of the company during the term of Ms. Parker's employment, and Ms. Parker was Vice-President of the company. There was an agreement in place during the term of her employment between Mr. and Mrs. Parker and John Cürl, the majority owner and current President of the company, that Ms. Parker would not be paid commissions due to her unique relationship with the company that set her apart from the regular sales staff.
- Bearing witness to that agreement was the fact that Ms. Parker did not turn in any commissions sheets, which is a main requirement for receiving commissions, except in the weeks immediately preceding her abandonment of her job. These requirements were set in place by Mr. Parker and were well known to Ms. Parker.
- As company president, Mr. Parker asked me to prepare an estimate of what Ms. Parker's commissions would have been *had she been eligible to receive them* through the duration of her tenure earlier this year. The prescribed parameters in the estimate make several assumptions above and beyond the eligibility factor that render the results inaccurate when compared to proper accounting of commissions. Apparently that hypothetical document is being used for the numeric basis for this claim.
- Although Ms. Parker abandoned her job without notice or further contact, in good faith she was paid for accrued vacation time, which amounted to 1 week's pay.

Phone (843) 669-1851

www.florencecarpetandtile.com

Fax (843) 661-2671

Post Office Drawer 13460

Florence, South Carolina 29504

1706 Pamlico Highway

Page 2

- Our Federal Tax ID number is [REDACTED]
- Attached are the pay stubs requested. Ms. Parker was a salaried employee, and as such was not required to track her time worked. Accordingly there are no time records for her.

If you have any questions, please let me know.

Sincerely,



Mike Barker
General Manager

Attachments

SOUTH CAROLINA DEPARTMENT OF LABOR, LICENSING AND REGULATION
OFFICE OF WAGES AND CHILD LABOR
WAGES INVESTIGATIVE REPORT

CASE NO.: 2019-1122

OPENED: 20190910

CLOSED: 20191014

FEDERAL ID. NO.:

COMPANY: Florence Carpet & Tile

REPRESENTATIVE: Mr. Mike Barker

ADDRESS: 1706 Pamplico Hwy.

TITLE: Manager

CITY: Florence

PHONE: (843)669-1851

STATE: SC

ZIP: 29505

FAX:

CORP. NAME:

REPRESENTATIVE:

ADDRESS:

TITLE:

CITY:

PHONE:

FAX:

STATE:

ZIP:

WARNING

This section of the warning is issued pursuant to SC Code of Law 41-10-80, for failure to comply with SC code of Law 41-10-30:

A. VIOLATION OF SC 41-10-30(A)

☒ Normal Hours☒ Wages☒ Time of payment☒ Place of payment☐ Deductions from wages☐ Changes made in employment

Without 7 calendar day

Written notice

B. VIOLATION OF SC 41-10-30(B)

☐ Name and/or address of employees☐ Wages paid and/or deductions made
for all employees each payday

C. VIOLATIONS OF SC 41-10-30(C)

☐ Failed to furnish each employee each pay period
an itemized statement showing:☐ Gross pay ☐ Deductions made☐ 13 NUMBER OF EMPLOYEES IN SC☐ 13 EMPLOYEES ON SITE

**YOU MUST CORRECT THESE VIOLATIONS IMMEDIATELY. FAILURE TO DO SO COULD RESULT IN A FINE OF
\$100.00 FOR EACH SUBSEQUENT OFFENSE.**

Miller 10/15/19
INVESTIGATOR Date

COMPANY OFFICIAL Date

CHILD LABOR	INVESTIGATIVE REPORT SUMMARY	OFFICE USE ONLY
Warning: Yes ☐ No ☐ Date: Date	Warning: Yes ☒ No ☐ Date: 10/15/19	Citation issued: Yes ☐ No ☐
Citation: Yes ☐ No ☐ Date: Date	Citation: Yes ☐ No ☒	Date: _____
Violation Number(s): Click here to enter text.	Number of violations alleged:	Citation Number: _____ \$ _____
Instance: ☐ 1 st ☐ 2 nd ☐ 3 rd	Section(s) 30 ☐ 40 ☐ 50 ☐	Number of Violations:
	Instance ☐ 1 ☐ 0 ☐ 0	Section(s) 30 ☐ 40 ☐ 50 ☐ CL ☐
		Instance ☐ ☐ ☐ ☐



South Carolina
Department of Labor, Licensing and Regulation



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4470
FAX: (803) 896-4656

Division of Professional and Occupational Licensing
Office of Investigations and Enforcement

Henry D. McMaster
Governor

Emily H. Farr
Director

October 15, 2019

Florence Carpet & Tile
1706 Pamplico Hwy.
Florence, SC 29505

Re: Employee: Ms. Allison Parker
Case No.: 2019-1122

Dear Mr. Barker:

The Department of Labor, Licensing and Regulation, through its Office of Investigations and Enforcement, has completed the investigation in the above-referenced case number.

As a result of this investigation, the Department has determined that your company is in violation of the record keeping provisions of the South Carolina Payment of Wages Act (S.C. Code Ann. § 41-10-30). **This statute requires that all employees be given written notice at the time of hiring, advising the employee of the hours of work, wages agreed upon, time and place of payment and deductions other than your normal state and federal taxes.** Any changes in these terms must be in writing at least seven calendar days before they become effective. This section also requires that names and addresses of employees with wages paid be kept for three years and the employee must be furnished an itemized statement showing gross pay and deductions made from the employee's wages.

Specifically, you have failed to provide the claimant and/or other employees the required written terms of employment. You are required to correct all violations within thirty days from the date of the warning by providing the required written notice to those employees who were not notified of the terms of employment. Pursuant to § 41-10-80(A) of the Act, any subsequent violations found after the thirty day period will result in a citation being issued by the Department.

No violations were found under S.C. Code Ann. § 41-10-40 payment of wages.

If you have any questions, please feel free to contact me.

Sincerely,

Mary Ann Miller
Investigator

ELECTRONICALLY FILED - 2021 Nov 01 1:00 PM - FLORENCE - COMMON PLEAS - CASE#2020CP2101296



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4470
FAX: (803) 896-4656

South Carolina
Department of Labor, Licensing and Regulation

Division of Professional and Occupational Licensing
Office of Investigations and Enforcement



Henry D. McMaster
Governor

Emily H. Farr
Director

October 15, 2019

Ms. Allison Parker
[REDACTED]

Re: Florence Carpet & Tile
Case No.: 2019-1122

Dear Ms. Parker:

The Department of Labor, Licensing and Regulation, through its Office of Investigations and Enforcement, has completed the investigation of your complaint against the above-referenced employer.

A warning was issued to the employer for failing to provide written notice to their employees as required under S.C. Code Ann. § 41-10-30. The employer will have thirty days to make the needed changes.

No violations were found under S.C. Code Ann. § 41-10-40 payment of wages. If you are in disagreement with the Department's determination, you may pursue legal action in court under S.C. Code Ann. § 41-10-80(C) of the S.C. Payment Act. This section of the law allows for triple unpaid wages, court cost and reasonable attorney fees.

The Department has officially closed this file. If you have any questions, please feel free to contact me.

Sincerely,

Mary Ann Miller
Investigator

ELECTRONICALLY FILED - 2021 Nov 01 1:00 PM - FLORENCE - COMMON PLEAS - CASE#2020CP2101296

State of South Carolina
In Common Pleas Court
Twelfth Judicial Circuit
County of Florence

Walter Parker,
Plaintiff

v. 2020-CP-21-01297

Florence Carpet and Tile, Inc.,
John Curl and Mike Barker,
Defendants.

Allison Parker,
Plaintiff,

v. 2020-CP-21-01296

Florence Carpet and Tile, Inc.,
John Curl and Mike Barker,
Defendants.

The Videoconference Deposition of: John Curl

Location: 1831 West Evans Street,

Florence, South Carolina

Date: Tuesday, May 25, 2021

Time: 10:03 a.m. --11:55 a.m.

Court Reporter: Roger R. Williamson

The deposition is taken pursuant to notice and/or agreement, in the above-entitled cause pending in the above-named court and pursuant to the South Carolina Rules of Civil Procedure.

Q & A Court Reporting Services
Post Office Box 4563 (29502)
273 West Evans Street
Florence, South Carolina (29501)
Telephone: (843) 673-9845
E-mail: info@qacourtreporting.com
Visit: www.qacourtreporting.com

1 H-O-V-E-R (sic).

2 MR. KOZACKI: Okay. Let's go off the
3 record for a second.

4 (Off-the-record discussion.

5 MR. KOZACKI: Mr. Curl, did you say
6 you're --

7 THE COURT REPORTER: Hold on -- hold
8 on --

9 MR. KOZACKI: -- currently an officer of
10 Florence Carpet --

11 THE COURT REPORTER: Back on the record.

12 MR. KOZACKI: Okay. I'm sorry. Let's
13 go back on the record.

14 BY MR. KOZACKI:

15 Q Mr. Curl, my understanding is that you
16 are the current owner -- or partial owner of
17 Florence Carpet and Tile, Incorporated. Is that
18 correct?

19 A It is.

20 Q And it's my understanding that you
21 allege you're a 53 percent owner in that company?

22 A That is correct.

23 Q Now to summarize your background and
24 just try again to speed up things a little bit. My
25 understanding is that you're also an operating

1 partner at Curl and Carmen Real Estate, L.L.C.

2 Correct?

3 A Yes.

4 Q You're currently also a broker at
5 Coldwell Banker McMillan and Associates?

6 A That is correct.

7 Q You're president of John --
8 John C. Curl Construction, Incorporated?

9 A That is correct.

10 Q You're the president at
11 Curl Builders, Incorporated?

12 A That is correct.

13 Q You are managing member at
14 Curl Properties, L.L.C.?

15 A That is correct.

16 Q What position do you currently hold at
17 Florence Carpet and Tile?

18 A President.

19 Q How long have you been the president of
20 Florence Carpet and Tile?

21 A Since Walt left the business. I don't
22 remember the exact date. It's about a
23 year-and-a-half or two years now, I guess.

24 Q Is on or about July 26 of 2019 sound
25 right?

1 of 18?

2 A I do.

3 Q What are their names?

4 A Evan Curl Moore and Katherine Curl.

5 Q Do either of your children currently
6 reside in Florence County?

7 A My youngest daughter, Katherine.

8 Q Do you have any other family members,
9 either by blood or marriage, that live in
10 Florence County?

11 A My brother, his wife --

12 Q And can you --

13 A -- and two of his four children live
14 in Florence.

15 Q Can you give me their last names,
16 please?

17 A My brother's last name is Curl. As
18 well as my sister-in-law and my nephew, which is
19 Devlin Curl. And my niece is married, and,
20 unfortunately, I don't remember her married name.

21 Q Okay. Mr. Curl, forgive me for asking
22 this question, but I ask it of all my deponents.
23 Have you ever been arrested?

24 A No.

25 Q Who are the current corporate officers

1 of Florence Carpet and Tile?

2 A Myself and Mike Barker.

3 Q And what is Mr. Barker's role with the
4 company?

5 A He -- his -- the corporate office he
6 holds is -- is vice-president and his current
7 position is store manager.

8 Q How long has Mr. Barker held the title
9 of vice-president with the company?

10 A Since -- at the same time we elected
11 new officers when I was elected president.

12 Q So that would have been subsequent to
13 Mr. Parker being terminated as the president?

14 A That is correct.

15 Q Does the company currently have a
16 secretary?

17 A I am the secretary.

18 Q Okay. And does the company currently
19 have a treasurer?

20 A That would be myself as well.

21 Q Do you know who the current registered
22 agent is for service of process for
23 Florence Carpet and Tile?

24 A I believe that, if you're talking
25 about who's the registered agent with the

1 BY MR. KOZACKI:

2 Q You can answer.

3 MR. PAYNE: You can go ahead and answer
4 it.

5 THE DEPONENT: As far as I know.

6 BY MR. KOZACKI:

7 Q Is it fair to say, Mr. Curl, that you've
8 never been involved with the day-to-day operations
9 of the corporation?

10 A Yes.

11 Q Since Mr. Parker has left, have you
12 taken a more active role in the day-to-day
13 operations of the corporation?

14 A Yes.

15 Q Describe how your duties with the
16 corporation have changed since Mr. Parker left.

17 A I've been more involved with the
18 oversight of the financial dealings and some with
19 the vendors and suppliers.

20 Q Have you had increased duties and
21 responsibilities as it relates to payroll?

22 A No.

23 Q How long has the corporation maintained
24 payroll check records?

25 A I don't know.

1 Q Do you know whether or not the
2 corporation maintained payroll check records during
3 the time Mr. and Ms. Parker were employed by
4 Florence Carpet and Tile?

5 A Yes.

6 Q And do those -- are those pay records
7 still kept by the corporation?

8 A Yes.

9 Q Do you know where those payroll records
10 are located at?

11 A No.

12 Q Do you know whether or not they've been
13 produced to your counsel?

14 A No.

15 Q Who would have that information?

16 A Either Mike or he would know who has
17 it.

18 Q Do you have any reason to know why those
19 records were not produced during discovery today?

20 A No.

21 Q Are those payroll records, to the best
22 of your knowledge, maintained in a hard copy or are
23 they maintained in some type of computer copy?

24 A I do not know.

25 Q Do you know whether or not

1 he prepare a W-2 form to the best of your knowledge?

2 Or excuse me, a W-4?

3 A I do not know that. I would assume

4 so --

5 Q Do you know --

6 A -- there was -- there was a -- there
7 was a -- there was a person in the business office
8 at the time that handled the day-to-day business
9 activities that would have done that for all
10 employees. So I would assume that to be correct.

11 Q Do you know whether or not
12 Mr. Walt Parker received written notice of the terms
13 and conditions of his employment at the time he was
14 first employed?

15 A He was not.

16 Q And why -- why was he not provided those
17 terms and conditions?

18 A He was a shareholder in the company,
19 and an officer in the company, and he came to work
20 as a day-to-day employee of the company, but also
21 as one of its owners. He was the day-to-day
22 operator.

23 Q When Ms. Allison Parker first came to
24 work for the company, was she provided with written
25 notice of the terms and conditions of her

1 employment?

2 A I don't know that. That would have
3 been Walt's responsibility. He was the -- in
4 charge of the day-to-day operations at that time.

5 Q Do you know whether or not
6 Mr. Walt Parker and Ms. Allison Parker were supposed
7 to be paid on a weekly basis?

8 A They were to be paid the same as all
9 other employees.

10 Q And what does that mean?

11 A They were to be treat--- treated the
12 same as all other employees. It was C Corporation
13 and there was to be no differentiation between
14 them or any other employee.

15 Q Were your other employees paid on a
16 weekly basis or a bi-weekly basis during the time
17 that Mr. and Ms. Parker were employed?

18 A I was not in charge of payroll. I do
19 not know the answer to that question.

20 Q Would Mr. Barker and/or Mr. Walt Parker
21 better able to answer those questions?

22 A Walt Parker would be. Mr. Barker did
23 not come to work for Florence Carpet and Tile
24 until a number of years after the -- both Walt and
25 Allison came to work there. So he would not be

1 Q And what happened as a result of your
2 expressing those concerns?

3 A He -- he would not deal with them.
4 That was one of the things that we had to
5 terminate once he was terminated.

6 Q Tell me how it was that Allison first
7 became employed with the company.

8 A She -- she came to work fairly
9 quickly. I think -- I think she pretty much came
10 to work when Walt started in April of 2007. And
11 she was working in the business office when she
12 came to work initially. But she ended up leaving
13 probably within maybe three years. She left for
14 about a year-and-a-half or two years.

15 Q Then at some point in time, did she
16 return to the company?

17 A She did. She came back to work part
18 time. She -- Walt did ask me about her coming
19 back and working on the sales floor because when
20 she was working before, she was working in the
21 business office. And Walt wanted her to work on
22 the sales floor as one of the salespeople, and
23 said that he was going to pay her a salary and --
24 wanted to pay her a good salary, and I made sure
25 he was aware that he -- she would have to work

State of South Carolina
In Common Pleas Court
Twelfth Judicial Circuit
County of Florence

Walter Parker,
Plaintiff

v. 2020-CP-21-01297

Florence Carpet and Tile, Inc.,
John Curl and Mike Barker,
Defendants.

Allison Parker,
Plaintiff,

v. 2020-CP-21-01296

Florence Carpet and Tile, Inc.,
John Curl and Mike Barker,
Defendants.

The Videoconference Deposition of: Mike Barker

Location: 1831 West Evans Street,

Florence, South Carolina

Date: Tuesday, May 25, 2021

Time: 12:15 p.m. - 1:25 p.m.

Court Reporter: Roger R. Williamson

The deposition is taken pursuant to notice and/or agreement, in the above-entitled cause pending in the above-named court and pursuant to the South Carolina Rules of Civil Procedure.

Q & A Court Reporting Services
Post Office Box 4563 (29502)
273 West Evans Street
Florence, South Carolina (29501)
Telephone: (843) 673-9845
E-mail: info@qacourtreporting.com
Visit: www.qacourtreporting.com

1 Q Okay. How long have you lived there at
2 that address?

3 A A little over a year.

4 MR. KOZACKI: And let's go off the
5 record.

6 (Off-the-record discussion.)

7 BY MR. KOZACKI:

8 Q Mr. Barker, my understanding is you --
9 that you are currently an officer of
10 Florence Carpet and Tile, Incorporated. Correct?

11 A That's correct.

12 Q And what title do you presently hold
13 with the company?

14 A Vice president and general manager.

15 Q And how long have you held the title of
16 vice president?

17 A A little over two years.

18 Q How long after Mr. Walt Parker's leaving
19 the company did you become the vice president?

20 A It was within a month following his
21 departure.

22 Q And was there a meeting of the board
23 that decided that to the best of your knowledge?

24 A To the best of my knowledge, yes.

25 Q Would there have been recorded minutes

1 have come on since I -- I was made vice president.
2 But prior to that, to my knowledge, no written job
3 descriptions were given.

4 Q And prior to your becoming the vice
5 president, to the best of your knowledge, were any
6 of the employees provided with written notice of the
7 terms and conditions of their employment?

8 A No.

9 Q When you yourself worked as a -- a
10 general manager for Florence Carpet and Tile, did
11 you ever receive written notification of either your
12 job description or the written notice of terms and
13 conditions of your employment?

14 A No.

15 Q How far did you yourself go in your
16 education, sir?

17 A I completed six years of college but
18 earned no degree.

19 Q What was your main course of study?

20 A There were actually two, chemistry and
21 accounting.

22 Q Where did you attend your education at?

23 A Francis Marion here in Florence.

24 Q How many credits are you shy of a
25 degree?

1 Q During your -- the time that you've been
2 at Florence Carpet and Tile, have you ever been a
3 victim of any adverse employment actions such as a
4 suspension, a demotion, any type of oral or written
5 reprimands?

6 A No.

7 Q To the best of your knowledge, have
8 either Mr. or Ms. Parker ever been the subject of
9 any type of adverse employment actions?

10 A Not to my knowledge on Ms. Parker. I
11 do know that Mr. Parker would occasionally have
12 meetings with Mr. Curl, and would bring back
13 information that we needed to improve on regarding
14 the store. But I cannot classify the extent of
15 their conversation and -- and what it meant to
16 Mr. Parker's employment.

17 Q Whose responsibility was it to maintain
18 the personnel records of Mr. Walt and Ms. Allison
19 Parker during the time of their employ?

20 A Ultimately it was Mr. Parker's.
21 The -- the file was located in my office, but
22 Mr. Parker and -- and Ms. Parker both had access
23 to that.

24 Q Okay. During the time that
25 Mr. Walt Parker and Ms. Allison Parker were employed

1 Q Was there ever a change in the job
2 duties and the responsibilities of Allison Parker
3 during the time that she was employed with the
4 company?

5 A Well, I can't speak to her previous
6 employment, but it's my understanding she worked
7 in the office the first time she was there. And
8 the second time she was there I do know for a fact
9 that she was a salesperson as well as the vice
10 president of the company.

11 Q Okay. And do the salespersons that are
12 typically employed by Florence Carpet and Tile, are
13 they usually given a commission?

14 A They sometimes are, and they sometimes
15 are not.

16 Q Okay. And describe the circumstances
17 for me which employees would receive a commission as
18 opposed to -- would not be receiving a commission.

19 A Well, we had at least one other
20 employee, to my knowledge, that just had an
21 agreement that they would be paid a straight
22 salary and would not receive commission even
23 though they were a full-time salesperson, other
24 than Ms. Parker. Anyone not receiving commission
25 otherwise would be anyone who -- you know, if they

1 Q And were commissions actually paid to
2 Allison Parker during the time period that she was
3 employed with Florence Carpet and Tile?

4 A Not for the time period that I can
5 speak to which was subsequent to May of 2014.

6 Q For any period that Ms. -- that you are
7 personally aware of, did Ms. Allison Parker ever
8 receive any type of sales commission?

9 A Not that I recall.

10 Q Whose responsibility was it to hire the
11 employees of Florence Carpet and Tile during the
12 time Mr. Walt Parker was employed by the company?

13 A It was Mr. Parker's.

14 Q And whose author--- who -- who had the
15 authority to set the rates and terms of pay for the
16 employees of Florence Carpet and Tile during the
17 time that Mr. Walt Parker was employed by the
18 company?

19 A It was Mister --

20 THE COURT REPORTER: I'm sorry, your --
21 the audio cut out. Could you repeat that answer
22 please?

23 THE DEPONENT: It was Mr. Walt Parker.

24 BY MR. KOZACKI:

25 Q At any point during Mr. Walt Parker's

1 Q Did -- Mr. Barker, to the best of your
2 knowledge, did -- did Mr. Parker ever make a demand
3 for payment for that \$102,303.53 prior to the time
4 he filed this lawsuit with anyone?

5 A Not to my knowledge.

6 Q Let's go ahead and see -- Mr. Barker I'm
7 now going to show you the next document which --

8 MR. KOZACKI: -- Roger, will be numbered
9 what?

10 THE COURT REPORTER: 2B.

11 (Plaintiffs' Exhibit Number 2B

12 marked for identification.)

13 BY MR. KOZACKI:

14 Q Okay. Do you recognize this particular
15 document, Mr. Barker?

16 A Yes, I do.

17 Q And is this another statement that you
18 signed indicating that you had reviewed the company
19 records in the ordinary course of business and
20 calculated the compensation due Allison Parker to
21 be \$57,461.48?

22 A Yes, given the scenario Mr. Parker
23 provided, that's correct.

24 Q Is it again your testimony that this
25 document was created as a result of a hypothetical

1 that actually occur?

2 A Sometime in 2014 or 2015. I don't
3 recall the specific date. It was just common
4 knowledge and I -- I got consistent information
5 from Mr. Curl, Ms. Parker and Mr. Parker that
6 corroborated that.

7 Q Do you know when it was that
8 Ms. Allison Parker returned to Florence Carpet and
9 Tile for the second time?

10 A I do not specifically. I know that it
11 was prior to May of 2014. But when I don't know.

12 Q And again, are you aware of any
13 documentation tending to indicate that Ms. Parker
14 was not to receive a commission during the second
15 time period that she was employed by the company?

16 A I'm aware of no documentation, no.

17 Q And if Mr. Parker had offered Ms. Parker
18 to return on a salary plus commission basis that
19 would have been well within his right to do so.
20 Correct?

21 A I'm not sure since Ms. Parker was also
22 an officer of the company. I would imagine such
23 offers -- offers paid to an officer would have had
24 to be run by Mr. Curl. But that's just my
25 conjecture.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	
WALTER PARKER,	)	CASE NO: 2020CP2101297
	)	
Plaintiff,	)	
vs.	)	
	)	
FLORENCE CARPET & TILE,	)	
INC., JOHN CURL and MIKE	)	
BARKER,	)	
	)	
Defendants.	)	
_____	)	
ALLISON PARKER,	)	CASE NO: 2020CP2101296
	)	
Plaintiff,	)	
vs.	)	
	)	
FLORENCE CARPET & TILE,	)	
INC., JOHN CURL and MIKE	)	
BARKER,	)	
	)	
Defendants.	)	
_____	)	

AFFIDAVIT OF WALTER PARKER

PERSONALLY APPEARED before me, Walter Parker who first being duly sworn, deposes and says:

1. I am above the age of eighteen (18) and am competent to declare the facts stated herein.
2. I was employed full-time by Defendant Florence Carpet & Tile, Inc. ("Defendant Carpet & Tile") as its President from on or about in or about 2007, until my involuntary separation from full-time employment on or about July 26, 2019.
3. I was never provided with written notice of the terms and conditions of my employment. However, all parties agreed that I was to be paid wages in the amount of \$75,000 per year, plus benefits.
4. I was required to be in charge of the day-to-day operations of the company. I dutifully and properly performed my job requirements for the company.

5. Defendants have not paid my rightfully due and owing wages, compensation, benefits, payments and/or other monies owed in an amount exceeding \$102,303.53.
6. Before the filing of this lawsuit, I filed a claim for unpaid compensation with the South Carolina Department of Labor, Licensing and Regulation.
7. Before the filing of this lawsuit, Defendant Mike Barker reviewed, signed, and gave me a copy of the attached written statement indicating that:

...I have examined the records of [Defendant Florence Carpet & Tile, Inc.] as maintained in the ordinary course of business and have calculated the compensation due Walt Parker for his services rendered as an employee of the corporation. The balance currently due is \$102,303.53.

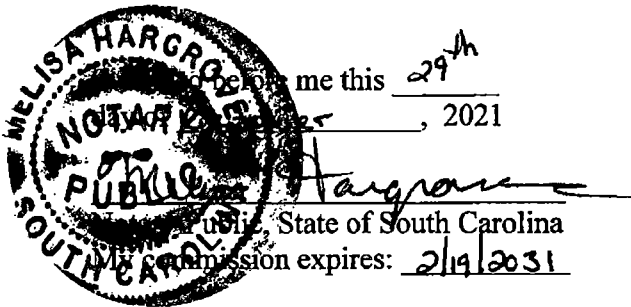
(Ex. 1 – Barker Statement).

8. Defendants Curl and Barker were/are agents, employees, and/or officers of the Corporation who knowingly permitted and/or caused my damages.
9. Defendant Florence Carpet and Tile (“Company”) has been grossly undercapitalized since its inception.
10. The company has never been provided with sufficient capital to achieve the desired results of significant profitability. The company often did not generate the profit that was expected.
11. Mr. Curl also refused to infuse sufficient monies into the company, despite it being severely needed for employees, merchandise, customer orders, vendors, repairs, building improvements and other business.
12. Director’s meetings were also not regularly held and corporate formalities were largely ignored, including employees regularly paying for necessary items out of their own pockets for business operation. Likewise, the company did not regularly hold scheduled meetings, hold special meetings, exercise fiduciary duties to the corporation, develop a planning routine and make all company purchases in the corporation’s name.
13. In fact, employees, such as Allison and myself, were required to purchase items using their own monies and/or credit cards to keep the business operating. The company would often not be able to pay employee wages on time.
14. Corporate funds were often first demanded and/or forced to be paid by Defendants Curl and Barker for rent to Curl Properties, LLC and/or to Defendant Curl, even before employee wages were paid.

15. I understand that making any false statements within this affidavit may subject me to criminal liability.
16. I further attest that I am making these statements freely and voluntarily, without coercion or duress. I further state that I am not suffering from any mental conditions or taking any substances which would impair my ability to understand all matters set forth herein.

FURTHER AFFIANT SAYETH NOT.

Walter Parker
Walter Parker



Carpet Florence Carpet & Tile, Inc.

GM
As ~~comptroller~~ of Florence Carpet & Tile, Inc., I have examined the records of that company as maintained in the ordinary course of business and have calculated the compensation due Walt Parker for his services rendered as an employee of the corporation. The balance currently due is \$ 102,303.53

May 4, 2019

Mike Barker
Mike Barker, ~~Comptroller~~ of Florence Carpet & Tile, Inc.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	
WALTER PARKER,	)	CASE NO: 2020CP2101297
	)	
Plaintiff,	)	
vs.	)	
	)	
FLORENCE CARPET & TILE,	)	
INC., JOHN CURL and MIKE	)	
BARKER,	)	
	)	
Defendants.	)	
_____	)	
ALLISON PARKER,	)	CASE NO: 2020CP2101296
	)	
Plaintiff,	)	
vs.	)	
	)	
FLORENCE CARPET & TILE,	)	
INC., JOHN CURL and MIKE	)	
BARKER,	)	
	)	
Defendants.	)	
_____	)	

AFFIDAVIT OF ALLISON PARKER

PERSONALLY APPEARED before me, Allison Parker who first being duly sworn, deposes and says:

1. I am above the age of eighteen (18) and am competent to declare the facts stated herein.
2. I was employed by Defendant Florence Carpet & Tile, Inc. ("Defendant Carpet & Tile") approximately on or about May 1, 2007, until my final separation from employment on or about August 13, 2019.
3. I was never provided with written notice of the terms and conditions of my employment. However, all parties agreed that while I was employed as an Inside Salesperson, I was to be paid wages in the amount of \$42,000 per year, a 2% commission on sales, plus benefits.
4. I dutifully and properly performed my job requirements for the company.

5. Defendants have not paid my rightfully due and owing wages, compensation, benefits, payments and/or other monies owed in an amount exceeding \$57,491.48. In fact, I was never paid all of my commissions, despite the agreement to the contrary.
6. Before the filing of this lawsuit, I filed a claim for unpaid compensation with the South Carolina Department of Labor, Licensing and Regulation.
7. Before the filing of this lawsuit, Defendant Mike Barker reviewed and signed a copy of the attached written statement indicating that:

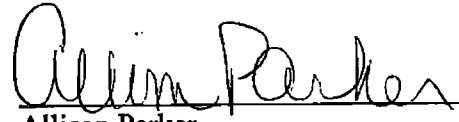
...I have examined the records of [Defendant Florence Carpet & Tile, Inc.] as maintained in the ordinary course of business and have calculated the compensation due Allison Parker for her services rendered as an employee of the corporation. The balance currently due is \$57,461.48.

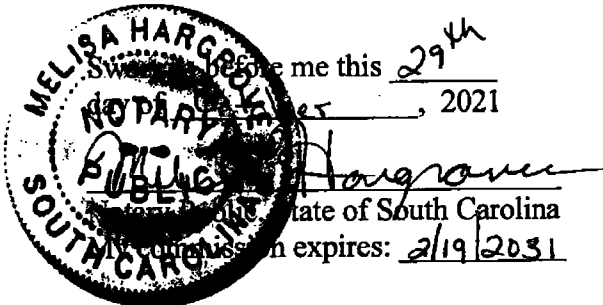
(Ex. 1 – Barker Statement).

-
8. Defendants Curl and Barker were/are agents, employees, and/or officers of the Corporation who knowingly permitted and/or caused my damages.
 9. Defendant Florence Carpet and Tile (“Company”) has been grossly undercapitalized since its inception.
 10. The company has never been provided with sufficient capital to achieve the desired results of significant profitability. The company often did not generate the profit that was expected.
 11. Mr. Curl also refused to infuse sufficient monies into the company, despite it being severely needed for employees, merchandise, customer orders, vendors, repairs, building improvements and other business.
 12. Director’s meetings were also not regularly held and corporate formalities were largely ignored, including employees regularly paying for necessary items out of their own pockets for business operation. Likewise, the company did not regularly hold scheduled meetings, hold special meetings, exercise fiduciary duties to the corporation, develop a planning routine and make all company purchases in the corporation’s name.
 13. In fact, employees, such as Walter and myself, were required to purchase items using their own monies and/or credit cards to keep the business operating. The company would often not be able to pay employee wages on time.
 14. Corporate funds were often first demanded and/or forced to be paid by Defendants Curl and Barker for rent to Curl Properties, LLC and/or to Defendant Curl, even before employee wages were paid.

15. I understand that making any false statements within this affidavit may subject me to criminal liability.
16. I further attest that I am making these statements freely and voluntarily, without coercion or duress. I further state that I am not suffering from any mental conditions or taking any substances which would impair my ability to understand all matters set forth herein.

FURTHER AFFIANT SAYETH NOT.


Allison Parker



Carpet Florence Carpet & Tile, Inc.

GM
As ~~comptroller~~ of Florence Carpet & Tile, Inc., I have examined the records of that company as maintained in the ordinary course of business and have calculated the compensation, whether wages or commission, due Allison Parker for her services rendered as an employee of the corporation. The balance currently due is \$ 57,481.48.

May 4, 2019

Mike Barker
Mike Barker, ~~Comptroller~~ of Florence Carpet & Tile, Inc. *Gives Nat. Money*

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	

WALTER PARKER,	)	CASE NO: 2020CP2101297
	)	

Plaintiff,	)
------------	---

vs.	)
-----	---

FLORENCE CARPET & TILE,	)
INC., JOHN CURL and MIKE	)
BARKER,	)

Defendants.	)
-------------	---

ALLISON PARKER,	)
-----------------	---

CASE NO: 2020CP2101296

Plaintiff,	)
------------	---

vs.	)
-----	---

FLORENCE CARPET & TILE,	)
INC., JOHN CURL and MIKE	)
BARKER,	)

Defendants.	)
-------------	---

AFFIDAVIT OF ELIZABETH SHELTON

PERSONALLY APPEARED before me, Elizabeth Shelton who first being duly sworn, deposes and says:

1. I am above the age of eighteen (18) and am competent to declare the facts stated herein.
2. I was employed full-time by Defendant Florence Carpet & Tile, Inc. ("Defendant Carpet & Tile") as a Kitchen/Bath Designer from on or about July 2010, until I voluntarily left in August 2021. Although the Plaintiff left in August 2021 she is still considered part-time by the Corporation, since she is still asked to perform services.
3. I was never provided with written notice of the terms and conditions of my employment. However, all parties agreed that I was to be paid wages in the amount of \$20.00 - \$25.00 per hour, plus commissions in the minimum amount of 2% of sales, and reimbursement of expenses.
4. I properly performed my job requirements for the company.

5. Defendants have not paid my rightfully due and owing wages, compensation, benefits, payments and/or other monies owed in an amount exceeding \$50,000.00.
6. Curl and Barker were/are agents, employees, and/or officers of the Corporation who knowingly permitted and/or caused my damages.
7. Defendant Florence Carpet and Tile ("Company") has been grossly undercapitalized since I worked there.
8. The company has never been provided with sufficient capital to achieve the desired results of significant profitability.
9. Mr. Curl also refused to infuse enough monies into the company, despite their being severely needed for employees, merchandise, customer orders, vendors, repairs, building improvements and other business.
10. Director's meetings were also not regularly held and corporate formalities were largely ignored, including employees regularly paying for necessary items out of their own pockets for business operation. Likewise, the company did not regularly hold scheduled meetings, hold special meetings, keep accurate records, exercise fiduciary duties to the corporation, develop a planning routine and make all company purchases in the corporation's name.
11. As well, the wages reported on my W-2 Forms in 2019 were inaccurate and did not accurately reflect my wages.
12. In fact, many employees purchased items using their own monies and/or credit cards to keep the business operating. The company also would often not be able to pay employee wages on time.
13. I understand that making any false statements within this affidavit may subject me to criminal liability.
14. I further attest that I am making these statements freely and voluntarily, without coercion or duress. I further state that I am not suffering from any mental conditions or taking any substances which would impair my ability to understand all matters set forth herein.

FURTHER AFFIANT SAYETH NOT.


Elizabeth Shelton

Sworn to before me this 27th
day of OCTOBER, 2021


Notary Public, State of South Carolina
My commission expires: 9/22/2027

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	Civil Action No. 2020-CP-21-01296
Allison Parker,	)	
	)	
Plaintiff,	)	
	)	
v.	)	MEMORANDUM IN SUPPORT OF
	)	MOTION FOR SUMMARY JUDGMENT
	)	(Mike Barker)
Florence Carpet & Tile, Inc., John Curl,	)	
and Mike Barker,	)	
	)	
Defendants.	)	

Defendant, Mike Barker, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, submits the following memorandum of law in support of his motion for summary judgment.

FACTS AND PROCEDURAL HISTORY

Plaintiff was an at-will, salaried employee of Florence Carpet & Tile, Inc. ("FCT") from May 1, 2007 until August 10, 2019. (Affidavit of John Curl, ¶¶ 6, 8) At the time of Plaintiff's hire, John Curl and Walter Parker, Plaintiff's husband, owned FCT. (Affidavit of John Curl, ¶ 3) Mr. Parker owned 47% of the company's shares, and Mr. Curl owned 53% of the company's shares. (Affidavit of John Curl, ¶ 2) Defendant Barker did not and has not ever owned shares of FCT. (Affidavit of Mike Barker, ¶ 2) From April 30, 2007 until July 27, 2019, Mr. Parker additionally served as President of FCT. (Affidavit of John Curl, ¶ 3) As President, Mr. Parker was in charge of the company's day-to-day operations, including the proper handling of payroll. (Affidavit of John Curl, ¶¶ 3, 9)

Defendant Barker began working for FCT in May 2014, at which time he reported to Mr. Parker and handled administrative duties. (Affidavit of Mike Barker, ¶ 1) Defendant Barker continued to report to Mr. Parker until Mr. Parker's employment ended on or about

July 27, 2019. *Id.* At no point during the relevant time period did Defendant Barker serve as an officer of FCT, and at no point did he have the authority to approve or alter FCT's payroll. (Affidavit of Mike Barker, ¶¶ 3-4) Only Mr. Parker, as President, held that authority. *Id.* Likewise, Mr. Parker had the sole authority to approve salesperson commissions. (Affidavit of Mike Barker, ¶ 5)

At no point during her twelve-year employment did Plaintiff receive a commission check. (Affidavit of John Curl, ¶ 10) In addition, Plaintiff never requested a commission check from Defendant Barker, provided the documentation necessary to obtain a commission check, or spoke with Defendant Barker regarding commission checks in any regard. (Affidavit of Mike Barker, ¶ 7) Mr. Parker approved all commission payments to FCT's sales people, and Mr. Parker never told Defendant Barker to pay Plaintiff a commission check. (Affidavit of Mike Barker, ¶¶ 5,8)

Plaintiff's claims against Defendant Barker are based on the South Carolina Payment of Wages Act, codified by South Carolina Code Annotated sections 41-10-10, *et seq.*, the South Carolina Payment of Post-Termination Claims to Sales Representatives Act, codified by South Carolina Code Annotated sections 39-65-10, *et seq.*, and common law breach of contract and quantum meruit principles. In her Complaint, Plaintiff alleges Defendant Barker knew FCT failed to pay her all wages and commissions earned during the course of her employment and seeks \$57,791.48 from him personally. Pursuant to the undisputed material facts set forth in the Affidavits of John Curl and Mike Barker, at no point during the during the relevant time period did Defendant Barker knowingly permit FCT to violate South Carolina's wage laws. Moreover, at no point did Defendant Barker distribute products wholesale, contract with Plaintiff to solicit orders, and compensate Plaintiff via commission. Finally, at no point did

Plaintiff have an employment contract with any defendant to this action or perform services that personally benefitted Defendant Barker. As such, Defendant Barker is entitled to a judgment as a matter of law in his favor on all claims.

STANDARD OF REVIEW

When deciding a Summary Judgment Motion pursuant to Rule 56, SCRCP, a trial court must weigh the facts and inferences in a light most favorable to the non-moving party. *Hancock v. Mid-South Mgmt., Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 802 (2009). Summary judgment is appropriate when the pleadings, depositions, discovery, and affidavits show no genuine issue of material fact exists. *Id.* Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Moore v. Weinberg*, 373 S.C. 209, 217, 644 S.E.2d 740, 744 (Ct. App. 2007). The non-moving party must come forward with specific facts showing a genuine issue for trial. *Id.*

LAW AND ARGUMENT

I. DEFENDANT BARKER IS NOT AN "EMPLOYER" PER THE SOUTH CAROLINA PAYMENT OF WAGES ACT AND CANNOT BE LIABLE TO PLAINTIFF FOR THE ALLEGED UNDERPAYMENT OF WAGES.

Plaintiff alleges Defendant Barker failed to pay her the full amount of wages owed in violation of the South Carolina Payment of Wages Act. The Act defines "employer" as "every person, firm, partnership, association, corporation, receiver, or other officer of a court of this State, the State or any political subdivision thereof, and any agent or officer of the above classes employing any person in this State." S.C. Code Ann. § 41-10-10(1). The Act defines "wages" as "all amounts at which labor rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, or commission basis[.]" S.C. Code Ann. § 41-10-10(2).

The Act requires an employer, as defined by the Act, to notify each employee in writing at the time of hiring of the agreed upon hours and wages, the time and place of payment, and the deductions to be made from wages. S.C. Code Ann. § 41-10-30(A). Then, the employer is required to pay all wages due and “shall not withhold or divert any portion of an employee’s wages unless the employer is required or permitted to do so by state or federal law or the employer has given written notification to the employee of the amount and terms of deductions.” S.C. Code Ann. § 41-10-40. Therefore, upon separation, an employer must pay its employees all wages due within forty-eight hours or the next regular payday, which may not exceed thirty days. S.C. Code Ann. § 41-10-50. The Act is remedial legislation, so employers who fail to pay employees in a manner that is consistent with it are responsible for any resulting underpayment. *Dumas v. InfoSafe Corp.*, 320 S.C. 188, 194, 463 S.E.2d 641, 645 (Ct. App. 1995).

In *Dumas*, our Court of Appeals found that when adopting the Act, the legislature intended to impose individual liability on corporate agents and officers who knowingly permit the Act to be violated. *Id.* at 193-94, 463 S.E.2d at 644-45. When doing so, the Court stated, “To hold otherwise would require us to ignore the words ‘and any agent or officer of the above classes.’” *Id.* Since that time, South Carolina courts have consistently found that having an ownership interest or holding a management position is not enough to expose an individual to personal liability under the Act; instead, the agent or officer must have knowingly permitted the company’s violation of the Act. *See, e.g., Temple v. Tec-Fab, Inc.*, 370 S.C. 383, 390, 635 S.E.2d 541, 544 (Ct. App. 2006), *aff’d in part, rev’d in part on other grounds*, 381 S.C. 597 (2009) (owner knew the company failed to properly pay the employee and was the person directly responsible for the non-payment, so he fell within the Act’s definition of “employer”

and was individually liable to the employee for all outstanding wages); *Allen v. Pinnacle Healthcare Sys., LLC.*, 394 S.C. 268, 272, 715 S.E.2d 362, 364 (Ct. App. 2011) (two prior owners who knew the plaintiff was not getting paid by virtue of reviewing payroll monthly were individually liable despite their subsequent transfer of interests, while an additional owner that was not involved in the daily operation of the company and did not have knowledge of the compensation arrangements with the plaintiff was not personally liable).

Defendant simply does not fall within the Act's definition of "employer." Further, Plaintiff has not and cannot point to any evidence that Defendant Barker knew FCT underpaid Plaintiff in violation of the Act. Pursuant to the Affidavit of Mike Barker, Defendant Barker has never been an owner of FCT and was not an officer during the relevant time period. (Affidavit of Mike Barker, ¶¶ 2-3) Further, Defendant Barker did not have the authority or ability to approve or alter employee compensation. (Affidavit of Mike Barker, ¶4) Defendant Barker, likewise, did not have the ability to approve or issue commission checks and was never asked by Plaintiff for one. (Affidavit of Mike Barker, ¶¶ 5-7) Instead, FCT hired Defendant Barker seven years after Plaintiff, at which point Plaintiff's compensation arrangements had been established. (Affidavit of Mike Barker, ¶¶ 1) Defendant Barker reported to Plaintiff's husband, Mr. Parker, and Mr. Parker oversaw the day-to-day operations of FCT, including the review of payroll. (Affidavit of Mike Barker, ¶¶ 1, 4) Defendant did not oversee Plaintiff's compensation and was in no way responsible for ensuring the payment of her wages. *Id.* The record is void of evidence imputing knowledge of a violation of the Act on Defendant. In the absence of such knowledge, Defendant Barker cannot have personal liability for any outstanding wages owed to Plaintiff.

There is no genuine issue of material fact that could give rise to Defendant Barker's individual liability to Plaintiff under the South Carolina Payment of Wages Act. As such, Defendant Barker is entitled to judgment as a matter of law in his favor.

II. DEFENDANT BARKER IS NOT A "PRINCIPAL" PER THE SOUTH CAROLINA POST-TERMINATION CLAIMS TO SALES REPRESENTATIVES ACT AND CANNOT BE LIABLE TO PLAINTIFF FOR THE ALLEGED FAILURE TO PAY COMMISSION.

As an alternative argument, Plaintiff asserts Defendant Barker owes outstanding commissions totaling \$57,791.48 pursuant to the South Carolina Payment of Post-Termination Claims to Sales Representatives Act, South Carolina Code Annotated sections 39-65-10, *et seq.* Pursuant to South Carolina Code Annotated section 39-65-20, "When a contract between a sales representative and a principal is terminated for any reason, the principal shall pay the sales representative all commissions that have or will accrue under the contract to the sales representative pursuant to the terms of the contract." S.C. Code Ann. § 39-65-20. "Principal" is defined as, "a person who: (a) manufactures, produces, imports, or distributes a tangible product for wholesale; (b) contracts with a sales representative to solicit orders for the product; and (c) compensates the sales representative, in whole or in part, by commission." S.C. Code Ann. § 39-65-10(3). Any principal who fails to comply with the provisions of this Act is liable for: "(1) all amounts due the sales representative plus punitive damages in an amount not to exceed three times the amount of commissions due the sales representative; and (2) attorney's fees actually and reasonably incurred by the sales representative in the action and court costs." S.C. Code Ann. § 39-65-30. The Act does not apply to all principals who pay their salespeople a commission. *Lee v. Thermal Eng'g Corp*, 952 S.C. 81, 93, 572 S.E. 2d 298, 304 (Ct. App. 2007). Rather, the plain language of the Act limits its applicability to wholesalers. *Id.*

“The cardinal rule of statutory construction is that we are to ascertain and effectuate the actual intent of the legislature.” *Burns v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989). “Words used therein must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand its operation.” *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). “The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose.” *Id.* Where a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning. *See e.g. Gulf Oil Corp. v. S.C. Tax Comm’n*, 248 S.C. 267, 270, 149 S.E.2d 642, 643 (1966) (citing Webster’s New International Dictionary for definition of a statute’s reference to “paid-in surplus”); *State v. Dickinson*, 339 S.C. 194, 199, 528 S.E.2d 675, 677 (Ct. App. 2000) (citing Black’s Law Dictionary for definition of “obtaining” in statute for obtaining property in fraudulent manner); *State v. Estridge*, 320 S.C. 288, 291, 465 S.E.2d 91, 93 (Ct. App. 1995) (referencing dictionary definition in determining legislative intent).

Here, based on the plain language of the Payment of Post-Termination Claims to Sales Representatives Act, Defendant Barker is not a principal and cannot have individual liability to Plaintiff for the payment of past-due commissions. Plaintiff was an at-will, salaried employee of FCT. (Affidavit of John Curl, ¶¶ 6, 8) Plaintiff received a W-2 from FCT, not Defendant Barker, for the work she performed. (Affidavit of Mike Barker, ¶ 6) Plaintiff did not receive commissions pursuant to a contract with Defendant Barker or anyone else. *Id.*

Moreover, at no point did Defendant Barker himself distribute products wholesale, contract with Plaintiff to solicit orders, and compensate Plaintiff via commission. (Affidavit of Mike Barker, ¶¶ 7, 8) To the contrary, Defendant Barker had no control over the manner in

which Plaintiff was paid, was never asked by Plaintiff to receive a commission check, and was never asked by his supervisor, who oversaw payroll, to provide Plaintiff with a commission check. *Id.* It is undisputed that Defendant Barker is not a principal for the purpose of the Act. As such, there is no genuine issue of material fact under which Defendant Barker could be individually liable for the payment of commissions to Plaintiff, so he is entitled to a judgment as a matter of law in his favor.

III. DEFENDANT BARKER DID NOT HAVE A CONTRACT WITH PLAINTIFF AND DID NOT PERSONALLY GAIN FROM PLAINTIFF'S EMPLOYMENT WITH FCT, SO HE IS NOT LIABLE FOR ANY OUTSTANDING WAGES OWED TO HER.

In a final attempt to assert a basis for recovery against Defendant Barker, Plaintiff attempts to state claims for breach of contract, breach of implied covenant of good faith and fair dealing, and quantum meruit. Each claim fails, so Defendant Barker is entitled to summary judgment in his favor on all claims.

A. Breach of Contract

To recover for breach of contract, a plaintiff must establish the existence of a contract, its breach, and the damages caused by the breach. *Branche Builders, Inc. v. Coggins*, 386 S.C. 43, 48, 686 S.E. 2d 200, 202 (Ct. App. 2009). It is undisputed that Plaintiff was an at-will employee of FCT and did not have an employment contract. (Affidavit of John Curl, ¶ 8) Further, even if she did have a contract, which she did not, it would have been with FCT and not with a non-owner, like Defendant Barker, who began working at FCT seven years after Plaintiff. There is no genuine issue of fact that could give rise to Defendant Barker's liability to Plaintiff for breach of contract, so the claim must be summarily dismissed by this Court.

B. Breach of Implied Covenant of Good Faith and Fair Dealing

For the same reason Plaintiff's breach of contract claim fails, her breach of implied covenant of good faith and fair dealing claim fails as well. Breach of implied covenant of good faith and fair dealing is not an independent cause of action separate from a breach of contract claim. *Rotec Servs. V. Encompass Servs.*, 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004). Courts instead consider an implied covenant of good faith and fair dealing to be another term of a contract at issue. *Id.* Again, Plaintiff did not have a contract with any defendant in this matter, including Defendant Barker. In the absence of a contract, this Court cannot determine whether the agreement's terms included a breach of implied covenant of good faith and fair dealing. Accordingly, summary judgment is appropriate.

C. Quantum Meruit

Finally, to recover under the equitable theory of quantum meruit, Plaintiff must prove three elements: "(1) benefit conferred by plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value." *Myrtle Beach Hosp. v. City of Myrtle Beach*, 341 S.C. 1, 8-9, 532 S.E.2d 686, 872 (2000). Defendant Barker began working with FCT seven years after Plaintiff. Defendant Barker was a non-owner and, unlike Plaintiff, was not an officer of the company. (Affidavit of Mike Barker, ¶¶ 2-3) Plaintiff did not provide services to Defendant Barker and could not have conferred a benefit upon him personally. In the absence of the realization of some benefit from services provided by Plaintiff to Defendant Barker, her quantum meruit claim fails. Defendant Barker is entitled to summary judgment on Plaintiff's quantum meruit claim as well.

CONCLUSION

Plaintiff has named Defendant, Mike Barber, as an individual defendant in this lawsuit but failed to assert a valid basis for her assertion he is personally liable for the outstanding wages sought. It is undisputed that Defendant Barker is not an employer as defined by the South Carolina Payment of Wages Act, is not a principal as defined by the South Carolina Payment of Post-Termination Claims to Sales Representatives Act, did not personally have a contract with Plaintiff, and did not personally benefit from the services rendered by Plaintiff during the course of her employment with FCT. In light of the foregoing, Defendant Barker respectfully requests that this Honorable Court grant his Motion for Summary Judgment as to all claims.

TURNER PADGET GRAHAM & LANEY, P.A.

November 2, 2021
Florence, South Carolina

s/ Jeffrey L. Payne
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ATTORNEYS FOR DEFENDANTS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	Civil Action No. 2020-CP-21-01296
	)	
Allison Parker,	)	
	)	
Plaintiff,	)	
	)	
v.	)	MEMORANDUM IN SUPPORT OF
	)	MOTION FOR SUMMARY JUDGMENT
	)	(John Curl)
Florence Carpet & Tile, Inc., John Curl,	)	
and Mike Barker,	)	
	)	
Defendants.	)	

Defendant, John Curl, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, submits the following memorandum of law in support of his motion for summary judgment.

FACTS AND PROCEDURAL HISTORY

Plaintiff was an at-will, salaried employee of Florence Carpet & Tile, Inc. ("FCT") from May 1, 2007 until August 10, 2019. (Affidavit of John Curl, ¶¶ 6, 8) At the time of Plaintiff's hire, Defendant Curl and Walter Parker, Plaintiff's husband, owned FCT. (Affidavit of John Curl, ¶¶ 2-3) Mr. Parker owned 47% of the company's shares, and Defendant Curl owned 53% of the company's shares. (Affidavit of John Curl, ¶ 2) From April 30, 2007 until July 27, 2019, Mr. Parker additionally served as President of FCT. (Affidavit of John Curl, ¶ 3) As President, Mr. Parker was in charge of the company's day-to-day operations, including the proper handling of payroll. (Affidavit of John Curl, ¶¶ 3, 9) Defendant Curl, on the other hand, has never been an employee of FCT and was not involved in the day-to-day operations of FCT during Plaintiff's employment. (Affidavit of John Curl, ¶¶ 4-5) Defendant Curl did not review payroll or have any involvement in employee compensation. *Id.* Those responsibilities instead fell solely to Mr. Parker, Plaintiff's husband. *Id.*

Plaintiff did not receive a commission check from FCT at any point during her twelve-year employment by the company. (Affidavit of John Curl, ¶ 10) In addition, Plaintiff never requested a commission check or other outstanding wages, provided the documentation necessary to obtain a commission check, or spoke with Defendant Curl regarding commission checks in any regard. (Affidavit of John Curl, ¶ 11) Mr. Parker approved all commission payments to FCT's sales people, so any request for a commission check would have been directed to him. (Affidavit of Mike Barker, ¶ 5)

Plaintiff's claims against Defendant Curl are based on the South Carolina Payment of Wages Act, codified by South Carolina Code Annotated sections 41-10-10, *et seq.*, the South Carolina Payment of Post-Termination Claims to Sales Representatives Act, codified by South Carolina Code Annotated sections 39-65-10, *et seq.*, and common law breach of contract and quantum meruit principles. In her Complaint, Plaintiff alleges Defendant Curl knew FCT failed to pay her all wages and commissions earned during the course of her employment and seeks \$57,791.48 from him personally. Pursuant to the undisputed material facts set forth in the Affidavits of John Curl and Mike Barker, at no point during the relevant time period did Defendant Curl knowingly permit FCT to violate South Carolina's wage laws. Moreover, at no point did Defendant Curl distribute products wholesale, contract with Plaintiff to solicit orders, and compensate Plaintiff via commission. Finally, at no point did Plaintiff have an employment contract with any defendant to this action or perform services that personally benefitted Defendant Curl. As such, Defendant Curl is entitled to a judgment as a matter of law in his favor on all claims.

STANDARD OF REVIEW

When deciding a Summary Judgment Motion pursuant to Rule 56, SCRCP, a trial court must weigh the facts and inferences in a light most favorable to the non-moving party. *Hancock v. Mid-South Mgmt., Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 802 (2009). Summary judgment is appropriate when the pleadings, depositions, discovery, and affidavits show no genuine issue of material fact exists. *Id.* Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Moore v. Weinberg*, 373 S.C. 209, 217, 644 S.E.2d 740, 744 (Ct. App. 2007). The non-moving party must come forward with specific facts showing a genuine issue for trial. *Id.*

LAW AND ARGUMENT

I. DEFENDANT CURL IS NOT AN "EMPLOYER" PER THE SOUTH CAROLINA PAYMENT OF WAGES ACT AND CANNOT BE LIABLE TO PLAINTIFF FOR THE ALLEGED UNDERPAYMENT OF WAGES.

Plaintiff alleges Defendant Curl failed to pay her the full amount of wages owed in violation of the South Carolina Payment of Wages Act. The Act defines "employer" as "every person, firm, partnership, association, corporation, receiver, or other officer of a court of this State, the State or any political subdivision thereof, and any agent or officer of the above classes employing any person in this State." S.C. Code Ann. § 41-10-10(1). The Act defines "wages" as "all amounts at which labor rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, or commission basis[.]" S.C. Code Ann. § 41-10-10(2). The Act requires an employer, as defined by the Act, to notify each employee in writing at the time of hiring of the agreed upon hours and wages, the time and place of payment, and the deductions to be made from wages. S.C. Code Ann. § 41-10-30(A). Then, the employer is

required to pay all wages due and “shall not withhold or divert any portion of an employee’s wages unless the employer is required or permitted to do so by state or federal law or the employer has given written notification to the employee of the amount and terms of deductions.” S.C. Code Ann. § 41-10-40. Therefore, upon separation, an employer must pay its employees all wages due within forty-eight hours or the next regular payday, which may not exceed thirty days. S.C. Code Ann. § 41-10-50. The Act is remedial legislation, so employers who fail to pay employees in a manner that is consistent with it are responsible for any resulting underpayment. *Dumas v. InfoSafe Corp.*, 320 S.C. 188, 194, 463 S.E.2d 641, 645 (Ct. App. 1995).

In *Dumas*, our Court of Appeals found that when adopting the Act, the legislature intended to impose individual liability on corporate agents and officers who knowingly permit the Act to be violated. *Id.* at 193-94, 463 S.E.2d at 644-45. When doing so, the Court stated, “To hold otherwise would require us to ignore the words ‘and any agent or officer of the above classes.’” *Id.* Since that time, South Carolina courts have consistently found that having an ownership interest or holding a management position is not enough to expose an individual to personal liability under the Act; instead, the agent or officer must have knowingly permitted the company’s violation of the Act. *See, e.g., Temple v. Tec-Fab, Inc.*, 370 S.C. 383, 390, 635 S.E.2d 541, 544 (Ct. App. 2006), *aff’d in part, rev’d in part on other grounds*, 381 S.C. 597 (2009) (owner knew the company failed to properly pay the employee and was the person directly responsible for the non-payment, so he fell within the Act’s definition of “employer” and was individually liable to the employee for all outstanding wages); *Allen v. Pinnacle Healthcare Sys., LLC.*, 394 S.C. 268, 272, 715 S.E.2d 362, 364 (Ct. App. 2011) (two prior owners who knew the plaintiff was not getting paid by virtue of reviewing payroll monthly

were individually liable despite their subsequent transfer of ownership interests, while an additional owner that was not involved in the daily operation of the company and did not have knowledge of the compensation arrangements with the plaintiff was not personally liable).

Defendant Curl simply does not fall within the Act's definition of "employer." Further, Plaintiff has not and cannot point to any evidence that Defendant Curl knew FCT underpaid Plaintiff in violation of the Act. While Defendant Curl is an owner of FCT, at the time Plaintiff was employed with the company, Defendant Curl did not review payroll or oversee any of FCT's day-to-day operations. (Affidavit of John Curl, ¶¶ 2, 5; Affidavit of Mike Barker, ¶ 4) Instead, for all but the last week of Plaintiff's employment, Plaintiff's husband, also an owner of the company, managed the daily operations of FCT and was responsible for ensuring employees were properly compensated. (Affidavit of John Curl, ¶ 9) Plaintiff, therefore, never contacted Defendant Curl regarding payroll issues or informed him that she felt FCT owed her unpaid commissions and wages. (Affidavit of John Curl, ¶ 11)

The record is void of evidence imputing knowledge of a violation of the Act on Defendant Curl. In the absence of such knowledge, Defendant cannot have personal liability for any outstanding wages owed to Plaintiff. There is no genuine issue of material fact that could give rise to Defendant Curl's individual liability to Plaintiff under the South Carolina Payment of Wages Act. As such, Defendant Curl is entitled to judgment as a matter of law in his favor.

II. DEFENDANT CURL IS NOT A "PRINCIPAL" PER THE SOUTH CAROLINA POST-TERMINATION CLAIMS TO SALES REPRESENTATIVES ACT AND CANNOT BE LIABLE TO PLAINTIFF FOR THE ALLEGED FAILURE TO PAY COMMISSION.

As an alternative argument, Plaintiff asserts Defendant Curl owes outstanding commissions totaling \$57,791.48 pursuant to the South Carolina Payment of Post-Termination

Claims to Sales Representatives Act, South Carolina Code Annotated sections 39-65-10, *et seq.* Pursuant to South Carolina Code Annotated section 39-65-20, “When a contract between a sales representative and a principal is terminated for any reason, the principal shall pay the sales representative all commissions that have or will accrue under the contract to the sales representative pursuant to the terms of the contract.” S.C. Code Ann. § 39-65-20. “Principal” is defined as, “a person who: (a) manufactures, produces, imports, or distributes a tangible product for wholesale; (b) contracts with a sales representative to solicit orders for the product; and (c) compensates the sales representative, in whole or in part, by commission.” S.C. Code Ann. § 39-65-10(3). Any principal who fails to comply with the provisions of this Act is liable for: “(1) all amounts due the sales representative plus punitive damages in an amount not to exceed three times the amount of commissions due the sales representative; and (2) attorney’s fees actually and reasonably incurred by the sales representative in the action and court costs.” S.C. Code Ann. § 39-65-30. The Act does not apply to all principals who pay their salespeople a commission. *Lee v. Thermal Eng’g Corp.*, 952 S.C. 81, 93, 572 S.E. 2d 298, 304 (Ct. App. 2007). Rather, the plain language of the Act limits its applicability to wholesalers. *Id.*

“The cardinal rule of statutory construction is that we are to ascertain and effectuate the actual intent of the legislature.” *Burns v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 520, 522, 377 S.E.2d 569, 570 (1989). “Words used therein must be given their plain and ordinary meaning without resort to subtle or forced construction to limit or expand its operation.” *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992). “The language must also be read in a sense which harmonizes with its subject matter and accords with its general purpose.” *Id.* Where a word is not defined in a statute, our appellate courts have looked to the usual dictionary meaning to supply its meaning. *See*

e.g. Gulf Oil Corp. v. S.C. Tax Comm'n, 248 S.C. 267, 270, 149 S.E.2d 642, 643 (1966) (citing Webster's New International Dictionary for definition of a statute's reference to "paid-in surplus"); *State v. Dickinson*, 339 S.C. 194, 199, 528 S.E.2d 675, 677 (Ct. App. 2000) (citing Black's Law Dictionary for definition of "obtaining" in statute for obtaining property in fraudulent manner); *State v. Estridge*, 320 S.C. 288, 291, 465 S.E.2d 91, 93 (Ct. App. 1995) (referencing dictionary definition in determining legislative intent).

Here, based on the plain language of the Payment of Post-Termination Claims to Sales Representatives Act, Defendant Curl is not a principal and cannot have individual liability to Plaintiff for the payment of past-due commissions. Plaintiff was an at-will, salaried employee. (Affidavit of John Curl, ¶¶ 6, 8) She did not have an employment contract with Defendant Curl or FCT and received a W-2 from FCT, not Defendant, for all work performed. (Affidavit of John Curl, ¶ 8; Affidavit of Mike Barker, ¶ 6) At no point during Plaintiff's twelve-year employment with FCT did she receive a commission check, nor did she inform Defendant Curl she was owed a commission check. (Affidavit of John Curl, ¶¶ 10-11) Instead, Walt Parker, Plaintiff's husband, approved all commissions paid to FCT's salespeople. (Affidavit of Mike Barker, ¶ 5) Mr. Parker never directed the payment of a commission to Plaintiff. (Affidavit of Mike Barker, ¶ 8)

It is undisputed that Defendant Curl is not a principal for the purpose of the Act. As such, there is no genuine issue of material fact under which Defendant Curl could be individually liable for the payment of commissions to Plaintiff, and Defendant Curl is entitled to a judgment as a matter of law in his favor.

III. DEFENDANT CURL DID NOT HAVE A CONTRACT WITH PLAINTIFF AND DID NOT PERSONALLY GAIN FROM PLAINTIFF'S EMPLOYMENT WITH FCT, SO HE IS NOT LIABLE FOR ANY OUTSTANDING WAGES OWED TO HER.

In a final attempt to assert a basis for recovery against Defendant Curl, Plaintiff attempts to state claims for breach of contract, breach of implied covenant of good faith and fair dealing, and quantum meruit. Each claim fails, so Defendant is entitled to summary judgment in his favor on all claims.

A. Breach of Contract

To recover for breach of contract, a plaintiff must establish the existence of a contract, its breach, and the damages caused by the breach. *Branche Builders, Inc. v. Coggins*, 386 S.C. 43, 48, 686 S.E. 2d 200, 202 (Ct. App. 2009). It is undisputed that Plaintiff was an at-will employee of FCT and did not have an employment contract with any defendant to this case, including Defendant Curl. (Affidavit of John Curl, ¶ 8) In the absence of a contract, there can be no breach. As such, there is no genuine issue of fact that could give rise to Defendant Curl's liability to Plaintiff for breach of contract, so the claim must be summarily dismissed by this Court.

B. Breach of Implied Covenant of Good Faith and Fair Dealing

For the same reason Plaintiff's breach of contract claim fails, her breach of implied covenant of good faith and fair dealing claim fails as well. Breach of implied covenant of good faith and fair dealing is not an independent cause of action separate from a breach of contract claim. *Rotec Servs. V. Encompass Servs.*, 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004). Rather, courts consider an implied covenant of good faith and fair dealing to be another term of the contract at issue. *Id.* Again, Plaintiff was an at-will employee of FCT and did not have an employment contract. (Affidavit of John Curl, ¶ 8) In the absence of a contract, this

Court cannot determine whether the agreement's terms included a breach of implied covenant of good faith and fair dealing. Accordingly, summary judgment is appropriate.

C. Quantum Meruit

Finally, to recover under the equitable theory of quantum meruit, Plaintiff must prove three elements: "(1) benefit conferred by plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value." *Myrtle Beach Hosp. v. City of Myrtle Beach*, 341 S.C. 1, 8-9, 532 S.E.2d 686, 872 (2000). Plaintiff did not provide any services to Defendant Curl directly. (Affidavit of John Curl, ¶ 12) Instead, all services were provided directly to FCT. *Id.* Defendant Curl did not personally benefit from the services rendered by Plaintiff. *Id.* In the absence of the realization of some benefit from services provided by Plaintiff to Defendant Curl, her quantum meruit claim fails. Defendant Curl is entitled to summary judgment on Plaintiff's quantum meruit claim as well.

CONCLUSION

Plaintiff has named Defendant, John Curl, as an individual defendant in this lawsuit but failed to assert a valid basis for her assertion that he is personally liable for the outstanding wages sought. It is undisputed that Defendant Curl is not an employer as defined by the South Carolina Payment of Wages Act, is not a principal as defined by the South Carolina Payment of Post-Termination Claims to Sales Representatives Act, did not personally have a contract with Plaintiff, and did not personally benefit from the services rendered by Plaintiff during the course of her employment with FCT. In light of the foregoing, Defendant Curl respectfully request that this Honorable Court grant his Motion for Summary Judgment on all of Plaintiff's claims.

November 2, 2021
Florence, South Carolina

TURNER PADGET GRAHAM & LANEY, P.A.

s/ Jeffrey L. Payne

Jeffrey L. Payne (SC Bar No.: 15136)

Virginia P. Bozeman (SC Bar No.: 104939)

P.O. Box 5478

Florence, South Carolina 29502

Telephone: (843) 662-9008

Email: jpayne@turnerpadget.com

ATTORNEYS FOR DEFENDANTS

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE TWELTH JUDICIAL CIRCUIT

ALLISON PARKER,)
))
Plaintiff,)
vs.)
))
FLORENCE CARPET & TILE,)
INC., JOHN CURL and MIKE)
BARKER,)
))
Defendants.)
_____)

CASE NO: 2020-CP-21-01296

Motion to Alter or Amend a Judgment

Plaintiff, by and through the undersigned legal counsel and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, does hereby move to alter or amend this Court's Order granting summary judgment in favor of Defendants John Curl and Mike Barker filed December 2, 2021, in the above-referenced matter. In particular, Plaintiff asserts that the Order granting summary judgment: (1) was clearly erroneous as a matter of law; (2) improperly weighed the evidence of record; (3) failed to consider both legal argument and evidence submitted by the Plaintiff; and (4) improperly determined that no genuine issue of material fact existed for trial as to the individual Defendants. For each of these reasons, Plaintiff's motion to alter or amend should be granted.

WILLCOX, BUYCK & WILLIAMS, PA

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PO Box 1909
Florence SC 29503 1909
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ATTORNEY FOR PLAINTIFF

December 9, 2021
Florence, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	
WALTER PARKER,	)	CASE NO: 2020CP21
	)	
Plaintiff,	)	
vs.	)	SUMMONS
	)	(Jury Trial Demanded)
FLORENCE CARPET & TILE,	)	
INC., JOHN CURL and MIKE	)	
BARKER,	)	
	)	
Defendants.	)	
_____	)	

TO: THE DEFENDANTS ABOVE NAMED

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint on the subscribers at their offices located at 248 W. Evans Street, PO Box 1909, Florence, South Carolina 29503-1909, within thirty (30) days after the service hereof, exclusive of the day of such service; and, if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

DATED at Florence, South Carolina, this 19th day of May 2020.

WILLCOX, BUYCK & WILLIAMS, P.A.

By: s/ J. Scott Kozacki
J. Scott Kozacki, Esquire
SC Bar No. 64137
PO Box 1909
Florence SC 29503-1909
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(843) 662-1342 Facsimile
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ATTORNEY FOR THE PLAINTIFF

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)
IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

WALTER PARKER,)
Plaintiff,)
vs.) **COMPLAINT**
FLORENCE CARPET & TILE,) (Jury Trial Demanded)
INC., JOHN CURL and MIKE)
BARKER,)
Defendants.)

Plaintiff Walter Parker ("Plaintiff"), by and through the undersigned legal counsel, does hereby complain of Defendants Florence Carpet & Tile, Inc. ("Corporation") John Curl ("Curl") and Mike Barker ("Barker") as follows:

1. This civil action is being brought pursuant to the South Carolina Payment of Wages Act, S.C. Code Ann. § 41-10-10 *et seq.* and the common law of the State of South Carolina.
2. This Court has jurisdiction over this civil action, since the matters complained of allegedly violate South Carolina state law and involve a South Carolina resident.
3. Venue is proper in this judicial circuit, since the matters complained of occurred within the County of Florence, State of South Carolina.
4. The Plaintiff is a resident of the County of Florence, State of South Carolina.
5. Defendants own property and transact business within the County of Florence, State of South Carolina.
6. Defendant Corporation is a corporation duly organized and existing under the laws of the State of South Carolina and has its principal place of business in Florence, South Carolina.
7. At all times relevant hereto, Defendants Curl and Barker were residents of the County of Florence, State of South Carolina.
8. At all times relevant hereto, Defendants Curl and Barker were agents, employees, and/or officers of Defendant Corporation. Pursuant to the doctrine of respondeat superior, Defendant Corporation is liable for the actions of its' agents, employees, and/or officers,

when the actions take place within the scope of employment.

FOR A FIRST CAUSE OF ACTION
(Failure to Pay Wages Pursuant to S.C. Code Ann. § 41-10-10 *et seq.*)

9. Plaintiff realleges and reiterates paragraphs 1-8 above, as if fully set out herein.
10. Plaintiff was employed full-time by Defendants as the President of the Corporation from in or about May 2007 until his termination on or about July 26, 2019.
11. During the course of Plaintiff's employment, all parties agreed that Plaintiff was to be paid wages of \$75,000.00 per year.
12. During the course of Plaintiff's employment, Defendants willfully, wantonly, recklessly, arbitrarily, unilaterally, and without Plaintiff's consent, withheld payment of the Plaintiff's wages, additional due and owing compensation, benefits, payments and/or monies.
13. To date, Defendants have willfully, wantonly, recklessly, arbitrarily, and without Plaintiff's consent wrongfully and unlawfully refused to pay Plaintiff his rightfully due and owing wages, additional due and owing compensation, benefits, payments and/or monies in an amount exceeding \$102,303.53.
14. Plaintiff has demanded on numerous occasions from the Defendants that he be paid his rightfully due and owing wages, compensation, benefits, payments and/or monies.
15. Despite the Plaintiff's repeated demands for payment of his rightfully due and owing wages, compensation, benefits, payments and/or monies, the Defendants have refused to pay such.
16. Defendants refusal to pay Plaintiff his rightfully due and owing wages, compensation, benefits, payments and/or monies, despite his numerous and repeated demands, was done in bad faith.
17. Defendants Curl and Barker knowingly permitted and/or caused Defendants to violate the South Carolina Payment of Wages statutes, S.C. Code Ann. § 41-10-10 *et seq.* and are individually liable to the Plaintiff as a result thereof.
18. Defendants failed to notify the Plaintiff in writing at the time of hiring of the normal hours and wages agreed upon, the time and place of payment, and the deductions which would be made from the wages, as required by S.C. Code Ann. § 41-10-30(A).

19. Defendants failed to provide the Plaintiff, in writing, and at least seven calendar days before they became effective, of any changes in those terms of employment, as required by S.C. Code Ann. § 41-10-30(A).
20. Defendants withheld or diverted a portion Plaintiff's wages, compensation, benefits, payments and/or monies, without permission to do so either by state or federal law and without written notification to the Plaintiff as required, all in violation of S.C. Code Ann. § 41-10-40(C).
21. Defendants failed to pay the Plaintiff all wages, compensation, benefits, payments and/or monies due at the time and place designated as required by S.C. Code Ann. § 41-10-30(A) and in violation of S.C. Code Ann. § 41-10-40(D).
22. Defendants failed to pay the Plaintiff all due and owing wages, compensation, benefits, payments and/or other monies within forty-eight hours of the time of his separation from employment or the next regular payday in violation of S.C. Code Ann. § 41-10-50.
23. Plaintiff is now entitled to an award of his unpaid wages, compensation, benefits, payments and/or monies treble/punitive damages, reasonable attorney's fees, suit costs, expert witness fees, other litigation expenses, and prejudgment interest on account of the Defendants' failure to pay wages, compensation, benefits, payments and/or monies.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

24. Plaintiff realleges and reiterates each and every allegation set forth above, as if fully set out herein.
25. An oral employment agreement existed between the parties. In particular, Plaintiff agreed to be employed by the Defendants in exchange for the wages, compensation benefits, payments and/or monies detailed herein.
26. Defendants willfully, wantonly, recklessly, arbitrarily, unilaterally and without Plaintiff's consent, breached the terms of the parties' employment agreement. Specifically, Defendants have willfully, wantonly, recklessly, arbitrarily, and without Plaintiff's consent, wrongfully and unlawfully refused to pay Plaintiff his rightfully due and owing wages, compensation, benefits, payments and/or other monies totaling \$102,303.53.
27. As a direct and proximate result of the Defendants' breach of the employment agreement, Plaintiff has been damaged, including his not being paid his rightfully due and owing wages, compensation, benefits, payments and/or monies in an amount totaling \$102,303.53.

28. As a direct and proximate result of the Defendants' breach of the employment agreement, Plaintiff has also been damaged by being forced to incur attorney's fees, suit costs, and/or other litigation expenses.
29. Plaintiff has performed his part of the employment agreement in full.

FOR A THIRD CAUSE OF ACTION
(Breach of the Implied Covenant of Good Faith and Fair Dealing)

30. Plaintiff realleges and reiterates each and every allegation set forth above, as if fully set out herein.
31. There exists in every agreement an implied covenant of good faith and fair dealing.
32. An oral employment agreement existed between the parties. In particular, Plaintiff agreed to be employed by Defendants in exchange for the wages, compensation, benefits, payments and/or monies detailed herein.
33. Defendants willfully, wantonly, recklessly, arbitrarily, unilaterally and without Plaintiff's consent, breached and/or caused to be breached the implied covenant of good faith and fair dealing between the parties. Specifically, Defendants have willfully, wantonly, recklessly, arbitrarily, and without Plaintiff's consent wrongfully and unlawfully refused to pay Plaintiff his rightfully due and owing wages, compensation benefits, payments and/or other monies in an amount totaling \$102,303.53.
34. As a direct and proximate result of the Defendants' breach and/or causing there to be a breach of the implied covenant of good faith and fair dealing between the parties, Plaintiff has been damaged, including his not being paid his rightfully due and owing wages, compensation, benefits, payments and/or other monies in an amount totaling \$102,303.53.
35. As a direct and proximate result of the Defendants' breach and/or causing there to be a breach of the implied covenant of good faith and fair dealing between the parties, Plaintiff has also been damaged by being forced to incur attorney's fees, suit costs, and/or other litigation expenses.
36. Plaintiff is now entitled to an award of his unpaid wages and compensation, punitive damages, reasonable attorney's fees, suit costs, expert witness fees, other litigation expenses, and prejudgment interest on account of the Defendants' breach of the implied covenant of good faith and fair dealing.

FOR A FOURTH CAUSE OF ACTION
(Quantum Meruit)

37. Plaintiff realleges and reiterates each and every allegation set forth above, as if fully set out herein.
38. Plaintiff conferred a benefit upon the Defendants, as agreed, by providing his services.
39. Defendants realized the full benefit of the Plaintiff's services.
40. Retention of the benefit of the Plaintiff's services by the Defendants, without Plaintiff being paid his rightfully due and owing wages, compensation, benefits, payments and/or monies is inequitable.
41. Plaintiff has been damaged, including his not being paid his rightfully due and owing wages, compensation, benefits, payments and/or other monies in an amount exceeding \$102,303.53.
42. Plaintiff has also now been damaged by being forced to incur attorney's fees, suit costs, and/or other litigation expenses.
43. Plaintiff is now entitled to an award of his unpaid wages compensation, benefits, payments and/or monies, punitive damages, reasonable attorney's fees, suit costs, expert witness fees, other litigation expenses, and prejudgment interest on the basis of quantum meruit.

Jury Trial Demand

44. Plaintiff demands a jury trial in the event that there exists any genuine issues of material fact.

WHEREFORE, Plaintiff respectfully requests that he be awarded the following from the Defendants:

- a. \$102,303.53 in unpaid wages, compensation, benefits, payments and/or monies;
- b. Treble/punitive damages in an actual amount to be determined by a jury;
- c. Reasonable attorney's fees, suit costs, expert witness fees, and all other litigation expenses;
- d. Pre-judgment interest; and

- e. Such other relief as the Court deems just, equitable and proper.

WILLCOX, BUYCK & WILLIAMS, PA

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ATTORNEY FOR PLAINTIFF

May 19, 2020
Florence, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	Civil Action No. 2020-CP-21-01297
	)	
Walter Parker,	)	
	)	
Plaintiff,	)	
	)	
v.	)	ANSWER
	)	(JURY TRIAL REQUESTED)
Florence Carpet & Tile, Inc., John Curl,	)	
and Mike Barker,	)	
	)	
Defendants.	)	
	)	
	)	

The Defendants, Florence Carpet & Tile, Inc., John Curl, and Mike Barker, hereby answer the Plaintiff's Complaint as follows:

FOR A FIRST DEFENSE

1. Each and every allegation not hereinafter specifically admitted is denied.
2. The statements made in paragraph one of the complaint do not require a response. To the extent they do, the Defendants deny the statements.
3. The Defendants admit the allegations contained in paragraphs 2, 3, 4, 5, 6, and 7,
4. The Defendants deny the allegations contained in paragraph 8.
5. Answering the reallegations contained in paragraph 9 the Defendants reassert each and every defense previously stated herein.
6. The Defendants admit the allegations contained in paragraph 10.
7. The Defendants lack sufficient information at this time to answer the allegations contained in paragraph 11 and therefore deny same.
8. The Defendants deny the allegations contained in paragraphs 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, and 23.

9. Answering the reallegations contained in paragraph 24 the Defendants reassert each and every defense previously stated herein.
 10. The Defendants deny the allegations contained in paragraphs 25, 26, 27, 28, and 29.
 11. Answering the reallegations contained in paragraph 30 the Defendants reassert each and every defense previously stated herein.
 12. The Defendants deny the allegations contained in paragraphs 31, 32, 33, 34, 35 and 36.
 13. Answering the reallegations contained in paragraph 37 the Defendants reassert each and every defense previously stated herein.
-
14. The Defendants deny the allegations contained in paragraphs 38, 39, 40, 41, 42, and 43.
 15. The Defendants deny that the Plaintiff is entitled to a jury trial for all of the causes of action as is set forth in paragraph 44.

FOR A SECOND DEFENSE
(Statute of Limitations)

16. Further, the Defendants allege the applicable statute of limitations (S.C. Code Ann. § 15-3-530) bars the claims.

FOR A THIRD DEFENSE
(Statute of Frauds)

17. The Defendants further allege the Plaintiff's contractual claims are barred by the South Carolina Statute of Frauds.

FOR A FOURTH DEFENSE
(Failure to State a Claim)

18. Although Defendant Mike Barker has filed a separate Motion to Dismiss, the Defendants assert the following 12(b)(6) defense and allege the allegations of the Complaint do not state facts sufficient to constitute a cause of action upon which relief can be granted, and this Court should dismiss the Complaint pursuant to 12(b)(6), SCRCP.

FOR A FIFTH DEFENSE
(Punitive Damages)

19. The Defendants allege that any award of punitive damages in a civil action violates the due process clause of the Fourteenth Amendment to the United States Constitution; violates the equal protection of the laws clause of the Fourteenth Amendment to the United States Constitution; and denies the defendant the protection of the Fifth Amendment to the United States Constitution in that civil punitive damages are sufficiently criminal in nature to require criminal procedure safeguards.
20. Further, the Defendants plead all applicable statutory caps on punitive damages, including but not limited to, the caps described in S.C. Code Ann. § 15-32-530, *et seq.*, as amended.

FOR A SIXTH DEFENSE
(Failure to Mitigate)

21. Further, the Defendants allege to the extent the Plaintiff has failed to mitigate his damages, such damages, if any, must be reduced in whole or in part.

FOR A SEVENTH DEFENSE
(Waiver and Release)

22. The Defendants further allege the doctrines of waiver and release bar this lawsuit because Plaintiff's own actions, omissions, unsatisfactory performance, and/or misconduct created and/or caused all of the allegations raised in the Complaint.

FOR A EIGHTH DEFENSE
(Laches)

23. Further, the Defendants allege the Plaintiff's claims are barred by the Doctrine of Laches.

FOR A NINTH DEFENSE**(Estoppel by Conduct)**

24. Defendants further allege that Plaintiff by his actions, conduct, words or silence which amounts to a representation or other concealment of material facts, has caused the Defendants to alter their position to their prejudice or injury and should therefore be estopped from bringing the within claims by the foregoing conduct and such constitutes a complete defense to all claims.

FOR A TENTH DEFENSE**(At-will Employee)**

25. Defendants further allege that at all times the Defendants employed Plaintiff on an at-will basis, and therefore Plaintiff had no contracts of employment.

FOR AN ELEVENTH DEFENSE**(Business Judgment Rule)**

26. Defendants plead the business judgment rule.

FOR A TWELTH DEFENSE**(Good Faith and Fair Dealing)**

27. Defendants deny any and all liability, but in the alternative, plead that at all times its actions were in good faith to serve and in furtherance of legitimate business purposes, and there existed a reasonable basis for these actions, such actions being for a proper purpose and by proper methods.

FOR A THIRTEENTH DEFENSE**(Jury Trial Demand)**

28. Plaintiff is not entitled to a jury trial on equitable issues.

FOR A FOURTEENTH DEFENSE**(South Carolina Workers' Compensation Act)**

29. The South Carolina Workers' Compensation Act provided the exclusive remedy, if any, for and barred/precluded any claims alleging fraud and negligent misrepresentation.

FOR A FIFTEENTH DEFENSE
(Reservation of Rights)

30. Defendants will rely upon all proper defenses lawfully available that may be disclosed by evidence and reserves the right to amend its Answer to state such other affirmative and additional defenses or to otherwise supplement this Answer upon discovery of facts of evidence rendering such action appropriate.

WHEREFORE, having answered the Plaintiff's Complaint, the Defendants ask this Court to dismiss the Complaint and to grant such other and further relief as this Court deems just and proper.

TURNER, PADGET, GRAHAM & LANEY, P. A.

s/ Jeffrey L. Payne
Jeffrey L. Payne, Esquire
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Direct: (843) 662-9008
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Florence, South Carolina

August 3, 2020

ATTORNEYS FOR THE DEFENDANTS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	Civil Action No. 2020-CP-21-01297
Walter Parker,	)	
	)	
Plaintiff,	)	
	)	
v.	)	MOTION FOR SUMMARY JUDGMENT
	)	(Mike Barker)
Florence Carpet & Tile, Inc., John Curl,	)	
and Mike Barker,	)	
	)	
Defendants.	)	

TO J. SCOTT KOZACKI, ATTORNEY FOR THE PLAINTIFF, ALLISON PARKER:

You will please take notice that ten (10) days after service of this notice upon you or soon thereafter as counsel may be heard, counsel for the Defendant, Mike Barker, will move before the Florence County Court of Common Pleas for an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting summary judgment in favor of the Defendant, Mike Barker, as to all causes of action alleged against him. The grounds for this motion are as follows:

1. From 2007 until July 27, 2019, Walt Parker was the President of Florence Carpet and Tile, Inc. ("FCT") and the shareholder in charge of the day to day operations of the business, including handling its payroll. Mike Barker did not start working for FCT until May 2014. Walt Parker was always Mike Barker's boss at FCT.

2. Mike Barker is not a shareholder of Florence Carpet & Tile, Inc. ("FCT") and he was not an officer or agent of FCT when Walt Parker was employed by FCT and was its President.

3. Mike Barker is not an "employer" as is defined under SC Code § 41-10-40(A)

(Supp. 2010). (the “Act”) and would have no liability to the Plaintiff for any claim he brings under the Act. Moreover, Mike Barker did not enter into any employment agreement with the Plaintiff whereby he would be classified or defined as an employer pursuant to the Act. Any alleged agreement the Plaintiff had would have been with his employer FCT which could have only occurred many years before Mike Barker ever started working for FCT.

4. At no time did Mike Barker knowingly permit his employer FCT to violate the Act by failing to pay wages to the Plaintiff. Mike Barker had no control over whether any employee was paid. The Plaintiff Walter Parker as President of FCT had this authority.

5. Mike Barker did not have any oral or written contract with the Plaintiff and therefore is not liable to the Plaintiff for any breach of contract. The Plaintiff was employed by FCT and any obligation as alleged would not be owed by Mike Barker. The Plaintiff received a W-2 from FCT each year. He did not receive a W-2 from Mike Barker. In addition, since the Plaintiff and Mike Barker lacked any contractual relationship, and there was no breach of any such contract, there can be no breach of the implied covenant of good faith and fair dealing.

6. Mike Barker did not receive any benefit as a result of the Plaintiff’s services to FCT. Mike Barker was only an employee of FCT and is not subject to any claim for quantum meruit.

For the foregoing reasons, the Court should grant Mike Barker’s Motion for Summary Judgment and thereby dismiss the Plaintiff’s claim against him.

This motion is based upon the pleadings before the Court, the Affidavit of Mike Barker, the Affidavit of John Curl, and the substantive and procedural law of the State of South Carolina.

TURNER PADGET GRAHAM & LANEY, P.A.

August 25, 2021
Florence, South Carolina

s/ Jeffrey L. Payne
Jeffrey L. Payne, Esquire
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Florence, South Carolina 29502
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Email: jpayne@turnerpadget.com

ATTORNEY FOR DEFENDANTS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	Civil Action No. 2020-CP-21-01297
Walter Parker,	)	
	)	
Plaintiff,	)	
	)	
v.	)	MOTION FOR SUMMARY JUDGMENT
	)	(John Curl)
Florence Carpet & Tile, Inc., John Curl,	)	
and Mike Barker,	)	
	)	
Defendants.	)	

TO J. SCOTT KOZACKI, ATTORNEY FOR THE PLAINTIFF, WALTER PARKER:

You will please take notice that ten (10) days after service of this notice upon you or soon thereafter as counsel may be heard, counsel for the Defendant, John Curl, will move before the Florence County Court of Common Pleas for an Order pursuant to Rule 56 of the South Carolina Rules of Civil Procedure granting summary judgment in favor of the Defendant, John Curl, as to all causes of action alleged against him. The grounds for this motion are as follows:

1. In 2007 Walter Parker and John Curl purchased the outstanding shares of Florence Carpet & Tile, Inc. ("FCT"). At the time of the purchase Walter Parker owned 47% of FCT and John Curl owned 53%.

2. From 2007 until July 27, 2019, Walter Parker was the President of FCT and he was in charge of the day to day operations of FCT including all matters related to the company's payroll. He was a salaried employee of FCT with a salary of \$75,000.00 per year.

3. John Curl was a passive owner of FCT. He was not an employee of FCT. Until Walter Parker's departure from FCT on July 27, 2019, he had no involvement with the day to day operation of FCT.

4. John Curl is not an “employer” as is defined under SC Code § 41-10-40(A) (Supp. 2010). (the “Act”) and would have no liability to the Plaintiff for any claim he brings under the Act. Moreover, John Curl did not enter into any employment agreement with the Plaintiff whereby he would be classified or defined as an employer pursuant to the Act. Any alleged agreement the Plaintiff had would have been with his employer FCT.

5. At no time did John Curl knowingly permit FCT to violate the Act by failing to pay wages to the Plaintiff.

6. John Curl did not have an oral or written contract with the Plaintiff and therefore is not liable to the Plaintiff for any breach of contract. The Plaintiff was employed by FCT and any obligation as alleged would not be owed by John Curl. The Plaintiff received a W-2 from FCT for each year. He did not receive a W-2 from John Curl. In addition, since the Plaintiff and John Curl lacked any contractual relationship and there was no breach of any such contract, there can be no breach of the implied covenant of good faith and fair dealing cause of action.

7. John Curl did not receive any benefit as a result of the Plaintiff’s services to FCT. John Curl was only a passive shareholder of FCT and had no involvement in the day to day operation of FCT. He is not subject to any claim of quantum meruit.

For the foregoing reasons, the Court should grant Defendant John Curl’s motion for summary judgment and thereby dismiss the Plaintiff’s Complaint against him.

This motion is based upon the pleadings before the Court, the Affidavit of Mike Barker, the Affidavit of John Curl, and the substantive and procedural law of the State of South Carolina.

TURNER PADGET GRAHAM & LANEY, P.A.

August 25, 2021
Florence, South Carolina

s/ Jeffrey L. Payne
Jeffrey L. Payne, Esquire
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ATTORNEY FOR DEFENDANTS

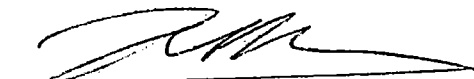
STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	Civil Action No. 2020-CP-21-01297
Walter Parker,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AFFIDAVIT OF MIKE BARKER
	)	
Florence Carpet & Tile, Inc., John Curl,	)	
and Mike Barker,	)	
	)	
<u>Defendants.</u>	)	

Personally appeared before me, Mike Barker who first being duly sworn deposes and states as follows:

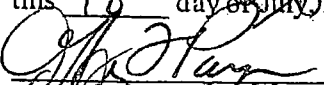
1. I began working for Florence Carpet & Tile, Inc. ("FCT") in May 2014 and I worked in the office handling a number of administrative duties for FCT. Walt Parker was always my boss at FCT until his employment was terminated on or about July 27, 2019.
2. I have never owned any shares in FCT.
3. During Walt Parker's employment period with FCT, I was never an officer of FCT.
4. As my boss Walt Parker had the authority to approve and alter FCT's payroll. I had no such authority. John Curl was not involved with the day to day operation of FCT and did not review or approve payroll matters.
5. As an owner of FCT, Walt Parker was responsible for paying himself any sums that he believed that FCT owed him. I had no such authority.
6. I never entered into any employment contract with Walt Parker. He worked for FCT and not me.
7. I did not receive any benefits from Walt Parker's employment with FCT. Any such benefits were enjoyed by FCT.

Affidavit of Mike Barker
C/A No.: 2020-CP-21-01297

FURTHER AFFIANT SAYETH NOT.


Mike Barker

Sworn to before me August
this 18 day of July, 2021.


Print Name: Jeffrey L. Payne
Notary Public for South Carolina
My Commission Expires: 1-13-2030

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	Civil Action No. 2020-CP-21-01297
Walter Parker,	)	
	)	
Plaintiff,	)	
	)	
v.	)	AFFIDAVIT OF JOHN CURL
	)	
Florence Carpet & Tile, Inc., John Curl,	)	
and Mike Barker,	)	
	)	
<u>Defendants.</u>	)	

Personally, appeared before me, John Curl who first being duly sworn deposes and states as follows:

1. On or about April 30, 2007, Walt Parker and I purchased the outstanding shares of Florence Carpet & Tile, Inc. ("FCT").
2. At the time of the purchase, Walt Parker owned 47% of the shares of FCT and I owned 53%.
3. From April 30, 2007 until July 27, 2019, ("Employment Period") Walt Parker was the President of FCT and in charge of its day to day operations including handling the company's payroll. Walt Parker was also a salaried employee of FCT who was supposed to be paid \$75,000 per year.
4. I have never been an employee of FCT and I have never received a paycheck from FCT.
5. I was not involved with the day to day operations of FCT while Walt Parker and Allison Parker were employed by FCT. Particularly, during this time, I did not review the payroll before payroll checks were issued to any FCT employees.

Affidavit of John Curl
C/A No.: 2020-CP-21-01297

6. As President of FCT Walt Parker was responsible for operating the business and making sure that the payroll for employees including himself was properly handled during the entire time of his twelve-year Employment Period.

7. Walt Parker never received a commission from FCT during his entire twelve-year Employment Period.

8. I did not have any oral employment agreement with Walt Parker. During his twelve-year Employment Period, Walt Parker received a W-2 from FCT and did not receive a W-2 from me. I have never issued a W-2 or 1099 to Walt Parker for any employment services

9. Prior to filing a lawsuit against me in November 2018, Walt Parker never contacted me to tell me that FCT owed him any wages or commissions. Even after Walt Parker filed that lawsuit he continued to run FCT and handle the payroll, including paying himself, until July 27, 2019.

10. Walt Parker did not provide any employment services to me as he alleges in his complaint. Any such services were provided to his employer FCT. I did not personally benefit from any of the alleged services that Walt Parker alleges he provided to FCT and I did not realize that I was personally benefitting from any of those services.

FURTHER AFFIANT SAYETH NOT.


 John Curl

Sworn to before me
 this 16 day of August, 2021.


 Print Name: Belva Powell
 Notary Public for South Carolina
 My Commission Expires: 02/15/24

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE TWELTH JUDICIAL CIRCUIT

WALTER PARKER,)
))
Plaintiff,)
vs.)
))
FLORENCE CARPET & TILE,)
INC., JOHN CURL and MIKE)
BARKER,)
))
Defendants.)
_____)

CASE NO: 2020-CP-21-01297

**PLAINTIFF'S RESPONSE IN
OPPOSITION TO DEFENDANTS
CURL AND BARKER'S
MOTIONS FOR SUMMARY
JUDGMENT**

Introduction

Plaintiff Walter Parker ("Plaintiff" and/or "Mr. Parker"), by and through the undersigned legal counsel does hereby respond in opposition to Defendants John Curl ("Defendant Curl and/or "Mr. Curl") and Mike Barker's ("Defendant Barker and/or "Mr. Barker") (collectively referred to herein as "these Defendants") pending motions for summary judgment. In particular, Plaintiff asserts that genuine issues of material fact exist for trial, which preclude the entry of summary judgment in this case. Accordingly, these Defendants' motions for summary judgment should be denied.

Relevant Factual Background

Plaintiff Walt Parker was employed full-time by Defendant Florence Carpet & Tile, Inc. ("Defendant Carpet & Tile") as its President from in or about 2007, until his involuntary separation from full-time employment on or about July 26, 2019 (Complaint ¶ 10; W. Parker Aff. ¶ 2; Curl Depo. p 21). According to Defendant Curl, it was "fair to say" that he and Mr. Parker were not on "very good terms" at the moment (Curl Depo. p. 70).

During the course of the Plaintiff's employment, Plaintiff was never provided with written

notice of the terms and conditions of his employment (Curl Depo. p. 22; W. Parker Aff. ¶ 3). However, all parties agreed that Mr. Parker was to be paid wages in the amount of \$75,000 per year, plus benefits (Complaint ¶ 11; W. Parker Aff. ¶ 3; Barker Depo. pp. 19-20; Curl Depo. pp. 58). In exchange therefor, Mr. Parker was required to be in charge of the day-to-day operations of the company (W. Parker Aff. ¶ 4; Curl Depo. pp. 22-23). Conversely, Defendant Curl was never involved in the daily operations of the Company (Curl Depo. p. 18).

At all times relevant hereto, Mr. Parker dutifully and properly performed his job requirements for the company (W. Parker Aff. ¶ 4; Barker Depo. pp. 19-20; Curl Depo. pp. 58). Despite such, the Defendants have not paid Mr. Parker his rightfully due and owing wages, compensation, benefits, payments and/or other monies owed in an amount exceeding \$102,303.53 (Complaint ¶s 13, 15; W. Parker Aff. ¶ 5). Likewise, Defendants Curl and Barker were/are agents, employees, and/or officers of the Corporation who knowingly permitted and/or caused the Plaintiff's damages (Complaint ¶ 8, 17; W. Parker Aff. ¶ 8; Curl Depo. p. 12-16; Barker Depo. p. 6).

Indeed, on or about May 4, 2019, and before the filing of this lawsuit, Defendant Mike Barker admittedly reviewed and signed a written statement indicating that:

...I have examined the records of [Defendant Florence Carpet & Tile, Inc.] as maintained in the ordinary course of business and have calculated the compensation due Walt Parker for his services rendered as an employee of the corporation. The balance currently due is \$102,303.53.

(Ex. 1 – Barker Written Statement; W. Parker Aff. ¶ 7; Curl Depo. p. 62-65; Barker Depo. p. 25-26).

Defendant Curl also further admits to having knowledge of Plaintiff's claim for unpaid compensation, prior to the filing of the instant lawsuit, but that no payment has yet been made (Curl Depo. pp. 63-64). Similarly, Defendants were undeniably aware of Plaintiff's claims for

unpaid compensation, since Mr. Walt Parker and Mrs. Parker had previously filed claims for unpaid compensation with the South Carolina Department of Labor, Licensing, and Regulation (“SCLLR”) (Ex. 2 – SCLLR Documents; W. Parker Aff. ¶ 6). As a result, the Plaintiff filed the instant lawsuit for unpaid compensation.

In his Complaint, the Plaintiff alleges the following causes of action against these Defendants: (1) violation of the South Carolina Payment of Wages Act; (2) breach of contract; (3) breach of the implied covenant of good faith and fair dealing; and (4) quantum meruit.¹ The Defendants have filed an Answer denying the Plaintiff’s claims. Defendants Barker and Curl have also now filed motions for summary judgment. This memorandum is submitted in opposition thereto.

Applicable Legal Standard

Pursuant to Rule 56(c) of the South Carolina Rules of Civil Procedure, summary judgment is proper if “the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.” Rule 56(c) S.C.R.C.P.; Opternative, Inc. v. S.C. Bd. of Med. Examiners, 859 S.E.2d 263, 2021 S.C. App. LEXIS 41, 2021 WL 1774528 (Ct. App. 2021) “In determining whether summary judgment is proper, the court must construe all ambiguities, conclusions, and inferences arising from the evidence against the moving party.” Weston v. Kim’s Dollar Store, 399 S.C. 303, 308, 731 S.E.2d 864, 866 (2012) (quoting Byers v. Westinghouse Elec. Corp., 310 S.C. 5, 7, 425 S.E.2d 23, 24 (1992)); Est. of Mims v. S.C. Dep’t

¹ Mr. Parker elects to no longer pursue causes of action against Defendants Barker and Curl for (1) breach of contract; (2) breach of the implied covenant of good faith and fair dealing; and (3) quantum meruit. Thus, Mr. Parker agrees to voluntarily dismiss these claims against these Defendants.

of Disabilities & Special Needs, 422 S.C. 388, 403-04, 811 S.E.2d 807, 815-16 (Ct. App. 2018) (“[I]n cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment.” (quoting Hancock v. Mid-S. Mgmt. Co., Inc., 381 S.C. 326, 330, 673 S.E.2d 801, 803 (2009))). Accordingly, summary judgment is appropriate only if there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Conner v. City of Forest Acres, 348 S.C. 454, 560 S.E.2d 606 (2002); Rule 56(c), SCRCPP. In this same regard, since it is a drastic remedy, summary judgment must be cautiously invoked so that a litigant will not” be improperly deprived of trial on disputed factual issues.” Id.

Analysis

I. *These Defendants May be Held Individually Liable for Violations Under the South Carolina Payment of Wages Act.*

Initially, Defendants Barker and Curl may be held individually liable for violations under the South Carolina Payment of Wages Act (“SCPWA”), S.C. Code Ann. § 41-10-10, *et. seq.* No genuine issues of material fact exist in this regard. For this reason, these Defendants’ motions for summary judgment should be denied.

Importantly, Plaintiff has asserted a claim under the South Carolina Payment of Wages Act, which creates a cause of action against an employer by an employee for failure of the employer to pay wages as required under that Act. S.C. Code Ann. § 41-10-80(C). Plaintiff also claims that Defendants Barker and Curl violated this Act by knowingly permitting violations and are individually liable as a result (See eg., Complaint ¶¶ 12-17).

In this regard, the SCPWA provides that employers “shall pay all wages due to the employee within forty-eight hours of the time of separation or the next regular pay day which may

not exceed thirty days.” S.C. Code Ann. § 41-10-50. The statute further provides as follows:

The Act, found in sections 41-10-10 to -110 of the South Carolina Code (Supp.2010), defines “employer” as “every person, firm, partnership, association, corporation, receiver, or other officer of a court of this State, the State or any political subdivision thereof, and any agent or officer of the above classes employing any person in this State.”

S.C. Code Ann. § 41-10-10(1) (emphasis added).

Defendants Curl and Barker undeniably fall within this definition of “employer.” No genuine issue of material fact exists in this regard. Therefore, summary judgment in favor of these Defendants should be denied.

In Dumas v. InfoSafe Corp., 320 S.C. 188, 195, 463 S.E.2d 641, 645 (Ct. App. 1995), the S.C. Court of Appeals interpreted the SCPWA, and clearly held that the legislature intended to impose individual liability on agents or officers of a corporation who knowingly permit their corporation to violate the Act. Id. “To hold otherwise would require us to ignore the words ‘and any agent or officer of the above classes.’ ” Id. Indeed, “[T]he South Carolina Payment of Wages Act is remedial legislation designed to protect working people and assist them in collecting compensation wrongfully withheld.” Id. at 194, 463 S.E.2d at 645; Allen v. Pinnacle Healthcare Sys., LLC, 715 S.E.2d 362, 364-65 (Ct. App. 2011). Other courts that have considered the issue of individual liability under the SCPWA have also similarly concluded that individuals, such as the Defendants, may be individually liable under the Act. *See eg.*, Wired Fox Techs., Inc. v. Estep, No. 15-331, 2017 WL 1135288, at *19 (D.S.C. Mar. 27, 2017) (“The [SCPWA] was ‘intended to impose individual liability on agents and officers of a corporation who knowingly permit their corporation to violate the Act.’”) (quoting Dumas, 463 S.E.2d at 645); Cool v. Ramaci, 12-02323, 2014 WL 12616090, at *3 (D.S.C. Dec. 9, 2014) (“Based on this definition, the South Carolina Court of Appeals has also held that the Act imposes ‘individual liability on agents or officers of a

corporation who knowingly permit their corporation to violate the Act.’ E.g., Allen v. Pinnacle Healthcare Sys., LLC, 715 S.E.2d 362, 365 (S.C. Ct. App. 2011)”).

Viewing the evidence in the light most favorable to the Plaintiff in this case, Defendants Curl and Barker may also be held individually liable as officers and/or agents of Defendant Florence Carpet & Tile, Inc. Again, Defendants Curl and Barker undeniably were/are agents, employees, and/or officers of the Corporation who knowingly permitted and/or caused the Plaintiff’s damages (Complaint ¶ 8, 17; W. Parker Aff. ¶ 8; Curl Depo. p. 12-16; Barker Depo. p. 6). As well, on or about May 4, 2019, and before the filing of this lawsuit, Defendant Mike Barker admittedly reviewed and signed a written statement indicating that:

...I have examined the records of [Defendant Florence Carpet & Tile, Inc.] as maintained in the ordinary course of business and have calculated the compensation due Walt Parker for his services rendered as an employee of the corporation. The balance currently due is \$102,303.53.

(Ex. 1 – Barker Written Statement; W. Parker Aff. ¶ 7; Curl Depo. p. 62-65; Barker Depo. p. 25-26).

Defendant Curl also undeniably admits to having knowledge of Plaintiff’s claim for unpaid compensation, prior to the filing of the instant lawsuit (Curl Depo. pp. 63-64). Despite such, the Defendants have also not paid Mr. Parker his rightfully due and owing wages, compensation, benefits, payments and/or other monies owed in an amount exceeding \$102,303.53 (Complaint ¶s 13, 15; W. Parker Aff. ¶ 5). No genuine issues of material fact exist in these regards. For this reason, these Defendants’ motions for summary judgment should be denied.

II. Multiple Factors Weigh in Favor of Disregarding the Corporate Entity.

Next, multiple factors undeniably also weigh in favor of disregarding the corporate entity. No genuine issues of material fact exist in this regard. For this reason, these Defendants’ motions

for summary judgment should be denied.

South Carolina's test for piercing the corporate veil requires that this court to find "a number," although not all, of the following factors weigh in favor of "disregard[ing] the corporate entity":

1. whether the corporation was grossly undercapitalized;
2. failure to observe corporate formalities;
3. non-payment of dividends;
4. insolvency of the debtor corporation at the time;
5. siphoning of funds of the corporation by the dominant stockholder;
6. non-functioning of other officers or directors;
7. absence of corporate records; and
8. the fact that the corporation was merely a facade for the operations of the dominant stockholder.

Dumas v. InfoSafe Corp., 320 S.C. 188, 463 S.E.2d 641, 644 (S.C. Ct. App. 1995). Similarly, the Plaintiff must prove "an element of injustice or fundamental unfairness if the acts of the corporation be not regarded as the acts of the [parent]." Sturkie v. Sifly, 280 S.C. 453, 313 S.E.2d 316, 318 (S.C. Ct. App. 1984). To demonstrate the presence fundamental unfairness, the Plaintiff may show that "(1) the defendant was aware of the plaintiff's claims against the corporation, and (2) thereafter, the defendant acted in a self-serving manner with regard to the property of the corporation and in disregard of the plaintiff's claim in the property." Dumas, 463 S.E.2d at 644. "However, for purposes of piercing the corporate veil, fundamental unfairness can exist in the absence of fraud, and may be proved by a lesser showing than reckless disregard." Id.

In Dumas v. InfoSafe Corp., a key case establishing South Carolina's veil-piercing criteria, the court found sufficient evidence to pierce the corporate veil and find its sole shareholder open to liability because: (1) the corporation had been undercapitalized since its inception; (2) it failed to hold directors meetings and observe other corporate formalities; (3) it did not pay dividends; (4) it was insolvent and could not pay its employees' wages; (5) the corporations funds were "regularly transferred to [the sole shareholder and his wife], allegedly for repayment of certain loans to the company"; (6) the shareholder, as the corporation's president, made all the hiring decisions; and (7) the shareholder put about \$300,000 of his own money into the corporation and described his occupation as "entrepreneur." Id. Under those facts, the Court concluded that the facts clearly demonstrated that the President, as sole shareholder of the corporation, had created the corporation to act as a shield for his own personal business dealings in order to protect himself from liability. Under virtually identical facts, piercing of the corporate veil is also appropriate in this case.

As the record reflects, Defendant Florence Carpet and Tile ("Company") had been grossly undercapitalized since its inception (W. Parker Aff. ¶ 9; A. Parker Aff. ¶ 9; Shelton Aff. ¶ 7). In fact, the company has never been provided with sufficient capital to achieve the desired results of significant profitability (W. Parker Aff. ¶ 10; A. Parker Aff. ¶ 10; Shelton Aff. ¶ 8). Mr. Curl also refused to infuse sufficient monies into the company, despite their being severely needed for employees, merchandise, customer orders, vendors, repairs, building improvements and other business necessities (W. Parker Aff. ¶ 11; A. Parker Aff. ¶ 11; Shelton Aff. ¶ 9). The company often did not generate the profit that was expected (W. Parker Aff. ¶ 11; A. Parker Aff. ¶ 11; Shelton Aff. ¶ 9). Director's meetings were also not regularly held and corporate formalities were largely ignored, including employees regularly paying for necessary items out of their own pockets for business operation (W. Parker Aff. ¶ 12; A. Parker Aff. ¶ 12; Shelton Aff. ¶ 10). Likewise, the

company did not regularly hold scheduled meetings, hold special meetings, keep accurate records,² exercise fiduciary duties to the corporation, develop a planning routine and make all company purchases in the corporation's name (W. Parker Aff. ¶ 12; A. Parker Aff. ¶ 12; Shelton Aff. ¶ 10). In fact, employees were required to purchase items using their own monies and/or credit cards to keep the business operating (W. Parker Aff. ¶ 13; A. Parker Aff. ¶ 13; Shelton Aff. ¶ 12). The company would often not be able to pay employee wages on time (W. Parker Aff. ¶ 13; A. Parker Aff. ¶ 13; Shelton Aff. ¶ 12). Defendant Curl also admitted that although, he was the majority shareholder of the company during the relevant time period, he also was the owner/operator of other business, including Curl Properties, LLC, the lessor of the company's business property (Curl Depo. pp. 12-13). Unfortunately, corporate funds were often siphoned by Defendants Curl and Barker to first to pay rent to Curl Properties, LLC and/or to Defendant Curl, even before employee wages (W. Parker Aff. ¶ 14; A. Parker Aff. ¶ 14). Again, Defendants Curl and Barker were also fully aware of the Plaintiff's claims of failure to pay compensation, prior to the filing of this lawsuit (Ex. 1 – Barker Written Statement; W. Parker Aff. ¶ 6; Curl Depo. p. 62-65; Barker Depo. p. 25-26).

Furthermore, it would also be “fundamentally unfair” to not hold the individual Defendants liable in this case. In particular, the undisputed record reflects that Defendants Curl and Barker were aware of the Plaintiff's claims prior to the filing of this lawsuit (Ex. 1 – Barker Written Statement; W. Parker Aff. ¶ 6; Curl Depo. p. 62-65; Barker Depo. p. 25-26). Again, before the

² For example, despite being the President, majority shareholder, Secretary and Treasurer of the company, Defendant Curl admittedly did not know where payroll records were located at, did not know whether they were produced to opposing legal counsel, the format in which they were maintained and/or for how long they had even been maintained. (Curl Depo. pp. 13, 15-16, 18-19); see also, S.C. Code § 41-10-30(C) (mandating that “[e]very employer shall keep records of names and addresses of all employees and of wages paid each payday and deductions made for three years).

filing of this lawsuit, Defendant Mike Barker admittedly reviewed and signed a written statement indicating that:

...I have examined the records of [Defendant Florence Carpet & Tile, Inc.] as maintained in the ordinary course of business and have calculated the compensation due Walt Parker for his services rendered as an employee of the corporation. The balance currently due is \$102,303.53.

(Ex. 1 – Barker Written Statement; W. Parker Aff. ¶ 7; Curl Depo. p. 62-65; Barker Depo. p. 25-26).

Defendant Curl also further admits to having knowledge of Plaintiff's claim for unpaid compensation, prior to the filing of the instant lawsuit (Curl Depo. pp. 63-64). Likewise, it is equally clear that the individual Defendants acted in a self-serving manner with regard to the property of the corporation and in disregard of the plaintiff's claim in the property" by refusing to pay the compensation due and owing. Dumas, 463 S.E.2d at 644. For instance, the individual Defendants undeniably continue to prioritize and/or receive salary, profits and/or rents from the Defendant corporation, despite wages and compensation being owed to company employees. For this reason, it is fundamentally unfair to not hold the individual Defendants liable in this case.

Viewing these facts in the light most favorable to the Plaintiff, as is legally required, genuine issues of material fact exist as to whether the corporate veil may be pierced. To conclude otherwise would be both erroneous as a matter of law and an abuse of discretion. For this reason, Defendant Curl and Barker's motions for summary judgment must also be denied.

Conclusion

For the foregoing reasons, Plaintiff respectfully requests that these Defendants' motions for summary judgment be denied and that this case be allowed to proceed to trial on its merits.

WILLCOX, BUYCK & WILLIAMS, P.A.

By: s/ J. Scott Kozacki
J. Scott Kozacki
SC Bar No. 64137
PO Box 1909
Florence SC 29503-1909
(843) 662-3258 Telephone
(843) 662-1342 Facsimile
Email: skozacki@willcoxlaw.com
ATTORNEY FOR THE PLAINTIFF

November 1, 2021
Florence, South Carolina

Carpet Florence Carpet & Tile, Inc.

GM
As ~~comptroller~~ of Florence Carpet & Tile, Inc., I have examined the records of that company as maintained in the ordinary course of business and have calculated the compensation due Walt Parker for his services rendered as an employee of the corporation. The balance currently due is \$ 102,303.53

May 4, 2019

Mike Barker
Mike Barker, ~~Comptroller~~ of Florence Carpet & Tile, Inc.

**S.C. DEPARTMENT OF LABOR, LICENSING AND REGULATION
DIVISION OF INVESTIGATIONS AND ENFORCEMENT/OFFICE OF WAGES AND CHILD LABOR**

Date: / / Case Number: 2019-
Mo Day Yr

CLAIMANT INFORMATION

Name PARKER WALTER A. Phone [REDACTED]
Address [REDACTED] SSN [REDACTED]
City [REDACTED] County [REDACTED] Date of Employment 5/1/2007
State [REDACTED] Zip [REDACTED] Separation 7/26/2019
Discharged ☒ Quit ☐ Still Working ☐

EMPLOYER INFORMATION

Company FLORENCE TILE, INC. Phone (843) 669-1851
Contact Person MIKE BARKER Title COMPANY MANAGER
Address 1706 PAMPLICO HWY. Type of Business FLOOR COVERING SALES & INSTALLATION
City FLORENCE County FLORENCE Number of Employees 13
State SC Zip 29505

ADDITIONAL INFORMATION

INCLUDES DEFERRED COMPENSATION AND 401(K)

CLAIM INFORMATION

Employee Occupation PRESIDENT
Rate of Pay: \$ 15,000 per YEAR
Other:
Deductions: Yes ☒ No ☐
Fed. ☒ State ☒ FICA ☒ Other ☐
PAY PERIOD
Weekly ☒ Bi-weekly ☐
Monthly ☐ By the job or other ☐
SPECIFIC PAYDAY: FRIDAY
SPECIFIC PAY DATE: 8/2/2019
Time & Place of Payment: DIRECT DEPOSIT
Where work performed: FLORENCE & VICINITY
Investigator

BASIS OF CLAIM
Wages ☒ Vacation ☐ Commission ☐
Bad Check ☐ Other ☒ 401(K)
UNPAID TIME WORKED: Hours
Dates VARIOUS - ON FILE AT COMPANY
ADVANCE/Setoff: Yes ☐ No ☐ Amt \$
Net amount owed by employer: \$32,313.31
CLAIMANT REQUESTED WAGES: Yes ☒ No ☐
Date: 8/19/2019
From Whom: JEFFREY L. PAYNE, ESQUIRE
CLAIMANT RECEIVED WRITTEN NOTIFICATION AS REQUIRED BY 41-10-30(A) Yes ☐ No ☒
Walter Parker 9-5-19
Claimant's Signature Date

WCL-3 (Rev. 9/05)

LABOR

PROGRAM: WAGES & CHILD LABOR

DATE: 9.9.19 OPEN: YES ☒ NO ☐

OTHER: _____

COMPLAINANT: Walter ParkerRESPONDENT Florence & Tile, Inc.HOW RECEIVED: Mail _____ Fax _____ In Person _____ Other ☒INVESTIGATOR ASSIGNED: MMSUPERVISOR: Chief BaldwinCATEGORY: Wages Claim ☒ Child Labor ☐ALLEGED ISSUES: Failure to pay Wages ☒ Recordkeeping _____
Child Labor _____

No Jurisdiction _____

Referral _____

Over One Year _____

COMMENTS: _____

Mary Ann Miller

To: [REDACTED]
Cc:
Subject: case # 2019-1121 Walter A. Parker
Attachments: 2019-09-12 (3).pdf

Good morning.

Would you please provide me with any written documents, contracts or offer letters that you may have had with Mr. John Curl/Florence & Tile, Inc? Also provide a statement about how you got involved with Mr. Curl and the agreement, verbal or written and what percent of ownership did you have. What was the agreed wages?

Thank you in advance for a speedy response.

Mary Ann Miller
Investigator III
Office of Investigations & Enforcement
South Carolina Labor Licensing & Regulations
110 Centerview Drive
Columbia SC 29211-1329
Phone:(803) 896-4378
Fax: (803) 896-7680
Email: Maryann.miller@llr.sc.gov
Website: www.llronline.com



Henry D. McMaster
Governor

Emily H. Farr
Director

South Carolina
Department of Labor, Licensing and Regulation

Division of Professional and Occupational Licensing
Office of Investigations and Enforcement



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4470
FAX: (803) 896-4656

September 12, 2019

Mr. Walter A. Parker
[REDACTED]

Re: Employer: Florence & Tile, Inc.
Case No.: 2019-1121

Dear Mr. Parker:

I am in receipt of your wage complaint. As an Investigator, I investigate employee wage complaints to determine whether an employer is in compliance with the S.C. Payment of Wage Law. If during the investigation it is determined that the employer is in violation of the Wage Payment Statute, the appropriate sanctions will be issued to the employer. You will be notified of the outcome of your case once my investigation is complete.

The Office of Wages and Child Labor **does not** have the authority to collect your wages or make an employer pay you. You have self serve rights under Section 41-10-80(C) of the South Carolina Payment of Wages Law.

Section 41-10-80(C) of the Payment of Wages Law states:

"In case of any failure to pay wages due to an employee as required by Subsection 41-10-40 or 41-10-50, the employee **may recover** in a Civil Action an amount equal to three times the full amount of the unpaid wages, plus costs and reasonable attorney's fees as the court may allow. Any civil action for the recovery of wages must be commenced within three years after the wages become due."

Any action you take in regards to a civil action is independent and separate from the actions and responsibilities of the Department of Labor.

Sincerely,

Mary Ann Miller
Investigator
(803) 896-4378
maryann.miller@llr.sc.gov



FLORENCE CARPET & TILE

September 25, 2019

Mary Ann Miller, Investigator II
SCDLLR
110 Centerview Dr.
Columbia, SC 29211

RE: Case # 2019-1122 – Allison Parker

Dear Ms. Miller:

This letter is to confirm the ownership of Florence Carpet and Tile, Inc. While I have not seen or inspected any corporate documentation addressing owner composition, it has been known to me since I was hired as General Manager that John Curl is the majority owner of the store and Walt Parker is a minority owner, and that combined they own 100% of the business. This has been confirmed to me by both parties on multiple occasions.

I verified today via phone with John Curl that he has 53% ownership interest in Florence Carpet and Tile, and Walt Parker has 47% ownership interest.

If you have any further questions, please let me know.

Sincerely,

Mike Barker
General Manager

EXHIBIT 1

Phone (843) 669-1851

www.florencecarpetandtile.com

Fax (843) 661-2671

Post Office Drawer 13460

Florence, South Carolina 29504

1706 Pamlico Highway

Mary Ann Miller

From: Mike Barker [REDACTED]
Sent: Wednesday, September 25, 2019 12:00 PM
To: Mary Ann Miller
Subject: FW: case # 2019-1122
Attachments: Doc - Sep 25 2019 - 11-55 AM.pdf

Importance: High

*** SCDLLR NOTICE ***

- This email is from an external email address. Please use caution when deciding whether to open any attachments or when clicking links.
- Personally Identifiable Information (PII) should not be included in e-mail text or attachments. Do not save or transmit PII unencrypted.

Mary Ann, per our conversation, attached is a letter confirming the ownership makeup of Florence Carpet and Tile. If you need anything else, please let me know.

Thanks,
Mike

Mike Barker
General Manager

Florence Carpet and Tile
Different By Design

1706 Pamplico Hwy.
Florence, SC 29505
843-669-1851

From: Mike Barker
Sent: Tuesday, September 24, 2019 11:33 AM
To: 'Mary Ann Miller'
Subject: RE: case # 2019-1122
Importance: High

Please see our response attached. Thank you.

Mike Barker
General Manager

Florence Carpet and Tile
Different By Design

1706 Pamplico Hwy.
Florence, SC 29505
843-669-1851

From: Mary Ann Miller [REDACTED]
Sent: Thursday, September 19, 2019 3:20 PM
To: Mike Barker
Subject: case # 2019-1122

Thank you in advance for a three day response.

Mary Ann Miller
Investigator III
Office of Investigations & Enforcement
South Carolina Labor Licensing & Regulations
110 Centerview Drive
Columbia SC 29211-1329
Phone: (803) 896-4378
Fax: (803) 896-7680
Email: Maryann.miller@llr.sc.gov
Website: www.llronline.com



FLORENCE CARPET & TILE

September 25, 2019

Mary Ann Miller, Investigator II
SCDLLR
110 Centerview Dr.
Columbia, SC 29211

RE: Case # 2019-1122 – Allison Parker

Dear Ms. Miller:

This letter is to confirm the ownership of Florence Carpet and Tile, Inc. While I have not seen or inspected any corporate documentation addressing owner composition, it has been known to me since I was hired as General Manager that John Curl is the majority owner of the store and Walt Parker is a minority owner, and that combined they own 100% of the business. This has been confirmed to me by both parties on multiple occasions.

I verified today via phone with John Curl that he has 53% ownership interest in Florence Carpet and Tile, and Walt Parker has 47% ownership interest.

If you have any further questions, please let me know.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Mike Barker'.

Mike Barker
General Manager

Phone (843) 669-1851

www.florencecarpetandtile.com

Fax (843) 661-2671

Post Office Drawer 13460

Florence, South Carolina 29504

1706 Pamplico Highway

Mary Ann Miller

From: [REDACTED]
Sent: Monday, September 23, 2019 3:34 PM
To: Mary Ann Miller; [REDACTED]
Subject: Case # 2019-1122
Attachments: IMG-9546.JPG; IMG-9547.JPG; IMG-9548.JPG

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Mary Ann,

Per our conversation please find the 3 documents. 2 signed by Mike Barker and the 3rd (spreadsheet) compiled by him detailing what is owed to us.

Please let me know what other info you need.

Thanks,

Walt Parker

Mary Ann Miller

From: [REDACTED]
Sent: Monday, September 23, 2019 3:50 PM
To: Mary Ann Miller; Reynolds Williams
Subject: Case # 2019-1150

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Mary Ann,

As well per our conversation, after I was fired, I was kept on (still have an office and drive company vehicles) to finish jobs I was in the middle of at the time of being fired as I was the only one who could finish them and collect the balance due which they desperately needed. I have a voice mail confirming I was working. I was paid the first week after being fired, allowed to work the next week and didn't find out there was no intention to pay me until the Thursday before payday (Friday). Mike Barker confirmed to me that that was John's plan for retaining me.

I still have two weeks of vacation I haven't been paid for as well.

Carpet Florence Carpet & Tile, Inc.

GM
As ~~comptroller~~ of Florence Carpet & Tile, Inc., I have examined the records of that company as maintained in the ordinary course of business and have calculated the compensation due Walt Parker for his services rendered as an employee of the corporation. The balance currently due is \$ 102,303.53

May 4, 2019

Mike Barker *General Manager*
Mike Barker, ~~Comptroller~~ of Florence
Carpet & Tile, Inc.

Summary of Amounts Owed to Walter Parker by Florence Carpet and Tile

Summary			
Obligation	Balance As Of	Trans Amount	Amount Owed
GMC Yukon Down Payment 2500 cash	6/1/2019		\$ 2,500.00
Balance of Capital One credit card	6/1/2019		\$ 8,414.26
Balance of Lowe's Card	6/1/2019		\$ 2,210.17
Discover Card balance and accrued interest	6/1/2019		\$ 54,616.23
Health ins Paid By Walt (With interest @ 5.5%)	6/1/2019		\$ 1,812.28
Cash for Operating Expenses (With interest @5.5%)	6/1/2019		\$ 13,677.20
401K Monies Owed Walt (With interest @5.5%)	6/1/2019		\$ 14,234.12
Loan to Payroll - Michael Ussery (With interest @ 5.5%)	2/1/2019	\$ 7,236.90	
Total Payments as Deferred Compensation (Itemized Below)	12/21/2018	\$ 5,527.93	
Balance of Loan to Payroll - Michael Ussery (w/interest @5.5%)	6/1/2019		\$ 1,740.41
Deferred Compensation Earned (Itemized Below)	12/21/2018	\$ 6,968.01	
Estimated Deductions Not Payable	12/21/2018	\$ 1,440.08	
Balance of Deferred Compensation Payable	6/1/2019		\$ 5,527.93
Balance of Commissions Due Allison Parker (Itemized Below)	6/1/2017		\$ 55,068.47
Total Balance Due			\$ 159,801.07

Itemizations/Detail

Payments (as deferred compensation)		Date	Amount
Check #100737 to Allison Parker		12/7/2018	\$ 586.51
Check #100738 to Walt Parker		12/7/2018	\$ 1,134.20
Check #100764 to Allison Parker		12/14/2018	\$ 586.51
Check #100765 to Walt Parker		12/14/2018	\$ 1,134.20
Check #100781 to Walt Parker		12/21/2018	\$ 1,500.00
Check #100782 to Allison Parker		12/21/2018	\$ 586.51
Total Payments			\$ 5,527.93
Deferred Compensation		Date	Amount
Allison Parker		12/7/2018	\$ 807.67
Walt Parker		12/7/2018	\$ 1,515.00
Allison Parker		12/14/2018	\$ 807.67
Walt Parker		12/14/2018	\$ 1,515.00
Allison Parker		12/21/2018	\$ 807.67
Walt Parker		12/21/2018	\$ 1,515.00
Total Deferred Compensation Obligation			\$ 6,968.01
Commissions Due Allison Parker			
Year	Gross Sales	Commissionable Sales	Estimated Commissions Earned
2012	\$ 69,402.79	\$ 64,261.84	\$ 1,285.24
2013	\$248,198.80	\$ 229,813.70	\$ 4,596.27
2014	\$280,140.28	\$ 259,389.15	\$ 5,187.78
2015	\$302,279.25	\$ 279,888.19	\$ 5,597.76
2016	\$513,101.89	\$ 475,094.34	\$ 9,501.89
2017	\$456,017.42	\$ 422,238.35	\$ 8,444.77
2018	\$373,753.74	\$ 346,068.28	\$ 6,921.37
2019 May (submitted)	\$200,670.22	\$ 185,805.76	\$ 4,865.87
Interest @5.5 percent, based on EOM balances			\$ 1,149.75
			\$ 7,517.78
Total:			\$ 55,068.47

Mary Ann Miller

To: [REDACTED]
Cc: [REDACTED]
Subject: case # 2019-1121 Walter A. Parker
Attachments: 2019-09-12 (3).pdf

Good morning.

Would you please provide me with any written documents, contracts or offer letters that you may have had with Mr. John Curl/Florence & Tile, Inc? Also provide a statement about how you got involved with Mr. Curl and the agreement, verbal or written and what percent of ownership did you have. What was the agreed wages?

Thank you in advance for a speedy response.

Mary Ann Miller
Investigator III
Office of Investigations & Enforcement
South Carolina Labor Licensing & Regulations
110 Centerview Drive
Columbia SC 29211-1329
Phone: (803) 896-4378
Fax: (803) 896-7680
Email: Maryann.miller@llr.sc.gov
Website: www.llronline.com

Investigator: Miller
Report Number: 2019-1121
Claimant: Walt Parker
Type of Complaint: Unpaid Wages

Florence Carpet & Tile LLC
1706 Pamplico Hwy.
Florence, SC 29505

Findings:

The Claimant filed a complaint with this office alleging non-payment of wages. He claims that the company owes him \$102,303.53 in deferred compensation.
On 09/12/2019, during a conversation with the Claimant he stated that he is an owner of the company.

On 09/25/2019, R/I contacted Mike Barker, the GM of the company, via the telephone,
He said the claimant owns 45% ownership and John Curl owns 55% of the business.

This office has no jurisdiction over this case because the claimant is an owner of the company.

Cite this Employer for:

No violations of SC Section 41-10-30(A).

No Violations of SC Section 41-10-40(D).



110 Centerview Drive
Post Office Box 11329
Columbia, SC 29211-1329
Phone: (803) 896-4470
FAX: (803) 896-4656

South Carolina
Department of Labor, Licensing and Regulation

Division of Professional and Occupational Licensing
Office of Investigations and Enforcement



Henry D. McMaster
Governor

Emily H. Farr
Director

October 22, 2019

Mr. Walter A. Parker
[REDACTED]

Re: Florence Carpet & Tile
Case No.: 2019-1121

Dear Mr. Parker:

The Department of Labor, Licensing and Regulation, through its Office of Investigations and Enforcement, has completed the investigation of your complaint against the above-referenced employer.

As a result of this investigation, the Department found no violations of the South Carolina Payment of Wages Act.

However, if you are in disagreement with the Department's determination, you may pursue legal action in court under S.C. Code Ann. § 41-10-80(C) of the S.C. Payment Act. This section of the law allows for triple unpaid wages, court cost and reasonable attorney fees.

The Department has officially closed this file. If you have any questions, please feel free to contact me.

Sincerely,

Mary Ann Miller
Investigator

ELECTRONICALLY FILED - 2021 Nov 01 12:55 PM - FLORENCE - COMMON PLEAS - CASE#2020CP2101297



110 Centerview Drive
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South Carolina
Department of Labor, Licensing and Regulation

Division of Professional and Occupational Licensing
Office of Investigations and Enforcement



Henry D. McMaster
Governor

Emily H. Farr
Director

October 22, 2019

Florence Carpet & Tile
1706 Pamplico Hwy.
Florence, SC 29505

Re: Employee: Mr. Walter A. Parker
Case No.: 2019-1121

Dear Mr. Barker:

The Department of Labor, Licensing and Regulation, through its Office of Investigations and Enforcement, has completed the investigation in the above-referenced case number.

The investigation did not reveal any violations under the S.C. Payment Statute, S. C. Code Ann. § 41-10-40 nor the S.C. Record Keeping Statute, S. C. Code Ann. § 41-10-30.

The Department has officially closed this file. If you have any questions, please feel free to contact me.

Sincerely,

Mary Ann Miller
Investigator

ELECTRONICALLY FILED - 2021 Nov 01 12:55 PM - FLORENCE - COMMON PLEAS - CASE#2020CP2101297

State of South Carolina
In Common Pleas Court
Twelfth Judicial Circuit
County of Florence

Walter Parker,
Plaintiff

v. 2020-CP-21-01297

Florence Carpet and Tile, Inc.,
John Curl and Mike Barker,
Defendants.

Allison Parker,
Plaintiff,

v. 2020-CP-21-01296

Florence Carpet and Tile, Inc.,
John Curl and Mike Barker,
Defendants.

The Videoconference Deposition of: John Curl

Location: 1831 West Evans Street,

Florence, South Carolina

Date: Tuesday, May 25, 2021

Time: 10:03 a.m. --11:55 a.m.

Court Reporter: Roger R. Williamson

The deposition is taken pursuant to notice and/or agreement, in the above-entitled cause pending in the above-named court and pursuant to the South Carolina Rules of Civil Procedure.

Q & A Court Reporting Services
Post Office Box 4563 (29502)
273 West Evans Street
Florence, South Carolina (29501)
Telephone: (843) 673-9845
E-mail: info@qacourtreporting.com
Visit: www.qacourtreporting.com

1 H-O-V-E-R (sic).

2 MR. KOZACKI: Okay. Let's go off the
3 record for a second.

4 (Off-the-record discussion.

5 MR. KOZACKI: Mr. Curl, did you say
6 you're --

7 THE COURT REPORTER: Hold on -- hold
8 on --

9 MR. KOZACKI: -- currently an officer of
10 Florence Carpet --

11 THE COURT REPORTER: Back on the record.

12 MR. KOZACKI: Okay. I'm sorry. Let's
13 go back on the record.

14 BY MR. KOZACKI:

15 Q Mr. Curl, my understanding is that you
16 are the current owner -- or partial owner of
17 Florence Carpet and Tile, Incorporated. Is that
18 correct?

19 A It is.

20 Q And it's my understanding that you
21 allege you're a 53 percent owner in that company?

22 A That is correct.

23 Q Now to summarize your background and
24 just try again to speed up things a little bit. My
25 understanding is that you're also an operating

1 partner at Curl and Carmen Real Estate, L.L.C.

2 Correct?

3 A Yes.

4 Q You're currently also a broker at
5 Coldwell Banker McMillan and Associates?

6 A That is correct.

7 Q You're president of John --
8 John C. Curl Construction, Incorporated?

9 A That is correct.

10 Q You're the president at
11 Curl Builders, Incorporated?

12 A That is correct.

13 Q You are managing member at
14 Curl Properties, L.L.C.?

15 A That is correct.

16 Q What position do you currently hold at
17 Florence Carpet and Tile?

18 A President.

19 Q How long have you been the president of
20 Florence Carpet and Tile?

21 A Since Walt left the business. I don't
22 remember the exact date. It's about a
23 year-and-a-half or two years now, I guess.

24 Q Is on or about July 26 of 2019 sound
25 right?

1 A Sounds correct.

2 Q And when you say Walt, of course, we're
3 referring to Walt Parker?

4 A That is correct.

5 Q And did Mr. Parker voluntarily leave as
6 president of the company or was he terminated?

7 A He was terminated.

8 Q And who actually terminated him?

9 A The -- the board.

10 Q And describe for me who actually took --
11 was the board comprised of at the time of
12 Mr. Parker's termination?

13 A At the time, it was Walt Parker,
14 myself and Devlin Curl.

15 Q And what was Mr. Devlin Curl's role in
16 the company?

17 A Just a board member.

18 Q Have you ever had occasion to serve in
19 the military?

20 A Have not.

21 Q And you're currently married?

22 A I am.

23 Q What is your wife's full legal name?

24 A Kathleen Marie Curl.

25 Q Do you have any children over the age

1 of 18?

2 A I do.

3 Q What are their names?

4 A Evan Curl Moore and Katherine Curl.

5 Q Do either of your children currently
6 reside in Florence County?

7 A My youngest daughter, Katherine.

8 Q Do you have any other family members,
9 either by blood or marriage, that live in
10 Florence County?

11 A My brother, his wife --

12 Q And can you --

13 A -- and two of his four children live
14 in Florence.

15 Q Can you give me their last names,
16 please?

17 A My brother's last name is Curl. As
18 well as my sister-in-law and my nephew, which is
19 Devlin Curl. And my niece is married, and,
20 unfortunately, I don't remember her married name.

21 Q Okay. Mr. Curl, forgive me for asking
22 this question, but I ask it of all my deponents.
23 Have you ever been arrested?

24 A No.

25 Q Who are the current corporate officers

1 of Florence Carpet and Tile?

2 A Myself and Mike Barker.

3 Q And what is Mr. Barker's role with the
4 company?

5 A He -- his -- the corporate office he
6 holds is -- is vice-president and his current
7 position is store manager.

8 Q How long has Mr. Barker held the title
9 of vice-president with the company?

10 A Since -- at the same time we elected
11 new officers when I was elected president.

12 Q So that would have been subsequent to
13 Mr. Parker being terminated as the president?

14 A That is correct.

15 Q Does the company currently have a
16 secretary?

17 A I am the secretary.

18 Q Okay. And does the company currently
19 have a treasurer?

20 A That would be myself as well.

21 Q Do you know who the current registered
22 agent is for service of process for
23 Florence Carpet and Tile?

24 A I believe that, if you're talking
25 about who's the registered agent with the

1 BY MR. KOZACKI:

2 Q You can answer.

3 MR. PAYNE: You can go ahead and answer
4 it.

5 THE DEPONENT: As far as I know.

6 BY MR. KOZACKI:

7 Q Is it fair to say, Mr. Curl, that you've
8 never been involved with the day-to-day operations
9 of the corporation?

10 A Yes.

11 Q Since Mr. Parker has left, have you
12 taken a more active role in the day-to-day
13 operations of the corporation?

14 A Yes.

15 Q Describe how your duties with the
16 corporation have changed since Mr. Parker left.

17 A I've been more involved with the
18 oversight of the financial dealings and some with
19 the vendors and suppliers.

20 Q Have you had increased duties and
21 responsibilities as it relates to payroll?

22 A No.

23 Q How long has the corporation maintained
24 payroll check records?

25 A I don't know.

1 Q Do you know whether or not the
2 corporation maintained payroll check records during
3 the time Mr. and Ms. Parker were employed by
4 Florence Carpet and Tile?

5 A Yes.

6 Q And do those -- are those pay records
7 still kept by the corporation?

8 A Yes.

9 Q Do you know where those payroll records
10 are located at?

11 A No.

12 Q Do you know whether or not they've been
13 produced to your counsel?

14 A No.

15 Q Who would have that information?

16 A Either Mike or he would know who has
17 it.

18 Q Do you have any reason to know why those
19 records were not produced during discovery today?

20 A No.

21 Q Are those payroll records, to the best
22 of your knowledge, maintained in a hard copy or are
23 they maintained in some type of computer copy?

24 A I do not know.

25 Q Do you know whether or not

1 insurance because he was going to exceed the
2 amount of money in income that would allow him to
3 get the assistance for health insurance. So there
4 was a period of time --

5 Q When you say --

6 A -- he did not take paychecks and then
7 he did later give himself those paychecks where he
8 hand wrote checks for payment.

9 THE COURT REPORTER: Can I interject
10 just for a second, please?

11 BY MR. KOZACKI:

12 Q So is it fair to say -- sure.

13 THE COURT REPORTER: Mr. Kozacki, it
14 would help me a lot since their last names are so
15 similar if you could differentiate Walt Parker from
16 Mike Barker when having these discussions. I don't
17 want to put the -- I don't want to put the wrong
18 last name in the transcript. Thank you.

19 BY MR. KOZACKI:

20 Q All right. Certainly. I'll do my best.
21 When did Mr. Parker, Walt Parker, first become
22 employed by Florence Carpet and Tile?

23 A When it was purchased from the
24 Carnell's in the end of April, 2007.

25 Q And when he first became employed, did

1 he prepare a W-2 form to the best of your knowledge?

2 Or excuse me, a W-4?

3 A I do not know that. I would assume

4 so --

5 Q Do you know --

6 A -- there was -- there was a -- there

7 was a -- there was a person in the business office

8 at the time that handled the day-to-day business

9 activities that would have done that for all

10 employees. So I would assume that to be correct.

11 Q Do you know whether or not

12 Mr. Walt Parker received written notice of the terms

13 and conditions of his employment at the time he was

14 first employed?

15 A He was not.

16 Q And why -- why was he not provided those

17 terms and conditions?

18 A He was a shareholder in the company,

19 and an officer in the company, and he came to work

20 as a day-to-day employee of the company, but also

21 as one of its owners. He was the day-to-day

22 operator.

23 Q When Ms. Allison Parker first came to

24 work for the company, was she provided with written

25 notice of the terms and conditions of her

1 employment?

2 A I don't know that. That would have
3 been Walt's responsibility. He was the -- in
4 charge of the day-to-day operations at that time.

5 Q Do you know whether or not
6 Mr. Walt Parker and Ms. Allison Parker were supposed
7 to be paid on a weekly basis?

8 A They were to be paid the same as all
9 other employees.

10 Q And what does that mean?

11 A They were to be treat--- treated the
12 same as all other employees. It was C Corporation
13 and there was to be no differentiation between
14 them or any other employee.

15 Q Were your other employees paid on a
16 weekly basis or a bi-weekly basis during the time
17 that Mr. and Ms. Parker were employed?

18 A I was not in charge of payroll. I do
19 not know the answer to that question.

20 Q Would Mr. Barker and/or Mr. Walt Parker
21 better able to answer those questions?

22 A Walt Parker would be. Mr. Barker did
23 not come to work for Florence Carpet and Tile
24 until a number of years after the -- both Walt and
25 Allison came to work there. So he would not be

1 A I think it was in the -- there was a
2 resume and a job description and an outline of his
3 employment that was provided to the bank at the
4 time that we got the loan. So I would say it was
5 memorialized but it may not be in his employment
6 file.

7 Q All right. But you're unaware of any
8 job description in either Mr. Walt Parker or
9 Ms. All--- Ms. Allison Parker's personnel file.
10 Correct?

11 A I would think that would have been his
12 responsibility to put those in the personnel file,
13 him being responsible for all day-to-day
14 operations.

15 Q Okay. The rate of pay for Mr. Walt
16 Parker was 75,000 dollars a year and that was
17 outlined in response to question 7. Correct?

18 A That is correct.

19 Q Answer 7?

20 A That is correct.

21 Q Do you happen to have any documentary
22 evidence as to when Ms. Allison Parker's salary was
23 actually increased to 42,000 dollars?

24 A I personally do not. She -- when her
25 kids -- well, let me put it differently. It's my

1 MR. KOZACKI: Four? Okay.

2 MR. PAYNE: Go ahead. I'm sorry. I'll
3 find it.

4 (Plaintiffs' Exhibit Number 4
5 marked for identification.)

6 BY MR. KOZACKI:

7 Q Mr. Curl, do you recognize this
8 particular document?

9 A Yeah, I've seen this document. I've
10 questioned this document. This was something that
11 was cooked up during the trial that we were in
12 with Mr. Parker. It's -- it's my understanding it
13 was based off of some hypothetical numbers that
14 were generated. And Mike was Walt Parker's
15 employee. And so he did this at the directive of
16 Walt Parker. So if you've got your boss standing
17 over your shoulder telling you to sign a document,
18 you sign the document.

19 Q You weren't personally present when this
20 document was signed, do you?

21 A Nope.

22 Q You weren't in any way conferred with --
23 concerning this document before it was signed, were
24 you?

25 A Nope.

1 Q In fact you don't have any personal
2 knowledge of the facts and circumstances surrounding
3 the execution of this document, do you?

4 A Except questioning Mike Barker.

5 Q Okay. And if we look to where
6 Mike Barker's signature is located, does that appear
7 to be Mr. Barker's signature to do?

8 A It does.

9 Q Does this document in any way reflect
10 that this is in response to a hypothetical
11 questioning of Mr. Walt Parker to Mr. Mike Barker?

12 A The document itself does not. It's my
13 understanding that it's something that -- that
14 Walt directed.

15 Q And if -- that understanding came from
16 what somebody else told you. Is that correct?

17 A That is correct.

18 Q And who would have told you that
19 information?

20 A Mike Barker.

21 Q And Mr. Barker would have told you that
22 information after this lawsuit was filed. Correct?

23 A Which lawsuit? You have to realize
24 Walt's had multiple lawsuits. I think when I
25 questioned this document that came out during the

1 last lawsuit that it was generated for, that's
2 when I was told, not on this lawsuit.

3 Q Okay. And this particular document
4 which was now signed by Mr. Parker indicates that he
5 has examined the records of the company as
6 maintained in the ordinary course of business and
7 has calculated the compensation to Walt Parker for
8 his services rendered as an employee of the
9 corporation. The balance currently due as of
10 May 4, 2019, is \$102,303.53. Is that accurate?

11 A That's what the document says, but
12 there's nothing that supports that. Except for
13 Walt Parker's demand that it be signed off on.

14 Q And if that's stated by a corporate
15 officer that \$102,000 dollars plus was due and
16 owing to my client. Correct?

17 A Excuse me?

18 Q Well, you said there was nothing to
19 support it. I said except for an attestation by a
20 corporate officer, Mr. Mike Barker, that my clients
21 were due the monies that he was due and owed?

22 A No, he was not a corporate officer at
23 the time this document was signed. Walt Parker
24 was the corporate officer at the time this
25 document was signed, and was Mike Barker's boss

1 and insisted that he sign it.

2 Q And the only basis for you knowing that
3 he insisted it be signed was based upon what
4 Mr. Barker told you?

5 A Well -- and you can look at the
6 document itself where comptroller was struck out
7 by Mike Barker and written in general manager.
8 They were trying to make out as if he was someone
9 who had done an -- who had an accounting
10 background that had a corporate title which he did
11 not. He was general manager.

12 Q And when you say, they, who are you
13 referring to?

14 A I'm saying Walt Parker. Walt.

15 Q The next document I'm going to show you,
16 Mr. Curl, is a summary of account of amount owed to
17 Walt Parker by Florence Carpet and Tile, Bates
18 stamped numbers, beginning 2, 3, 4, 5, 6, and 7. Do
19 you recognize this particular document? And I'm --
20 tell me to scroll down when you need me to.

21 A No, I have seen the document. It's
22 something that -- that Walt put together and
23 had -- had Mike put on a spread sheet. I do
24 recog--- recognize the document. None of the --
25 none of the numbers were on the balance sheet for

1 Q Is it fair to say you and Walt are not
2 on very good terms at the moment?

3 A Not at all.

4 Q What is your relationship currently with
5 Allison Parker?

6 A You know, I feel sorry for her. I
7 don't -- I don't have a relationship with her. I
8 haven't seen or talked to her since she left,
9 and -- and I -- I really feel bad for her.

10 Q Is there any way of determining the
11 sales histories for the company during the time that
12 Allison Parker was employed by the company?

13 A Gross sales for the company?

14 Q No, the amount of sales that may have
15 been associated with her -- with her sales number.

16 A Yes, that could occur but being an
17 inside salesperson a lot of transactions that
18 would have been -- would have been handled by
19 multiple people on the floor. She would enter
20 in -- many of the transactions that I would do
21 with Florence Carpet and Tile, Allison would be
22 listed as my salesperson. She was the person on
23 the floor, and she would be listed as the
24 salesperson because she would enter the invoice
25 because I would be point of contact with her, so I

State of South Carolina
In Common Pleas Court
Twelfth Judicial Circuit
County of Florence

Walter Parker,
Plaintiff

v. 2020-CP-21-01297

Florence Carpet and Tile, Inc.,
John Curl and Mike Barker,
Defendants.

Allison Parker,
Plaintiff,

v. 2020-CP-21-01296

Florence Carpet and Tile, Inc.,
John Curl and Mike Barker,
Defendants.

The Videoconference Deposition of: Mike Barker

Location: 1831 West Evans Street,

Florence, South Carolina

Date: Tuesday, May 25, 2021

Time: 12:15 p.m. - 1:25 p.m.

Court Reporter: Roger R. Williamson

The deposition is taken pursuant to notice and/or agreement, in the above-entitled cause pending in the above-named court and pursuant to the South Carolina Rules of Civil Procedure.

Q & A Court Reporting Services
Post Office Box 4563 (29502)
273 West Evans Street
Florence, South Carolina (29501)
Telephone: (843) 673-9845
E-mail: info@qacourtreporting.com
Visit: www.qacourtreporting.com

1 Q Okay. How long have you lived there at
2 that address?

3 A A little over a year.

4 MR. KOZACKI: And let's go off the
5 record.

6 (Off-the-record discussion.)

7 BY MR. KOZACKI:

8 Q Mr. Barker, my understanding is you --
9 that you are currently an officer of
10 Florence Carpet and Tile, Incorporated. Correct?

11 A That's correct.

12 Q And what title do you presently hold
13 with the company?

14 A Vice president and general manager.

15 Q And how long have you held the title of
16 vice president?

17 A A little over two years.

18 Q How long after Mr. Walt Parker's leaving
19 the company did you become the vice president?

20 A It was within a month following his
21 departure.

22 Q And was there a meeting of the board
23 that decided that to the best of your knowledge?

24 A To the best of my knowledge, yes.

25 Q Would there have been recorded minutes

1 Q Who would have knowledge of that fact if
2 you were not aware of it?

3 A It would be difficult for me to
4 speculate, but I imagine anyone that was in that
5 position for processing payroll would have that
6 information as well as the Parkers themselves.

7 Q Were both of the -- Mr. and Ms. Parker,
8 were they supposed to be paid the same amount each
9 and every week?

10 A Yes, they were both salaried employees
11 and that would equate to equal paychecks.

12 Q And I understand that Ms. Parker was
13 paid differently the first time that she was there
14 as opposed to the second time. Is that correct?

15 A I've heard that. I -- I wasn't there
16 the first time she was there, so I can't speak --
17 speak to that.

18 Q You never had occasion to compare what
19 she had been being paid -- paid previously?

20 A Not really, no.

21 Q What is your understanding as to how
22 Mr. Walt Parker was supposed to be paid during the
23 time that you were there?

24 A It was my understanding that he earned
25 a set salary.

1 Q And in addition to his set salary,
2 describe for me each benefit that he was supposed to
3 be receiving as a company employee?

4 A He did have a company car that was
5 obviously paid for by the company that he had at
6 disposal for both business and personal use. He
7 was paying his insurance through the company
8 funds. Mr. Curl told me that that was not
9 supposed to be the case. So to my knowledge, that
10 was not something he was supposed to receive but
11 he was receiving it.

12 Q And tell me when you first learned of
13 that?

14 A Learned of what?

15 Q That Mr. Parker was receiving payments
16 for insurance that he should not have been.

17 A I don't recall the specific time. I
18 do recall that we were having -- I was having a
19 discussion with John or whatever and just
20 mentioned that, you know, we were paying
21 Mr. Parker's insurance, and he let me know that
22 that was not supposed to be the case.

23 Q Okay. And was that before or after
24 Mr. and Ms. Parker had filed a lawsuit in this case?

25 A That was before.

1 Q Mister -- Mr. Barker, did you ever
2 complete a form attempting to indicate that you had
3 calculated a compensation due to Walt Parker for his
4 services and that that compensation totaled
5 a \$102,303.53?

6 A At Walt's request, I compiled a spread
7 sheet of all the amounts that he believed he was
8 owed and produced that for him.

9 Q Okay. And tell me the circumstances in
10 which that was requested to be produced.

11 A He came to me and simply indicated
12 that he believed there were amounts that were owed
13 to him, and he needed to -- to have them
14 consolidated onto a spread sheet. He knew that I
15 had experience in working with Excel and asked me
16 to compile that spread sheet for him.

17 Q I'm going to show you a particular
18 document on the screen and ask that you identify
19 that for me if you would.

20 A Yes, it is a form that I signed on
21 May 4th, 2019.

22 Q And in anywhere on that form does it
23 appear that you were basing your calculations on a
24 hypothetical scenario?

25 A To me, yes, because I calculated the

1 hundred and two thousand dollar amount that's
2 entered onto the form, which was a hypothetical
3 scenario. So having knowledge of that number,
4 yes.

5 Q Does that -- does that form indicate
6 anywhere on it specifically that that calculation
7 was based upon a hypothetical situation?

8 A This form does not.

9 Q Did you find it unusual when Mr. Parker
10 allegedly made this request of you?

11 A I did. He was my boss and made the
12 request and I complied. I did object to giving --

13 Q Did you --

14 A -- public the -- the controller since
15 that was certainly not the case.

16 Q Okay. Do you know who actually prepared
17 this form?

18 A I know I did not. I believe it was
19 either Mr. Parker or his attorney.

20 Q Okay. But that is your signature on the
21 bottom of that form. Correct?

22 A That is my signature, yes.

23 Q And you agreed with everything that was
24 contained on that form except for the -- you being
25 identified as the comptroller. Is that correct?

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE TWELFTH JUDICIAL CIRCUIT
COUNTY OF FLORENCE	)	
WALTER PARKER,	)	CASE NO: 2020CP2101297
	)	
Plaintiff,	)	
vs.	)	
	)	
FLORENCE CARPET & TILE,	)	
INC., JOHN CURL and MIKE	)	
BARKER,	)	
	)	
Defendants.	)	
_____	)	
ALLISON PARKER,	)	CASE NO: 2020CP2101296
	)	
Plaintiff,	)	
vs.	)	
	)	
FLORENCE CARPET & TILE,	)	
INC., JOHN CURL and MIKE	)	
BARKER,	)	
	)	
Defendants.	)	
_____	)	

AFFIDAVIT OF WALTER PARKER

PERSONALLY APPEARED before me, Walter Parker who first being duly sworn, deposes and says:

1. I am above the age of eighteen (18) and am competent to declare the facts stated herein.
2. I was employed full-time by Defendant Florence Carpet & Tile, Inc. ("Defendant Carpet & Tile") as its President from on or about in or about 2007, until my involuntary separation from full-time employment on or about July 26, 2019.
3. I was never provided with written notice of the terms and conditions of my employment. However, all parties agreed that I was to be paid wages in the amount of \$75,000 per year, plus benefits.
4. I was required to be in charge of the day-to-day operations of the company. I dutifully and properly performed my job requirements for the company.

5. Defendants have not paid my rightfully due and owing wages, compensation, benefits, payments and/or other monies owed in an amount exceeding \$102,303.53.
6. Before the filing of this lawsuit, I filed a claim for unpaid compensation with the South Carolina Department of Labor, Licensing and Regulation.
7. Before the filing of this lawsuit, Defendant Mike Barker reviewed, signed, and gave me a copy of the attached written statement indicating that:

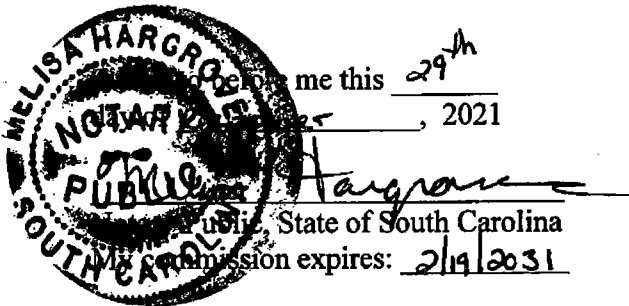
...I have examined the records of [Defendant Florence Carpet & Tile, Inc.] as maintained in the ordinary course of business and have calculated the compensation due Walt Parker for his services rendered as an employee of the corporation. The balance currently due is \$102,303.53.

(Ex. 1 – Barker Statement).
8. Defendants Curl and Barker were/are agents, employees, and/or officers of the Corporation who knowingly permitted and/or caused my damages.
9. Defendant Florence Carpet and Tile (“Company”) has been grossly undercapitalized since its inception.
10. The company has never been provided with sufficient capital to achieve the desired results of significant profitability. The company often did not generate the profit that was expected.
11. Mr. Curl also refused to infuse sufficient monies into the company, despite it being severely needed for employees, merchandise, customer orders, vendors, repairs, building improvements and other business.
12. Director’s meetings were also not regularly held and corporate formalities were largely ignored, including employees regularly paying for necessary items out of their own pockets for business operation. Likewise, the company did not regularly hold scheduled meetings, hold special meetings, exercise fiduciary duties to the corporation, develop a planning routine and make all company purchases in the corporation’s name.
13. In fact, employees, such as Allison and myself, were required to purchase items using their own monies and/or credit cards to keep the business operating. The company would often not be able to pay employee wages on time.
14. Corporate funds were often first demanded and/or forced to be paid by Defendants Curl and Barker for rent to Curl Properties, LLC and/or to Defendant Curl, even before employee wages were paid.

15. I understand that making any false statements within this affidavit may subject me to criminal liability.
16. I further attest that I am making these statements freely and voluntarily, without coercion or duress. I further state that I am not suffering from any mental conditions or taking any substances which would impair my ability to understand all matters set forth herein.

FURTHER AFFIANT SAYETH NOT.

Walter Parker
Walter Parker



Carpet Florence Carpet & Tile, Inc.

GM
As ~~comptroller~~ of Florence Carpet & Tile, Inc., I have examined the records of that company as maintained in the ordinary course of business and have calculated the compensation due Walt Parker for his services rendered as an employee of the corporation. The balance currently due is \$ 102,303.53

May 8, 2019

Mike Barker
Mike Barker, ~~Comptroller~~ of Florence Carpet & Tile, Inc.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

WALTER PARKER,)
Plaintiff,)

CASE NO: 2020CP2101297

vs.)

FLORENCE CARPET & TILE,)
INC., JOHN CURL and MIKE)
BARKER,)
Defendants.)

ALLISON PARKER,)
Plaintiff,)

CASE NO: 2020CP2101296

vs.)

FLORENCE CARPET & TILE,)
INC., JOHN CURL and MIKE)
BARKER,)
Defendants.)

AFFIDAVIT OF ALLISON PARKER

PERSONALLY APPEARED before me, Allison Parker who first being duly sworn,
deposes and says:

1. I am above the age of eighteen (18) and am competent to declare the facts stated herein.
2. I was employed by Defendant Florence Carpet & Tile, Inc. ("Defendant Carpet & Tile") approximately on or about May 1, 2007, until my final separation from employment on or about August 13, 2019.
3. I was never provided with written notice of the terms and conditions of my employment. However, all parties agreed that while I was employed as an Inside Salesperson, I was to be paid wages in the amount of \$42,000 per year, a 2% commission on sales, plus benefits.
4. I dutifully and properly performed my job requirements for the company.

5. Defendants have not paid my rightfully due and owing wages, compensation, benefits, payments and/or other monies owed in an amount exceeding \$57,491.48. In fact, I was never paid all of my commissions, despite the agreement to the contrary.
6. Before the filing of this lawsuit, I filed a claim for unpaid compensation with the South Carolina Department of Labor, Licensing and Regulation.
7. Before the filing of this lawsuit, Defendant Mike Barker reviewed and signed a copy of the attached written statement indicating that:

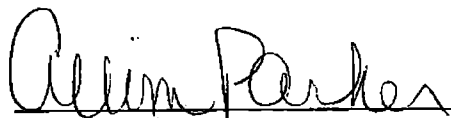
...I have examined the records of [Defendant Florence Carpet & Tile, Inc.] as maintained in the ordinary course of business and have calculated the compensation due Allison Parker for her services rendered as an employee of the corporation. The balance currently due is \$57,461.48.

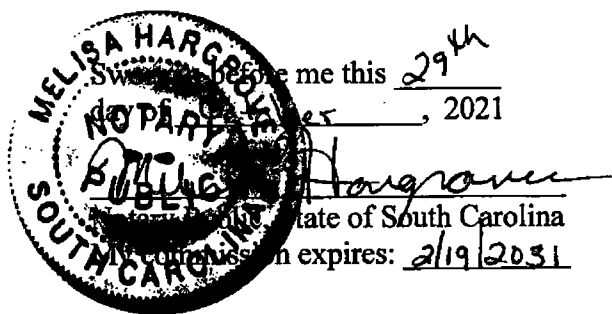
(Ex. 1 – Barker Statement).

8. Defendants Curl and Barker were/are agents, employees, and/or officers of the Corporation who knowingly permitted and/or caused my damages.
9. Defendant Florence Carpet and Tile (“Company”) has been grossly undercapitalized since its inception.
10. The company has never been provided with sufficient capital to achieve the desired results of significant profitability. The company often did not generate the profit that was expected.
11. Mr. Curl also refused to infuse sufficient monies into the company, despite it being severely needed for employees, merchandise, customer orders, vendors, repairs, building improvements and other business.
12. Director’s meetings were also not regularly held and corporate formalities were largely ignored, including employees regularly paying for necessary items out of their own pockets for business operation. Likewise, the company did not regularly hold scheduled meetings, hold special meetings, exercise fiduciary duties to the corporation, develop a planning routine and make all company purchases in the corporation’s name.
13. In fact, employees, such as Walter and myself, were required to purchase items using their own monies and/or credit cards to keep the business operating. The company would often not be able to pay employee wages on time.
14. Corporate funds were often first demanded and/or forced to be paid by Defendants Curl and Barker for rent to Curl Properties, LLC and/or to Defendant Curl, even before employee wages were paid.

15. I understand that making any false statements within this affidavit may subject me to criminal liability.
16. I further attest that I am making these statements freely and voluntarily, without coercion or duress. I further state that I am not suffering from any mental conditions or taking any substances which would impair my ability to understand all matters set forth herein.

FURTHER AFFIANT SAYETH NOT.


Allison Parker



Carpet Florence Carpet & Tile, Inc.

GM
As ~~comptroller~~ of Florence Carpet & Tile, Inc., I have examined the records of that company as maintained in the ordinary course of business and have calculated the compensation, whether wages or commission, due Allison Parker for her services rendered as an employee of the corporation. The balance currently due is \$ 57,481.48.

May 4, 2019

Mike Barker
Mike Barker, ~~Comptroller~~ General Manager of Florence Carpet & Tile, Inc.

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)
IN THE COURT OF COMMON PLEAS
FOR THE TWELFTH JUDICIAL CIRCUIT

WALTER PARKER,)
CASE NO: 2020CP2101297

Plaintiff,

vs.

FLORENCE CARPET & TILE,
INC., JOHN CURL and MIKE
BARKER,

Defendants.

ALLISON PARKER,

CASE NO: 2020CP2101296

Plaintiff,

vs.

FLORENCE CARPET & TILE,
INC., JOHN CURL and MIKE
BARKER,

Defendants.

AFFIDAVIT OF ELIZABETH SHELTON

PERSONALLY APPEARED before me, Elizabeth Shelton who first being duly sworn, deposes and says:

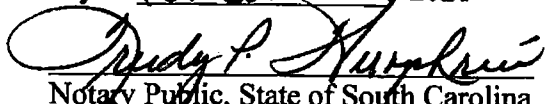
1. I am above the age of eighteen (18) and am competent to declare the facts stated herein.
2. I was employed full-time by Defendant Florence Carpet & Tile, Inc. ("Defendant Carpet & Tile") as a Kitchen/Bath Designer from on or about July 2010, until I voluntarily left in August 2021. Although the Plaintiff left in August 2021 she is still considered part-time by the Corporation, since she is still asked to perform services.
3. I was never provided with written notice of the terms and conditions of my employment. However, all parties agreed that I was to be paid wages in the amount of \$20.00 - \$25.00 per hour, plus commissions in the minimum amount of 2% of sales, and reimbursement of expenses.
4. I properly performed my job requirements for the company.

5. Defendants have not paid my rightfully due and owing wages, compensation, benefits, payments and/or other monies owed in an amount exceeding \$50,000.00.
 6. Curl and Barker were/are agents, employees, and/or officers of the Corporation who knowingly permitted and/or caused my damages.
 7. Defendant Florence Carpet and Tile ("Company") has been grossly undercapitalized since I worked there.
 8. The company has never been provided with sufficient capital to achieve the desired results of significant profitability.
 9. Mr. Curl also refused to infuse enough monies into the company, despite their being severely needed for employees, merchandise, customer orders, vendors, repairs, building improvements and other business.
-
10. Director's meetings were also not regularly held and corporate formalities were largely ignored, including employees regularly paying for necessary items out of their own pockets for business operation. Likewise, the company did not regularly hold scheduled meetings, hold special meetings, keep accurate records, exercise fiduciary duties to the corporation, develop a planning routine and make all company purchases in the corporation's name.
 11. As well, the wages reported on my W-2 Forms in 2019 were inaccurate and did not accurately reflect my wages.
 12. In fact, many employees purchased items using their own monies and/or credit cards to keep the business operating. The company also would often not be able to pay employee wages on time.
 13. I understand that making any false statements within this affidavit may subject me to criminal liability.
 14. I further attest that I am making these statements freely and voluntarily, without coercion or duress. I further state that I am not suffering from any mental conditions or taking any substances which would impair my ability to understand all matters set forth herein.

FURTHER AFFIANT SAYETH NOT.


Elizabeth Shelton

Sworn to before me this 27th
day of OCTOBER, 2021


Notary Public, State of South Carolina
My commission expires: 9/22/2027

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	Civil Action No. 2020-CP-21-01297
Walter Parker,	)	
	)	
Plaintiff,	)	
	)	
v.	)	MEMORANDUM IN SUPPORT OF
	)	MOTION FOR SUMMARY JUDGMENT
	)	(Mike Barker)
Florence Carpet & Tile, Inc., John Curl,	)	
and Mike Barker,	)	
	)	
<u>Defendants.</u>	)	

Defendant, Mike Barker, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, submits the following memorandum of law in support of his motion for summary judgment.

FACTS AND PROCEDURAL HISTORY

On April 30, 2007, Plaintiff and John Curl purchased outstanding shares of Florence Carpet & Tile, Inc. ("FCT"). (Affidavit of John Curl, ¶ 1) At the time, Plaintiff owned 47% of the FCT shares, and Mr. Curl owned 53%. (Affidavit of John Curl, ¶ 2) Plaintiff additionally served as President of FCT, and in that capacity, oversaw the daily operations of the company, including payroll. (Affidavit of John Curl, ¶ 3; Affidavit of Mike Barker, ¶ 4) Mr. Curl, on the other hand, was a passive owner and not involved in the day-to-day operations of the company until after Plaintiff's separation from employment. (Affidavit of John Curl, ¶ 5; Affidavit of Mike Barker, ¶ 4) As President, Plaintiff received an annual salary of \$75,000. (Affidavit of John Curl, ¶ 3) Plaintiff was constantly employed by FCT as President from April 30, 2007 until July 27, 2019. (Affidavit of John Curl, ¶ 3)

Defendant Barker was hired by FCT in May, 2014, seven years after Plaintiff purchased shares of FCT and became employed by the company as its President. (Affidavit of Mike

Barker, ¶ 1) After hire, Defendant Barker worked in FCT's office and performed administrative duties. *Id.* Plaintiff was Defendant Barker's boss until Plaintiff's separation from employment on July 27, 2019. (Affidavit of Mike Barker, ¶ 1) Defendant Barker did not have the authority to review and approve payroll; that authority rested solely with Plaintiff. (Affidavit of Mike Barker, ¶ 4)

Defendant Barker did not have any oral or written employment agreements with Plaintiff. (Affidavit of Mike Barker, ¶ 6) Plaintiff was employed by FCT, not Defendant Barker. *Id.* For that reason, FCT reaped the benefits of Plaintiff's employment, not Defendant Barker. (Affidavit of Mike Barker, ¶ 7)

Plaintiff's claims against Defendant Barker are based on the South Carolina Payment of Wages Act, codified by South Carolina Code Annotated sections 41-10-10, *et seq.*, and common law breach of contract and quantum meruit principles. In his Complaint, Plaintiff alleges Defendant Barker knew FCT failed to pay him all wages and commissions earned during the course of his employment and seeks \$102,303.53 from him personally. Pursuant to the undisputed material facts set forth in the Affidavits of John Curl and Mike Barker, at no point during the relevant time period did Defendant Barker knowingly permit FCT to violate South Carolina's wage laws. Moreover, at no point did Plaintiff have an oral or written employment contract with Defendant Barker or perform services that personally benefitted Defendant Barker. As such, Defendant Barker is entitled to a judgment as a matter of law in his favor on all claims.

STANDARD OF REVIEW

When deciding a Summary Judgment Motion pursuant to Rule 56, SCRCP, a trial court must weigh the facts and inferences in a light most favorable to the non-moving party.

Hancock v. Mid-South Mgmt., Co., 381 S.C. 326, 330, 673 S.E.2d 801, 802 (2009). Summary judgment is appropriate when the pleadings, depositions, discovery, and affidavits show no genuine issue of material fact exists. *Id.* Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Moore v. Weinberg*, 373 S.C. 209, 217, 644 S.E.2d 740, 744 (Ct. App. 2007). The non-moving party must come forward with specific facts showing a genuine issue for trial. *Id.*

LAW AND ARGUMENT

I. DEFENDANT BARKER IS NOT AN "EMPLOYER" PER THE SOUTH CAROLINA PAYMENT OF WAGES ACT AND CANNOT BE LIABLE TO PLAINTIFF FOR THE ALLEGED UNDERPAYMENT OF WAGES.

Plaintiff alleges Defendant Barker failed to pay him the full amount of wages owed in violation of the South Carolina Payment of Wages Act. The Act defines "employer" as "every person, firm, partnership, association, corporation, receiver, or other officer of a court of this State, the State or any political subdivision thereof, and any agent or officer of the above classes employing any person in this State." S.C. Code Ann. § 41-10-10(1). The Act defines "wages" as "all amounts at which labor rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, or commission basis[.]" S.C. Code Ann. § 41-10-10(2). The Act requires an employer, as defined by the Act, to notify each employee in writing at the time of hiring of the agreed upon hours and wages, the time and place of payment, and the deductions to be made from wages. S.C. Code Ann. § 41-10-30(A). Then, the employer is required to pay all wages due and "shall not withhold or divert any portion of an employee's wages unless the employer is required or permitted to do so by state or federal law or the employer has given written notification to the employee of the amount and terms of

deductions.” S.C. Code Ann. § 41-10-40. Therefore, upon separation, an employer must pay its employees all wages due within forty-eight hours or the next regular payday, which may not exceed thirty days. S.C. Code Ann. § 41-10-50. The Act is remedial legislation, so employers who fail to pay employees in a manner that is consistent with it are responsible for any resulting underpayment. *Dumas v. InfoSafe Corp.*, 320 S.C. 188, 194, 463 S.E.2d 641, 645 (Ct. App. 1995).

In *Dumas*, our Court of Appeals found that when adopting the Act, the legislature intended to impose individual liability on corporate agents and officers who knowingly permit the Act to be violated. *Id.* at 193-94, 463 S.E.2d at 644-45. When doing so, the Court stated, “To hold otherwise would require us to ignore the words ‘and any agent or officer of the above classes.’” *Id.* Since that time, South Carolina courts have consistently found that having an ownership interest or holding a management position is not enough to expose an individual to personal liability under the Act; instead, the agent or officer must have knowingly permitted the company’s violation of the Act. *See, e.g., Temple v. Tec-Fab, Inc.*, 370 S.C. 383, 390, 635 S.E.2d 541, 544 (Ct. App. 2006), *aff’d in part, rev’d in part on other grounds*, 381 S.C. 597 (2009) (owner knew the company failed to properly pay the employee and was the person directly responsible for the non-payment, so he fell within the Act’s definition of “employer” and was individually liable to the employee for all outstanding wages); *Allen v. Pinnacle Healthcare Sys., LLC.*, 394 S.C. 268, 272, 715 S.E.2d 362, 364 (Ct. App. 2011) (two prior owners who knew the plaintiff was not getting paid by virtue of reviewing payroll monthly were individually liable despite their subsequent transfer of ownership interests, while an additional owner that was not involved in the daily operation of the company and did not have knowledge of the compensation arrangements with the plaintiff was not personally liable).

Defendant Barker simply does not fall within the Act's definition of "employer." Further, Plaintiff has not and cannot point to any evidence that Defendant Barker knew FCT underpaid Plaintiff in violation of the Act. Defendant Barker reported to Plaintiff and was not an owner of the company. (Affidavit of Mike Barker, ¶¶ 1-2) Defendant Barker never had the authority to review and alter payroll; that authority rested solely with Plaintiff. (Affidavit of Mike Barker, ¶ 4) Instead, for all but the last week of Plaintiff's employment, Plaintiff managed the daily operations of FCT and was responsible for ensuring employees, including himself, were properly compensated. (Affidavit of John Curl, ¶¶ 3, 9)

The record is void of evidence imputing knowledge of a violation of the Act on Defendant Barker. In the absence of such knowledge, Defendant Barker cannot have personal liability for any outstanding wages owed to Plaintiff. There is no genuine issue of material fact that could give rise to Defendant Barker's individual liability to Plaintiff under the South Carolina Payment of Wages Act. As such, Defendant Barker is entitled to judgment as a matter of law in his favor.

II. DEFENDANT BARKER DID NOT HAVE A CONTRACT WITH PLAINTIFF AND DID NOT PERSONALLY GAIN FROM PLAINTIFF'S EMPLOYMENT WITH FCT, SO HE IS NOT LIABLE FOR ANY OUTSTANDING WAGES OWED TO HIM.

Plaintiff also attempts to state claims for breach of contract, breach of implied covenant of good faith and fair dealing, and quantum meruit. Each claim fails, so Defendant Barker is entitled to summary judgment in his favor on these claims as well.

A. Breach of Contract

To recover for breach of contract, a plaintiff must establish the existence of a contract, its breach, and the damages caused by the breach. *Branche Builders, Inc. v. Coggins*, 386 S.C. 43, 48, 686 S.E. 2d 200, 202 (Ct. App. 2009). It is undisputed that as President, Plaintiff was

an employee of FCT, so FCT provided him with an annual W-2. (Affidavit of John Curl, ¶ 8; Affidavit of Mike Barker, ¶ 6) Plaintiff did not have a contract with Defendant Barker. (Affidavit of Mike Barker, ¶ 6) In the absence of a contract, there can be no breach. As such, there is no genuine issue of fact that could give rise to Defendant Barker's liability to Plaintiff for breach of contract, so the claim must be summarily dismissed by this Court.

B. Breach of Implied Covenant of Good Faith and Fair Dealing

For the same reason Plaintiff's breach of contract claim fails, his breach of implied covenant of good faith and fair dealing claim fails as well. Breach of implied covenant of good faith and fair dealing is not an independent cause of action separate from a breach of contract claim. *Rotec Servs. V. Encompass Servs.*, 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004). Rather, courts consider an implied covenant of good faith and fair dealing to be another term of the contract at issue. *Id.* Again, Plaintiff did not have a contract, oral or otherwise, with Defendant Barker. (Affidavit of Michael Barker, ¶ 6) In the absence of a contract, this Court cannot determine whether the agreement's terms included a breach of implied covenant of good faith and fair dealing. Accordingly, summary judgment is appropriate.

C. Quantum Meruit

Finally, to recover under the equitable theory of quantum meruit, Plaintiff must prove three elements: "(1) benefit conferred by plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value." *Myrtle Beach Hosp. v. City of Myrtle Beach*, 341 S.C. 1, 8-9, 532 S.E.2d 686, 872 (2000). Plaintiff did not provide any services to Defendant Barker directly. (Affidavit of John Curl, ¶ 10) Instead, all services were provided directly to FCT. *Id.* Defendant Barker did not personally benefit from the

services rendered by Plaintiff. *Id.* In the absence of the realization of some benefit from services provided by Plaintiff to Defendant Barker, his quantum meruit claim fails. Defendant Barker is entitled to summary judgment on Plaintiff's quantum meruit claim as well.

CONCLUSION

Plaintiff has named Defendant, Mike Barker, as an individual defendant in this lawsuit but failed to assert a valid basis for his assertion that Defendant Barker is personally liable for the outstanding wages sought. It is undisputed that Defendant Barker is not an employer as defined by the South Carolina Payment of Wages Act, did not personally have a contract with Plaintiff, and did not personally benefit from the services rendered by Plaintiff during the course of his employment with FCT. In light of the foregoing, Defendant Barker respectfully requests that this Honorable Court grant his Motion for Summary Judgment on all of Plaintiff's claims.

TURNER PADGET GRAHAM & LANEY, P.A.

November 2, 2021
Florence, South Carolina

s/ Jeffrey L. Payne
Jeffrey L. Payne (SC Bar No.: 15136)
Virginia P. Bozeman (SC Bar No.: 104939)
P.O. Box 5478
Florence, South Carolina 29502
Telephone: (843) 662-9008
Email: jpayne@turnerpadget.com

ATTORNEYS FOR DEFENDANTS

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF FLORENCE	)	Civil Action No. 2020-CP-21-01297
Walter Parker,	)	
	)	
Plaintiff,	)	
	)	
v.	)	MEMORANDUM IN SUPPORT OF
	)	MOTION FOR SUMMARY JUDGMENT
	)	(John Curl)
Florence Carpet & Tile, Inc., John Curl,	)	
and Mike Barker,	)	
	)	
Defendants.	)	

Defendant, John Curl, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, submits the following memorandum of law in support of his motion for summary judgment.

FACTS AND PROCEDURAL HISTORY

Plaintiff and Defendant Curl purchased outstanding shares of Florence Carpet & Tile, Inc. ("FCT") on April 30, 2007. (Affidavit of John Curl, ¶ 1) At the time, Plaintiff owned 47% of the FCT shares, and Defendant Curl owned 53%. (Affidavit of John Curl, ¶ 2) Plaintiff additionally served as President of FCT, and in that capacity, oversaw the daily operations of the company, including payroll. (Affidavit of John Curl, ¶ 3; Affidavit of Mike Barker, ¶ 4) Defendant Curl, on the other hand, was a passive owner and not involved in the day-to-day operations of the company until after Plaintiff's separation from employment. (Affidavit of John Curl, ¶ 5; Affidavit of Mike Barker, ¶ 4) As President, Plaintiff received an annual salary of \$75,000. (Affidavit of John Curl, ¶ 3) Plaintiff was constantly employed by FCT as President from April 30, 2007 until July 27, 2019. (Affidavit of John Curl, ¶ 3)

Defendant Curl did not have any oral or written employment agreements with Plaintiff. (Affidavit of John Curl, ¶ 8) Defendant Curl never personally paid Plaintiff or issued him a W-

2 or 1099. (Affidavit of John Curl, ¶ 8) Rather, as a salaried employee of FCT, the company, not Defendant, issued Plaintiff a W-2 annually. (Affidavit of John Curl, ¶ 8)

Until his separation from employment on July 27, 2019, Plaintiff handled any and all payroll issues, including his own. (Affidavit of John Curl, ¶¶ 6, 9) Plaintiff never informed Defendant Curl that he believed FCT owned him unpaid wages or commissions. (Affidavit of John Curl, ¶ 9) Further, Plaintiff never provided services for Defendant Curl personally. (Affidavit of John Curl, ¶ 10) All services were rendered to FCT only. *Id.* Defendant Curl did not personally benefit from the services rendered by Plaintiff, and Defendant Curl never realized that he was personally benefitting from any such services. *Id.*

Plaintiff's claims against Defendant are based on the South Carolina Payment of Wages Act, codified by South Carolina Code Annotated sections 41-10-10, *et seq.*, and common law breach of contract and quantum meruit principles. In his Complaint, Plaintiff alleges Defendant Curl knew FCT failed to pay him all wages and commissions earned during the course of his employment and seeks \$102,303.53 from him personally. Pursuant to the undisputed material facts set forth in the Affidavits of John Curl and Mike Barker, at no point during the during the relevant time period did Defendant Curl knowingly permit FCT to violate South Carolina's wage laws. Moreover, at no point did Plaintiff have an oral or written employment contract with Defendant Curl or perform services that personally benefitted Defendant Curl. As such, Defendant is entitled to a judgment as a matter of law in his favor on all claims.

STANDARD OF REVIEW

When deciding a Summary Judgment Motion pursuant to Rule 56, SCRPC, a trial court must weigh the facts and inferences in a light most favorable to the non-moving party. *Hancock v. Mid-South Mgmt., Co.*, 381 S.C. 326, 330, 673 S.E.2d 801, 802 (2009). Summary

judgment is appropriate when the pleadings, depositions, discovery, and affidavits show no genuine issue of material fact exists. *Id.* Once the party moving for summary judgment meets the initial burden of showing an absence of evidentiary support for the opponent's case, the opponent cannot simply rest on mere allegations or denials contained in the pleadings. *Moore v. Weinberg*, 373 S.C. 209, 217, 644 S.E.2d 740, 744 (Ct. App. 2007). The non-moving party must come forward with specific facts showing a genuine issue for trial. *Id.*

LAW AND ARGUMENT

I. DEFENDANT CURL IS NOT AN "EMPLOYER" PER THE SOUTH CAROLINA PAYMENT OF WAGES ACT AND CANNOT BE LIABLE TO PLAINTIFF FOR THE ALLEGED UNDERPAYMENT OF WAGES.

Plaintiff alleges Defendant Curl failed to pay him the full amount of wages owed in violation of the South Carolina Payment of Wages Act. The Act defines "employer" as "every person, firm, partnership, association, corporation, receiver, or other officer of a court of this State, the State or any political subdivision thereof, and any agent or officer of the above classes employing any person in this State." S.C. Code Ann. § 41-10-10(1). The Act defines "wages" as "all amounts at which labor rendered is recompensed, whether the amount is fixed or ascertained on a time, task, piece, or commission basis[.]" S.C. Code Ann. § 41-10-10(2). The Act requires an employer, as defined by the Act, to notify each employee in writing at the time of hiring of the agreed upon hours and wages, the time and place of payment, and the deductions to be made from wages. S.C. Code Ann. § 41-10-30(A). Then, the employer is required to pay all wages due and "shall not withhold or divert any portion of an employee's wages unless the employer is required or permitted to do so by state or federal law or the employer has given written notification to the employee of the amount and terms of deductions." S.C. Code Ann. § 41-10-40. Therefore, upon separation, an employer must pay

its employees all wages due within forty-eight hours or the next regular payday, which may not exceed thirty days. S.C. Code Ann. § 41-10-50. The Act is remedial legislation, so employers who fail to pay employees in a manner that is consistent with it are responsible for any resulting underpayment. *Dumas v. InfoSafe Corp.*, 320 S.C. 188, 194, 463 S.E.2d 641, 645 (Ct. App. 1995).

In *Dumas*, our Court of Appeals found that when adopting the Act, the legislature intended to impose individual liability on corporate agents and officers who knowingly permit the Act to be violated. *Id.* at 193-94, 463 S.E.2d at 644-45. When doing so, the Court stated, “To hold otherwise would require us to ignore the words ‘and any agent or officer of the above classes.’” *Id.* Since that time, South Carolina courts have consistently found that having an ownership interest or holding a management position is not enough to expose an individual to personal liability under the Act; instead, the agent or officer must have knowingly permitted the company’s violation of the Act. *See, e.g., Temple v. Tec-Fab, Inc.*, 370 S.C. 383, 390, 635 S.E.2d 541, 544 (Ct. App. 2006), *aff’d in part, rev’d in part on other grounds*, 381 S.C. 597 (2009) (owner knew the company failed to properly pay the employee and was the person directly responsible for the non-payment, so he fell within the Act’s definition of “employer” and was individually liable to the employee for all outstanding wages); *Allen v. Pinnacle Healthcare Sys., LLC.*, 394 S.C. 268, 272, 715 S.E.2d 362, 364 (Ct. App. 2011) (two prior owners who knew the plaintiff was not getting paid by virtue of reviewing payroll monthly were individually liable despite their subsequent transfer of ownership interests, while an additional owner that was not involved in the daily operation of the company and did not have knowledge of the compensation arrangements with the plaintiff was not personally liable).

Defendant Curl simply does not fall within the Act's definition of "employer." Further, Plaintiff has not and cannot point to any evidence that Defendant Curl knew FCT underpaid Plaintiff in violation of the Act. While Defendant Curl is an owner of FCT, at the time Plaintiff was employed with the company, Defendant Curl did not review payroll or oversee any of FCT's day-to-day operations. (Affidavit of John Curl, ¶¶ 2, 5; Affidavit of Mike Barker, ¶ 4) Instead, for all but the last week of Plaintiff's employment, Plaintiff managed the daily operations of FCT and was responsible for ensuring employees, including himself, were properly compensated. (Affidavit of John Curl, ¶¶ 3, 9) Plaintiff never informed Defendant Curl FCT was not fully compensating him. (Affidavit of John Curl, ¶ 9)

The record is void of evidence imputing knowledge of a violation of the Act on Defendant Curl. In the absence of such knowledge, Defendant Curl cannot have personal liability for any outstanding wages owed to Plaintiff. There is no genuine issue of material fact that could give rise to Defendant Curl's individual liability to Plaintiff under the South Carolina Payment of Wages Act. As such, Defendant Curl is entitled to judgment as a matter of law in his favor.

II. DEFENDANT CURL DID NOT HAVE A CONTRACT WITH PLAINTIFF AND DID NOT PERSONALLY GAIN FROM PLAINTIFF'S EMPLOYMENT WITH FCT, SO HE IS NOT LIABLE FOR ANY OUTSTANDING WAGES OWED TO HIM.

Plaintiff also attempts to state claims for breach of contract, breach of implied covenant of good faith and fair dealing, and quantum meruit. Each claim fails, so Defendant Curl is entitled to summary judgment in his favor on all claims.

A. Breach of Contract

To recover for breach of contract, a plaintiff must establish the existence of a contract, its breach, and the damages caused by the breach. *Branche Builders, Inc. v. Coggins*, 386 S.C.

43, 48, 686 S.E. 2d 200, 202 (Ct. App. 2009). It is undisputed that as President, Plaintiff was an employee of FCT, so FCT provided him with an annual W-2. (Affidavit of John Curl, ¶ 8) Plaintiff did not have a contract with Defendant Curl. (Affidavit of John Curl, ¶ 8) In the absence of a contract, there can be no breach. As such, there is no genuine issue of fact that could give rise to Defendant Curl's liability to Plaintiff for breach of contract, so the claim must be summarily dismissed by this Court.

B. Breach of Implied Covenant of Good Faith and Fair Dealing

For the same reason Plaintiff's breach of contract claim fails, his breach of implied covenant of good faith and fair dealing claim fails as well. Breach of implied covenant of good faith and fair dealing is not an independent cause of action separate from a breach of contract claim. *Rotec Servs. V. Encompass Servs.*, 359 S.C. 467, 473, 597 S.E.2d 881, 884 (Ct. App. 2004). Rather, courts consider an implied covenant of good faith and fair dealing to be another term of the contract at issue. *Id.* Again, Plaintiff did not have a contract, oral or otherwise, with Defendant Curl. (Affidavit of John Curl, ¶ 8) In the absence of a contract, this Court cannot determine whether the agreement's terms included a breach of implied covenant of good faith and fair dealing. Accordingly, summary judgment is appropriate.

C. Quantum Meruit

Finally, to recover under the equitable theory of quantum meruit, Plaintiff must prove three elements: "(1) benefit conferred by plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value." *Myrtle Beach Hosp. v. City of Myrtle Beach*, 341 S.C. 1, 8-9, 532 S.E.2d 686, 872 (2000). Plaintiff did not provide any services to Defendant Curl directly. (Affidavit of John Curl, ¶ 10) Instead, all services

were provided directly to FCT. *Id.* Defendant Curl did not personally benefit from the services rendered by Plaintiff. *Id.* In the absence of the realization of some benefit from services provided by Plaintiff to Defendant Curl, his quantum meruit claim fails. Defendant is entitled to summary judgment on Plaintiff's quantum meruit claim as well.

CONCLUSION

Plaintiff has named Defendant, John Curl, as an individual defendant in this lawsuit but failed to assert a valid basis for her assertion that he is personally liable for the outstanding wages sought. It is undisputed that Defendant is not an employer as defined by the South Carolina Payment of Wages Act, did not personally have a contract with Plaintiff, and did not personally benefit from the services rendered by Plaintiff during the course of his employment with FCT. In light of the foregoing, Defendant Curl respectfully request that this Honorable Court grant his Motion for Summary Judgment on all of Plaintiff's claims.

TURNER PADGET GRAHAM & LANEY, P.A.

November 2, 2021
Florence, South Carolina

s/ Jeffrey L. Payne
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ATTORNEYS FOR DEFENDANTS

STATE OF SOUTH CAROLINA)
COUNTY OF FLORENCE)

IN THE COURT OF COMMON PLEAS
FOR THE TWELTH JUDICIAL CIRCUIT

WALTER PARKER,)
))
Plaintiff,)
vs.)
))
FLORENCE CARPET & TILE,)
INC., JOHN CURL and MIKE)
BARKER,)
))
Defendants.)
_____)

CASE NO: 2020-CP-21-01297

Motion to Alter or Amend a Judgment

Plaintiff, by and through the undersigned legal counsel and pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure, does hereby move to alter or amend this Court's Order granting summary judgment in favor of Defendants John Curl and Mike Barker filed December 2, 2021, in the above-referenced matter. In particular, Plaintiff asserts that the Order granting summary judgment: (1) was clearly erroneous as a matter of law; (2) improperly weighed the evidence of record; (3) failed to consider both legal argument and evidence submitted by the Plaintiff; and (4) improperly determined that no genuine issue of material fact existed for trial as to the individual Defendants. For each of these reasons, Plaintiff's motion to alter or amend should be granted.

WILLCOX, BUYCK & WILLIAMS, PA

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December 9, 2021
Florence, South Carolina

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF FLORENCE	)	2020-CP-21-01297
	)	2020-CP-21-01296
	)	
	)	
	)	
WALTER PARKER AND ALLISON	)	
PARKER,	)	
PLAINTIFFS,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
FLORENCE CARPET & TILE, INC.,	)	
ET AL,	)	
DEFENDANTS.	)	

November 3, 2021
Florence, South Carolina

B E F O R E:

THE HONORABLE MICHAEL G. NETTLES, JUDGE.

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

SCOTT KOZACKI, ESQ.
Attorney for the Plaintiffs

JEFFREY L. PAYNE, ESQ.
Attorney for the Defendants

Proceedings Recorded by DCRP
Transcribed by Penny M. Johnson

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits submitted.)

P R O C E E D I N G S

THE COURT: The next case is Allison Parker vs. Florence Carpet & Tile.

MR. PAYNE: Good afternoon, Your Honor. Jeff Payne here today on behalf of Walt Parker -- I mean, Mike Barker and John Curl, two of the Defendants in the case. The same Motion is also pending in Mr. Walt Parker's case, which is, I think, on down your roster maybe. But we'll go ahead and address Allison's. The arguments are pretty much the same.

This is a Motion for Summary Judgment as to the two individual Defendants, John Curl and Mike Barker. This is not to get Florence Carpet & Tile dismissed from the case. In support of our Motions, we have supplied or filed the Affidavit of John Curl and Mike Barker. We filed some memos with the Court as well.

A little bit of background, Your Honor. Ms. Parker's lawsuit is based on a claim that she had an oral agreement while she was working for Florence Carpet & Tile that she be paid commissions. Florence Carpet & Tile denies that there's any such agreement to pay her commission. She's never earned a commission in the 12 years that she worked for her husband, who is Walt Parker, he was the boss and the operations person in charge. Not paid one nickel in 12 years.

But nonetheless, they've chosen to drag in John Curl,

1 who's one of the passive owners, who had nothing to do with
2 the day-to-day operation of the business, and they've also
3 drug in Mike Barker, who's an employee. He's got no
4 ownership interest in this company. When she was employed,
5 he wasn't an officer, nothing, but they've decided to drag
6 in somebody who works in the office into this lawsuit
7 claiming that she had some contract with one of the
8 employees that he's obligated to pay her commissions.

9 Interestingly, she didn't drag her own husband into the
10 case, who was the president of the company, and is the one
11 that any contract that she's alleged, he would have been the
12 one to have made it on behalf of Florence Carpet & Tile, but
13 she didn't bring him into the case. But she's drug my
14 clients in here.

15 And it's real disappointing that we actually are having
16 to be here today on what I see, especially as to Mike
17 Barker, as one of the most frivolous things, to drag in an
18 employee and just randomly say oh, we had a contract with
19 him and he owes us wages and he's an agent and all this
20 other stuff. It is absolutely ridiculous and very frivolous
21 in my opinion.

22 So let me tell you a little bit about some of the
23 facts. She started working for Florence Carpet & Tile in
24 2007, and she quit on August 10th, 2019. She was paid every
25 nickel wage. She even got an extra week when she left

1 because she had some unaccrued vacation, and she was paid
2 that. And while she was working for the company, she never
3 demanded or requested any commissions from John Curl or Mike
4 Barker. Never turned in one commission statement, not one
5 thing ever saying I'm owed commissions. And she was never
6 paid a commission in 12 years.

7 Now, the only mention of commissions started after she
8 got -- well, she actually quit. Her husband got fired a few
9 weeks before. She files a claim with LLR stating that
10 Florence Carpet & Tile, her employer, owed her some
11 commissions, and that claim was denied. She doesn't mention
12 anybody else owing her anything. She list on the little
13 form, it's actually attached to their memo in opposition,
14 that the employer was Florence Carpet & Tile.

15 So John Curl is an owner of the company. He has no
16 involvement with the day-to-day operations. He had nothing
17 to do with the payroll of this company. Walt Parker was the
18 president. He's the one who ran it. He's the one who made
19 decisions about pay and what was paid and not paid.

20 Mike Barker, as I mentioned, he's an employee. He
21 started working in May of 2014. She starts in '07 and says
22 she's had this agreement since '07, but yet, they can still
23 claim that she had some agreement for a guy that didn't even
24 start working until 2014. Walt Parker was Mike's boss.
25 Walt's still working out there at the company. He's having

1 to come in here and defend this lawsuit.

2 Now, they've got several claims. One of the claims is
3 under the Wage Payment Act. And the definition under that
4 Act does give the Court the right to say an individual could
5 be responsible for the debts of a company. The term
6 employer has been defined broadly to say, you know, an owner
7 or an officer, if they've knowingly violated this Act, we
8 could hold them responsible. But if you look at all the
9 cases that cite that definition, there's two or three of
10 them, all of the companies are defunct. There was no
11 dispute about whether wages were owed or not. The officer
12 who they tried to hold individually liable knew about the
13 claim. Here, we didn't know about it. And you've got those
14 kinds of facts existing.

15 Dumas was the first case, Dumas vs. Infosafe, and you,
16 I'm sure, heard about it. It came up with a ruling. It
17 says well, they must knowingly violate the Act if we're
18 going to hold them individually liable. In that case, no
19 dispute that wages were owed. The employee was duped into
20 continuing to work for the company while the owners kept
21 saying oh, we're going to get you paid. We're going to get
22 you paid. They knew about it.

23 And the owners, actually, were responsible for the
24 payroll of the company. They were involved with the
25 payroll. And the owner had syphoned off money in that case.

1 And they refused to pay the employee. Well, the Court in
2 that case pierced the corporate veil, actually, and they
3 said look, y'all syphoned off all this money, we're going to
4 hold you individually liable. They repaid themselves a
5 bunch of loans. So they pierced the corporate veil, they
6 held them liable, but they also said hey, y'all were
7 knowingly involved in this. We're going to hold you liable
8 under the Wage Payment Act.

9 Here, there's a big dispute about whether she's owed
10 any commissions. She was paid all her wages. There was
11 never a demand on anybody while she was working. This
12 company is still in business. Mr. Curl and Mr. Barker were
13 not responsible for the payroll while she's working there,
14 unlike these other folks. Now, Mike does help compile some
15 information and he sends it to the payroll company, which is
16 his job as an employee of the company, which he was there,
17 but her boss was Walt Parker. He was the one who had
18 ultimate responsibility for the payroll.

19 So you look at the facts of Dumas, which is cited in
20 both of our briefs. There's just nothing even close to that
21 in our particular case. There's two other cases. One's
22 called Temple vs. Tech Fab, and they held an owner
23 personally liable in that case, not an employee. And the
24 owner knew wages weren't being paid. The owner was actively
25 involved in the business and in creating the payroll.

1 A more recent case is called Allen vs. Pinnacle
2 Healthcare, it's from down at the beach. There was no
3 dispute about the guy had a contract. It was a doctor. He
4 was down there. He had a contract. He got duped by the
5 owners of the company to continue to work while they were
6 trying to sell the business.

7 And in that case, they found two owners liable because
8 they handled the payroll. They knew about the contract. It
9 was no dispute that the money was owed. But one owner, they
10 said, no, we're not going to find him liable. And because
11 he had no involvement with the payroll, not involved with
12 the day-to-day operation and did not know about the
13 contract. No demand had been made on him to pay the bill
14 back.

15 So I think if you look at the cases, there's nothing in
16 this case to warrant holding these individuals liable.
17 There's nothing to show that they somehow knowingly violated
18 the Act by not paying her some commission that we only
19 learned about after she left the company when she filed this
20 claim. There's just nothing there to hold two people
21 individually. If they want to fight about it with Florence
22 Carpet & Tile, we'll fight about it. We may be back here on
23 another day, but as to the individuals, there's nothing here
24 to hold them liable.

25 Now, she's also got another claim for the Sales

1 Representative Act, which is dealing with commissions. And
2 she's claiming that these two individuals, along with the
3 company have violated the Act --

4 MR. KOZACKI: Your Honor, if I could just interrupt Mr.
5 Payne here for a second. As I've indicated in my brief, Mr.
6 and Mrs. Parker are no longer pursuing any claims against
7 the individual Defendants, save and accept the failure to
8 pay wage case. So the other claims are no longer being
9 pursued by the Parkers.

10 MR. PAYNE: Okay. That will speed this up a little
11 bit. So that means the Sales Representative Act, quantum
12 meruit, breach of contract, implied covenant of good faith
13 and fair dealing, all of those --

14 MR. KOZACKI: All the claims against the individual
15 Defendants. It still remains against Florence Carpet &
16 Tile, but not the individual Defendants.

17 MR. PAYNE: So I'll wrap it up then as to the Wage
18 Payment Act, Your Honor. One other thing they -- he's put
19 in his brief talking about piercing the corporate veil and
20 they're talking about all these factors. There's no claim
21 in the Complaint to pierce the corporate veil.

22 In the Dumas decision, they ultimately pierce the
23 corporate veil, but it was done post-trial. I don't know if
24 the Complaint had it in there or not, but as you know, it
25 would either have to be done through supplemental

1 proceedings or it would have to be done via separate
2 lawsuit. But there's no allegations here in the Complaint
3 that said it should be -- you know, we should pierce the
4 corporate veil.

5 It's a little bit different as to Walt Parker, but not
6 much as far as the facts. The same thing -- we can get into
7 his in just a minute -- well, I'll go ahead while I'm here.
8 As to Walt Parker, as I mentioned, he was the president in
9 charge of the day-to-day operations. And for him to come in
10 here and now say y'all somehow should be responsible for
11 some contract that I created to give my wife commissions and
12 that y'all knowingly violated the Act when Mr. Curl had
13 nothing to do with the payroll, Mr. Barker, while compiling
14 some information may have, there's just nothing here to show
15 that they've knowingly violated this Act that warrants them
16 being stuck in this lawsuit. Thank you.

17 THE COURT: You have dismissed all the causes of action
18 against these two individuals with the exception of?

19 MR. KOZACKI: Failure to pay wage claim.

20 THE COURT: So we can do a consent order with regard to
21 that. And what do you have to say about the remaining
22 matter before the Court?

23 MR. KOZACKI: Well, certainly, Your Honor, at the
24 onset, I want to take great umbrage with the fact that this
25 action is frivolous or that we're bringing or dragging

1 anyone into this proceeding. The fact remains, and I think
2 the facts are undisputed that both of these individuals were
3 and are officers of the corporation. They testified to that
4 in their depositions and they are currently still officers
5 of the corporation.

6 In that regard, Your Honor, the Failure to Pay Wage Act
7 specifically says under South Carolina Code Section
8 41-10-50, when an employer separates an employee from the
9 payroll for any reason, the employer shall pay all wages due
10 to the employer within 48 hours of the time of the
11 separation or the next regular pay day, which may not exceed
12 30 days.

13 It goes on, South Carolina Code Section 41-10-10 to
14 define an employer as follows: And it means every person
15 from partnership association, corporation receiver or other
16 officer of the court of this state, the state or any
17 political subdivision thereof and, most importantly, Your
18 Honor, any agent or officer of the above classes employing
19 any person in this state. And that's precisely, Your Honor,
20 what we have here with both Mr. Curl and Mr. Barker.

21 Importantly, Your Honor, it's also been indicated that
22 these persons simply had no knowledge of what was going on
23 with either Mr. Or Ms. Parker. That's simply not accurate.

24 In particular, on or about May 4th of 2019, in both
25 instances, Mr. Barker himself signed a written statement

1 acknowledging that compensation was owed to Mr. Parker in
2 the amount of \$102,303.53. On that same day, he also signed
3 a statement indicating that compensation was due and owing
4 to Ms. Parker for \$57,461.48. Mr. Curl further admits to
5 having knowledge of the Plaintiff's claims for unpaid
6 compensation prior to the filing of the instant lawsuit.
7 And that's found out in deposition at Page 63 to 64.

8 As well, Your Honor, I've included -- this is well in
9 the record, it's from the South Carolina Labor, Licensing
10 and Regulation Board clearly indicate that they had
11 knowledge prior to the filing of this lawsuit.

12 Again, Your Honor, there's no dispute that both of
13 these individuals were officers and are officers of Florence
14 Carpet & Tile and they had knowledge of the Plaintiff's
15 claims in both cases before this lawsuit was filed. To
16 date, Your Honor, the Parkers still have not been paid any
17 of the monies which they've acknowledged in writing to be
18 due and owing to them.

19 So to say that we're frivolously bringing in the
20 officers of the corporation, that's simply not accurate and
21 I think it's undisputed for that reason. Even if we were to
22 view the evidence in the light most favorable to my clients,
23 as is legally required, summary judgment simply is not
24 appropriate in this instance.

25 Your Honor, as well, I have gone ahead and submitted

1 the Affidavit of both the Parkers and Ms. Shelton, another
2 employee of Florence Carpet & Tile delineating multiple
3 factors why it would be fundamentally unfair to go ahead and
4 to not impose individual liability on these individual
5 Defendants. I don't think I need to go through all of them.
6 I think it's clear in my brief that summary judgment at this
7 juncture, Your Honor, simply is not appropriate and for that
8 reason, it should be denied.

9 THE COURT: Mr. Payne, anything further?

10 MR. PAYNE: Yes, Your Honor. Mike Barker is not an
11 officer of this company. I don't know where that comes
12 from. He's never been an officer. He's got a title of
13 general manager, but he's never been an officer of this
14 company. He didn't start with this company until a few
15 years ago.

16 The demand that I mentioned -- if you look at all the
17 cases, the demand has to be made while they are working for
18 the company. The demand for Allison Parker, it came about
19 when she left the company. Yes, we knew about it prior to
20 filing this lawsuit, but she didn't mention it to one person
21 in the 12 years she works for this company that she's
22 somehow owed commissions that her husband promised her. And
23 that demand was filed in September, the month after she
24 leaves with the LLR. So there has been no demand by her.

25 As far as Mr. Parker goes, he's not even claiming he's

1 owed any wages, but that's an issue between the two of them.
2 All his has got to do with -- in our other lawsuit that
3 we've got going on, we've got two or three other lawsuits
4 going on, he's claiming he's owed some money, but they're
5 not wages.

6 And then lastly, the evidence that they -- there's got
7 to be something to where these individuals -- John Curl,
8 who's not even involved in the day-to-day business doesn't
9 know about this until she leaves. There's not some
10 automatic duty on him -- okay, he now knows about the claim
11 in September of 2019. Does that make him all of a sudden
12 personally responsible for paying what we view as a
13 frivolous claim? That's a whole other issue.

14 All of these cases where they hold people individual
15 liable, there's no dispute about the wage being owed. The
16 wage is definitely owed. Pinnacle, there's a contract.
17 Dumas, they've mentioned -- there's no dispute. It was
18 owed. All the owners in that case are saying is we don't
19 have any money. We're going to piece the corporate veil.
20 There is no dispute about that. Here, there is a huge
21 dispute about whether she's entitled to something.

22 So all of those things lead -- you've got to show those
23 other factors. If you look at those three cases, there's
24 nothing in this case that even comes close. There's no
25 notice, there's no involvement with the company. There's no

1 involvement with the payroll. Just because we know of
2 something after she leaves or after Mr. Parker leaves or
3 sues us doesn't make us knowingly liable, personally liable
4 to pay some wage. We'll fight all day long with Florence
5 Carpet & Tile, but these two individuals should not be in
6 this lawsuit. Thank you.

7 MR. KOZACKI: Your Honor, just relatively short
8 rebuttal. I took Mr. Barker's deposition on May 25th
9 earlier this year. I've included it in response to the
10 Motion for Summary Judge. And specifically, at Page 6, I
11 asked Mr. Barker, my question: Mr. Barker, my understanding
12 is that you are currently an officer of Florence Carpet &
13 Tile, Incorporated, correct?

14 That's correct.

15 And what title do you presently hold with the company?
16 Vice-president and general manager.

17 And how long have you held that title of
18 Vice-President?

19 A little over two years.

20 It's clear that Mr. Barker is an officer of the
21 corporation by his own admission.

22 Your Honor, moreover, the cases interpreting the South
23 Carolina Payment Wage Act have all consistently held that
24 individuals may be held liable under the act. In this case,
25 Mr. Payne is saying there's a huge dispute over wages.

1 Well, there is. And viewing the evidence in the light most
2 favorable to my clients, as is legally required, summary
3 judgment is not appropriate at this time. If we go to
4 trial, a jury may very well have to decide whether or not
5 Mr. Curl and Mr. Barker are liable, but for purposes of this
6 Motion, Your Honor, summary judgment should be denied.

7 I've also included in my brief, Your Honor, multiple
8 cases that go ahead and support or favor individual
9 liabilities in these cases, included Wired Fox Technologies
10 vs. Estep, Cool vs. Ramaci, Dumas vs. Infosafe, which is
11 what Mr. Payne had alluded to, and Allen V. Pinnacle
12 Healthcare Systems.

13 Your Honor, if you take a look at the Dumas vs.
14 Infosafe case, which I believe is the most instructive on
15 these particular issues of individual liability, our Court
16 of Appeals specifically held as follows: Our legislature
17 intended to impose individual liability on agents or
18 officers of a corporation who knowingly permit their
19 corporation to violate the Act. To hold otherwise would
20 require us to ignore the words and an agent or officer of
21 the above classes, which I alluded to, Your Honor, in the
22 definition of employer at South Carolina Code Section
23 41-10-10.

24 For those reasons, Your Honor, and, again, viewing the
25 evidence in the light most favorable to the Plaintiffs, we

1 believe that summary judgment simply is not appropriate.

2 THE COURT: Mr. Payne, what do you say about Mr. Parker
3 being an officer? Apparently, he indicated in his
4 deposition that he was.

5 MR. PAYNE: Not when she was an employee, that's what
6 I'm saying. He's not -- he's now got some title now that we
7 fired Walt. I'm still not a hundred percent sure that the
8 records reflect that. But the key to all this is to
9 knowingly violate the Act, you've got to know about the
10 claim. He's not an officer during all this time when she
11 works there and is claiming she didn't get her commissions.
12 That's the big distinction. If you look at all these cases,
13 they are put on notice about the employee is owed the money,
14 they controlled -- they didn't dispute they owed it, but
15 they were put on notice about the claim. We can't knowingly
16 violate this statute when we don't even know about her
17 claim. She doesn't tell us until she leaves. And we can't
18 knowingly say well, dang, your husband was the one doing all
19 this stuff for 12 years, why are you now suing these two
20 people who had nothing to do with this issue? There's just
21 no proof that they knowingly did it.

22 THE COURT: I tell you what I'm going to do. I want to
23 study the briefs. I have not read the entire -- those three
24 cases you mentioned, I've not read those entirely. I want
25 to do that. And I want to ask both of y'all, if you could,

1 to submit proposed orders while I'm reviewing that stuff.
2 I'll make a decision and sign it.

3 MR. PAYNE: One more thing, Your Honor, I forgot to hit
4 on. You'll see on the deposition, there's some typed up
5 documents that Mr. Barker signed that he mentioned. And
6 those were prepared by Mr. Parker who asked him, let's do a
7 hypothetical. This was to help his other lawsuit against
8 John. How much do you think I'm owed? And then as far as
9 Allison. And Mr. Barker says this in his deposition, he
10 said, He came to me with a hypothetical. What would she
11 have been owed had we paid her commission of two percent
12 over all these years? So he fills it out, does a little
13 chart, signs whatever they -- his boss, at the time, her
14 husband, gives him and asked him to sign and he signed it.

15 So that's a little disingenuous unless you read how
16 that came into being. It's just not like something he just
17 voluntarily did it. He did it because his boss, Walt
18 Parker, told him to do it and he did it. And we'll submit
19 the orders. Thank you, Judge.

20 MR. KOZACKI: Your Honor, that's, of course, what Mr.
21 Barker says now, but that's not what it --

22 THE COURT: It's a question of fact.

23 MR. KOZACKI: It certainly is, Your Honor.

24 THE COURT: So I do want y'all to submit proposed
25 orders. Let me study this thing and ponder on it a little

1 bit.

2 MR. PAYNE: Thank you, Your Honor.

3 MR. KOZACKI: Thank you.

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CERTIFICATE OF REPORTER

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

I, PENNY M. JOHNSON, do hereby certify that the foregoing transcript is a true and correct record of the recorded proceedings; that said proceedings were transcribed to the best of my ability from the audio recording and supporting information; and that I am neither counsel for, related to, nor employed by any of the parties to this case, and I have no interest, financial or otherwise, in its outcome.

May 20, 2022

Penny M. Johnson
Penny M. Johnson
Court Reporter III

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM FLORENCE COUNTY
Court of Common Pleas
Michael G. Nettles, Circuit Court Judge

Appellate Case No. 2022-000131
Case Nos. 2020-CP-21-1297/1296

Walter Parker Appellant,

v.

Florence Carpet & Tile, Inc., John Curl, and Mike Barker Respondents,

AND

Allison Parker Appellant,

v.

Florence Carpet & Tile, Inc., John Curl, and Mike Barker Respondents.

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.

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