

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge

Appellate Case No.: 2022-000556

JBCM Holdings, d/b/a Goodfellas Cabaret, Cheetah Charleston
Gentlemen's Club & Generation X Cabaret, Appellants,

v.

Carolina Coin Amusement, LLC, and Ronald J. Davis, Respondents.

RECORD ON APPEAL

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SC Court of Appeals

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Clifton Newman, Circuit Court Judge

Appellate Case No.: 2022-000556

JBCM Holdings, d/b/a Goodfellas Cabaret, Cheetah Charleston
Gentlemen's Club & Generation X Cabaret, Appellants,

v.

Carolina Coin Amusement, LLC, and Ronald J. Davis, 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.

October 13, 2022



Jarrel L. Wigger, Esquire
Wigger Law Firm, Inc.
8086 Rivers Avenue, Suite A
North Charleston, SC 29406
(843) 553-9800
Attorney for Appellants

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
)
 JBCM HOLDINGS, d/b/a GOODFELLAS,)
 CABARET, CHEETAH CHARLESTON)
 GENTLEMEN'S CLUB & GENERATION)
 X CABARET,)
)
 Plaintiff,)
)
)
 vs.)
)
 CAROLINA COIN AMUSEMENT, LLC)
 AND RONALD J. DAVIS,)
)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 CASE NO.: 2021-CP-10-

SUMMONS

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscriber at his office, 8086 Rivers Avenue, North Charleston, South Carolina 29406, 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, the Plaintiff will apply to the Court for relief demanded in the Complaint.

s/Jarrel L. Wigger
 Jarrel L. Wigger, Esquire
 Attorney for the Plaintiff
 8086 Rivers Avenue, Suite A
 North Charleston, SC 29406
 (843) 553-9800

North Charleston, South Carolina
 This 24th day of August, 2021.

STATE OF SOUTH CAROLINA)
 COUNTY OF CHARLESTON)
)
 JBCM HOLDINGS, LLC d/b/a)
 GOODFELLAS CABARET,)
 CHEETAH CHARLESTON)
 GENTLEMEN'S CLUB &)
 GENERATION X CABARET,)
)
)
 Plaintiff,)
)
 v.)
)
 CAROLINA COIN AMUSEMENT,)
 LLC AND RONALD J. DAVIS,)
)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 CASE NO.: 2021-CP-10-

COMPLAINT
 (JURY TRIAL DEMANDED)

The Plaintiff complaining of the Defendants, alleges as follows:

ONE: The Plaintiff, JBCM Holdings, d/b/a Goodfellas Cabaret, Cheetah Charleston Gentlemen's Club and Generation X Cabaret, is a domestic corporation organized and existing under the laws of the State of South Carolina and maintains premises, agents or employees in the State of South Carolina, more specifically located at 2028 Pittsburg Avenue, North Charleston, SC 29405.

TWO: The Defendant, Carolina Coin Amusement, LLC, upon information and belief, is a domestic corporation organized and existing under the laws of the State of South Carolina and maintains a premises, agents or employees in the State of South Carolina, more specifically, an office located at 2118 Cosgrove Avenue, North Charleston, South Carolina 29405.

THREE: The Defendant, Ronald J. Davis, upon information and belief, is the owner and registered agent of the Defendant, Carolina Coin Amusement, LLC.

FOUR: The parties, matters and all things and matters hereinafter alleged are within the jurisdiction of this Court.

FIVE: That the parties entered into an agreement in 2015 whereby the Defendants' ATM machines would be used at Plaintiff's business located in North Charleston, South Carolina and that the Defendants would pay Plaintiff a percentage of the portion of the processed funds through said ATM machines at Plaintiff's business location.

SIX: In accordance with paperwork from Venco, the processor of transactions of the ATM machine, the Defendants owe the Plaintiff approximately \$207,736.00 over a four-year period.

SEVEN: The Plaintiff discovered that Defendant, Ronald J. Davis, was shorting him on the payments and confronted Defendant Davis. Defendant Davis admitted he had unilaterally changed the percentage without asking the Plaintiff.

EIGHT: The Defendants have and continue to fail to pay any of the monies owed to the Plaintiff.

NINE: The Defendants, by their non-action, has made it clear that they never intend to pay any of the money owed to the Plaintiff.

FOR A FIRST CAUSE OF ACTION
BREACH OF CONTRACT

TEN: The Plaintiff realleges and incorporates by reference the allegations contained hereinabove as if fully set forth herein.

ELEVEN: That in or around 2015, the Plaintiff and Defendants entered into an agreement whereby the Defendants were to pay to the Plaintiff a portion of the proceeds gained during the use of the ATM machines located on Plaintiff's business property.

TWELVE: The Defendants have failed to pay any monies owed to the Plaintiff in accordance with the agreement the parties entered into.

THIRTEEN: That the Defendants refused to honor the agreement based on the terms agreed upon by the parties.

FOURTEEN: That the Defendants willfully, falsely, intentionally and with malice made representations to the Plaintiff as to terms of the agreement and also represented that those terms would be complied with.

FIFTEEN: That those representations were false.

SIXTEEN: That the Defendants had knowledge of the falsity of its misrepresentations or had a reckless disregard for their truth or falsity.

SEVENTEEN: That the Plaintiff was ignorant of the falsity of their representations and believed the terms of the agreement would be complied with by the Defendants.

EIGHTEEN: The Defendants are liable to the Plaintiff for the payment of the monies owed to the Plaintiff as set out in the agreement.

NINETEEN: That the Plaintiff relied on the truth of the representations of the Defendants that it would comply with the terms of the agreement.

TWENTY: That the Plaintiff relied on the representations of the Defendants and had a right to rely on these representations, thereby constituting a fraud.

TWENTY-ONE: That by reason of the breach of the contract and fraudulent conduct of the Defendants, the Plaintiff was caused great economic loss and hardship, and incurred expenses and reasonable attorneys fees in attempting to enforce the contract.

TWENTY-TWO: That Defendant Davis unilaterally altered the terms without notifying the Plaintiff with changing his/their agreement.

TWENTY-THREE: That the Defendants breached the contract with the Plaintiff with fraudulent intent, and this breach was accompanied by the fraudulent acts set forth above.

TWENTY-FOUR: That by reason thereof, the Defendants are liable for actual damages in such an amount as the trier of fact may find.

FOR SECOND CAUSE OF ACTION
FRAUD IN THE INDUCEMENT

TWENTY-FIVE: The Plaintiff realleges and incorporates by reference the allegations contained hereinabove as if fully set forth herein.

TWENTY-SIX: The Defendants committed fraud in the inducement against the Plaintiff in the following particulars to wit:

- a. In using deceit and tricking the Plaintiff to act to its advantage by unilaterally altering the agreement with the Defendants;
- b. In falsely misleading the Plaintiff as to the facts upon which the Plaintiff based its decisions to enter into the agreement with the Defendants;
- c. In knowingly misleading the Plaintiff. Defendant Davis knew he had unilaterally altered the terms, yet continued to ___ and send funds as if he was complying with the agreement;
- d. In knowing that the Defendants' representations to the Plaintiff were false;
- e. In knowing that the Plaintiff relied on the misrepresentations that were made by the Defendants;
- f. In knowingly causing the Plaintiff to suffer from financial loss;
- g. In such other ways as may become evident during discovery.

TWENTY-SEVEN: As a proximate result of the acts of the Defendants, the Plaintiff is entitled to actual damages, compensatory damages, attorney fees and the costs of this action.

FOR A THIRD CAUSE OF ACTION
CONVERSION

TWENTY-EIGHT: The Plaintiff realleges and incorporates by reference the allegations contained hereinabove as if fully set forth herein.

TWENTY-NINE: Defendants committed conversion against the Plaintiff in the following particulars to wit:

- a. In wrongfully taking, obtaining, and withholding Plaintiff's money from its possession;
- b. In taking, obtaining, and withholding Plaintiff's money with the intent to permanently deprive and defraud Plaintiff of the use and benefit of its money;
- c. In taking, obtaining, and withholding Plaintiff's money with the intent to permanently appropriate the property for the use of Defendants or any other person other than the Plaintiff.

THIRTY: Defendants' actions were without right or justification and constituted the conversion of Plaintiff's property.

THIRTY-ONE: Defendants acted maliciously and in bad faith in that it knowingly converted Plaintiff's funds when in the exercise of reasonable care it should have known its actions were wrongful.

WHEREFORE, the Plaintiff prays for Judgment against the Defendants for actual damages, consequential damages, and punitive damages as the trier of fact may find, the costs of this action and any further relief as this Court deems just and proper.

s/Jarrel L. Wigger
Jarrel L. Wigger, Esquire
Attorney for the Plaintiff
8086 Rivers Avenue, Suite A
North Charleston, SC 29406
(843) 553-9800

North Charleston, South Carolina
This 24th day of August, 2021.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

CASE NO.: 2021-CP-10-03905

JBCM HOLDINGS, d/b/a GOODFELLAS,
CABARET, CHEETAH CHARLESTON
GENTLEMEN'S CLUB & GENERATION X
CABARET

Plaintiff,

v.

12(b)(6) MOTION TO
DISMISS WITH PREJUDICE FOR
DEFENDANT RONALD J. DAVIS

CAROLINA COIN AMUSEMENT, LLC
AND RONALD J. DAVIS,

Defendants.

TO: JARREL L. WIGGER, ESQ. -- ATTORNEY FOR PLAINTIFF

COMES NOW the Defendant, Ronald J. Davis (hereinafter Defendant), denying each and every allegation of the Complaint not hereinafter specifically admitted, qualified, or explained and demanding strict proof thereof. Defendant will move before this Honorable Court, within 10 days or as soon thereafter as counsel may be heard, for the following relief:

Defendant, Ronald J. Davis, Motions to Dismiss with Prejudice the Plaintiff's Complaint in its entirety pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure on the grounds of Plaintiff's failure to state a claim upon which relief may be granted. Defendant contends the claims against him should be dismissed as all of Plaintiff's claims relate to Carolina Coin Amusement, LLC, and he is protected from individual liability under the South Carolina Uniform Limited Liability Company Act § 33-44-101, et seq.

To the extent an Answer is required, specifically reserving and without waiving all objections defenses, and rights, responds to the Complaint as follows:

1. This Defendant denies the allegations contained in Paragraphs 1 through 31 and demands strict proof thereof.

This Motion is supported by all applicable law and may be supplemented further with memoranda, affidavits, or other supporting material as permitted under and pursuant to the South Carolina Rules of Civil Procedure.

Respectfully submitted,
THE PHIPPS LAW FIRM

/s/ Edward L. Phipps

Edward L. Phipps, Esq.

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Charleston, SC 29407

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ATTORNEY(S) FOR DEFENDANT

October 14, 2021
Charleston, SC

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

CASE NO.: 2021-CP-10-03905

JBCM HOLDINGS, d/b/a GOODFELLAS,
CABARET, CHEETAH CHARLESTON
GENTLEMEN'S CLUB & GENERATION X
CABARET

Plaintiff,

**DEFENDANTS' MOTION TO
DISMISS WITH PREJUDICE**

v.

CAROLINA COIN AMUSEMENT, LLC
AND RONALD J. DAVIS,

Defendants.

TO: THIS HONORABLE COURT, PLAINTIFFS AND THEIR ATTORNEYS:

COMES NOW the Defendants, Carolina Coin Amusement, LLC and Ronald J. Davis (hereinafter Defendants), who by and through undersigned counsel, motions to Dismiss with Prejudice Plaintiff's Complaint in its entirety pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure on the grounds:

1. Plaintiff's failure to state a claim upon which relief may be granted, as all of Plaintiff's claims fail to meet the requirements of S.C. Code § 32-3-10 (Statute of Frauds). Plaintiff's contractual arguments fail as a matter of law as the statute bars recovery upon any agreement that is not to be performed within the space of one year from making thereof.

2. Plaintiff's failure to state a claim upon which relief may be granted, as all of Plaintiff's claims fail to meet the requirements of S.C. Code § 15-3-530 (Statute of Limitations). Plaintiff's claims fail as the claimed action occurred in 2015. Therefore, the deadline to bring a cause of action for any such claims expired in 2018.

This Motion is supported by all applicable law and may be supplemented further with memoranda, affidavits, or other supporting material as permitted under and pursuant to the South Carolina Rules of Civil Procedure.

THE PHIPPS LAW FIRM, LLC

s/Edward L. Phipps

Edward L. Phipps (SC Bar No. 70252)

Mark R. H. Huber (SC Bar No. 102738)

571 Savannah Highway

Charleston, SC 29407

Ph: (843) 216-9797

Edward@phippsfirm.com

Mark@phippsfirm.com

ATTORNEYS FOR DEFENDANTS

Charleston, South Carolina
January 11, 2022

IN THE STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

JBCM HOLDINGS, d/b/a GOODFELLAS,
CABARET, CHEETAH CHARLESTON
GENTLEMEN'S CLUB & GENERATION
X CABARET,

Plaintiff,

v.

CAROLINA COIN AMUSEMENT, LLC
AND RONALD J. DAVIS,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NUMBER: 2021-CP-10-03905

PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT
RONALD J. DAVIS'S MOTION TO
DISMISS

TO: EDWARD L. PHIPPS, ESQUIRE, ATTORNEY FOR THE DEFENDANTS:

Defendant Ronald J. Davis filed a Motion to Dismiss relative to the above-captioned action. Based on the facts of this case and the arguments set forth below, the Plaintiffs respectfully requests this Honorable Court deny said motion. Discovery has not been completed; therefore, to the extent this motion relies on any factual issues, Defendant's Motion to Dismiss should be denied as premature. Dispositive motions generally should not be entertained until such time as discovery is completed.

The Plaintiffs, by and through, their undersigned attorney, further responds to the Defendant's Motion to Dismiss as follows:

STATEMENT OF FACTS

The parties entered into an agreement in 2015 wherein the Defendants' ATM machines would be used at Plaintiffs' businesses located in North Charleston, South Carolina, and that the Defendants would pay Plaintiffs a percentage of the portion of the funds processed through said ATM machines at Plaintiffs' business locations. The percentage payout is set on the machine internally and the Plaintiffs had no access to the numbers to determine if the agreed-upon

percentage was being paid. The Plaintiffs relied on the Defendants to pay in accordance with their agreement. Defendants made payments every month and represented those payments were made pursuant to the terms agreed upon. Around 2018, the Plaintiff began to hear from others who had contracted with the Defendants that there were some questionable business practices by the Defendants. The Plaintiffs began asking for printouts from the machines to verify that the amounts paid to the Plaintiffs were consistent with the agreed-upon percentage. Defendants refused to provide said proof. The Plaintiffs then hired an outside group to run reports on the ATM machines in 2018 and discovered the Defendants were shorting the numbers. The Plaintiff confronted the Defendants and Defendant Ronald Davis admitted he had, unilaterally and without notice, changed the percentage and that he was keeping the Plaintiffs' money. Documentation from Venco, the processor of transactions of the ATM machine, shows that the Defendants owe the Plaintiffs approximately \$207,736.00 over a four-year period. The Defendants have failed and continue to fail to pay any of the monies owed to the Plaintiffs. Please see Affidavit of W. Scott Hendrix attached hereto as Exhibit A.

MOTION TO DISMISS STANDARD

In ruling upon a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6), the court should not grant the motion unless it appears to a certainty that the Plaintiff can prove no facts in support of the claims which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). A Rule 12(b)(6) motion cannot be sustained if facts alleged in the complaint and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. Benson v. United Guar. Residential Ins., 445 S.E.2d 647 (S.C. App. 1994); *see also*, Burns v. Gardner, 328 S.C. 608, 493 S.E.2d 356 (S.C. App. 1997). Since it is a drastic remedy, dismissal "should be cautiously invoked so that

no person will be improperly deprived of a trial of the disputed factual issues." Watson v. Southern Ry. Co., 420 F. Supp. 483, 486 (D.S.C. 1975); *see also* Holloman v. McAllister, 289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986) ("an extreme remedy to be cautiously invoked").

In deciding a 12(b)(6) motion, the question is whether, in the light most favorable to Plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. Holy Loch Distributors, Inc. v. Hitchcock, 332 S.C. 247, 503 S.E.2d 787, 790 (Ct. App. 1998). "The court must accept the factual allegations in the Complaint and must construe them in the light most favorable to the plaintiff." Martin Marietta Corp. v. International Telecommunications Satellite Org., 991 F.2d 94, 97 (4th Cir. 1992); IAC International, Inc. v. J. Gordon James, et al., 1996 WL 751454 (E.D. Va.).

LEGAL ARGUMENT

When considering a Motion to Dismiss, the Court must only consider the Complaint. No extraneous documents or information come before the Court. Defendant Ronald J. Davis raised a 12(b)(6) argument under the provisions of South Carolina Code §33-44-101, *et seq.*, stating that all claims in Plaintiffs' Complaint relate to Defendant Carolina Coin Amusement, LLC and that he is protected from individual liability based on this code section.

To the contrary, this protection does not apply to Defendant Davis. During the entire time that the parties were engaged in their agreement, the Plaintiff was aware of and only dealt with Defendant Davis. Defendant Davis is the principal and registered agent of Defendant Carolina Coin Amusement, LLC; and as such, he is a responsible party for the action and/or inactions of his company. Considering these details, Defendant Davis is liable for the fraudulent acts his company performed against the Plaintiffs.

Further, because the Defendants intentionally acted, it is unknown without discovery

whether that act was ratified by the company, or if the company was even aware of the deceitful conduct. Because conversion is at play, the Plaintiffs need to conduct discovery to determine the extent of Defendants' knowledge and actions. Also, if Defendant Davis was acting as a rogue employee while committing these acts, it is doubtful that the company was following its corporate formalities and Plaintiffs may have to pierce the corporate veil.

The South Carolina Supreme Court has ruled that the corporate entity may be disregarded (or the corporate veil may be "pierced") in certain situations. *See Baker v. Equitable Leasing Corp.*, 275 S.C. 359, 271 S.E.2d 596 (1980). An action to pierce the corporate veil lies in equity, and therefore, this court may determine the facts according to its own view of the preponderance of the evidence. *Sturkie v. Sifly*, 280 S.C. 453, 456-57, 313 S.E.2d 316, 318 (Ct. App. 1984). When determining if a plaintiff should be allowed to "pierce the corporate veil," all facts must be fully developed so that this Court may make a fair determination based on the totality of the circumstances giving rise to a claim. Mirroring Plaintiffs' argument that Defendant Davis should not be dismissed from this action in his individual capacity, the Plaintiffs further argue that they should be afforded a full opportunity for discovery before any dispositive motion should be entertained.

CONCLUSION

Based upon the foregoing reasons, the Plaintiffs respectfully request this Honorable Court deny Defendant Davis's Motion to Dismiss.

[SIGNATURE BLOCK ON FOLLOWING PAGE]

WIGGER LAW FIRM, INC.

s/Jarrel L. Wigger
Jarrel L. Wigger, Esquire
Wigger Law Firm
S.C. Bar #: 011824
Attorney for Plaintiff
8086 Rivers Avenue, Suite A
North Charleston, SC 29406
(843) 553-9800

North Charleston, South Carolina
This 18th day of March 2022.

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

JBCM HOLDINGS, d/b/a
GOODFELLAS CABARET,
CHEETAH CHARLESTON
GENTLEMEN'S CLUB &
GENERATION X CABARET,

Plaintiff,

v.

CAROLINA COIN AMUSEMENT,
LLC AND RONALD J. DAVIS,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2021-CP-10-03905

AFFIDAVIT OF W. SCOTT HENDRIX

I, W. Scott Hendrix, do hereby depose and say:

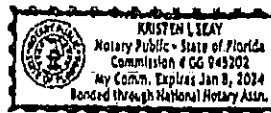
1. I am a partner in JBCM Holdings who owns and operates Goodfellas Cabaret, Cheetah Charleston Gentlemen's Club and Generation X Cabaret.
2. That JCBM Holdings and the Defendants entered into an agreement in 2015 whereby the Defendants' ATM machines would be used at Plaintiff's businesses located in North Charleston, South Carolina and that the Defendants would pay Plaintiff a percentage of the portion of the processed funds through said ATM machines at Plaintiff's business locations.
3. The percentage payout is set on the machine internally and the Plaintiff had no access to the numbers to determine if the agreed upon percentage was being paid. Plaintiff relied on the Defendant to pay pursuant to their agreement.
4. Defendants made payments every month and represented those payments were made pursuant to the terms agreed upon.
5. Around 2018, the Plaintiff began to hear from others who had contracted with the Defendants that there were some questionable business practices by the Defendants. Plaintiff began asking for printouts from the machines to verify the amounts paid were consistent with the agreed upon percentage. Defendants refused to provide said proof.
6. The Plaintiff hired an outside group to run reports on the ATM machines in the 2018 time period and discovered the Defendants were shorting the numbers.
7. The Plaintiff confronted the Defendant and Defendant Ronald Davis admitted he had unilaterally and without notice, changed the percentage and that he was keeping the Plaintiff's money.

8. The Plaintiff filed suit within three years of discovering the theft by the Defendants.

W. Scott Hendrix
W. Scott Hendrix

SWORN TO BEFORE ME THIS
THIS 16th day of March, 2022.

Kristen L. Seay
NOTARY PUBLIC FOR THE
STATE OF FLORIDA
My Commission Expires: 1/8/24



IN THE STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

JBCM HOLDINGS, d/b/a GOODFELLAS,
CABARET, CHEETAH CHARLESTON
GENTLEMEN'S CLUB & GENERATION
X CABARET,

Plaintiff,

v.

CAROLINA COIN AMUSEMENT, LLC
AND RONALD J. DAVIS,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT

CASE NUMBER: 2021-CP-10-03905

**PLAINTIFFS' MEMORANDUM IN
OPPOSITION TO DEFENDANTS'
MOTION TO DISMISS**

TO: EDWARD L. PHIPPS, ESQUIRE, ATTORNEY FOR THE DEFENDANTS:

The Defendants have filed a Motion to Dismiss relative to the above-captioned action. Based on the facts of this case and the arguments set forth below, the Plaintiffs respectfully requests this Honorable Court deny said motion. Discovery has not been completed; therefore, to the extent this motion relies on any factual issues, Defendants' Motion to Dismiss should be denied as premature. Dispositive motions generally should not be entertained until such time as discovery is completed.

The Plaintiffs, by and through, their undersigned attorney, further responds to the Defendants' Motion to Dismiss as follows:

STATEMENT OF FACTS

The parties entered into an agreement in 2015 wherein the Defendants' ATM machines would be used at Plaintiffs' businesses located in North Charleston, South Carolina, and that the Defendants would pay Plaintiffs a percentage of the portion of the funds processed through said ATM machines at Plaintiffs' business locations. The percentage payout is set on the machine internally and the Plaintiffs had no access to the numbers to determine if the agreed-upon

percentage was being paid. The Plaintiffs relied on the Defendants to pay in accordance with their agreement. Defendants made payments every month and represented those payments were made pursuant to the terms agreed upon. Around 2018, the Plaintiff began to hear from others who had contracted with the Defendants that there were some questionable business practices by the Defendants. The Plaintiffs began asking for printouts from the machines to verify that the amounts paid to the Plaintiffs were consistent with the agreed-upon percentage. Defendants refused to provide said proof. The Plaintiffs then hired an outside group to run reports on the ATM machines in 2018 and discovered the Defendants were shorting the numbers. The Plaintiff confronted the Defendants and Defendant Ronald Davis admitted he had, unilaterally and without notice, changed the percentage and that he was keeping the Plaintiffs' money. Documentation from Venco, the processor of transactions of the ATM machine, shows that the Defendants owe the Plaintiffs approximately \$207,736.00 over a four-year period. The Defendants have failed and continue to fail to pay any of the monies owed to the Plaintiffs. Please see Affidavit of W. Scott Hendrix attached hereto as Exhibit A.

MOTION TO DISMISS STANDARD

In ruling upon a motion to dismiss for failure to state a claim upon which relief can be granted pursuant to Rule 12(b)(6), the court should not grant the motion unless it appears to a certainty that the Plaintiff can prove no facts in support of the claims which would entitle him to relief. Conley v. Gibson, 355 U.S. 41, 45-46 (1957). A Rule 12(b)(6) motion cannot be sustained if facts alleged in the complaint and inferences reasonably deducible therefrom would entitle the plaintiff to any relief on any theory of the case. Benson v. United Guar. Residential Ins., 445 S.E.2d 647 (S.C. App. 1994); *see also*, Burns v. Gardner, 328 S.C. 608, 493 S.E.2d 356 (S.C. App. 1997). Since it is a drastic remedy, dismissal "should be cautiously invoked so that

no person will be improperly deprived of a trial of the disputed factual issues." Watson v. Southern Ry. Co., 420 F. Supp. 483, 486 (D.S.C. 1975); *see also* Holloman v. McAllister, 289 S.C. 183, 186, 345 S.E.2d 728, 729 (1986) ("an extreme remedy to be cautiously invoked").

In deciding a 12(b)(6) motion, the question is whether, in the light most favorable to Plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. Holy Loch Distributors, Inc. v. Hitchcock, 332 S.C. 247, 503 S.E.2d 787, 790 (Ct. App. 1998). "The court must accept the factual allegations in the Complaint and must construe them in the light most favorable to the plaintiff." Martin Maricetta Corp. v. International Telecommunications Satellite Org., 991 F.2d 94, 97 (4th Cir. 1992); IAC International, Inc. v. J. Gordon James, et al., 1996 WL 751454 (E.D. Va.).

LEGAL ARGUMENT

The Defendants first argue that Plaintiffs' claims fail to meet the requirements of South Carolina Code §32-3-10 (Statute of Frauds) in that Plaintiffs' contractual arguments fail as a matter of law, as the statute bars recovery upon any agreement that is not to be performed within the space of one year from the making thereof. However, that argument is without merit. Based on the terms of the agreement entered into between the parties in 2015, the agreement was set up such that the Plaintiffs would receive a certain percentage of the portion of the processed funds from the Defendants, and that upon receipt of this payment by the Plaintiffs, the agreement would automatically renew itself each month. Therefore, if the Defendants failed to pay the Plaintiffs on any given month, the Plaintiffs had the right to terminate the agreement and thus, the contract could very well have been completed in less than one year. As such, to the extent the Defendants request dismissal based on Plaintiffs' failure to meet the requirements of §32-3-10 should, their motion should be denied.

Secondly, the Defendants argue that Plaintiffs' claims fail to meet the requirements of South Carolina Code §15-3-530 (Statute of Limitations) because the Plaintiffs' claimed action occurred in 2015 and the Plaintiffs failed to file their Complaint before the end of 2018. This argument is similarly without merit.

South Carolina Code §15-3-530(7) states that any action for relief on the grounds of fraud is not considered to have accrued until *the discovery by the aggrieved party* of the facts constituting the fraud. The Plaintiffs and Defendants engaged in a contract in the year of 2015; however, the Plaintiffs did not become aware of the fraudulent actions by the Defendants until 2018. As such, Plaintiffs had until the end of 2021 to file their Complaint, and did so on August 24, 2021. Therefore, to the extent the Defendants request dismissal based on the Plaintiffs' failure to meet the requires of §15-3-530(7), their motion should be denied.

CONCLUSION

Based upon the foregoing reasons, the Plaintiff respectfully requests this Honorable Court deny Defendants' Motion to Dismiss.

WIGGER LAW FIRM, INC.

s/Jarrel L. Wigger
Jarrel L. Wigger, Esquire
Wigger Law Firm
S.C. Bar #: 011824
Attorney for Plaintiff
8086 Rivers Avenue, Suite A
North Charleston, SC 29406
(843) 553-9800

North Charleston, South Carolina
This 18th day of March 2022.

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

JBCM HOLDINGS, d/b/a
GOODFELLAS CABARET,
CHEETAH CHARLESTON
GENTLEMEN'S CLUB &
GENERATION X CABARET,

Plaintiff,

v.

CAROLINA COIN AMUSEMENT,
LLC AND RONALD J. DAVIS,

Defendants.


IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2021-CP-10-03905

AFFIDAVIT OF W. SCOTT HENDRIX

I, W. Scott Hendrix, do hereby depose and say:


1. I am a partner in JBCM Holdings who owns and operates Goodfellas Cabaret, Cheetah Charleston Gentlemen's Club and Generation X Cabaret.
2. That JCBM Holdings and the Defendants entered into an agreement in 2015 whereby the Defendants' ATM machines would be used at Plaintiff's businesses located in North Charleston, South Carolina and that the Defendants would pay Plaintiff a percentage of the portion of the processed funds through said ATM machines at Plaintiff's business locations.
3. The percentage payout is set on the machine internally and the Plaintiff had no access to the numbers to determine if the agreed upon percentage was being paid. Plaintiff relied on the Defendant to pay pursuant to their agreement.
4. Defendants made payments every month and represented those payments were made pursuant to the terms agreed upon.
5. Around 2018, the Plaintiff began to hear from others who had contracted with the Defendants that there were some questionable business practices by the Defendants. Plaintiff began asking for printouts from the machines to verify the amounts paid were consistent with the agreed upon percentage. Defendants refused to provide said proof.
6. The Plaintiff hired an outside group to run reports on the ATM machines in the 2018 time period and discovered the Defendants were shorting the numbers.
7. The Plaintiff confronted the Defendant and Defendant Ronald Davis admitted he had unilaterally and without notice, changed the percentage and that he was keeping the Plaintiff's money.

8. The Plaintiff filed suit within three years of discovering the theft by the Defendants.



W. Scott Hendrix

SWORN TO BEFORE ME THIS
THIS 16th day of March, 2022.



NOTARY PUBLIC FOR THE
STATE OF FLORIDA
My Commission Expires: 1/8/24



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JBCM HOLDINGS, d/b/a GOODFELLAS
CABARET, CHEETAH CHARLESTON
GENTLEMEN'S CLUB & GENERATION X
CABARET

Plaintiff,

v.

CAROLINA COIN AMUSEMENT, LLC
AND RONALD J. DAVIS,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2021-CP-10-03905

ORDER GRANTING DEFENDANTS'
12(b)(6) MOTION TO DISMISS

This Honorable Court held a hearing on March 21, 2022, on Defendants Carolina Coin Amusement, LLC and Ronald J. Davis' (Defendants) 12(b)(6) Motion to Dismiss Plaintiffs, JBCM Holdings, d/b/a Goodfellas Cabaret, Cheetah Charleston Gentlemen's Club & Generation X Cabaret's (Plaintiffs) Summons and Complaint. Present on behalf of the Defendants was Attorney Edward L. Phipps and on behalf of the Plaintiffs was Attorney Jarrel L. Wigger.

Plaintiffs filed this action against Defendants on August 24, 2021, alleging Breach of Contract, Fraud in the Inducement, and Conversion stemming from an alleged agreement from 2015. On January 11, 2022, Defendants filed this Motion to Dismiss for Plaintiffs' failure to meet the requirements of S.C. Code § 32-3-10 (Statute of Frauds) and S.C. Code § 15-3-530 (Statute of Limitations).

Defendants argued at the hearing on March 21, 2022, that Plaintiffs' contractual arguments fail as a matter of law as S.C. Code § 32-3-10 (Statute of Frauds), which bars recovery for any agreement not in writing that cannot be performed within one year from the making thereof. The Plaintiffs argued extrinsic terms of the alleged agreement. However, these terms were not pled in their complaint, nor was a written contract reflecting the agreement produced/filed that would allow this Court to let Plaintiffs to survive a Motion to Dismiss under S.C. Code § 32-3-10 (Statute of Frauds).

Moreover, Defendants argued that the Plaintiffs are barred by the three (3) year Statute of Limitations, S.C. Code § 15-3-530. The Plaintiffs Complaint alleges an agreement was formed in 2015 between them and is the only date referenced twice in the Complaint. The Law requires a complaint to be filed within three (3) years of the date the material breach was learned, which was argued at the hearing by Plaintiffs' counsel but absent from the Complaint. The clear language of the Complaint would have required the Plaintiffs to file this action by 2018. The Plaintiffs conceded that their Complaint failed comply with the requirements of S.C. Code § 15-3-530 (Statue of Limitations). As such the Plaintiffs requested the Court grant them leave to amend their Complaint under S.C. Rule of Civil Procedure 15(C). However, the Court denies this request as the law is clear and must only consider the Complaint. "When considering a Motion to Dismiss, the Court must only consider the Complaint, with no extraneous documents or information coming before the court." (See Plaintiff's Memorandum in Opposition to Defendant Ronald J. Davis's Motion to Dismiss, ¶ 6).

WHEREFORE, the Court, having considered arguments from both parties on the Motion of the Defendants to dismiss the claims of this action pursuant to SCRPC 12(b)(6), finds:

1. Plaintiffs' claims fail to meet the requirements of S.C. Code § 32-3-10;
2. Plaintiffs' claims fail to meet the requirements of S.C. Code § 15-3-530.

And the Defendants' Motion to Dismiss is GRANTED.

AND IT SO ORDERED!

_____, 2022
Charleston, South Carolina

Honorable Judge Clifton Newman



Charleston Common Pleas

Case Caption: Jbcm Holdings , plaintiff, et al VS Carolina Coin Amusement Llc ,
defendant, et al
Case Number: 2021CP1003905
Type: Order/Dismissal

So Ordered

s/ Clifton B. Newman, 2127

Electronically signed on 2022-03-30 15:41:49 page 3 of 3

ELECTRONICALLY FILED - 2022 Mar 31 8:38 AM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003905

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

JBCM HOLDINGS, d/b/a GOODFELLAS
CABARET, CHEETAH CHARLESTON
GENTLEMEN'S CLUB & GENERATION X
CABARET

Plaintiff,

v.

CAROLINA COIN AMUSEMENT, LLC
AND RONALD J. DAVIS,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2021-CP-10-03905

ORDER GRANTING DEFENDANTS'
12(b)(6) MOTION TO DISMISS

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Moreover, Defendants argued that the Plaintiffs are barred by the three (3) year Statute of Limitations, S.C. Code § 15-3-530. The Plaintiffs Complaint alleges an agreement was formed in 2015 between them and is the only date referenced twice in the Complaint. The Law requires a complaint to be filed within three (3) years of the date the material breach was learned, which was argued at the hearing by Plaintiffs' counsel but absent from the Complaint. The clear language of the Complaint would have required the Plaintiffs to file this action by 2018. The Plaintiffs conceded that their Complaint failed comply with the requirements of S.C. Code § 15-3-530 (Statue of Limitations). As such the Plaintiffs requested the Court grant them leave to amend their Complaint under S.C. Rule of Civil Procedure 15(C). However, the Court denies this request as the law is clear and must only consider the Complaint. "When considering a Motion to Dismiss, the Court must only consider the Complaint, with no extraneous documents or information coming before the court." (See Plaintiff's Memorandum in Opposition to Defendant Ronald J. Davis's Motion to Dismiss, ¶ 6).

WHEREFORE, the Court, having considered arguments from both parties on the Motion of the Defendants to dismiss the claims of this action pursuant to SCRCP 12(b)(6), finds:

1. Plaintiffs' claims fail to meet the requirements of S.C. Code § 32-3-10;
2. Plaintiffs' claims fail to meet the requirements of S.C. Code § 15-3-530.

And the Defendants' Motion to Dismiss is **GRANTED**.

AND IT SO ORDERED!

Clifton Newman
Presiding Judge

_____, 2022
Charleston, South Carolina



Charleston Common Pleas

Case Caption: Jbcm Holdings , plaintiff, et al VS Carolina Coin Amusement Llc ,
defendant, et al
Case Number: 2021CP1003905
Type: Order/Other

So Ordered

s/ Clifton B. Newman, 2127

Electronically signed on 2022-04-15 14:54:50 page 3 of 3

ELECTRONICALLY FILED - 2022 Apr 15 3:26 PM - CHARLESTON - COMMON PLEAS - CASE#2021CP1003905

STATE OF SOUTH CAROLINA)	THE COURT OF COMMON PLEAS
)	
COUNTY OF CHARLESTON)	DOCKET NO. 2021-CP-10-3905
)	
JBCM HOLDINGS, et al)	
)	
Plaintiffs)	
)	
vs.)	
)	
CAROLINA COIN AMUSEMENT, LLC,)	
et al)	
)	
Defendants)	
)	TRANSCRIPT OF RECORD
)	March 21, 2022
)	WebEx videoconferencing

B E F O R E:

THE HONORABLE CLIFTON NEWMAN, JUDGE

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

JARRELL L. WIGGER, ESQ.
Attorney for the Plaintiff

EDWARD L. PHIPPS, ESQ.
Attorney for Defendants Carolina Coin Amusements & Ronald
Davis

JOYCE C. RUEGER,
Certified Verbatim Reporter-Master
Circuit Court Reporter

[Certified Transcript Provided for: Jarrell L. Wigger, Esq.]

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PROCEEDINGS

1
2 THE COURT: Good morning. Is this the JBCM
3 Holdings?

4 MR. PHIPPS: Yes, Your Honor. Good morning.
5 Edward Phipps.

6 THE COURT: Yes, sir.

7 MR. PHIPPS: I represent Carolina Coin Amusement
8 and Ronald Davis.

9 THE COURT: All right.

10 MR. WIGGER: Your Honor, Jerry Wigger here for JCBM
11 Holdings.

12 THE COURT: All right. I have a 12(b)(6) motion.
13 You may proceed.

14 MR. PHIPPS: Yes, Your Honor. May it please the
15 Court?

16 THE COURT: Yes.

17 MR. PHIPPS: Mr. Wigger on behalf of his client,
18 JBCM Holdings, LLC doing business as Goodfellas Cabaret
19 and Cheetah Charleston Gentlemen's Club and Generation X
20 Cabaret filed a complaint against Carolina Coin
21 Amusement, LLC and Ronald Davis.

22 Let me first start with Ronald Davis and then the
23 other motions are kind of intertwined. But in regards to
24 Mr. Davis alone this is an LLC and the alleged agreement
25 is between the LLC and JBCM Holdings, LLC. Mr. Ronald

1 Davis is under the law, protection of the corporate laws
2 and should not be named individually as a participant in
3 this lawsuit under the incorporation laws.

4 Aside from that there are two other; we have three
5 other arguments to have this dismissed. The first being
6 as you know the legal argument is and this is in Mr.
7 Wigger's plaintiff's memorandum in opposition to
8 defendant Ronald Davis motion to dismiss but it applies
9 to both. And I'm going to quote from his memorandum:

10 When considering a motion to dismiss the Court must
11 only consider the complaint. No extraneous documents or
12 information come before the Court.

13 And so in that regard Your Honor we have filed a
14 motion to dismiss and one of the reasons for that was
15 statute of limitations. And if you reference the
16 complaint the complaint indicates that this incident
17 occurred back in 2015 where an agreement was made. And
18 that's all it references.

19 So, on paragraph 5 of the complaint it pleads that
20 the parties entered into an agreement in 2015 whereby the
21 defendant's ATM machines would be used at the plaintiff's
22 business located in North Charleston, South Carolina and
23 that the defendants would pay the plaintiff a percentage
24 of the portion of the proceeds funds through said ATM
25 machines at plaintiffs business location.

1 Now, we filed our motion after the filing the
2 statute of limitations. In his memorandum Mr. Wigger
3 argues extraneously that the plaintiffs did not become
4 aware of the fraudulent actions by the defendants until
5 2018. That is not pled in the complaint.

6 There is no indication that any of the timeframe is
7 anything other than argued in 2015. We're obviously way
8 beyond the three year statute of limitations for
9 anything. And he is barred at that point to bring in
10 anything extraneous except what is in the complaint.

11 Secondly we argued, we asked for relief on the
12 grounds of statute of frauds in that the alleged
13 agreement has to be in writing and that these agreements
14 were to be over a year. There is no written agreement.

15 He references that it could be cancelled on a
16 monthly basis but there is no written agreement that
17 shows that from 2015. I don't think it would be proper
18 for them to make an assertion of anything other than that
19 as years and years and years have passed. And thirdly --
20 give me a second, Your Honor.

21 [Whereupon, Mr. Phipps reviews documents]

22 MR. PHIPPS: Your Honor, I believe that's all the
23 arguments we have. I think that is sufficient to grant
24 us a motion for summary judgment based upon all of them;
25 the latter two apply to both entities. In regards to

1 Ronald Davis I think he should be personally removed as
2 he is a member manager of the LLC and he has incorporated
3 that for the protections of the LLC. Thank you, Your
4 Honor.

5 THE COURT: All right. Yes sir, Mr. Wigger?

6 MR. WIGGER: Yes, sir. Your Honor, we got involved
7 in the case right as the statute was coming up and we
8 filed our complaint to meet the statute. But I'll point
9 out to the Court that we did put there was fraud in the
10 inducement, which renders a three year time period from
11 the date of discovery.

12 I'll agree with Mr. Phipps our complaint is solid
13 about when our person found out about it. And to the
14 extent that our complaint is deficient I would ask leave
15 from the Court under Rule 15(c) to amend the complaint to
16 incorporate any or correct any deficiencies with it. The
17 defendant was aware of when this was discovered because
18 he is on audiotape talking about it.

19 But again since Rule 15(c) is to be liberally
20 construed I would ask the Court for leave to amend to see
21 if we can correct any deficiencies the Court would think
22 would be in our complaint, which would include any
23 piercing the corporate veil issues that would come up
24 with Mr. Davis. It would include any time period as to
25 when our person discovered that he had been defrauded and

JBCM Holdings, et al vs. Carolina Coin Amusement, LLC, et al
Motion to Dismiss
March 21, 2022

1 kind of fill in some of the blanks that Mr. Phipps is
2 talking about.

3 THE COURT: Mr. Phipps?

4 MR. PHIPPS: Thank you, Your Honor. We would
5 object to that. We would ask that the complaint be
6 dismissed with prejudice. Mr. Wigger does not dispute
7 the fact that they did not plead it properly in the sense
8 of I think an affidavit that he added in his memorandum
9 from his client they state in it on paragraph 5 around
10 2018.

11 And again, I think even still with that that it
12 would violate the statute of limitations at the time he
13 filed. We would ask that the complaint be dismissed with
14 prejudice.

15 THE COURT: All right. Mr. Wigger, can assign
16 member LLC, member of the LLC. What was your response
17 to that?

18 MR. WIGGER: Well, the same thing Your Honor. We
19 would ask that we be allowed to amend to include piercing
20 the corporate veil. This fellow we did put in the
21 complaint that he unilaterally changed what the agreement
22 was.

23 And we don't know if the LLC authorized that or if
24 they are going to say he was kind of a rogue person that
25 did it. We would need some discovery to determine that.

1 And we were trying to put him on notice that we were
2 bringing a claim against him personally because we don't
3 know how the LLC is going to respond to his actions.

4 And we think we adequately put him on notice that we
5 are bringing a claim against him but we need some
6 discovery to see how far that would go.

7 MR. PHIPPS: Your Honor, may it please the Court?

8 THE COURT: Yes, sir.

9 MR. PHIPPS: In regards to you know this is the age
10 of everybody files everything with these complaints.
11 They file the agreements, they have filed emails;
12 everybody attaches everything to the pleadings. And we
13 would just dispute that argument in the sense that there
14 was no written agreement.

15 And he's indicating terms and issues in something
16 from 2015 that just did not exist. I don't think it's
17 fair in 2021 to go back and try to pierce a veil and
18 bring in an individual who had protection under a
19 corporation that was properly formed and organized under
20 the laws of South Carolina.

21 MR. WIGGER: Your Honor, with any fairness argument
22 we shouldn't allow this fellow to commit fraud and get
23 away with it, which is what we're attempting to do is
24 correct that problem. He's basically taken our client's
25 money, which we alleged and we shouldn't let him get away

1 with his own bad acts.

2 MR. PHIPPS: And Your Honor, may it please the
3 Court? We obviously dispute any allegations of fraud on
4 behalf of Mr. Davis,

5 THE COURT: So aside from the argument that you all
6 are making on the issues, regarding the issues you've
7 raised do either of you have any authority for your
8 proposition?

9 MR. WIGGER: Well, Your Honor, under Rule 15(c) it
10 says leave to amend shall be freely given. So I'd also
11 point out we cited the statute that talks about fraud
12 being a three year statute. And it's set out in our
13 brief. I'll find it in one second here.

14 [Whereupon, Mr. Wigger reviews documents]

15 MR. WIGGER: 33-44-101.

16 THE COURT: What about it?

17 MR. WIGGER: Well, I thought we had the statute
18 that said that we had three years if there was fraud
19 alleged.

20 [Whereupon, Mr. Wigger reviews documents]

21 THE COURT: Any other comments by anyone?

22 MR. PHIPPS: Yes, Your Honor. I was waiting, I
23 thought Mr. Wigger, I was waiting for Mr. Wigger. I
24 apologize.

25 MR. WIGGER: I'll find it in a second.

1 MR. PHIPPS: Are you still, you still -- Your
2 Honor, may I proceed while we wait for Mr. Wigger?

3 THE COURT: Yes, sir.

4 MR. PHIPPS: Thank you, Your Honor. And I would
5 just piggyback right off that. In his argument he's
6 arguing 33-44-101 in which I started out in the beginning
7 and this is coming from his memorandum which says:

8 When considering a motion to dismiss the Court must
9 only consider the complaint. No extraneous documents or
10 information come before the Court.

11 And that's exactly what he is asking you to do is
12 the opposite of -- the Court must accept the factual
13 allegations in the complaint and must construe them in
14 light most favorable to the plaintiff. That's Martin
15 Marietta Corp. v International Telecommunications
16 Satellite Org., 99 1 F.2d 94. And we don't disagree with
17 that, Your Honor. That's from his memorandum. We think
18 it should be construed in the favor most likable to the
19 plaintiff.

20 The problem is it's not in the complaint. And
21 therefore he's asking you to do specifically what he
22 argued in opposite of his memorandum, the statute of
23 limitations the South Carolina Code 15-3-530 which
24 applies here. This act that he complained of in his
25 action was arguably paragraph 5 of his complaint in 2015.

1 It is 2022. This was filed in 2021; well outside the
2 statute of limitations. Now Mr. Wigger was contacted
3 late in the action. This thing has been discussed with
4 another attorney way prior. They had knowledge. They
5 could have filed this lawsuit a long time ago and they
6 did not.

7 And also South Carolina Code 15-3-537 states that
8 any action for relief under the grounds of fraud has not
9 accrued until discovery by the aggrieved party of the
10 facts. And that's just not argued in the complaint. He
11 can't add that information here at the hearing. It has
12 to be in the complaint. So therefore we would ask that
13 the Court only consider what was in the complaint.
14 That's what a 12 (b)(6) is.

15 And in addition to the statute of limitations there
16 is also the argument of the statute of frauds where a
17 year, more than one year has applied in regards to this
18 agreement that was never put in writing and therefore it
19 violates the statute of frauds.

20 MR. WIGGER: Your Honor, the 15-3-530 section is
21 the section I was going to point out to the Court because
22 under 7, which is a subset of that says the statute of
23 limitations has not accrued until discovery by the
24 aggrieved party. And the complaint is silent to that but
25 that's why this 15 (c) exists is to allow somebody to

1 amend if there are errors like that in a complaint or if
2 things need to be fleshed out more. So it was filed
3 within three years of the discovery of the fraud. This
4 is our person that didn't have access to the ability to
5 even find out that it was going on for some time.

6 And the contract people that walked away from it
7 when it was first entered into nobody knew if they were
8 going to make money or not but that's why it was done
9 this way so either side could walk away at any point.
10 So, nobody anticipated or nobody knew whether it was
11 going to go past a year or not.

12 THE COURT: Based on the arguments I heard and the
13 law as I understand it the motion is granted. The order
14 will not state with prejudice or without prejudice, but
15 the motion is granted.

16 MR. PHIPPS: Thank you, Your Honor.

17 THE COURT: If you will prepare an order to that
18 effect and submit it to me for my review and signature.
19 Serve opposing counsel for any comment that he might wish
20 to make.

21 MR. PHIPPS: Thank you, Your Honor.

22 MR. WIGGER: Thank you, Your Honor.

23 THE COURT: Thank you.

24 *****END OF TRANSCRIPT OF RECORD*****
25

C E R T I F I C A T E

I, the undersigned, Joyce C. Rueger, Official
Circuit Court Reporter for the Ninth Judicial Circuit of
the State of South Carolina, do hereby certify that the
foregoing is, to the best of my ability, a complete
Transcript of Record of the proceedings had, using WebEx
videoconferencing, and evidence introduced in the trial
of the captioned case, relative to appeal, in the Court
of Common Pleas for Charleston County, South Carolina on
the 21st day of March, 2022.

I do further certify that I am neither of kin,
counsel, nor interest to any party hereto.

June 9, 2022


Joyce C. Rueger, CVR-M
Court Reporter

3 Circuit Court Reporter for the Ninth Judicial Circuit of
4 the State of South Carolina, do hereby certify that the
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6 Transcript of Record of the proceedings had, using WebEx
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June 9, 2022


Joyce C. Rueger, OVR-M
Court Reporter

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

JBCM HOLDINGS, d/b/a
GOODFELLAS CABARET,
CHEETAH CHARLESTON
GENTLEMEN'S CLUB &
GENERATION X CABARET,

Plaintiff,

v.

CAROLINA COIN AMUSEMENT,
LLC AND RONALD J. DAVIS,

Defendants.

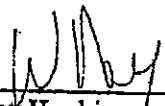
IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO: 2021-CP-10-03905

AFFIDAVIT OF W. SCOTT HENDRIX

I, W. Scott Hendrix, do hereby depose and say:

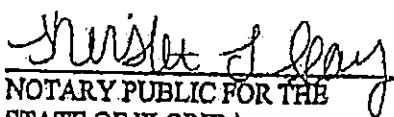
1. I am a partner in JCBM Holdings who owns and operates Goodfellas Cabaret, Cheetah Charleston Gentlemen's Club and Generation X Cabaret.
2. That JCBM Holdings and the Defendants entered into an agreement in 2015 whereby the Defendants' ATM machines would be used at Plaintiff's businesses located in North Charleston, South Carolina and that the Defendants would pay Plaintiff a percentage of the portion of the processed funds through said ATM machines at Plaintiff's business locations.
3. The percentage payout is set on the machine internally and the Plaintiff had no access to the numbers to determine if the agreed upon percentage was being paid. Plaintiff relied on the Defendant to pay pursuant to their agreement.
4. Defendants made payments every month and represented those payments were made pursuant to the terms agreed upon.
5. Around 2018, the Plaintiff began to hear from others who had contracted with the Defendants that there were some questionable business practices by the Defendants. Plaintiff began asking for printouts from the machines to verify the amounts paid were consistent with the agreed upon percentage. Defendants refused to provide said proof.
6. The Plaintiff hired an outside group to run reports on the ATM machines in the 2018 time period and discovered the Defendants were shorting the numbers.
7. The Plaintiff confronted the Defendant and Defendant Ronald Davis admitted he had unilaterally and without notice, changed the percentage and that he was keeping the Plaintiff's money.

8. The Plaintiff filed suit within three years of discovering the theft by the Defendants.



W. Scott Hendrix

SWORN TO BEFORE ME THIS
THIS 16th day of March, 2022.



NOTARY PUBLIC FOR THE
STATE OF FLORIDA
My Commission Expires: 1/8/24

