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Dec 14 2022

SC Court of Appeals

**THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS**

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas for the Ninth Circuit

The Honorable Mikell Scarborough, Master in Equity

Case No.: 2016-CP-10-06265
App. Case No. 2022-000078

TONY A. BILLIPS, individually and as a derivative shareholder of Alex's Restaurants,
Inc.,.....*Plaintiff /Respondent,*

v.

CAROLYN A. BILLIPS, individually and as Trustee of the benefit of Anthony Billips, William
Casey Ivey, and Alex Billips, and as controlling person of Alex's Restaurants, Inc. and ALEX'S
RESTAURANTS, INC.,.....*Defendants/Appellants.*

**AMENDED
RECORD ON APPEAL
VOL. I**

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Clinton T. Magill (S.C. Bar No. 102770)
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ATTORNEYS FOR RESPONDENT

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The South Carolina Court of Appeals

Tony A. Billips, individually and as a derivative
shareholder of Alex's Restaurants, Inc., Respondent,

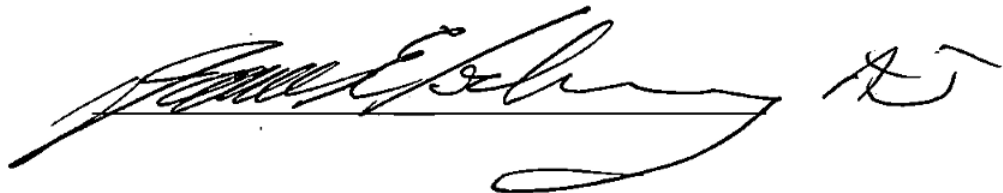
v.

Carolyn A. Billips, individually and as Trustee for the
benefit of Anthony Billips, William Casey Ivey, and
Alex Billips, and as controlling person of Alex's
Restaurants, Inc., and Alex's Restaurants, Inc.,
Appellants.

Appellate Case No. 2022-000078

ORDER

The parties consented to refer Respondent's accounting cause of action to a master-in-equity. Appellant now appeals the master-in-equity's orders valuing Respondent's shares in Alex's Restaurant, Inc. and remanding the remaining causes of action to the circuit court. After receiving the notice of appeal, the Court ordered the parties to serve and file memoranda addressing the appealability of the master's orders. After careful review and consideration of the parties' memoranda, we find the orders are immediately appealable. *See* S.C. Code Ann. § 14-3-330 (2017) (providing our appellate courts have jurisdiction to review interlocutory orders that "involve[] the merits" or "affect[] a substantial right made in an action when such order . . . in effect determines the action and prevents a judgment from which an appeal might be taken"); *Peterkin v. Brigman*, 319 S.C. 367, 368, 461 S.E.2d 809, 810 (1995) ("To involve the merits, the order must 'finally determine some substantial matter forming the whole or part of some cause of action or defense . . .'" (quoting *Mid-State Distributors, Inc., v. Century Importers, Inc.*, 310 S.C. 330, 426 S.E.2d 777 (1993))). However, nothing in this order prevents the parties from addressing appealability in their briefs.



FOR THE COURT

Columbia, South Carolina

cc:

Jaan Gunnar Rannik, Esquire

Michael W. Sautter, Esquire

O. Grady Query, Esquire

Michael Holland Ellis, Jr., Esquire

FILED
Mar 11 2022

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

TONY A. BILLIPS, individually and as a
derivative shareholder of Alex's Restaurant,
Inc.

Plaintiff,

vs.

CAROLYN A. BILLIPS

Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-10-6265

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney:

_____, Bar No. _____

Address: _____

Phone: _____ Fax _____

E-mail: _____ Other: _____

Defendant's Attorney:

Andrew K. Epting, Jr., Bar No. 1908

Address: _____

46A State Street, Charleston, SC 29401

Phone: 8433771871 Fax 8433771310

E-mail: ake@epting-law.com Other: _____

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____

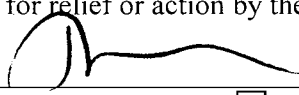
Court Reporter Needed: ☐ YES/☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☐ Plaintiff/☒ Defendant

4/19/17

Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: \$ _____

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,

reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED – AMOUNT DUE: \$ _____

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

TONY A. BILLIPS, individually and as a
derivative shareholder of Alex's Restaurants,
Inc.

Plaintiff,

v.

CAROLYN A. BILLIPS, individually and as
Trustee for the benefit of Anthony Billips,
William Casey Ivey, and Alex Billips, and as
controlling person of Alex's Restaurants, Inc.

and

ALEX'S RESTUARANTS, INC.,

Defendants.

IN THE COURT OF COMMON PLEAS
FOR CHARLESTON COUNTY

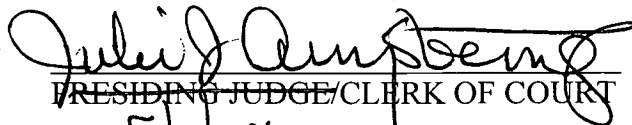
CASE NO.: 2016-CP-10-6265

CONSENT ORDER OF REFERENCE

FILED
2017 MAY -3 AM 9:40
JULIE J. ARMSTRONG
CLERK OF COURT
RY ✓

IT APPEARING that the above-titled action is a proper matter to refer to the Master in Equity for Charleston County so he may preside over the accounting requested by Plaintiff, upon motion of Andrew K. Epting, Attorney for the Defendants, and with the consent of Plaintiff,

IT IS ORDERED that the matter be, and the same hereby is, referred to the Honorable Mikell Scarborough as Master in Equity for Charleston County with regard to the accounting requested by Plaintiff.

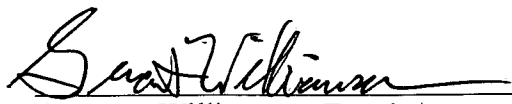

PRESIDING JUDGE/CLERK OF COURT
5/1/17

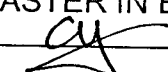
Charleston, South Carolina

I SO MOVE:


Andrew K. Epting, Esquire
Attorney for Defendants

I SO CONSENT:


Grant A. Williamson, Esquire
Attorney for Plaintiff

PAID
Date 4/25/17
Amount \$50.00
MIKELL R. SCARBOROUGH
MASTER IN EQUITY
By: 

ANDREW K. EPTING, JR., L.L.C.
ATTORNEYS AT LAW



April 19, 2017

The Honorable Julie Armstrong
Clerk of Court, Charleston County
100 Broad Street
Charleston, SC 29401

RE: *Tony A. Billips v. Carolyn A. Billips*
Civil Action No.: 2016-CP-10-06265

Dear Ms. Armstrong:

Enclosed for filing please find the original and one (1) copy of the Consent Order of Reference together with the \$25.00 filing fee in the above-referenced matter. I would greatly appreciate your filing the original and returning the file-stamped copy to me in the self-addressed, stamped envelope provided.

Additionally, please also find enclosed our firm's check made payable to the Master-In-Equity in the amount of \$50.00 as payment of the Master's fee. Please note I have copied Laura Beck so that the matter may be scheduled for a status conference once the case has been transferred to the Master.

With kindest regards,

ANDREW K. EPTING, JR., LLC

Andrew K. Epting, Jr.

AKE,Jr./agg

Enclosures – as stated

cc: O. Grady Query, Esquire
E. Brooks Hurt, Esquire
Michael A. Uricchio, Esquire
Laura Dukes Beck, Esquire

ANDREW K. EPTING, JR. · AKE@EPTING-LAW.COM
JAAN G. RANNIK* · JGR@EPTING-LAW.COM
MICHELLE N. ENDEMANN (SPECIAL COUNSEL) · MNE@EPTING-LAW.COM
46A STATE STREET · CHARLESTON · SC · 29401
PHONE: (843) 377-1871 · FAX: (843) 377-1310

*Currently Admitted Only in Maryland

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

RETURN SERVICE REQUESTED



clerkofcourt.charlestoncounty.org

4



ANDREW K. EPTING JR.
46 STATE ST STE A
CHARLESTON SC 29401-2820

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Order/Referred to Master

CASE NO: 2016CP1006265

Tony A Billips , plaintiff, et al VS Carolyn A Billips , defendant, et al

This judgment was entered on the 03th day of May, 2017, and notice mailed first class on Thursday, May 18, 2017, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

0006

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

TONY A. BILLIPS, individually and as a
derivative shareholder of Alex's Restaurants,
Inc.

Plaintiff,

v.

CAROLYN A. BILLIPS, individually and as
Trustee for the benefit of Anthony Billips,
William Casey Ivey, and Alex Billips, and as
controlling person of Alex's Restaurants, Inc.
and

ALEX'S RESTUARANTS, INC.,

Defendants.

**IN THE COURT OF COMMON PLEAS
FOR CHARLESTON COUNTY**

CASE NO.: 2016-CP-10-6265

**CONSENT CONFIDENTIALITY AND
PROTECTIVE ORDER**

FILED
2017 AUG 17 AM 10:24
JULIE J. ARMSTRONG
CLERK OF COURT

Whereas, the parties to this Consent Confidentiality Order ("parties"), have stipulated that certain discovery material is and should be treated as confidential, and have agreed to the terms of this order; accordingly, it is ORDERED:

1. **Scope.** All documents produced in the course of discovery, all responses to discovery requests, all deposition testimony, deposition exhibits, and any other materials which may be subject to discovery (hereinafter collectively "documents") shall be subject to this Order concerning confidential information as set forth below.

2. **Form and Timing of Designation.** Confidential documents shall be so designated by placing or affixing the word "CONFIDENTIAL" on the document in a manner which will not interfere with the legibility of the document. Documents shall be designated CONFIDENTIAL prior to, or contemporaneously with, the production or disclosure of the documents. Inadvertent or unintentional production of documents without prior designation as confidential shall not be



deemed a waiver, in whole or in part, of the right to designate documents as confidential as otherwise allowed by this Order.

3. **Documents Which May be Designated Confidential.** Any party may designate documents as confidential but only after review of the documents; such designation must be made in good faith and on the basis that the information marked confidential contains sensitive information, research, or trade secrets, or commercial information. The certification shall be made concurrently with the disclosure of the documents. Information or documents which are available in the public sector may not be designated as confidential.

4. **Depositions.** Portions of depositions shall be deemed confidential only if designated as such when the deposition is taken or within seven business days after receipt of the transcript. Such designation shall be specific as to the portions to be protected.

5. **Protection of Confidential Material.**

a. **General Protections.** Documents designated CONFIDENTIAL under this Order shall not be used or disclosed by the parties or counsel for the parties or any other persons identified below (§ 5.b.) for any purposes whatsoever other than preparing for and conducting the litigation in which the documents were disclosed (including any appeal of that litigation).

b. **Limited Third Party Disclosures.** The parties and counsel for the parties shall not disclose or permit the disclosure of any documents designated CONFIDENTIAL under the terms of this Order to any other person or entity except as set forth in subparagraphs (1)-(5) below, and then only after the person to whom disclosure is to be made has executed an acknowledgment (in the form set forth at Attachment A hereto), that he or she has read and understands the terms of this Order and is bound by it. Subject to



these requirements, the following categories of persons may be allowed to review documents which have been designated CONFIDENTIAL pursuant to this Order:

- (1) counsel and employees of counsel for the parties who have responsibility for the preparation and trial of the lawsuit;
- (2) parties and employees of a party to this Order but only to the extent counsel shall certify that the specifically named individual party or employee's assistance is necessary to the conduct of the litigation in which the information is disclosed²;
- (3) court reporters engaged for depositions and those persons, if any, specifically engaged for the limited purpose of making photocopies of documents;
- (4) consultants, investigators, or experts (hereinafter referred to collectively as "experts") employed by the parties or counsel for the parties to assist in the preparation and trial of the lawsuit; and
- (5) other persons only upon consent of the producing party or upon order of the court and on such conditions as are agreed to or ordered.

c. **Control of Documents.** Counsel for the parties shall take reasonable efforts to prevent unauthorized disclosure of documents designated as Confidential pursuant to the terms of this order.

d. **Copies.** All copies, duplicates, extracts, summaries, or descriptions (hereinafter referred to collectively as "copies") of documents designated as Confidential under this Order, or any portion of such a document, shall be immediately affixed with the

² At or prior to the time such party or employee completes his or her acknowledgment of review of this Order and agreement to be bound by it (Attachment A hereto), counsel shall complete a certification in the form shown at Attachment B hereto. Counsel shall retain the certification together with the form signed by the party or employee.

designation "CONFIDENTIAL" if the word does not already appear on the copy. All such copies shall be afforded the full protection of this Order.

6. **Filing of Confidential Materials.** In the event a party seeks to file any material that is subject to protection under this Order with the court, that party shall take appropriate action to insure that the documents receive proper protection from public disclosure including: (1) filing a redacted document with the consent of the party who designated the document as confidential; (2) where appropriate (*e.g.* in relation to discovery and evidentiary motions), submitting the documents solely for *in camera* review; or (3) where the preceding measures are not adequate, seeking permission to file the document under seal pursuant to the procedural steps set forth in Local Civil Rule 5.03, DSC, or such other rule or procedure as may apply in the relevant jurisdiction. Absent extraordinary circumstances making prior consultation impractical or inappropriate, the party seeking to submit the document to the court shall first consult with counsel for the party who designated the document as confidential to determine if some measure less restrictive than filing the document under seal may serve to provide adequate protection. This duty exists irrespective of the duty to consult on the underlying motion. Nothing in this Order shall be construed as a prior directive to the Clerk of Court to allow any document to be filed under seal. The parties understand that documents may be filed under seal only with the permission of the court after proper motion pursuant to Local Civil Rule 5.03.

7. **Greater Protection of Specific Documents.** No party may withhold information from discovery on the ground that it requires protection greater than that afforded by this Order unless the party moves for an Order providing such special protection.

8. **Challenges to Designation as Confidential.** Any CONFIDENTIAL designation is subject to challenge. The following procedures shall apply to any such challenge.

A handwritten signature in black ink, located in the bottom right corner of the page. The signature is stylized and appears to be a combination of initials and a surname.

a. The burden of proving the necessity of a Confidential designation remains with the party asserting confidentiality.

b. A party who contends that documents designated CONFIDENTIAL are not entitled to confidential treatment shall give written notice to the party who affixed the designation of the specific basis for the challenge. The party who so designated the documents shall have fifteen (15) days from service of the written notice to determine if the dispute can be resolved without judicial intervention and, if not, to move for an Order confirming the Confidential designation.

c. Notwithstanding any challenge to the designation of documents as confidential, all material previously designated CONFIDENTIAL shall continue to be treated as subject to the full protections of this Order until one of the following occurs:

(1) the party who claims that the documents are confidential withdraws such designation in writing;

(2) the party who claims that the documents are confidential fails to move timely for an Order designating the documents as confidential as set forth in paragraph 9.b. above; or

(3) the court rules that the documents should no longer be designated as confidential information.

d. Challenges to the confidentiality of documents may be made at any time and are not waived by the failure to raise the challenge at the time of initial disclosure or designation.

A handwritten signature in black ink, consisting of stylized, overlapping loops and strokes, located in the bottom right corner of the page.

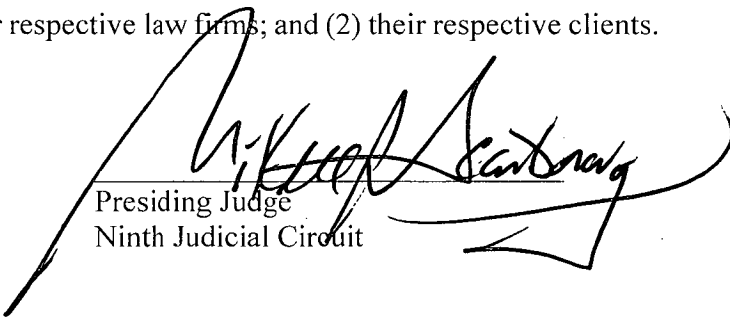
9. **Order Remains in Effect on Conclusion of Litigation.** All provisions of this Order restricting the use of documents designated CONFIDENTIAL shall continue to be binding after the conclusion of the litigation unless otherwise agreed or ordered.

10. **Order Subject to Modification.** This Order shall be subject to modification on motion of any party or any other person who may show an adequate interest in the matter to intervene for purposes of addressing the scope and terms of this Order. The Order shall not, however, be modified until the parties are given notice and an opportunity to be heard on the proposed modification.

11. **No Judicial Determination.** This Order is entered based on the representations and agreements of the parties and for the purpose of facilitating discovery. Nothing herein shall be construed or presented as a judicial determination that any specific document or item of information designated as CONFIDENTIAL by counsel is subject to protection under Rule 26(c) of the Federal Rules of Civil Procedure or otherwise until such time as a document-specific ruling shall have been made.

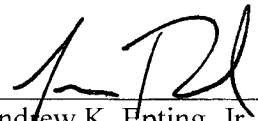
12. **Persons Bound.** This Order shall take effect when entered and shall be binding upon: (1) counsel who signed below and their respective law firms; and (2) their respective clients.
SO ORDERED.

Sumter, South Carolina
August 14, 2017



Presiding Judge
Ninth Judicial Circuit

WE SO MOVE AND CONSENT:



Andrew K. Epting, Jr., Esq.

Jaan G. Rannik, Esq.

Andrew K. Epting, LLC

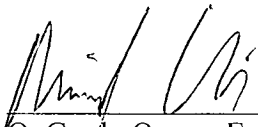
46A State Street, Charleston, SC 29401

P: 843.377.1871

ake@epting-law.com jgr@epting-law.com

Attorneys for Defendant

DATED: August 14, 2017
Charleston, South Carolina



O. Grady Query, Esquire

Query Sautter Forsythe, LLC

147 Wappoo Creek Dr.

Charleston, SC 29412

Attorneys for Plaintiff

DATED: August 14, 2017
Charleston, South Carolina

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

TONY A. BILLIPS, individually and as a
derivative shareholder of Alex's Restaurants,
Inc.

Plaintiff,

v.

CAROLYN A. BILLIPS, individually and as
Trustee for the benefit of Anthony Billips,
William Casey Ivey, and Alex Billips, and as
controlling person of Alex's Restaurants, Inc.
and

ALEX'S RESTUARANTS, INC.,

Defendants.

**IN THE COURT OF COMMON PLEAS
FOR CHARLESTON COUNTY**

CASE NO.: 2016-CP-10-6265

**PROPOSED ORDER DISMISSING
LIS PENDENS AND SECOND
AMENDED SCHEDULING ORDER**

2018 JUN -1 AM 8:09
CLERK OF COURT
JULIA A. BROWN

During the proceedings in this matter held on April 25, 2018, this Court ordered the lifting of Lis Pendens number 2016-LP-18-550 ("the Lis Pendens") as part of its authority in presiding over the accounting in this matter. *See Exh. A* (excerpt of transcript of proceedings). Accordingly, the Lis Pendens is dismissed and dissolved.

In addition, as discovery remains ongoing in this matter and because the Parties indicated during the April 25 hearing that the scheduling order would require amendment, the previous scheduling order is amended as follows:

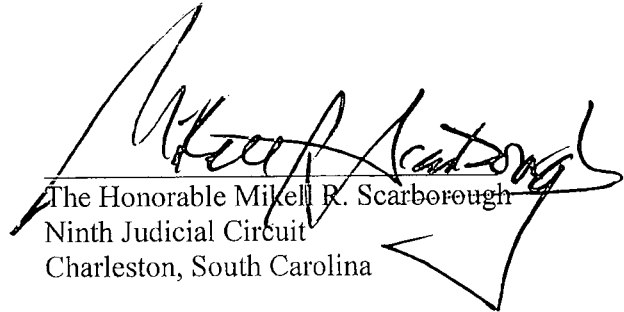
1. **June 15, 2018** – Plaintiff shall file any amended Complaint by this date.
2. **August 15, 2018** – Plaintiff shall make his experts available for deposition by this date.
3. **November 15, 2018** - Discovery shall be completed.
4. **December 14, 2018** - All motions except (a) those relating to the admissibility of evidence at trial and (b) those to compel discovery must be filed on or before this date.
5. **January 30, 2019** - Mediation shall be completed.

[Handwritten signature]

6. ~~March 1, 2018~~²⁰¹⁹ This case is not to be called for trial before this date.

IT IS SO ORDERED.

This 31st day of May, 2018


The Honorable Mikell R. Scarborough
Ninth Judicial Circuit
Charleston, South Carolina

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Tony A. Billips, et al.,
Plaintiffs,
vs. CASE NO. 2016-CP-10-6265
Carolyn A. Billips, et al.,
Defendants.

Hearing before the Honorable Mikell R.
Scarborough, reported by Christine A. Smith, Court
Reporter and Notary Public, at 2:11 p.m. on
April 25, 2018 at 100 Broad Street, Charleston,
South Carolina.

Christine A. Smith, Court Reporter
Master-in-Equity
P.O. Box 30276
Charleston, South Carolina, 29417
(843) 958-5071
casmith@charlestoncounty.org

ExA

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF:

3 Michael H. Ellis, Esq.
4 Query Sautter & Associates, LLC
5 147 Wappoo Creek Drive
6 Shite 202
Charleston, SC 29412
(843) 795-9500
Mellis@qlawsc.com

7 ATTORNEYS FOR THE DEFENDANT:

8 Andrew K. Epting, Jr., Esq.
9 Jaan G. Rannik, Esq.
10 Andrew K. Epting, Jr., LLC
11 46A State Street
12 Charleston, SC 29401
(843) 377-1871
Ake@epting-law.com
Jgr@epting-lawfirm.com

1 MR. EPTING: There are now two, Judge.

2 THE COURT: Down to two restaurants? Okay. I
3 think I read that the last time we were together.

4 Mr. Ellis, other than checking with your
5 client on removing of the lis pendens -- I'm assuming
6 it's in Dorchester County. You-all said Summerville.
7 Is that Dorchester? Summerville is probably in three
8 counties like Ladson.

9 MR. ELLIS: All three.

10 MR. RANNIK: That's correct.

11 THE COURT: It's in Dorchester?

12 MR. ELLIS: Yes, sir.

13 THE COURT: Okay. Well, what I would be
14 willing to do for the benefit of Ms. Billips on that
15 would be to order the removal of the lis pendens, but
16 I would require you-all to notify Mr. Ellis on behalf
17 of his client, whatever's going to happen, whatever
18 money is being -- whatever the amount of the debt is
19 today, whatever the amount of the debt is going to
20 be, and if they're moving debt from an Alex's store
21 over to there, they should be entitled to get that.
22 So it would be something that they ought to be
23 entitled to receive on an information basis. That
24 would be consistent with their accounting cause of
25 action, just to follow the funds on that sort of

1 thing. So I don't have a problem with that. That
2 allows it to move forward, which I understand is the
3 frustration that you've got right now. I understand
4 that. Okay? Just make sure he stays in the know on
5 that, just so you-all are in the know on that.

6 As to the dismissals -- because technically
7 the accounting -- I'm not sure I can touch those
8 today. I think maybe you-all need to go back and
9 talk about that and as to what, if anything else
10 wants to come in here or what needs to be tried by a
11 jury. It doesn't matter to me.

12 I would order that there would be an agreement
13 not to sell or otherwise encumber any of Alex's
14 assets. Alex's is essentially what I think the
15 Plaintiff is after, are they not, in tracing the
16 funds? Mr. Ellis?

17 MR. ELLIS: Correct, Your Honor. The same
18 thing falls under the results of the trust.

19 THE COURT: Right. Their share of whatever is
20 as a result of that, Alex's Restaurant, Inc., right?

21 MR. ELLIS: Correct. Anything that would have
22 been trust money or corporate money to buy outside.

23 THE COURT: Okay. I'm with you on that one.

24 MR. EPTING: Judge, one thing that may -- we
25 would like to get a little more specificity either in

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

TONY A. BILLIPS, individually and as a
derivative shareholder of Alex's Restaurants,
Inc.,

Plaintiff,)

vs.)

CAROLYN BILLIPS, et al.

Defendant.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-10-06265

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney:

_____, Bar No. _____

Address: _____

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

Andrew K. Epting, Jr., Bar No. 1908

Address: _____

46A State Street, Charleston, SC 29401

Phone: 8433771871 Fax 8433771310

E-mail: ake@epting-law.com Other: _____

☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)

☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)

☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: _____

Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☐ NO

SECTION II: Motion/Order Type

☐ Written motion attached

☒ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

10-3-18

Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT: \$ _____

☐ EXEMPT:

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other: _____

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ MOTION FEE COLLECTED: \$ _____

☐ CONTESTED – AMOUNT DUE: \$ _____

2/18/18 -
original sealed
& placed w/ redacted

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

TONY A. BILLIPS, individually and as a
derivative shareholder of Alex's Restaurants,
Inc.

Plaintiff,

v.

CAROLYN BILLIPS, individually and as
Trustee for the benefit of Anthony Billips,
William Casey Ivey, and Alex Billips, and as
controlling person of Alex's Restaurants, Inc.
and
ALEX'S RESTAURANTS, INC.,

Defendants.

**IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT**

CASE NO. 2016-CP-10-06265

CONSENT ORDER TO SEAL

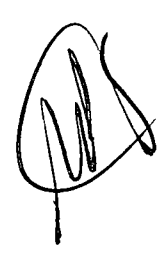
FILED
2018 DEC 13 PM 1:35
CLERK OF COURT

THIS MATTER COMES BEFORE ME by consent of the parties for an Order pursuant
to SCRCP Rule 41.1, to seal certain documents;

WHEREAS, Plaintiff filed a Motion to Quash and for a Protective Order on August 13,
2018 and a Memorandum in Support of his motion along with exhibits on September 6, 2018;

WHEREAS, a hearing was held before this Court on September 10, 2018 on Plaintiff's
Motion to Quash and for a Protective Order;

WHEREAS, during the September 10 hearing, the Parties consented on the record to the
redaction and sealing of portions of the deposition transcript of John Freeman taken August 13,
2018, portions of Exhibit C "Deposition Transcript of John Freeman" to Plaintiff's
Memorandum filed in support of the Motion to Quash on September 6, 2018, and a portion of the
transcript of the September 10, 2018 hearing before the Honorable Mikell R. Scarborough as
follows:



Deposition Transcript of John Freeman dated August 13, 2018:

Page:Line

- 30:1-33:25;
- 35:9-10;
- 41:21-22

September 10, 2018 Hearing before the
Honorable Mikell R. Scarborough Transcript:

Page:Line

- 26:2-3

Exhibit C "Deposition Transcript of John Freeman"
to Plaintiff's Memorandum filed in support of the
Motion to Quash on September 5, 2018:

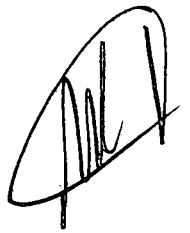
Page:Line

- Page(s) 32, 33, and 34.

NOW, THEREFORE, by agreement of the parties,

IT IS HEREBY ORDERED as follows:

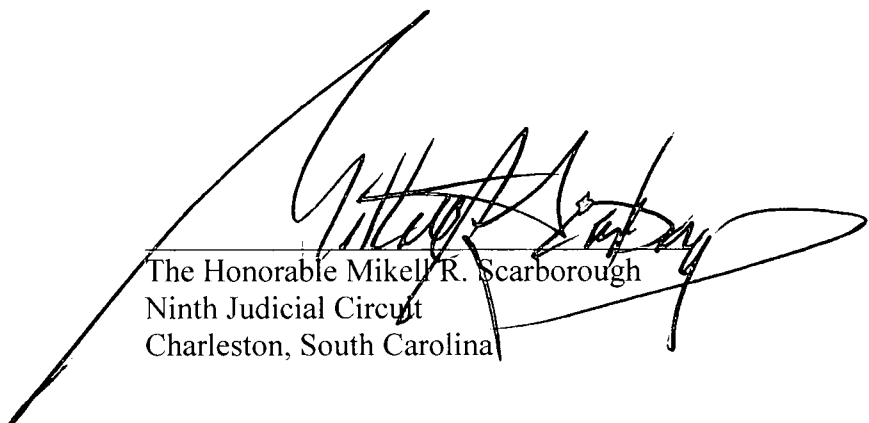
1. That portions of (i) the deposition transcript of John Freeman taken August 13, 2018, (ii) of Exhibit C "Deposition Transcript of John Freeman" to Plaintiff's Memorandum filed in support of the Motion to Quash on September 6, 2018, and (iii) of the transcript of the September 10, 2018 hearing shall be redacted and sealed by the Clerk as stated above;
2. The clerk shall rescind the filing of the memorandum in support of Plaintiff's Motion to Quash, filed September 6, 2018, removing both the paper and electronic versions of the filing from the Court's docket, and replace the filing with the redacted version provided by Defendants' counsel with the relevant portions placed under seal in an envelope provided by Defendants, as discussed on the record before this Court;



3. Only counsel of record may have copies of the original unredacted version of the exhibits;
4. The Parties shall not refer to the sealed portion of the filing, the sealed portion of the transcript of the September 10 hearing before this Court, or any subsequently sealed materials in the future, unless that reference is itself made confidential and/or, if filed, filed under seal.

AND IT IS SO ORDERED.

This 7th day of Dec, 2018



The Honorable Mikell R. Scarborough
Ninth Judicial Circuit
Charleston, South Carolina

ANDREW K. EPTING, JR., LLC

ATTORNEYS AT LAW

ANDREW K. EPTING, JR. · AKE@EPTING-LAW.COM

JAAN G. RANNIK · JGR@EPTING-LAW.COM



October 3, 2018

VIA EMAIL & US MAIL

The Honorable Mikell R. Scarborough
Charleston County Master In Equity
100 Broad Street
Charleston, SC 29401

RE: *Tony A. Billips v. Carolyn A. Billips and Alex's Restaurants, Inc.*
Case No.: 2016-CP-32-6265

Dear Judge Scarborough:

Enclosed for your consideration is a proposed Order regarding the sealing of certain records, as agreed to by the Parties on the record at the last hearing before Your Honor in this case. The \$25.00 motion fee is likewise enclosed, and Counsel for Plaintiff is copied with this letter.

Should the Order meet your approval, we would be grateful if you should sign it and return a file-stamped copy to our office in the self-addressed, stamped envelope provided.

I also enclose a courtesy copy of a motion being filed today in this matter.

With thanks and kindest regards,

ANDREW K. EPTING, JR., LLC

Drew

Andrew K. Epting, Jr.
AKE,Jr./jgr

Enclosures as stated

cc: O. Grady Query, Esquire (*via email, with enclosures*)
Mike Ellis, Esquire (*via email, with enclosures*)

46A STATE STREET · CHARLESTON · SC · 29401
PHONE (843) 377-1871 · FAX (843) 377-1310

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

RETURN SERVICE REQUESTED



clerkofcourt.charlestoncounty.org

96



ANDREW K. EPTING JR.
46 STATE ST STE A
CHARLESTON SC 29401-2820

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

order to seal memo filed 9-6-18-replaced w/ redacted copy

CASE NO: 2016CP1006265

Tony A Billips , plaintiff, et al VS Carolyn A Billips , defendant, et al

This judgment was entered on the 13th day of December, 2018, and notice mailed first class on Thursday, December 13, 2018, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

RETURN SERVICE REQUESTED



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JAAN GUNNAR RANNIK
46 STATE ST STE A
CHARLESTON SC 29401-2820

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

order to seal memo filed 9-6-18-replaced w/ redacted copy

CASE NO: 2016CP1006265

Tony A Billips , plaintiff, et al VS Carolyn A Billips , defendant, et al

This judgment was entered on the 13th day of December, 2018, and notice mailed first class on Thursday, December 13, 2018, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016 CP-10-6265

Tony A. Billips, individually and as a derivative shareholder

Carolyn Billips, et al.

of Alex's Restaurants, Inc.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Master in Equity

 Attorney for : ☐ Plaintiff ☐ Defendant
 or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **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
- ☐ **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: Defendant's Motion to Dismiss and For Further Relief is respectfully DENIED.

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

 If applicable, describe the property, including tax map information and address, referenced in the order:
 N/A

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

Circuit Court Judge

3062

Judge Code

12/19/18

Date

JULIE J. ARMSTRONG

CLERK OF COURT, C.P. & G.S.
100 BROAD STREET, SUITE 106
CHARLESTON, SC 29401-2258

RETURN SERVICE REQUESTED



clerkofcourt.charlestoncounty.org

31



JAAN GUNNAR RANNIK
46 STATE ST STE A
CHARLESTON SC 29401-2820

NOTICE OF ENTRY OF JUDGMENT/ORDER PURSUANT TO RULE 77 SCRPC

Master's Order Denying defendant Motion to Dismiss & Relief

CASE NO: 2016CP1006265

Tony A Billips , plaintiff, et al VS Carolyn A Billips , defendant, et al

This judgment was entered on the 28th day of December, 2018, and notice mailed first class on Wednesday, January 02, 2019, to all counsel of record and/or all parties entitled to receive notice.

You may view and download this document at <http://clerkofcourt.charlestoncounty.org> or obtain a copy in person at the Clerk of Court's Office during regular Charleston County business hours.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP1006265

Tony A Billips et al
PLAINTIFF(S)

Carolyn A Billips et al
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:

This matter came before the Court on the Defendant's Motion to Exclude Expert Witness Testimony and on the Plaintiff's Motion to Compel Discovery. The Motion to Exclude is respectfully DENIED as it relates to James Ewart as he has testified to his opinion and the basis for his calculation of value. The Motion to Exclude is GRANTED as to John Freeman, whose testimony is not necessary at the accounting hearing before the Court. The Motion to Compel Updated Discovery was agreed to by the Defendant and is RESOLVED.

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 08/09/2021 .

Alex Billips
William Casey Ivey

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.



Charleston Common Pleas

Case Caption: Tony A Billips , plaintiff, et al VS Carolyn A Billips , defendant, et al

Case Number: 2016CP1006265

Type: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2021-08-09 15:00:55 page 3 of 3

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON****IN THE COURT OF COMMON PLEAS
FOR CHARLESTON COUNTY**

TONY A. BILLIPS, individually and
as a derivative shareholder of Alex's
Restaurants, Inc.

CASE NO. 2016-CP-10-06265

Plaintiff,

v.

CAROLYN A. BILLIPS, individually
and as Trustee for the benefit of
Anthony Billips, William Casey Ivey,
and Alex Billips, and as controlling
person of Alex's Restaurants, Inc.

ORDER

and

ALEX'S RESTAURANTS, INC.,

Defendants.

The parties have asked this Court, in their Consent Order of Reference filed May 3, 2017, to entertain the accounting action, and place a value on Mr. Tony Billips' eighteen and one-third percent stake in Alex's Restaurants Inc. Testimony and exhibits were presented over a two-day trial beginning August 24, 2021. Having heard and considered the evidence, I rule as follows.

I. Factual Background**A. Ownership of Alex's Restaurants, Inc.**

Alex's Restaurants Inc. ("Alex's") was founded in 1975 by Alex Billips Sr. and Carolyn Billips, whose original ownership percentages were 55% and 45% respectively. Upon Mr. Billips' death in February 1980, his 55% interest was left to be divided equally among Alex Lee Billips, Jr., William Casey Ivey, and Tony Billips. These shares were held in trust until they came of age, at which point each would receive their eighteen and one-third percent (18.33%) interest. There is no dispute that this occurred, nor that Mr. Ivey's shares were ultimately

transferred to Ms. Billips. It is likewise undisputed that the ownership interests today are:

- Carolyn Billips – 63.33%
- Alex Billips, Jr. – 18.33%
- Tony Billips – 18.33%

B. Operations of Alex's

At the height of its local market share, Alex's operated six locations in the Tri-County:

1. 302 Coleman Boulevard, Mt. Pleasant, South Carolina
2. 5503 Rivers Avenue, North Charleston, South Carolina¹
3. 2623 Ferrara Drive, North Charleston, South Carolina (known as the "Dorchester Road" location)
4. 1644 Savannah Highway, Charleston, South Carolina
5. 315 N Hwy 52, Moncks Corner, South Carolina
6. 132 St. James Avenue, Goose Creek, South Carolina

Alex's revenues came from food sales and video poker machines located within each restaurant. When video poker was banned in the early 2000s, Alex's revenues dramatically declined. Following the 2008 Recession, the company faced further difficulties that left it unable to meet its financial obligations. The result was the forced sale of certain locations of Alex's Restaurants between 2008 and 2013. To stay in business, Ms. Billips contributed some of her personal assets to keep the business operational. The Court is persuaded that, but for Ms. Billips' efforts, Alex's would not have survived as an ongoing business enterprise.

As of today, the sole remaining location of Alex's is located at 132 St. James Avenue in Goose Creek, South Carolina.

¹ This location was operated as a laundry after it began losing money as a restaurant in the early 2000s.

C. Flowertown Restaurant

Ms. Billips also operated Flowertown Restaurant (“Flowertown”) in Summerville, South Carolina. Flowertown was founded in approximately 1984 and is wholly owned by Carolyn Billips. It keeps separate books and files separate tax returns from Alex’s, although it has faced the same difficulties as Alex’s described *supra*.

Ms. Billips testified that, as the sole owner of Flowertown and the majority shareholder of Alex’s, her inability to meet the obligations of either would result in the closure of both. Accordingly, she has used proceeds from the sale of certain Alex’s locations to satisfy obligations of Flowertown, and she also sold personal assets to satisfy obligations of Alex’s (the accounting of which is presented *infra*).

Flowertown was renamed “Alex’s Restaurant” in about 2013. Ms. Billips testified she did so in order to reduce advertising expense for both Alex’s and Flowertown but that neither business saw a change in revenues as a result. It was later renamed “Family Restaurant.”

II. Valuation

Plaintiff presented evidence and an expert report calculating the value of Alex’s as of 2014. The Court finds that Plaintiff has failed to prove any conduct on the part of Defendants or any other reason that would justify this Court valuing Mr. Billips’ interest of Alex’s Restaurants, Inc. based on its value in 2014 rather than as of today. Plaintiff provided no definite opinion as to its present value, instead leaving that decision to the Court.

Defendants argued that the business has operated at a loss over the past decade and that the value of the business is therefore \$0.00. While I find that the business has not been profitable, as the valuation is for the purpose of setting the price at which Mr. Billips’ 18.3%

interest in the corporation will be repurchased,² the question for the Court is what value his shares have based on prospective earnings. This Court's decision on this value follows.

A. Methodology for Valuing Alex's

Plaintiff's expert, Mr. Ewart, testified that, while he could not determine a valuation of Alex's, he could calculate the value of the Goose Creek location (the sole remaining location of Alex's) as of 2014 by multiplying its estimated gross revenues over a twelve-month period by a discount multiplier of 0.28. The Court accepts this methodology and this multiplier.

Though Alex's Restaurants, Inc.'s tax year ends on July 31, the most recent annual revenues available to the court are for calendar year 2020, and they show gross revenues of \$392,922.19. The Court also received a profit and loss statement showing \$1,742,553.72 in gross revenues for calendar year 2019. **Pl. Exh. 19.** A review of Alex's tax returns since 2010 shows that 2019 represented Alex's highest gross revenues in the last decade. The 2020 numbers reflect the reality of running a restaurant business during the current COVID-19 pandemic.

To use the numbers from either of these years would not reflect the reality of today – especially in the restaurant industry which businesses have been severely hampered by the effects of the COVID-19 pandemic, continuing labor shortages, and the threat of further COVID-

² A request Plaintiff acknowledged during his testimony:

Q. And you're asking this Court to determine the value of that interest and cash you out on your interest, correct?

A. Yeah, from the – what was given to me when it was given to me.

Q. And that would be based on the value today of –

A. Correct.

Q. – the operations?

A. Yes, sir.

Exh. 1, Trial Tr. (Aug. 25, 2021) at 37:1–10.

19-related disruptions.

This Court must consider anticipated future revenues in order to ascribe a present-day value to the business. Accordingly, the Court finds that the average of the gross revenues of calendar years 2019 and 2020, or \$1,067,737.96, represents the likely revenues of Alex's going forward and is the best means of valuing Mr. Billips' interest today.

Using this number and Plaintiff's expert's (James Ewart) multiplier of 0.28, the value of Alex's Restaurants, Inc. as a whole and as of today is \$298,966.63.

B. Adjustment Relating to Flowertown

The Court finds that the use of proceeds from the sale of assets of Alex's in order to satisfy tax obligations for Flowertown requires an adjustment in the valuation of Alex's. Contemporary accounting records show that \$170,277.57 of proceeds from those sales went to satisfying tax obligations for Flowertown. Specifically:

- \$42,037.45 toward state taxes from the sale of Rivers Avenue (**D. Exh. 5**) broken down as follows:
 - a \$27,992.62 countercheck (*id.* at 1);
 - an additional \$14,044.83 from three checks issued to Ms. Billips (*id.* at 2, including handwritten notes); and
- \$128,240.12 from the sale of the properties on Dorchester Road (**Pl. Exh. 2**), as follows:
 - \$21,087.01 toward Flowertown sales tax,
 - \$81,061.15 toward Flowertown's federal taxes,
 - \$19,472.01 toward Flowertown's state taxes,
 - and \$6,619.95 toward Ms. Billips' taxes.

However, contemporary accounting records also establish that Ms. Billips contributed \$168,213.90 in personal assets for the benefit of Alex's during this same time period, as follows:

- \$40,000 from the February 5, 2010 sale of her property ("St. George") to satisfy payroll taxes for Alex's Inc. (**D. Exh. 4**),

- \$70,000 and \$50,000 respectively for the donation of two properties owned by Ms. Billips (2619 and 2621 Ferrara Drive) in order to effectuate the sale of the Dorchester Road location of Alex's (without which the sale would not have closed) (**D. Exh. 3³**); and
- \$8,213.90 from the sale of her personal residence (1140 Island View Drive) that was paid to satisfy obligations of Alex's. **D. Exh. 4.**

As the proceeds to Flowertown exceeded Ms. Billips' personal contributions by \$2,063.67, the Court finds that Ms. Billips owes \$2,063.67 to Alex's Inc., increasing the valuation of Alex's Inc. by that amount, for a total of \$301,030.30.

C. Valuing Mr. Billips' Interest

Mr. Billips owns 18.33% of Alex's Restaurants, Inc., valued at \$301,030.30, which amounts to \$55,178.85. I must also account, though, for the judicially noticed fact that Mr. Billips' interest is a minority interest subject to a discount in value ranging from 20-40%, which this Court finds recognizes the discount for less marketable interests in privately held businesses. *See, e.g., Romagnoli, John, Common Discounts Used in Valuations of Closely Held Businesses, available at https://cst-cpa.com/wp-content/uploads/Common_Discounts_Romagnoli_.pdf* (last accessed November 16, 2021).

In its decision, the Court considers:

- (i) the business's lack of profitability;
- (ii) Ms. Billips' submarket salary for operating the business the past four decades; and
- (iii) the risk of capital contributions necessary to keep the business ongoing.

The Court finds a 20% discount on this amount is a conservative reduction to account for Mr. Billips' status as a minority shareholder in a business not readily marketable.

³ Of the \$320,000 sale price of the Alex's location and Ms. Billips' properties, \$200,000 was received for the restaurant and parking, and \$120,000 was received for Ms. Billips' properties. *Id.*

Accordingly, the Court finds the value of Mr. Billips' 18.3% interest to be \$44,143.08, (\$55,178.85 – \$11,035.77 = \$44,143.08).

IT IS FURTHER ORDERED that, upon tender of the sum of \$44,143.08 to Mr. Billips, his shares shall be transferred back to the corporation for the benefit of Ms. Billips.

IT IS SO ORDERED.

This ____ day of _____, 2021

Mikell R. Scarborough
Master in Equity
County of Charleston



Charleston Common Pleas

Case Caption: Tony A Billips , plaintiff, et al VS Carolyn A Billips , defendant, et al

Case Number: 2016CP1006265

Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2021-11-22 12:05:23 page 8 of 8

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016CP1006265

Tony A Billips et al
PLAINTIFF(S)

Carolyn A Billips et al
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:

Upon consideration of the Plaintiff's Motion to Reconsider the Master's Order, filed December 2, 2021, the Court GRANTS the Motion to the extent it orders payment of money in exchange for shares. Instead, the Court orders this action be REMANDED to the Circuit Court on the remaining causes of action after this Court's Order on the Accounting. The Motion is DENIED as to the value of the Plaintiff's interest which was reduced for his minority interest in Alex's. Further, the Court GRANTS the Defendant's Motion for Relief to seal the record as to the four Exhibits requested as the Court finds this request reasonable and limited in scope and the allegations contained therein not relevant to the accounting cause of action. Defendant's remaining relief is respectfully 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 12/20/2021 .

Alex Billips
William Casey Ivey

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.



Charleston Common Pleas

Case Caption: Tony A Billips , plaintiff, et al VS Carolyn A Billips , defendant, et al

Case Number: 2016CP1006265

Type: Order/Electronic Form 4

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2021-12-20 13:05:12 page 3 of 3

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
TONY A. BILLIPS, individually and as)
a derivative shareholder of Alex's)
Restaurants, Inc.)

Plaintiff,)

vs.)

CAROLYN A. BILLIPS, individually and as)
Trustee for the benefit of Anthony Billips,)
William Casey Ivey, and Alex Billips, and as)
controlling person of Alex's Restaurants, Inc.)
and ALEX'S RESTAURANTS, INC.,)

Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER 2016-CP-10-6265

**CONSENT ORDER
GRANTING LEAVE
FOR DEFENDANT TO DEPOSIT
FUNDS PURSUANT TO
RULE 67, SCRPC**

Defendants moved before this Court for leave to deposit the sum of \$44,143.08 into Court pursuant to Rule 67, SCRPC.

NOW THEREFORE, and with Consent of the parties, Defendant is granted leave to deposit the amount of \$44,143.08 into Court pursuant to Rule 67, SCRPC.

IT IS SO ORDERED!

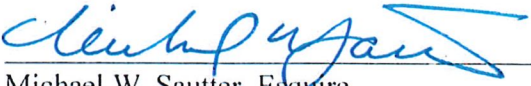
The Honorable Mikell R. Scarborough
Charleston County Master in Equity

Charleston, South Carolina
This ____ day of May, 2022

WE CONSENT:



Jaan Rannik, Esquire
Epting and Rannik, LLC
Attorneys for Defendant



Michael W. Sautter, Esquire
Query Sautter & Associates, LLC
Attorneys for Plaintiff



Charleston Common Pleas

Case Caption: Tony A Billips , plaintiff, et al VS Carolyn A Billips , defendant, et al

Case Number: 2016CP1006265

Type: Order/Consent Order

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2022-06-01 11:44:01 page 3 of 3

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

TONY A. BILLIPS, individually and as)
a derivative shareholder of Alex's)
Restaurants, Inc.)

Plaintiff.)

vs.)

CAROLYN A. BILLIPS, individually and as)
Trustee for the benefit of Anthony Billips,)
William Casey Ivey, and Alex Billips, and as)
controlling person of Alex's Restaurants, Inc.)
and ALEX'S RESTAURANTS, INC.,)

Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER 2016-CP-10- 6265

SUMMONS

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 subscribed at the law office at 147 Wappoo Creek Drive, Suite 202, Charleston, South Carolina 29412, 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 in this action will apply to the Court for the relief demanded in the Complaint, including the rendering of judgment by default against you.

If the within pleadings were served upon you by certified mail, then in that event, a copy of your Answer to said Complaint shall be received by said attorney within thirty-five (35) days after the service thereof, exclusive of the day of such service, as provided by Rule 6, of the South Carolina Rules of Civil Procedure.

FILED
2016 NOV 21 AM 11:49
CLERK OF COURT

YOU ARE HEREBY GIVEN FURTHER NOTICE that if you fail to answer, appear or defend said Complaint required by this Summons within said time allowed under Rule 6, of the South Carolina Rules of Civil Procedure, judgment by default will be rendered against you for the relief demanded in said Complaint.

QUERY SAUTTER FORSYTHE, LLC



O. Grady Query, Esquire (SC Bar: 4610)
E. Brooks Hurt, Esquire (SC Bar: 100649)
Grant A. Williamson, Esquire (SC Bar: 102863)
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Michael A. Uricchio, Esquire (SC Bar: 11275)
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North Charleston, South Carolina 29405
Telephone: 843.577.4744

Attorneys for Plaintiff

Dated: 11/18/16
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
TONY A. BILLIPS, individually and as)
a derivative shareholder of Alex's)
Restaurants, Inc.)
Plaintiff,)
vs.)
CAROLYN A. BILLIPS, individually and as)
Trustee for the benefit of Anthony Billips,)
William Casey Ivey, and Alex Billips, and as)
controlling person of Alex's Restaurants, Inc.)
and ALEX'S RESTAURANTS, INC.,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER 2016-CP-10-_____

COMPLAINT

Injunctive Relief, Fraud,
Accounting, Piercing the Corporate
Veil, Breach of Trust, Breach of
Fiduciary Duty as Co-Trustee, Breach of
Fiduciary Duty as Majority Shareholder,
Judicial Determination of Shareholder's
Interest

Alternatively
Constructive Trust, Conversion,
and Resulting Trust

NOW COMES the Plaintiff, Tony A. Billips, through his undersigned counsel
complaining of above named Defendants and would show unto this Honorable Court as follows:

1. Plaintiff is a resident of Raleigh, North Carolina.
2. Defendant Carolyn A. Billips is a resident of Charleston County, South Carolina.
3. Defendant Alex's Restaurants, Inc. (Alex's) is a domestic corporation incorporated on
July 28, 1975 in the State of South Carolina and has its primary place of business in
North Charleston, South Carolina.
4. This court has jurisdiction over the subject matter of this Complaint and the parties
named herein, and venue is proper in Charleston County, South Carolina.

FACTS

5. On February 6, 1980, Alex L. Billips properly executed his last Will and Testament that
created a testamentary trust (Trust).

6. The Trust provided that Deborah A. Billips and Carolyn A. Billips would be co-trustees of a testamentary trust for the purposes of managing the assets in trust for the Plaintiff, Alex L. Billips, Jr., and William Casey Ivey.
7. The Trust further provided that the co-trustees were to act jointly in trust administration with neither of the co-trustees having the authority to act separately.
8. Carolyn A. Billips acted unilaterally with respect to Trust management by excluding her fellow co-trustee, selling off, and transferring trust assets without consulting Deborah A. Billips, and without the consent of the Plaintiff as a beneficiary.
9. At the time of the execution of Alex L. Billips' Will, there were several corporations that owned different aspects of Alex's restaurant business; at the express direction of the Will, upon information and belief, these corporations were merged into the current active corporation, Alex's Restaurants, Inc.
10. Upon information and belief, Alex's Restaurants, Inc. is the sole active corporation for the operation of Alex's Restaurant business, which was formed on July 28, 1975.
11. The Plaintiff was employed as a manager of one or more of the Alex's Restaurants owned by the corporation and subject to the terms of the trust from 1985 to 2006, and again from 2013-2014.
12. Carolyn A. Billips has upon information and belief, personally assumed control, and upon information and belief claims ownership of the majority of shares of Alex's Restaurants, Inc. and has sold off considerable portions of the corporation, outside her authority as co-trustee or as director or officer of the corporation.

13. Carolyn A. Billips has made a distribution from the Trust to Tony A. Billips by issuing him stock in Alex's Restaurants, Inc., purportedly making him a minority shareholder of Alex's Restaurants, Inc.
14. Plaintiff does not believe the distribution of stock complied with the express directions of the testamentary trust.
15. Carolyn A. Billips has failed to observe corporate formalities with respect to Alex's Restaurants, Inc., by not having a board of directors or annual shareholder meetings.
16. Carolyn A. Billips has conveyed substantial corporate assets without any notice to the minority shareholder, Tony A. Billips.
17. Carolyn A. Billips has diminished the value of Plaintiff's interest in the corporation while personally benefitting from selling or utilizing corporate assets.
18. Carolyn A. Billips owes a fiduciary duty to the Plaintiff as the controlling person of Alex's Restaurant's Inc.,
19. Carolyn A. Billips owes a fiduciary duty to the Plaintiff as the co-trustee of Alex L. Billips' testamentary trust that was formed for Plaintiff's benefit.
20. Plaintiff has personal concerns about Carolyn selling more restaurants in order to benefit financially.

FOR A FIRST CAUSE OF ACTION
(Accounting of Trust)

21. The Plaintiff re-alleges paragraphs 1-20 of this Complaint as if specifically set forth herein.
22. The Defendant, has failed as a co-trustee of Alex L. Billips' testamentary trust, to provide an annual accounting of the trust, complete with a list of trust assets and their market values to the Plaintiff as a beneficiary.

23. Upon information and belief, the Defendant, as co-trustee has not provided an adequate accounting of the trust assets at any time during the life of the trust to the point of the alleged trust termination and distribution.
24. The Plaintiff, pursuant to the South Carolina Trust Code, is entitled to an accounting as a beneficiary of the Alex L. Billips' testamentary trust in order to become reasonably informed of the trust and its administration.
25. As a beneficiary, the Plaintiff is also entitled to an accounting in order to ascertain a valuation of his interest in the trust at the time of the alleged trust distribution and is entitled to any appreciation in value of the trust corpus.

FOR A SECOND CAUSE OF ACTION
(Accounting of Corporation)

26. Plaintiff re-alleges paragraphs 1-25 above as if stated here verbatim.
27. An accounting of Alex's Restaurants, Inc. is a matter of right as a minority shareholder and is necessary to prevent unjust enrichment by Defendant and further diminution of Plaintiff's interest in the corporation.
28. A formal accounting is necessary to determine what assets have been liquidated by the Defendant for her personal benefit that would have a substantial effect on the value of Plaintiff's interest in Alex's Restaurants, Inc.
29. Plaintiff is also entitled to inspect the financial records of the corporation as a minority shareholder of Alex's Restaurants, Inc.
30. Plaintiff's share has been devalued by the transfer and conveyance of corporate assets and an accounting is necessary to determine the financial livelihood of the corporation as well as the current value of Plaintiff's interest.

31. A fiduciary relationship existed between Plaintiff and Defendant because Defendant as a controlling person of Alex's Restaurants, Inc., in which Plaintiff is a minority shareholder.
32. The amount due to Plaintiff from Defendant is not readily ascertainable because the amount of corporate assets siphoned out of the corporation to the Defendant in her personal capacity is unknown.

FOR A THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty as Co-Trustee)

33. The Plaintiff re-alleges paragraphs 1-32 above as if stated here verbatim.
34. The Defendant and Plaintiff were in a fiduciary relationship whereby the Defendant owed the Plaintiff a duty of loyalty, good faith, and fair dealing.
35. By agreeing to be a co-trustee of Alex L. Billips' testamentary trust, the Defendant owes the Plaintiff a duty of loyalty.
36. The Defendant consciously failed to exercise due care in her fiduciary duty to the Plaintiff.
37. The Defendant's breach of her fiduciary duty was reckless, willful, wanton, and a malicious attempt to deprive the Plaintiff of his private right to his property under the Alex L. Billips' testamentary trust formed for the benefit of the Plaintiff.
38. As a result of Defendant's breach of her fiduciary duty owed to Plaintiff, Plaintiff is entitled to actual and punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty as Controlling Shareholder)

39. Plaintiff re-alleges paragraphs 1-38 above as if stated here verbatim.

40. Being the controlling person of Alex's Restaurant's, Inc., the Defendant also owes a duty of loyalty, good faith, and fair dealing to the Plaintiff as a minority shareholder of Alex's Restaurant's, Inc.
41. The Defendant breached her fiduciary obligation owed to Plaintiff by siphoning off corporate assets of Alex's Restaurants, Inc., and engaging in self dealing by personally profiting off of those above-mentioned transactions.
42. The Defendant consciously failed to exercise due care in her fiduciary duty to the Plaintiff.
43. The Defendant's breach of her fiduciary duty was reckless, willful, wanton, and a malicious attempt to deprive the Plaintiff of his right to manage Alex's Restaurant's, Inc.
44. As a result of Defendant's breach of her fiduciary duty owed to Plaintiff, Plaintiff is entitled to actual and punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Conversion)

45. The Plaintiff re-alleges paragraphs 1-44 above as if stated here verbatim.
46. Plaintiff has made demands upon Defendant for access to corporate records of Alex's Restaurants and for a distribution of proceeds of sales of corporate assets.
47. Defendant has failed to deliver assets to Plaintiff and has converted corporate assets for personal gain.
48. Defendant's actions constitute conversion of the corporation's assets at the demise of Plaintiff for the benefit of Defendant.
49. The value of the corporate assets on the day that Defendant converted them needs to be determined at trial. Plaintiff is unable to access the corporate records in order to

determine the value of the assets and the extent that Defendant has personally profited from the corporation at the demise of Plaintiff.

Plaintiff has been damaged by the conversion of corporate assets.

FOR A SIXTH CAUSE OF ACTION
(Breach of Trust)

50. The Plaintiff re-alleges 1-49 above as if stated here verbatim.
51. Alex L. Billips created a testamentary trust in his Will that instructed the Defendant and Deborah L. Billips to manage the trust corpus as co-trustees for the benefit of the Plaintiff, Alex L. Billips, Jr., and William Casey Ivey.
52. As a co-trustee, the Defendant owes the trust a fiduciary duty to manage the trust corpus in good faith solely for the beneficiaries' interests, and in a prudent manner in accordance with the trust terms set forth by Alex L. Billips.
53. The Defendant has breached her fiduciary duty by siphoning off corporate assets of Alex's Restaurants, Inc. that were included in the trust corpus.
54. The Defendant has dealt with the trust corpus in her individual capacity by personally profiting from selling off corporate assets, and therefore has breached her duty of loyalty to the beneficiaries.
55. The Defendant has also breached her duty to report and keep the beneficiaries reasonably informed of the Alex L. Billips testamentary trust by not keeping the required annual accounting of the trust that is complete with a list of trust assets and market values of those trust assets all to Plaintiff's damage.

FOR A SEVENTH CAUSE OF ACTION
(Derivative Action by Shareholder)

56. The Plaintiff re-alleges paragraphs 1-55 above as if stated here verbatim.
57. The Plaintiff brings this action as a derivative action within the meaning of Rule 23(b)(1) of the South Carolina Rules of Civil Procedure on behalf of the Plaintiff and all other shareholders of Alex's Restaurants, Inc. that are similarly situated.
58. The Plaintiff was a shareholder at the time when Carolyn A. Billips, as controlling shareholder, was siphoning off corporate assets for personal gain.
59. The Plaintiff has not made a demand on the board of directors of Alex's Restaurants, Inc. because that demand would have been futile.
60. Plaintiff has not made any efforts to have this suit brought for Alex's Restaurants, Inc., and the demand would be futile because:
- a. A formal board of directors elected by the shareholders of Alex's Restaurants, Inc. does not exist;
 - b. Carolyn A. Billips is the only other shareholder as she has bought out William Casey Ivey and Alex L. Billips, Jr.;
 - c. Carolyn A. Billips would certainly not agree to essentially bring a lawsuit against herself as she controls the corporation.
61. The Defendant will not take action against herself under any circumstances or admit to the conversion of Alex's Restaurants, Inc.'s assets to privately owned assets of her own.
62. At all times, the Defendant was the controlling shareholder of Alex's Restaurants, Inc. and simultaneously engaged in self dealing by liquidating a substantial majority of corporate assets for personal financial gain.

63. On numerous occasions between on or about 2003 to the present, the Defendant authorized the transfer of corporate assets paid for by Alex's Restaurants, Inc. out of the corporation and into assets privately owned by the Plaintiff or others.
64. The Defendant conducted herself in a fraudulent and false manner by indicating the sale of a substantial majority of the restaurants was necessary for continuing the operation of Alex's Restaurants, Inc.
65. As a result of the Defendant authorizing these actions in her capacity as the controlling shareholder, the Defendant obtained valuable sales proceeds from Alex's Restaurants, Inc. at no cost to her, deprived Alex's Restaurants, Inc. of the value of these proceeds, and damaged the corporation in this manner.
66. Upon information and belief, the value of the assets converted from Alex's Restaurants, Inc. by the Defendant from on or around 2003 to 2013 is about \$3,000,000.
67. Plaintiff's successful prosecution of this action will result in a substantial benefit to the corporation, and therefore, the Plaintiff is entitled to reimbursements for his expenses in bringing this action, including reasonable attorney's fees.

FOR AN EIGHTH CAUSE OF ACTION
(Piercing the Corporate Veil)

68. The Plaintiff re-alleges paragraphs 1-67 above as if stated here verbatim.
69. The Plaintiff is purportedly a minority shareholder of Alex's Restaurants, Inc., and Defendant exercises control over the corporation and represents that she owns the lion share of Alex's Restaurants, Inc. due to her buyout of William Casey Ivey and Alex L. Billips, Jr.
70. Defendant's assets and affairs became synonymous with Alex's Restaurants, Inc. when she began liquidating corporate assets and selling restaurants while profiting personally

off of those transactions without the consent of the Plaintiff or essential corporate founders.

71. The Defendant has treated the assets of Alex's Restaurants, Inc. as her own and therefore the assets of the corporation and personal assets of the Defendant have become so intermingled that the separation of the two is impossible.
72. The Defendant has failed to observe the corporate formalities by not holding any annual shareholders' meetings, electing a board of directors or conducting business of Alex's Restaurants, Inc. by resolution.
73. Plaintiff is a shareholder and was not put on notice of any meetings where the sale of restaurants and other substantial assets including real property occurred.
74. Alex's Restaurants, Inc. is the alter-ego of the Defendant and therefore the separate identity between the two should be disregarded.
75. The Defendant's operation of Alex's Restaurants, Inc. has resulted in such an injustice to the Plaintiff, that equity requires that the Defendant respond to the damage she has caused to the Plaintiff.

FOR A NINTH CAUSE OF ACTION
(Judicial Determination of Shareholder's Interest)

76. Plaintiff re-alleges paragraphs 1-75 above as if stated here verbatim.
77. Defendant has engaged in blatant oppressive conduct resulting in Plaintiff's wrongful dissociation from Alex's Restaurant's, Inc., and making judicial dissolution necessary by:
 - a. Excluding Plaintiff from all major business decisions, to the detriment of his share in the corporation and the corporation itself;
 - b. Denying his right to dividends; and
 - c. Denying his right to access business records.

78. Despite the dissociation of Plaintiff, Defendant has not wound up Alex's Restaurant's, Inc., resulting in Plaintiff being entitled to the fair value of Plaintiff's share in the corporation as of the date of his dissociation.
79. Defendant has failed and refused to offer Plaintiff his distributional interest in the corporation, and has completely ignored South Carolina's corporate statutes.
80. Defendant's actions to deny Plaintiff his interest in the corporation along with the failure to provide the required financial information were arbitrary, wilful, wanton, and in bad faith.
81. Plaintiff requests that Defendant be responsible for all attorney's fees that arise out of this action.
82. Plaintiff requests that his interest in Alex's Restaurant's Inc. be judicially determined and distributed to him.

FOR A TENTH CAUSE OF ACTION
(Constructive Trust)

83. Plaintiff re-alleges paragraphs 1-82 above as if stated here verbatim.
84. In the alternative, a constructive trust arose when Defendant holds legal title to all corporate assets of Alex's Restaurant's, Inc. for the benefit of Plaintiff.
85. Defendant is a co-trustee of a testamentary trust formed for the benefit of Plaintiff, Alex L. Billips, Jr., and William Casey Ivey.
86. Defendant is the controlling shareholder of Alex's Restaurants, Inc. and owes a fiduciary duty, fair dealing, and duty of care to other shareholders including the Plaintiff.
87. Defendant has sold off significant corporate assets at the expense of the minority shareholder, the Plaintiff, for Defendant's self dealing.

88. Defendant obtained the benefit of selling corporate assets at the expense of Plaintiff due to Defendant wilfully and wantonly disregarding her duties clearly mandated by law and enumerated in the trust terms.
89. Defendant cannot in equity and good conscience retain or withhold the benefit from Plaintiff arising in a constructive trust being imposed where Defendant holds a controlling share to Alex's Restaurant's, Inc. where that business was specifically left for the benefit the Plaintiff, Alex L. Billips, and William Casey Ivey.

FOR AN ELEVENTH CAUSE OF ACTION
(Resulting Trust)

90. The Plaintiff re-alleges paragraphs 1-89 above as if stated here verbatim.
91. In the alternative, a resulting trust arises when the Defendant holds legal title to all corporate property of Alex's Restaurants, Inc. for the benefit of Plaintiff.
92. Plaintiff was a beneficiary of a testamentary trust created in the Will of Alex L. Billips that specifically directed the Defendant to manage the business property for the benefit of the Plaintiff, Alex L. Billips, Jr., and William Casey Ivey until the beneficiaries became 25 years old.
93. The Plaintiff is entitled to one third of the entire trust corpus, which has not been completely distributed to the beneficiaries due to the Defendant using trust assets for her own personal benefit instead.
94. At no time did the Plaintiff intend for the Defendant, in her capacity as co-trustee or as controlling shareholder of Alex's Restaurants, Inc., to convert his interest in the corporation into personal assets of the Defendant.

95. The Defendant holds apparent legal title of Plaintiff's interest in the corporation and the testamentary trust formed by Alex L. Billips in his Will.

WHEREFORE, the Plaintiff prays judgment of this Court as follows:

1. For the entry of an injunction restraining Defendant from entering into any negotiations to sell any or all of Alex's Restaurants, Inc. absent Plaintiff's statutory rights to participate in fundamental business decisions, an agreement between the parties, or a Court Order;
2. For an accounting of Plaintiff's interest in Alex's Restaurant's, Inc.;
3. For a Piercing of the Corporate Veil of Alex's Restaurant's, Inc., and holding the corporation is the alter ego of the Defendant and therefore the Defendant is personally liable to the Plaintiff;
4. For a finding of a breach of fiduciary duty by the Defendant, entitling the Plaintiff to actual and punitive damages in an amount to be determined by the trier of fact;
5. For a judicial determination of Plaintiff's interest in Alex's Restaurant's, Inc. and the distribution of that interest to Plaintiff.
6. For a recovery of the benefit of Alex's Restaurants, Inc. the damages described in this complaint together with pre- and post-judgment interest as allowed by law.
7. The arising of a resulting trust in which Defendant is the legal owner of a share of Alex's Restaurant's, Inc. that rightfully belongs to the Plaintiff;
8. For judgment against the Defendants in an amount to be determined by the trier of fact for damages;
9. For costs of this action including reasonable attorney's fees incurred in the prosecution of this action for the benefit of Alex's Restaurants, Inc.; and

10. For such other and further relief as the Court may deem just and proper.

QUERY SAUTTER FORSYTHE, LLC



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E. Brooks Hurt, Esquire (SC Bar: 100649)
Grant A. Williamson, Esquire (SC Bar: 102863)
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Telephone: 843.577.4744

Attorneys for Plaintiff

Dated: 11/18/16
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF BERKELEY)

TONY A. BILLIPS, individually)
And as derivative shareholder)
Of Alex's Restaurants, Inc.)

Plaintiff,)

v.)

CAROLYN A. BILLIPS,)
Individually and as Trustee for the)
Benefit of Anthony Billips,)
William Casey Ivey, And Alex)
Billips, and as controlling person)
Of Alex's Restaurants, Inc.)

And ALEX'S RESTAURANTS,)
INC.,)

Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

2016 LP 08 00037

LIS PENDENS

FILED
2016 NOV 21 PM 4:40
CLERK OF COURT
BERKELEY COUNTY, SC

NOTICE IS HEREBY GIVEN that an action entitled hereinabove has been commenced between the captioned parties in the Common Pleas Court for Charleston County, South Carolina (case number 2016-CP-10-1765), affecting the title to real estate, in which the above-named Plaintiff is entitled to a judgment against Defendant Carolyn A. Billips, individually and as Trustee for the Benefit of Anthony Billips, William Casey Ivey, and Alex Billips, and as controlling person of Alex's Restaurants, Inc. and a lien against the subject real estate, which is described as follows:

ALL that certain piece, parcel or lot of land, situate, lying and being in the City of Goose Creek, County of Berkeley, State of South Carolina, as shown as containing 0.50 acres on a plat entitled "Plat of a 0.50 acre tract owned by O.H. Thomason about to be conveyed to Alex's Restaurant, Inc.", which plat was prepared by E.M. Seabrook, Jr., Inc. on November 8, 1983; which plat is attached hereto and recorded simultaneously herewith and recorded in the R.M.C. Office for Berkeley County in File Cabinet I, Folio 206; said lot having such size, shape, dimensions, buttings and boundings as will be reference to said plat more fully and at large appear.

BEING a portion of the same property, one-half (1/2) interest of which was conveyed to Arine Thomason by deed of O.H. Thomason, dated February 10, 1950 and recorded March 7, 1950 in the R.M.C. Office for Berkeley County in Book A-86, page 16, conveyed to said O.H. Thomason, therein known as Orven H. Thomason, by deed of Fred J. Aichele, dated July 15, 1946, and recorded August 1, 1946 in the R.M.C. Office for Berkeley County in Book A-78, page 50.

TMS#: 243-08-06-047

Respectfully submitted by,

QUERY SAUTTER FORSYTHE, LLC



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Elizabeth Brooke Hurt, Esquire
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Michael A. Uricchio, Esquire
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North Charleston, South Carolina 29405
Telephone: 843.577.4744

Dated: 11/18/16
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF DORCHESTER)

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT

2016-LP-18-550

TONY A. BILLIPS, individually)
And as derivative shareholder)
Of Alex's Restaurants, Inc.)

LIS PENDENS

Plaintiff,)

v.)

CAROLYN A. BILLIPS,)
Individually and as Trustee for the)
Benefit of Anthony Billips,)
William Casey Ivey, And Alex)
Billips, and as controlling person)
Of Alex's Restaurants, Inc.)

And ALEX'S RESTAURANTS,)
INC.,)

Defendants.)

CERTIFIED COPY
2016 NOV 23 AM 10:08
Clerk of Court
DORCHESTER COUNTY

NOTICE IS HEREBY GIVEN that an action entitled hereinabove has been commenced between the captioned parties in the Common Pleas Court for Charleston County, South Carolina (case number 2016-CP-10-~~716~~), affecting the title to real estate, in which the above-named Plaintiff is entitled to a judgment against Defendant Carolyn A. Billips, individually and as Trustee for the Benefit of Anthony Billips, William Casey Ivey, and Alex Billips, and as controlling person of Alex's Restaurants, Inc. and a lien against the subject real estate, which is described as follows:

ALL that lot, piece, parcel or tract of land, with the buildings and improvements thereon, located on the south side of Fifth North Street (U.S. Highway 78), in the Town of Summerville, Dorchester County, State of South Carolina, butting and bounding now or formerly as follows: From a point in the extreme northwest corner of said property a distance of 88.75' S56°30'E, along the run of Fifth North Street in a generally southerly direction to a point that said line intersects with other lands of the Grantee; thence in a generally southwesterly direction a distance of 100' S33°30'W to a point in the extreme southeastern corner of said property; thence 88.75' in a generally northwesterly direction along the line to the extreme southwestern corner of said property; thence in a

generally easterly direction a distance of 100' N33°30'E to the point of beginning. Said property would further be described as a rectangular piece of property 88.75' on Fifth North Street 100' deep. The property is further described as the northeasterly one-third of the .58 acres shown on a plat entitled "Plat of lot surveyed for Gloria (Mrs. M.B.) Beach," prepared by Bailey and Associates, Inc., said plat dated May 17, 1982.

SUBJECT to all easements, reservations, restrictions rights-of-way, covenants, conditions, limitations, obligations, governmental regulations, zoning ordinances and all other matters of record.

BEING the same property conveyed to Carolyn A. Billips by Deed of John Derek Mickalis dated May 20, 1996, and recorded May 21, 1996, in the RMC Office for Dorchester County, South Carolina in Deed Book 1601, at Page 277.

ALSO

ALL that certain piece, parcel or lot of land with the buildings and improvements thereon, situate, lying and being at the intersection of Highway #78 and North Magnolia Street in the Town of Summerville, County of Dorchester, State of South Carolina, being in the shape of a rectangle, measuring on its Northeastern and Southwestern sides a distance of One Hundred Twenty (120') feet, and on its Northwestern and Southeastern sides a distance of One Hundred (100') feet, be the said dimensions, more or less; butting and bounding as follows, to wit: Northeast on said U.S. Highway 78; Southwest and Northwest on lands formerly of Hewitt Oil Company; and Southeast on North Magnolia Street of the said Town of Summerville. Said lot of land will more fully appear by reference being had to a plat of the same by Thomas W. Bailey, Surveyor, dated May 21, 1962, recorded in Plat Book 14, at Page 24, in the Office of the Clerk of Court for Dorchester County, reference to which is hereby craved and made a part and parcel hereof.

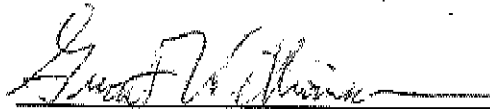
SUBJECT to all easements, reservations, restrictions, rights-of-way, covenants, conditions, limitations, obligations, governmental regulations, zoning ordinances and all other matters of record.

BEING the same property conveyed to Carolyn A. Billips by Deed of John Derek Mickalis dated May 20, 1996, and recorded May 21, 1996, in the RMC Office for Dorchester County, South Carolina in Deed Book 1601, at Page 277.

TMS#: 137-03-03-003

Respectfully submitted by,

QUERY SAUTTER FORSYTHE, LLC



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Dated: 11/18/16
Charleston, South Carolina

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

TONY A. BILLIPS, individually and as a
derivative shareholder of Alex's Restaurants,
Inc.

Plaintiff,

v.

CAROLYN A. BILLIPS, individually and as
Trustee for the benefit of Anthony Billips,
William Casey Ivey, and Alex Billips, and as
controlling person of Alex's Restaurants, Inc.
and

ALEX'S RESTUARANTS, INC.,

Defendants.

**IN THE COURT OF COMMON PLEAS
FOR CHARLESTON COUNTY**

CASE NO. 2016-CP-10-06265

ANSWER

FILED
2017 JAN 31 AM 11:28
CLERK OF COURT

Defendants Carolyn A. Billips ("Ms. Billips") and Alex's Restaurants, Inc. ("Alex's")
(collectively, "Defendants") answer the Complaint of Tony A. Billips ("Plaintiff") as follows.

Each and every allegation not expressly admitted is denied.

1. Defendants lack sufficient information to either admit or deny the allegations of Paragraph 1, and thus deny the same.
2. The allegations of Paragraph 2 are admitted.
3. The allegations of Paragraph 3 are admitted.
4. The allegations of Paragraph 4 are admitted.
5. The allegations of Paragraph 5 call for legal conclusions and no response is required.

To the extent a response is required, Defendants crave reference to the Will and

- Testament of Alex L. Billips and admit only those allegations that are consistent with the plain and unambiguous language of the document to which the allegation refers.
6. The allegations of Paragraph 6 call for legal conclusions and no response is required. To the extent a response is required, Defendants crave reference to the Will and Testament of Alex L. Billips and admit only those allegations that are consistent with the plain and unambiguous language of the document to which the allegation refers.
 7. The allegations of Paragraph 7 call for legal conclusions and no response is required. To the extent a response is required, Defendants crave reference to the Will and Testament of Alex L. Billips and admit only those allegations that are consistent with the plain and unambiguous language of the document to which the allegation refers.
 8. In response to the allegations of Paragraph 8, Defendants state that Ms. Billips has acted and made her business judgments at all times in the best interests of Alex's, its shareholders, and its employees. Defendants deny that Ms. Billips affirmatively excluded anyone from the management of and business decision-making process regarding Alex's. The remaining allegations of Paragraph 8 are denied.
 9. In response to the allegations of Paragraph 9, Defendants crave reference to the Will and Testament of Alex L. Billips and admit only those allegations that are consistent with the plain and unambiguous language of the document to which the allegation refers.
 10. The allegations of Paragraph 10 are admitted.
 11. In response to the allegations of Paragraph 11, Defendants state, upon information and belief, that Plaintiff was employed as a manager at Alex's at various times during the period between approximately 1985 and 2006 and the period between approximately

2011 and 2012. The remaining allegations of Paragraph 11 call for legal conclusions and no response is required. However, to the extent a response is required, the remaining allegations are denied.

12. In response to the allegations of Paragraph 12, Defendants admit that Ms. Billips is a majority shareholder of Alex's. Defendants deny the remaining allegations in Paragraph 12 and state that Ms. Billips has managed Alex's in keeping with her business judgments and the best interests of the corporation and the employees and shareholders of Alex's.
13. With regard to the allegations of Paragraph 13, Defendants state that shares of Alex's that were, upon information and belief, held in trust for the Plaintiff and were disbursed to Plaintiff in or about 1999, making him a minority shareholder. The remaining allegations of Paragraph 13 are denied.
14. In response to the allegations of Paragraph 14, Defendants have no independent knowledge of Plaintiff's beliefs and thus cannot admit any allegation regarding the same. Thus, the allegations of Paragraph 14 are denied.
15. In response to the allegations of Paragraph 15, Defendants state that shareholder meetings were held that Plaintiff, after being given notice, elected not to attend. The remaining allegations of Paragraph 15 are denied.
16. The allegations of Paragraph 16 are denied.
17. The allegations of Paragraph 17 are denied.
18. The allegations of Paragraph 18 call for legal conclusions and no response is required. To the extent a response is required however, the allegations are denied.

19. The allegations of Paragraph 19 call for legal conclusions and no response is required.

To the extent a response is required however, the allegations are denied.

20. Defendants have no independent knowledge of Plaintiff's concerns and thus cannot admit any allegation regarding the same. Thus, the allegations of Paragraph 20 are denied.

PLAINTIFF'S CLAIM FOR ACCOUNTING OF TRUST

21. Defendants incorporate the foregoing responses with regard to Paragraph 21.

22. The allegations of Paragraph 22 call for legal conclusions and no response is required.

To the extent a response is required however, the allegations are denied.

23. In response to the allegations of Paragraph 23, Defendants state that Ms. Billips has kept accurate records and accounting of the assets and liabilities of Alex's. Whether an accounting was due to the Plaintiff or whether such an accounting would qualify as "adequate" are legal conclusions to which no response is required. To the extent a response is required, the allegations are denied along with any remaining allegations of Paragraph 23.

24. The allegations of Paragraph 24 call for legal conclusions and no response is required.

To the extent a response is required however, the allegations are denied.

25. The allegations of Paragraph 25 call for legal conclusions and no response is required.

To the extent a response is required however, the allegations are denied.

PLAINTIFF'S CLAIM FOR ACCOUNTING OF CORPORATION

26. Defendants incorporate the foregoing responses with regard to Paragraph 26.

27. The allegations of Paragraph 27 call for legal conclusions and no response is required.

To the extent a response is required however, the allegations are denied.

28. The allegations of Paragraph 28 call for legal conclusions and no response is required.

To the extent a response is required however, the allegations are denied.

29. The allegations of Paragraph 29 call for legal conclusions and no response is required.

To the extent a response is required however, the allegations are denied.

30. Defendants deny the allegations of Paragraph 30.

31. The allegations of Paragraph 31 call for legal conclusions and no response is required.

To the extent a response is required however, the allegations are denied.

32. Defendants deny the allegations of Paragraph 32. No amount is owed to Plaintiff and no corporate assets have been “siphoned out of the corporation to” Ms. Billips.

PLAINTIFF’S CLAIM FOR BREACH OF FIDUCIARY DUTY AS CO-TRUSTEE

33. Defendants incorporate the foregoing responses with regard to Paragraph 33.

34. The allegations of Paragraph 34 call for legal conclusions and no response is required.

To the extent a response is required however, the allegations are denied.

35. The allegations of Paragraph 35 call for legal conclusions and no response is required.

To the extent a response is required however, the allegations are denied.

36. The allegations of Paragraph 36 call for legal conclusions and no response is required.

To the extent a response is required however, the allegations are denied. In addition,

Ms. Billips has at all times acted in good faith and used her business judgment to act in keeping with the best interests of Alex’s, its shareholders, and its employees.

Defendants deny that Ms. Billips failed to exercise care, whether consciously or unconsciously.

37. The allegations of Paragraph 37 are denied.

38. The allegations of Paragraph 38 are denied.

PLAINTIFF'S CLAIM FOR BREACH OF FIDUCIARY DUTY AS SHAREHOLDER

39. Defendants incorporate the foregoing responses with regard to Paragraph 39.
40. The allegations of Paragraph 40 call for legal conclusions and no response is required.
To the extent a response is required however, the allegations are denied.
41. The allegations of Paragraph 41 call for legal conclusions and no response is required.
To the extent a response is required however, the allegations are denied. In addition, Ms. Billips denies she "siphoned off" corporate assets or engaged in self-dealing or personally profited from the alleged transactions beyond continuing to earn a salary as a result of the continued existence of Alex's.
42. The allegations of Paragraph 42 call for legal conclusions and no response is required.
To the extent a response is required however, the allegations are denied. Defendants further deny that Ms. Billips failed to exercise care, whether consciously or otherwise.
43. The allegations of Paragraph 43 call for legal conclusions and no response is required.
To the extent a response is required however, the allegations are denied. Ms. Billips further denies that she deprived or attempted to deprive Plaintiff of any right he may have had with regard to Alex's.
44. The allegations of Paragraph 44 are denied.

PLAINTIFF'S CLAIM FOR CONVERSION

45. Defendants incorporate the foregoing responses with regard to Paragraph 45.
46. Defendants deny the allegations of Paragraph 46. Plaintiff made no such demands at any time prior to the filing the instant lawsuit.
47. The allegations of Paragraph 47 are denied.

48. The allegations of Paragraph 48 call for legal conclusions and no response is required.

To the extent a response is required however, the allegations are denied.

49. The allegations of Paragraph 49 call for legal conclusions and no response is required.

To the extent a response is required however, the allegations are denied.

PLAINTIFF'S CLAIM FOR BREACH OF TRUST

50. Defendants incorporate the foregoing responses with regard to Paragraph 50.

51. The allegations of Paragraph 51 call for legal conclusions and no response is required.

To the extent a response is required, Defendants crave reference to the Will and

Testament of Alex L. Billips and admit only those allegations that are consistent with the plain and unambiguous language of the document to which the allegation refers.

52. The allegations of Paragraph 52 call for legal conclusions and no response is required.

To the extent a response is required however, the allegations are denied. Defendants further state that Ms. Billips has at all times acted in good faith and used her business judgment to act in keeping with the best interests of Alex's, its shareholders, and its employees.

53. The allegations of Paragraph 53 are denied.

54. The allegations of Paragraph 54 are denied.

55. The allegations of Paragraph 55 call for legal conclusions and no response is required.

To the extent a response is required however, the allegations are denied.

PLAINTIFF'S CLAIM FOR DERIVATIVE ACTION BY SHAREHOLDER

56. Defendants incorporate the foregoing responses with regard to Paragraph 56.

57. The allegations of Paragraph 57 call for legal conclusions and no response is required.

58. In response to the allegations of Paragraph 58, Defendants deny that Ms. Billips is now or has ever “siphon[ed] off corporate assets for personal gain.” Defendants admit that Plaintiff is a shareholder of Alex’s. Any remaining allegations in Paragraph 58 are denied.
59. In response to the allegations of Paragraph 59, Defendants admit that Plaintiff has made no demand of the board of directors of Alex’s. Defendants deny, however, that such a request would have been futile.
60. In response to the allegations of Paragraph 60 and its sub-paragraphs, Defendants deny the allegation that “Plaintiff has not made any efforts” to bring this suit, as evidenced by the complaint Plaintiff filed in this case to which Defendants now respond. Defendants further deny that a demand on the board of directors would have been futile.
61. The allegations of Paragraph 61 are denied. In addition, Defendants state that Ms. Billips has made extraordinary sacrifices to keep Alex’s operating and great personal cost to herself and to her health, and therefore *has* taken action “against herself” for the benefit of Alex’s. Defendants deny that Ms. Billips has converted assets of Alex’s.
62. Defendants admit that Ms. Billips became, at some point, a majority shareholder of Alex’s. The remaining allegations of Paragraph 62 are denied.
63. The allegations of Paragraph 63 are denied. In addition, Defendants state that Ms. Billips took steps at various times stave off foreclosure and protect Alex’s from total failure, in which she succeeded, suffering injury to her personal assets and her health in the process. She did not transfer corporate assets for personal gain.
64. The allegations of Paragraph 64 are denied. The steps Ms. Billips took at various times *were* necessary for the continuing operation of Alex’s.

65. The allegations of Paragraph 65 are denied.
66. In response to the allegations of Paragraph 66, Defendants deny any assets of Alex's have been converted. With regard to the historical value of Plaintiff's shares, Defendants lack sufficient information to admit or deny any allegations related thereto and thus deny the same. Any remaining allegations in Paragraph 66 are likewise denied.
67. The allegations of Paragraph 67 are denied. Plaintiff's action is meritless and serves only to create substantial expense for the corporation and to cause damage to the same, thus defeating the very purpose Plaintiff purports to desire in maintaining this suit.

PLAINTIFF'S CLAIM FOR PIERCING THE CORPORATE VEIL

68. Defendants incorporate the foregoing responses with regard to Paragraph 68.
69. In response to the allegations of Paragraph 69, Defendants admit that Plaintiff is a minority shareholder and that Ms. Billips is the majority shareholder and manages the operations of Alex's. Defendants admit that, at some time, other minority shareholders agreed to sell some or all of their shares to Ms. Billips. The remaining allegations of Paragraph 69 are denied.
70. The allegations of Paragraph 70 call for legal conclusions and no response is required. To the extent a response is required, the allegations are denied. Further, Defendants deny that Ms. Billips profited personally from the steps she took in order to save Alex's, except to the extent that the continued existence of Alex's is of benefit to its shareholders and employees (including Ms. Billips).
71. The allegations of Paragraph 71 are denied.

72. In response to the allegations of Paragraph 72, Defendants state that shareholders' meetings have been held and that Plaintiff elected not to attend. The remaining allegations of Paragraph 72 are denied.
73. In response to the allegations of Paragraph 73, Defendants admit that Plaintiff is a shareholder. Defendants deny the remaining allegation of Paragraph 73.
74. The allegations of Paragraph 74 call for legal conclusions and no response is required. To the extent a response is required, the allegations are denied.
75. The allegations of Paragraph 75 are denied.

PLAINTIFF'S CLAIM FOR JUDICIAL DETERMINATION OF INTEREST

76. Defendants incorporate the foregoing responses with regard to Paragraph 76.
77. The allegations of Paragraph 77 and its sub-paragraphs are denied.
78. Defendants admit that the operation of Alex's has not been wound up, despite the numerous and seemingly insurmountable hurdles it faced in the past. The remaining allegations in Paragraph 78 call for legal conclusions and no response is required. To the extent a response is required, the allegations are denied.
79. The allegations of Paragraph 79 are denied.
80. The allegations of Paragraph 80 are denied.
81. To the extent any response is required to Paragraph 81, the allegations therein are denied.
82. To the extent any response is required to Paragraph 82, the allegations therein are denied.

PLAINTIFF'S CLAIM FOR CONSTRUCTIVE TRUST

83. Defendants incorporate the foregoing responses with regard to Paragraph 83.

84. The allegations of Paragraph 84 call for legal conclusions and no response is required.
To the extent a response is required, the allegations are denied.
85. The allegations of Paragraph 85 call for legal conclusions and no response is required.
To the extent a response is required, the allegations are denied.
86. In response to the allegations of Paragraph 86, Defendants admit that Ms. Billips is a majority shareholder of Alex's. The remaining allegations call for legal conclusions and no response is required. However, to the extent any response is required, the remaining allegations of Paragraph 86 are denied.
87. The allegations of Paragraph 87 are denied. In addition, Defendants state that Ms. Billips took steps at various times to ensure the continued existence and operation of Alex's and has not engaged in self-dealing.
88. The allegations of Paragraph 88 are denied.
89. The allegations of Paragraph 89 are denied.

PLAINTIFF'S CLAIM FOR RESULTING TRUST

90. Defendants incorporate the foregoing responses with regard to Paragraph 90.
91. The allegations of Paragraph 91 call for legal conclusions and no response is required.
To the extent a response is required, the allegations are denied.
92. The allegations of Paragraph 92 call for legal conclusions and no response is required.
To the extent a response is required, the allegations are denied.
93. The allegations of Paragraph 93 are denied.
94. In response to the allegations of Paragraph 94, Defendants have no independent knowledge of Plaintiff's intent and therefore deny any allegations regarding the same.

95. The allegations of Paragraph 95 call for legal conclusions and no response is required.

To the extent a response is required, the allegations are denied.

AS A FIRST AFFIRMATIVE DEFENSE

96. Plaintiff has not alleged facts sufficient to state a cause of action for which relief can be granted pursuant to SCRCP 12(b)(6), requiring dismissal.

AS A SECOND AFFIRMATIVE DEFENSE

97. Some or all of Plaintiff's claims are barred by the business judgment rule and should be dismissed.

AS A THIRD AFFIRMATIVE DEFENSE

98. Plaintiff has failed to comply with the requirements for filing a shareholder derivative suit under SCRCP 23(b)(1), including the demand requirement, the requirement of filing a verified complaint, the requirement to allege that Plaintiff was shareholder at the time of the complained-of transaction(s), and the requirement that Plaintiff fairly and adequately represent the interests of similarly situated shareholders, requiring dismissal.

AS A FOURTH AFFIRMATIVE DEFENSE

99. Plaintiff is not entitled to legal or equitable relief as he has unclean hands and is equitably estopped from asserting his claims.

AS A FIFTH AFFIRMATIVE DEFENSE

100. Plaintiff's claims are barred by the applicable statute of limitations.

AS A SIXTH AFFIRMATIVE DEFENSE

101. Plaintiff's claims are barred by laches.

[signature on following page]

ANDREW K. EPTING, JR., LLC

BY: Andrew Epting Jr. (MNE)
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ATTORNEYS FOR DEFENDANTS

On this 30th day of January, 2017
Charleston, South Carolina

CERTIFICATE OF SERVICE
THE UNDERSIGNED HEREBY CERTIFIES that true and correct copies of the pleading or paper to which this certificate is affixed was served upon the party(s) in this action in accord with the applicable Court Rules by electronic transmission or by hand delivery or by regular U.S. Mail, postage prepaid, properly addressed to the attorney(s) of record for such party(s).

Signed this 30 day of JANUARY, 2017 at
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
TONY A. BILLIPS, individually and as)
a derivative shareholder of Alex's)
Restaurants, Inc.)
Plaintiff,)
vs.)
CAROLYN A. BILLIPS, individually and as)
Trustee for the benefit of Tony A. Billips,)
William Casey Ivey, and Alex Billips, and as)
controlling person of Alex's Restaurants, Inc.)
and ALEX'S RESTAURANTS, INC.,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER 2016-CP-10-6265

AMENDED COMPLAINT

Injunctive Relief, Fraud,
Accounting, Piercing the Corporate
Veil, Breach of Trust, Breach of
Fiduciary Duty as Co-Trustee, Breach of
Fiduciary Duty as Majority Shareholder,
Judicial Determination of Shareholder's
Interest, **Oppression**

Alternatively
Constructive Trust, Conversion,
and Resulting Trust

NOW COMES the Plaintiff, Tony A. Billips, through his undersigned counsel
complaining of above named Defendants and would show unto this Honorable Court as follows:

1. Plaintiff is a resident of Raleigh, North Carolina.
2. Defendant Carolyn A. Billips is a resident of Charleston County, South Carolina.
3. Defendant Alex's Restaurants, Inc. (Alex's) is a domestic corporation incorporated on
July 28, 1975 in the State of South Carolina and has its primary place of business in
North Charleston, South Carolina.
4. This court has jurisdiction over the subject matter of this Complaint and the parties
named herein, and venue is proper in Charleston County, South Carolina.

FACTS

5. On February 6, 1980, Alex L. Billips properly executed his last Will and Testament that
created a testamentary trust (Trust).

6. The Trust provided that Deborah A. Billips and Carolyn A. Billips would be co-trustees of a testamentary trust for the purposes of managing the assets in trust for the Plaintiff, Alex L. Billips, Jr., and William Casey Ivey.
7. The Trust further provided that the co-trustees were to act jointly in trust administration with neither of the co-trustees having the authority to act separately.
8. Carolyn A. Billips acted unilaterally with respect to Trust management by excluding her fellow co-trustee, selling off, and transferring trust assets without consulting Deborah A. Billips, and without the consent of the Plaintiff as a beneficiary.
9. At the time of the execution of Alex L. Billips' Will, there were several corporations that owned different aspects of Alex's restaurant business; at the express direction of the Will, upon information and belief, these corporations were merged into the current active corporation, Alex's Restaurants, Inc.
10. Upon information and belief, Alex's Restaurants, Inc. is the sole active corporation for the operation of Alex's Restaurant business, which was formed on July 28, 1975.
11. Pursuant to the trust, Plaintiff and the two (2) other beneficiaries were to have equal 1/3 interests in Alex's Restaurant, Inc as beneficiaries under the trust and were then to take as legal owners upon the termination of the trust.
12. Based upon information and belief, all beneficiaries of the trust have obtained the age of twenty-five (25) and have demanded their 1/3 interest in Alex's Restaurant, Inc.
13. The Plaintiff was employed as a manager of one or more of the Alex's Restaurants owned by the corporation and subject to the terms of the trust from 1985 to 2006, and again from 2013-2014.

14. As a shareholder in the close corporation of Alex's Restaurant's Inc., Plaintiff looked mainly to a salary for a share in his business returns.
15. In 2014, Plaintiff was frozen out of the business.
16. Carolyn A. Billips has upon information and belief, personally assumed control, and upon information and belief claims ownership of the majority of shares of Alex's Restaurants, Inc. and has sold off considerable portions of the corporation, outside her authority as co-trustee or as director or officer of the corporation.
17. Based upon information and belief, the actions taken by Carolyn A. Billips are illegal, fraudulent, oppressive, unfairly prejudicial to the minority shareholders, and have resulted in corporate assets being misapplied and wasted.
18. Carolyn A. Billips has made a distribution from the Trust to Tony A. Billips by issuing him stock in Alex's Restaurants, Inc., purportedly making him a minority shareholder of Alex's Restaurants, Inc.
19. Plaintiff does not believe the distribution of stock complied with the express directions of the testamentary trust.
20. Carolyn A. Billips has continued to maintain control over Alex's Restaurants, Inc. as a trustee and has held herself out as the owner despite the will giving all ownership to Plaintiff and the other beneficiaries upon the termination of the trust.
21. Carolyn A. Billips has failed to observe corporate formalities with respect to Alex's Restaurants, Inc., by not having a board of directors or annual shareholder meetings.
22. Carolyn A. Billips has conveyed substantial corporate assets without any notice to the minority shareholder, Tony A. Billips.

23. Carolyn A. Billips has diminished the value of Plaintiff's interest in the corporation while personally benefitting from selling or utilizing corporate assets.
24. Carolyn A. Billips owes a fiduciary duty to the Plaintiff as the controlling person of Alex's Restaurant's Inc.,
25. Carolyn A. Billips owes a fiduciary duty to the Plaintiff as the co-trustee of Alex L. Billips' testamentary trust that was formed for Plaintiff's benefit.
26. Plaintiff has personal concerns about Carolyn selling more restaurants in order to benefit financially.

FOR A FIRST CAUSE OF ACTION
(Accounting of Trust)

27. The Plaintiff re-alleges paragraphs 1-26 of this Complaint as if specifically set forth herein.
28. The Defendant, has failed as a co-trustee of Alex L. Billips' testamentary trust, to provide an annual accounting of the trust, complete with a list of trust assets and their market values to the Plaintiff as a beneficiary.
29. Upon information and belief, the Defendant, as co-trustee has not provided an adequate accounting of the trust assets at any time during the life of the trust to the point of the alleged trust termination and distribution.
30. The Plaintiff, pursuant to the South Carolina Trust Code, is entitled to an accounting as a beneficiary of the Alex L. Billips' testamentary trust in order to become reasonably informed of the trust and its administration.
31. As a beneficiary, the Plaintiff is also entitled to an accounting in order to ascertain a valuation of his interest in the trust at the time of the alleged trust distribution and is entitled to any appreciation in value of the trust corpus.

FOR A SECOND CAUSE OF ACTION
(Accounting of Corporation)

32. Plaintiff re-alleges paragraphs 1-31 above as if stated here verbatim.
33. An accounting of Alex's Restaurants, Inc. is a matter of right as a minority shareholder and is necessary to prevent unjust enrichment by Defendant and further diminution of Plaintiff's interest in the corporation.
34. A formal accounting is necessary to determine what assets have been liquidated by the Defendant for her personal benefit that would have a substantial effect on the value of Plaintiff's interest in Alex's Restaurants, Inc.
35. Plaintiff is also entitled to inspect the financial records of the corporation as a minority shareholder of Alex's Restaurants, Inc.
36. Plaintiff's share has been devalued by the transfer and conveyance of corporate assets and an accounting is necessary to determine the financial livelihood of the corporation as well as the current value of Plaintiff's interest.
37. A fiduciary relationship existed between Plaintiff and Defendant because Defendant as a controlling person of Alex's Restaurants, Inc., in which Plaintiff is a minority shareholder.
38. The amount due to Plaintiff from Defendant is not readily ascertainable because the amount of corporate assets siphoned out of the corporation to the Defendant in her personal capacity is unknown.

FOR A THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty as Co-Trustee)

39. The Plaintiff re-alleges paragraphs 1-38 above as if stated here verbatim.

40. The Defendant and Plaintiff were in a fiduciary relationship whereby the Defendant owed the Plaintiff a duty of loyalty, good faith, and fair dealing.
41. By agreeing to be a co-trustee of Alex L. Billips' testamentary trust, the Defendant owes the Plaintiff a duty of loyalty.
42. The Defendant consciously failed to exercise due care in her fiduciary duty to the Plaintiff.
43. The Defendant's breach of her fiduciary duty was reckless, willful, wanton, and a malicious attempt to deprive the Plaintiff of his private right to his property under the Alex L. Billips' testamentary trust formed for the benefit of the Plaintiff.
44. As a result of Defendant's breach of her fiduciary duty owed to Plaintiff, Plaintiff is entitled to actual and punitive damages.

FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty as Controlling Shareholder)

45. Plaintiff re-alleges paragraphs 1-44 above as if stated here verbatim.
46. Being the controlling person of Alex's Restaurant's, Inc., the Defendant also owes a duty of loyalty, good faith, and fair dealing to the Plaintiff as a minority shareholder of Alex's Restaurant's, Inc.
47. The Defendant breached her fiduciary obligation owed to Plaintiff by siphoning off corporate assets of Alex's Restaurants, Inc., and engaging in self dealing by personally profiting off of those above-mentioned transactions.
48. The Defendant consciously failed to exercise due care in her fiduciary duty to the Plaintiff.

49. The Defendant's breach of her fiduciary duty was reckless, willful, wanton, and a malicious attempt to deprive the Plaintiff of his right to manage Alex's Restaurant's, Inc.
50. As a result of Defendant's breach of her fiduciary duty owed to Plaintiff, Plaintiff is entitled to actual and punitive damages.

FOR A FIFTH CAUSE OF ACTION
(Conversion)

51. The Plaintiff re-alleges paragraphs 1-50 above as if stated here verbatim.
52. Plaintiff has made demands upon Defendant for access to corporate records of Alex's Restaurants and for a distribution of proceeds of sales of corporate assets.
53. Defendant has failed to deliver assets to Plaintiff and has converted corporate assets for personal gain.
54. Defendant's actions constitute conversion of the corporation's assets at the demise of Plaintiff for the benefit of Defendant.
55. The value of the corporate assets on the day that Defendant converted them needs to be determined at trial. Plaintiff is unable to access the corporate records in order to determine the value of the assets and the extent that Defendant has personally profited from the corporation at the demise of Plaintiff. Plaintiff has been damaged by the conversion of corporate assets.

FOR A SIXTH CAUSE OF ACTION
(Breach of Trust)

56. The Plaintiff re-alleges 1-55 above as if stated here verbatim.
57. Alex L. Billips created a testamentary trust in his Will that instructed the Defendant and Deborah L. Billips to manage the trust corpus as co-trustees for the benefit of the Plaintiff, Alex L. Billips, Jr., and William Casey Ivey.

58. As a co-trustee, the Defendant owes the trust a fiduciary duty to manage the trust corpus in good faith solely for the beneficiaries' interests, and in a prudent manner in accordance with the trust terms set forth by Alex L. Billips.
59. The Defendant has breached her fiduciary duty by siphoning off corporate assets of Alex's Restaurants, Inc. that were included in the trust corpus.
60. The Defendant has dealt with the trust corpus in her individual capacity by personally profiting from selling off corporate assets, and therefore has breached her duty of loyalty to the beneficiaries.
61. The Defendant has also breached her duty to report and keep the beneficiaries reasonably informed of the Alex L. Billips testamentary trust by not keeping the required annual accounting of the trust that is complete with a list of trust assets and market values of those trust assets all to Plaintiff's damage.

FOR A SEVENTH CAUSE OF ACTION
(Derivative Action by Shareholder)

62. The Plaintiff re-alleges paragraphs 1-61 above as if stated here verbatim.
63. The Plaintiff brings this action as a derivative action within the meaning of Rule 23(b)(1) of the South Carolina Rules of Civil Procedure on behalf of the Plaintiff and all other shareholders of Alex's Restaurants, Inc. that are similarly situated.
64. The Plaintiff was a shareholder at the time when Carolyn A. Billips, as controlling shareholder, was siphoning off corporate assets for personal gain.
65. The Plaintiff has not made a demand on the board of directors of Alex's Restaurants, Inc. because that demand would have been futile.
66. Plaintiff has not made any efforts to have this suit brought for Alex's Restaurants, Inc., and the demand would be futile because:

- a. A formal board of directors elected by the shareholders of Alex's Restaurants, Inc. does not exist;
 - b. Carolyn A. Billips is the only other shareholder as she has bought out William Casey Ivey and Alex L. Billips, Jr.;
 - c. Carolyn A. Billips would certainly not agree to essentially bring a lawsuit against herself as she controls the corporation.
67. The Defendant will not take action against herself under any circumstances or admit to the conversion of Alex's Restaurants, Inc.'s assets to privately owned assets of her own.
68. At all times, the Defendant was the controlling shareholder of Alex's Restaurants, Inc. and simultaneously engaged in self dealing by liquidating a substantial majority of corporate assets for personal financial gain.
69. On numerous occasions between on or about 2003 to the present, the Defendant authorized the transfer of corporate assets paid for by Alex's Restaurants, Inc. out of the corporation and into assets privately owned by the Plaintiff or others.
70. The Defendant conducted herself in a fraudulent and false manner by indicating the sale of a substantial majority of the restaurants was necessary for continuing the operation of Alex's Restaurants, Inc.
71. As a result of the Defendant authorizing these actions in her capacity as the controlling shareholder, the Defendant obtained valuable sales proceeds from Alex's Restaurants, Inc. at no cost to her, deprived Alex's Restaurants, Inc. of the value of these proceeds, and damaged the corporation in this manner.
72. Upon information and belief, the value of the assets converted from Alex's Restaurants, Inc. by the Defendant from on or around 2003 to 2013 is about \$3,000,000.

73. Plaintiff's successful prosecution of this action will result in a substantial benefit to the corporation, and therefore, the Plaintiff is entitled to reimbursements for his expenses in bringing this action, including reasonable attorney's fees.

FOR AN EIGHTH CAUSE OF ACTION
(Piercing the Corporate Veil)

74. The Plaintiff re-alleges paragraphs 1-73 above as if stated here verbatim.

75. The Plaintiff is purportedly a minority shareholder of Alex's Restaurants, Inc., and Defendant exercises control over the corporation and represents that she owns the lion share of Alex's Restaurants, Inc. due to her buyout of William Casey Ivey and Alex L. Billips, Jr.

76. Defendant's assets and affairs became synonymous with Alex's Restaurants, Inc. when she began liquidating corporate assets and selling restaurants while profiting personally off of those transactions without the consent of the Plaintiff or essential corporate founders.

77. The Defendant has treated the assets of Alex's Restaurants, Inc. as her own and therefore the assets of the corporation and personal assets of the Defendant have become so intermingled that the separation of the two is impossible.

78. The Defendant has failed to observe the corporate formalities by not holding any annual shareholders' meetings, electing a board of directors or conducting business of Alex's Restaurants, Inc. by resolution.

79. Plaintiff is a shareholder and was not put on notice of any meetings where the sale of restaurants and other substantial assets including real property occurred.

80. Alex's Restaurants, Inc. is the alter-ego of the Defendant and therefore the separate identity between the two should be disregarded.

81. The Defendant's operation of Alex's Restaurants, Inc. has resulted in such an injustice to the Plaintiff, that equity requires that the Defendant respond to the damage she has caused to the Plaintiff.

FOR A NINTH CAUSE OF ACTION
(Judicial Determination of Shareholder's Interest)

82. Plaintiff re-alleges paragraphs 1-81 above as if stated here verbatim.

83. Defendant has engaged in blatant oppressive conduct resulting in Plaintiff's wrongful dissociation from Alex's Restaurant's, Inc., and making judicial dissolution necessary by:

- a. Excluding Plaintiff from all major business decisions, to the detriment of his share in the corporation and the corporation itself;
- b. Denying his right to dividends; and
- c. Denying his right to access business records.

84. Despite the dissociation of Plaintiff, Defendant has not wound up Alex's Restaurant's, Inc., resulting in Plaintiff being entitled to the fair value of Plaintiff's share in the corporation as of the date of his dissociation.

85. Defendant has failed and refused to offer Plaintiff his distributional interest in the corporation, and has completely ignored South Carolina's corporate statutes.

86. Defendant's actions to deny Plaintiff his interest in the corporation along with the failure to provide the required financial information were arbitrary, willful, wanton, and in bad faith.

87. Plaintiff requests that Defendant be responsible for all attorney's fees that arise out of this action.

88. Plaintiff requests that his interest in Alex's Restaurant's Inc. be judicially determined and distributed to him.

FOR A TENTH CAUSE OF ACTION
(Constructive Trust)

89. Plaintiff re-alleges paragraphs 1-88 above as if stated here verbatim.
90. In the alternative, a constructive trust arose when Defendant holds legal title to all corporate assets of Alex's Restaurant's, Inc. for the benefit of Plaintiff.
91. Defendant is a co-trustee of a testamentary trust formed for the benefit of Plaintiff, Alex L. Billips, Jr., and William Casey Ivey.
92. Defendant is the controlling shareholder of Alex's Restaurants, Inc. and owes a fiduciary duty, fair dealing, and duty of care to other shareholders including the Plaintiff.
93. Defendant has sold off significant corporate assets at the expense of the minority shareholder, the Plaintiff, for Defendant's self dealing.
94. Defendant obtained the benefit of selling corporate assets at the expense of Plaintiff due to Defendant willfully and wantonly disregarding her duties clearly mandated by law and enumerated in the trust terms.
95. Defendant cannot in equity and good conscience retain or withhold the benefit from Plaintiff arising in a constructive trust being imposed where Defendant holds a controlling share to Alex's Restaurant's, Inc. where that business was specifically left for the benefit the Plaintiff, Alex L. Billips, and William Casey Ivey.

FOR AN ELEVENTH CAUSE OF ACTION
(Resulting Trust)

96. The Plaintiff re-alleges paragraphs 1-95 above as if stated here verbatim.
97. In the alternative, a resulting trust arises when the Defendant holds legal title to all corporate property of Alex's Restaurants, Inc. for the benefit of Plaintiff.

98. Plaintiff was a beneficiary of a testamentary trust created in the Will of Alex L. Billips that specifically directed the Defendant to manage the business property for the benefit of the Plaintiff, Alex L. Billips, Jr., and William Casey Ivey until the beneficiaries became 25 years old.
99. The Plaintiff is entitled to one third of the entire trust corpus, which has not been completely distributed to the beneficiaries due to the Defendant using trust assets for her own personal benefit instead.
100. At no time did the Plaintiff intend for the Defendant, in her capacity as co-trustee or as controlling shareholder of Alex's Restaurants, Inc., to convert his interest in the corporation into personal assets of the Defendant.
101. The Defendant holds apparent legal title of Plaintiff's interest in the corporation and the testamentary trust formed by Alex L. Billips in his Will.

FOR A TWELFTH CAUSE OF ACTION
(Oppression)

102. The Plaintiff re-alleges paragraphs 1-101 above as if stated forth here in verbatim.
103. Carolyn A. Billips has at all times pertinent hereto exercised control of Alex's restaurant, Inc.
104. Through her control of the corporation, Carolyn A. Billips has taken actions that are illegal, fraudulent, oppressive, unfairly prejudicial to the minority shareholders, and has misapplied and wasted corporate assets.
105. As a result of Carolyn A. Billips's oppressive actions, Plaintiff faces a trapped investment and an indefinite exclusion from participation in business returns.
106. As a result of Carolyn A. Billips's oppressive actions, Plaintiff has been frozen out of the business and is not receiving any salary or distributions from the business.

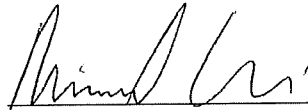
107. **Plaintiff is entitled to a judicial dissolution of the corporation, and judicial determination of his shares in the corporation, and a buyout of his shares.**

WHEREFORE, the Plaintiff prays judgment of this Court as follows:

1. For the entry of an injunction restraining Defendant from entering into any negotiations to sell any or all of Alex's Restaurants, Inc. absent Plaintiff's statutory rights to participate in fundamental business decisions, an agreement between the parties, or a Court Order;
2. For an accounting of Plaintiff's interest in Alex's Restaurant's, Inc.;
3. For a Piercing of the Corporate Veil of Alex's Restaurant's, Inc., and holding the corporation is the alter ego of the Defendant and therefore the Defendant is personally liable to the Plaintiff;
4. For a finding of a breach of fiduciary duty by the Defendant, entitling the Plaintiff to actual and punitive damages in an amount to be determined by the trier of fact;
5. For a judicial determination of Plaintiff's interest in Alex's Restaurant's, Inc. and the distribution of that interest to Plaintiff.
6. For a recovery of the benefit of Alex's Restaurants, Inc. the damages described in this complaint together with pre- and post-judgment interest as allowed by law.
7. The arising of a resulting trust in which Defendant is the legal owner of a share of Alex's Restaurant's, Inc. that rightfully belongs to the Plaintiff;
8. **For a judicial dissolution of the corporation, and judicial determination of his shares in the corporation, and a buyout of his shares.**
9. For judgment against the Defendants in an amount to be determined by the trier of fact for damages;

10. For costs of this action including reasonable attorney's fees incurred in the prosecution of this action for the benefit of Alex's Restaurants, Inc.; and
11. For such other and further relief as the Court may deem just and proper.

QUERY SAUTTER & ASSOCIATES, LLC



O. Grady Query, 4610
Michael H. Ellis, Jr., 101524
147 Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412
Telephone: 843.795.9500
Facsimile: 843.762.1500

Attorneys for Plaintiff

Dated: 12/28/2017
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
TONY A. BILLIPS, individually and as)
a derivative shareholder of Alex's)
Restaurants, Inc.)
Plaintiff,)
vs.)
CAROLYN A. BILLIPS, individually and as)
Trustee for the benefit of Anthony Billips,)
William Casey Ivey, and Alex Billips, and as)
Controlling person of Alex's Restaurants, Inc.)
And ALEX'S RESTAURANTS, INC.,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER 2016-CP-10-6265

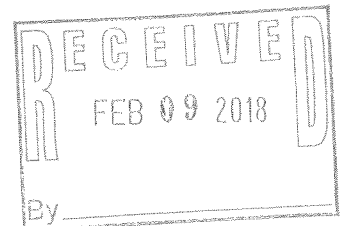
CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a copy of the Amended Complaint upon Jaan G. Rannik, Esquire, attorney for Defendants, by placing a copy of same in the United States Mail with sufficient postage attached thereto and addressed as follows:

Jaan G. Rannik, Esq.
Andrew K. Epting Jr., LLC
46A State Street
Charleston, SC 29401

Date: 01/23/18

Tracy Obrian



**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

TONY A. BILLIPS, individually and as a
derivative shareholder of Alex's Restaurants,
Inc.

Plaintiff,

v.

CAROLYN A. BILLIPS, individually and as
Trustee for the benefit of Anthony Billips,
William Casey Ivey, and Alex Billips, and as
controlling person of Alex's Restaurants, Inc.
and

ALEX'S RESTUARANTS, INC.,

Defendants.

**IN THE COURT OF COMMON PLEAS
FOR CHARLESTON COUNTY**

CASE NO. 2016-CP-10-06265

ANSWER TO AMENDED COMPLAINT

FILED
2019 MAY 15 AM 11:24
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

Defendants Carolyn A. Billips ("Ms. Billips") and Alex's Restaurants, Inc. ("Alex's") (collectively, "Defendants") answer the Amended Complaint of Tony A. Billips ("Plaintiff") as follows. Each and every allegation not expressly admitted is denied.

1. Defendants lack sufficient information to either admit or deny the allegations of Paragraph 1, and thus deny the same.
2. The allegations of Paragraph 2 are admitted.
3. The allegations of Paragraph 3 are admitted.
4. The allegations of Paragraph 4 are admitted.
5. The allegations of Paragraph 5 call for legal conclusions and no response is required.

To the extent a response is required, Defendants crave reference to the Will and Testament of Alex L. Billips and admit only those allegations that are consistent with the plain and unambiguous language of the document to which the allegation refers.

6. The allegations of Paragraph 6 call for legal conclusions and no response is required.
To the extent a response is required, Defendants crave reference to the Will and Testament of Alex L. Billips and admit only those allegations that are consistent with the plain and unambiguous language of the document to which the allegation refers.
7. The allegations of Paragraph 7 call for legal conclusions and no response is required.
To the extent a response is required, Defendants crave reference to the Will and Testament of Alex L. Billips and admit only those allegations that are consistent with the plain and unambiguous language of the document to which the allegation refers.
8. In response to the allegations of Paragraph 8, Defendants state that Ms. Billips has acted and made her business judgments at all times in the best interests of Alex's, its shareholders, and its employees. Defendants deny that Ms. Billips affirmatively excluded anyone from the management of and business decision-making process regarding Alex's. The remaining allegations of Paragraph 8 are denied.
9. In response to the allegations of Paragraph 9, Defendants crave reference to the Will and Testament of Alex L. Billips and admit only those allegations that are consistent with the plain and unambiguous language of the document to which the allegation refers.
10. The allegations of Paragraph 10 are admitted.
11. In response to the allegations of Paragraph 11, Defendants deny that the beneficiaries would each have 1/3 interests in Alex's Restaurants, Inc. upon termination of the trust.
12. In response to Paragraph 12, Defendants admit that all beneficiaries have attained the age of twenty-five but denies that each is entitled to a 1/3 interest in Alex's Restaurants, Inc.

13. In response to the allegations of Paragraph 13, Defendants state, upon information and belief, that Plaintiff was employed as a manager at Alex's at various times during the period between approximately 1985 and 2006 and the period between approximately 2011 and 2012. The remaining allegations of Paragraph 11 call for legal conclusions and no response is required. However, to the extent a response is required, the remaining allegations are denied.
14. Defendants state they lack sufficient information to either admit or deny the allegations of Paragraph 14 and therefore deny the same.
15. Defendants deny the allegations of Paragraph 15.
16. In response to the allegations of Paragraph 16, Defendants admit that Ms. Billips is a majority shareholder of Alex's. Defendants deny the remaining allegations in Paragraph 16 and state that Ms. Billips has managed Alex's in keeping with her business judgments and the best interests of the corporation and the employees and shareholders of Alex's.
17. Defendants deny the allegations of Paragraph 17.
18. With regard to the allegations of Paragraph 18, Defendants state that shares of Alex's that were, upon information and belief, held in trust for the Plaintiff and were disbursed to Plaintiff in or about 1999, making him a minority shareholder. The remaining allegations of Paragraph 18 are denied.
19. In response to the allegations of Paragraph 19, Defendants have no independent knowledge of Plaintiff's beliefs and thus cannot admit any allegation regarding the same. Thus, the allegations of Paragraph 19 are denied.

20. In response to the allegations of Paragraph 20, Defendants admit that Carolyn Billips has retained majority control of Alex's Restaurants, Inc. The remaining allegations of Paragraph 20 are denied.
21. In response to the allegations of Paragraph 21, Defendants state that shareholder meetings were held that Plaintiff, after being given notice, elected not to attend. The remaining allegations of Paragraph 21 are denied.
22. The allegations of Paragraph 22 are denied.
23. The allegations of Paragraph 23 are denied.
24. The allegations of Paragraph 24 call for legal conclusions and no response is required. To the extent a response is required however, the allegations are denied.
25. The allegations of Paragraph 25 call for legal conclusions and no response is required. To the extent a response is required however, the allegations are denied.
26. Defendants have no independent knowledge of Plaintiff's concerns and thus cannot admit any allegation regarding the same. Thus, the allegations of Paragraph 26 are denied.

PLAINTIFF'S CLAIM FOR ACCOUNTING OF TRUST

27. Defendants incorporate the foregoing responses in response to Paragraph 27.
28. The allegations of Paragraph 28 call for legal conclusions and no response is required. To the extent a response is required however, the allegations are denied.
29. In response to the allegations of Paragraph 29, Defendants state that Ms. Billips has kept accurate records and accounting of the assets and liabilities of Alex's. Whether an accounting was due to the Plaintiff or whether such an accounting would qualify as "adequate" are legal conclusions to which no response is required. To the extent a

response is required, the allegations are denied along with any remaining allegations of Paragraph 29.

30. The allegations of Paragraph 30 call for legal conclusions and no response is required.

To the extent a response is required however, the allegations are denied.

31. The allegations of Paragraph 31 call for legal conclusions and no response is required.

To the extent a response is required however, the allegations are denied.

PLAINTIFF'S CLAIM FOR ACCOUNTING OF CORPORATION

32. Defendants incorporate the foregoing responses in response to Paragraph 32.

33. The allegations of Paragraph 33 call for legal conclusions and no response is required.

To the extent a response is required however, the allegations are denied.

34. The allegations of Paragraph 34 call for legal conclusions and no response is required.

To the extent a response is required however, the allegations are denied.

35. The allegations of Paragraph 35 call for legal conclusions and no response is required.

To the extent a response is required however, the allegations are denied.

36. Defendants deny the allegations of Paragraph 36.

37. The allegations of Paragraph 37 call for legal conclusions and no response is required.

To the extent a response is required however, the allegations are denied.

38. Defendants deny the allegations of Paragraph 38. No amount is owed to Plaintiff and no corporate assets have been "siphoned out of the corporation to" Ms. Billips.

PLAINTIFF'S CLAIM FOR BREACH OF FIDUCIARY DUTY AS CO-TRUSTEE

39. Defendants incorporate the foregoing responses in response to Paragraph 39.

40. The allegations of Paragraph 40 call for legal conclusions and no response is required.

To the extent a response is required however, the allegations are denied.

41. The allegations of Paragraph 41 call for legal conclusions and no response is required.
To the extent a response is required however, the allegations are denied.
42. The allegations of Paragraph 42 call for legal conclusions and no response is required.
To the extent a response is required however, the allegations are denied. In addition,
Ms. Billips has at all times acted in good faith and used her business judgment to act in
keeping with the best interests of Alex's, its shareholders, and its employees.
Defendants deny that Ms. Billips failed to exercise care, whether consciously or
unconsciously.
43. The allegations of Paragraph 43 are denied.
44. The allegations of Paragraph 44 are denied.

PLAINTIFF'S CLAIM FOR BREACH OF FIDUCIARY DUTY AS SHAREHOLDER

45. Defendants incorporate the foregoing responses in response to Paragraph 45.
46. The allegations of Paragraph 46 call for legal conclusions and no response is required.
To the extent a response is required however, the allegations are denied.
47. The allegations of Paragraph 47 call for legal conclusions and no response is required.
To the extent a response is required however, the allegations are denied. In addition,
Ms. Billips denies she "siphoned off" corporate assets or engaged in self-dealing or
personally profited from the alleged transactions beyond continuing to earn a salary as a
result of the continued existence of Alex's.
48. The allegations of Paragraph 48 call for legal conclusions and no response is required.
To the extent a response is required however, the allegations are denied. Defendants
further deny that Ms. Billips failed to exercise care, whether consciously or otherwise.

49. The allegations of Paragraph 49 call for legal conclusions and no response is required. To the extent a response is required however, the allegations are denied. Ms. Billips further denies that she deprived or attempted to deprive Plaintiff of any right he may have had with regard to Alex's.
50. The allegations of Paragraph 50 are denied.

PLAINTIFF'S CLAIM FOR CONVERSION

51. Defendants incorporate the foregoing responses in response to Paragraph 51.
52. Defendants deny the allegations of Paragraph 52. Plaintiff made no such demands at any time prior to the filing the instant lawsuit.
53. The allegations of Paragraph 53 are denied.
54. The allegations of Paragraph 54 call for legal conclusions and no response is required. To the extent a response is required however, the allegations are denied.
55. The allegations of Paragraph 55 call for legal conclusions and no response is required. To the extent a response is required however, the allegations are denied.

PLAINTIFF'S CLAIM FOR BREACH OF TRUST

56. Defendants incorporate the foregoing responses in response to Paragraph 56.
57. The allegations of Paragraph 57 call for legal conclusions and no response is required. To the extent a response is required, Defendants crave reference to the Will and Testament of Alex L. Billips and admit only those allegations that are consistent with the plain and unambiguous language of the document to which the allegation refers.
58. The allegations of Paragraph 58 call for legal conclusions and no response is required. To the extent a response is required however, the allegations are denied. Defendants further state that Ms. Billips has at all times acted in good faith and used her business

judgment to act in keeping with the best interests of Alex's, its shareholders, and its employees.

59. The allegations of Paragraph 59 are denied.

60. The allegations of Paragraph 60 are denied.

61. The allegations of Paragraph 61 call for legal conclusions and no response is required.

To the extent a response is required however, the allegations are denied.

PLAINTIFF'S CLAIM FOR DERIVATIVE ACTION BY SHAREHOLDER

62. Defendants incorporate the foregoing responses in response to Paragraph 62.

63. The allegations of Paragraph 63 call for legal conclusions and no response is required.

64. In response to the allegations of Paragraph 64, Defendants deny that Ms. Billips is now or has ever "siphon[ed] off corporate assets for personal gain." Defendants admit that Plaintiff is a shareholder of Alex's. Any remaining allegations in Paragraph 64 are denied.

65. In response to the allegations of Paragraph 65 Defendants admit that Plaintiff has made no demand of the board of directors of Alex's. Defendants deny, however, that such a request would have been futile.

66. In response to the allegations of Paragraph 66 and its sub-paragraphs, Defendants deny the allegation that "Plaintiff has not made any efforts" to bring this suit, as evidenced by the complaint Plaintiff filed in this case to which Defendants now respond. Defendants further deny that a demand on the board of directors would have been futile.

67. The allegations of Paragraph 67 are denied. In addition, Defendants state that Ms. Billips has made extraordinary sacrifices to keep Alex's operating and great personal

cost to herself and to her health, and therefore *has* taken action “against herself” for the benefit of Alex’s. Defendants deny that Ms. Billips has converted assets of Alex’s.

68. Defendants admit that Ms. Billips became, at some point, a majority shareholder of Alex’s. The remaining allegations of Paragraph 68 are denied.

69. The allegations of Paragraph 69 are denied. In addition, Defendants state that Ms. Billips took steps at various times stave off foreclosure and protect Alex’s from total failure, in which she succeeded, suffering injury to her personal assets and her health in the process. She did not transfer corporate assets for personal gain.

70. The allegations of Paragraph 70 are denied. The steps Ms. Billips took at various times *were* necessary for the continuing operation of Alex’s.

71. The allegations of Paragraph 71 are denied.

72. In response to the allegations of Paragraph 72, Defendants deny any assets of Alex’s have been converted. With regard to the historical value of Plaintiff’s shares, Defendants lack sufficient information to admit or deny any allegations related thereto and thus deny the same. Any remaining allegations in Paragraph 72 are likewise denied.

73. The allegations of Paragraph 73 are denied. Plaintiff’s action is meritless and serves only to create substantial expense for the corporation and to cause damage to the same, thus defeating the very purpose Plaintiff purports to desire in maintaining this suit.

PLAINTIFF’S CLAIM FOR PIERCING THE CORPORATE VEIL

74. Defendants incorporate the foregoing responses in response to Paragraph 74.

75. In response to the allegations of Paragraph 75, Defendants admit that Plaintiff is a minority shareholder and that Ms. Billips is the majority shareholder and manages the

operations of Alex's. Defendants admit that, at some time, other minority shareholders agreed to sell some or all of their shares to Ms. Billips. The remaining allegations of Paragraph 75 are denied.

76. The allegations of Paragraph 76 call for legal conclusions and no response is required. To the extent a response is required, the allegations are denied. Further, Defendants deny that Ms. Billips profited personally from the steps she took in order to save Alex's, except to the extent that the continued existence of Alex's is of benefit to its shareholders and employees (including Ms. Billips).
77. The allegations of Paragraph 77 are denied.
78. In response to the allegations of Paragraph 78, Defendants state that shareholders' meetings have been held and that Plaintiff elected not to attend. The remaining allegations of Paragraph 78 are denied.
79. In response to the allegations of Paragraph 79, Defendants admit that Plaintiff is a shareholder. Defendants deny the remaining allegation of Paragraph 79.
80. The allegations of Paragraph 80 call for legal conclusions and no response is required. To the extent a response is required, the allegations are denied.
81. The allegations of Paragraph 81 are denied.

PLAINTIFF'S CLAIM FOR JUDICIAL DETERMINATION OF INTEREST

82. Defendants incorporate the foregoing responses in response to Paragraph 82.
83. The allegations of Paragraph 83 and its sub-paragraphs are denied.
84. Defendants admit that the operation of Alex's has not been wound up, despite the numerous and seemingly insurmountable hurdles it faced in the past. The remaining

allegations in Paragraph 84 call for legal conclusions and no response is required. To the extent a response is required, the allegations are denied.

85. The allegations of Paragraph 85 are denied.

86. The allegations of Paragraph 86 are denied.

87. To the extent any response is required to Paragraph 87, the allegations therein are denied.

88. To the extent any response is required to Paragraph 88, the allegations therein are denied.

PLAINTIFF'S CLAIM FOR CONSTRUCTIVE TRUST

89. Defendants incorporate the foregoing responses in response to Paragraph 89.

90. The allegations of Paragraph 90 call for legal conclusions and no response is required. To the extent a response is required, the allegations are denied.

91. The allegations of Paragraph 91 call for legal conclusions and no response is required. To the extent a response is required, the allegations are denied.

92. In response to the allegations of Paragraph 92, Defendants admit that Ms. Billips is a majority shareholder of Alex's. The remaining allegations call for legal conclusions and no response is required. However, to the extent any response is required, the remaining allegations of Paragraph 92 are denied.

93. The allegations of Paragraph 93 are denied. In addition, Defendants state that Ms. Billips took steps at various times to ensure the continued existence and operation of Alex's and has not engaged in self-dealing.

94. The allegations of Paragraph 94 are denied.

95. The allegations of Paragraph 95 are denied.

PLAINTIFF'S CLAIM FOR RESULTING TRUST

96. Defendants incorporate the foregoing responses in response to Paragraph 96.
97. The allegations of Paragraph 97 call for legal conclusions and no response is required.
To the extent a response is required, the allegations are denied.
98. The allegations of Paragraph 98 call for legal conclusions and no response is required.
To the extent a response is required, the allegations are denied.
99. The allegations of Paragraph 99 are denied.
100. In response to the allegations of Paragraph 100, Defendants have no independent knowledge of Plaintiff's intent and therefore deny any allegations regarding the same.
101. The allegations of Paragraph 101 call for legal conclusions and no response is required.
To the extent a response is required, the allegations are denied.

PLAINTIFF'S CLAIM OF OPPRESSION

102. Defendants incorporate the foregoing responses in response to Paragraph 102.
103. Defendants admit that Carolyn Billips has been and remains the majority shareholder of Alex's Restaurants, Inc. and has managed and continues to manage the business. Any remaining allegations in Paragraph 103 are denied.
104. Denied.
105. Denied.
106. Denied.
107. Denied.

AS A FIRST AFFIRMATIVE DEFENSE

108. Plaintiff has not alleged facts sufficient to state a cause of action for which relief can be granted pursuant to SCRCP 12(b)(6), requiring dismissal, including for failure to plead with particularity.

AS A SECOND AFFIRMATIVE DEFENSE

109. Some or all of Plaintiff's claims are barred by the business judgment rule and should be dismissed.

AS A THIRD AFFIRMATIVE DEFENSE

110. Plaintiff has failed to comply with the requirements for filing a shareholder derivative suit under SCRCP 23(b)(1), including the demand requirement or the pleading of futility with particularity, the requirement of filing a verified complaint, the requirement to allege that Plaintiff was shareholder at the time of the complained-of transaction(s), and the requirement that Plaintiff fairly and adequately represent the interests of similarly situated shareholders, requiring dismissal.

AS A FOURTH AFFIRMATIVE DEFENSE

111. Plaintiff is not entitled to legal or equitable relief as he has unclean hands and is equitably estopped from asserting his claims.

AS A FIFTH AFFIRMATIVE DEFENSE

112. Plaintiff's claims are barred by the applicable statute of limitations.

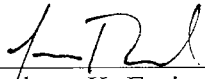
AS A SIXTH AFFIRMATIVE DEFENSE

113. Plaintiff's claims are barred by laches.

WHEREFORE, having fully answered Plaintiff's complaint, Defendants respectfully request this Court dismiss this action and award Defendants all attorney's fees and costs associated with its defense and for any other relief the Court deems just and proper.

ANDREW K. EPTING, JR., LLC

This 13th day of May, 2019
Charleston, S.C.



Andrew K. Epting, Jr.
Jaan G. Rannik
46A State Street, Charleston, SC 29401
P: 843-377-1871
F: 843-377-1310
ake@epting-law.com; jgr@epting-law.com

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that true and correct copies of the pleading or paper to which this certificate is affixed ~~was served upon the party(s)~~ to this action in accord with the applicable Court Rules by electronic transmission or by hand delivery or by regular U.S. Mail, postage prepaid, properly addressed to the attorney(s) of record for such party(s).



Signed this 13 day of May, 2019th
Charleston, South Carolina

ANDREW K. EPTING, JR., LLC

ATTORNEYS AT LAW

ANDREW K. EPTING, JR. · AKE@EPTING-LAW.COM

JAAN G. RANNIK · JGR@EPTING-LAW.COM

May 14, 2019

The Honorable Julie Armstrong
Clerk of Court, Charleston County
100 Broad Street
Charleston, SC 29401

RE: *Tony A. Billips v. Carolyn A. Billips and Alex's Restaurants, Inc.*
Case No.: 2016-CP-~~32~~-6265

~10~

Dear Ms. Armstrong:

Enclosed for filing please find the original and one copy of Defendants' Answer to Amended Complaint in the above-referenced matter. I would greatly appreciate your filing the original and returning a file-stamped copy to me in the self-addressed, stamped envelope provided.

With kindest regards,

ANDREW K. EPTING, JR., LLC

s/ Angela

Angela Gross
Legal Assistant to Jaan G. Rannik

Enclosures

cc: Mike Ellis, Esquire (w/enc.)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NUMBER 2016-CP-10-6265
	)	
TONY A. BILLIPS, individually and as	)	
a derivative shareholder of Alex's	)	
Restaurants, Inc.	)	
	)	
Plaintiff,	)	
	)	SECOND AMENDED SUMMONS
vs.	)	
	)	
CAROLYN A. BILLIPS, individually and as	)	
Trustee for the benefit of Anthony Billips,	)	
William Casey Ivey, and Alex Billips, and as	)	
controlling person of Alex's Restaurants, Inc.)	)	
and ALEX'S RESTAURANTS, INC.,	)	
	)	
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 subscribed at the law office at 147 Wappoo Creek Drive, Suite 202, Charleston, South Carolina 29412, 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 in this action will apply to the Court for the relief demanded in the Complaint, including the rendering of judgment by default against you.

If the within pleadings were served upon you by certified mail, then in that event, a copy of your Answer to said Complaint shall be received by said attorney within thirty-five (35) days after the service thereof, exclusive of the day of such service, as provided by Rule 6, of the South Carolina Rules of Civil Procedure.

YOU ARE HEREBY GIVEN FURTHER NOTICE that if you fail to answer, appear or defend said Complaint required by this Summons within said time allowed under Rule 6, of the South Carolina Rules of Civil Procedure, judgment by default will be rendered against you for the relief demanded in said Complaint.

QUERY SAUTTER & ASSOCIATES, LLC

/s Michael H. Ellis

O. Grady Query, 4610
Michael H. Ellis, Jr., 101524
147 Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412
Telephone: 843.795.9500
Facsimile: 843.762.1500

Attorneys for Plaintiff

Dated:11/11/20
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NUMBER 2016-CP-10-6265
	)	
TONY A. BILLIPS, individually and as	)	
a derivative shareholder of Alex's	)	
Restaurants, Inc.	)	SECOND AMENDED COMPLAINT
	)	
Plaintiff,	)	Injunctive Relief, Fraud,
	)	Accounting, Piercing the Corporate
	)	Veil, Breach of Trust, Breach of
vs.	)	Fiduciary Duty as Co-Trustee, Breach of
	)	Fiduciary Duty as Majority Shareholder,
CAROLYN A. BILLIPS, individually and as)	)	Judicial Determination of Shareholder's
Trustee for the benefit of Tony A. Billips,	)	Interest, Oppression, Trademark
William Casey Ivey, and Alex Billips, and as)	)	Infringement, Unfair Trade Practice
controlling person of Alex's Restaurants,	)	
Inc.; ALEX'S RESTAURANTS, INC.;	)	<u>Alternatively</u>
120 EAST FIFTH NORTH STREET,	)	Constructive Trust, Conversion,
LLC,	)	and Resulting Trust
	)	
Defendants.	)	
	)	

NOW COMES the Plaintiff, Tony A. Billips, through his undersigned counsel complaining of above named Defendants and would show unto this Honorable Court as follows:

1. Plaintiff is a resident of Raleigh, North Carolina.
2. Defendant Carolyn A. Billips is a resident of Charleston County, South Carolina.
3. Defendant Alex's Restaurants, Inc. (Alex's) is a domestic corporation incorporated on July 28, 1975 in the State of South Carolina and has its primary place of business in North Charleston, South Carolina.
4. **Defendant 120 East Fifth North Street, LLC is a domestic statutory entity with a primary place of business in Dorchester County, South Carolina.**
5. This court has jurisdiction over the subject matter of this Complaint and the parties named herein, and venue is proper in Charleston County, South Carolina.

FACTS

6. On February 6, 1980, Alex L. Billips properly executed his last Will and Testament that created a testamentary trust (Trust).

7. The Trust provided that Deborah A. Billips and Carolyn A. Billips would be co-trustees of a testamentary trust for the purposes of managing the assets in trust for the Plaintiff, Alex L. Billips, Jr., and William Casey Ivey.

8. The Trust further provided that the co-trustees were to act jointly in trust administration with neither of the co-trustees having the authority to act separately.

9. Carolyn A. Billips acted unilaterally with respect to Trust management by excluding her fellow co-trustee, selling off, and transferring trust assets without consulting Deborah A. Billips, and without the consent of the Plaintiff as a beneficiary.

10. At the time of the execution of Alex L. Billips' Will, there were several corporations that owned different aspects of Alex's restaurant business; at the express direction of the Will, upon information and belief, these corporations were merged into the current active corporation, Alex's Restaurants, Inc.

11. Upon information and belief, Alex's Restaurants, Inc. is the sole active corporation for the operation of Alex's Restaurant business, which was formed on July 28, 1975.

12. Pursuant to the trust, Plaintiff and the two (2) other beneficiaries were to have equal 1/3 interests in Alex's Restaurant, Inc as beneficiaries under the trust and were then to take as legal owners upon the termination of the trust.

13. Based upon information and belief, all beneficiaries of the trust have obtained the age of twenty-five (25) and have demanded their 1/3 interest in Alex's Restaurant, Inc.

14. The Plaintiff was employed as a manager of one or more of the Alex's Restaurants owned by the corporation and subject to the terms of the trust from 1985 to 2006, and again from 2013-2014.

15. As a shareholder in the close corporation of Alex's Restaurant's Inc., Plaintiff looked mainly to a salary for a share in his business returns.

16. In 2014, Plaintiff was frozen out of the business.

17. Carolyn A. Billips has upon information and belief, personally assumed control, and upon information and belief claims ownership of the majority of shares of Alex's Restaurants, Inc. and has sold off considerable portions of the corporation, outside her authority as co-trustee or as director or officer of the corporation.

18. Based upon information and belief, the actions taken by Carolyn A. Billips are illegal, fraudulent, oppressive, unfairly prejudicial to the minority shareholders, and have resulted in corporate assets being misapplied and wasted.

19. Carolyn A. Billips has made a distribution from the Trust to Tony A. Billips by issuing him stock in Alex's Restaurants, Inc., purportedly making him a minority shareholder of Alex's Restaurants, Inc.

20. Plaintiff does not believe the distribution of stock complied with the express directions of the testamentary trust.

21. Carolyn A. Billips has continued to maintain control over Alex's Restaurants, Inc. as a trustee and has held herself out as the owner despite the will giving all ownership to Plaintiff and the other beneficiaries upon the termination of the trust.

22. Carolyn A. Billips has failed to observe corporate formalities with respect to Alex's Restaurants, Inc., by not having a board of directors or annual shareholder meetings.

23. Carolyn A. Billips has conveyed substantial corporate assets without any notice to the minority shareholder, Tony A. Billips.

24. **Based upon information and belief, 120 East Fifth North Street, LLC is wholly owned and operated by Defendant Carolyn A. Billips.**

25. **120 East Fifth North Street, LLC owns real property located at 120 East Fifth North Street in Summerville, SC on which sits a restaurant.**

26. **Based upon information and belief, this real property was acquired by Carolyn A. Billips either utilizing funds of Alex's Restaurants, Inc. or using Alex's Restaurants, Inc.'s assets to secure financing for the purchase of said real property.**

27. **Prior to 2008, the restaurant on this real property was known as Flowertown Restaurant.**

28. **Defendant Carolyn Billips always represented that Flowertown Restaurant was separate and apart from Alex's Restaurants, Inc.**

29. **In 2008, the restaurant was represented as becoming an Alex's Restaurant, owned and operated by Alex's Restaurants, Inc. and utilizing and benefitting from all of Alex Restaurants Inc.'s goodwill, name advertising, menu, and established operating procedures.**

30. **On April 10, 2020, Plaintiff received notice from Carolyn A. Billips that in fact, the restaurant remained separate and apart from Alex's Restaurant, Inc., wholly owned and operated by Carolyn A. Billips and her limited liability company, 120 East Fifth North Street, LLC.**

31. **Based upon information and belief, neither Carolyn A. Billips nor 120 East Fifth North Street, LLC has paid for the use of Alex's Restaurants, Inc.'s goodwill, name advertising, menu, and established operating procedures.**

32. Based upon information and belief, neither Carolyn A. Billips nor 120 East Fifth North Street, LLC has been authorized by Alex's Restaurants, Inc. to use Alex's Restaurants, Inc.'s goodwill, name advertising, menu, and established operating procedures.

33. Based upon information and belief, Carolyn A. Billips and 120 East Fifth North, Street, LLC have been representing to the public that their restaurant is an Alex's Restaurant without Alex's Restaurant's, Inc. having quality control, thereby jeopardizing the name and goodwill achieved by Alex's Restaurants, Inc. in the community.

34. Based upon information and belief, consumers, when viewing the restaurant owned and operated by Carolyn A Billips and 120 East Fifth North Street, LLC, assume that the product and service it represents is associated with the product and service of Alex's Restaurants, Inc.

35. Carolyn A. Billips has diminished the value of Plaintiff's interest in the corporation while personally benefitting from selling or utilizing corporate assets.

36. Carolyn A. Billips owes a fiduciary duty to the Plaintiff as the controlling person of Alex's Restaurant's Inc.,

37. Carolyn A. Billips owes a fiduciary duty to the Plaintiff as the co-trustee of Alex L. Billips' testamentary trust that was formed for Plaintiff's benefit.

38. Plaintiff has personal concerns about Carolyn selling more restaurants in order to benefit financially.

FOR A FIRST CAUSE OF ACTION
(Accounting of Trust)

39. The Plaintiff re-alleges paragraphs 1-26 of this Complaint as if specifically set forth herein.

40. The Defendant, has failed as a co-trustee of Alex L. Billips' testamentary trust, to provide an annual accounting of the trust, complete with a list of trust assets and their market values to the Plaintiff as a beneficiary.

41. Upon information and belief, the Defendant, as co-trustee has not provided an adequate accounting of the trust assets at any time during the life of the trust to the point of the alleged trust termination and distribution.

42. The Plaintiff, pursuant to the South Carolina Trust Code, is entitled to an accounting as a beneficiary of the Alex L. Billips' testamentary trust in order to become reasonably informed of the trust and its administration.

43. As a beneficiary, the Plaintiff is also entitled to an accounting in order to ascertain a valuation of his interest in the trust at the time of the alleged trust distribution and is entitled to any appreciation in value of the trust corpus.

FOR A SECOND CAUSE OF ACTION
(Accounting of Corporation)

44. Plaintiff re-alleges paragraphs 1-31 above as if stated here verbatim.

45. An accounting of Alex's Restaurants, Inc. is a matter of right as a minority shareholder and is necessary to prevent unjust enrichment by Defendant and further diminution of Plaintiff's interest in the corporation.

46. A formal accounting is necessary to determine what assets have been liquidated by the Defendant for her personal benefit that would have a substantial effect on the value of Plaintiff's interest in Alex's Restaurants, Inc.

47. Plaintiff is also entitled to inspect the financial records of the corporation as a minority shareholder of Alex's Restaurants, Inc.

48. Plaintiff's share has been devalued by the transfer and conveyance of corporate assets and an accounting is necessary to determine the financial livelihood of the corporation as well as the current value of Plaintiff's interest.

49. A fiduciary relationship existed between Plaintiff and Defendant because Defendant as a controlling person of Alex's Restaurants, Inc., in which Plaintiff is a minority shareholder.

50. The amount due to Plaintiff from Defendant is not readily ascertainable because the amount of corporate assets siphoned out of the corporation to the Defendant in her personal capacity is unknown.

FOR A THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty as Co-Trustee)

51. The Plaintiff re-alleges paragraphs 1-38 above as if stated here verbatim.

52. The Defendant and Plaintiff were in a fiduciary relationship whereby the Defendant owed the Plaintiff a duty of loyalty, good faith, and fair dealing.

53. By agreeing to be a co-trustee of Alex L. Billips' testamentary trust, the Defendant owes the Plaintiff a duty of loyalty.

54. The Defendant consciously failed to exercise due care in her fiduciary duty to the Plaintiff.

55. The Defendant's breach of her fiduciary duty was reckless, willful, wanton, and a malicious attempt to deprive the Plaintiff of his private right to his property under the Alex L. Billips' testamentary trust formed for the benefit of the Plaintiff.

56. As a result of Defendant's breach of her fiduciary duty owed to Plaintiff, Plaintiff is entitled to actual and punitive damages.

FOR A FOURTH CAUSE OF ACTION

(Breach of Fiduciary Duty as Controlling Shareholder)

57. Plaintiff re-alleges paragraphs 1-44 above as if stated here verbatim.

58. Being the controlling person of Alex's Restaurant's, Inc., the Defendant also owes a duty of loyalty, good faith, and fair dealing to the Plaintiff as a minority shareholder of Alex's Restaurant's, Inc.

59. The Defendant breached her fiduciary obligation owed to Plaintiff by siphoning off corporate assets of Alex's Restaurants, Inc., and engaging in self dealing by personally profiting off of those above-mentioned transactions.

60. The Defendant consciously failed to exercise due care in her fiduciary duty to the Plaintiff.

61. The Defendant's breach of her fiduciary duty was reckless, willful, wanton, and a malicious attempt to deprive the Plaintiff of his right to manage Alex's Restaurant's, Inc.

62. As a result of Defendant's breach of her fiduciary duty owed to Plaintiff, Plaintiff is entitled to actual and punitive damages.

FOR A FIFTH CAUSE OF ACTION

(Conversion)

63. The Plaintiff re-alleges paragraphs 1-50 above as if stated here verbatim.

64. Plaintiff has made demands upon Defendant for access to corporate records of Alex's Restaurants and for a distribution of proceeds of sales of corporate assets.

65. Defendant has failed to deliver assets to Plaintiff and has converted corporate assets for personal gain.

66. Defendant's actions constitute conversion of the corporation's assets at the demise of Plaintiff for the benefit of Defendant.

67. The value of the corporate assets on the day that Defendant converted them needs to be determined at trial. Plaintiff is unable to access the corporate records in order to determine the value of the assets and the extent that Defendant has personally profited from the corporation at the demise of Plaintiff. Plaintiff has been damaged by the conversion of corporate assets.

FOR A SIXTH CAUSE OF ACTION
(Breach of Trust)

68. The Plaintiff re-alleges 1-55 above as if stated here verbatim.

69. Alex L. Billips created a testamentary trust in his Will that instructed the Defendant and Deborah L. Billips to manage the trust corpus as co-trustees for the benefit of the Plaintiff, Alex L. Billips, Jr., and William Casey Ivey.

70. As a co-trustee, the Defendant owes the trust a fiduciary duty to manage the trust corpus in good faith solely for the beneficiaries' interests, and in a prudent manner in accordance with the trust terms set forth by Alex L. Billips.

71. The Defendant has breached her fiduciary duty by siphoning off corporate assets of Alex's Restaurants, Inc. that were included in the trust corpus.

72. The Defendant has dealt with the trust corpus in her individual capacity by personally profiting from selling off corporate assets, and therefore has breached her duty of loyalty to the beneficiaries.

73. The Defendant has also breached her duty to report and keep the beneficiaries reasonably informed of the Alex L. Billips testamentary trust by not keeping the required annual accounting of the trust that is complete with a list of trust assets and market values of those trust assets all to Plaintiff's damage.

FOR A SEVENTH CAUSE OF ACTION
(Derivative Action by Shareholder)

74. The Plaintiff re-alleges paragraphs 1-61 above as if stated here verbatim.

75. The Plaintiff brings this action as a derivative action within the meaning of Rule 23(b)(1) of the South Carolina Rules of Civil Procedure on behalf of the Plaintiff and all other shareholders of Alex's Restaurants, Inc. that are similarly situated.

76. The Plaintiff was a shareholder at the time when Carolyn A. Billips, as controlling shareholder, was siphoning off corporate assets for personal gain.

77. The Plaintiff has not made a demand on the board of directors of Alex's Restaurants, Inc. because that demand would have been futile.

78. Plaintiff has not made any efforts to have this suit brought for Alex's Restaurants, Inc., and the demand would be futile because:

- a. A formal board of directors elected by the shareholders of Alex's Restaurants, Inc. does not exist;
- b. Carolyn A. Billips is the only other shareholder as she has bought out William Casey Ivey and Alex L. Billips, Jr.;
- c. Carolyn A. Billips would certainly not agree to essentially bring a lawsuit against herself as she controls the corporation.

79. The Defendant will not take action against herself under any circumstances or admit to the conversion of Alex's Restaurants, Inc.'s assets to privately owned assets of her own.

80. At all times, the Defendant was the controlling shareholder of Alex's Restaurants, Inc. and simultaneously engaged in self dealing by liquidating a substantial majority of corporate assets for personal financial gain.

81. On numerous occasions between on or about 2003 to the present, the Defendant authorized the transfer of corporate assets paid for by Alex's Restaurants, Inc. out of the corporation and into assets privately owned by the Plaintiff or others.

82. The Defendant conducted herself in a fraudulent and false manner by indicating the sale of a substantial majority of the restaurants was necessary for continuing the operation of Alex's Restaurants, Inc.

83. As a result of the Defendant authorizing these actions in her capacity as the controlling shareholder, the Defendant obtained valuable sales proceeds from Alex's Restaurants, Inc. at no cost to her, deprived Alex's Restaurants, Inc. of the value of these proceeds, and damaged the corporation in this manner.

84. Upon information and belief, the value of the assets converted from Alex's Restaurants, Inc. by the Defendant from on or around 2003 to 2013 is about \$3,000,000.

85. Plaintiff's successful prosecution of this action will result in a substantial benefit to the corporation, and therefore, the Plaintiff is entitled to reimbursements for his expenses in bringing this action, including reasonable attorney's fees.

FOR AN EIGHTH CAUSE OF ACTION
(Piercing the Corporate Veil)

86. The Plaintiff re-alleges paragraphs 1-73 above as if stated here verbatim.

87. The Plaintiff is purportedly a minority shareholder of Alex's Restaurants, Inc., and Defendant exercises control over the corporation and represents that she owns the lion share of Alex's Restaurants, Inc. due to her buyout of William Casey Ivey and Alex L. Billips, Jr.

88. Defendant's assets and affairs became synonymous with Alex's Restaurants, Inc. when she began liquidating corporate assets and selling restaurants while profiting personally off of those transactions without the consent of the Plaintiff or essential corporate founders.

89. The Defendant has treated the assets of Alex's Restaurants, Inc. as her own and therefore the assets of the corporation and personal assets of the Defendant have become so intermingled that the separation of the two is impossible.

90. The Defendant has failed to observe the corporate formalities by not holding any annual shareholders' meetings, electing a board of directors or conducting business of Alex's Restaurants, Inc. by resolution.

91. Plaintiff is a shareholder and was not put on notice of any meetings where the sale of restaurants and other substantial assets including real property occurred.

92. Alex's Restaurants, Inc. is the alter-ego of the Defendant and therefore the separate identity between the two should be disregarded.

93. The Defendant's operation of Alex's Restaurants, Inc. has resulted in such an injustice to the Plaintiff, that equity requires that the Defendant respond to the damage she has caused to the Plaintiff.

FOR A NINTH CAUSE OF ACTION
(Judicial Determination of Shareholder's Interest)

94. Plaintiff re-alleges paragraphs 1-81 above as if stated here verbatim.

95. Defendant has engaged in blatant oppressive conduct resulting in Plaintiff's wrongful dissociation from Alex's Restaurant's, Inc., and making judicial dissolution necessary by:

- a. Excluding Plaintiff from all major business decisions, to the detriment of his share in the corporation and the corporation itself;
- b. Denying his right to dividends; and
- c. Denying his right to access business records.

96. Despite the dissociation of Plaintiff, Defendant has not wound up Alex's Restaurant's, Inc., resulting in Plaintiff being entitled to the fair value of Plaintiff's share in the corporation as of the date of his dissociation.

97. Defendant has failed and refused to offer Plaintiff his distributional interest in the corporation, and has completely ignored South Carolina's corporate statutes.

98. Defendant's actions to deny Plaintiff his interest in the corporation along with the failure to provide the required financial information were arbitrary, willful, wanton, and in bad faith.

99. Plaintiff requests that Defendant be responsible for all attorney's fees that arise out of this action.

100. Plaintiff requests that his interest in Alex's Restaurant's Inc. be judicially determined and distributed to him.

FOR A TENTH CAUSE OF ACTION
(Constructive Trust)

101. Plaintiff re-alleges paragraphs 1-88 above as if stated here verbatim.

102. In the alternative, a constructive trust arose when Defendant holds legal title to all corporate assets of Alex's Restaurant's, Inc. for the benefit of Plaintiff.

103. Defendant is a co-trustee of a testamentary trust formed for the benefit of Plaintiff, Alex L. Billips, Jr., and William Casey Ivey.

104. Defendant is the controlling shareholder of Alex's Restaurants, Inc. and owes a fiduciary duty, fair dealing, and duty of care to other shareholders including the Plaintiff.

105. Defendant has sold off significant corporate assets at the expense of the minority shareholder, the Plaintiff, for Defendant's self dealing.

106. Defendant obtained the benefit of selling corporate assets at the expense of Plaintiff due to Defendant willfully and wantonly disregarding her duties clearly mandated by law and enumerated in the trust terms.

107. Defendant cannot in equity and good conscience retain or withhold the benefit from Plaintiff arising in a constructive trust being imposed where Defendant holds a controlling share

to Alex's Restaurant's, Inc. where that business was specifically left for the benefit the Plaintiff, Alex L. Billips, and William Casey Ivey.

FOR AN ELEVENTH CAUSE OF ACTION

(Resulting Trust)

108. The Plaintiff re-alleges paragraphs 1-95 above as if stated here verbatim.

109. In the alternative, a resulting trust arises when the Defendant holds legal title to all corporate property of Alex's Restaurants, Inc. for the benefit of Plaintiff.

110. Plaintiff was a beneficiary of a testamentary trust created in the Will of Alex L. Billips that specifically directed the Defendant to manage the business property for the benefit of the Plaintiff, Alex L. Billips, Jr., and William Casey Ivey until the beneficiaries became 25 years old.

111. The Plaintiff is entitled to one third of the entire trust corpus, which has not been completely distributed to the beneficiaries due to the Defendant using trust assets for her own personal benefit instead.

112. At no time did the Plaintiff intend for the Defendant, in her capacity as co-trustee or as controlling shareholder of Alex's Restaurants, Inc., to convert his interest in the corporation into personal assets of the Defendant.

113. The Defendant holds apparent legal title of Plaintiff's interest in the corporation and the testamentary trust formed by Alex L. Billips in his Will.

FOR A TWELFTH CAUSE OF ACTION

(Oppression)

114. The Plaintiff re-alleges paragraphs 1-101 above as if stated forth here in verbatim.

115. Carolyn A. Billips has at all times pertinent hereto exercised control of Alex's restaurant, Inc.

116. Through her control of the corporation, Carolyn A. Billips has taken actions that are illegal, fraudulent, oppressive, unfairly prejudicial to the minority shareholders, and has misapplied and wasted corporate assets.

117. As a result of Carolyn A. Billips's oppressive actions, Plaintiff faces a trapped investment and an indefinite exclusion from participation in business returns.

118. As a result of Carolyn A. Billips's oppressive actions, Plaintiff has been frozen out of the business and is not receiving any salary or distributions from the business.

119. Plaintiff is entitled to a judicial dissolution of the corporation, and judicial determination of his shares in the corporation, and a buyout of his shares.

FOR A THIRTEENTH CAUSE OF ACTION
(Trademark Infringement)

120. **Plaintiff re-alleges paragraphs 1-119 above as if stated forth here in verbatim.**

121. **The name and logo for Alex's Restaurants is used by Alex's Restaurant's, Inc. to identify and distinguish their restaurants from others.**

122. **The use of the name and logo of Alex's Restaurants by Defendant's Carolyn A. Billips and 120 East Fifth North Street, LLC despite their restaurant not being an Alex's Restaurant leads consumers to probably assume that the product and service it represents is associated with Alex's Restaurants, Inc.**

123. **Based upon information and belief, Defendants' use was unjustified.**

124. **Plaintiff is entitled to reasonable attorney's fees and damages to include treble damages and punitive damages.**

FOR A FOURTEENTH CAUSE OF ACTION
(Unfair Trade Practices)

125. Plaintiff re-alleges paragraphs 1-124 above as if stated forth here in verbatim.

126. Defendants Carolyn A. Billips and 120 East Fifth North Street, LLC willfully and wantonly deceived the public by representing their Summerville restaurant to be the same product and service associated with the product and service of Alex's Restaurants, Inc.

127. Defendants engaged in an unlawful trade practice.

128. Plaintiff suffered actual, ascertainable damages as a result of the Defendant's use of the unlawful trade practice.

129. Defendants unlawful trade practice had an adverse impact on the public interest.

130. Plaintiff is entitled to reasonable attorney's fees and damages to include treble damages and punitive damages.

WHEREFORE, the Plaintiff prays judgment of this Court as follows:

1. For the entry of an injunction restraining Defendant from entering into any negotiations to sell any or all of Alex's Restaurants, Inc. absent Plaintiff's statutory rights to participate in fundamental business decisions, an agreement between the parties, or a Court Order;

2. For an accounting of Plaintiff's interest in Alex's Restaurant's, Inc.;

3. For a Piercing of the Corporate Veil of Alex's Restaurant's, Inc., and holding the corporation is the alter ego of the Defendant and therefore the Defendant is personally liable to the Plaintiff;

4. For a finding of a breach of fiduciary duty by the Defendant, entitling the Plaintiff to actual and punitive damages in an amount to be determined by the trier of fact;

5. For a judicial determination of Plaintiff's interest in Alex's Restaurant's, Inc. and the distribution of that interest to Plaintiff.

6. For a recovery of the benefit of Alex's Restaurants, Inc. the damages described in this complaint together with pre- and post-judgment interest as allowed by law.

7. The arising of a resulting trust in which Defendant is the legal owner of a share of Alex's Restaurant's, Inc. that rightfully belongs to the Plaintiff;

8. For a judicial dissolution of the corporation, and judicial determination of his shares in the corporation, and a buyout of his shares.

9. For judgment against the Defendants in an amount to be determined by the trier of fact for damages;

10. For costs of this action including reasonable attorney's fees incurred in the prosecution of this action for the benefit of Alex's Restaurants, Inc.; and

11. For such other and further relief as the Court may deem just and proper.

QUERY SAUTTER & ASSOCIATES, LLC

/s Michael H. Ellis

O. Grady Query, 4610
Michael H. Ellis, Jr., 101524
147 Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412
Telephone: 843.795.9500
Facsimile: 843.762.1500

Attorneys for Plaintiff

Dated:11/11/20
Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

TONY A. BILLIPS, individually and as a
derivative shareholder of Alex's Restaurants,
Inc.,

Plaintiff,

vs.

CAROLYN BILLIPS, et al.

Defendant.

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO.: 2016-CP-10-06265

MOTION AND ORDER INFORMATION

FORM AND COVERSHEET

Plaintiff's Attorney:

_____, Bar No. _____

Address:

Phone: _____ Fax: _____

E-mail: _____ Other: _____

Defendant's Attorney:

Andrew K. Epting, Jr., Bar No. 1908

Address:

46A State Street, Charleston, SC 29401

Phone: 8433771871 Fax 8433771310

E-mail: ake@epting-law.com Other: _____

☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)

☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)

☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

SECTION I: Hearing Information

Nature of Motion: Motion to Dismiss and for Further Relief

Estimated Time Needed: 15 min

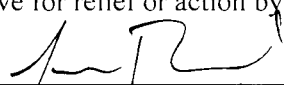
Court Reporter Needed: ☒ **YES** / ☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.


Signature of Attorney for ☐ Plaintiff / ☒ Defendant

10-3-18

Date submitted

SECTION III: Motion Fee

☒ **PAID – AMOUNT:** \$ _____

☐ **EXEMPT:**

(check reason)

☐ Rule to Show Cause in Child or Spousal Support

☐ Domestic Abuse or Abuse and Neglect

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Sexually Violent Predator Act ☐ Post-Conviction Relief

☐ Motion for Stay in Bankruptcy

☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)

☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter: _____

☐ Other: _____

JUDGE'S SECTION

☐ Motion Fee to be paid upon filing of the attached
order.

☐ Other:

JUDGE CODE _____

Date: _____

CLERK'S VERIFICATION

Collected by: _____ Date Filed: _____

☐ **MOTION FEE COLLECTED:** \$ _____

☐ **CONTESTED – AMOUNT DUE:** \$ _____

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

TONY A. BILLIPS, individually and as a
derivative shareholder of Alex's Restaurants,
Inc.

Plaintiff,

v.

CAROLYN A. BILLIPS, individually and as
Trustee for the benefit of Anthony Billips,
William Casey Ivey, and Alex Billips, and as
controlling person of Alex's Restaurants, Inc.
and

ALEX'S RESTAURANTS, INC.,

Defendants.

**IN THE COURT OF COMMON PLEAS
FOR CHARLESTON COUNTY**

CASE NO. 2016-CP-10-06265

**DEFENDANTS' MOTION TO DISMISS
AND FOR FURTHER RELIEF**

FILED
2018 OCT -4 AM 11:35
JULIE J. MSTRONG
CLERK OF COURT

The Defendants move this Court for appropriate relief.

Defendants first interrogatories to Plaintiff requested the identity of Plaintiff's experts.

Plaintiff answered Defendants' discovery on October 24, 2017, stating no expert had been retained. Experts were revealed for the first time in Supplemental Answers to Interrogatories dated January 11, 2018. At this time, Plaintiff did not produce any documentation provided to or from his experts, nor did Plaintiff identify opinions held by those experts. On February 21, 2018, Plaintiff answered Defendants' Second Set of Interrogatories requesting this information (**Exh. A**) but again advised that Plaintiff was unable to produce what documents were used or relied upon by the experts or what opinions would be provided by his experts. Defendants' noted their objection on February 22, 2018. **Exh. B.**

A hearing was held before this Court on April 25, 2018. Prior to the hearing, Defendant learned that one of Plaintiff's experts was not aware he had been named as an expert. As will appear from **Exhibit C** (a transcript of the hearing) at p. 29:10-16, this Court instructed Plaintiff

to identify any further documents needed from Defendants in order to properly prepare his experts for deposition. At this time the Defendants believed they had complied with all discovery requests of Plaintiff¹ and did not know Plaintiff alleged further documents were needed.

An Amended Scheduling Order was entered by this Court on June 1, 2018 (**Exh. D**), in which Plaintiff was ordered to prepare and make all experts available for deposition by August 15, 2018. On August 6, 2018, counsel for Defendants advised that Defendants were waiting on the opinions of the experts together with the documents they relied upon but intended to meet the Court's scheduling order to have the depositions concluded by August 15. **Exh. E at 8**. Attached as **Exh. E (at 8)** is counsel for Plaintiff's response, indicating there were no reports, documents, or opinions. Further, on the same date counsel for Plaintiff advised that the Scheduling Order only required that the experts be made available for deposition, not that they would have opinions or would have tendered documents relied upon by that date. **Id. at 6**. Subsequent to this exchange and after an aborted deposition of one of Plaintiff's experts, Plaintiff advised the remaining depositions would not go forward and filed a Motion before this Court for a Protective Order.

Additionally, on August 31, 2018, Plaintiff filed a Motion to Compel suggesting that Defendants had never answered Plaintiff's interrogatories. In fact, Defendants had provided thorough answers to each of three sets of interrogatories and had received no word, at any time, that the responses were deficient in any way. Further, this Motion was filed on Friday before Labor Day and, rather than being served via email as had previously been the case,

¹ With the exception of tax returns for the year 2017 which had been completed days earlier and were produced to Plaintiff on the day following the hearing.

Plaintiff served Defendants by United States Postal Service on September 5, removing half of the required 10-day notice period before a hearing scheduled on September 10. Finally, there was no effort to consult with counsel for the Defendants prior to filing the motion to compel answers to interrogatories.

A hearing was held on September 10, and counsel for Plaintiff advised the Court that they were awaiting documents from the Defendant. Interestingly, none of the filings contained any suggestion that the Defendants had not provided all documents, but rather contested whether or not Defendants had provided answers to Interrogatories.

At this hearing, after the arguments of counsel, this Court once again ordered Plaintiff to reveal what discovery was needed in order to prepare their experts for deposition and ordered that this occur by September 24. September 24 has passed, and Plaintiff has yet to advise what documents are needed in order to prepare their experts for deposition.

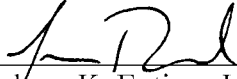
The irregularity of listing experts who have not been contacted; of being ordered by the Court to reveal in what way the Defendants' discovery responses were inadequate and having failed to do so; of contending that a scheduling order only required that experts be made available for deposition and not that they actually have opinions or advise what they have relied upon; and finally having failed for the second time to comply with an Order of the Court warrants real relief as this Court believes just.

[signature on following page]

Respectfully submitted,

ANDREW K. EPTING, JR., LLC

On this 3rd day of October, 2018
Charleston, SC



Andrew K. Epting, Jr.
Jaan G. Rannik
46A State Street, Charleston, SC 29401
P: 843-377-1871
F: 843-377-1310
ake@epting-law.com
jgr@epting-law.com

ATTORNEYS FOR DEFENDANTS

CERTIFICATE OF SERVICE

THE UNDERSIGNED HEREBY CERTIFIES that true and correct copies of the pleading or paper to which this certificate is affixed was served upon the party(s) to this action in accord with the applicable Court Rules by electronic transmission or by hand delivery or by regular U.S. Mail, postage prepaid, properly addressed to the attorney(s) of record for such party(s).

Signed this 3 day of OCTOBER, 2018
at
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
TONY A. BILLIPS, individually and as)
a derivative shareholder of Alex's)
Restaurants, Inc.)
)
Plaintiff,)
)
vs.)
)
CAROLYN A. BILLIPS, individually and as)
Trustee for the benefit of Anthony Billips,)
William Casey Ivey, and Alex Billips, and as)
Controlling person of Alex's Restaurants, Inc.)
And ALEX'S RESTAURANTS, INC.,)
)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER 2016-CP-10-6265

**PLAINTIFF'S ANSWERS TO
DEFENDANTS' SECOND SET OF
INTERROGATORIES**

TO: ANDREW K. EPTING JR., ATTORNEY FOR DEFENDANT:

1. For each expert named in Plaintiff's First Supplemental Answers to Defendants'

First Set of Interrogatories, please provide:

a. A complete statement of the opinions of said experts with regard to the instant
litigation and the basis for those opinions;

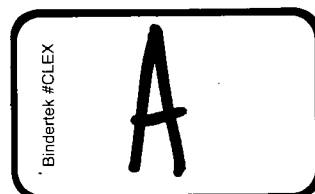
None at this time.

b. The facts or date considered by the witnesses in forming their opinions;

None at this time.

c. A list of all cases in the past four years in which those witnesses have served as
expert witnesses;

**Plaintiff has requested this information from the named experts and will
produce it when it is available.**



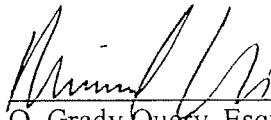
- d. A list of all documents, communications, records, statements, or other materials relied upon in forming those opinions; and

None at this time.

- e. A statement of the compensation to be paid for each expert's study and testimony in this litigation.

The experts are working on an hourly basis. At this point the amount of hours spent by each expert is unknown.

QUERY SAUTTER & ASSOCIATES, LLC



O. Grady Query, Esquire (SC Bar: 4610)
Michael Ellis, Esquire (SC Bar: 101524)
147 Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412
Telephone: 843.795.9500
Facsimile: 843.762.1500

Michael A. Uricchio, Esquire (SC Bar: 11275)
3842 Leeds Ave, Suite B
North Charleston, South Carolina 29405
Telephone: 843.577.4744

Attorneys for Plaintiff

Dated: 02/21/2018
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
TONY A. BILLIPS, individually and as)
a derivative shareholder of Alex's)
Restaurants, Inc.)
Plaintiff,)
vs.)
CAROLYN A. BILLIPS, individually and as)
Trustee for the benefit of Anthony Billips,)
William Casey Ivey, and Alex Billips, and as)
Controlling person of Alex's Restaurants, Inc.)
And ALEX'S RESTAURANTS, INC.,)
Defendants.)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NUMBER 2016-CP-10-6265

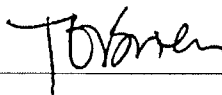
CERTIFICATE OF SERVICE

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a copy of the foregoing document upon
Jaan G. Rannik, Esquire, via e-mail at jgr@epting-law.com and by placing a copy of same in the
United States Mail with sufficient postage attached thereto and addressed as follows:

Jaan G. Rannik., Esq.
Andrew K. Epting Jr., LLC
46A State Street
Charleston, SC 29401

Date: 2.21.18



Angela Gross

From: Jaan Rannik
Sent: Thursday, February 22, 2018 1:18 PM
To: Mike Ellis
Cc: Andrew K. Epting
Subject: RE: Billips v Billips

Mike,

It was just the expert interrogatories, yes. Thanks for the response.

But Mike, this case is on the docket. You've named experts who have received no documents, have no opinions, and in at least one case, had not been contacted before being named as an expert. We cannot depose them as it stands, and must file a motion if they are not withdrawn as experts within 5 days.

Thanks much,
Jaan

Jaan G. Rannik, Esq.
Andrew K. Epting Jr., LLC
46A State Street, Charleston, SC 29401
P: 843-377-1871
C: 843-806-8719
F: 843-377-1310
jgr@epting-law.com

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From: Mike Ellis [mailto:mellis@qlawsc.com]
Sent: Wednesday, February 21, 2018 11:27
To: Jaan Rannik <jgr@epting-law.com>
Cc: Tracey O'Brien <tobrien@qlawsc.com>; Angela Gross <agg@epting-law.com>
Subject: RE: Billips v Billips

Jaan,

Was it just the second interrogatories about the experts?

Mike Ellis, Esquire

Query Sautter & Associates, LLC
147 Wappoo Creek Drive
Suite 202
Charleston, SC 29412



Telephone: (843) 795-9500

Facsimile: (843) 762-1500

mellis@qlawsc.com

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From: Jaan Rannik [<mailto:jgr@epting-law.com>]

Sent: Wednesday, February 21, 2018 8:44 AM

To: Mike Ellis

Cc: Tracey O'Brien; Angela Gross

Subject: RE: Billips v Billips

Mike,

Wondering if responses to our latest discovery requests are forthcoming. How about we plan that I'll file a motion if I don't have responses by the end of the week?

Thanks Mike,

Jaan

Jaan G. Rannik, Esq.

Andrew K. Epting Jr., LLC

46A State Street, Charleston, SC 29401

P: 843-377-1871

C: 843-806-8719

F: 843-377-1310

jgr@epting-law.com

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From: Angela Gross

Sent: Friday, January 19, 2018 9:56

To: Mike Ellis <mellis@qlawsc.com>; Jaan Rannik <jgr@epting-law.com>

Cc: Tracey O'Brien <tobrien@qlawsc.com>; Angela Gross <agg@epting-law.com>

Subject: Billips v Billips

Mr. Ellis,

Attached for service please find Defendants' Second Set of Interrogatories to Plaintiff in the above-referenced matter.

Angela

Angela Gross
Legal Assistant to Andrew K. Epting, Jr., Esquire
Jaan G. Rannik, Esquire
Andrew K. Epting, Jr., LLC
46A State Street
Charleston, SC 29401
Telephone: (843) 377-1871
Facsimile: (843) 377-1310
agg@epting-law.com

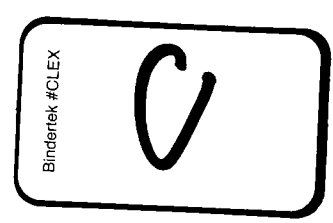
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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Tony A. Billips, et al.,
Plaintiffs,
vs. CASE NO. 2016-CP-10-6265
Carolyn A. Billips, et al.,
Defendants.

Hearing before the Honorable Mikell R.
Scarborough, reported by Christine A. Smith, Court
Reporter and Notary Public, at 2:11 p.m. on
April 25, 2018 at 100 Broad Street, Charleston,
South Carolina.

Christine A. Smith, Court Reporter
Master-in-Equity
P.O. Box 30276
Charleston, South Carolina, 29417
(843) 958-5071
casmith@charlestoncounty.org



1 hear them, whatever you-all decide, but as to the
2 discovery, I would like for you-all to move forward
3 on that as quickly as possible.

4 I'm willing to entertain an amended scheduling
5 order if you-all can get to work on that. I think
6 this one lead us to sometime in August to be starting
7 to get ready for trial. Of course, I always hear
8 dispositive motions before that anyway. I'm happy to
9 do that then.

10 Then if you-all can get -- Mr. Ellis, if you
11 can state specifically what it is that you need, put
12 that in writing to them -- by e-mail would be
13 sufficient I would think. Hey, we need this, we need
14 that. I can get that stuff to my expert and then
15 make him available for a deposition, and then you-all
16 can start moving this ball down the road. Okay?

17 MR. ELLIS: Thank you, Your Honor.

18 MR. RANNIK: Thank you.

19 MR. EPTING: Thank you, Judge.

20 THE COURT: All right, gentlemen. Good to see
21 you-all. Mr. Rannik, good to see you, sir. Very
22 well done. Mr. Epting, thanks for all that history
23 on Alex's Restaurant.

24 (The proceedings were concluded at 2:43 p.m.)
25

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

TONY A. BILLIPS, individually and as a
derivative shareholder of Alex's Restaurants,
Inc.

Plaintiff,

v.

CAROLYN A. BILLIPS, individually and as
Trustee for the benefit of Anthony Billips,
William Casey Ivey, and Alex Billips, and as
controlling person of Alex's Restaurants, Inc.
and

ALEX'S RESTUARANTS, INC.,

Defendants.

**IN THE COURT OF COMMON PLEAS
FOR CHARLESTON COUNTY**

CASE NO.: 2016-CP-10-6265

**PROPOSED ORDER DISMISSING
LIS PENDENS AND SECOND
AMENDED SCHEDULING ORDER**

FILED
CLERK OF COURT

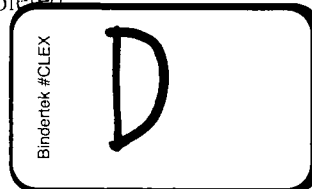
2018 JUN -1 AM 8:11

RECEIVED

During the proceedings in this matter held on April 25, 2018, this Court ordered the lifting of Lis Pendens number 2016-LP-18-550 ("the Lis Pendens") as part of its authority in presiding over the accounting in this matter. *See Exh. A* (excerpt of transcript of proceedings). Accordingly, the Lis Pendens is dismissed and dissolved.

In addition, as discovery remains ongoing in this matter and because the Parties indicated during the April 25 hearing that the scheduling order would require amendment, the previous scheduling order is amended as follows:

1. **June 15, 2018** – Plaintiff shall file any amended Complaint by this date.
2. **August 15, 2018** – Plaintiff shall make his experts available for deposition by this date.
3. **November 15, 2018** - Discovery shall be completed.
4. **December 14, 2018** - All motions except (a) those relating to the admissibility of evidence at trial and (b) those to compel discovery must be filed on or before this date.
5. **January 30, 2019** - Mediation shall be completed.

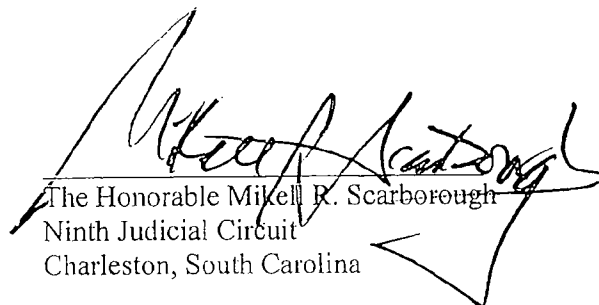


RRS

6. ~~March 1, 2018~~²⁰¹⁹ This case is not to be called for trial before this date.

IT IS SO ORDERED.

This 31st day of May, 2018


The Honorable Mikell R. Scarborough
Ninth Judicial Circuit
Charleston, South Carolina

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

Tony A. Billips, et al.,
Plaintiffs,
vs. CASE NO. 2016-CP-10-6265
Carolyn A. Billips, et al.,
Defendants.

Hearing before the Honorable Mikell R.
Scarborough, reported by Christine A. Smith, Court
Reporter and Notary Public, at 2:11 p.m. on
April 25, 2018 at 100 Broad Street, Charleston,
South Carolina.

Christine A. Smith, Court Reporter
Master-in-Equity
P.O. Box 30276
Charleston, South Carolina, 29417
(843) 958-5071
casmith@charlestoncounty.org

ExA

1 APPEARANCES OF COUNSEL:

2 ATTORNEYS FOR THE PLAINTIFF:

3 Michael H. Ellis, Esq.
4 Query Sautter & Associates, LLC
5 147 Wappoo Creek Drive
6 Shite 202
7 Charleston, SC 29412
8 (843) 795-9500
9 Mellis@qlawsc.com

7 ATTORNEYS FOR THE DEFENDANT:

8 Andrew K. Epting, Jr., Esq.
9 Jaan G. Rannik, Esq.
10 Andrew K. Epting, Jr., LLC
11 46A State Street
12 Charleston, SC 29401
13 (843) 377-1871
14 Ake@epting-law.com
15 Jgr@epting-lawfirm.com

1 MR. EPTING: There are now two, Judge.

2 THE COURT: Down to two restaurants? Okay. I
3 think I read that the last time we were together.

4 Mr. Ellis, other than checking with your
5 client on removing of the lis pendens -- I'm assuming
6 it's in Dorchester County. You-all said Summerville.
7 Is that Dorchester? Summerville is probably in three
8 counties like Ladson.

9 MR. ELLIS: All three.

10 MR. RANNIK: That's correct.

11 THE COURT: It's in Dorchester?

12 MR. ELLIS: Yes, sir.

13 THE COURT: Okay. Well, what I would be
14 willing to do for the benefit of Ms. Billips on that
15 would be to order the removal of the lis pendens, but
16 I would require you-all to notify Mr. Ellis on behalf
17 of his client, whatever's going to happen, whatever
18 money is being -- whatever the amount of the debt is
19 today, whatever the amount of the debt is going to
20 be, and if they're moving debt from an Alex's store
21 over to there, they should be entitled to get that.
22 So it would be something that they ought to be
23 entitled to receive on an information basis. That
24 would be consistent with their accounting cause of
25 action, just to follow the funds on that sort of

1 thing. So I don't have a problem with that. That
2 allows it to move forward, which I understand is the
3 frustration that you've got right now. I understand
4 that. Okay? Just make sure he stays in the know on
5 that, just so you-all are in the know on that.

6 As to the dismissals -- because technically
7 the accounting -- I'm not sure I can touch those
8 today. I think maybe you-all need to go back and
9 talk about that and as to what, if anything else
10 wants to come in here or what needs to be tried by a
11 jury. It doesn't matter to me.

12 I would order that there would be an agreement
13 not to sell or otherwise encumber any of Alex's
14 assets. Alex's is essentially what I think the
15 Plaintiff is after, are they not, in tracing the
16 funds? Mr. Ellis?

17 MR. ELLIS: Correct, Your Honor. The same
18 thing falls under the results of the trust.

19 THE COURT: Right. Their share of whatever is
20 as a result of that, Alex's Restaurant, Inc., right?

21 MR. ELLIS: Correct. Anything that would have
22 been trust money or corporate money to buy outside.

23 THE COURT: Okay. I'm with you on that one.

24 MR. EPTING: Judge, one thing that may -- we
25 would like to get a little more specificity either in

Jaan Rannik

From: Mike Ellis <mellis@qlawsc.com>
Sent: Friday, August 10, 2018 14:56
To: Jaan Rannik
Cc: Andrew K. Epting; Angela Gross
Subject: RE: Billips

Jaan,

He lives in Seattle but is already in Charleston.

Mike Ellis, Esquire

Query Sautter & Associates, LLC
147 Wappoo Creek Drive
Suite 202
Charleston, SC 29412
Telephone: (843) 795-9500
Facsimile: (843) 762-1500
mellis@qlawsc.com

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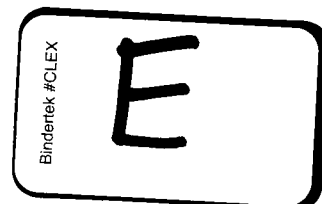
From: Jaan Rannik [mailto:jgr@epting-law.com]
Sent: Friday, August 10, 2018 2:02 PM
To: Mike Ellis
Cc: Andrew K. Epting; Angela Gross
Subject: RE: Billips

Thanks, Mike.

Another question – your discovery listed Mr. Freeman as living in Columbia, but I believe he might actually live in Seattle. Would you please confirm which is the case, as well as what the travel expenses to Charleston for Monday's deposition would be if the latter? We may need to set it up as a video deposition if he is unable to travel.

Thanks again,
Jaan

Jaan G. Rannik, Esq.
Andrew K. Epting Jr., LLC
46A State Street, Charleston, SC 29401
P: 843-377-1871



C: 843-806-8719
F: 843-377-1310
jgr@epting-law.com

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From: Mike Ellis <mellis@qlawsc.com>
Sent: Friday, August 10, 2018 10:02
To: Jaan Rannik <jgr@epting-law.com>
Cc: Andrew K. Epting <ake@epting-law.com>; Angela Gross <agg@epting-law.com>
Subject: RE: Billips

Jann,

You have not received any opinions from any of the exerts. You subpoenaed the experts and received responses from them.

Thanks,

Mike Ellis, Esquire

Query Sautter & Associates, LLC
147 Wappoo Creek Drive
Suite 202
Charleston, SC 29412
Telephone: (843) 795-9500
Facsimile: (843) 762-1500
mellis@qlawsc.com

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From: Jaan Rannik [<mailto:jgr@epting-law.com>]
Sent: Friday, August 10, 2018 9:04 AM
To: Mike Ellis
Cc: Andrew K. Epting; Angela Gross
Subject: RE: Billips

Mike,

Ahead of the depositions next week, please confirm that we have not been told what documents have been provided to any of your experts and that we have not received reports from any of your experts.

We will be sending an amended notice for Dr. Wood shortly, reflecting that the deposition will take place in Columbia on August 15 at 10:30. I plan to attend via video conference. Messrs. Hartnett and Freeman will have their depositions taken here in our office per the original notices.

Thanks much,
Jaan

Jaan G. Rannik, Esq.
Andrew K. Epting Jr., LLC
46A State Street, Charleston, SC 29401
P: 843-377-1871
C: 843-806-8719
F: 843-377-1310
jgr@epting-law.com

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From: Mike Ellis <mellis@qlawsc.com>
Sent: Thursday, August 9, 2018 12:48
To: Jaan Rannik <jgr@epting-law.com>
Cc: Andrew K. Epting <ake@epting-law.com>
Subject: RE: Billips

Jann,

It is at Creel reporting.

1230 Richland Street
Columbia, SC 29201

It might be best if you just use one of their reporters.

Mike Ellis, Esquire

Query Sautter & Associates, LLC
147 Wappoo Creek Drive
Suite 202
Charleston, SC 29412
Telephone: (843) 795-9500
Facsimile: (843) 762-1500
mellis@qlawsc.com

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From: Jaan Rannik [<mailto:jgr@epting-law.com>]

Sent: Thursday, August 09, 2018 11:26 AM

To: Mike Ellis

Cc: Andrew K. Epting

Subject: RE: Billips

Mike,

Would you please send me the address for Dr. Wood's deposition on the 15th? I need to schedule the court reporter.

Thanks much,

Jaan

Jaan G. Rannik, Esq.

Andrew K. Epting Jr., LLC

46A State Street, Charleston, SC 29401

P: 843-377-1871

C: 843-806-8719

F: 843-377-1310

jgr@epting-law.com

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From: Jaan Rannik

Sent: Tuesday, August 7, 2018 16:58

To: 'Mike Ellis' <mellis@qlawsc.com>

Cc: Andrew K. Epting <ake@epting-law.com>

Subject: RE: Billips

Mike,

Do you mean mean the experts might have opinions to offer next week? If so, please provided updated interrogatory responses prior to the depositions so we can keep this thing moving.

If I could direct you to page 26 of the hearing on our motion to compel, I think you'll find it bears out our position on the expert depositions. You stated (and, might I add, eloquently as always) that your experts were not up to speed as of

that time, were not ready to go. Judge Scarborough then acknowledged that our request was for Plaintiff to "get[]" these experts ready for deposition." He then ordered the same.

Thanks much,
Jaan

Jaan G. Rannik, Esq.
Andrew K. Epting Jr., LLC
46A State Street, Charleston, SC 29401
P: 843-377-1871
C: 843-806-8719
F: 843-377-1310
jgr@epting-law.com

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From: Mike Ellis <mellis@qlawsc.com>
Sent: Monday, August 6, 2018 13:30
To: Jaan Rannik <jgr@epting-law.com>
Cc: Andrew K. Epting <ake@epting-law.com>
Subject: RE: Billips

Jaan,

The experts have not provided me any opinions as of yet, but I cannot state what their answers to your questions would be. I do not think that the court ordered that our experts issue their opinions by a certain date but that they be available for a deposition.

Mike Ellis, Esquire

Query Sautter & Associates, LLC
147 Wappoo Creek Drive
Suite 202
Charleston, SC 29412
Telephone: (843) 795-9500
Facsimile: (843) 762-1500
mellis@qlawsc.com

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From: Jaan Rannik [<mailto:jgr@epting-law.com>]
Sent: Monday, August 06, 2018 12:07 PM
To: Mike Ellis
Cc: Andrew K. Epting
Subject: RE: Billips

Mike,

We are trying to figure out what Mr. Billips is alleging and whether any factual basis exists for those allegations. As a piece of that, we asked the Court to order your experts be prepared to provide their opinions at a deposition by a certain date. A deposition at which the experts merely testify that they have not reviewed any documents and have no opinions is not consistent with the purpose of the Court's order.

At the time, you were waiting on some tax records which we got to you within a day of the hearing. Today, we provided formal interrogatory responses that are duplicative of materials already produced to you. If there is anything else requested that we have not produced, please let me know. But the long and short of it is that our records have been provided, and months ago.

In the meantime, is it fair for me to take your email as a confirmation that your experts will not be prepared to offer any opinions by August 15?

Thanks again,
Jaan

Jaan G. Rannik, Esq.
Andrew K. Epting Jr., LLC
46A State Street, Charleston, SC 29401
P: 843-377-1871
C: 843-806-8719
F: 843-377-1310
jgr@epting-law.com

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From: Mike Ellis <mellis@qlawsc.com>
Sent: Monday, August 6, 2018 11:48
To: Jaan Rannik <jgr@epting-law.com>
Cc: Andrew K. Epting <ake@epting-law.com>
Subject: RE: Billips

Jaan,

Off the top of my head, I believe the Order says to make them available for a deposition. Their opinions will be heavily influenced by the facts of this case. We are still engaging in discovery right now. You just stated you are sending us some production and when we see that it might lead us to ask for something else. No factual witnesses have been

deposed. We are not going to pay our experts to produce immature reports and then give them a bunch of new information to produce another report.

Thanks,

Mike Ellis, Esquire

Query Sautter & Associates, LLC
147 Wappoo Creek Drive
Suite 202
Charleston, SC 29412
Telephone: (843) 795-9500
Facsimile: (843) 762-1500
mellis@qlawsc.com

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From: Jaan Rannik [<mailto:jgr@epting-law.com>]
Sent: Monday, August 06, 2018 11:40 AM
To: Mike Ellis
Cc: Andrew K. Epting
Subject: RE: Billips

Mike, I understood the Court's order to mean that they would need to be ready to have their deposition taken by the 15th of August, which would include having made their opinions and records available to us prior to that date. They have had access to our records for some time now. Do I understand correctly that they will not have opinions or reports to provide us by Wednesday?

Thanks much,
Jaan

Jaan G. Rannik, Esq.
Andrew K. Epting Jr., LLC
46A State Street, Charleston, SC 29401
P: 843-377-1871
C: 843-806-8719
F: 843-377-1310
jgr@epting-law.com

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From: Mike Ellis <mellis@qlawsc.com>
Sent: Monday, August 6, 2018 11:32
To: Jaan Rannik <jgr@epting-law.com>
Cc: Angela Gross <agg@epting-law.com>
Subject: RE: Billips

Jann,

There are on opinions or reports yet. I was kind of surprised you wanted to go ahead and depose them without those.

I am so sorry I forgot to supplement with the information to 1c in your second RFP's. I am checking the files now for that information to get to you.

Please let me know soon about whether you want to go forward with next week so that I can let those guys know.

Thanks,

Mike Ellis, Esquire

Query Sautter & Associates, LLC
147 Wappoo Creek Drive
Suite 202
Charleston, SC 29412
Telephone: (843) 795-9500
Facsimile: (843) 762-1500
mellis@qlawsc.com

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From: Jaan Rannik [<mailto:jgr@epting-law.com>]
Sent: Monday, August 06, 2018 10:54 AM
To: Mike Ellis
Cc: Angela Gross
Subject: RE: Billips

Thanks, Mike. We're glad to move be moving this forward. That said, we still don't have expert opinions, reports, documents, or updated responses to our second set of interrogatories. If we get that by Wednesday at 10am, we can move forward with the depositions (and the 15th at 10:30 in Columbia will work for Dr. Wood).

Sending responses to your third set of interrogatories today.

Thanks much,
Jaan

Jaan G. Rannik, Esq.
Andrew K. Epting Jr., LLC
46A State Street, Charleston, SC 29401
P: 843-377-1871
C: 843-806-8719
F: 843-377-1310
jgr@epting-law.com

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From: Mike Ellis <mellis@qlawsc.com>
Sent: Friday, August 3, 2018 11:58
To: Jaan Rannik <jgr@epting-law.com>
Cc: Angela Gross <agg@epting-law.com>
Subject: RE: Billips

Jaan,

Dr. Wood says he can do August 13 at 10:30 in Columbia. He also has the 15th at 10:30 also in Columbia.

Mike Ellis, Esquire

Query Sautter & Associates, LLC
147 Wappoo Creek Drive
Suite 202
Charleston, SC 29412
Telephone: (843) 795-9500
Facsimile: (843) 762-1500
mellis@qlawsc.com

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From: Jaan Rannik [<mailto:jgr@epting-law.com>]
Sent: Friday, August 03, 2018 11:55 AM
To: Mike Ellis

Cc: Angela Gross
Subject: RE: Billips

Mike, good hearing from you, hope all is well with you too.

Looking into this and will be back with you.

No worries re Dr. Wood, we may need to push it back anyway. Keep me posted.
Jaan

Jaan G. Rannik, Esq.
Andrew K. Epting Jr., LLC
46A State Street, Charleston, SC 29401
P: 843-377-1871
C: 843-806-8719
F: 843-377-1310
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From: Mike Ellis <mellis@qlawsc.com>
Sent: Thursday, August 2, 2018 13:50
To: Jaan Rannik <jgr@epting-law.com>
Subject: Billips

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Jann,

I hope all is well. Did you ever send me the responses to Plaintiffs Third Interrogatories? I just want to make sure that I am not overlooking them in the file. I have attached a copy.

Also, Dr. Wood is not able to make the August 13 deposition. I am working on alternate dates for you.

Thanks,

Mike Ellis, Esquire

Query Sautter & Associates, LLC
147 Wappoo Creek Drive
Suite 202
Charleston, SC 29412
Telephone: (843) 795-9500
Facsimile: (843) 762-1500
mellis@qlawsc.com

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ANDREW K. EPTING, JR., LLC

ATTORNEYS AT LAW

ANDREW K. EPTING, JR. · AKE@EPTING-LAW.COM

JAAN G. RANNIK · JGR@EPTING-LAW.COM

October 3, 2018

The Honorable Julie Armstrong
Clerk of Court, Charleston County
100 Broad Street
Charleston, SC 29401

RE: *Tony A. Billips v. Carolyn A. Billips and Alex's Restaurants, Inc.*
Case No.: 2016-CP-32-6265

Dear Ms. Armstrong:

Enclosed for filing please find the original and one copy of Defendants' Motion to Dismiss and for Further Relief together with the \$25 motion fee in the above-referenced matter. I would greatly appreciate your filing the original and returning a file-stamped copy to me in the self-addressed, stamped envelope provided.

With kindest regards,

ANDREW K. EPTING, JR., LLC

s/ Angela

Angela Gross
Legal Assistant to Jaan G. Rannik

Enclosures

cc: Mike Ellis, Esquire (w/enc.)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NUMBER 2016-CP-10-6265
	)	
TONY A. BILLIPS, individually and as	)	
a derivative shareholder of Alex's	)	
Restaurants, Inc.	)	
	)	
Plaintiff,	)	NOTICE OF MOTION AND
	)	MOTION TO AMEND COMPLAINT
vs.	)	
	)	
CAROLYN A. BILLIPS, individually and as	)	
Trustee for the benefit of Anthony Billips,	)	
William Casey Ivey, and Alex Billips, and as	)	
controlling person of Alex's Restaurants, Inc.)	)	
and ALEX'S RESTAURANTS, INC.,	)	
	)	
Defendants.	)	
	)	

TO: ANDREW K. EPTING, JR., ESQUIRE AND JAAN G. RANNICK, ESQUIRE,
ATTORNEYS FOR ABOVE NAMED DEFENDANTS:

You will please take notice, that Plaintiff, by and through his undersigned counsel, will move this Honorable Court to grant the leave of Court for Plaintiff to amend his Complaint. This motion is based upon Rule 15(a) of the South Carolina Rules of Civil Procedure as justice so requires that Plaintiff be able to amend his Complaint (**Exhibit A**) to amend the causes of action to appropriately conform to the facts of this case, and it does not prejudice Defendants. This motion is supported any affidavits and memoranda of law to be produced prior to the scheduled motion hearing.

QUERY SAUTTER & ASSOCIATES, LLC

/s Michael H. Ellis
Michael H. Ellis, Jr., Esquire
mellis@qlawsc.com
147 Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412
Telephone: 843-795-9500
Facsimile: 843-762-1500
Attorney for Plaintiffs

Dated: 11/11/20
Charleston, South Carolina

Rule 11 Certification

I, Michael Ellis, affirm that an attempt was made to resolve this with opposing counsel to no avail.

/s Michael H. Ellis
Michael Ellis

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that I served a copy of the Motion to Amended Complaint upon Jaan G. Rannik, Esquire, attorney for Defendants, by placing a copy of same in the United States Mail with sufficient postage attached thereto and addressed as follows:

Jaan G. Rannik, Esq.
Andrew K. Epting Jr., LLC
46A State Street
Charleston, SC 29401

Date: 11/11/20

/s Michael H. Ellis

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NUMBER 2016-CP-10-6265
	)	
TONY A. BILLIPS, individually and as	)	
a derivative shareholder of Alex's	)	
Restaurants, Inc.	)	
	)	
Plaintiff,	)	
	)	SECOND AMENDED SUMMONS
vs.	)	
	)	
CAROLYN A. BILLIPS, individually and as	)	
Trustee for the benefit of Anthony Billips,	)	
William Casey Ivey, and Alex Billips, and as	)	
controlling person of Alex's Restaurants, Inc.)	)	
and ALEX'S RESTAURANTS, INC.,	)	
	)	
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 subscribed at the law office at 147 Wappoo Creek Drive, Suite 202, Charleston, South Carolina 29412, 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 in this action will apply to the Court for the relief demanded in the Complaint, including the rendering of judgment by default against you.

If the within pleadings were served upon you by certified mail, then in that event, a copy of your Answer to said Complaint shall be received by said attorney within thirty-five (35) days after the service thereof, exclusive of the day of such service, as provided by Rule 6, of the South Carolina Rules of Civil Procedure.

YOU ARE HEREBY GIVEN FURTHER NOTICE that if you fail to answer, appear or defend said Complaint required by this Summons within said time allowed under Rule 6, of the South Carolina Rules of Civil Procedure, judgment by default will be rendered against you for the relief demanded in said Complaint.

QUERY SAUTTER & ASSOCIATES, LLC

/s Michael H. Ellis

O. Grady Query, 4610
Michael H. Ellis, Jr., 101524
147 Wappoo Creek Drive, Suite 202
Charleston, South Carolina 29412
Telephone: 843.795.9500
Facsimile: 843.762.1500

Attorneys for Plaintiff

Dated:11/11/20
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NUMBER 2016-CP-10-6265
	)	
TONY A. BILLIPS, individually and as	)	
a derivative shareholder of Alex's	)	
Restaurants, Inc.	)	SECOND AMENDED COMPLAINT
	)	
Plaintiff,	)	Injunctive Relief, Fraud,
	)	Accounting, Piercing the Corporate
	)	Veil, Breach of Trust, Breach of
vs.	)	Fiduciary Duty as Co-Trustee, Breach of
	)	Fiduciary Duty as Majority Shareholder,
CAROLYN A. BILLIPS, individually and as)	)	Judicial Determination of Shareholder's
Trustee for the benefit of Tony A. Billips,	)	Interest, Oppression, Trademark
William Casey Ivey, and Alex Billips, and as)	)	Infringement, Unfair Trade Practice
controlling person of Alex's Restaurants,	)	
Inc.; ALEX'S RESTAURANTS, INC.;	)	<u>Alternatively</u>
120 EAST FIFTH NORTH STREET,	)	Constructive Trust, Conversion,
LLC,	)	and Resulting Trust
	)	
Defendants.	)	
	)	

NOW COMES the Plaintiff, Tony A. Billips, through his undersigned counsel complaining of above named Defendants and would show unto this Honorable Court as follows:

1. Plaintiff is a resident of Raleigh, North Carolina.
2. Defendant Carolyn A. Billips is a resident of Charleston County, South Carolina.
3. Defendant Alex's Restaurants, Inc. (Alex's) is a domestic corporation incorporated on July 28, 1975 in the State of South Carolina and has its primary place of business in North Charleston, South Carolina.
4. **Defendant 120 East Fifth North Street, LLC is a domestic statutory entity with a primary place of business in Dorchester County, South Carolina.**
5. This court has jurisdiction over the subject matter of this Complaint and the parties named herein, and venue is proper in Charleston County, South Carolina.

FACTS

6. On February 6, 1980, Alex L. Billips properly executed his last Will and Testament that created a testamentary trust (Trust).

7. The Trust provided that Deborah A. Billips and Carolyn A. Billips would be co-trustees of a testamentary trust for the purposes of managing the assets in trust for the Plaintiff, Alex L. Billips, Jr., and William Casey Ivey.

8. The Trust further provided that the co-trustees were to act jointly in trust administration with neither of the co-trustees having the authority to act separately.

9. Carolyn A. Billips acted unilaterally with respect to Trust management by excluding her fellow co-trustee, selling off, and transferring trust assets without consulting Deborah A. Billips, and without the consent of the Plaintiff as a beneficiary.

10. At the time of the execution of Alex L. Billips' Will, there were several corporations that owned different aspects of Alex's restaurant business; at the express direction of the Will, upon information and belief, these corporations were merged into the current active corporation, Alex's Restaurants, Inc.

11. Upon information and belief, Alex's Restaurants, Inc. is the sole active corporation for the operation of Alex's Restaurant business, which was formed on July 28, 1975.

12. Pursuant to the trust, Plaintiff and the two (2) other beneficiaries were to have equal 1/3 interests in Alex's Restaurant, Inc as beneficiaries under the trust and were then to take as legal owners upon the termination of the trust.

13. Based upon information and belief, all beneficiaries of the trust have obtained the age of twenty-five (25) and have demanded their 1/3 interest in Alex's Restaurant, Inc.

14. The Plaintiff was employed as a manager of one or more of the Alex's Restaurants owned by the corporation and subject to the terms of the trust from 1985 to 2006, and again from 2013-2014.

15. As a shareholder in the close corporation of Alex's Restaurant's Inc., Plaintiff looked mainly to a salary for a share in his business returns.

16. In 2014, Plaintiff was frozen out of the business.

17. Carolyn A. Billips has upon information and belief, personally assumed control, and upon information and belief claims ownership of the majority of shares of Alex's Restaurants, Inc. and has sold off considerable portions of the corporation, outside her authority as co-trustee or as director or officer of the corporation.

18. Based upon information and belief, the actions taken by Carolyn A. Billips are illegal, fraudulent, oppressive, unfairly prejudicial to the minority shareholders, and have resulted in corporate assets being misapplied and wasted.

19. Carolyn A. Billips has made a distribution from the Trust to Tony A. Billips by issuing him stock in Alex's Restaurants, Inc., purportedly making him a minority shareholder of Alex's Restaurants, Inc.

20. Plaintiff does not believe the distribution of stock complied with the express directions of the testamentary trust.

21. Carolyn A. Billips has continued to maintain control over Alex's Restaurants, Inc. as a trustee and has held herself out as the owner despite the will giving all ownership to Plaintiff and the other beneficiaries upon the termination of the trust.

22. Carolyn A. Billips has failed to observe corporate formalities with respect to Alex's Restaurants, Inc., by not having a board of directors or annual shareholder meetings.

23. Carolyn A. Billips has conveyed substantial corporate assets without any notice to the minority shareholder, Tony A. Billips.

24. **Based upon information and belief, 120 East Fifth North Street, LLC is wholly owned and operated by Defendant Carolyn A. Billips.**

25. **120 East Fifth North Street, LLC owns real property located at 120 East Fifth North Street in Summerville, SC on which sits a restaurant.**

26. **Based upon information and belief, this real property was acquired by Carolyn A. Billips either utilizing funds of Alex's Restaurants, Inc. or using Alex's Restaurants, Inc.'s assets to secure financing for the purchase of said real property.**

27. **Prior to 2008, the restaurant on this real property was known as Flowertown Restaurant.**

28. **Defendant Carolyn Billips always represented that Flowertown Restaurant was separate and apart from Alex's Restaurants, Inc.**

29. **In 2008, the restaurant was represented as becoming an Alex's Restaurant, owned and operated by Alex's Restaurants, Inc. and utilizing and benefitting from all of Alex Restaurants Inc.'s goodwill, name advertising, menu, and established operating procedures.**

30. **On April 10, 2020, Plaintiff received notice from Carolyn A. Billips that in fact, the restaurant remained separate and apart from Alex's Restaurant, Inc., wholly owned and operated by Carolyn A. Billips and her limited liability company, 120 East Fifth North Street, LLC.**

31. **Based upon information and belief, neither Carolyn A. Billips nor 120 East Fifth North Street, LLC has paid for the use of Alex's Restaurants, Inc.'s goodwill, name advertising, menu, and established operating procedures.**

32. Based upon information and belief, neither Carolyn A. Billips nor 120 East Fifth North Street, LLC has been authorized by Alex's Restaurants, Inc. to use Alex's Restaurants, Inc.'s goodwill, name advertising, menu, and established operating procedures.

33. Based upon information and belief, Carolyn A. Billips and 120 East Fifth North, Street, LLC have been representing to the public that their restaurant is an Alex's Restaurant without Alex's Restaurant's, Inc. having quality control, thereby jeopardizing the name and goodwill achieved by Alex's Restaurants, Inc. in the community.

34. Based upon information and belief, consumers, when viewing the restaurant owned and operated by Carolyn A Billips and 120 East Fifth North Street, LLC, assume that the product and service it represents is associated with the product and service of Alex's Restaurants, Inc.

35. Carolyn A. Billips has diminished the value of Plaintiff's interest in the corporation while personally benefitting from selling or utilizing corporate assets.

36. Carolyn A. Billips owes a fiduciary duty to the Plaintiff as the controlling person of Alex's Restaurant's Inc.,

37. Carolyn A. Billips owes a fiduciary duty to the Plaintiff as the co-trustee of Alex L. Billips' testamentary trust that was formed for Plaintiff's benefit.

38. Plaintiff has personal concerns about Carolyn selling more restaurants in order to benefit financially.

FOR A FIRST CAUSE OF ACTION
(Accounting of Trust)

39. The Plaintiff re-alleges paragraphs 1-26 of this Complaint as if specifically set forth herein.

40. The Defendant, has failed as a co-trustee of Alex L. Billips' testamentary trust, to provide an annual accounting of the trust, complete with a list of trust assets and their market values to the Plaintiff as a beneficiary.

41. Upon information and belief, the Defendant, as co-trustee has not provided an adequate accounting of the trust assets at any time during the life of the trust to the point of the alleged trust termination and distribution.

42. The Plaintiff, pursuant to the South Carolina Trust Code, is entitled to an accounting as a beneficiary of the Alex L. Billips' testamentary trust in order to become reasonably informed of the trust and its administration.

43. As a beneficiary, the Plaintiff is also entitled to an accounting in order to ascertain a valuation of his interest in the trust at the time of the alleged trust distribution and is entitled to any appreciation in value of the trust corpus.

FOR A SECOND CAUSE OF ACTION
(Accounting of Corporation)

44. Plaintiff re-alleges paragraphs 1-31 above as if stated here verbatim.

45. An accounting of Alex's Restaurants, Inc. is a matter of right as a minority shareholder and is necessary to prevent unjust enrichment by Defendant and further diminution of Plaintiff's interest in the corporation.

46. A formal accounting is necessary to determine what assets have been liquidated by the Defendant for her personal benefit that would have a substantial effect on the value of Plaintiff's interest in Alex's Restaurants, Inc.

47. Plaintiff is also entitled to inspect the financial records of the corporation as a minority shareholder of Alex's Restaurants, Inc.

48. Plaintiff's share has been devalued by the transfer and conveyance of corporate assets and an accounting is necessary to determine the financial livelihood of the corporation as well as the current value of Plaintiff's interest.

49. A fiduciary relationship existed between Plaintiff and Defendant because Defendant as a controlling person of Alex's Restaurants, Inc., in which Plaintiff is a minority shareholder.

50. The amount due to Plaintiff from Defendant is not readily ascertainable because the amount of corporate assets siphoned out of the corporation to the Defendant in her personal capacity is unknown.

FOR A THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty as Co-Trustee)

51. The Plaintiff re-alleges paragraphs 1-38 above as if stated here verbatim.

52. The Defendant and Plaintiff were in a fiduciary relationship whereby the Defendant owed the Plaintiff a duty of loyalty, good faith, and fair dealing.

53. By agreeing to be a co-trustee of Alex L. Billips' testamentary trust, the Defendant owes the Plaintiff a duty of loyalty.

54. The Defendant consciously failed to exercise due care in her fiduciary duty to the Plaintiff.

55. The Defendant's breach of her fiduciary duty was reckless, willful, wanton, and a malicious attempt to deprive the Plaintiff of his private right to his property under the Alex L. Billips' testamentary trust formed for the benefit of the Plaintiff.

56. As a result of Defendant's breach of her fiduciary duty owed to Plaintiff, Plaintiff is entitled to actual and punitive damages.

FOR A FOURTH CAUSE OF ACTION

(Breach of Fiduciary Duty as Controlling Shareholder)

57. Plaintiff re-alleges paragraphs 1-44 above as if stated here verbatim.

58. Being the controlling person of Alex's Restaurant's, Inc., the Defendant also owes a duty of loyalty, good faith, and fair dealing to the Plaintiff as a minority shareholder of Alex's Restaurant's, Inc.

59. The Defendant breached her fiduciary obligation owed to Plaintiff by siphoning off corporate assets of Alex's Restaurants, Inc., and engaging in self dealing by personally profiting off of those above-mentioned transactions.

60. The Defendant consciously failed to exercise due care in her fiduciary duty to the Plaintiff.

61. The Defendant's breach of her fiduciary duty was reckless, willful, wanton, and a malicious attempt to deprive the Plaintiff of his right to manage Alex's Restaurant's, Inc.

62. As a result of Defendant's breach of her fiduciary duty owed to Plaintiff, Plaintiff is entitled to actual and punitive damages.

FOR A FIFTH CAUSE OF ACTION

(Conversion)

63. The Plaintiff re-alleges paragraphs 1-50 above as if stated here verbatim.

64. Plaintiff has made demands upon Defendant for access to corporate records of Alex's Restaurants and for a distribution of proceeds of sales of corporate assets.

65. Defendant has failed to deliver assets to Plaintiff and has converted corporate assets for personal gain.

66. Defendant's actions constitute conversion of the corporation's assets at the demise of Plaintiff for the benefit of Defendant.

67. The value of the corporate assets on the day that Defendant converted them needs to be determined at trial. Plaintiff is unable to access the corporate records in order to determine the value of the assets and the extent that Defendant has personally profited from the corporation at the demise of Plaintiff. Plaintiff has been damaged by the conversion of corporate assets.

FOR A SIXTH CAUSE OF ACTION
(Breach of Trust)

68. The Plaintiff re-alleges 1-55 above as if stated here verbatim.

69. Alex L. Billips created a testamentary trust in his Will that instructed the Defendant and Deborah L. Billips to manage the trust corpus as co-trustees for the benefit of the Plaintiff, Alex L. Billips, Jr., and William Casey Ivey.

70. As a co-trustee, the Defendant owes the trust a fiduciary duty to manage the trust corpus in good faith solely for the beneficiaries' interests, and in a prudent manner in accordance with the trust terms set forth by Alex L. Billips.

71. The Defendant has breached her fiduciary duty by siphoning off corporate assets of Alex's Restaurants, Inc. that were included in the trust corpus.

72. The Defendant has dealt with the trust corpus in her individual capacity by personally profiting from selling off corporate assets, and therefore has breached her duty of loyalty to the beneficiaries.

73. The Defendant has also breached her duty to report and keep the beneficiaries reasonably informed of the Alex L. Billips testamentary trust by not keeping the required annual accounting of the trust that is complete with a list of trust assets and market values of those trust assets all to Plaintiff's damage.

FOR A SEVENTH CAUSE OF ACTION
(Derivative Action by Shareholder)

74. The Plaintiff re-alleges paragraphs 1-61 above as if stated here verbatim.

75. The Plaintiff brings this action as a derivative action within the meaning of Rule 23(b)(1) of the South Carolina Rules of Civil Procedure on behalf of the Plaintiff and all other shareholders of Alex's Restaurants, Inc. that are similarly situated.

76. The Plaintiff was a shareholder at the time when Carolyn A. Billips, as controlling shareholder, was siphoning off corporate assets for personal gain.

77. The Plaintiff has not made a demand on the board of directors of Alex's Restaurants, Inc. because that demand would have been futile.

78. Plaintiff has not made any efforts to have this suit brought for Alex's Restaurants, Inc., and the demand would be futile because:

- a. A formal board of directors elected by the shareholders of Alex's Restaurants, Inc. does not exist;
- b. Carolyn A. Billips is the only other shareholder as she has bought out William Casey Ivey and Alex L. Billips, Jr.;
- c. Carolyn A. Billips would certainly not agree to essentially bring a lawsuit against herself as she controls the corporation.

79. The Defendant will not take action against herself under any circumstances or admit to the conversion of Alex's Restaurants, Inc.'s assets to privately owned assets of her own.

80. At all times, the Defendant was the controlling shareholder of Alex's Restaurants, Inc. and simultaneously engaged in self dealing by liquidating a substantial majority of corporate assets for personal financial gain.

81. On numerous occasions between on or about 2003 to the present, the Defendant authorized the transfer of corporate assets paid for by Alex's Restaurants, Inc. out of the corporation and into assets privately owned by the Plaintiff or others.

82. The Defendant conducted herself in a fraudulent and false manner by indicating the sale of a substantial majority of the restaurants was necessary for continuing the operation of Alex's Restaurants, Inc.

83. As a result of the Defendant authorizing these actions in her capacity as the controlling shareholder, the Defendant obtained valuable sales proceeds from Alex's Restaurants, Inc. at no cost to her, deprived Alex's Restaurants, Inc. of the value of these proceeds, and damaged the corporation in this manner.

84. Upon information and belief, the value of the assets converted from Alex's Restaurants, Inc. by the Defendant from on or around 2003 to 2013 is about \$3,000,000.

85. Plaintiff's successful prosecution of this action will result in a substantial benefit to the corporation, and therefore, the Plaintiff is entitled to reimbursements for his expenses in bringing this action, including reasonable attorney's fees.

FOR AN EIGHTH CAUSE OF ACTION
(Piercing the Corporate Veil)

86. The Plaintiff re-alleges paragraphs 1-73 above as if stated here verbatim.

87. The Plaintiff is purportedly a minority shareholder of Alex's Restaurants, Inc., and Defendant exercises control over the corporation and represents that she owns the lion share of Alex's Restaurants, Inc. due to her buyout of William Casey Ivey and Alex L. Billips, Jr.

88. Defendant's assets and affairs became synonymous with Alex's Restaurants, Inc. when she began liquidating corporate assets and selling restaurants while profiting personally off of those transactions without the consent of the Plaintiff or essential corporate founders.

89. The Defendant has treated the assets of Alex's Restaurants, Inc. as her own and therefore the assets of the corporation and personal assets of the Defendant have become so intermingled that the separation of the two is impossible.

90. The Defendant has failed to observe the corporate formalities by not holding any annual shareholders' meetings, electing a board of directors or conducting business of Alex's Restaurants, Inc. by resolution.

91. Plaintiff is a shareholder and was not put on notice of any meetings where the sale of restaurants and other substantial assets including real property occurred.

92. Alex's Restaurants, Inc. is the alter-ego of the Defendant and therefore the separate identity between the two should be disregarded.

93. The Defendant's operation of Alex's Restaurants, Inc. has resulted in such an injustice to the Plaintiff, that equity requires that the Defendant respond to the damage she has caused to the Plaintiff.

FOR A NINTH CAUSE OF ACTION
(Judicial Determination of Shareholder's Interest)

94. Plaintiff re-alleges paragraphs 1-81 above as if stated here verbatim.

95. Defendant has engaged in blatant oppressive conduct resulting in Plaintiff's wrongful dissociation from Alex's Restaurant's, Inc., and making judicial dissolution necessary by:

- a. Excluding Plaintiff from all major business decisions, to the detriment of his share in the corporation and the corporation itself;
- b. Denying his right to dividends; and
- c. Denying his right to access business records.

96. Despite the dissociation of Plaintiff, Defendant has not wound up Alex's Restaurant's, Inc., resulting in Plaintiff being entitled to the fair value of Plaintiff's share in the corporation as of the date of his dissociation.

97. Defendant has failed and refused to offer Plaintiff his distributional interest in the corporation, and has completely ignored South Carolina's corporate statutes.

98. Defendant's actions to deny Plaintiff his interest in the corporation along with the failure to provide the required financial information were arbitrary, willful, wanton, and in bad faith.

99. Plaintiff requests that Defendant be responsible for all attorney's fees that arise out of this action.

100. Plaintiff requests that his interest in Alex's Restaurant's Inc. be judicially determined and distributed to him.

FOR A TENTH CAUSE OF ACTION
(Constructive Trust)

101. Plaintiff re-alleges paragraphs 1-88 above as if stated here verbatim.

102. In the alternative, a constructive trust arose when Defendant holds legal title to all corporate assets of Alex's Restaurant's, Inc. for the benefit of Plaintiff.

103. Defendant is a co-trustee of a testamentary trust formed for the benefit of Plaintiff, Alex L. Billips, Jr., and William Casey Ivey.

104. Defendant is the controlling shareholder of Alex's Restaurants, Inc. and owes a fiduciary duty, fair dealing, and duty of care to other shareholders including the Plaintiff.

105. Defendant has sold off significant corporate assets at the expense of the minority shareholder, the Plaintiff, for Defendant's self dealing.

106. Defendant obtained the benefit of selling corporate assets at the expense of Plaintiff due to Defendant willfully and wantonly disregarding her duties clearly mandated by law and enumerated in the trust terms.

107. Defendant cannot in equity and good conscience retain or withhold the benefit from Plaintiff arising in a constructive trust being imposed where Defendant holds a controlling share

to Alex's Restaurant's, Inc. where that business was specifically left for the benefit the Plaintiff, Alex L. Billips, and William Casey Ivey.

FOR AN ELEVENTH CAUSE OF ACTION

(Resulting Trust)

108. The Plaintiff re-alleges paragraphs 1-95 above as if stated here verbatim.

109. In the alternative, a resulting trust arises when the Defendant holds legal title to all corporate property of Alex's Restaurants, Inc. for the benefit of Plaintiff.

110. Plaintiff was a beneficiary of a testamentary trust created in the Will of Alex L. Billips that specifically directed the Defendant to manage the business property for the benefit of the Plaintiff, Alex L. Billips, Jr., and William Casey Ivey until the beneficiaries became 25 years old.

111. The Plaintiff is entitled to one third of the entire trust corpus, which has not been completely distributed to the beneficiaries due to the Defendant using trust assets for her own personal benefit instead.

112. At no time did the Plaintiff intend for the Defendant, in her capacity as co-trustee or as controlling shareholder of Alex's Restaurants, Inc., to convert his interest in the corporation into personal assets of the Defendant.

113. The Defendant holds apparent legal title of Plaintiff's interest in the corporation and the testamentary trust formed by Alex L. Billips in his Will.

FOR A TWELFTH CAUSE OF ACTION

(Oppression)

114. The Plaintiff re-alleges paragraphs 1-101 above as if stated forth here in verbatim.

115. Carolyn A. Billips has at all times pertinent hereto exercised control of Alex's restaurant, Inc.

116. Through her control of the corporation, Carolyn A. Billips has taken actions that are illegal, fraudulent, oppressive, unfairly prejudicial to the minority shareholders, and has misapplied and wasted corporate assets.

117. As a result of Carolyn A. Billips's oppressive actions, Plaintiff faces a trapped investment and an indefinite exclusion from participation in business returns.

118. As a result of Carolyn A. Billips's oppressive actions, Plaintiff has been frozen out of the business and is not receiving any salary or distributions from the business.

119. Plaintiff is entitled to a judicial dissolution of the corporation, and judicial determination of his shares in the corporation, and a buyout of his shares.

FOR A THIRTEENTH CAUSE OF ACTION
(Trademark Infringement)

120. **Plaintiff re-alleges paragraphs 1-119 above as if stated forth here in verbatim.**

121. **The name and logo for Alex's Restaurants is used by Alex's Restaurant's, Inc. to identify and distinguish their restaurants from others.**

122. **The use of the name and logo of Alex's Restaurants by Defendant's Carolyn A. Billips and 120 East Fifth North Street, LLC despite their restaurant not being an Alex's Restaurant leads consumers to probably assume that the product and service it represents is associated with Alex's Restaurants, Inc.**

123. **Based upon information and belief, Defendants' use was unjustified.**

124. **Plaintiff is entitled to reasonable attorney's fees and damages to include treble damages and punitive damages.**

FOR A FOURTEENTH CAUSE OF ACTION
(Unfair Trade Practices)

125. Plaintiff re-alleges paragraphs 1-124 above as if stated forth here in verbatim.

126. Defendants Carolyn A. Billips and 120 East Fifth North Street, LLC willfully and wantonly deceived the public by representing their Summerville restaurant to be the same product and service associated with the product and service of Alex's Restaurants, Inc.

127. Defendants engaged in an unlawful trade practice.

128. Plaintiff suffered actual, ascertainable damages as a result of the Defendant's use of the unlawful trade practice.

129. Defendants unlawful trade practice had an adverse impact on the public interest.

130. Plaintiff is entitled to reasonable attorney's fees and damages to include treble damages and punitive damages.

WHEREFORE, the Plaintiff prays judgment of this Court as follows:

1. For the entry of an injunction restraining Defendant from entering into any negotiations to sell any or all of Alex's Restaurants, Inc. absent Plaintiff's statutory rights to participate in fundamental business decisions, an agreement between the parties, or a Court Order;

2. For an accounting of Plaintiff's interest in Alex's Restaurant's, Inc.;

3. For a Piercing of the Corporate Veil of Alex's Restaurant's, Inc., and holding the corporation is the alter ego of the Defendant and therefore the Defendant is personally liable to the Plaintiff;

4. For a finding of a breach of fiduciary duty by the Defendant, entitling the Plaintiff to actual and punitive damages in an amount to be determined by the trier of fact;

5. For a judicial determination of Plaintiff's interest in Alex's Restaurant's, Inc. and the distribution of that interest to Plaintiff.

6. For a recovery of the benefit of Alex's Restaurants, Inc. the damages described in this complaint together with pre- and post-judgment interest as allowed by law.

7. The arising of a resulting trust in which Defendant is the legal owner of a share of Alex's Restaurant's, Inc. that rightfully belongs to the Plaintiff;

8. For a judicial dissolution of the corporation, and judicial determination of his shares in the corporation, and a buyout of his shares.

9. For judgment against the Defendants in an amount to be determined by the trier of fact for damages;

10. For costs of this action including reasonable attorney's fees incurred in the prosecution of this action for the benefit of Alex's Restaurants, Inc.; and

11. For such other and further relief as the Court may deem just and proper.

QUERY SAUTTER & ASSOCIATES, LLC

/s Michael H. Ellis

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Attorneys for Plaintiff

Dated:11/11/20
Charleston, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FOR THE NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CASE NUMBER 2016-CP-10-6265
	)	
TONY A. BILLIPS, individually and as	)	
a derivative shareholder of Alex's	)	PLAINTIFF'S MOTION TO
Restaurants, Inc.	)	RECONSIDER MASTER'S ORDER
	)	
Plaintiff,	)	
	)	
vs.	)	
	)	
CAROLYN A. BILLIPS, individually and as	)	
Trustee for the benefit of Anthony Billips,	)	
William Casey Ivey, and Alex Billips, and as	)	
controlling person of Alex's Restaurants, Inc.)	)	
and ALEX'S RESTAURANTS, INC.,	)	
	)	
Defendants.	)	
	)	

NOW COMES Plaintiff, by and through his undersigned counsel, moving this honorable court to alter and/or amend its November 22, 2021 order (**Exhibit A**) pursuant to R.59(e) SCRCP. Plaintiff moves for said order to be altered/amended in a way that does not order the purchase of Plaintiff's shares in Alex's Restaurants, Inc and to not apply any discount to Plaintiff's value of shares.

This matter was originally filed in the Court of Common Pleas. Plaintiff's accounting cause of action only was referred to the master in equity by the consent of the parties. All other causes of action remained with the Court of Common Pleas.

Ordered Purchase of Shares

It is Plaintiff's belief that whether or not Plaintiff's shares should be ordered to be purchased by Alex's Restaurant's, Inc. is properly adjudicated via his oppression cause of action. By forcing the purchase of Plaintiff's shares in this accounting action, it is Plaintiff's belief that he is prejudicially being denied his election of remedies. "The concern and focus in shareholder

oppression cases is that the minority ‘faces a trapped investment and an indefinite exclusion [from] participation in business returns.’” Ballard v. Roberson, 733 S.E.2d 107 (SC 2012) *citing to* Kirikades v. Atlas Food Systems & Services, Inc., 541 S.E.2d, 257 (SC 2001).

Whereas the accounting cause of action was to determine the value of Plaintiff’s shares in Alex’s Restaurant’s, Inc. as an ongoing business, an oppression cause of action allows the finder of fact to consider the Defendants’ actions in oppressing Plaintiff including but not limiting to terminating his employment, removing him from management of the company and refusing to declare dividends, all of which may entitle Plaintiff to punitive and compensatory damages over and beyond the mere value of his shares.

Furthermore, Plaintiff still has his derivative action of Alex’s Restaurants, Inc. against Defendant and her various entities that operate the Summerville Alex’s Restaurant without paying due royalties to Alex’s Restaurants, Inc. Should Plaintiff lose his status as a shareholder his royalties claim is jeopardized by a potential lack of standing. Plaintiff moved to amend his complaint in the present action to assert that claim in this action but was denied. Plaintiff therefore has to bring a separate action and would be prejudiced should his shares be ordered sold.

By ordering the purchase of Plaintiff’s shares via this accounting action, Plaintiff fears he may be denied his ability to seek his prayed for relief under his oppression cause of action and his standing to seek his proper recompense in collateral actions. Plaintiff respectfully moves this court to alter and/or amend the Order to not order the purchase of Plaintiff’s shares.

Discount On Shares

Plaintiff respectfully moves that his shares not be discounted merely because he is a minority shareholder. In finding that Plaintiff’s value of shared should be discounted, the court expressly relied upon an article by John Romagnoli, *Common Discounts Used in Valuations of*

Closely Held Businesses. However, Mr. Romagnoli does not take into consideration the totality of the circumstances of this case that make it inequitable to apply a discount. The court's discount does not consider the fact that Defendant liquidated the Alex's assets for her own benefit, thereby reducing Plaintiff's value. The court's discount does not take into consideration the fact Carolyn Billips engaged in an inappropriate sexual relationship with Plaintiff while Plaintiff was still a minor child and used this inappropriate sexual relationship to maintain control over Plaintiff upon his reaching majority and oppress him as a minor shareholder.

Plaintiff respectfully moves that Mr. Romagnoli's discount not be applied to Plaintiff's valuation of shares as it would be inequitable and would unjustly allow Carolyn Billips to benefit from her own bad acts.

QUERY SAUTTER & ASSOCIATES, LLC

/s Michael H. Ellis
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Attorneys for Plaintiff

Dated: December 2, 2021
Charleston, South Carolina

Certificate of Service

I, the undersigned, hereby certify that I served a copy of the foregoing document upon Jaan Rannik, attorneys for the Defendants, via E-filing and via email:

Jaan Rannik, Esquire
jgr@epling-law.com

Dated: 12/02/21

/s Michael H. Ellis

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

TONY A. BILLIPS, individually and
as a derivative shareholder of Alex's
Restaurants, Inc.

Plaintiff,

v.

CAROLYN A. BILLIPS, individually
and as Trustee for the benefit of
Anthony Billips, William Casey Ivey,
and Alex Billips, and as controlling
person of Alex's Restaurants, Inc.

and

ALEX'S RESTAURANTS, INC.,

Defendants.

**IN THE COURT OF COMMON PLEAS
FOR CHARLESTON COUNTY**

CASE NO. 2016-CP-10-06265

ORDER

The parties have asked this Court, in their Consent Order of Reference filed May 3, 2017, to entertain the accounting action, and place a value on Mr. Tony Billips' eighteen and one-third percent stake in Alex's Restaurants Inc. Testimony and exhibits were presented over a two-day trial beginning August 24, 2021. Having heard and considered the evidence, I rule as follows.

I. Factual Background**A. Ownership of Alex's Restaurants, Inc.**

Alex's Restaurants Inc. ("Alex's") was founded in 1975 by Alex Billips Sr. and Carolyn Billips, whose original ownership percentages were 55% and 45% respectively. Upon Mr. Billips' death in February 1980, his 55% interest was left to be divided equally among Alex Lee Billips, Jr., William Casey Ivey, and Tony Billips. These shares were held in trust until they came of age, at which point each would receive their eighteen and one-third percent (18.33%) interest. There is no dispute that this occurred, nor that Mr. Ivey's shares were ultimately

transferred to Ms. Billips. It is likewise undisputed that the ownership interests today are:

- Carolyn Billips – 63.33%
- Alex Billips, Jr. – 18.33%
- Tony Billips – 18.33%

B. Operations of Alex's

At the height of its local market share, Alex's operated six locations in the Tri-County:

1. 302 Coleman Boulevard, Mt. Pleasant, South Carolina
2. 5503 Rivers Avenue, North Charleston, South Carolina¹
3. 2623 Ferrara Drive, North Charleston, South Carolina (known as the "Dorchester Road" location)
4. 1644 Savannah Highway, Charleston, South Carolina
5. 315 N Hwy 52, Moncks Corner, South Carolina
6. 132 St. James Avenue, Goose Creek, South Carolina

Alex's revenues came from food sales and video poker machines located within each restaurant. When video poker was banned in the early 2000s, Alex's revenues dramatically declined. Following the 2008 Recession, the company faced further difficulties that left it unable to meet its financial obligations. The result was the forced sale of certain locations of Alex's Restaurants between 2008 and 2013. To stay in business, Ms. Billips contributed some of her personal assets to keep the business operational. The Court is persuaded that, but for Ms. Billips' efforts, Alex's would not have survived as an ongoing business enterprise.

As of today, the sole remaining location of Alex's is located at 132 St. James Avenue in Goose Creek, South Carolina.

¹ This location was operated as a laundry after it began losing money as a restaurant in the early 2000s.

C. Flowertown Restaurant

Ms. Billips also operated Flowertown Restaurant (“Flowertown”) in Summerville, South Carolina. Flowertown was founded in approximately 1984 and is wholly owned by Carolyn Billips. It keeps separate books and files separate tax returns from Alex’s, although it has faced the same difficulties as Alex’s described *supra*.

Ms. Billips testified that, as the sole owner of Flowertown and the majority shareholder of Alex’s, her inability to meet the obligations of either would result in the closure of both. Accordingly, she has used proceeds from the sale of certain Alex’s locations to satisfy obligations of Flowertown, and she also sold personal assets to satisfy obligations of Alex’s (the accounting of which is presented *infra*).

Flowertown was renamed “Alex’s Restaurant” in about 2013. Ms. Billips testified she did so in order to reduce advertising expense for both Alex’s and Flowertown but that neither business saw a change in revenues as a result. It was later renamed “Family Restaurant.”

II. Valuation

Plaintiff presented evidence and an expert report calculating the value of Alex’s as of 2014. The Court finds that Plaintiff has failed to prove any conduct on the part of Defendants or any other reason that would justify this Court valuing Mr. Billips’ interest of Alex’s Restaurants, Inc. based on its value in 2014 rather than as of today. Plaintiff provided no definite opinion as to its present value, instead leaving that decision to the Court.

Defendants argued that the business has operated at a loss over the past decade and that the value of the business is therefore \$0.00. While I find that the business has not been profitable, as the valuation is for the purpose of setting the price at which Mr. Billips’ 18.3%

interest in the corporation will be repurchased,² the question for the Court is what value his shares have based on prospective earnings. This Court's decision on this value follows.

A. Methodology for Valuing Alex's

Plaintiff's expert, Mr. Ewart, testified that, while he could not determine a valuation of Alex's, he could calculate the value of the Goose Creek location (the sole remaining location of Alex's) as of 2014 by multiplying its estimated gross revenues over a twelve-month period by a discount multiplier of 0.28. The Court accepts this methodology and this multiplier.

Though Alex's Restaurants, Inc.'s tax year ends on July 31, the most recent annual revenues available to the court are for calendar year 2020, and they show gross revenues of \$392,922.19. The Court also received a profit and loss statement showing \$1,742,553.72 in gross revenues for calendar year 2019. **Pl. Exh. 19.** A review of Alex's tax returns since 2010 shows that 2019 represented Alex's highest gross revenues in the last decade. The 2020 numbers reflect the reality of running a restaurant business during the current COVID-19 pandemic.

To use the numbers from either of these years would not reflect the reality of today – especially in the restaurant industry which businesses have been severely hampered by the effects of the COVID-19 pandemic, continuing labor shortages, and the threat of further COVID-

² A request Plaintiff acknowledged during his testimony:

Q. And you're asking this Court to determine the value of that interest and cash you out on your interest, correct?

A. Yeah, from the – what was given to me when it was given to me.

Q. And that would be based on the value today of –

A. Correct.

Q. – the operations?

A. Yes, sir.

Exh. 1, Trial Tr. (Aug. 25, 2021) at 37:1–10.

19-related disruptions.

This Court must consider anticipated future revenues in order to ascribe a present-day value to the business. Accordingly, the Court finds that the average of the gross revenues of calendar years 2019 and 2020, or \$1,067,737.96, represents the likely revenues of Alex's going forward and is the best means of valuing Mr. Billips' interest today.

Using this number and Plaintiff's expert's (James Ewart) multiplier of 0.28, the value of Alex's Restaurants, Inc. as a whole and as of today is \$298,966.63.

B. Adjustment Relating to Flowertown

The Court finds that the use of proceeds from the sale of assets of Alex's in order to satisfy tax obligations for Flowertown requires an adjustment in the valuation of Alex's. Contemporary accounting records show that \$170,277.57 of proceeds from those sales went to satisfying tax obligations for Flowertown. Specifically:

- \$42,037.45 toward state taxes from the sale of Rivers Avenue (**D. Exh. 5**) broken down as follows:
 - a \$27,992.62 countercheck (*id.* at 1);
 - an additional \$14,044.83 from three checks issued to Ms. Billips (*id.* at 2, including handwritten notes); and
- \$128,240.12 from the sale of the properties on Dorchester Road (**Pl. Exh. 2**), as follows:
 - \$21,087.01 toward Flowertown sales tax,
 - \$81,061.15 toward Flowertown's federal taxes,
 - \$19,472.01 toward Flowertown's state taxes,
 - and \$6,619.95 toward Ms. Billips' taxes.

However, contemporary accounting records also establish that Ms. Billips contributed \$168,213.90 in personal assets for the benefit of Alex's during this same time period, as follows:

- \$40,000 from the February 5, 2010 sale of her property ("St. George") to satisfy payroll taxes for Alex's Inc. (**D. Exh. 4**),

- \$70,000 and \$50,000 respectively for the donation of two properties owned by Ms. Billips (2619 and 2621 Ferrara Drive) in order to effectuate the sale of the Dorchester Road location of Alex's (without which the sale would not have closed) (**D. Exh. 3³**); and
- \$8,213.90 from the sale of her personal residence (1140 Island View Drive) that was paid to satisfy obligations of Alex's. **D. Exh. 4.**

As the proceeds to Flowertown exceeded Ms. Billips' personal contributions by \$2,063.67, the Court finds that Ms. Billips owes \$2,063.67 to Alex's Inc., increasing the valuation of Alex's Inc. by that amount, for a total of \$301,030.30.

C. Valuing Mr. Billips' Interest

Mr. Billips owns 18.33% of Alex's Restaurants, Inc., valued at \$301,030.30, which amounts to \$55,178.85. I must also account, though, for the judicially noticed fact that Mr. Billips' interest is a minority interest subject to a discount in value ranging from 20-40%, which this Court finds recognizes the discount for less marketable interests in privately held businesses. *See, e.g., Romagnoli, John, Common Discounts Used in Valuations of Closely Held Businesses, available at https://cst-cpa.com/wp-content/uploads/Common_Discounts_Romagnoli_.pdf* (last accessed November 16, 2021).

In its decision, the Court considers:

- (i) the business's lack of profitability;
- (ii) Ms. Billips' submarket salary for operating the business the past four decades; and
- (iii) the risk of capital contributions necessary to keep the business ongoing.

The Court finds a 20% discount on this amount is a conservative reduction to account for Mr. Billips' status as a minority shareholder in a business not readily marketable.

³ Of the \$320,000 sale price of the Alex's location and Ms. Billips' properties, \$200,000 was received for the restaurant and parking, and \$120,000 was received for Ms. Billips' properties. *Id.*

Accordingly, the Court finds the value of Mr. Billips' 18.3% interest to be \$44,143.08, (\$55,178.85 – \$11,035.77 = \$44,143.08).

IT IS FURTHER ORDERED that, upon tender of the sum of \$44,143.08 to Mr. Billips, his shares shall be transferred back to the corporation for the benefit of Ms. Billips.

IT IS SO ORDERED.

This ____ day of _____, 2021

Mikell R. Scarborough
Master in Equity
County of Charleston



Charleston Common Pleas

Case Caption: Tony A Billips , plaintiff, et al VS Carolyn A Billips , defendant, et al

Case Number: 2016CP1006265

Type: Master/Order/Other

So Ordered

s/Mikell R. Scarborough 3062

Electronically signed on 2021-11-22 12:05:23 page 8 of 8

**STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON**

TONY A. BILLIPS, individually and as a
derivative shareholder of Alex's Restaurants,
Inc.

Plaintiff,

v.

CAROLYN A. BILLIPS, individually and as
Trustee for the benefit of Anthony Billips,
William Casey Ivey, and Alex Billips, and as
controlling person of Alex's Restaurants, Inc.

and

ALEX'S RESTAURANTS, INC.,

Defendants.

**IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT**

CASE No. 2016-CP-10-06265

**DEFENDANTS' OPPOSITION TO
MOTION TO RECONSIDER AND
DEFENDANTS' MOTION FOR RELIEF**

I. Purchase of Interest

Mr. Billips has objected to the Court ordering his shares to be transferred back to the corporation upon tender of the Court's valuation of his shares, contending he is being denied his election of remedies. But, under oath, Mr. Billips testified that he was requesting that the Court determine the value of his interest and "cash him out" on his interest:

Q. And you're asking this Court to determine the value of that interest and cash you out on your interest, correct?

A. Yeah, from the – what was given to me when it was given to me.

Q. And that would be based on the value today of –

A. Correct.

Q. – the operations?

A. Yes, sir.

Exh. A, Trial Tr. (Aug. 25, 2021) at 37:1–10. Mr. Billips is bound.

Further, Mr. Billips' pleadings request an Accounting of his interest in Alex's Restaurants, Inc. and "other such other and further relief as the Court may deem just and proper."

Am. Compl. at 4, 15. Mr. Billips’ complaint incorporates all of his factual allegations into the Accounting cause of action, *id.* at § 32, and he sought to prove them at trial before this Court, contending they were necessary to establishing the valuation of Mr. Billips’ interest. Unsatisfied with this Court’s assessment of his proof, he seeks a “redo;” and only now that Plaintiff has failed to establish his claimed valuation does he recant what he testified to under oath and seek the opportunity to pursue different remedy.

But even had Plaintiff not requested this relief, the Court acted well within its broad authority to fashion an appropriate remedy, doubly so as the Plaintiff expressly requested an accounting. *See, e.g., Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 428, 673 S.E.2d 448, 454 (2009) (explaining that an “accounting” is an equitable remedy that “refers to ‘an adjustment of the accounts of the parties and a rendering of a judgment for the balance ascertained to be due.’” (citing 1 Am. Jur. 2d Accounts and Accounting § 52 (2005)); *see also Regions Bank v. Wingard Props., Inc.*, 394 S.C.241, 252, 715 S.E.2d 348, 354 (Ct. App. 2011) (“Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible.”).

The Court should deny Plaintiff’s motion to reconsider regarding the purchase of his shares.

II. Minority Discount

Plaintiff asks that this Court ignore a long-settled principle in the valuation of minority interests because he contends that principle fails to take into account two allegations: one that Plaintiff attempted and failed to prove at trial regarding Ms. Billips’ operation of Alex’s, and a new allegation that Ms. Billips has committed a crime. **Motion** at 3.

As to the first, this Court properly rejected Plaintiff’s arguments that Ms. Billips reduced

the value of Alex's by her actions, noting that it was her actions that kept the business afloat. Nevertheless, Plaintiff apparently hopes that repeating an allegation enough times will lend it credibility. As to the second, it goes too far and is addressed *infra*, Part III.

In the context though of this motion to reconsider, suffice it to say: the Court granted Plaintiff limited latitude to introduce certain evidence of the relationship between Plaintiff and Defendant on the issue of witness credibility. This Court already having judged the credibility means there is no basis for reconsideration of the well-settled principles applied by the Court. The motion to reconsider should be denied on this basis as well.

III. Motion to Seal and for Sanctions

Plaintiff's "tactics" were first brought to the Court's attention during a September 10, 2018 hearing, resulting in the Court sealing portions of a deposition transcript removing certain allegations from the public record. At trial, and over Defendants' objections, the Court concluded that the allegations may be pertinent to the witnesses' credibility and allowed testimony on the subject.

At this time, Defendants renew their objections and request, pursuant to Rule 41.1, S.C.R.C.P., that select portions of the trial transcript, Plaintiff's proposed order, and the Motion for Reconsideration be sealed and redacted versions filed in their place.¹ This Court has recognized that the allegations in question (which are not part of Plaintiff's complaint) do not bear on Plaintiff's claims; Defendants ask that they be sealed.

Persuasion and lawyering are artforms, and lawyers are given certain latitude in

¹ Pursuant to Rule 41.1, S.C.R.C.P., the portions subject to this request have been highlighted and being filed separately under seal in an attachment entitled "Confidential Information Submitted to Court in Connection with the Motion to Seal" for *in camera* review.

advocating for their clients' interests. This is as it should be. Disrespect of the process, of the law, and of this Court's appointment is not countenanced. The continued reference to scandalous accusations ought not to be permitted, as evidence of such was allowed only to assist the Court in making determinations of credibility. The Court has made its determinations. The allegation of a crime in Plaintiff's Motion is out of bounds.

Further, it is neither true nor believable that Plaintiff's counsel does not understand the purpose for which this Court allowed the testimony it did; they defy the Court's intention,² and a sanction must be entered. An appropriate sanction would be to bar Plaintiff from any recovery in order to make an example of this conduct.³

This Court has an incredibly lawyer-centric orientation; that is to be applauded, and we are grateful for it. It is highly probable that this Court will not be inclined to impose any sanction for Plaintiff's conduct. But Defendants feel the conduct constitutes a harm to the Court, and one within our power to pursue.

Respectfully Submitted:

This 17th day of December, 2021
Charleston, South Carolina

/s/Jaan Rannik
Jaan G. Rannik
EPTING & RANNIK, LLC
46A State Street
Charleston, SC 29401
843-377-1871; Fax: 843-377-1310
jgr@epting-law.com

ATTORNEY FOR DEFENDANTS

² And not for the first time. As set forth in Defendants' October 3, 2018 Motion to Dismiss and on the record during hearings dated December 19, 2018, October 29, 2020, and others, Plaintiff has repeatedly failed to comply with this Court's orders. This further supports the ruling now requested.

³ We do not mean to suggest that other sanction or reprimand would not be appropriate with regard to Plaintiff's counsel, but we do not undertake to suggest to the Court what an appropriate sanction or reprimand would be.

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

TONY A. BILLIPS, individually and as a
derivative shareholder of Alex's Restaurants,
Inc.

Plaintiff,

v.

CAROLYN A. BILLIPS, individually and as
Trustee for the benefit of Anthony Billips,
William Casey Ivey, and Alex Billips, and as
controlling person of Alex's Restaurants, Inc.

and

ALEX'S RESTAURANTS, INC.,

Defendants.

**IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT**

Case No. 2016-CP-10-06265

**DEFENDANTS'
MOTION TO DEPOSIT FUNDS**

WHEREAS this matter came before the Court for trial on Plaintiff's accounting cause of
action by consent of the Parties;

WHEREAS the matter was tried, and this Court entered its order valuing Plaintiff's
interest in Alex's Restaurants, Inc. at \$44,143.08;

WHEREAS Defendants have noticed an appeal in which they will challenge this Court's
order on the ground, *inter alia*, that Plaintiff, upon payment by Defendant of \$44,143.08, will
have no interest in Alex's Restaurants, Inc.;

WHEREAS the Court of Appeals has ruled that this Court's order is immediately
appealable under S.C. Code Ann. §14-3-330 and because of Plaintiff's election of remedies
under *Lawson v. Rogers*, 312 S.C. 492 (1993);

WHEREAS, the deposit of funds into Court under Rule 67, S.C.R.C.P. also precludes
accrual of post-judgment interest under *Russo v. Sutton*, 317 S.C. 441 (1995);

NOW THEREFORE Defendants request the Court enter the attached Order (**Exh. A**) granting Defendants leave to tender unto this Court the sum of \$44,143.08 to be held pursuant to Rule 67, S.C.R.C.P.

Respectfully Submitted:

EPTING & RANNIK, LLC

This 12th day of April, 2022
Charleston, S.C.

/s/ Jaan Rannik
Jaan G. Rannik
46A State Street
Charleston, SC 29401
843-377-1871
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ATTORNEYS FOR DEFENDANTS

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

TONY A. BILLIPS, individually and as a
derivative shareholder of Alex's Restaurants,
Inc.

Plaintiff,

v.

CAROLYN A. BILLIPS, individually and as
Trustee for the benefit of Anthony Billips,
William Casey Ivey, and Alex Billips, and as
controlling person of Alex's Restaurants, Inc.

and

ALEX'S RESTAURANTS, INC.,

Defendants.

**IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT**

Case No. 2016-CP-10-06265

**ORDER GRANTING
MOTION TO DEPOSIT FUNDS**

For the reasons advanced in the "Whereas" clauses of Defendants' Motion to Deposit
Funds, the Defendants' Motion is **GRANTED**.

IT IS SO ORDERED.

This ____ day of _____, 2022

The Honorable Mikell R. Scarborough
Master in Equity, Charleston County

1 STATE OF SOUTH CAROLINA
 2 IN THE COURT OF COMMON PLEAS
 3 COUNTY OF CHARLESTON
 4 FOR THE NINTH JUDICIAL CTRCUIT

5 TONY A. BILLIPS,)
 6 individually and as a)
 7 derivative shareholder of)
 8 Alex's Restaurants, Inc.)
 9) Case No.
 10 Plaintiff,) 2016-CP-10-6265
 11)

12 -versus-)
 13)

14 CAROLYN A. BILLIPS,)
 15 individually and as Trustee)
 16 for the benefit of Anthony)
 17 Billips, William Casey)
 18 Ivey, and Alex Billips, and)
 19 as controlling person of)
 20 Alex's Restaurants, Inc.)
 21 and ALEX'S RESTAURANTS,)
 22 INC.,)
 23)
 24 Defendants.)

25 -----
 26 Hearing before the Honorable Mikell R.
 27 Scarborough, reported by Jennifer M. Huggins,
 28 Court Reporter and Notary Public, at 9:57 a.m. on
 29 August 24, 2021 at 100 Broad Street, Courtroom
 30 2A, Charleston, South Carolina.

31 Jennifer M. Huggins, Court Reporter
 32 Master-in-Equity
 33 P.O. Box 80711
 34 Charleston, SC 29416

35 * Any court, party, or person who has purchased a
 36 transcript may, without paying a further fee to
 37 the reporter, reproduce a copy or portion thereof
 38 as an exhibit pursuant to court order or rule or
 39 for internal use, but shall NOT otherwise provide
 40 or sell a copy or copies to any other party or
 41 person.

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1 THE COURT: Good morning, folks.
2 Please have a seat. Okay. So the long awaited
3 day arrives.
4 This is the case of Tony Billips,
5 individually, and as a derivative shareholder of
6 Alex's Restaurant versus Carolyn Billips,
7 individually, and as a trustee for the benefit of
8 Anthony Billips, William Casey Ivey, Alex
9 Billips, and Alex's Restaurants.

10 This is a 2016 case number CP-10-6265.
11 This case was referred to me back in 2017 for the
12 purposes of an accounting to determine, I assume,
13 the value of the entity known as Alex's
14 Restaurants.

15 And then there are other causes of
16 action, which would then be sent back to the
17 Circuit Court for trial. I don't know how that's
18 going to go these days because they're not doing
19 much over there. But, anyway, we will get to
20 that point.

21 So we've had a number of pretrial
22 hearings in this case. We set today as the day
23 for trial. I've got today put aside so we've got
24 the whole day to go. Let me give just a couple
25 of sort of housekeeping items as we go forward,

1 and then we can get started.

2 And that is, I generally run until
3 about -- somewhere between 12 and 1 for lunch;
4 break usually around 12:30, and come back close
5 to 2 o'clock, and then press on through the day
6 and get through this thing.

7 Anytime anybody needs a break, water,
8 the bathroom, if you're not -- this is a civil
9 case; so if you're not currently active in the
10 case or the only lawyer in the case, you can take
11 off and then come on back when you can. Restroom
12 are down the hall down there. And I can't think
13 of really anything else to speak of, but the
14 court reporter is here. We will have it on the
15 record.

16 I've had a chance to review the pretrial
17 briefs. I appreciate y'all sending those to me.
18 I don't think it's going to be a particularly
19 long day today, but I do have it scheduled for
20 the day.

21 So let me ask -- and what I normally do
22 is I start with the plaintiff and see if there's
23 any matters that we need to take up before we
24 start.

25 Mr. Ellis?

1 MR. ELLIS: Nothing from the
2 plaintiff, Your Honor.

3 THE COURT: All right. And
4 Mr. Rannik?

5 MR. RANNIK: Judge, one quick
6 question, which is, do you prefer that the
7 witnesses who are not parties, who are not
8 actively testifying be sequestered prior to their
9 testimony?

10 Mr. Ewart is here, and the defendants
11 would move that, for the purposes of opening
12 arguments and Mr. Billips' testimony -- unless he
13 wants to go first -- that Mr. Ewart be excluded
14 from the courtroom until it is his time to
15 testify. But --

16 THE COURT: Okay. Just one second.
17 So I did forget one thing right off the bat,
18 masks. If you are vaccinated and you are
19 comfortable removing your masks, you certainly
20 may. Okay. I apologize for that.

21 I've been doing that -- I consider this
22 to be my private courtroom, although it is in a
23 public space. But I find that people can
24 communicate a lot better without that. She can
25 certainly take it down a lot better, and I can

1 see and hear a lot better. So anyway, to get to
2 that point.

3 So the motion is to sequester
4 witnesses, and in particular, the expert witness,
5 Mr. Ewart?

6 MR. RANNIK: That's correct.

7 THE COURT: Okay. Mr. Ellis, let
8 me hear from you.

9 MR. ELLIS: Your Honor, I think
10 that if Mr. Ewart is able to sit in the courtroom
11 and hear any testimony from any other witnesses,
12 it might add to any opinions he might have in
13 this case.

14 So I feel like there is no reason to
15 sequester this late in the game, anyway. I don't
16 think there's any prejudice by him to remain in
17 here and hear any testimony. We ask that the
18 witness be allowed to stay in the courtroom.

19 THE COURT: Okay. All right. Any
20 response to that?

21 MR. RANNIK: Very briefly, Judge.
22 If there are new opinions to be offered, we would
23 object to that. We asked that any opinions that
24 Mr. Ewart was going to offer to be provided to us
25 in a report, which you have ordered, which we

1 received. We then took his deposition. We have
2 not had the chance to hear of any new opinions;
3 so we would object to that notion.

4 THE COURT: Gotcha. All right.
5 Let me -- refresh my memory on that. We did talk
6 about that. Is he here to offer an opinion
7 today?

8 MR. ELLIS: No, Your Honor.

9 THE COURT: Okay. All right.
10 Well, if he's not going to do that, then I'm not
11 going to exclude him. I will just keep him here,
12 and then if there's a change of anything, you
13 just bring that to my attention by objection.
14 All right?

15 MR. RANNIK: Very good. Thank you,
16 Judge.

17 THE COURT: Okay. Very good.
18 Mr. Ellis?

19 MR. ELLIS: May it please the
20 Court.

21 THE COURT: Yes, sir.

22 MR. ELLIS: Your Honor, as you did
23 state, there were many causes of action filed in
24 this case, one of which being an accounting,
25 which was the sole cause of action that was

1 referred over to Your Honor.

2 Mr. Billips, during his time when he was
3 still working in this corporation, on many
4 occasions, demanded to see the financial books of
5 this corporation as he is statutorily allowed to
6 do.

7 He was repeatedly denied that access to
8 books, and that's why we brought this accounting
9 action is so that we could have Court enforcement
10 of his statutory right to review the financial
11 records of this -- this corporation. This did
12 take a long time to get to this point. We had --
13 the Court assisted in the discovery process of
14 getting those financial records.

15 And while the plaintiff is
16 surprised by the quality of what was produced,
17 the defendants are adamant that that's what there
18 is. And so we can't -- we can't force them to
19 give us something that we don't know they have,
20 and they're saying they don't have.

21 And now that this accounting process has
22 been concluded, that they have produced what they
23 say are the financial records of this
24 corporation.

25 We believe that this case is right to be

1 referred back over to the Court of Common Pleas
2 so that all of the remaining causes of action can
3 be litigated and adjudicated with -- using the
4 knowledge we've learned in this accounting and
5 any further knowledge we've learned as discovery
6 progresses.

7 And so we ask that the Court to conclude
8 the accounting cause of action today and send us
9 upstairs so that we can -- can finish this
10 matter.

11 THE COURT: Okay.

12 MR. ELLIS: Thank you, Your Honor.

13 THE COURT: And you're prepared to
14 go forward with that this morning?

15 MR. ELLIS: Prepared to? I mean --

16 THE COURT: You're going to put
17 forth some evidence of what the value of the
18 Alex's Restaurant is, right?

19 MR. ELLIS: No, Your Honor.

20 THE COURT: You're not going to do
21 that?

22 MR. ELLIS: We're not doing that
23 because we -- this has been a demand for a jury
24 trial since the filing of the complaint. I'm not
25 saying this Court -- we don't trust this Court's

1 discretion, but we believe that that -- the
2 judicial economy is best served by presenting the
3 entire case to the ultimate finder of fact, which
4 in this case, we do believe would be the jury.

5 The accounting action has just focused
6 solely on receiving the financial records that
7 the defendants say they have, and we believe that
8 they have produced what they say they have. And
9 so we're -- we ask that this Court return this
10 case to the Court of Common Pleas.

11 THE COURT: All right. I will let
12 you talk to Mr. Sautter there for a second.

13 Mr. Rannik, let me hear from you.

14 MR. RANNIK: Thank you, Your Honor,
15 may it please the Court. Judge, a couple of
16 things.

17 First, this matter was referred to you,
18 as you said, in 2017 by consent of the parties
19 for an accounting of plaintiff's interest in
20 Alex's Restaurants, Inc., which is what plaintiff
21 requested in his pleading.

22 Now, Judge, I will be brief. We're
23 prepared to go forward and put on testimony and
24 valuation of Alex's. And the testimony that the
25 Court will hear today will establish that Alex's

1 Restaurants is a mom and pop shop. It's faced
2 some mighty challenges over the years, and while
3 it's still just about standing, it's really not
4 by much.

5 I will not get to the -- what the
6 evidence is going to show. Let me just suffice
7 it to say that, but for the efforts of Carolyn
8 Billips, sitting here to my right today, Alex's
9 Restaurants would have closed a decade ago.

10 Now, the Court has before it the task of
11 placing a valuation on Mr. Tony Billips' 18 and a
12 third percent share of that entity. Judge, we
13 feel the evidence will establish that the
14 operations of Alex's Restaurants are not worth a
15 dime today and that a minority interest in Alex's
16 Restaurants is worth even less.

17 So with that, we're ready to proceed.
18 Thank you, Your Honor.

19 MR. SAUTTER: Your Honor, may I
20 reply?

21 THE COURT: Sure.

22 MR. SAUTTER: Thank you, Your
23 Honor. Michael Sautter, for Tony Billips, the
24 plaintiff. There's a huge problem in this case.
25 There are daily -- daily cost control documents

1 from the entire time that Tony was involved with
2 this restaurant that have simply vanished. They
3 were in the hands of Ms. Carolyn. They were in
4 the hands of headquarters at Dorchester Road at
5 some point, but they are gone.

6 There's nothing to say how much was made
7 each week. There's nothing to say how much was
8 lost each week. There's very little, if any,
9 documentation.

10 We've got some 2,000 pages of documents,
11 which basically are tax returns and things of
12 that nature, but they don't go into putting a
13 value on the business. And that is a question
14 that ultimately will have to be decided by the
15 jury.

16 There are inferences that we will -- we
17 will ask the jury to -- we will ask the Judge to
18 instruct the jury about missing documents.
19 Mr. Rannik has a simple task, like, well, we
20 don't have anything, so Tony Billips doesn't get
21 squat.

22 That's just not the case. There was an
23 existing entity in 2014 that we have documents on
24 for the Goose Creek location. Mr. Ewart is here,
25 but if he testifies today, he is going to say he

1 cannot establish the value on what's -- for the
2 other units on what has been produced.

3 This a mom and pop shop. It was run
4 very closely. Carolyn Billips and Tony Billips
5 were all in it together. He is the first, oldest
6 son of Mr. Alex himself. Once Mr. Alex died,
7 Tony stepped up and worked with Carolyn on this
8 business.

9 He has intimate knowledge of the
10 workings of the business. Initially, the video
11 poker was -- was ongoing in this state.
12 Substantial cash revenues were derived from the
13 video poker, and of course, that went out -- I
14 think it was 2001 or something like that.

15 So, anyway, the defendant has placed in
16 a point like where, well, you can't prove your
17 case because we already lost the documents. All
18 that can be determined by the Court next door or
19 up the hall.

20 But today, I mean, we asked for an
21 accounting, just like Mr. Ellis stated, for Court
22 supervised discovery. And it was a runaround.
23 We're asking for stuff. We got numerous
24 documents yesterday, 2019 tax returns on Goose
25 Creek. We're trying to process all that.

1 We're spending time with our expert, and
2 he's got his hands up in the air. It's -- he can
3 give a value for Goose Creek, but he can't give a
4 value for the rest of the units because those
5 documents, which were solely in control of
6 Ms. Billips and her crowd over there, don't exist
7 anymore.

8 We are not saying that Mr. Rannik hid
9 documents or anything like that. We're just
10 saying that, in the course of time, those
11 documents just disappeared. The business was
12 run -- and I worked in fast food.

13 My first job, I made a \$1.50 an hour.
14 Managers went around, the overhead is too high,
15 the product is too high. The staff is drinking
16 too many Cokes. You've got one Coke, and let's
17 get to this overhead down. They know that.
18 That's how they live and breath in this business.

19 That's how they -- and there's been no
20 documents produced about what their food accounts
21 were, what the supplies were. We're in a
22 guessing game caused by Ms. Billips, and she's
23 trying to penalize our client for it.

24 So all we're asking this Court to do is
25 to conclude the accounting, send it next door,

1 and let us -- let us go for the remaining causes
2 of action. I don't think this Court can
3 determine what the value of his interest is. I
4 think the Court can assist in giving us the
5 information.

6 But the ultimate question of what the
7 value of his interest is, and the value of
8 Alex's, all of those units is going to be
9 determined by ultimate trier of fact and not by
10 here today with 2,000 pages that don't really
11 mean anything.

12 THE COURT: Well, don't I have
13 to -- isn't the whole idea of doing the
14 accounting here is for me to come up with some
15 estimate of value of what the business is so you
16 can go next door, pursue all of your causes of
17 action, and say, hey, we're entitled to this, or
18 we're entitled to that or whatever we're entitled
19 to?

20 MR. ELLIS: Your Honor, our other
21 causes of action speak of the malfeasances of
22 Carolyn Billips.

23 THE COURT: Sure, yeah. But that
24 issue is -- I acknowledge, that's not before me.

25 MR. ELLIS: And so we do not think

1 judicial economy is best served by presenting to
2 both this Court and the fact -- finder of facts
3 in the Common Pleas.

4 THE COURT: Well, we are way past
5 judicial economy. We are five years into this
6 case, and we haven't gotten anywhere.

7 MR. ELLIS: Of how her malfeasance
8 has -- how she's treated Alex's as her own bank
9 account to fund her other businesses and has
10 co-mingled funds so much. We do not think
11 judicial economy is best served by presenting her
12 malfeasance twice.

13 And we view the accounting as a
14 Court-assisted discovery in the attempt to get
15 the -- the right to the books that Mr. Billips
16 has been denied throughout his years.

17 And now we have that, we think that
18 judicial economy is best served by presenting the
19 case as a whole to one finder of fact rather than
20 presenting the case twice to two separate finders
21 of fact, and especially when this case -- this
22 Court, because of the limited amount of
23 jurisdiction, it was referred over.

24 It does not have the jurisdiction to
25 make determinations on the malfeasance, which, of

1 course, the malfeasance goes into the value of
2 Mr. Billips' share, of the value of the business,
3 and therefore --

4 THE COURT: No, it doesn't.
5 Malfeasance would have nothing to do with this
6 percentage interest and the value of a business.
7 It may go to damages, but it has absolutely zero
8 to do with his percentage of the value of the
9 business.

10 My question for the plaintiffs is, what
11 do y'all contend the value of the business is and
12 what evidence are you planning to put forward
13 today to establish that value?

14 MR. ELLIS: Well, and, Your Honor,
15 we believe that the malfeasance does directly go
16 to the value of the business. What is the value
17 of the business?

18 THE COURT: Well, I don't agree
19 with you. I'm going to tell you right now, I
20 don't agree with that. So you better find a
21 better solution, a better argument than that one.

22 MR. ELLIS: Your Honor --

23 THE COURT: So far, I haven't heard
24 any evidence, right? I'm only hearing argument
25 of counsel. But right now I've got the plaintiff

1 at zero and the defendant at something less than
2 10 cents on a value. Now, do you want me to send
3 that to a jury to go determine that the
4 plaintiff's interest is 18.33 percent of maybe a
5 dime?

6 MR. SAUTTER: No, sir.

7 THE COURT: I don't think that's
8 what y'all want.

9 MR. SAUTTER: No, sir.

10 MR. ELLIS: No, Your Honor. We
11 want you to send the entire case back over
12 to the --

13 THE COURT: Well, I'm not going to
14 do that. I'm going to do my job, and my job is
15 to do an accounting. Do you got a witness?

16 MR. SAUTTER: Yes, sir.

17 THE COURT: All right. Let's put
18 them up.

19 MR. SAUTTER: Carolyn Billips.

20 THE COURT: All right.

21 Ms. Billips, come on up, and I will have you sit
22 in that chair. When you get comfortable, we'll
23 get started. Okay?

24 THE WITNESS: Okay.

25 THE COURT: Ms. Billips, good

1 morning to you.

2 THE WITNESS: Good morning.

3 THE COURT: I'm going to swear you
4 in. I'm going to get some information from you,
5 and then they're going to ask you some questions.
6 Okay?

7 THE WITNESS: Okay.

8 (CAROLYN BILLIPS, having first been
9 duly sworn, testified as follows:)

10 THE COURT: Thank you. Now, give
11 me your full name and address for the record
12 please, ma'am.

13 THE WITNESS: Carolyn Moselle
14 Billips.

15 THE COURT: And your address,
16 Ms. Billips?

17 THE WITNESS: 341 Canterhill Lane,
18 Moncks Corner, South Carolina 29461.

19 THE COURT: Thank you very much.
20 Mr. Sautter?

21 MR. SAUTTER: Thank you, Your
22 Honor.

23 DIRECT EXAMINATION

24 BY MR. SAUTTER:

25 Q. Ms. Billips, do you recognize that the

1 business was founded by Alex Billips prior to
2 your marriage to him?

3 A. Not really.

4 Q. All right. Well, were you there -- were
5 you married to him when the business was started
6 up?

7 A. We opened Mt. Pleasant was the first
8 one.

9 Q. Okay. Were you married at the time?

10 A. Yes.

11 Q. All right. And what was your role in
12 the business?

13 A. From a server to the kitchen, whether it
14 was helping to cook, the dishwasher, helping with
15 paperwork, whatever was needed.

16 Q. Okay. After Mr. Alex -- when did
17 Mr. Alex die?

18 A. 1980.

19 Q. Okay. And after that -- and was Tony
20 involved in the business, Tony Billips?

21 A. When he died?

22 Q. Yes, ma'am. At any time.

23 A. Yes, sir.

24 Q. Okay. And do you contest that he's
25 entitled to 18.3 percent of the business?

1 A. No, sir.

2 Q. Okay. So what was Tony's role in the
3 business?

4 A. He managed the Dorchester Road location.

5 Q. All right. And did he also go between
6 the other locations?

7 A. He helped when he was needed and when
8 asked, yes.

9 Q. And so he would be familiar with the
10 business at the other locations as well as
11 Dorchester Road?

12 A. Somewhat.

13 Q. All right. And so let me just -- are
14 you familiar with what has produced by your side
15 in this case to us so that this Court can make a
16 determination of what his value is?

17 A. Yes, sir, I think so.

18 Q. Did any of those documents include any
19 cost control documents as far the daily, the
20 monthly, the weekly cost of each of those
21 locations?

22 A. No, because we hadn't did those in
23 years. That was just an in-house that I did for
24 the managers for the food and the payroll cost,
25 but I haven't did those in years.

1 Q. When was the last time you did them?

2 You did them in 2014, correct?

3 A. I don't remember, sir.

4 Q. But they haven't been produced in this
5 case?

6 A. It wasn't anything that we kept.

7 Q. All right. And did you turn those over
8 to your accountant?

9 A. No.

10 Q. And this accountant is Mr. Wood?

11 A. Michael Fox.

12 Q. Michael Fox. Is he coming here today?

13 A. Yes, sir.

14 Q. All right. And does he have any
15 information as to those daily and the product
16 control worksheets?

17 A. No, sir.

18 Q. All right. Tell me about the -- y'all
19 had video poker machines in the locations?

20 A. We did.

21 Q. And those were cash?

22 A. Yes.

23 Q. And y'all would split 50 percent with
24 the Collins?

25 A. Yes, sir.

1 Q. All right. Where are the records for
2 the video poker receipts?

3 A. I don't have any idea. It's been a long
4 time ago.

5 Q. Yes, ma'am. But there was -- but you
6 would agree with me, there was substantial cash
7 revenues from the video poker machines, correct?

8 A. Yes, sir.

9 Q. \$20,000 a week at Dorchester Road?

10 A. I don't know.

11 Q. You have no idea about that?

12 A. No, sir.

13 Q. All right. And you've actually -- you
14 sold the Mt. Pleasant location, right?

15 A. Yes, sir.

16 Q. What's in there now?

17 A. The Okra Grill.

18 Q. Pretty popular, as far as you know?

19 A. I believe.

20 Q. Yes. And what did you sell that
21 location for?

22 A. I don't remember.

23 Q. 1.5 million dollars? Does that help
24 refresh your recollection?

25 A. I don't remember exactly.

1 Q. When was it sold?

2 A. I don't remember the date.

3 Q. What year?

4 A. I don't remember the year.

5 Q. What happened to the money?

6 A. There wasn't any.

7 Q. 1.5 million dollars. Was there a
8 mortgage on it?

9 A. Yes, sir.

10 Q. How much?

11 A. I don't know.

12 Q. And did Mr. Billips get 18.3 percent of
13 the proceeds of the sale of the Mt. Pleasant
14 location?

15 A. No.

16 Q. Why not?

17 A. There wasn't any money.

18 Q. Where did the money go?

19 A. There wasn't any money left.

20 Q. Where did the money go that you got from
21 the sale? I mean, what happened to it? Did you
22 just put it all in your piggy banks?

23 A. No, sir.

24 Q. If you can recall, please tell me where
25 the money went, the 1.5 million dollars.

1 A. What I can tell you is that I would have
2 to look at the day's sheets where we sold it. I
3 don't remember any details on it.

4 Q. Well, generally, do you have any
5 recollection of where the money went? Did it go
6 to tax liens?

7 A. I don't remember exactly where the money
8 went.

9 Q. Okay. During that time period, did you
10 have tax liens against you?

11 A. Yes, sir.

12 Q. All right. Against you personally?

13 A. I'm sure.

14 Q. All right. And so -- do you know or not
15 whether the money from the sale of Mt. Pleasant
16 went to pay some of those tax -- your personal
17 tax obligations?

18 A. No, sir, I don't.

19 Q. How many -- what happened to the other
20 locations? Lets just go -- okay. We talked
21 about Mt. Pleasant. We've got Moncks Corner,
22 right?

23 A. Uh-huh.

24 Q. Yes?

25 A. Yes, sir.

1 Q. Was that ultimately sold?

2 A. Yes, sir.

3 Q. Where did that money go?

4 A. I don't know.

5 Q. Well, what do you know about it?

6 A. I know I had to sell them.

7 Q. Why did you have to sell them?

8 A. Because there wasn't -- they were not
9 making money, and there wasn't any money.

10 Q. There wasn't any money?

11 A. No, sir.

12 Q. But you walked away with money from the
13 closing of Moncks Corner as well, didn't you?

14 A. I don't remember.

15 Q. Do you have the closing statements?
16 Have they been provided to your counsel?

17 A. Yes, sir.

18 Q. What other locations were sold?

19 A. Dorchester Road.

20 Q. What happened to that money?

21 A. It went to pay on taxes and on bills.

22 Q. Okay. Your taxes, your bills, right?

23 A. And the corporation's.

24 Q. So the corporation's taxes, but you were
25 responsible -- you were personally responsible

1 for those bills, right, for the figurehead of the
2 corporation, weren't you?

3 A. Yes, sir.

4 Q. Did Tony get any money from the sale of
5 Dorchester Road?

6 A. No, sir.

7 Q. Did Tony get any money from the sale of
8 Moncks Corner?

9 A. No, sir.

10 Q. What else was sold?

11 A. Rivers Avenue location.

12 Q. What happened to that money?

13 A. I don't remember the details.

14 Q. When was it sold?

15 A. I don't remember that either.

16 Q. Do you remember anything about what
17 happened to that money?

18 A. No, sir. I don't remember the details.

19 Q. What year was it?

20 A. I don't remember that.

21 Q. So who was in charge of this Alex's
22 Corporation? That was you, right?

23 A. Yes, sir.

24 Q. And do you understand you had a duty to
25 keep all of these records and stuff?

1 A. Yes, sir.

2 Q. And why don't you have any records of
3 it?

4 A. I have to --

5 MR. RANNIK: Object to the form.
6 That misstates the evidence.

7 THE COURT: Overruled. Go ahead.
8 BY MR. SAUTTER:

9 Q. Please explain to this Court why there
10 are no records of the proceeds, the daily
11 reports, things of that nature. Why?

12 A. I'm sure there was. I'm sure they went
13 to the accountant.

14 Q. Okay. We'll ask him about that because
15 I don't think that we -- we haven't been produced
16 any of the quality control sheets.

17 What other restaurant have -- so we
18 talked about Moncks Corner. What about Goose
19 Creek? What happened to that location?

20 A. It's open.

21 Q. And it's an ongoing business?

22 A. Yes, sir.

23 Q. And did y'all file taxes on that?

24 A. Yes, sir.

25 Q. And it's making money?

1 A. I would say it's close now.

2 Q. It's close. Well, so -- all right. And
3 do y'all own the real estate as well?

4 A. Yes, sir.

5 Q. What's the value of the real estate?

6 A. I don't know.

7 Q. What about Savannah Highway? Is that
8 still in the Alex's umbrella?

9 A. No, sir.

10 Q. What happened to that one?

11 A. It was sold.

12 Q. When was it sold?

13 A. I don't know.

14 Q. What happened to the money?

15 A. I don't know.

16 Q. Where are the records?

17 A. What records I have went through my
18 accountant.

19 Q. All right. So have you made -- so when
20 those locations were sold, you got the money
21 distributed to you, and you paid some tax
22 obligations and things of that nature; is that
23 correct?

24 A. Yes, sir.

25 Q. What distributions did Tony get out of

1 any of that?

2 A. None.

3 Q. You got a hundred percent; he got zero,
4 correct, in distributions from the sale of the
5 real property of the Alex locations --

6 A. Yes.

7 Q. -- that we talked about?

8 A. Yes, sir.

9 Q. You got a hundred percent; he got zero?

10 A. No, not -- it went into the business.

11 Q. What?

12 A. I didn't personally get a hundred
13 percent.

14 Q. You used that money for your taxes,
15 right? You've already testified to that.

16 A. Some of it, yes.

17 Q. Where did the rest of it go?

18 A. The corporation had taxes also.

19 Q. So there was no money -- so you don't
20 know where the money went; you just know that he
21 didn't get any of it, correct?

22 A. I know where the money went. It's on
23 the closing statements.

24 Q. But what happened to it after that?
25 That's what we're trying get to today. We're

1 trying to get to what the value of his interest
2 is. Is that something that -- is there any other
3 information that you can tell this Court to give
4 him the value of his interest?

5 A. Nothing other than what went through the
6 accountant. That's all there is.

7 Q. And at some point, you and Tony -- he
8 was a manager, right?

9 A. Yes, sir.

10 Q. And at some point, he ceased to be a
11 manager, right?

12 A. Yes, sir.

13 Q. Why did y'all fall out, or did y'all
14 fall out?

15 A. No.

16 Q. What happened?

17 A. I don't remember exactly when he decided
18 not to manage. I don't remember an exact date.

19 Q. Did you have a sexual relationship with
20 Tony Billips?

21 MR. RANNIK: Judge, may we
22 approach?

23 THE COURT: Yeah.

24 (Off-the-record discussion.)

25 THE COURT: All right. Objection

1 is sustained.

2 BY MR. SAUTTER:

3 Q. You paid your personal income taxes with
4 funds from Alex's, Inc., correct?

5 A. I may have.

6 Q. And if your personal taxes weren't paid
7 directly from Alex, Inc.'s money, Alex, Inc.,
8 would have been healthier financially, correct?

9 A. I put a lot of money in Alex's
10 Restaurant from my personal. Personal loans that
11 I did, my personal money from the sale of my
12 house, from the sale of the property that I
13 inherited.

14 Q. When was that?

15 A. I don't know the date.

16 Q. But did you -- did you draw a salary
17 from Alex's?

18 A. I did.

19 Q. How much?

20 A. Then? It would have varied.

21 Q. Well, what are the parameters?

22 A. Well, I think one year I made \$15,000.
23 One year maybe \$5,000. I make \$1,500 a week now.

24 Q. Well, did you make salary up to the
25 amounts of \$50, \$60,000 a year out of taxes?

1 A. I don't remember the exact amount over
2 the years.

3 Q. So you admit that the restaurant kept
4 cost control, correct, cost control?

5 A. We did, and we didn't keep them for any
6 period of time.

7 Q. How long did you keep them for?

8 A. I don't remember exactly. Probably
9 until after the next year. That's what I --
10 that's what I did with them, compared to the year
11 before; so I didn't need them after that.

12 Q. Well, was some of that information given
13 to the accountant?

14 A. No, not those sheets. He had the actual
15 sales and everything.

16 Q. He had the sales?

17 A. He had everything, the receipts, the
18 detail of the -- where all of the money went.

19 Q. Do you have any documents that the loans
20 that you earlier referenced were loans that you
21 say you made to the company?

22 A. Probably some of them.

23 Q. Have they been turned over?

24 A. I think they're on the closing
25 statements.

1 Q. So your personal loans were satisfied
2 out of the sale of Alex's Restaurant, correct,
3 these different units? Some of them?

4 A. Some.

5 Q. So how did that work? Who did you
6 borrow -- what were your personal obligations?
7 Can you describe them?

8 A. I don't understand what you're asking.

9 Q. You said you had loans to the business,
10 and so when a unit would close, you would be
11 reimbursed for those loans?

12 A. No.

13 Q. You're saying they're on the closing.
14 I'm just trying to get to what --

15 A. No. I was not paid back any of my
16 loans.

17 Q. Okay. Were those loans satisfied by the
18 sale of the real property, some of them? And
19 which ones and how much?

20 A. I can't tell you that, sir.

21 Q. And you would agree that Tony Billips
22 had a knowledge of the business, Alex's, correct?

23 A. Yes.

24 Q. And he was a manager of Goose Creek?

25 A. Yes.

1 Q. And he went to different stores?

2 A. He was the manager of Dorchester Road.

3 Q. Yes, ma'am. And that was one of y'all's
4 big locations, right?

5 A. No, sir.

6 Q. It wasn't?

7 A. No, sir.

8 Q. Dorchester Road was not the hot spot for
9 the video poker?

10 A. The video poker did well in each place.

11 Q. And Dorchester Road was not the hot
12 spot?

13 A. I don't understand what you're asking.

14 Q. Did the stores perform differently
15 for -- in the video poker days for the amount of
16 money that they would bring in from the video
17 poker?

18 A. I don't know that.

19 Q. And that -- was Tony involved with the
20 video poker part of it? You weren't involved in
21 that, correct?

22 A. He was involved, yes.

23 Q. All right. And so where was the
24 corporate headquarters of Alex's?

25 A. Behind Dorchester Road.

1 Q. And it was a regular brick and mortar
2 structure?

3 A. Yes, sir.

4 Q. And that's where you spent most of your
5 time, correct?

6 A. Part of my time.

7 Q. I mean, in the later years and stuff
8 like that. I mean, after Big Alex passed away
9 and things of that nature, what was your
10 percentage of time in the corporate structure and
11 out at these different locations?

12 A. I couldn't tell you that.

13 Q. I mean, you weren't waiting on tables,
14 or you weren't actively like a manager of any of
15 these locations or anything, were you?

16 A. No. At a location if they needed
17 somebody to wash dishes, I would wash dishes. I
18 helped to cook. I helped to clean the tables.

19 Q. During what time period? What years are
20 we talking about?

21 A. Whenever, all of them. Whatever was
22 needed.

23 Q. When's the last time you worked in the
24 Goose Creek location? When was the last time you
25 washed a dish in Goose Creek?

1 A. Probably the last time I helped them in
2 the kitchen was probably a couple weeks ago.

3 Q. You were washing dishes?

4 A. (No audible answer.)

5 Q. Yes or no?

6 A. Sir, I do whatever they need. If they
7 needed silverware or if they needed cups,
8 whatever.

9 Q. This is a couple weeks ago. What did
10 you do in the Goose Creek restaurant?

11 A. One thing that comes to my mind, I got
12 the -- helped them get some vegetables out,
13 helped them get them ready. We're short staffed.

14 Q. What time did you go in there? What
15 day?

16 A. I don't know that, sir.

17 MR. SAUTTER: May I have one
18 minute, Your Honor?

19 THE COURT: Sure.

20 BY MR. SAUTTER:

21 Q. Let me just go back to the sale of the
22 Rivers Avenue location at 5503. It's called
23 Rivers Avenue Laundry. And I ask if you can
24 identify this document? And it's marked C.
25 Billips 00701. What is that?

1 MR. RANNIK: And, Judge, might I
2 approach and have a look at the document?

3 THE COURT: Sure. Ms. Billips, let
4 Mr. Rannik take a look at that. I'm assuming
5 that's a Bates stamp number. What was the number
6 on it again? I'm sorry.

7 MR. RANNIK: It is C. Billips
8 000701.

9 THE COURT: 701.

10 MR. RANNIK: Thank you.

11 BY MR. SAUTTER:

12 Q. What is that, ma'am?

13 A. This is the statement on the sale of the
14 laundry.

15 Q. And that's the Rivers Avenue location?

16 A. Yes, sir.

17 Q. What did some of those proceeds go down
18 to, a Harbor -- what's the name of that bank?
19 Harbor -- It's on the bottom.

20 A. Harbor National.

21 Q. All right. So some of the proceeds from
22 the sale of -- is it fair to say that some of the
23 proceeds from the sale of Rivers Avenue went to
24 repay loans at Harbor National on other
25 locations? Is that what it says?

1 A. It says that that's where the money
2 went.

3 Q. Yes, ma'am.

4 A. That's where I deposited it.

5 Q. Okay. So let me --

6 MR. SAUTTER: Your Honor, I would
7 move this is in as Plaintiff's Exhibit No. 1.

8 THE COURT: Any objection?

9 MR. RANNIK: No objection.

10 THE COURT: Okay.

11 (PLE. EXH. 1 was marked for
12 identification and admitted into evidence.)

13 BY MR. SAUTTER:

14 Q. And the Judge is looking at the exhibit
15 right now, ma'am. But does that closing
16 statement, Plaintiff's Exhibit No. 1, reflect
17 that monies from the sale of Rivers Avenue were
18 used to pay South Carolina Department of Revenue,
19 the two different liens there?

20 Do you know anything about that, or do
21 you need to look at the exhibit?

22 A. I'm sure it is correct, whatever it
23 says.

24 Q. Okay. So is it fair to say that you
25 liquidated assets of the Rivers Avenue location

1 of Alex's, not to preserve assets for Alex's,
2 Inc., but to pay your own obligations, as set
3 forth on Exhibit No. 1? Is that what happened?

4 A. No, sir.

5 Q. Well, please explain.

6 A. They were not just my obligations.

7 Q. Whose obligations were they?

8 A. What that's -- what that is, is -- part
9 of it was the restaurant's; part of it was mine.

10 Q. Part of it was yours personally?

11 A. Yes, part of it was mine, and yes,
12 you're right, I am responsible for mine
13 personally and the corporation.

14 Q. Okay. Where does it reflect on Exhibit
15 No. 1, the 18.3 percent that you've admitted that
16 Tony Billips is entitled to? It's not reflected
17 on there anywhere, is it?

18 A. No, sir.

19 Q. And no distributions were made by you
20 to -- or from Alex's to Tony from the sale of the
21 Rivers Avenue, correct?

22 A. No, sir.

23 Q. And no distributions were paid to Tony
24 from the sale of Moncks Corner, correct?

25 A. No, sir.

1 Q. From the sale of Mt. Pleasant?

2 A. No, sir.

3 Q. Did Mt. Pleasant sell for \$1.5 million?

4 A. I don't remember.

5 Q. So is it fair to say that you were using
6 these Alex's proceeds from the sale as just your
7 personal piggy bank to take care of your
8 obligations --

9 A. No, sir.

10 Q. -- as well as Alex's?

11 A. No, sir.

12 Q. Why isn't that a fair statement? Tell
13 me.

14 A. It was not a personal piggy bank, no,
15 sir.

16 Q. Okay. But you paid your loans out of
17 it, right?

18 A. Some of them, right.

19 Q. And Alex got -- and Mr. Tony got
20 nothing, correct? He got nothing out of any of
21 the sale of the real estate?

22 A. No, he didn't.

23 Q. All right. So let's go back.

24 MR. SAUTTER: Your Honor, may I
25 have a moment, and I will let get some water

1 and --

2 THE COURT: Sure. All right.

3 Mr. Sautter?

4 MR. SAUTTER: Thank you, Your
5 Honor.

6 BY MR. SAUTTER:

7 Q. Ms. Billips, down here at the bottom, it
8 says, transferred to Harbor National Bank. I'm
9 looking at Exhibit 1, C. Billips 000701,
10 previously admitted into evidence. I see
11 transferred to Harbor National Bank, \$98,000,
12 correct?

13 A. Yes, sir.

14 Q. And then what's the entry underneath
15 that on Exhibit 1?

16 A. It says 11/20/11 on the checks.

17 Q. Where did the checks go? What is that
18 first check written out of that \$98,000?

19 A. I do not know, sir.

20 Q. What does it say right there on the
21 sheet, Ms. Billips?

22 A. That's what it says.

23 Q. Doesn't it say Flowertown?

24 A. Right underneath, Harbor National, it
25 says --

1 Q. What does that say right there?

2 A. Okay. That says, 12/12/2011, counter
3 check, Flowertown, yes.

4 Q. SCDOR, what is that?

5 A. Tax?

6 Q. South Carolina Department of Revenue?

7 A. Yes.

8 Q. Okay. And Ftown means Flowertown,
9 right?

10 A. Yes, sir.

11 Q. So Flowertown was part of the Alex's,
12 Inc., umbrella, correct?

13 A. No, sir.

14 Q. Well, you used proceeds from the sale of
15 Rivers Avenue to pay off -- it looks like, to pay
16 off SCDOR lien to Flowertown of \$27,992.69 --
17 excuse me, 62 cents, correct?

18 A. Yes, sir.

19 Q. And you were -- so what's the Flowertown
20 location called during this time period? It was
21 called Alex's, wasn't it?

22 A. No, sir.

23 Q. There wasn't a sign out front that said
24 Alex's?

25 A. It said Flowertown.

1 Q. Was there a sign on it that said Alex's?

2 A. I don't think at that time.

3 Q. All right. Was there ever -- was it
4 known as Alex's in the community, to your
5 knowledge?

6 A. What are you -- I don't understand what
7 you're saying.

8 Q. Was that restaurant named Alex's at one
9 time?

10 A. At one time, probably. I did change the
11 sign outside to Alex's, but I don't remember
12 exactly the time, the date that it was, but it
13 was -- I took down the Flowertown and I put up
14 Alex's.

15 Q. You took down Flowertown and put up
16 Alex's?

17 A. Uh-huh, yes, sir.

18 Q. And did Mr. Billips get any kind of
19 distribution on that money out of Rivers Avenue?

20 A. No, sir.

21 Q. And so do you -- are you maintaining
22 that Flowertown was a separate -- was a separate
23 company?

24 A. Yes, sir, it was.

25 Q. Who owned Flowertown?

1 A. I do.

2 Q. How did you -- how did that come to
3 pass? Did you purchase it from Alex's, or did
4 you change it into your name?

5 A. Yes, sir. I opened it in, I think,
6 around '85, somewhere there.

7 Q. Okay. And you opened it?

8 A. Yes.

9 Q. Where did the money come from?

10 A. We had the --

11 Q. I think you started to say we had,
12 correct? You and Alex put the money together to
13 do Flowertown?

14 A. No, sir. No, sir. The -- I rented a
15 building in Summerville. I think it had been a
16 7-Eleven or a liquor store, and we enclosed the
17 porch, or I enclosed it.

18 When I say we, people that I had that
19 did it, the construction part, that's what the
20 construction was. It enclosing the front. And I
21 paid rent on the building.

22 Q. Paid rent to who?

23 A. I don't remember who it was.

24 Q. Okay. So you -- y'all didn't own the
25 Flowertown location, right?

1 A. No.

2 Q. You paid rent?

3 A. Yes, sir.

4 Q. Where did the money come from for the
5 renovations? Didn't it come from video poker
6 money?

7 A. The best I remember, I borrowed it.

8 Q. From where?

9 A. From the bank.

10 Q. Which bank?

11 A. I don't remember exactly, but I remember
12 it wasn't a lot of money because we didn't do a
13 lot with it.

14 Q. When was that renovation -- when did
15 that renovation occur?

16 A. '85, somewhere there.

17 Q. All right. And you changed the name of
18 it to Alex's, correct? I think that's what you
19 just testified. It was Flowertown initially, and
20 you changed it to Alex's at some point?

21 A. Yes. It was Flowertown. It's not the
22 same building. That was a rented building then.
23 The building now is -- I moved Flowertown there
24 on 78 in '98, '99.

25 Q. And the name of that business is called

1 Alex's, correct?

2 A. Today it's called Family Restaurant.

3 Q. Okay. And what was it called in 2016 or
4 2014? It was called Alex's, wasn't it?

5 A. The -- I think I changed it to Alex's at
6 about 2012 or something. I'm not sure.

7 Q. 2012. And when did you change it to
8 Family Restaurant?

9 A. Well, this became an issue.

10 Q. Oh, because of this case, you changed
11 the name of -- called from Alex's to Flowertown?

12 A. I changed the sign back, yes, sir.

13 Q. Because of this case?

14 A. Yes, sir.

15 Q. Okay. What else did you do because of
16 this case? Did you preserve all the records and
17 everything? I mean, when this case -- this case
18 has been going on a while. I mean, 2016 was this
19 docket number, but it was -- this controversy was
20 before that.

21 What else did you do to prepare for this
22 case, to prepare for this day? And I'm not
23 talking about talking to your attorneys. I'm
24 talking about keeping records and things of that
25 nature.

1 A. I don't understand what you're saying.

2 Q. Well, let me just kind of break it down.
3 Where are the point of sale records for -- you
4 know, for any of these locations for years 2014,
5 2015? I know some of them have been gone, but
6 where are the point of sale records?

7 A. They would have went to my accountant to
8 do taxes.

9 Q. And did the point of sale records
10 account for what was paid in cash and what was
11 paid for in credit cards?

12 A. He gets everything. He gets a statement
13 of everything.

14 Q. Is it all together, or is it separately?
15 Is cash listed separately is what I'm trying to
16 get to, at the point of sale?

17 Because I've eaten at Alex's, and if I'm
18 just by myself and get some eggs and some coffee,
19 it's 6 bucks, and I pay cash. If I take my
20 family in there, it might be more, and I would go
21 card. I mean, that's kind of the pattern of this
22 business, right, these businesses?

23 A. Yes.

24 Q. And to your knowledge, anywhere are the
25 point of sale records kept that differentiates

1 cash from credit cards?

2 A. All my records have the -- when it's
3 rang up, I come up with one total.

4 Q. And -- okay. And is cash always rung
5 up?

6 A. Yes.

7 Q. All right. Now, one of units that we're
8 talking about is Dorchester Road, and is it fair
9 to say that Tony made an offer to purchase that
10 from you for 340-some thousand dollars; is that
11 true? And you turned him down, right?

12 A. I don't know anything about that.

13 Q. You don't know anything about that?

14 A. No, sir, I don't.

15 Q. You don't recall an offer of -- for him
16 to buy the restaurant and to separate himself
17 from Alex's?

18 A. No, sir, I don't.

19 Q. And what was it ultimately sold for,
20 Dorchester Road?

21 A. I don't remember the exact dollar
22 amount.

23 Q. Was it less than \$340,000 or more?

24 A. I think it was less.

25 Q. Okay. So why would you -- you don't

1 recall anything about a \$340,000 --

2 A. No. I don't know anything about that.

3 Q. All right. And what led to your
4 decision to sell the Dorchester Road location?

5 A. It was losing money, for one thing.

6 Q. All right. Ms. Billips, I'm handing you
7 another document that has been previously marked
8 as C. Billips 000832, and I will be showing it to
9 your counsel first. And then can you identify
10 this document? What is it?

11 A. Yes, sir. I recognize it. It's a
12 statement on the sale of Dorchester Road.

13 Q. How much did you sell it for?

14 A. 320.

15 Q. And then did money from the sale of
16 Dorchester Road go to Flowertown debts on the
17 bottom?

18 A. Some of them, yes.

19 Q. How much?

20 A. \$21,000 tax to Flowertown.

21 Q. And let me look at that again, please.
22 Let me see this again, please, sorry. And also
23 it's got IRS Carolyn Billips. What amount of
24 that proceeds went to -- for your personal tax
25 liability?

1 A. The \$6,619.95.

2 Q. Okay. And what amount did Tony Billips
3 receive as distribution of 18.3 percent of the
4 sale of that?

5 A. None.

6 Q. And you -- is it fair to say that you
7 had control to do whatever -- you had control
8 over what happened with the proceeds of the sale
9 of Dorchester Road, right?

10 A. Yes, sir.

11 Q. Okay. And you also, out of Dorchester
12 Road, you paid the sales tax on Flowertown,
13 correct?

14 A. Yes, sir.

15 Q. How much was that?

16 A. \$21,087.

17 Q. And you paid sales tax on Alex's
18 Restaurant. Which location is that?

19 A. I'm not sure.

20 Q. Okay. So all of them?

21 A. I'm not sure.

22 Q. All right. And you paid the personal
23 IRS for Flowertown, how much?

24 A. 81 -- well, \$81,061.15.

25 Q. \$81,000, correct?

1 A. Yes, sir.

2 Q. And you maintained that that was your
3 separate property apart from Alex's, Inc., which
4 is the defendant, along with yourself in this
5 case right here. And you paid \$81,000 out of
6 Dorchester Road to pay a bill for Flowertown,
7 which you maintain is your own separate
8 corporation or business, correct?

9 A. Yes, sir.

10 Q. Why did you do that?

11 A. Because I had to pay it all.

12 Q. Okay. So is it fair to say that you
13 used the income and the proceeds from the sale of
14 all of the units that were sold to pay the debts,
15 your debts, and the debts of your corporation,
16 Flowertown?

17 Isn't that what happened? Over \$100,000
18 right there, right? \$103,000 for your personal
19 taxes, for Flowertown's taxes?

20 A. Yes, sir, it is.

21 Q. Okay. And you sold it for 320, and you
22 don't remember an offer from Tony for 340?

23 A. No, sir.

24 MR. SAUTTER: Your Honor, I would
25 move this into evidence as Plaintiff's Exhibit

1 No. 2.

2 MR. RANNIK: No objection.

3 THE COURT: Without objection.

4 Very good.

5 (PLEF. EXH. 2 was marked for
6 identification and admitted into evidence.)

7 BY MR. SAUTTER:

8 Q. So you liquidated those units? You
9 liquidated Rivers? You liquidated Dorchester
10 Road, correct?

11 A. Yes, sir.

12 Q. And you personally benefited from the
13 liquidation of those units, correct, by paying
14 your taxes, correct?

15 A. Yes.

16 Q. And Flowertown also benefited from it,
17 and that's a company that you control, correct?

18 A. Yes.

19 Q. Do you have any corporate books of these
20 companies, separate corporate documents so that
21 the Court can provide information as to how these
22 companies were structured and things of that
23 nature?

24 A. The -- I don't understand the question.

25 Q. So I'm just trying to see if Alex's --

1 what corporate formalities that you're aware of
2 that Alex's complied with? And I'm going to --
3 are you aware of any corporate books, separate
4 corporate books for Alex's, Inc., things of that
5 nature?

6 A. Nothing other than where it was
7 incorporated.

8 Q. All right. Did y'all have regular
9 shareholders meetings and things of that nature?

10 A. At the beginning we did.

11 Q. How about during this time period, '14
12 through '16, that we're kind of focusing on here
13 today?

14 A. No, sir.

15 Q. Okay. And looking back at this Rivers
16 Avenue laundry closing statement that's been
17 marked Plaintiff's Exhibit 1, it says three
18 checks to Carolyn Billips, \$22,104. What were
19 those checks for?

20 A. I don't know.

21 Q. Well, why was it three checks?

22 A. I don't know.

23 Q. Okay. Do you know whether the other
24 closing statements for Moncks Corner -- I guess
25 that's the only other -- Moncks Corner was

1 ultimately sold, right?

2 A. Yes, sir.

3 Q. Where is the closing statement?

4 A. If I --

5 Q. Do you have any knowledge of where the
6 closing statement is?

7 A. If I had it, I gave it to my attorney.

8 Q. Okay. And what justification can you
9 provide for this Court today for the Flowertown
10 location, which you maintained to be totally
11 separate and you're the sole owner of -- for
12 getting money for the sale of Alex's locations?
13 It's all one big organization, isn't it?

14 A. No. Flowertown is not -- was not part
15 of Alex's.

16 Q. Why did Flowertown get money from Alex's
17 when those locations were sold?

18 A. I paid what I had to pay to keep the
19 business afloat. I put my own money in it. I
20 sold property of my own and put in it. Like I
21 say, like my house, to keep the business afloat.

22 Q. You sold your house?

23 A. Yes, sir.

24 Q. Where do you live now?

25 A. Moncks Corner.

1 Q. Who do you live with?

2 A. I live with my son.

3 Q. Who owns it?

4 A. I do.

5 Q. What's the value of that?

6 A. I don't know.

7 Q. Is there a mortgage on it?

8 A. I do have a mortgage.

9 Q. How much is owed?

10 A. I don't know the exact dollars, but it's
11 over 100.

12 Q. What's the house worth? Is it acreage?

13 A. Pardon me?

14 Q. How many acres?

15 A. The house is -- the house is on two and
16 a half acres.

17 Q. What's the address, ma'am, please?

18 A. 341 Canterhill Lane.

19 Q. Okay. Where did the money come from to
20 buy that house?

21 A. I bought that property -- I don't -- it
22 was many years ago. I don't remember when it
23 was.

24 Q. Was it bought with proceeds from the
25 Alex's, Inc., Restaurants?

1 A. No. It was a loan.

2 Q. From where?

3 A. It was a loan, I remember that.

4 Q. All right.

5 MR. SAUTTER: Your Honor, I'm
6 getting ready to show defense counsel C. Billips
7 000662, which I believe to be the closing
8 statement for the Mt. Pleasant location at 302
9 Coleman Boulevard, settlement date May 12th,
10 2011.

11 MR. RANNIK: Thank you.

12 BY MR. SAUTTER:

13 Q. Ms. Billips, can you identify this
14 document?

15 A. Yes.

16 Q. What is that?

17 A. The sale of Mt. Pleasant.

18 Q. Okay.

19 MR. SAUTTER: Your Honor, I would
20 move this into evidence as Plaintiff Exhibit
21 No. 3.

22 MR. RANNIK: Without objection.

23 THE COURT: Without objection.

24 (PLF. EXH. 3 was marked for
25 identification and admitted into evidence.)

1 BY MR. SAUTTER:

2 Q. Okay. Ms. Billips, this is -- you
3 testified that this is the closing statement for
4 the sale of the Mt. Pleasant location. Does this
5 reflect your -- refresh your recollection on what
6 was received from the sale?

7 A. This is the -- yes, this is the
8 statement.

9 Q. What was the gross amount received?

10 A. 1 million 395.

11 Q. Okay. 1.395 million dollars. Now, was
12 that just for the real estate, or was that for
13 the operations of the business itself?

14 A. That was for everything.

15 Q. Everything. And now it's a successful
16 business over there with the Page's Okra Grill
17 that everybody loves and flocks to, correct?

18 A. I've heard that, yes.

19 Q. Yes, ma'am. So out of this 1.3 million
20 dollars, how much did -- did Tony get his 18.3
21 percent?

22 A. No.

23 Q. All right. Why not?

24 A. Cash to seller was (inaudible).

25 Q. Yeah. And where did the 1.3 million --

1 let's just go down the list. Settlement charges
2 \$135,174.59. Where did they go?

3 A. I don't know, sir.

4 Q. Do you know?

5 A. No, sir.

6 Q. Pay off mortgage to Tidelands Bank. Was
7 that the mortgage on the Mt. Pleasant location?

8 A. Yes, sir.

9 Q. Some \$835,000?

10 A. Yes, sir.

11 Q. County taxes, was that for Mt. Pleasant?

12 A. Yes, sir.

13 Q. It looks like an additional deposit of
14 \$10,000?

15 A. I don't know.

16 Q. Okay. And you got a mortgage from the
17 seller. You gave them a mortgage?

18 A. Yes, sir.

19 Q. Are they still paying on it?

20 A. No, sir.

21 Q. No. What happened? They paid you off?

22 A. Yes.

23 Q. What happened to that money, the payoff?

24 Did Tony Billips get his 18.3 percent out of
25 that?

1 A. No, sir.

2 Q. Why not?

3 A. I don't remember what the money went
4 for.

5 Q. So you don't have -- you don't contest
6 that the Mt. Pleasant store was part of this
7 Alex, Inc., empire, correct?

8 A. That's correct.

9 Q. All right. And to your knowledge, did
10 Tony get anything out of sale of the Mt. Pleasant
11 location?

12 A. No, sir.

13 Q. All right. So I see an IRS payoff of
14 \$171,093. Was that your -- was that a tax
15 liability for you?

16 A. No, sir.

17 Q. What was it?

18 A. My guess is it was with the corporation.

19 Q. And that's just a guess?

20 A. Yes, sir.

21 Q. You don't really know whose taxes that
22 was for, do you? If you do, please tell us. If
23 you don't, that's fine.

24 A. No, sir, I don't.

25 Q. Okay. Looking at SCDOR payoff. What is

1 that? \$119,000, the last line?

2 A. That's taxes.

3 Q. For which unit?

4 A. I don't know, sir.

5 Q. And so you were the key person in this
6 Alex, Inc., correct? You were the key -- you
7 were the one that knew everything. You were the
8 one in control of everything, correct?

9 A. Yes, sir.

10 Q. And you don't know where all this money
11 went?

12 A. No, sir.

13 Q. When was this -- when was this mortgage
14 that you gave -- mortgage from seller \$119,000,
15 when was it paid off?

16 A. I don't remember.

17 Q. What were the payments that they were
18 making to you before it was paid off?

19 A. I don't remember that.

20 Q. Is there any record that you're aware of
21 as to loans that you may have lent to Alex's,
22 Inc., company or the money that you took out of
23 Alex's, Inc.? Is there any record of that,
24 repayment of loans, anything of that nature? Are
25 there any kind of agreements? Is there any kind

1 of shareholders meeting?

2 Is there any kind of directive from you
3 for basically the whole corporation? I'm asking
4 you, what's the -- is there any proof of it that
5 we can show this Court?

6 A. There may be some with the closing --
7 there would be some with the closing statements.

8 Q. Just what we've talked about today?

9 A. And the sale of 4767 Rivers Avenue.

10 Q. So we talked about Rivers Avenue, and we
11 talked about Dorchester Road. So the Moncks
12 Corner location was also sold, correct?

13 A. Yes, sir.

14 Q. And is there a closing statement on
15 that? We can't find it on our little file over
16 here.

17 A. I don't -- I don't remember.

18 Q. Okay. And do you recall whether
19 Mr. Billips received anything from Moncks Corner,
20 the sale of Moncks Corner?

21 A. No, sir.

22 Q. So is it fair to say that you personally
23 benefited from the liquidation of the units that
24 we've talked about by paying your own taxes,
25 correct?

1 A. Some of them for a time, yes.

2 Q. Yes, ma'am. And it's also fair to say
3 that Tony Billips didn't get one penny of that
4 money from the sale of any of the units?

5 A. Yes, sir.

6 Q. My question is, why? Why didn't he get
7 any money? You admitted that he has an 18.3
8 ownership interest, right?

9 A. There was no distribution.

10 Q. Well, plenty of people are getting
11 distributions. I mean, we looked at these
12 statements, Exhibits 1, 2, and 3.

13 You've got a mortgage back that was
14 satisfied on the Mt. Pleasant property, right?
15 So why didn't -- you admit that he's got an 18.3
16 ownership interest in Alex's, Inc., correct?

17 A. Yes, sir.

18 Q. But he didn't get 18.3 of anything, did
19 he?

20 A. No, sir.

21 Q. And you were the one that decided where
22 all this money would go when you liquidated one
23 unit, right?

24 A. Yes, sir.

25 Q. Is there any kind of board meeting or

1 any kind of corporate minutes or anything like
2 that that we could go back and show the Court how
3 this all came to pass?

4 A. No, sir.

5 Q. And the only thing that you're aware of
6 are these closing statements and that your
7 accountant may have other information?

8 A. Yes, sir.

9 Q. Okay. How about your -- so that -- when
10 big Alex passed away, there were two other sons
11 that you and big Alex had together?

12 A. No, one.

13 Q. One. Okay. Well, did they receive --
14 did they have their own -- they had their own
15 ownership interest, too, right? They had 18.3
16 percent?

17 A. Yes, they did.

18 Q. And did they receive distributions?

19 A. No, sir.

20 Q. Are you getting any -- you live with one
21 of the sons right now, right?

22 A. Yes.

23 Q. Is he paying any rent or anything?

24 A. No, sir.

25 Q. Does he still -- does he work for the

1 company?

2 A. No, sir.

3 Q. Did one of the sons have a gambling
4 problem?

5 MR. RANNIK: Judge, objection. I
6 have no idea how this has any relevance to the
7 valuation of Alex's Restaurants, Inc.

8 MR. SAUTTER: I will be very brief,
9 Your Honor. But as far as the basis is, I mean,
10 it -- I have information that one of the sons had
11 a gambling problem, and that it -- that he spent
12 a lot of money on it. And that's really --
13 that's where some of the assets that Mr. Billips
14 might be entitled to went.

15 THE COURT: You can pull that
16 together from an accounting standpoint?

17 MR. SAUTTER: No, sir.

18 THE COURT: All right. I will
19 sustain the objection then.

20 MR. RANNIK: Thank you.

21 MR. SAUTTER:

22 Q. Did you acquire the shares of your --
23 some of your other sons? And did you pay money
24 for that?

25 A. No, sir.

1 Q. You didn't pay any money?

2 A. No, sir.

3 Q. Did you acquire their shares?

4 A. They gave it to me.

5 Q. And what was it in exchange for?

6 A. It wasn't in exchange for anything.

7 Q. Is there a document about it?

8 A. With the shares of the stock, yes.

9 Q. And how many shares did -- how many
10 shares is 18.3 percent? Did all of the sons have
11 the same number of shares?

12 A. Yes, they did.

13 Q. All right. And so which son -- a son
14 gave it back to you, right?

15 A. Yes.

16 Q. Which son?

17 A. Well, one son gave -- Alex gave 6
18 percent. I don't remember the date. I
19 transferred it back to him. He gave me his 18
20 and a third percent.

21 Q. Is that who you live with now?

22 A. He lives there, yes.

23 Q. And what was the consideration for him
24 giving the stock back to you?

25 A. There wasn't any consideration.

1 Q. And there was a 6 percent that -- that
2 was the other son. What was his name?

3 A. Alex.

4 Q. Alex. That's -- okay. And he
5 transferred 6 percent of his 18.3 back to you?

6 A. He did.

7 Q. And you transferred it back to him at
8 some point, right?

9 A. At some point.

10 Q. Why?

11 A. When he transferred it to me, it was --
12 it put me at over 51 percent.

13 Q. And when was it transferred back?

14 A. I don't recall.

15 Q. Was it because of this case?

16 A. No, sir.

17 Q. Well, did you make 51 percent of the
18 decisions, or what is your expected ownership
19 interest? What is the percentage?

20 What are you supposed to have and what
21 are the boys supposed to have? We're talking
22 about his 18.3. What percentage are you supposed
23 to have?

24 A. I started with 45.

25 Q. Okay. And it went up to 51?

1 A. It's 45, plus the 18 and a third. 63, I
2 think.

3 Q. And you had another 6 percent at some
4 point from your other son. So you had 69 percent
5 of all the shares at one time?

6 A. Yes.

7 Q. And you did what you wanted to -- you
8 did whatever you saw fit with Alex's, Inc.,
9 correct?

10 A. I did what I thought was best at the
11 time.

12 Q. So when you had 45 percent, the boys had
13 an ownership interest in it, right? They had a
14 bigger share than you did, right, when you had a
15 45 percent, right?

16 A. The three of them together, yes, sir.

17 Q. Yeah. And who made all the decisions
18 for the business? You, correct?

19 A. Yes.

20 Q. There weren't any kind of shareholders
21 meetings, right?

22 A. There was some.

23 Q. Okay. When?

24 A. I don't remember.

25 Q. Okay. Ms. Billips, I'm handing you a

1 document that your attorney has previously
2 reviewed. I'm looking for the -- it's on the
3 bottom, C. Billips 0142. It is dated May 3rd,
4 1999. And can you identify that document for me,
5 please?

6 A. Yes, sir, I can.

7 Q. What is it?

8 A. It is a copy of a note that I promised
9 to pay for some property, my son.

10 Q. Which property is it? Which property?

11 A. It was -- there was 2621 and the office.
12 It was the office.

13 Q. Y'all still own it?

14 A. Which I haven't -- I still owe my son
15 that.

16 Q. All right. And that's your signature on
17 the bottom of it?

18 A. It is.

19 Q. And the other son -- you borrowed money
20 from the other son? Who is that document right
21 there -- and I'm going to introduce -- move that
22 into evidence as Exhibit No. 4 in a second. What
23 son is involved in that document?

24 A. This one is William, my oldest son.

25 Q. Okay.

1 A. His brother, Alex has exactly the same
2 thing.

3 Q. Are you making payments on those?

4 A. No. I still owe both of them.

5 Q. All right.

6 A. I still have the notes.

7 MR. SAUTTER: Your Honor, I move
8 this into evidence as Plaintiff's Exhibit No. 4.

9 MR. RANNIK: Without objection.

10 THE COURT: Without objection.
11 Okay.

12 (PLF. EXH. 4 was marked for
13 identification and admitted into evidence.)

14 BY MR. SAUTTER:

15 Q. Does Alex's, Inc., still own the
16 corporate headquarters on Dorchester Road?

17 A. No, sir.

18 Q. When was that sold?

19 A. That went with the sale of Dorchester
20 Road and 2619. I had to -- they both had to go
21 with it in order to make the sale.

22 Q. All right. So 2619, was that the
23 location of the restaurant?

24 A. No, sir.

25 Q. 2619, was that the location of the

1 Alex's corporate office?

2 A. No. It was a rental house beside the
3 office.

4 Q. All right. And that's where -- that's
5 where Tony lived for some time, right?

6 A. No, sir.

7 Q. He didn't live there. Okay. So you
8 sold it all. Who owned the house at 2619?
9 Whose name was that in?

10 A. What do you mean? When?

11 Q. Who was the owner of 2619?

12 A. I was.

13 Q. You or Alex's, Inc.?

14 A. I was.

15 Q. Okay. Ms. Billips, I'm handing you a
16 document that has been previously identified as
17 C. Billips 0149, and would ask if you could
18 identify this document?

19 A. Yes.

20 Q. What is that?

21 A. That's where Alex Lee transferred his 6
22 percent to me.

23 Q. 6 percent that we talked about earlier?

24 A. Yes, sir.

25 Q. What was the value of that 6 percent?

1 A. I have no idea.

2 Q. You acknowledge it had some value,
3 right? Correct?

4 A. Yes.

5 Q. And who is Deborah A. Billips?

6 A. She was -- she was Alex's wife at the
7 time he died.

8 Q. Alex, Jr.'s wife, right?

9 A. Alex, Sr.

10 MR. SAUTTER: Your Honor, I move
11 this into evidence as the Plaintiff's next
12 exhibit, please.

13 THE COURT: No. 5.

14 MR. RANNIK: No objection.

15 THE COURT: Without objection.

16 (PLE. EXH. 5 was marked for
17 identification and admitted into evidence.)

18 MR. RANNIK: So does this have a
19 Bates number on it? Can we tell from before or
20 after what the Bates number is?

21 MR. ELLIS: Yeah. That comes from
22 between -- it's 155.

23 MR. RANNIK: 155. Let me just have
24 a quick look here. Thank you. Sorry. And then
25 we'll be good to go. All right. Thank you.

1 BY MR. SAUTTER:

2 Q. Ms. Billips, I'm handing you a document
3 that I believe has been previously identified as
4 CB Billips 0155. Can you identify that?

5 A. It says Alex Lee Billips, Jr., received
6 certificate no. 16 for 12 and one-third shares.

7 Q. All right. Is that your handwriting on
8 it?

9 A. Yes.

10 Q. So who else was involved in the transfer
11 of shares other than you and Alex, Jr., who
12 received it? That's it, right?

13 A. From this one. The way I read this,
14 it's -- yes. Yes, right.

15 Q. So let me just go ahead and move this
16 into evidence as the next exhibit.

17 MR. SAUTTER: Your Honor, I move it
18 into evidence as Plaintiff's Exhibit No. 6.

19 MR. RANNIK: No objection.

20 THE COURT: All right.

21 (PLF. EXH. 6 was marked for
22 identification and admitted into evidence.)

23 BY MR. SAUTTER:

24 Q. So in effect, you, on behalf of Alex's,
25 Inc., conveyed all of Alex's shares back to him,

1 correct?

2 A. His 6.

3 Q. 6 plus the 12 point whatever that is?

4 A. Well, he already had the 12.

5 Q. Yes, ma'am. That looks like the 12 is
6 going back.

7 MR. RANNIK: And, Judge, if I
8 might, I can clarify a little bit here.

9 MR. SAUTTER: That's fine.

10 BY MR. SAUTTER:

11 Q. So doesn't this indicate to you that 12
12 and one-third shares are going back to Alex, Jr.?
13 Isn't that what Exhibit No. 6 purports to be?

14 A. He only transferred 6 to me, and then
15 they got transferred back to him.

16 Q. So you're transferring 12.3 -- 12 point
17 one-third shares. What is that for?

18 A. He didn't have the -- he already had the
19 12.

20 Q. So what is that document right there,
21 Exhibit No. 6?

22 A. Well, maybe I messed up on it.

23 Q. Okay. So to your knowledge, did the
24 various units have their own -- have insurance on
25 them for liability insurance and things of that

1 nature with the StarStone National Insurance
2 Company?

3 A. I don't remember the name, but I guess
4 they've always had insurance on them.

5 Q. Okay. Well, I'm handing you a stack of
6 documents, and I'm not sure what I'm going to
7 offer into evidence.

8 But it starts, C. Billips 244, and it
9 goes through C. Billips 362. And to your
10 knowledge, did this insurance policy insure both
11 locations of Alex's, Inc., as well as the
12 Flowertown location?

13 A. I don't remember the name. I don't know
14 that we did have insurance, but I don't know the
15 name.

16 Q. Well, is it all in one policy, or do you
17 recall whether separate policies?

18 A. No. They have separate policies.

19 Q. Okay. So if we're looking at this --
20 and how was this insurance paid? Would it come
21 out of the Alex's, Inc., ledger?

22 A. Yeah. It would be part of the -- yes,
23 it was.

24 Q. And I'm looking at -- I'm looking at the
25 named insured endorsement, C. Billips 344, and it

1 says the named insureds -- what are the named
2 insureds listed there?

3 A. The Billips Enterprise, Inc., and
4 Carolyn Billips, Alex's, Flowertown, Alex's,
5 Inc., Carolyn Billips d/b/a 522 Magnolia.

6 Q. So all of these locations, Flowertown as
7 well as Alex's, Inc., as well as you,
8 individually, it looks like, were all insured
9 under this same policy, correct?

10 A. They had separate -- they were
11 separated.

12 Q. Well, how did you determine -- but they
13 were all paid -- who paid for the insurance?

14 A. Flowertown paid for its, and Alex's paid
15 for its.

16 Q. Who paid for yours?

17 A. Flowertown.

18 Q. And is there any document that would
19 show who paid for what insurance on a single
20 policy that insured apparently all locations?

21 A. It was broke down the amount that it
22 was.

23 Q. Okay. I'm just asking you -- I'm trying
24 to figure out who paid for what, and maybe it's
25 in here. Let me just do it this way. I don't

1 want to take up too much time. I'm handing you a
2 document that's been marked CB Billips 0244.
3 What is that?

4 A. This says insurance company name change
5 endorsement.

6 Q. Okay. Is that the face page for the
7 insurance on all locations that we've talked
8 about earlier?

9 A. Probably.

10 Q. Okay.

11 MR. SAUTTER: Your Honor, I move
12 that this page, CB Billips 244 into evidence as
13 the next exhibit for the plaintiff, please.

14 MR. RANNIK: No objection.

15 THE COURT: Do you just want that
16 one page for that?

17 MR. SAUTTER: Yes, sir.

18 THE COURT: Okay. Is that the dec
19 page or the face page?

20 MR. SAUTTER: That's the face page,
21 I believe, Your Honor.

22 (PLF. EXH. 7 was marked for
23 identification and admitted into evidence.)

24 BY MR. SAUTTER:

25 Q. And I'm handing you now, after I have

1 counsel have a look at it, CB Billips 344.

2 MR. RANNIK: All right. Thank you.

3 BY MR. SAUTTER:

4 Q. And what is this?

5 A. Policy -- endorsement changes to policy.

6 Q. Okay. It says, named insured
7 endorsements, correct?

8 A. Right.

9 Q. And under this one policy, who are the
10 named insureds one more time for the Court,
11 please?

12 A. Billips Enterprise, Inc., and Carolyn
13 Billips, Alex's Restaurant, Flowertown
14 Restaurant, Alex's, Inc., Carol Billips d/b/a 522
15 North Magnolia.

16 Q. Okay. And you've got no record of the
17 separate entities paying for their own insurance,
18 correct?

19 A. They did pay for their own.

20 Q. Okay. Do you have any records of it?

21 A. I'm sure checks and -- where they would
22 have paid went through the accountant, which
23 company had paid which.

24 Q. All right. But sitting here today,
25 you're not aware? Do you know of any specific

1 checks --

2 A. No, sir.

3 Q. -- or anything?

4 A. No, sir.

5 MR. SAUTTER: Your Honor, I move
6 into evidence what she's testified to, C. Billips
7 344.

8 MR. RANNIK: No objection.

9 THE COURT: Okay. Exhibit No. 8.

10 (PLF. EXH. 8 was marked for
11 identification and admitted into evidence.)

12 BY MR. SAUTTER:

13 Q. I'm looking at these named insureds, and
14 it lists Bills Enterprises, Inc., and Carolyn
15 Billips. When was Enterprises, Inc., formed?

16 A. It wasn't.

17 Q. Okay. Alex's Restaurant and what --
18 okay. Alex's Restaurant. It included the
19 Flowertown Restaurant, LLC, Alex's, Inc., Carolyn
20 Billips d/b/a 522 Magnolia, LLC. What is that?

21 A. That is a piece of property in
22 Summerville.

23 Q. Do you still own that?

24 A. Yes, sir.

25 Q. All right.

1 MR. SAUTTER: I move Exhibit -- I
2 think Exhibit 8 is already in.

3 THE COURT: That's 8, yeah. 8 is
4 in. Thank you.

5 MR. SAUTTER: Your Honor, may I
6 have one moment, please?

7 THE COURT: Yes.

8 MR. SAUTTER: I think we're
9 wrapping this witness up.

10 BY MR. SAUTTER:

11 Q. Is there a house in Georgia that you
12 have an ownership interest in?

13 A. Yes, sir.

14 Q. What's the address?

15 A. 3868 Tom Wheeler Road.

16 Q. What town is it in?

17 A. Towns County.

18 Q. Towns? How do you spell that?

19 A. T-O-W-N-S.

20 Q. What is that near, a bigger city?

21 A. It's --

22 Q. Macon, Atlanta, Savannah?

23 A. A couple hours from Atlanta.

24 Q. Which way?

25 A. It goes north. It's near Cleveland,

1 Georgia; Gainesville, Georgia.

2 Q. Okay. How many acres is it?

3 A. My house is on two and a half or 3, I
4 think.

5 Q. Where did the money come from to buy
6 that house?

7 A. The -- my brother built the house, and
8 he and I brought -- bought a piece of property
9 together.

10 Q. When?

11 A. I think '90 maybe, '91, somewhere in
12 there.

13 Q. Where did your money come from to
14 purchase the property?

15 A. The man that I bought it from, he
16 financed it, and I'm making payments.

17 Q. Are you still making payments?

18 A. No.

19 Q. When did you pay it off?

20 A. A long time ago. The land I bought, and
21 as I said, my brother built the house.

22 Q. And what -- what is all that worth?
23 What's the land worth and what's the house worth?
24 How much do you owe on it, as far as you know?

25 A. I don't know how much it's worth.

1 Q. Okay. And you agree with me that your
2 interest was purchased in that house from
3 proceeds of Alex's Restaurant?

4 A. No, sir.

5 Q. Where did the money come from?

6 A. As I say, the land was -- was not
7 expensive, and I made payments.

8 Q. How much was it, the land?

9 A. I think I bought it for like 3,000 an
10 acre.

11 Q. All right. So you testified there's two
12 point something acres?

13 A. Two or three, I think, is what the house
14 is on.

15 Q. How big is the house?

16 A. I don't know.

17 Q. Is it 1,500 square feet, over 1,500?

18 A. It is -- yeah. I would -- don't know
19 how many square feet it is, but I'm sure it's
20 over 1,500.

21 Q. Is it over 2,000?

22 A. I don't know.

23 Q. At some point -- or maybe you can help
24 me with the year. Was there a storm in the --
25 that affected the Goose Creek operation of

1 Alex's, Inc.?

2 A. Yes, sir.

3 Q. And was a business loss evaluation
4 requested and done on that because of the loss?

5 A. Yes, sir.

6 Q. Okay. And now I'm handing you what's
7 been previously marked as C. Billips 478 through
8 484, and I would ask that -- just you identify
9 what these series of document are. I think I'm
10 going to put all of these in. What is that?

11 A. It is -- it says a business income loss,
12 a valuation, or calculation.

13 Q. Does that concern the Goose Creek --

14 A. Yes, sir.

15 Q. -- location?

16 A. Yes, sir.

17 Q. Do you believe that report to be
18 accurate?

19 A. I think that it was.

20 Q. Yes, ma'am.

21 A. You know, I don't know.

22 Q. And y'all hired Dixon Hughes Goodman to
23 do it, or somebody hired them, correct? Dixon
24 Hughes is the one who did the business valuation,
25 right?

1 A. Yes, the attorneys handled that.

2 Q. Okay. And what is the business income
3 loss reflected on C. Billips 478 business income
4 from August 26, 2011 to April 30, 2012. I guess
5 that's --

6 A. I don't know the details on this.

7 Q. What does it say there on the report,
8 the business loss was during that time period?

9 A. August, it says \$150,000.

10 Q. And is there another time period of
11 business loss on that letter?

12 A. It says May 1st to July 31st.

13 Q. How much?

14 A. \$59,000.

15 Q. \$59,000.

16 A. But I don't -- I'm sure there
17 (inaudible).

18 Q. I'm sorry, \$209,620 for business losses
19 from the damage period August 26 th, 2011 to
20 April 30th, 2012 and from May 1st, 2012 to July
21 31st, 2012. Is that what that says?

22 A. That's what it says, but I don't know.

23 Q. Okay. What were the damages to the
24 Goose Creek that caused the loss of -- the loss
25 of -- lost business?

1 A. We were closed down for, I think, over a
2 year or --

3 Q. During these time periods?

4 A. Yes.

5 Q. All right. And you don't have any
6 reason to sit here today and say this valuation
7 is not accurate, do you?

8 A. I couldn't say yes or no. I don't know.

9 Q. Okay. All right.

10 A. All I was doing was just --

11 Q. But this was submitted to your insurance
12 company?

13 A. Yes.

14 Q. -- on behalf -- by Dixon Hughes Goodman,
15 certified public accountants and advisors,
16 correct? And they did -- is that true?

17 A. Yes, sir.

18 Q. And they did a sales analysis as well,
19 right?

20 A. I don't know.

21 MR. SAUTTER: Your Honor, I'm going
22 to move these next series of documents, CB
23 Billips 478 through CB Billips 484 as the next
24 plaintiff's exhibit. I move them into evidence.

25 THE COURT: Exhibit 9?

1 MR. SAUTTER: Yes, sir.

2 THE COURT: Without objection?

3 MR. RANNIK: No objection.

4 (PLF. EXH. 9 was marked for
5 identification and admitted into evidence.)

6 BY MR. SAUTTER:

7 Q. Did Alex, Jr., open up his own stereo
8 store in the -- right next to the Rivers Avenue
9 location?

10 A. He did build -- he did built it over
11 there, yes, sir.

12 Q. Where did that money come from?

13 A. He borrowed it from the bank.

14 Q. Did Alex's, Inc., or you or anyone, part
15 of this -- the defendants contribute anything to
16 him acquiring that property or building that --
17 it's a stereo store, wasn't it?

18 A. He built a stereo shop, yes, sir.

19 Q. To your knowledge, did Alex's, Inc.,
20 contribute to it or any --

21 A. No.

22 Q. -- of the defendants? No?

23 A. He did not.

24 Q. He went and borrowed money from the
25 bank?

1 A. He went and borrowed money from the
2 bank.

3 Q. And did Alex's, Inc., transfer that lot
4 to him where the stereo store is?

5 A. No. No, sir.

6 Q. So he acquired all of it from the bank?

7 A. He bought it, yes.

8 Q. Alex's, Inc., owned the parking lot that
9 that stereo store was built on, correct?

10 A. It still owned it when I -- it was
11 still -- it was a piece of property that joined
12 Alex's Restaurant there.

13 Q. Right.

14 A. The parking lot part of the -- he used
15 part of -- when he went in and out of the parking
16 lot, he used part of the parking lot of Alex's,
17 Inc. I'm sure they did with the -- for the size
18 of the lot.

19 Q. Okay. And how much money did Alex's,
20 Inc., receive when that -- when it was
21 transferred to your son for the stereo shop for
22 the part of the parking lot?

23 A. It wasn't transferred to him.

24 Q. Okay. He didn't transfer -- Alex's,
25 Inc., didn't transfer it to him?

1 A. He didn't transfer any property to him,
2 no.

3 Q. All right. Who owns that property now?

4 A. It's sold.

5 Q. Did he pay any rent to you for the use
6 of that parking lot?

7 A. It wasn't his solely to use. The
8 restaurant used it. It was for the whole -- for
9 the -- the people at the stereo shop used it, and
10 the restaurant used it. It wasn't separated.

11 Q. But Alex's, Inc., owned the Rivers
12 Avenue restaurant, and they also owned that
13 parking lot right there, right? They owned that
14 parking lot that he built the stereo shop on?

15 A. No. No. He didn't build a stereo shop
16 on Alex's, Inc.'s property.

17 Q. Okay. I'm just trying to get clarified,
18 what did Alex's, Inc., own there? They owned the
19 restaurant, right, and the land it was on?

20 A. Yes.

21 Q. And they owned the parking lot, right?

22 A. Behind the restaurant, yes.

23 Q. Behind the restaurant?

24 A. Yes.

25 Q. And then, at some point, Alex, Jr.,

1 built a stereo shop, correct?

2 A. On the property beside the Alex's,
3 Inc.'s property.

4 Q. What money flowed to Alex's, Inc.,
5 from -- from the stereo shop or from Alex, Jr.,
6 from his use of that property?

7 A. He didn't pay any rent, if that's what
8 you're asking, when his customers used it.

9 Q. So is he still operating a stereo shop
10 there?

11 A. No.

12 Q. And Rivers Avenue was sold?

13 A. Yes.

14 Q. And that included both that parking lot
15 that -- and does that also include the stereo
16 place?

17 A. No. They were two separate pieces of
18 property.

19 Q. But when you -- when you sold Rivers
20 Avenue, you also sold the parking lot on Rivers
21 Avenue that Alex, Jr., was also using, correct?

22 A. He wasn't solely using it. When Alex's
23 Restaurant sold, it sold all of its property,
24 period.

25 Q. Okay. And I think we got that closing

1 statement already into evidence, but one last
2 question about that. And so Tony Billips didn't
3 receive 18.3 percent of anything from the sale of
4 the Rivers Avenue location, right?

5 A. Correct.

6 Q. And my question again is why?

7 A. There was no distribution, I said.

8 Q. But there were distributions to your
9 taxes, correct?

10 A. Some of the taxes were paid for that,
11 but it was -- I paid some of the corporation's
12 taxes out of the sale of my property. I
13 just tried to keep everything afloat.

14 Q. You tried to keep everything afloat, but
15 you considered everything together; isn't that
16 true?

17 A. No. I was responsible.

18 Q. Okay.

19 A. I felt responsible, and I was
20 responsible because if one fell -- if I defaulted
21 on one loan, that was a problem.

22 Q. But you also had your liability, and
23 your separate, individual liabilities were
24 addressed from the sale of these units, correct?
25 We've already talked about them.

1 A. Yes, sir.

2 Q. So you personally benefited from the
3 liquidation of the various units, right?

4 A. The -- yes. I guess you could say so,
5 yes.

6 Q. And I know I've asked you this before,
7 but was the -- who was making all these
8 decisions? It was just you, right?

9 A. Yes, sir.

10 Q. To your knowledge -- we're talking about
11 the Flowertown location now in Summerville, South
12 Carolina. Did Flowertown ever pay Alex's, Inc.,
13 anything for the use of its name, provide any
14 royalties to Alex's, Inc.?

15 A. No, sir.

16 Q. Why not?

17 A. I didn't -- frankly, I didn't think
18 about it. And for the use -- the name when I
19 changed the sign, I felt like it was mutually
20 beneficial.

21 Q. Mutually beneficial to who?

22 A. The corporation to -- to Alex's in Goose
23 Creek and to Flowertown. I considered it a cost
24 savings on printing the menus and also beneficial
25 to both.

1 Q. So beneficial to both locations that --
2 of Alex's, Inc., and Flowerdown, which was called
3 Alex's, correct? The menus were the same, right?

4 A. Yes.

5 Q. Insurance was the same on those two
6 locations, right?

7 A. But they were paid for separately.

8 Q. And you don't have any records today
9 that they were paid for separately or how they
10 were paid for, correct?

11 A. My accountant had a record of those. He
12 knew what went to -- the paperwork we gave them,
13 the checks and all, that's recorded in my tax
14 returns.

15 Q. Okay.

16 THE COURT: Mr. Sautter, I know
17 you're ready to wrap up. Do you want to take a
18 break right now --

19 MR. SAUTTER: Yes, sir.

20 THE COURT: -- so y'all can make a
21 decision as to whether or not we're going to go
22 into examining her now or later. Let's take five
23 minutes right now. We've been going for a while;
24 so let's take five.

25 MR. SAUTTER: Thank you, Your

1 Honor.

2 THE COURT: Then you can decide how
3 you want to proceed, and then we'll go from
4 there.

5 (A recess transpired.)

6 THE COURT: Mr. Sautter?

7 MR. SAUTTER: Thank you, Your
8 Honor.

9 BY MR. SAUTTER:

10 Q. I asked you briefly about a Dorchester
11 house. Do you have any knowledge of whether Tony
12 Billips lived in that house at all?

13 A. Are you talking about the 2619?

14 Q. Yes, ma'am. Ferrara Drive, Dorchester
15 Road. Do you agree with me or not that he lived
16 there in 1991?

17 A. No, he didn't.

18 Q. He didn't?

19 A. No.

20 Q. Okay. All right. Do you agree with me
21 that Tony was the first manager of the unit --
22 the Flowertown location in Summerville?

23 A. No, sir.

24 Q. He wasn't?

25 A. No, sir.

1 Q. Tell me about the shopping center that
2 was developed in Goose Creek around the Goose
3 Creek unit location. Do you still own that?

4 A. No, sir.

5 Q. Who owns it?

6 A. I don't know who owns it now.

7 Q. Did you sell it?

8 A. Yes, sir.

9 Q. Whose name was it in?

10 A. I had a partner.

11 Q. Who?

12 A. Mark Marinas.

13 Q. How much did you sell it for?

14 A. I don't remember.

15 Q. And is it fair to say that that shopping
16 center was developed at the same time that that Goose
17 Creek location was developed that was part of
18 Alex's, Inc.?

19 A. No, it wasn't.

20 Q. It wasn't?

21 A. No.

22 Q. It wasn't developed around the same
23 time?

24 A. No, sir.

25 Q. You have no idea what he sold it for?

1 A. No, sir.

2 Q. Let me just kind of get to a point where
3 I can wrap up my examination. You can't show the
4 amount that you put in personally to Alex's,
5 Inc., and these various units, can you?

6 A. No, not directly, no.

7 Q. But we can see what came out on those
8 closing statements, right?

9 A. Yes, sir.

10 Q. And you liquidated those units -- well,
11 are you aware of any way to value the units that
12 have been sold, such as for today's dollar, for
13 today's purposes, the units at Dorchester Road,
14 Moncks Corner, Mt. Pleasant, how do -- do you
15 know a way that would be available to value those
16 units as an ongoing concern?

17 A. No idea.

18 Q. All right. And you liquidated those
19 units to benefit yourself, correct?

20 A. And the rest of the corporation.

21 Q. The rest of the corporation?

22 A. Yes.

23 Q. All right. And no distributions were
24 made to Tony Billips at any time about that?

25 A. No, sir.

1 Q. Now, at some point, we talked about
2 earlier where Alex, Jr., transferred stock to you
3 and you transferred stock back. What was that
4 all about? Why was that done?

5 A. As I said, to make me 51 percent
6 ownership.

7 Q. And why was that important?

8 A. The -- I don't remember exactly any
9 particular thing. I just knew it was from
10 original incorporation when we changed it to from
11 45 to Alex at 55, so...

12 Q. Well, was that done to borrow money from
13 the banks?

14 A. Probably.

15 Q. Was it also done so that he would
16 continue to have a minority share in the
17 business, and then you could do whatever you
18 wanted with it, correct?

19 A. No, sir. I'm sure it had to do with the
20 bank and loaning money.

21 Q. Okay. And once the bank loan came in,
22 you transferred the stock back to Alex Cash,
23 right -- I mean, Alex, Jr.?

24 A. No, sir.

25 Q. You did transfer it back?

1 A. I transferred it back. I don't know any
2 specific loan it would have been. I say the
3 banks, but that probably is what it was.

4 Q. Okay. And then, once you got the money,
5 you transferred the stock back to Alex, Jr.,
6 right?

7 A. I don't know the -- I can't say exactly.
8 I don't know if it was the exact loan or what it
9 was. I don't know.

10 Q. All right. So Alex, Jr., transferred
11 all of his shares in Alex's, Inc., to you at one
12 point, correct?

13 A. No, 6 percent.

14 Q. 6 percent. And then there's -- one of
15 the exhibits has 12 point -- what is that about?
16 You transferred 12.6 back to him.

17 A. I don't know.

18 Q. You don't know anything about that?

19 A. Like I say, maybe it was a mistake I
20 made. I don't know. He only transferred 6.

21 Q. Okay. So who -- you talked about a
22 mistake that you might have made. Who was
23 supervising you? Who did you have to answer to
24 in the Alex's, Inc., empire? Is it fair to say
25 no one, except for the creditors, the South

1 Carolina Department of Revenue, correct?

2 A. I tried to go with -- I went with -- I
3 did the best I could with what I had. I checked
4 with my accountants at the time and tried to do
5 the best I could.

6 Q. You made those decisions?

7 A. Yes, sir.

8 Q. Did you consult with Mr. Billips about
9 those decisions that affected his interest and
10 affected his equity in Alex's, Inc.? Was he
11 consulted?

12 A. We did -- we had some meetings, but I
13 don't know how many, and I don't remember when.

14 Q. Okay. And do you recall one meeting
15 where you were upset about -- was the subject of
16 one of those meetings insurance bills?

17 One of the corporate meetings -- and I'm
18 trying to stretch -- you said that you've had
19 meetings involving Alex's, Inc. Do you recall
20 whether one of those meetings concerns the
21 insurance bills?

22 A. No. I don't recall.

23 Q. Was Tony brought into the conversation
24 that these units of Alex's, such as Mt. Pleasant,
25 Rivers Avenue, were liquidated and how the

1 proceeds were going to be applied? Was he part
2 of that conversation?

3 A. I don't remember if he was around when I
4 sold -- I don't -- I don't remember if he was
5 there or not.

6 Q. Was there any kind of corporate
7 resolution or anything to sell those?

8 A. I'm sure there was.

9 Q. But you don't have any recollection of
10 Tony Billips being consulted when you liquidated
11 Mt. Pleasant, correct?

12 A. I think there was on Mt. Pleasant. I
13 think he -- I think I faxed the paper to him, the
14 best I remember.

15 Q. Which paper?

16 A. That needed his signature, and then he
17 faxed it back, the best I remember.

18 Q. Okay. But he didn't have any input as
19 to what -- where the proceeds went from the sale
20 of these various units, right? That was all you.
21 You made those decisions?

22 A. Yes.

23 MR. SAUTTER: That's all I have at
24 this time, Your Honor.

25 THE COURT: Okay. All right.

1 MR. RANNIK: Judge, what I would
2 like to do is do a brief cross-examination on the
3 issues raised by Mr. Sautter, and then we will
4 call Ms. Billips later in our case.

5 THE COURT: Okay. All right. I
6 will allow that, sure.

7 MR. RANNIK: Thank you.

8 CROSS-EXAMINATION

9 BY MR. RANNIK:

10 Q. Good morning, Carolyn.

11 A. Morning.

12 Q. I want to touch on a couple of things
13 that you've talked about already this morning.
14 You were asked where the video poker revenues
15 were deposited. Can you tell Judge Scarborough
16 where those were deposited?

17 A. The money went into the bank account the
18 same as the food sales did.

19 Q. Into the operating account for Alex's?

20 A. Yes, yes. They were deposited into
21 there.

22 Q. All of them?

23 A. Yes.

24 Q. So they would show up on the tax
25 returns?

1 A. Yes.

2 Q. Now, you've been asked a number of
3 questions about the sale of various properties of
4 Alex's, which happened a long time ago. But
5 without getting into specific details, did you
6 ever pay yourself a bonus from the sales of these
7 properties?

8 A. No, sir.

9 Q. Did all of the proceeds -- were they all
10 used to pay off existing obligations?

11 A. Yes.

12 Q. Why were funds used from the sale of an
13 Alex property to pay off a tax lien for
14 Flowertown, for example?

15 A. Because the -- I couldn't default on one
16 without it affecting the other. And I knew that.
17 And so I did and tried to make a note so later I
18 could pay it -- you know, whoever owed who could
19 pay it back, could be straightened out.

20 Q. And so had Flowertown been closed down
21 and unable to pay its tax lien, the IRS would
22 have closed down Alex's in order to recover the
23 amounts owed? That was your understanding?

24 A. Yes, because I was responsible.

25 Q. Now, did Tony Billips ever invest in

1 Alex's, Inc.?

2 A. No.

3 Q. Did he ever loan money to Alex's, Inc.?

4 A. No.

5 Q. So were there any loans by Tony Billips
6 to be repaid out of the sales of these
7 properties?

8 A. No.

9 Q. And you weren't paying yourself back the
10 loan? You were paying the tax obligation on the
11 basis that you had already given money to the
12 company. You needed to pay a tax obligation.
13 This was the only way to get the money to pay the
14 tax obligation to keep the business afloat; isn't
15 that right?

16 MR. SAUTTER: Objection, Your
17 Honor. That's leading.

18 THE COURT: He is on cross; so I'm
19 going to give him that opportunity.

20 MR. SAUTTER: Your Honor, this
21 is -- and I would just state an objection
22 briefly. I mean, this is his witness. This is
23 his party.

24 I think the normal rules of
25 cross-examination, you can cross and lead an

1 adverse witness, but you can't cross and lead
2 your own witness. And I would lodge an objection
3 to that.

4 THE COURT: All right. Objection
5 noted and overruled.

6 MR. RANNIK: Thank you, Judge.

7 BY MR. RANNIK:

8 Q. So isn't that right, Ms. Billips?

9 A. I knew if I defaulted on one, that it
10 would affect the other because I was working
11 with -- working with the banks, with the IRS. I
12 knew I couldn't default on any of them.

13 Q. Were any of your personally owned
14 properties ever bundled with an Alex property in
15 order to effect the sale?

16 A. Yes.

17 Q. Can you please describe that for the
18 Judge?

19 A. Dorchester Road, in order to make the
20 sale -- because nothing was selling. Money was
21 tight, and so nothing was happening. I had to
22 put 2621 Ferrara and 2619 with it in order to
23 make the sale.

24 At that time, it was -- it was just that
25 they were -- the IRS and the state were getting

1 ready to shut me down, to lock the doors.

2 Q. And the buyer wouldn't buy Dorchester
3 Road without you including these two
4 properties --

5 A. No.

6 Q. -- in addition?

7 A. No. I had -- no.

8 MR. SAUTTER: Your Honor, can I
9 have a notation of a continuing objection to the
10 leading of his own witness?

11 THE COURT: So noted. Yep. So
12 noted.

13 MR. SAUTTER: Thank you.

14 THE WITNESS: No. He wouldn't buy
15 it, and we couldn't find a buyer unless I put
16 that with it.

17 BY MR. RANNIK:

18 Q. Now, you were asked some questions about
19 the sale of Mt. Pleasant, as you will recall, and
20 the document that you were shown -- I believe it
21 was Plaintiff's Exhibit 3 -- showed that there
22 was a mortgage to the seller on there. Do you
23 remember there?

24 A. Yes, sir.

25 Q. Was this a mortgage issued by you,

1 Carolyn Billips, or by the owner of the property,
2 Alex's Restaurants, Inc.?

3 A. Alex's Restaurant, Inc.

4 Q. And I'd like to show you what I will
5 mark as Defendant's Exhibit 1.

6 MR. RANNIK: And I've got a copy
7 for Your Honor.

8 THE COURT: Thank you. Defendant's
9 1?

10 MR. RANNIK: Defendant's 1.

11 (DFT. EXH. 1 was marked for
12 identification.)

13 BY MR. RANNIK:

14 Q. Now, Ms. Billips, you testified that
15 you -- your memory was that you had faxed the
16 document that needed to be signed to Tony. Is
17 this the document that you were referring to?

18 A. Yes, sir.

19 Q. Would you please read the third
20 paragraph to the Court?

21 A. Resolve that Carolyn Billips has been
22 given unanimous authority to execute any and all
23 documents necessary to sell or otherwise
24 transact, including a second mortgage for the
25 sale of the property commonly known as 302

1 Coleman, Mt. Pleasant, South Carolina.

2 Q. Thank you. And the three signatures
3 that appear there, do you recognize those
4 signatures?

5 A. Yes. Mine and Tony's and Alex's.

6 Q. So in answer to the question you were
7 asked repeatedly, you did talk to Tony about the
8 sale of these properties, correct?

9 A. Yes.

10 Q. And you had authorization from Tony to
11 issue a seller's mortgage on this property?

12 A. Yes.

13 Q. Now, again, these sales happened over a
14 decade ago, but -- and so now, as you sit here
15 today, some of the memories of what the various
16 proceeds were used for is a little hazier than it
17 was. But at the time, did you know where the
18 proceeds were going?

19 A. Not exactly.

20 Q. You knew that there were outstanding
21 obligations?

22 A. I knew there was tax liens and I -- and
23 sales tax and IRS. I knew those would come --
24 would come first.

25 Q. And then whatever was left would be

1 left?

2 A. Yes.

3 Q. When did the boys receive their shares
4 in Alex's, Inc., approximately?

5 A. Approximately, I would -- probably at
6 25, around that, somewhere there is when
7 probably. I'm not sure.

8 Q. Because what happened to the 55 percent
9 that was owned by Alex, Sr., upon his death in
10 1980?

11 A. It was in trust.

12 Q. And who were the trustees?

13 A. Myself and Eddie Jackson.

14 Q. And so you held it in trust until a
15 certain age, and then it was passed on to the
16 boys?

17 A. Yes.

18 Q. Is there any question today that you own
19 63 and a third percent of Alex's Restaurant,
20 Inc.?

21 A. No.

22 Q. Is there any question that Mr. Tony
23 Billips owns 18 and a third percent?

24 A. No, sir.

25 Q. Is there any question that Alex Lee,

1 your son, owns 18 and a third percent?

2 A. No, sir.

3 Q. And Alex Lee agreed to give you 6
4 percent of his interest, correct?

5 A. Yes.

6 Q. And Casey -- William Casey agreed to
7 give you ultimately his entire share, correct?

8 A. Yes.

9 Q. Is there any action that you have ever
10 taken, as you sit here today, that you can
11 remember, that was not taken with the goal of
12 serving Alex's Restaurants, Inc., to the best of
13 your ability?

14 A. No, sir. No, sir. I always tried to --
15 it was in the forefront to make sure the bills
16 were paid and figure out how -- I knew that had
17 to come first.

18 That was where I made a living, and
19 that's where -- if anything was going to be left
20 to my sons. That's where Debbie worked. That
21 was her job. We got along very well together and
22 became very good friends. But my -- my goal was
23 to keep them intact. That was my hope.

24 MR. RANNIK: Thank you very much.

25 Nothing further, Judge.

1 THE COURT: Any follow-up?

2 MR. SAUTTER: Yes, sir.

3 MR. RANNIK: Judge, a housekeeping
4 matter, I don't believe I ever moved my
5 Defendant's 1 into evidence.

6 THE COURT: Defendant's 1?

7 MR. SAUTTER: No objection, Your
8 Honor.

9 THE COURT: Okay. Without
10 objection.

11 (DFT. EXH. 1 was admitted into
12 evidence.)

13 REDIRECT EXAMINATION

14 BY MR. SAUTTER:

15 Q. So is it fair to say that the proceeds
16 from the sale of these various units were all
17 bundled together to keep the Alex's, Inc.,
18 entities afloat?

19 A. And I guess some to pay -- some that I
20 had for Flowertown also.

21 Q. You considered them all in one bundle,
22 right? You were trying to save everything is was
23 what your testimony was. Wasn't that what you
24 just testified to?

25 A. Yes, yes.

1 Q. Okay.

2 A. Yes, I was trying to save everything.

3 Q. Okay. And I think you said something
4 else. You said, if there would be anything left
5 to the sons. And is there anything left to the
6 sons?

7 A. They have Goose Creek.

8 Q. Goose Creek. And what are your plans
9 for Goose Creek?

10 A. The -- to stay open, depending on what
11 with all this COVID stuff.

12 Q. Would you consider transferring Goose
13 Creek to the plaintiff in resolution of this
14 case?

15 A. No.

16 Q. Why not?

17 A. Just no.

18 Q. Why?

19 A. Because I don't want to.

20 Q. I know you don't want to. Is there a
21 reason for it? Is there something that -- is
22 there some bitterness towards Mr. Billips that we
23 haven't addressed yet?

24 A. No.

25 Q. What is the reason? Why has he not been

1 given 18.3 percent of these units that were
2 liquidated and the ongoing Goose Creek? Why
3 don't you recognize his 18.3 interest in those
4 entities?

5 A. He's not the only one that has an
6 interest in it.

7 Q. It's you and him and then one other son,
8 right? You've got 63 percent now. Is it fair to
9 say that you -- so you don't consider his
10 interest, right?

11 A. I really don't know how to answer that.

12 Q. All right. And you took the proceeds
13 from these various entities, and you applied them
14 as you saw fit? You applied them to your
15 personal tax liability, correct? You applied
16 them to -- you applied those proceeds to bail out
17 Flowertown, correct?

18 A. I also sold my sole property.

19 Q. Now, what you are you talking, you sold
20 your sole property?

21 A. I sold property that was mine and put
22 the money in the corporation.

23 Q. Okay. And let's talk about the
24 Dorchester Road -- the Dorchester Road property.
25 What was the restaurant sold for? And I think

1 you've testified that another lot was -- and
2 another house was included in that, and it was
3 sold for \$320,000, right?

4 A. Yes.

5 THE COURT: We plowed that ground.
6 What's in response to this cross?

7 MR. SAUTTER: And I will get there.
8 It's -- I've got a letter from the next exhibit,
9 CB Billips 1095, that the value of the property
10 of Alex's Restaurant was \$315,000, and the
11 property in toto sold for \$320,000. And that's
12 as far as I'm going on this, Your Honor.

13 THE COURT: Okay. All right. Do
14 you want to show her that? Show it to her. I
15 think she testified about that just a minute ago.
16 BY MR. SAUTTER:

17 Q. And I'm handing you a document that's
18 been produced by your counsel, CB Billips 1095,
19 dated November 2nd, 2011. What is that,
20 Ms. Billips?

21 A. That is an appraisal on Dorchester Road.

22 MR. SAUTTER: Your Honor, I would
23 move that into evidence as the next exhibit.

24 THE COURT: All right. We'll mark
25 that as Exhibit 10.

1 MR. SAUTTER: Exhibit 10.

2 THE COURT: Plaintiff's.

3 MR. SAUTTER: Plaintiff's Exhibit
4 10. Thank you.

5 (PLF. EXH. 10 was marked for
6 identification.)

7 BY MR. SAUTTER:

8 Q. All right. So now we're back and
9 looking at Exhibit No. 2. The gross amount
10 received was for \$320,000, correct, for the
11 Dorchester Road properties?

12 A. Yes.

13 Q. And the value of the restaurant,
14 according to Exhibit -- I think it's going to be
15 Plaintiff's Exhibit No. 10, the restaurant alone
16 was valued at \$315,000, correct?

17 A. That's what it was then, but I could not
18 sell it for that.

19 Q. Okay. And you sold it for \$320,000,
20 correct, the Dorchester Road properties?

21 A. Yes.

22 MR. SAUTTER: I move into evidence
23 Exhibit No. 10, please for the plaintiff.

24 MR. RANNIK: No objection.

25 THE COURT: Without objection.

1 Thank you.

2 (PLF. EXH. 10 was admitted into
3 evidence.)

4 BY MR. SAUTTER:

5 Q. Let's look back at this Defendant's
6 Exhibit 1 for just one quick moment. Looking at
7 what's been marked as Defendant's Exhibit 1,
8 corporate resolution, according to that document,
9 does that give you the authority to disburse the
10 proceeds as you see fit?

11 Does it say anything about how the
12 proceeds are going to be distributed?

13 A. I think this document gives me the -- or
14 obviously, it gives the authority to sell it.

15 Q. It gives you the authority to sell it,
16 but it doesn't say anything about him saying that
17 you can do what you want with the proceeds of
18 Mt. Pleasant, correct?

19 A. Yes.

20 MR. SAUTTER: Your Honor, that's
21 all that I have at this time.

22 THE COURT: Okay. Ms. Billips, I
23 think the only question I've got is, the
24 document, such as Defendant's 1, where this
25 corporate resolution is signed off by the three

1 board members in this instance, was that
2 consistent with each of these sales? Did y'all
3 do this in each instance? Do you recall?

4 THE WITNESS: No, I don't recall.
5 But I don't think it was required.

6 THE COURT: Okay. All right. And
7 I think I have one other question. Hold one
8 second. Yeah. You said that, as to the Goose
9 Creek -- the current Alex's Restaurant is the
10 Goose Creek property; is that right?

11 THE WITNESS: Yes, sir.

12 THE COURT: Okay. And your
13 testimony earlier was that you were close to
14 profitable. Is it still a profitable enterprise
15 as we sit here today?

16 THE WITNESS: Today, I honestly
17 can't say because we are only open because of the
18 PPP laws.

19 THE COURT: Okay.

20 THE WITNESS: So and it's -- we had
21 two of those.

22 THE COURT: And can you tell me how
23 much they total to?

24 THE WITNESS: The first one was
25 \$202,000, and the second one is, I think,

1 \$227,000.

2 THE COURT: So together close to
3 \$450,000?

4 THE WITNESS: Yes, sir.

5 THE COURT: Okay. If my math is
6 right. Maybe it's 430. You've got actually two
7 PPP loans to keep the doors open?

8 THE WITNESS: Yes, sir.

9 THE COURT: And I'm sure -- you've
10 testified to this. I'm sure you're having
11 trouble getting workers.

12 THE WITNESS: Yes, sir.

13 THE COURT: But that's the economy
14 we're living in right now. I'm with you on that
15 one.

16 THE WITNESS: Yes, sir.

17 THE COURT: Okay. But the plan for
18 now is to keep the doors open; is that right?

19 THE WITNESS: That's my hope.

20 THE COURT: Okay. And what is the
21 status of the payback on those loans? Is there
22 any requirement or any payment plan on those
23 loans that you're aware of?

24 THE WITNESS: On the first one, the
25 202, at this point, I'm hopeful I've gotten --

1 from what I understand, they can decide later. I
2 don't remember how many months it said they
3 could -- if they are allowed to be able to get to
4 use the whole thing or not. The second one, I
5 don't have any idea.

6 THE COURT: Okay. One of the
7 requirements was you had to keep your
8 employees --

9 THE WITNESS: Yes.

10 THE COURT: -- and keep your doors
11 open, correct?

12 THE WITNESS: Yes.

13 THE COURT: And that's for a
14 certain period of time?

15 THE WITNESS: Yes, sir.

16 THE COURT: All right. And then
17 finally, you made reference to, when you pay off
18 the debts, when the debts -- when the properties
19 were sold and the debts were paid, you would pay
20 off these other debts. Were all the properties
21 cross-collateralized with one bank, or were there
22 individual loans for each property?

23 THE WITNESS: I had individual
24 loans on each one. The -- that was on that. But
25 my signature was required on everything, which my

1 understanding was, it obligated me in all areas.

2 THE COURT: Okay. And so the
3 liens, the tax liens, would have been for Alex's,
4 Inc.; is that right?

5 THE WITNESS: Yes, sir.

6 THE COURT: And so you're trying to
7 satisfy those liens as you go, and that would be
8 as to all restaurants?

9 THE WITNESS: Yes.

10 THE COURT: But the mortgage loans
11 would be individualized --

12 THE WITNESS: Yes, sir.

13 THE COURT: -- to each particular
14 location?

15 THE WITNESS: Yes, sir.

16 THE COURT: Okay. All right.
17 Thank you. That's all the questions that I've
18 got.

19 If y'all have any follow-up, you
20 certainly may. Mr. Ellis don't get any.
21 Mr. Sautter, do you have any? I'm not switching
22 gears on her. I'm not going to let you switch
23 horses on me midstream.

24 BY MR. SAUTTER:

25 Q. Is it fair to say that the tax liens,

1 the South Carolina Department of Revenue tax
2 liens, were in Alex's, Inc., as well as you
3 personally?

4 A. I had to get them on both.

5 Q. Yes, ma'am. And then you were -- it
6 sounds like -- were you a guarantor on those
7 mortgages and the money that was borrowed?

8 A. Yes.

9 Q. You personally guaranteed them?

10 A. Yes.

11 Q. Because you were in charge of the money
12 on all of the Alex's, correct?

13 A. Yes.

14 Q. And you were in charge of your own
15 money, correct?

16 A. Yes.

17 Q. Okay. There were liens paid off in the
18 name of Flowertown, Inc., SCDOR, correct, out of
19 the proceeds of the sale of some of these
20 properties?

21 A. Flowertown, yes.

22 Q. And Carolyn Billips' individual loans
23 were paid out of the proceeds, correct?

24 A. Yes.

25 MR. SAUTTER: No further questions

1 at this time.

2 THE COURT: Okay. Thank you. All
3 right. Ms. Billips, thank you, ma'am. You may
4 step down. Watch your step coming off that ramp.

5 Why don't we -- let's take our lunch
6 break now. It's a little after 12:30, and let's
7 just plan to move forward at 2. We're still in
8 the plaintiff's case. I'm assuming y'all are
9 going to say call whoever your expert is. I know
10 Mr. Ewart is back there or Mr. Billips, however
11 y'all want to go proceed, but let's go forward.

12 For somebody didn't want to put up any
13 evidence, y'all have certainly taken up my
14 morning. I don't know how long -- how long this
15 is going to go, but my tomorrow just fell apart.
16 So if we need to go into tomorrow, we can, but
17 that is not my goal. Okay? My goal is to get
18 this done today. All right. Just so y'all know.
19 Let's plan to be ready to go at 2 o'clock.

20 (A recess transpired.)

21 THE COURT: All right. Mr. Ellis,
22 we're back on your case.

23 MR. ELLIS: Thank you, Your Honor.
24 At this time, the plaintiff will call Michael Fox
25 to the stand.

1 THE COURT: All right. Come on up,
2 Mr. Fox. I think you've been there before.

3 (MICHAEL FOX, having first been
4 duly sworn, testified as follows:)

5 THE COURT: Thank you, sir. Please
6 have a seat, and when you get comfortable, if you
7 would give us your full name and address for the
8 record.

9 THE WITNESS: My address is -- my
10 mailing address is 4621 Durant Avenue in North
11 Charleston, and my residence is 5261 County Line
12 Road in Ravenel.

13 THE COURT: It's Michael?

14 THE WITNESS: Michael C. Fox. The
15 C stands for Clark, very important.

16 THE COURT: All right. Very good.
17 Thank you, Mr. Fox.

18 All right. Mr. Ellis, you may proceed.

19 MR. ELLIS: Thank you, Your Honor.

20 DIRECT EXAMINATION

21 BY MR. ELLIS:

22 Q. Good afternoon, Mr. Fox. How are you?

23 A. Good afternoon, Mr. Ellis. How are you
24 today, sir?

25 Q. Not too bad. I think we spoke on the

1 phone a couple times, so it's nice to meet you in
2 person.

3 A. We may have. Thank you.

4 Q. What is your role in Alex's, Inc.? What
5 is your role and relationship to Alex's,
6 Incorporated?

7 A. I'm their accountant.

8 Q. Okay. And how about as far as Carolyn
9 Billips? What is your role in -- with regard to
10 Carolyn Billips, individually?

11 A. I am her accountant as well.

12 Q. Okay. And can you name the other
13 businesses in which Carolyn Billips is an owner,
14 that you have some sort of role in?

15 A. Carolyn is the sole owner of Flowertown
16 Restaurant in Summerville, Alex's, whichever you
17 want to refer to it as. And she is a major
18 stockholder in Alex's, Incorporated.

19 Q. Is that the only two?

20 A. Sir?

21 Q. Is that the only two?

22 A. Yes, sir.

23 Q. How about 522 Magnolia, LLC? Are you
24 familiar with an entity by that name?

25 A. Well, that's just a single member

1 property that she owns.

2 Q. Okay. Do you have any role with that
3 company?

4 A. It's included in her rental properties
5 on her personal tax return.

6 Q. Okay. How about Billips Enterprises,
7 Incorporated?

8 A. I don't have -- I don't know anything
9 about that to date.

10 Q. Okay. So you don't know anything about
11 that entity?

12 A. It's nonexistent as far I know it.

13 Q. Okay. Do you assist in any way with
14 insurance premiums for Carolyn Billips on her
15 various companies?

16 A. What kind of insurance?

17 Q. Do you help her shop for policies?

18 A. I do not help her shop for policies, no,
19 sir.

20 Q. Do you pay premiums?

21 A. I do not.

22 Q. Okay. Do you manage the books for any
23 of those entities we've discussed so far?

24 A. For Flowertown and Alex's, Incorporated,
25 I maintain their accounting work and books.

1 Q. Okay. And what would you describe to be
2 the books that -- what is your scope of the book
3 maintaining for Ms. Billips, Flowertown, and
4 Alex's? What do you do?

5 A. Well, the books are posted daily and
6 weekly by her secretary, full-time secretary that
7 she has there, and that secretary provides me
8 with profit and loss statements periodically for
9 various accounting functions that I do, estimated
10 taxes and tax planning.

11 Q. And posted daily. What does posted
12 daily mean?

13 A. Well, it -- maintaining records of
14 deposits, whenever deposits are made to the bank
15 and the recording of checks when they're
16 disbursed for various vendors and suppliers.

17 Q. And you said the secretary for Alex's,
18 Incorporated, puts that together? Is that what
19 you said?

20 A. Yes, sir.

21 Q. Okay. And that is delivered to you?

22 A. It's faxed to me.

23 Q. Okay. And, I mean, what kind of format
24 is that that it gets to you? Is it a summary
25 done by the secretary or how is it --

1 A. That is correct, but it's checked by me.

2 Q. Okay. And what is the format of this
3 summary?

4 A. What do you mean, what is the format of
5 the summary? You have to be more specific.

6 Q. Well, when something is faxed to you,
7 what does it look like? Does it say --

8 A. When what is faxed to me?

9 Q. The secretary's summary that we were
10 just discussing.

11 A. Of the income and expenses?

12 Q. For the books of Alex's.

13 A. It looks like a statement reflecting
14 income and expenses.

15 Q. Is it a spreadsheet?

16 A. It's a sheet of paper of 8 and a half by
17 10.

18 Q. And it's handwritten?

19 A. No, sir.

20 Q. Okay.

21 A. It's on their computer. It's a
22 computerized profit and loss statement, income
23 and expense statement.

24 Q. Okay. And those are sent to you how
25 often?

1 A. Whenever I request them.

2 Q. How often do you request them?

3 A. Whenever I need them. There's no
4 specific, like every Thursday or once a month.
5 It's just whenever I want to review them.

6 Q. And is it -- do you request a certain
7 time frame, and they put those together to send
8 to you, or is it something they store in-house
9 and it's sent to you whenever you ask for them?

10 A. They fax to me the time periods that I'm
11 interested in at the time.

12 Q. So whenever you request the time period,
13 is it your understanding that they then prepare
14 that time period at the time of the request, or
15 is it already prepared?

16 A. It's already prepared, to the best of my
17 knowledge on the day to week basis as they go
18 along each month.

19 Q. Okay. So they have daily breakdowns and
20 weekly breakdowns? Is that what you're saying?

21 A. I don't know anything about that now. I
22 don't know what you're asking in that respect.

23 Q. Well, you just said that you believe
24 that it's kept in Alex's --

25 A. I didn't say I believe. I said it was

1 kept at Alex's.

2 Q. Okay. So what is the format as kept in
3 at Alex's, as you know? Like, is it a daily
4 breakdown? Is it a monthly breakdown? What is
5 it?

6 A. It comes to me in a monthly summary and
7 a year to date.

8 Q. Okay. And those breakdowns are prepared
9 prior to you even requesting them?

10 A. I don't know exactly what day they
11 prepare them, but at the time that I request
12 them, they get them to me within a reasonable
13 amount of time.

14 Q. Okay. Well, how do you know they are
15 kept at Alex's? How do you know that? How do
16 you know what they have at Alex's?

17 A. Because I've been over there to the
18 office on -- over the last 20 years.

19 Q. Okay. And so when you go over there,
20 you say, hey, I need the breakdown for this time
21 period, and they say, okay, we'll get right on
22 creating those, or do they say, oh, grab them out
23 of the filing cabinet?

24 A. Repeat that again.

25 Q. Whenever you request -- whenever you go

1 over there and request a certain time frame that
2 you want to look at, do you -- do they say, oh,
3 Mr. Fox we'll get right on creating those reports
4 to send over to you, or do they say, we'll pull
5 them out of the filing cabinet? Do they already
6 have them ready whenever you ask for them?

7 A. I've never know them to have them in a
8 filing cabinet.

9 Q. Well, my question is, do you know
10 whether or not they have them already prepared at
11 the time you ask for them or not?

12 A. Over the course of the years, sometimes
13 they give them to me right on the spot, if I go
14 over there and request them.

15 And sometimes they may tell me -- if
16 it's close to the end of the month, they may tell
17 me to wait a day or so, and they'll have them
18 posted up-to-date and furnish me with that
19 information.

20 Q. So is it your understanding that they
21 create a monthly report every month then?

22 A. Every month a report is created.

23 Q. By Alex's, Incorporated?

24 A. That is correct.

25 Q. Okay. And whenever you request those,

1 they are given to you?

2 A. Yeah, whenever I request them.

3 Q. Okay. And in your normal operating
4 procedure, do you keep those?

5 A. Each one of them?

6 Q. Whichever one you request.

7 A. I keep them for the time period that I
8 need them.

9 Q. What is the time period that you need
10 them for?

11 A. Sometimes I need them -- it depends on
12 what time I request them during the year. If I
13 request them at half time during the year,
14 they'll give them to me for six months.

15 And if I don't request them until
16 another three or four months, I don't get them
17 until another three or four months. I don't
18 request them on a -- for a specific period
19 consistently during the year.

20 Q. How long do you keep the production that
21 is given to you from Alex's, laying out these
22 monthly reports you're talking about?

23 A. How long do I keep that production?

24 Q. Yes, sir.

25 A. For as long as is necessary for me to

1 get the answer I'm looking for or derive the goal
2 or objective that I'm working on at that time.

3 Q. Okay. And then what do you do once you
4 reach your goal or objective? What do you do
5 with these reports?

6 A. I get up from my desk. I walk through
7 my office to the back room, and I put them in my
8 fellow shredder, and I shred them.

9 Q. So you do not keep -- you do not keep --
10 what do you use these reports for? When you
11 request them, what are you doing with them?

12 A. I use them to check on the profit and
13 various expenses and markups and for just general
14 accounting observations.

15 Q. Do you prepare the taxes for Alex's,
16 Incorporated?

17 A. I do.

18 Q. Okay. And are you a certified public
19 accountant?

20 A. I am not a certified public accountant.
21 I'm just an accountant open to the public, and I
22 have been open to the public for the past 51
23 years.

24 Q. And is there a certain qualification
25 that a person needs to be a tax preparer?

1 A. Depending on what kind of a tax
2 preparer. You're talking about a tax preparer --
3 are you talking about a constant one?

4 Q. A legal one.

5 A. I don't think you have to have any
6 qualifications to be legal.

7 Q. Okay. So anybody can -- anybody can
8 prepare taxes for anybody else as a tax preparer
9 is your understanding?

10 A. Well, you get into a little bit of
11 controversy with -- if you're not a tax return
12 preparer, you may have a problem with
13 representation and, you know, getting into that
14 type of a conversation with the IRS. I'm a
15 licensed tax return preparer.

16 Q. That's what I was asking. You're a
17 licensed tax return preparer?

18 A. I am.

19 Q. Okay. What state are you licensed in?

20 A. South Carolina.

21 Q. Okay. How long have you been a licensed
22 tax preparer?

23 A. I think that enrollment came out -- and
24 I'm halfway guessing -- probably about 15 years
25 ago, I'm guessing. But I've been a tax return

1 preparer for 51 years.

2 Q. Well, so 51 years ago, there was no
3 requirement -- there was no license? Is that
4 what you're saying? Like, the state --

5 A. That designation -- and I'm halfway
6 guessing -- doesn't come out until about 15 years
7 ago, but I'm not sure of the dates.

8 Q. So 15 years ago, you became a South
9 Carolina licensed tax preparer?

10 A. (No audible response.)

11 Q. Is that a yes?

12 A. Yes, sir. Or let me say this: To the
13 best -- I don't know -- I mean, I've been a tax
14 return -- licensed tax return preparer for a
15 number of years. I don't recall when I first
16 began.

17 Q. Okay. But it was around 15 years ago?

18 A. You could say that. Between 10 and 15
19 years. Whenever I picked up on the fact that it
20 was out that you could obtain that designation.

21 Q. Do you have clients other than Alex's,
22 Incorporated, and Ms. Billips' entities and her
23 personal things?

24 A. I've had, over the course of 51 years,
25 probably between 750 and 1,000 different clients,

1 tax returns, proprietorships, partnerships,
2 corporations, trusts.

3 Q. I'm sure at least one of those clients
4 over the years has been audited, correct?

5 A. Yes, sir. Yes, sir, that is true. I've
6 had probably -- I've probably had in the past 51
7 years, that I know of -- I want to say I've had
8 four audits of which three of them resulted in a
9 no change.

10 And the other audit yielded a tax bill,
11 and that was predicated on the fact that he left
12 off a 1099 in his income that he neglected to
13 give to me through just negligence, faulty
14 bookkeeping or what have you.

15 Q. Okay. And so it sounds like you
16 participate in any auditings of your clients; is
17 that correct?

18 A. I participate myself personally, and
19 when I have need to, I engage help, such as Irvin
20 Slotchiver can give you a good -- a
21 recommendation of me. If you called him up today
22 and asked him, what's my capabilities, his -- I
23 think he would -- I think he would give his
24 comments and credibility.

25 Q. Okay. And I imagine to prepare for

1 these potential audits that may or may not
2 happen, you keep supporting documents in order to
3 support your position; is that correct?

4 A. Your either -- my clients do. I give
5 the information back to my clients in most
6 instances.

7 Q. Okay. In most instances, you give the
8 supporting documents back to your clients, is
9 that what you're saying?

10 A. And I keep copies of them and attach
11 them to tax returns on many occasions.

12 Q. But you shred the supporting documents
13 that come from Alex's, Inc.; is that correct?

14 A. I don't -- the documents that you're
15 referring to that I shred are not the actual
16 documents that I prepare the tax return from.
17 These are individual components that make up the
18 tax return that I prepare at the end of the year
19 when I get the printout of the final 12 P&L
20 statements combined in the one.

21 Q. Okay. So what documents do you use to
22 prepare the taxes for Alex's, Incorporated?

23 A. I use their bank statements and their
24 profit and loss statement that the secretary
25 gives me. Those are my ingredients.

1 Q. What's the name of that secretary that
2 gives you these documents?

3 A. Her first name is April.

4 Q. And so that's -- those are the only two
5 documents that you rely upon to prepare the taxes
6 for Alex's, Inc., is bank statements and profit
7 and loss statements from April?

8 A. Those are the only two types -- and
9 cancelled checks from time to time. Sometimes I
10 request -- the secretary will furnish me with
11 cancelled checks or copies of the checks.

12 Q. What is laid out on the profit and loss
13 statement provided to you by April?

14 A. Ask me that question again.

15 Q. How are the profits and losses broken
16 down? You said they're monthly statements,
17 correct, the profits and losses provided to you
18 by April?

19 A. Well, I get monthly profit and loss
20 statements, but I get a recap at the end of the
21 year, the year to date.

22 Q. Okay. And is it just --

23 A. It goes from August the 1st to July 31st
24 of the following year.

25 Q. And is it just Alex's, Incorporated,

1 profit X, loss Y, and that's all that's on the
2 entire sheet? What does the sheet look like?

3 A. It has the income posted on it, and it
4 has the cost of goods sold posted on it, and it
5 has the other operating expenses posted on it.

6 Q. And that's -- that's how the monthly
7 statements look as well as the year-end recap?

8 A. Same format.

9 Q. Okay. So they both say the same
10 information, just different periods of time?

11 A. Well, any time you have a different
12 period of time, you have different money amounts
13 of information on it.

14 Q. Right. But it's still -- this column
15 and this column is still the same format, so it
16 still has the same amount of columns just for a
17 different -- and the numbers that fill in those
18 columns are for a different period of time?

19 A. Yeah. When you get the sheet of paper,
20 it has gross income always on the top line.
21 Okay? And then it always has operating -- cost
22 of goods sold and operating expenses typed out in
23 the same way, used in the same wording.

24 Q. Okay. And so the monthly reports that
25 you --

1 A. I don't get a P&L one month that says,
2 cost of goods sold on it and then the next month,
3 I get a statement saying, vendors paid for the
4 month -- vendor costs for the month. All of them
5 have the same -- virtually the same account
6 titles on it.

7 Q. Okay. And so the year-end recap and the
8 monthly cost control reports are -- look exactly
9 the same except for the --

10 A. Well, they're not the --

11 Q. -- except for the numbers and the dates
12 plugged; is that what you're saying?

13 A. Yeah. Well, other than the numbers,
14 there's nothing else to put on it.

15 Q. The numbers go with a category, correct?

16 A. Yeah. Each category has a number, a
17 money amount assigned to it for that given period
18 of time.

19 Q. Okay. And so since you rely upon bank
20 statements and profit and loss statements to
21 prepare the tax returns for Alex's, Incorporated,
22 do you keep those in your regular practice?

23 A. Do I keep?

24 Q. The documents that you rely upon.

25 A. The bank statements?

1 Q. You told me that you rely upon bank
2 statement and the profit and loss statements that
3 are --

4 A. I didn't tell you I relied upon them. I
5 told you I got them.

6 Q. Okay. Well --

7 A. I didn't use the term relied.

8 Q. Okay. Well, let me ask you this
9 question: What do you rely upon to prepare the
10 taxes for Alex's, Incorporated?

11 A. I prepare it from the deposits to the
12 bank for the year, reconcile them through the
13 income sheets, the daily, weekly, yearly income
14 sheets for the income, make sure they match, and
15 I compare the expenses to the cash account, the
16 total expenses for the year disbursed through the
17 checking account.

18 Everything that I get virtually is on
19 public record. My client deposits total income
20 into the bank. I pick up that as total income.
21 I got -- I pick up 12 of those for the year
22 because it happens to be 12 months in a year that
23 the accounting reporting period covers.

24 And then I pick up all of the checks
25 that are written during the year to substantiate

1 the expenses. And then the difference is your
2 profit or loss for the year.

3 Q. Okay. And you keep those -- you keep
4 those documents that you're using to prepare the
5 tax returns? Do you keep those?

6 A. I don't have any bank statement that --
7 any bank statements that belongs to Alex's,
8 Incorporated, period. I don't have any bank
9 statements that belong to any of my clients other
10 than the ones I'm ready to return to them when I
11 pick up next month's work from them.

12 Q. Okay. Well, bank statements aside, you
13 just told me a laundry list of things. How about
14 those other things?

15 A. I got the income statements.

16 Q. And you said a daily, weekly, yearly
17 income statement?

18 A. No. I got one at the end of the year.

19 Q. Well, a second ago I asked you what you
20 used to prepare Alex's, Inc.?

21 A. I use it, but I don't keep all of the 12
22 P&Ls for the year. I just keep the one for the
23 end of the year that -- that recaps the 12 for
24 the year.

25 Q. But you -- so what is a daily, weekly,

1 yearly income sheet?

2 A. Do what?

3 Q. What is a daily, weekly, yearly income
4 sheet? I asked you a second ago, what do you use
5 to prepare Alex's tax returns, and you said --
6 one of the things you said was a daily, weekly,
7 yearly income sheet. What is that?

8 A. Well, I reckon daily, weekly, and
9 monthly, they post their books at their office,
10 and that's what I use to prepare the tax return
11 with. I don't whenever -- like, for instance,
12 today is Wednesday.

13 I don't know whether Ms. April has
14 posted Monday, Tuesday, and Wednesday's checks
15 that have been written yet or not. She may wait
16 until Thursday morning to do it. Or she may, if
17 she has time, do it each day. I don't know.

18 Q. So Alex's regular course of business is
19 to prepare daily, weekly, yearly income sheets?

20 A. The daily income and the expenses are
21 posted to their income and expense sheets.
22 Whether they do it daily, every other day, weekly
23 or monthly, I don't know.

24 Q. But you've seen daily income sheets?

25 A. I have.

1 Q. Okay. How many times have you seen a
2 daily income sheet for Alex?

3 A. Well, anytime I ask for one.

4 Q. And you get that to do what you need to
5 do, and you give it back to Alex's; is that
6 correct?

7 A. Those -- give what back to Alex's?

8 Q. A daily income sheet. If you request a
9 daily income sheet, you get a daily income sheet,
10 correct?

11 A. No, I don't request the daily sheets.
12 They post them daily at their -- their shop.

13 Q. Post them --

14 A. I would assume with daily or every other
15 day.

16 Q. What do you mean, post them at their
17 shop?

18 A. Well, I keep a punching machine, and she
19 punches in the checks that they wrote for that
20 day.

21 THE COURT: Let me jump in here a
22 second. Do you know whether or not they use
23 QuickBooks or what system they use?

24 THE WITNESS: They use a QuickBooks
25 type, yes, sir.

1 THE COURT: There you go. All
2 right. We're starting to get there.

3 THE WITNESS: Now, whether they --
4 whether she gets on the QuickBooks machine daily
5 or weekly or every other day, I don't know.

6 BY MR. ELLIS:

7 Q. Okay. But she generates reports somehow
8 in a daily, weekly, yearly, monthly. Whenever
9 you request them, you get something?

10 A. Yes, sir.

11 Q. Okay. And you use them to prepare tax
12 returns?

13 A. (No audible response.)

14 Q. Is that a yes?

15 A. Yes, sir.

16 Q. And do you keep them or give them back
17 to Alex's?

18 A. No. When she gives me computer
19 printouts, I don't give them back to her. I
20 shred them.

21 Q. You shred them?

22 A. Because she can print out a hundred of
23 them at her shop anytime she wants to, as long as
24 she's got copier paper in the printer.

25 Q. You told me that you rely on those

1 daily, weekly, yearly income sheets to prepare
2 taxes, correct?

3 A. No. I told you I do the one at the end
4 of the year. That's a summary of all 12 months.
5 It's the sum total of 365 days.

6 Q. Okay. When preparing these taxes
7 returns, do you verify or capture the amount of
8 cash that's being told you?

9 A. Come again?

10 Q. Do you verify in any way the amount of
11 cash that's being represented to you by Alex's?

12 A. Absolutely.

13 Q. Okay. How do you do that?

14 A. By going -- by using the bank
15 statements.

16 Q. Okay. So based on what they deposit in
17 the bank; is that correct?

18 A. And their income sheets, their daily
19 income sheets.

20 Q. Okay. Is there any other method you use
21 to report -- to verify what cash is actually
22 brought in -- I mean, I know you say you verify
23 what went into the bank, but is there any way you
24 verify what actually comes into the restaurant?

25 A. Other than the daily sheets and the bank

1 statements, I do not.

2 Q. So whatever Alex's, Incorporated,
3 represents to you as the cash flow is what you
4 take?

5 A. Same as with all of my clients. I use
6 an indirect method to try to prove all of the
7 income for all of my clients.

8 Q. Okay. So there's no verification by you
9 of the numbers that Alex's gives to you?

10 A. You just took what I said, and you said
11 the reverse of it, Mr. Ellis.

12 Q. Okay. Well, I --

13 A. I do verify. Why did you say I didn't?

14 Q. You verify by looking at the numbers
15 that the client gives you? Is that your
16 practice?

17 A. I verify by looking at all the
18 documents, the bank statements and the daily
19 sheets.

20 Q. The daily sheets are produced by the
21 client, though, correct?

22 A. I think they're probably produced -- I
23 don't know who produces the daily sheets. Maybe
24 the shift managers. I don't know.

25 Q. But these people you don't know, you

1 just trust that what they put on the daily sheet
2 is the correct amount of cash?

3 A. I don't trust. I go to the bank account
4 to verify it.

5 Q. Okay. So you verify what is deposited
6 into the bank. Is there any way that you verify
7 that what is deposited into the bank is the
8 actual cash flow that comes into the store?
9 Somebody can have \$10 and only deposit \$5 in the
10 bank, correct?

11 A. Well, ask me that question again now.

12 Q. It's possible that somebody has \$10 in
13 their hand, correct, and they can deposit \$5 in
14 the bank, and the bank statements will show only
15 \$5 being deposited, correct?

16 A. (No audible response.)

17 Q. Is that a yes?

18 A. Then the daily sheets should pick up
19 on -- should alert you that there's a \$5
20 shortage.

21 Q. Okay. So if the daily sheets match the
22 bank deposits, that's the end of your
23 verification?

24 A. Daily sheets, bank deposits, and P&L
25 statement, all of them -- in a perfect world, all

1 three should be one and the same.

2 Q. And the P&L statement is prepared by the
3 same people that do the daily sheets?

4 A. Yes. But I'm the one that -- the only
5 difference is that I'm the one -- I'm the only
6 one that adjusts the P&L statements.

7 Q. Okay. And how do you adjust the P&L?
8 What causes you to adjust the P&L statements from
9 what is represented to you?

10 A. If I see any differences that I think
11 that the IRS would take exception to, I adjust
12 them to conform to general accepted accounting
13 principals and procedures.

14 When I prepare their work, I prepare it
15 in mind that, at the same day I filed the return,
16 I'm being audited on it. And my job is
17 contingent on the audit results.

18 Q. Okay. So what would be an example in
19 cash that would require you to adjust the cash
20 number on the profit and loss statements? Why
21 would you -- why would you adjust the profit and
22 loss number of cash that is represented to you by
23 the client and that also matches up with the bank
24 deposit?

25 A. I would go with the higher unless they

1 could prove the difference.

2 Q. You would go with the higher?

3 A. Uh-huh.

4 Q. So --

5 A. If the income sheet said for the -- for
6 the day, if the income sheet said \$100 income and
7 the bank deposit said, \$90, if there wasn't
8 justification of the \$10 difference, I would go
9 with \$100.

10 Q. Okay. So at the end of the day, you
11 just take the word from the client?

12 A. No. No, sir. I didn't say that. You
13 said that.

14 Q. So if your client says 100 worth of cash
15 or deposit in the bank, and the bank deposits
16 show \$90 deposited in the bank, you're going to
17 say, okay, client, I believe you and take the
18 \$100.

19 A. I pick the higher.

20 Q. Okay.

21 A. Same way the IRS would do. I use the
22 same method to derive with the income that the
23 IRS does. The only difference is, I get there
24 first.

25 Q. Okay. So the only way you would know if

1 cash inflowed into Alex's Restaurant is what the
2 client tells you and what's deposited in the
3 bank, correct?

4 A. No, sir.

5 Q. What else is there?

6 A. I use the income sheets.

7 Q. And that's what the client is telling
8 you, correct?

9 A. That's what the corporation submits to
10 me whenever I request it.

11 Q. Okay.

12 A. Or request the information on it.

13 Q. So that's what the client is telling
14 you, correct?

15 A. Yes, sir.

16 Q. Okay. Do you know if Alex has ever
17 utilized any point of sale systems? Are
18 waitresses plugging in what they're selling into
19 any computer or anything?

20 A. I have no idea what happens before the
21 daily sheets and the bank deposits get to me. I
22 don't know what -- I don't even know whether
23 Alex's has a cash register or not.

24 Q. Okay. So as long as --

25 A. So to speak, but I know they do.

1 Q. So as long as the client's
2 representation of the cash inflow is higher than
3 what the bank says it is, you just go based upon
4 what the client is telling you?

5 A. (No audible response.)

6 Q. Is that a yes?

7 A. I go with the higher -- I go with the
8 higher that's reported.

9 Q. Do you still prepare taxes for Goose
10 Creek?

11 A. I do.

12 Q. Okay. And still the same methodology
13 we're going through right now?

14 A. Yes, sir.

15 Q. Okay. So for Alex's, Incorporated, what
16 documents do you keep in your file after you've
17 prepared their taxes?

18 A. The P&L statement for the end of the
19 year.

20 Q. Do you know what Alex's does with the
21 daily, weekly, or yearly income sheets after you
22 give them back to them?

23 A. I have no idea.

24 Q. Okay. How long do you retain the yearly
25 profit and loss statement?

1 A. Generally about three years.

2 Q. When is it not a general situation where
3 you would keep it either less or more than three
4 years?

5 A. If it's attached to a tax return, then
6 it has assets being depreciated on it and assets
7 being acquired. That's when I would try to keep
8 it longer because you have ongoing circumstances
9 that led from one year to the next, such as
10 depreciation expense in this case.

11 Q. The daily, weekly, monthly, yearly
12 income sheets that you have seen, do they
13 encompass individual units, like individual
14 Alex's Restaurants, or is it Alex's, Inc., as a
15 whole?

16 A. How many Alex's restaurants are you
17 talking about?

18 Q. All of them.

19 A. I don't do accounting work for all of
20 them.

21 Q. And how long have you been doing tax
22 preparation for Alex's, Incorporated?

23 A. Ever since 1969.

24 Q. Okay.

25 A. For 51 years.

1 Q. So at one time, there was about five or
2 six Alex's?

3 A. Yes, sir.

4 Q. So let's take a time frame when there
5 were five Alex's.

6 A. Right.

7 Q. Would you get one daily income sheet for
8 all five of those combined or would each -- would
9 each Alex's Restaurant have their own income
10 sheet?

11 A. Each had their own income sheet.

12 Q. Okay. And would you use that to prepare
13 a joint tax return for Alex's, Inc., or would
14 you -- would you break out each restaurant into
15 its own?

16 A. It was a consolidated tax return.

17 Q. Okay.

18 A. All of them were put on one sheet, total
19 income, total expense.

20 Q. Okay. And --

21 A. When the corporation was done,
22 submitted.

23 Q. So the tax return would not show the
24 individual profits and losses for each
25 restaurant?

1 A. No, sir.

2 Q. Okay. Would you have anything that you
3 kept to show the individual profit and losses of
4 each individual restaurant?

5 A. Due to the statute of limitations, I
6 would have absolutely zero.

7 Q. Okay. When there were more than one
8 Alex's Restaurant, would you have kept any
9 documents that -- as your regular course of
10 business, that showed the restaurants' profits
11 and losses individually rather than together?

12 A. I certainly would, and I would have it
13 individually and consolidated, yes, sir.

14 Q. Okay.

15 A. I sure did.

16 Q. How long do you keep completed tax
17 returns?

18 A. How long do I keep completed tax
19 returns?

20 Q. Yes, sir.

21 A. I generally -- I generally keep them for
22 three years and four, sometimes four. The ones
23 that have extenuating circumstances on them, I
24 may keep them a little longer, such as
25 acquisition of equipment and use for

1 depreciation.

2 Q. Do you keep the attachments and
3 schedules that go along with that completed tax
4 return for the same amount of time?

5 A. I do.

6 Q. Okay. Are there any financial documents
7 that you know that Alex's, Incorporated, keeps in
8 their records that you do not possess?

9 A. No, sir.

10 Q. You don't know if there are any or there
11 aren't any?

12 A. Repeat that question one more time.

13 Q. Do you -- do you know of any financial
14 documents showing profit and loss of restaurants
15 under Alex's, Incorporated, that Alex's keeps in
16 their files that you do not keep?

17 A. Are you talking about different
18 financial statements? Is that what you're
19 alluding to?

20 Q. Different or the same.

21 A. They would have the same ones that I
22 have, and I don't know how long they keep those
23 statements.

24 Q. Would they have more than what you have?

25 A. I don't know what they have.

1 Q. Okay. Mr. Fox, you were served a
2 subpoena by me, correct?

3 A. Sir?

4 Q. You were served a subpoena by me? Do
5 you recall getting a subpoena by me for various
6 records?

7 THE COURT: Do you have some
8 documents?

9 A. My office may have received this, but I
10 really don't recall this -- ever seeing this
11 document.

12 Q. Do you recall having a phone call with
13 me after you received this document to talk about
14 it?

15 A. I don't have a clear recollection of it.
16 But I do remember one call from you, but I do
17 not -- I couldn't tell you, for the life of me,
18 any subject matter in the telephone call.

19 Q. Okay. Do you have any reason to believe
20 that this subpoena was not served upon you? Do
21 you have any reason to doubt that?

22 A. Well, you know, you have an element of
23 privacy that exists, and this document wasn't
24 signed by a judge. It was signed by a lawyer or
25 anybody that called themselves or referred to

1 themselves as a lawyer.

2 And I stayed in a lawsuit for three
3 years in 1985; sued for \$11 million on something
4 I had nothing to do with, and I am very cautious
5 about trusting a lot of lawyers. No one
6 specifically, but just lawyers in general in
7 giving out information.

8 And I don't -- I don't give these type
9 of subpoenas a whole lot of credibility because,
10 like I said, they weren't signed by a judge. And
11 if I give you something that I wasn't authorized
12 to give you, then I would be in another lawsuit.

13 Q. So is that a, no, you do not have any
14 reason to dispute that a subpoena signed by me
15 was served upon you?

16 A. I don't recall getting it. I'm going to
17 say at this point, it may have come to my office,
18 but I don't recall getting it.

19 Q. Throughout this litigation, have you
20 been asked to produce a bunch of financial
21 documents from your records?

22 A. Yes, I have.

23 Q. Okay. Did you produce all the documents
24 that you have in relation to Alex's,
25 Incorporated?

1 A. I think I have. I don't know of any
2 that I haven't produced.

3 Q. Okay. I'm going to show you some
4 documents. They're Bates stamped Fox 1 through
5 1233.

6 A. Do you want me to go through each one of
7 these pages?

8 Q. If you want to, but if you just glimpse
9 at them, do you recognize --

10 THE COURT: Well, yeah. Ask him a
11 question because you just handed him a bunch of
12 documents.

13 BY MR. ELLIS:

14 Q. Do you recognize any of those documents?

15 A. I recognize the first one I see right
16 here on the first page.

17 Q. Okay. Does that look like some work you
18 did for Alex's, Incorporated?

19 A. It does, yes, sir.

20 Q. Okay. Do you recall generating that
21 stack of documents?

22 A. My secretaries may have done it. Me
23 personally, no.

24 Q. Okay. Well, if you'll turn back to that
25 Exhibit A of that subpoena that I put before you

1 that is not signed by a judge.

2 A. Exhibit A. Okay.

3 Q. Do you see it asks for any and all
4 documents as it relates to Alex's Restaurant,
5 Inc., that were in your possession.

6 Do you believe that that is all
7 documents that you had or have for Alex's,
8 Incorporated? Do you think there's more
9 documents that you do not have?

10 A. I don't see any payroll tax reports.
11 Some of these are information -- I do not have
12 details regarding any sales of businesses. I
13 think -- I don't think I have any of those in my
14 files currently.

15 I think I've produced all of the tax
16 returns for the following individuals down at the
17 bottom, for Carolyn Billips. I produced all of
18 the corporation returns for Alex's, Incorporated.
19 I don't -- I don't have anything for Billips
20 Enterprises. That is a nonexistent entity.

21 I've produced all of the tax returns for
22 Flowerstown. They were encompassed in
23 Ms. Billips' tax return as well as 522 Magnolia,
24 LLC, it being encompassed on the schedule E in
25 Carolyn Billips' personal returns.

1 Q. So Carolyn Billips' 522 Magnolia, LLC,
2 and Flowertown are all filed together?

3 A. Yes, sir.

4 Q. Mr. Fox, if you will look at the front
5 page of that -- that subpoena. The date is
6 January 10, 2019.

7 So I want you to reference that time
8 frame, January 10th, 2019. Is what you said
9 regarding what you did and did not have a second
10 ago, is that the same for January 10th, 2019?

11 A. As well as I know it.

12 Q. Okay. So is there anything that you
13 think that you have that was not produced in that
14 stack of papers, Bates stamped Fox 1 through Fox
15 1233?

16 A. Well, like I said, I haven't gone
17 through each one of these -- these sheets.

18 Q. Okay. Well, if you could just thumb
19 through them. I mean, I'm not asking you to go
20 into detail with each one.

21 A. Well, I would have to go into detail
22 with each one.

23 Q. Okay. Well, I would like an answer to
24 my question; so whatever you need to do, please
25 let me know.

1 A. I see tax returns. I'm going to say
2 this is -- this is all that I have. If you can
3 point out any specific item --

4 Q. Well, and so my subpoena requested any
5 and all documents including but not limited to
6 these things.

7 A. Yeah. This is all that I'm aware of at
8 this time.

9 Q. Okay. So you believe it would have been
10 everything in your possession regarding the --

11 A. Yeah. I didn't have -- let me say this:
12 Mr. Ellis, I didn't have any reason to withhold
13 anything, once I got permission from Ms. Carolyn
14 Billips, to release the information to whomever
15 my secretary released it to.

16 I would be assured that I got -- at the
17 time I got permission from Ms. Billips for my
18 secretary to copy, e-mail, or whatever to
19 whomever she gave us permission to do so to.

20 Q. Okay.

21 A. And for --

22 Q. I'm sorry?

23 A. And for -- to e-mail it, fax it to and
24 for that person as well.

25 Q. Okay. Do you know if your office puts

1 that Bates stamp in the bottom right corner or do
2 you think that was probably prepared by
3 Ms. Billips' attorney?

4 A. Put the what stamp?

5 Q. See the red numbering in the corner?

6 A. The confidential?

7 Q. Well, confidential and that Bates stamp
8 number. Do you think your office did that, or do
9 you think that that was done after y'all produced
10 the documents?

11 A. I think that was done after. I mean, we
12 don't have the capability of putting that
13 designation on a tax return.

14 Q. Okay. So if there were any loan
15 documents regarding loans between Carolyn Billips
16 and Flowertown and Alex's, Inc., you would not
17 have them, correct?

18 A. No, sir.

19 Q. Okay.

20 A. That certainly is correct.

21 Q. And as far as any documents that would
22 go towards any repayment of loans between those
23 entities, you would not have possession of it,
24 correct?

25 A. That's been very limited activity in

1 the -- in my history of our company.

2 Q. What, managing loans between the
3 entities?

4 A. Yeah. That has not existed. I mean,
5 that would be a unique exception as opposed to
6 the rule.

7 Q. Okay.

8 A. I got many clients that loan money back
9 and forth day in and day out, sun up and sun
10 down, but this one doesn't. They keep all of
11 their records specifically separate.

12 Q. Well, I think you heard some testimony
13 from Ms. Billips earlier talking about sales of
14 various Alex's Restaurants going to pay Carolyn
15 Billips?

16 A. Yeah. That's an exception as opposed to
17 the rule for their business conduct on a day to
18 day basis.

19 Q. Okay. Using those proceeds of the sale
20 of the house is asset --

21 A. That only happened about four times out
22 of 51 years that I'm aware of.

23 Q. Okay. Well yeah, four out of six
24 restaurants. Okay. So four times out of 51
25 years, did you see the sale of Alex's assets to

1 pay for Carolyn Billips' individual liabilities
2 and Flowertown, LLC, liabilities?

3 A. Repeat that question again now.

4 Q. In the 51 years -- so 51 years, you've
5 been doing the books for tax preparation for
6 Alex's, Incorporated?

7 A. I have been. And the reason I know that
8 is because I got married in '69, and I picked up
9 the account in -- before I got married.

10 Q. All right. 51 years. That's a good
11 number. So 51 years of doing the tax preparation
12 for Alex's, you saw four times where Alex's
13 assets were sold to pay for Carolyn Billips'
14 individual liabilities and Flowertown
15 liabilities. Is that you what you just said?

16 A. Do you know what you just said?

17 Q. Are you asking me to repeat the
18 question?

19 A. Yes, and be very attentive to what
20 you're asking me.

21 Q. Okay. You said you've only seen that
22 happen four times in 51 years.

23 A. What happen?

24 Q. That Alex's assets were sold.

25 A. No, I didn't. I said, I only know of

1 about four times in the last 51 years that the --
2 that Alex's had sales. I didn't go any further.

3 Q. Okay. Were you involved in the
4 distribution of the proceeds from the sales of
5 Alex's Restaurants?

6 A. What do you mean by --

7 Q. Did you have a hand in the paperwork,
8 anything at all?

9 A. The lawyer took care of that at the
10 closing.

11 Q. Did you take some of the proceeds to pay
12 off any tax roll liens that anybody may have had?

13 A. I didn't take nothing.

14 Q. Did you use --

15 A. I didn't use anything.

16 Q. Were you instructed to?

17 A. Do what?

18 Q. Were you instructed to by Carolyn
19 Billips?

20 A. What would I have to have paid it with.
21 I mean, nobody would give me any money at the
22 closing. The lawyers and the creditors kept it.

23 Q. Did you keep the books for taxes owed
24 for the entities that Carolyn Billips is involved
25 in?

1 A. I kept the books for Alex's,
2 Incorporated.

3 Q. And Flowertown, LLC?

4 A. And Flowertown, LLC.

5 Q. And Carolyn Billips, individually?

6 A. And Carolyn Billips, individually.

7 Q. And 522 Magnolia, LLC?

8 A. Yes, sir.

9 Q. Okay. And as part of your role in doing
10 that, did you keep track of any tax liens that
11 any of those entities or individuals might owe?

12 A. Me, personally?

13 Q. You, your company, as preparer -- as
14 bookkeeper and preparer of their financial
15 records?

16 A. Really, in all reality, I did not. I
17 hired a retired IRS agent to do that tax work for
18 Ms. Carolyn Billips.

19 Q. Okay. So you would not have any
20 knowledge as to the repayment of any tax -- or
21 just the payment of tax liabilities owed by
22 Carolyn Billips, Alex's, Incorporated,
23 Flowertown, LLC or 522 Magnolia, LLC? You would
24 not have any knowledge of that?

25 A. I know that Flowertown owed taxes

1 when -- and I know that Alex's owed taxes. I
2 know that Alex's -- some of Alex's real estate
3 was sold. I know that Ms. Billips sold her
4 personal residence to pay these taxes. I do not
5 have an individual breakdown.

6 Q. So do you have knowledge of that, based
7 upon your professional capacity?

8 A. I have knowledge that Alex's owed taxes
9 and Carolyn Billips' restaurant owed taxes, some
10 taxes, and I have knowledge that Alex -- some of
11 Alex's property was sold. And I have knowledge
12 that some of Ms. Carolyn Billips' property was
13 sold, her residence. And she had to move as a
14 result of one of those sales.

15 Q. Do you have knowledge of what you're
16 saying, based upon your professional capacity in
17 doing the books and tax preparations for those
18 entities and individuals? Is that how you have
19 the knowledge?

20 A. I just told you. Yes, sir. That was
21 just what I just told you.

22 Q. Okay.

23 A. That's my knowledge.

24 Q. And so you have knowledge that the sale
25 of assets from Alex's paid Carolyn Billips,

1 individually, liabilities?

2 A. I didn't say that, no. I don't know
3 which one, if any, paid the other.

4 Q. Okay. So you know that at some point,
5 various taxes --

6 A. I just know that both owed taxes, and I
7 know that both sold properties.

8 Q. Okay. And they both sold properties to
9 pay tax liabilities?

10 A. To the best of my knowledge, when all
11 sales took place, they were sold to pay taxes and
12 tax liens at that point that were very intimate.
13 They were -- they were crucial. They -- if
14 Ms. Billips hadn't have owed the taxes, the
15 properties wouldn't have gotten sold.

16 Q. Do you know why these entities got into
17 these tax lien situations?

18 A. I can tell you exactly to the penny why
19 and how. I have a hundred percent perception of
20 how that happened.

21 Q. I would love to hear it.

22 A. A number of years ago, South Carolina
23 had blackjack machines that they allowed business
24 owners to put in their places of business. And
25 Alex's Restaurant owned a number of these

1 machines, and they were very profitable.

2 And the State of South Carolina decided
3 to take these machines out of the hands of
4 individuals and business owners in South
5 Carolina, and they replaced it with the lottery.
6 And in doing so, it started a downward trend in
7 Alex's, Incorporated, and it went down -- not
8 some years, every year.

9 And what happened is that, because of
10 those lack of capital coming into the business,
11 we were able to make payroll, but we got behind
12 on the payroll taxes that would have been the
13 taxes within -- payable at the end of the month.
14 We got behind with that.

15 And the IRS and the state put pressure
16 on us, very, very heavy pressure. So we had to
17 started liquidating these properties to service
18 those debts. But Ms. Carolyn fought hard as she
19 could to do everything she possibly could to keep
20 from having to sell those different properties
21 that Alex's, Incorporated, owned.

22 Q. Okay. And so both Alex's, Incorporated,
23 and Flowertown, LLC, got way behind on the
24 payroll taxes?

25 A. Yes, sir.

1 Q. Okay.

2 A. Very simple really. Nothing complicated
3 about it.

4 Q. Do you recall -- well, was there -- do
5 you recall when Alex's -- and I'm going to ask
6 you for a ballpark number here. Do you recall
7 when Alex's first started having the poker
8 machines in their -- in their restaurants?

9 A. Mr. Ellis, I do not. I wish -- I wish I
10 had those kind of aptitudes, but I don't possess
11 them.

12 Q. Were there any payroll tax issues in
13 Alex's, Incorporated, prior to the poker machines
14 being installed in their restaurants?

15 A. No, sir.

16 Q. Okay. So they were always able to pay
17 their payroll taxes prior to the machines being
18 put in there? They were able to pay them when
19 the machines were put in there, and then, they
20 weren't able to pay their payroll taxes after the
21 machines left; is that --

22 A. That is my best recollection.

23 Q. Were there employees brought on for the
24 sole purposes of managing those poker machines?

25 A. I do not know that.

1 Q. Okay. Do you know whether or not
2 payroll increased as a result of those poker
3 machines being installed?

4 A. Payroll increased as a result of the --

5 Q. And what I want to know, Mr. Fox, is,
6 they were able to always make their payroll taxes
7 prior to the machines?

8 A. Yeah. We never had a problem before,
9 that I can recall.

10 Q. So why is it the machine's fault for not
11 being able to pay payroll taxes after they left?

12 A. Because the machines produced a
13 tremendous amount of income.

14 Q. I understand that. But the restaurant
15 was always able to pay its payroll without the
16 machines prior to the machines?

17 A. You would have to go back to the time,
18 look at the P&L statements before the -- the
19 business machines came into the business and
20 after in order to be able to give an answer of
21 material value to that question.

22 Q. Okay. So you don't -- other than the
23 payroll machines no longer being there, you
24 can't -- you don't know of any other change that
25 resulted in them not being able to pay their

1 payroll taxes after the machines left?

2 A. I think that we were operating well
3 before the machines come and went out of the
4 business, as best as I can recall it.

5 Q. Who did the sales tax reports for
6 Alex's, Incorporated?

7 A. A girl called Roxanne.

8 Q. Do you know who Roxanne -- do you know
9 what roles -- do you know what Roxanne's role is
10 to Alex's, Incorporated?

11 A. It was the same job that April is before
12 me currently.

13 Q. Okay.

14 A. Just an inhouse bookkeeper.

15 Q. Okay. So through your 51 years of doing
16 tax returns for Alex's, Incorporated, there were
17 various bookkeepers that you dealt with inhouse?

18 A. Two. Only two.

19 Q. Okay. Roxanne and then April?

20 A. Yes, sir.

21 Q. And April is still there?

22 A. Yes, sir.

23 Q. And was it the same method that you
24 described?

25 A. Same format.

1 Q. Okay. Do you know -- did Roxanne and
2 April generate their QuickBooks reports on the
3 computer?

4 A. Yes, sir.

5 Q. And would you go in there, and say, I
6 need this, and they would print it out and hand
7 it to you?

8 A. That's correct.

9 Q. Okay. Does it say to assume that they
10 were saving the QuickBooks reports onto the
11 computer?

12 A. I can't -- I don't know what they did to
13 the reports. They just gave me what I wanted. I
14 don't know what they did inhouse when I walked
15 out the front door.

16 Q. Okay. Was it always printed out from
17 the computer that either Roxanne or April used?

18 A. Yes.

19 Q. Okay. And is that the same way they
20 operate today if you walk into the offices for
21 Alex's, Inc.?

22 A. It hasn't changed one iota.

23 Q. Okay. So they have QuickBooks reports
24 showing yearly, daily, monthly, weekly income?

25 A. They have that -- they have that

1 capacity. They have that capacity. I don't know
2 how far back they can go.

3 Q. You could go today and say, give me a
4 daily report for yesterday, and they could give
5 you that?

6 A. I think so.

7 Q. But, again, that's all -- that stack in
8 front of you is all you had in your possession?

9 A. I have no more to offer anybody.

10 Q. Okay. The money that should have gone
11 towards paying payroll taxes, do you know what
12 the alternative use for that money was? Was
13 there some -- what was the priorities over
14 payroll taxes?

15 A. Payroll.

16 Q. Okay.

17 A. And of course, as you know, that's the
18 net payroll, you know, for the following week for
19 operations. You use the payroll tax withheld
20 that should have been -- should have been turned
21 into the different governmental authorities for
22 immediate operating expenses the following week,
23 which is not -- which is not acceptable. It's
24 not a good practice.

25 But in this case, it was bare survival.

1 it was a way of just keeping the door open and
2 keeping the supplier backed up to the restaurant,
3 delivering flour and meat and goods and whatever
4 was to be sold.

5 Q. Did you report tax liabilities on taxes
6 whenever you filed them?

7 A. That's -- that's what you do when you
8 follow 941. You report the amount that's owed
9 and the amount -- you report the amount that's
10 paid, and you pay the difference, if there is a
11 difference, or you get refunded or credited if
12 the difference happens to be overpayment.

13 Q. But if the company -- and I'm sorry, I'm
14 not an accountant. If the company has tax
15 liabilities presently owed, it would be shown on
16 a tax filing, correct?

17 A. On a 941, yes, sir, for the IRS for 1605
18 on the state and for SD3 on the sales tax
19 liability.

20 Q. Okay. And do you know whether any of
21 those documents were produced to this stack of
22 papers in front of you?

23 A. Ask me that question again.

24 Q. Do you know of any of those documents,
25 the 941 and the other document are in that stack

1 of paper that you provided?

2 A. I think I saw a few here somewhere, if I
3 can readily run across them. I'm trying not to
4 hold up the -- Mr. Ellis, we're in luck.

5 Q. All right. I'll come to you.

6 A. Right here on line 6 on this particular
7 one, the 941 for 2007, that's the liability.
8 That's how much is owed. Okay? And this is the
9 amount of the deposits, \$42,000. We filed the
10 tax return, a 941 showing a balance due of
11 32,470.04.

12 Q. Okay. Would you show that amount on the
13 liability report for the income of the
14 corporation?

15 A. Come again?

16 Q. So you've got to file the income of the
17 corporation, right?

18 A. We have to file the income for the
19 corporation, the income tax return?

20 Q. Correct?

21 A. Yeah. Yes, sir.

22 Q. And do you show the tax liability owed
23 by that corporation in the liabilities for
24 income?

25 A. You should. They may not have been

1 shown on these tax returns, but you should.

2 Q. Why would they have not been shown on
3 these?

4 A. Because of the time involved in it. In
5 preparing the tax return, the corporation return,
6 you've got two parts to it.

7 One is a profit and loss statement,
8 which shows the income and the expense and the
9 profit or the loss for the company, and you've
10 got the other half that shows, for the most part,
11 subject to any sales of anything. It shows the
12 balance sheet. It shows the assets and
13 liabilities.

14 The IRS is more interested in the profit
15 and loss statement than they are in the balance
16 sheet because you can't -- you can't give
17 somebody a tax bill based on the filing of a
18 balance sheet, but you certainly can based on the
19 filing of a profit and loss statement.

20 And even though the 1120s are
21 corporation returns, and they should -- you
22 should go to the time to have correct assets and
23 liabilities portrayed on them. But even if you
24 don't, the IRS doesn't really give you a penalty
25 on the balance sheet if it's not -- if it's not

1 correct.

2 And furthermore, the balance sheet --
3 these are not flow-through entities. These
4 corporations stand on their own, and these --
5 whether you have a thin corporation or a
6 corporation that's not thin, it doesn't have any
7 bearing on the individual tax return that the
8 officer files.

9 And it has -- and it does not interfere
10 with the profit and loss statement that you filed
11 to show the income and expense for the year.

12 Q. Okay. One second, Mr. Fox.

13 A. We filed -- I mean, some of these
14 balance sheets are more correct than others. But
15 I have filed 51 of these balance sheets and
16 corporation returns for Alex's, Incorporated, for
17 over 51 years.

18 The IRS has yet to say one thing about
19 it. They've been timely filed. They've been
20 openly filed. And the IRS so far has been very
21 pleased with it. I've had one audit 30 years
22 ago, which resulted in no change.

23 Q. Okay.

24 A. And nothing negative was said about it.
25 And they liked it so good, they decided to leave

1 us alone for the next 30 years.

2 Q. Okay. Are you familiar with how tax
3 liens operate, like the liening agencies and
4 everything?

5 A. I'm familiar with how they operate. I
6 have a certain amount of knowledge and insight
7 into it. I will tell you this: I do not have
8 the insight into it that a collection agent for
9 the IRS has. Some of those fellows are pretty
10 good at it.

11 Q. Do you know whether a lien, a tax lien
12 would attach to the dirt that a company owns?
13 Say the dirt on the Dorchester Road restaurant,
14 would the tax lien run with that real property?
15 Do you know?

16 A. I can almost promise you to my heart, it
17 does.

18 Q. Okay.

19 A. If the corporation owes the liability,
20 that lien is just like a mortgage.

21 Q. Okay. So whether or not --

22 A. To my knowledge.

23 Q. Whether or not a lien was placed on a
24 company would be important if somebody was trying
25 to place a value on a business?

1 A. Sir?

2 Q. I said, so whether or not a lien, a tax
3 lien was on a business, that would be important
4 information to know for placing a value on that
5 business?

6 A. They don't -- the tax lien -- of course,
7 somebody may know more than I do about that
8 answer that I'm going to give you, but the tax
9 lien goes against the -- the owner of the
10 business and not -- not so much the assets of it.

11 Because you can file a lien against a
12 restaurant, and you can sell the frying pans in
13 it, and in the meanwhile, nothing too much
14 happens. Okay? But you can't sell the building
15 or the ground that owns -- that that corporation
16 owns.

17 Q. Because that lien would run with the
18 land, correct?

19 A. Yes, sir. That's my -- that's my
20 knowledge of it.

21 Q. Did you have any involvement with
22 shareholder loans to Alex's, Incorporated?

23 A. Not really, no, sir.

24 Q. Okay. When you say, not really, what
25 was your involvement then?

1 A. That's a good question. I will answer
2 it more specifically, and I apologize for not
3 having answered it specifically to begin with. I
4 have no knowledge of shareholder loans that I can
5 recollect momentarily.

6 Q. Thank you. Do you have any knowledge of
7 where the corporate books are kept for Alex's,
8 Incorporated?

9 A. Do I know where the corporate books are
10 kept?

11 Q. Yes, sir.

12 A. Mr. Ellis, I really don't. I have no
13 idea.

14 Q. Do you know whether any corporate books
15 are kept?

16 A. I have been involved in conversation
17 with Ms. Carolyn with her telling me about --
18 mentioning that to me, whenever Alex died, the
19 fellow that started this corporation.

20 But it's just in general, vague terms
21 that, you know, he had corporate books, and he
22 had a trust and -- but nothing specific on --
23 that I could have a conversation with you about.
24 I'm not enlightened with it to that degree.

25 Q. Okay. So any knowledge you would have

1 had about keeping the corporate books would have
2 been from the '80s; is that what you're saying?

3 A. From what?

4 Q. From the 1980's? I think he passed away
5 sometime in the '80s.

6 A. That's probably -- well, that's probably
7 about true. I don't know anything to the
8 contrary.

9 Q. Okay. So you had a conversation about
10 keeping the corporate books back in the 1980's
11 and since that time --

12 A. Well, see, the existence of them. I was
13 aware that there was an existence of them
14 whenever he died.

15 Q. Okay. And after he died, you have no
16 knowledge as far as his --

17 A. Not really, no, sir.

18 Q. Would you have any knowledge regarding
19 any shareholder meetings of Alex's, Incorporated?
20 Any shareholder meetings?

21 A. I heard Carolyn -- I remember her
22 mentioning something about it, but I do not
23 recall the particulars of it.

24 Q. Do you remember the time frame?

25 A. Not really.

1 Q. Last 20 years?

2 A. Probably.

3 Q. Last 10 years?

4 A. Could be.

5 Q. So do you recall her talking about one
6 shareholding meeting?

7 A. I don't remember the particulars of it.

8 Q. But just one meeting; is that what
9 you're saying?

10 A. I didn't say one meeting. You said one
11 meeting.

12 Q. Okay. Well, how many meetings do you
13 recall talking --

14 A. I don't know. I don't recall.

15 Q. Okay. So you just, at some point --

16 A. I don't know what she said about --
17 about the meetings, whether it was -- I don't
18 remember anything. I just remember the subject
19 matter coming up for some reason.

20 Q. So just the term shareholder meetings
21 came up at some point? You have no idea why or
22 when or what about?

23 A. Well, it had to do with the shares of
24 the boys.

25 Q. Okay. Would it have had to do with the

1 transfer of shares?

2 A. Well, now you're getting into
3 particulars. I don't remember any particulars of
4 the conversation.

5 Q. So it had something to do with the
6 shares of the boys, but you don't know any more
7 than that?

8 A. No.

9 Q. Did Alex's, Incorporated, ever have any
10 type of retirement reserve or save any money for
11 retirement in any way?

12 A. I recall one time Alex Billips himself
13 saying something about that, but what happened
14 is, he took the money out of there and bought
15 other restaurants, land, and created other
16 restaurants with it.

17 It was something that never did -- it
18 was an idea he had that never did materialize
19 because the funds were required at that -- during
20 that short-term when the restaurant was doing
21 real good. And that was probably back in the --
22 40 years ago.

23 He used that to expand his restaurants
24 as opposed to put any emphasis on developing a
25 retirement plan. It was no -- Alex's,

1 incorporated, does not have a retirement plan,
2 and I can never remember any -- any material
3 energies to pursue that. It really should have
4 been labeled, if anything, a savings account.

5 Q. Okay. And so Alex, Sr., prior to him
6 passing away, started this retirement --

7 A. Yeah.

8 Q. -- something or another but exhausted
9 it -- exhausted whatever savings they were --

10 A. He exhausted it before he died.

11 Q. He did exhaust it before he died?

12 A. (No audible response.)

13 Q. Is that a yes?

14 A. Yes, sir.

15 Q. Thank you. Okay. And so Mr. Fox, do
16 you believe this stack of papers was produced by
17 your company in response to that subpoena; is
18 that correct?

19 A. I think so, yes, sir.

20 Q. Okay.

21 A. Well, it was produced in response to
22 Carolyn authorizing me to produce it. I didn't
23 do that contingent on this.

24 Q. Okay. So you got the subpoena, and then
25 sought permission from your client prior to --

1 A. I certainly did.

2 Q. Okay.

3 A. And I always do with all of my clients.

4 MR. ELLIS: Okay. Your Honor, I'd
5 like to move both of these documents into
6 evidence, the subpoena, the January 10, 2019
7 subpoena.

8 THE COURT: And all of those
9 documents?

10 MR. ELLIS: Yes, Your Honor.

11 THE COURT: Well, good. You get to
12 carry them home. And those are Bates stamped --
13 let's verify those numbers on the Bates stamp so
14 we can be clear on it.

15 THE WITNESS: Here you go.

16 THE COURT: Thank you, Mr. Fox.

17 MR. ELLIS: So the box documents
18 are Bates stamped Fox underscore 0001 through Fox
19 no underscore 1233.

20 THE COURT: So it should be 1233
21 documents. And that would be Defendant's No. 2?

22 MR. ELLIS: Plaintiff whatever
23 number is next.

24 THE COURT: I'm sorry about that.
25 Plaintiff's No. 11 I think we're up to, aren't

1 we? Plaintiff's 11. And you can just leave them
2 right there.

3 MR. ELLIS: Well, do you want to do
4 the subpoena 11 and --

5 THE COURT: Well, you're right.
6 Yeah. Why don't we do it 11 and 11A.

7 (PLF. EXH. 11 and 11A was marked
8 for identification and admitted into evidence.)

9 THE COURT: Does that conclude your
10 testimony for now?

11 MR. ELLIS: Let me check.

12 THE COURT: Why don't you check and
13 we'll take a break and come right back. Okay?

14 (A recess transpired.)

15 THE COURT: We can resume. I think
16 we're still on direct, right?

17 MR. ELLIS: Yes, Your Honor.

18 THE COURT: All right. Very good.

19 MR. ELLIS: May it please the
20 Court?

21 THE COURT: Yes, sir.

22 BY MR. ELLIS:

23 Q. Are you ready, Mr. Fox?

24 A. I'm ready.

25 Q. Okay. You testified earlier about

1 QuickBooks being kept by the Alex's, Incorporated
2 on the computer. Do you remember testifying as
3 to that?

4 A. Yes, sir.

5 Q. Okay. Do you know whether they had any
6 hard copy ledgers to keep as a back up to what
7 was on the computer?

8 A. I have absolutely no idea at all.

9 Q. Okay. Do you know whether, when a new
10 computer was put into the office, whether the
11 information that was on the old computer was
12 transferred over to the new computer?

13 A. I have no -- no information on that at
14 all. I know nothing about that, if it was or
15 wasn't.

16 Q. In the 51 years that you've prepared
17 the -- did the books and tax returns for Alex's,
18 Inc., and other entities, including Ms. Billips,
19 do you ever remember a chaotic moment where all
20 of the sudden the computer crashed and all the
21 accounting information was lost? Do you ever
22 recall a moment like that?

23 A. I remember complaints from -- I just
24 told you her name, but I forgot it.

25 Q. Roxanne?

1 A. Roxanne. She used to complain to me all
2 the time about that.

3 Q. About information being lost?

4 A. About her computer because it was an old
5 computer.

6 Q. But her computer crashing and losing
7 information or just --

8 A. I just remember her complaining about
9 the computer and having problems with it and it
10 being down and whether it crashed or whether it
11 did what. I don't have any particulars on that.

12 Q. Okay. Well, was there ever a time that
13 you requested needed information, financial
14 information to do your work that they said, oh,
15 we can't provide that because the information has
16 been lost?

17 A. There has been.

18 Q. When was that?

19 A. I don't know. I just remember -- I just
20 remember the dilemma.

21 Q. Was it within the last 20 years?

22 A. I don't remember.

23 Q. Well, you've been doing it for --

24 A. It was in Roxanne's days, I know that.

25 Q. Okay. When did April start?

1 A. I don't really remember that either.

2 Q. Was it --

3 A. After Roxanne left.

4 Q. Has April been there for more or less
5 than 10 years, to your knowledge?

6 A. I'm going to say that she's been there
7 less than 10 years. That's my best guess, and
8 I'm guessing.

9 Q. Okay.

10 A. But that's my best guess.

11 Q. Well, let's go to five years. More or
12 less than five years that April has been there?

13 A. I feel pretty confident that she's been
14 there for five years.

15 Q. So somewhere between 5 and 10 years,
16 April has been -- took over for Roxanne; is that
17 your belief?

18 A. Somewhere between five and -- and
19 whatever.

20 Q. Okay. But it was Roxanne -- it was
21 during Roxanne's time that Alex's cannot give you
22 financial documents to do what you needed to do
23 because they lost the information?

24 A. During when? You said during Roxanne's
25 time that Alex --

1 Q. So --

2 A. When you say Alex, are you referring to
3 the restaurant or the Mr. Alex Billips?

4 Q. And I apologize. Alex's, Inc., Alex's
5 Restaurants, Incorporated. So it was during
6 Roxanne's time that Alex's Restaurant,
7 Incorporated, told you they couldn't produce some
8 sort of financial documents you needed because
9 they had lost the financial documents?

10 A. During Roxanne's reign, yes, she told me
11 that.

12 Q. Do you recall what it was you were
13 trying to do?

14 A. Same thing that I told you a while ago,
15 look at the income and expense of the business
16 and keep tabs on it for paying any estimated
17 income taxes and keeping up with profits and that
18 type of ordeal.

19 Q. Well, do you recall having to regenerate
20 the missing information? Do you recall how you
21 got the information that you needed to?

22 A. I don't regenerate it. I never
23 regenerated anything for them.

24 Q. And I'm sorry for that phrasing. Do you
25 recall how it was you got the needed information

1 to do your job at that time that they said they'd
2 lost the information?

3 A. Yes, sir.

4 Q. And how did you get that information?

5 A. I exercised my patience until she could
6 provide it to me.

7 Q. She, as in Roxanne?

8 A. She, as in Roxanne.

9 Q. Okay. So Roxanne said, we lost the --

10 A. Now, I don't know what she said now.

11 Q. Okay. And it's your understanding that
12 Roxanne could not generate the yearly, daily,
13 weekly --

14 A. Wait a minute. I did not specify what
15 she could or couldn't generate.

16 Q. Okay. But there was a time when you
17 requested some financial information to do your
18 job and Roxanne said, we can't right now?

19 A. Yes.

20 Q. And why couldn't -- to your
21 understanding, why could she not give you the
22 requested information you were requesting?

23 A. She had major computer problems.

24 Q. Okay. And you said you exercised great
25 patience to --

1 A. No, I didn't say great patience. I said
2 I exercised my patience until she could --

3 Q. Well, how long is your patience? How
4 long did it take her after she told you she
5 couldn't give it to you, before she did give it
6 to you?

7 A. Mr. Ellis, I'm a very patient man. I
8 don't know. I don't know.

9 Q. A day, week, month?

10 A. I don't recall.

11 Q. It was not the same day?

12 A. I don't recall.

13 Q. Okay. And you don't recall what time
14 frame this was?

15 A. I don't recall.

16 Q. Do you recall any secretaries doing
17 Roxanne's job prior to Roxanne?

18 A. I recall one secretary that Mr. Alex
19 himself had. I don't know -- I will tell you
20 that there were -- after Mr. Alex's -- one of
21 Mr. Alex's secretaries, he -- and he engaged us
22 to do the full bookkeeping service. We did it
23 for a while. We posted every check that they
24 wrote.

25 Q. Okay. So in the 51 years that you have

1 been requesting documents from Alex's,
2 Incorporated, financial documents, there's only
3 been once where they said, you've got to wait
4 because there's a problem?

5 A. I didn't say that.

6 Q. Okay. Well, other than this one time,
7 that --

8 A. I was just telling you of one instance.

9 Q. Okay. Well, other than this one
10 instance, is there any time that Alex's,
11 Incorporated, has not been able to generate the
12 requested financial documents that you requested?

13 A. Yes, sir.

14 Q. How many times?

15 A. I don't recall how many times.

16 Q. When's the last time?

17 A. It's been probably -- I haven't really
18 had a problem -- well, I would say periodically,
19 like, you know, our office with our computers, we
20 were -- we were down for pretty close to a month
21 at one time. In the last two years, we were
22 without computer whatever for several days.

23 Q. Okay.

24 A. And the same with them. I mean, it was
25 no consistent pattern. Like, on the 3rd of

1 August every year, their computer would be down
2 or on the 31st of December every other year.

3 Q. So in these instances, where maybe the
4 computer went down, would you eventually get the
5 financial document information or financial
6 information documents that you were requesting?

7 A. We would certainly get it at least
8 annually to do the tax returns.

9 Q. Okay. So there -- has there ever been a
10 time where you were told, we can't get you the
11 financial information that you requested?

12 A. I would have to tell you that there
13 were -- there have been times when we couldn't
14 file the -- that we've got to file corporate tax
15 returns for them. That doesn't exist. We've got
16 tax returns filed for every year they've been in
17 business.

18 Q. Was there ever a time when you said, I
19 need the monthly profits and losses for a time,
20 and they said, we're not -- we can't get that to
21 you right now and we'll never be able to get that
22 to you?

23 A. We'll never be able to get it to you?

24 Q. Yes, sir.

25 A. I don't recall that terminology used in

1 the conversation.

2 Q. Okay. So in your 51 years, do you
3 believe that Alex's Restaurant, Inc., has always
4 provided to you the financial documents you need
5 to do your job?

6 A. I know they have. I don't think. I
7 know.

8 MR. ELLIS: Okay. Mr. Fox, that's
9 all I have on direct. Thank you for your time.

10 THE WITNESS: Thank you, Mr. Ellis.

11 MR. RANNIK: Judge, there are no
12 questions for me on cross. I would like to
13 reserve the right to call him in our case in
14 chief.

15 And, Judge, along those lines, I would
16 to like to inquire of plaintiff's counsel what
17 they view the next hours looking like, in terms
18 of timing.

19 I believe -- I'm going to try to make
20 myself available tomorrow, if need be, but as I
21 stand here right now, I don't know that I can be,
22 and I want to make sure that we get this resolved
23 as soon as we can.

24 THE COURT: Okay.

25 Mr. Sautter: Your Honor -- and

1 thank you, Counsel. Our plan at the moment is to
2 call the plaintiff. I anticipate his testimony
3 will be at least as long as the individual
4 defendant. Then we also have Jim Ewart here, who
5 will try to wrap all this up together for the
6 Court.

7 THE COURT: Sure. Okay. Well,
8 I've got a few questions that I want to ask
9 Mr. Fox; so I can pin some stuff down for me, and
10 then let's just sort of figure out where we are.
11 Okay?

12 Mr. Fox, I'm going to hand you some
13 documents and just ask if you have seen them and
14 can identify them, and it's just -- it's stuff
15 that Ms. -- let me hand it to you. It's some
16 testimony that was presented through Ms. Billips
17 earlier today.

18 THE WITNESS: Do you want me to
19 review it here?

20 THE COURT: You can do it right
21 there. You'll be fine. I think I can -- I've
22 looked at it enough, I think I can follow it.
23 I'm just trying to figure it out.

24 I've got some -- let me get some general
25 questions out to you, and then we will look

1 specifically at those.

2 So, Mr. Fox, you've performed accounting
3 services for the company, really since 1969?

4 THE WITNESS: Yes, sir, that's
5 correct.

6 THE COURT: All right. And those
7 services, do they include an audit or are you
8 doing a review or a compilation of what they've
9 provided you? How would you describe it?

10 THE WITNESS: We have never
11 provided an audit, nor a review, nor a
12 compilation.

13 THE COURT: Okay. So you take what
14 they give you and then you work up the financial
15 statements; is that right?

16 THE WITNESS: That's correct.

17 THE COURT: All right. And they
18 actually provide you with the profit and loss; is
19 that right?

20 THE WITNESS: They provide me with
21 the profit and loss statement that I verify
22 through their bank records.

23 THE COURT: Okay. All right. And
24 have you through the years then provided them
25 with advice on sort of how to run the business,

1 or you're having problems here, we need to deal
2 with this here? In other words, really I'm
3 talking about tax liens in that regard.

4 THE WITNESS: The biggest problems
5 I've chatted with them about was ways to
6 circumvent getting behind with their payroll
7 taxes, and that encompassed basically trying to
8 get enough momentum financially to make tax
9 deposits when they give out payroll checks; so
10 they wouldn't get behind with it.

11 THE COURT: So not only did they
12 cover the payroll, but they also covered the
13 payroll tax --

14 THE WITNESS: Absolutely, yes, sir.

15 THE COURT: -- in a timely fashion
16 so it doesn't build up?

17 THE WITNESS: Yes, sir.

18 THE COURT: However, my experience
19 with restaurants is, that's fairly typically in
20 that industry.

21 THE WITNESS: Very, very typical,
22 yes, sir.

23 THE COURT: All right. Very good.
24 So then that now leads to what I've handed you.
25 I think I handed you Exhibits -- Plaintiff's

1 Exhibits 1, 2 and 3. And after 2, I believe I
2 handed you 10, which was an appraised statement.

3 So I believe I was the sale of -- I
4 forget which one, I was. One was the sale of
5 Coleman Boulevard; one was the sale of Rivers
6 Avenue, and one was the sale of Dorchester. I
7 think Dorchester was number 2.

8 So were you -- my question to you is,
9 were you privy to these documents at or about the
10 time of the sale?

11 THE WITNESS: Yes, sir.

12 THE COURT: Okay. And would those
13 have been -- how would those documents have been
14 entered into any financial statements and/or tax
15 returns that were prepared?

16 THE WITNESS: These -- item no. 1,
17 no. 2, and No. 3 would not have.

18 THE COURT: Okay. Would they have
19 not shown on the balance sheet either that you
20 talked about?

21 THE WITNESS: They would not
22 because the balance sheet was maintained by -- by
23 the secretary, who -- you have to have a little
24 bit more information to do a balance sheet than
25 you do a profit and loss statement. And she had

1 zero ability to do a balance sheet.

2 THE COURT: Okay.

3 THE WITNESS: Okay?

4 THE COURT: Okay.

5 THE WITNESS: And one thing -- and
6 another reason is because these statements are --
7 going by the dates are geared for -- are geared
8 up for a payoff, whether it happened at that time
9 or not.

10 THE COURT: Right.

11 THE WITNESS: And the corporation
12 doesn't cutoff until July 31st; so these balances
13 would have been satisfied prior to July 31st for
14 the most part.

15 THE COURT: Okay.

16 THE WITNESS: You would have to
17 look at the closing statements from the lawyer
18 and preparer.

19 THE COURT: Right. These are
20 snapshots in time for whatever date they are.
21 Your snapshot in time is the end of the calendar
22 year for the business?

23 THE WITNESS: That's the only thing
24 that mattered to me was the July 31st corporation
25 cutoff.

1 THE COURT: Got it. All right.

2 I'm with you there. But if you look at those
3 briefly, you will see there's payments of these
4 tax liens being done. There's payment towards
5 other -- there was, I think, payments to
6 Flowertown in some of those, and that gets into
7 what we've discussed.

8 And I think Mr. Ellis asked specifically
9 about that. Some funds from the sale of these
10 businesses were going to satisfy some Flowertown
11 liens or loans, whatever they were.

12 THE WITNESS: Right. It certainly
13 could have been.

14 THE COURT: Okay. The next one,
15 the Exhibit 10, I think it is, is the appraisal
16 of the Dorchester Road store. Appraisal came in
17 at 315, but as you can see from Exhibit 2, it
18 sold for 320.

19 And are you familiar with this, or does
20 that ring a bell with you?

21 THE WITNESS: Yes, sir, it does.

22 THE COURT: Because the testimony
23 was that actually three properties were sold with
24 that Dorchester Road restaurant.

25 THE WITNESS: Well, it was a couple

1 of other small houses.

2 THE COURT: Just right there next
3 door, if I remember right.

4 THE WITNESS: Right, yes, sir.

5 THE COURT: Okay.

6 THE WITNESS: And at the time, the
7 world was just about to come down on Ms. Carolyn.
8 She wouldn't have sold this if it hadn't have
9 been for the tax liens.

10 THE COURT: Right. This is
11 post-2008 crash, and we're kind of fighting our
12 way through that.

13 THE WITNESS: And let me tell you
14 this: At that particular time, you couldn't give
15 away a property.

16 THE COURT: Well, I gave away a lot
17 up here, but that's a different story. That's a
18 totally different story. But I'm with you on
19 that. I understand.

20 THE WITNESS: Yes, sir.

21 THE COURT: The market sort of
22 dried up.

23 THE WITNESS: It sure did. It sure
24 did. We begged realtors to list it, and they --
25 and several of them said, we'll be glad to list

1 it, but the chances of selling it or getting
2 anything for it is nil right now.

3 THE COURT: Okay. Thank you for
4 that. And then, finally, I think I gave you -- I
5 believe it's Exhibit 9, and those are -- I found
6 that interesting, and I wanted to get your
7 feedback on that. Tell me if you've ever seen
8 that before, and then I will describe it briefly,
9 but take a look.

10 THE WITNESS: I think I have,
11 Judge. I think I have.

12 THE COURT: Would you have helped
13 provide information to create that report?

14 THE WITNESS: This document?

15 THE COURT: Yes, sir. Not the
16 document itself but the underlying data. In
17 other words, the income shown on the report.
18 This is a report --

19 THE WITNESS: The only thing that I
20 can tell you is, I don't know where this income
21 came from.

22 THE COURT: Okay.

23 THE WITNESS: I would be a person
24 that someone could obtain this information from.

25 THE COURT: Right.

1 THE WITNESS: Whether these figures
2 are estimated or real -- now, let me tell you
3 this: If they came from tax returns, I accept
4 one hundred percent involvement in it.

5 THE COURT: Okay.

6 THE WITNESS: And these tax
7 returns, Judge, I'm telling you, they come
8 straight from the bank statement.

9 The income for the year, we pick that up
10 from the 12 bank deposits, and that is exactly
11 verbatim the way the IRS was, unless they can
12 find subsidiary information to the contrary where
13 there was more.

14 THE COURT: Okay.

15 THE WITNESS: I don't think that is
16 the case here at all.

17 THE COURT: Okay.

18 THE WITNESS: That does not exist.
19 You can make that conjecture. You can infer it
20 all day long, but --

21 THE COURT: Okay. Okay.

22 THE WITNESS: The proof otherwise,
23 I think, is (inaudible).

24 THE COURT: All right. So the
25 document itself was prepared by Dixon Hughes

1 Goodman.

2 THE WITNESS: Yes, sir.

3 THE COURT: And it was done for the
4 purposes -- this was when the Goose Creek store,
5 the one that's still open today, had suffered
6 some sort of -- it must have been a roof damage
7 or water damage or something happened over there.

8 THE WITNESS: Right.

9 THE COURT: So they were shut down
10 for what appeared to be about a year.

11 THE WITNESS: Yes, sir.

12 THE COURT: So what they're doing
13 is trying to cash in on the insurance policy for
14 business interruption loss, correct?

15 THE WITNESS: Right.

16 THE COURT: And we all know
17 insurance companies, they don't pay unless you
18 prove to them what you're owed, right?

19 THE WITNESS: That's true. And
20 sometimes when you overestimate, they'll settle
21 because they don't want to go to court.

22 THE COURT: Right. Okay.

23 THE WITNESS: And, you know,
24 these -- well, the actual income that would have
25 taken place at that time, you -- in my opinion,

1 it would be just like valuating a house. What
2 does the house sell for next door? And on this
3 one, what is the tax -- what does the profit
4 margin look like before and after.

5 THE COURT: Can you just look at
6 those dates and see whether or not they would
7 have been stuff that would have come off of
8 returns that you had prepared or would the timing
9 of that be such that you probably did not provide
10 the basis for that information?

11 THE WITNESS: I don't recall
12 providing any person with this information.

13 THE COURT: Okay. It does state
14 the dates. Help me out on that. For whatever
15 reason, it's over two different periods of time.
16 I don't know why they broke it out the way they
17 did, but there may be an explanation. I just
18 don't know it.

19 THE WITNESS: Yeah. I would be
20 interested to know the source of these figures --

21 THE COURT: Okay.

22 THE WITNESS: -- personally.

23 THE COURT: And just to check my
24 records, that is Exhibit No. 9, is it not?

25 THE WITNESS: Yes, sir, that's

1 correct.

2 THE COURT: Okay. All right. So
3 you would have had -- to the best of your
4 knowledge, you had no input into that report; is
5 that right?

6 THE WITNESS: No, sir. And these
7 figures, these -- as far as -- if they're
8 alluding to this being the profit -- and I'm not
9 sure whether I'm interpreting it right, but
10 \$209,000 for that period of time, I think that's
11 way out of line.

12 I don't think I've got any documents
13 that -- if you want to see what the income and
14 expense of the business and what the profit of
15 the business is, you can look at my -- especially
16 my past five to seven year tax returns.

17 THE COURT: Right.

18 THE WITNESS: And if you can get
19 any of those years reviewed and you come up with
20 the material difference in the profit, I
21 personally -- and you got it on record -- I
22 personally will pay that accounting firm for the
23 time of the Court.

24 THE COURT: Okay. All right. I
25 came up with roughly \$19,000 a month is what

1 would have been net income based on what I've
2 looked at there.

3 THE WITNESS: No, sir.

4 THE COURT: That's not been
5 historically what you've seen?

6 THE WITNESS: No, sir, absolutely
7 not.

8 THE COURT: All right.

9 THE WITNESS: I know that for a
10 fact, and I can prove it.

11 THE COURT: All right. I'm with
12 you. I'm going to let y'all ask him any
13 questions, but that's the document I was looking
14 at over lunchtime, so...

15 MR. ELLIS: Thank you, Your Honor.

16 BY MR. ELLIS:

17 Q. So, Mr. Fox, staying on that Dixon
18 Hughes report, you said you do not know where the
19 data came from to generate that report?

20 A. I don't know where it come from.

21 Q. All right. And your profits and loss
22 statements are always provided to you by Roxanne
23 or April?

24 A. No, sir. Well, April, not Roxanne.

25 Q. Well --

1 THE COURT: Currently.

2 Q. Prior to April.

3 A. Prior to April, it was Roxanne.

4 Q. Right, right. And so the profit and
5 loss statements -- the profit of the Goose Creek
6 restaurant would have been provided to you by
7 April currently, Roxanne prior to that; is that
8 correct?

9 A. That's correct.

10 Q. And that would be the number you would
11 evaluate to form a belief as to what was the
12 monthly income; is that correct?

13 A. (Inaudible.)

14 Q. Is that a yes?

15 A. Yes.

16 Q. But you don't know the data?

17 A. Yeah. This isn't what it is today.

18 Q. Okay.

19 A. You know, if you look back -- and this
20 is going back 10 years. If you look 10 years
21 back, it may; it could. I haven't looked at a
22 tax return 10 years ago. But I'm telling you,
23 within the last five years, it's way out of line.

24 Q. Okay. So the data you get from either
25 April or Roxanne, you don't think, matches

1 whatever data Dixon Hughes got?

2 A. I don't know where Dixon Hughes got
3 their information from.

4 Q. Okay.

5 A. If I didn't -- if they got them from the
6 tax returns, I'm going to tell you, they're
7 right. If they didn't, I'm going to tell you,
8 they're not correct.

9 Q. Okay.

10 A. And that's a fact.

11 Q. It would just be different data analyzed
12 to come to those different numbers, right? Your
13 tax returns versus whatever number they came to,
14 correct?

15 A. I don't know where they would have got
16 the information from to make up a report if it
17 wasn't from P&L statements. They would have to
18 have fabricated or estimated a figure, because
19 mine is not fabricated, my figures, and they're
20 not estimated. They're factual.

21 Q. Or they could have been provided
22 different information from the client, correct?

23 A. Repeat that again now.

24 Q. Dixon Hughes, in creating that report,
25 could have gotten different information from

1 their client than the information that you got to
2 generate your tax report for the same time frame;
3 is that correct?

4 A. I would like to see what different
5 information is, Mr. Ellis.

6 Q. But it's possible that Dixon Hughes got
7 this set of data, and you got this set of data,
8 correct?

9 A. I don't think so.

10 Q. How is that impossible?

11 A. Okay. Let's agree on one thing.
12 There's one source of income, and that's the bank
13 deposits.

14 Q. I don't agree on that.

15 A. Okay. Then show me the difference.
16 Show me where the income is different.

17 Q. Bank deposits only show what's actually
18 deposited, correct?

19 A. Do what?

20 Q. The bank deposits only show what is
21 actually deposited, correct?

22 A. That is correct.

23 Q. Okay. So the accounting for the cash
24 register on a Tuesday night can have a different
25 figure than what was actually deposited in the

1 bank, correct?

2 A. It certainly could have a difference,
3 but did it?

4 Q. Okay. Are you saying it didn't, or are
5 you asking me, did it?

6 A. I am asking you, did the figures differ?

7 Q. Well, that's what I'm saying. Isn't it
8 possible that Dixon Hughes could have gotten
9 different information to create their report than
10 you're getting to create your tax reports?

11 A. No. They could have estimated it. They
12 could have taken somebody else's suggestions or
13 thoughts on it.

14 Q. So the deposits in the bank is the end
15 all, be all, of what revenue a company is
16 generating?

17 A. It's the bottom line unless you can
18 prove otherwise. Because it's a public record
19 piece of information, you can't -- you can't
20 change a bank statement that -- that a bank
21 publishes at least for 10 years if it's a FDIC
22 bank.

23 Q. But a person can choose how much they
24 deposit in the bank?

25 A. A person can choose to do anything they

1 want.

2 Q. Right.

3 A. But I don't think you're choosing
4 Carolyn of underreporting her income.

5 Q. I'm asking you -- I'm asking you, in
6 your experience, have -- you never believed that
7 somebody is depositing a different amount, or is
8 getting a different amount of cash than what
9 they're depositing into the bank?

10 A. I'm sure it exists, no question about
11 it.

12 Q. Okay. And so why is it not possible
13 that Dixon Hughes got different data to create
14 that report than you'd gotten to create your tax
15 returns for the same time?

16 A. Because I'm -- I am stating that Carolyn
17 Billips got -- only got benefit of what she
18 deposited into her checking account.

19 Q. You do not know the data that Dixon
20 Hughes used to create that report, correct?

21 A. I do not where Dixon Hughes, at this
22 point, got their information from.

23 Q. Okay. So you cannot say that it was the
24 same information that you've gotten, correct?

25 A. My information came from daily reports

1 versus bank deposits. If they -- where else
2 would they have gotten their information from?

3 Q. That would be a question for your
4 client. I don't have an answer to that.

5 A. Wait a minute. It might not be a
6 question for my client. I'm asking if you're
7 saying in the -- his records, did Dixon Hughes
8 records differ from mine, I'm interested in
9 knowing where -- why is there a difference? I
10 can tell you where my -- what my source is. Now,
11 you tell me where your source is.

12 Q. I'm not Dixon Hughes; so I don't know
13 where the -- I don't know the source of that
14 data.

15 A. Do what?

16 Q. I don't know the source of that data
17 because I'm not --

18 A. Okay. So you're guessing at it?

19 Q. No. I'm asking you whether you could
20 have gotten different data than what Dixon Hughes
21 got? I'm asking if that is possible?

22 A. If he had got it from the same sources
23 that I did, the daily register sheets reconciled
24 with the bank deposits, he couldn't have gotten a
25 different answer.

1 Q. What's a daily register sheet?

2 A. It's the sheets that represent the
3 income for the day, the adding machine tapes, so
4 to speak, adding machine and each shift
5 reconciled.

6 Q. And you've got copies of those?

7 A. I would use those, yes. At the end of
8 the year, I got the information from it and
9 reconciled it to the bank deposits and would find
10 out, if there was a difference, where the
11 difference came from.

12 Q. And so there was a daily register sheet
13 that you relied upon to do your work, correct?

14 A. No. I didn't tell you that I -- I
15 didn't say that I relied --

16 Q. You used, as part of your --

17 A. I used it as a tool.

18 Q. Okay. And you were provided those daily
19 register sheets?

20 A. Whenever I asked for the information on
21 it, I had it.

22 Q. Okay. So they would have the daily
23 register sheets to give to you whenever you --

24 A. Or sales --

25 Q. -- would request them?

1 A. -- tax returns, whichever.

2 Q. And they would have the daily register
3 sheets to give you whenever you requested them?

4 A. If I requested them.

5 Q. And those daily register sheets, you
6 would give back to Alex's, Inc.?

7 A. I never would take them from the office.

8 Q. Okay. You just got summaries of them?

9 A. And I got -- sometimes I would do a
10 sample, yes, I certainly would, and I would give
11 them back to them.

12 Q. You would do a sample. So you would
13 actually get the hard copy? You'd get the
14 original of them?

15 A. I get the original what?

16 Q. The daily register sheet. You said you
17 sometimes do a sample of them.

18 A. I do.

19 Q. How would you do a sample of them?

20 A. How would I?

21 Q. Well, I mean, what is the actual daily
22 register sheet? What is it? Is it that long
23 tape where you punch it into the calculator and
24 it's about 2 inches wide?

25 A. Well, the information off of it.

1 Q. But is that what you're talking about?

2 Is that what you're calling a daily --

3 A. It was a daily sheet, some kind of white
4 sheet that they had.

5 Q. Was it a file that --

6 A. Yeah. Yeah. Maybe a little bit longer.

7 Q. Okay. And if you said, hey, I want to
8 do a sample, give me last Thursday, they would
9 give that to you?

10 A. Uh-huh.

11 Q. Is that a yes?

12 A. Yes, sir, I'm sorry.

13 Q. No problem. I've never seen daily
14 register sheets; so that's why I was asking about
15 them. And so your figures that you use to
16 prepare your tax returns are the figures of all
17 sums deposited into the bank account?

18 A. Come again?

19 Q. Your figures that you use to complete
20 your tax returns are the sums of all deposits
21 into the bank account?

22 A. The figures that I use to prepare my
23 return is the sum total, the bottom line of all
24 bank deposits, yes. That's the minimum. That's
25 the bottom line.

1 Q. Okay.

2 A. It's at least that, and if I can
3 determine that there's more income, I report
4 more.

5 Q. How would you determine that there is
6 more income?

7 A. If sales tax returns were higher than
8 the bank deposits, I would report that.

9 Q. Did y'all ever have any sales tax
10 problems? Like, was it always just payroll tax
11 liens you were having to pay on? Did you ever
12 have any set -- did you ever get behind on sales
13 tax?

14 A. Yes, sir, we sure did.

15 Q. And was that part of the dilemma, was
16 sometimes sales tax and deposit --

17 A. No, no, no. Wait a minute. The sales
18 tax problem we got into was, when we filed the
19 sales tax returns, we didn't have money to pay
20 the sales tax.

21 Q. And is that because the sales tax --

22 A. No, sir. It was lack of money.

23 Q. May I finish my question. Is that
24 because the sales tax did not match up with the
25 actual deposits?

1 A. I will repeat it again. No, sir. It
2 was from the lack of money to pay the sales tax.
3 That's where you get into -- run into a problem.

4 Q. And I'm going to try to finish my
5 question one more time. Is it because the sales
6 taxes didn't match up with the actual deposits
7 into the bank account?

8 A. What does the sales tax return not
9 matching up with the deposits have to do with not
10 paying your sales tax?

11 Q. All right. Well, you just testified
12 that sometimes you would have had to adjust the
13 deposits into the bank account because the sales
14 tax --

15 A. That was -- no, no, no. That was for
16 the income tax return, Mr. Ellis. We were not
17 talking about the sales tax return at that point.

18 Q. I'm sorry. I heard sales tax.

19 A. No, sir, you didn't. You thought you
20 heard sales tax.

21 Q. Okay. So sometimes the income tax
22 return did not match up with the actual deposits
23 into the bank account?

24 A. Sometimes they may not. There may be a
25 difference.

1 Q. What would those differences be?

2 A. It could be shortages at the register;
3 it could be loans; it could be bounced checks.
4 It could be a lot of things.

5 Q. Those are possibilities, but you don't
6 know why? Is that what you're saying?

7 A. Come again?

8 Q. Whenever you would have to adjust the
9 income tax return because they did not
10 match up --

11 A. You would have to show me which return
12 I'm adjusting and what -- what adjustments you're
13 talking about.

14 Q. I asked you if the tax returns were
15 always reflective of the actual deposits in the
16 bank account, and you said, no, sometimes you had
17 to adjust it because the sales tax was different.

18 And I know -- maybe you meant to say
19 income tax, but you said sales tax the first
20 time. And now you're saying that sometimes you
21 had to adjust it because the income tax didn't
22 match up with the actual bank deposits. That's
23 what I'm hearing.

24 A. Mr. Ellis, we have a miscommunication.
25 Okay?

1 Q. Okay.

2 A. Let's get it clarified. Let's go one at
3 a time now.

4 Q. So your tax returns were always --

5 A. Well, let's --

6 Q. -- based upon the deposits, actual
7 deposits into the bank account?

8 MR. RANNIK: Judge, if I may. I
9 think this has been very well covered on direct.
10 I think this is outside the scope of the
11 questions that Your Honor was asking.

12 Do we really need to go through this
13 for -- I think this is the fifth time?

14 THE COURT: Where are you going,
15 just so I'm clear?

16 MR. ELLIS: And, Your Honor, in
17 your questioning of the witness, I heard of some
18 new information that I never seen in the three
19 years of discovery. We've been going through
20 these register cash sheets that he referenced in
21 using to answer your questions.

22 THE COURT: Okay.

23 MR. ELLIS: And so that -- I want
24 to know why he didn't tell me about that whenever
25 I was asking him what documents he relied upon

1 and how he's -- now he's bringing this in and
2 saying, that's what he uses.

3 THE COURT: All right. Well, ask
4 him that question specifically.

5 BY MR. ELLIS:

6 Q. Okay. When would you use -- what did
7 you call them? The register cash sheets, is that
8 what you called them?

9 A. Yes, sir.

10 Q. Okay. When would you use those register
11 cash sheets?

12 A. Just whenever I would want to track the
13 income for that period of time.

14 Q. Okay. Just to make sure that the
15 deposits into the bank matched up to what was
16 going into the register?

17 A. I made that task on a number of
18 occasions, and it always come out to be very
19 satisfactory. And I find the bank deposits to be
20 extremely, extremely reliable.

21 Q. Okay. At any time you wanted the
22 register cash sheets, you could get the register
23 cash sheets?

24 A. Yes, sir.

25 Q. Okay. Was there any length of time that

1 they said, you can no longer have those register
2 cash sheels because that's too far gone?

3 A. No, sir. No, sir.

4 MR. ELLIS: Nothing further, Your
5 Honor.

6 THE COURT: All right. Thank you.
7 Mr. Fox, I don't have any more questions. I'm
8 sorry I opened up that can of worms.

9 THE WITNESS: That's all right.

10 THE COURT: Actually, I do have one
11 question.

12 THE WITNESS: Yes, sir.

13 THE COURT: This is personal and
14 don't have nothing to do with this. Are you
15 familiar with any criteria, change in criteria
16 from the IRS in what the basis on properties or
17 assets would be effective in 2020?

18 In other words, not cost basis -- or,
19 well, original cost basis as opposed to appraised
20 values? Are you familiar with any change in how
21 the IRS is doing things on tax returns? I think
22 it's only effective in 2020. That's what I was
23 informed. I'm just inquisitive about that.

24 THE WITNESS: I am not privy of any
25 at this point. I do know the basis is a big

1 ticket item with the IRS on today's market.

2 THE COURT: Right.

3 THE WITNESS: And especially
4 partnership returns. That's a hot ticket.

5 THE COURT: All right. Very good.
6 Well, that probably answers my question. Thank
7 you, sir. You may step down.

8 I'm going to excuse him unless you have
9 another need for him. I'm assuming he was your
10 witness?

11 MR. RANNIK: Yes. And we do intend
12 to call him, Judge.

13 THE COURT: All right. Very good.
14 Thank you very much, Mr. Fox. It was good to see
15 you again, sir.

16 All right. So we're still on the
17 plaintiff's case. Y'all intend to call
18 Mr. Billips, the plaintiff. How long do y'all
19 want to go? We took at least an hour and a half
20 this morning. I don't mind going until 6. I
21 don't know if my staff feels that way or not. I
22 don't know if y'all feel that way or not.

23 And I'm not sure that would get you
24 through cross-examinations; so I'm assuming that
25 could take a while as well.

1 MR. SAUTTER: It's at the Court's
2 convenience and the Court's schedule. We can go
3 this afternoon or we can go tomorrow morning,
4 whatever the court would like to do.

5 THE COURT: Mr. Rannik, do you need
6 to check with your office and see if you're
7 available in the morning?

8 MR. RANNIK: I do, Judge. And I
9 have a pending request in, and I haven't heard
10 back yet.

11 THE COURT: Okay. All right. You
12 have asked?

13 MR. RANNIK: But my preference
14 would certainly be to finish this evening, if at
15 all possible. From our part, I think that
16 shouldn't be a problem, but I don't know how long
17 direct testimony is going to go.

18 (A recess transpired.)

19 MR. SAUTTER: Just for the timing
20 of things, I think that Mr. Ewart will testify.
21 He's expected to testify as to what Mr. Billips
22 will go through as to his personal knowledge as
23 the manager for these -- all these different
24 locations.

25 I think it's -- he is the only one that

1 seemed to know about these daily cost sheets and
2 he's the best source of that. And I think any
3 opinion --

4 THE COURT: My recollection is,
5 they hadn't been produced, so you don't have
6 them.

7 MR. SAUTTER: Well, we've got his
8 recollection of it. He was intimately involved
9 in them, and that's what he would first
10 establish.

11 And then I anticipate that that would
12 form a basis of any opinion or testimony that
13 Mr. Ewart may have. He's a partner in this
14 business. He can testify to it. And we'll clean
15 up Mr. Ewart's testimony.

16 But I don't think for -- for right now,
17 that that's a reason why that Mr. Billips should
18 go prior to Mr. Ewart. And then the Court can
19 determine whatever weight to give any evidence
20 that the Court considers.

21 MR. RANNIK: Judge, I'm fine with
22 Mr. Billips going first, but I don't see any
23 prejudice to him remaining under oath overnight.
24 His testimony is going to be what his testimony
25 is going to be.

1 I assume it's not going to change
2 overnight. I would ask that we proceed with him
3 and get as far as we can.

4 THE COURT: Let's get started. You
5 figure out which one you want to call, and let's
6 get started.

7 MR. SAUTTER: Thank you. I'll call
8 the plaintiff, Mr. Billips, Tony Billips.

9 THE COURT: All right.

10 (TONY BILLIPS, having first been
11 duly sworn, testified as follows:)

12 THE COURT: Thank you, sir. Please
13 have a seat, and when you get comfortable, give
14 us your full name and address for the record,
15 sir.

16 THE WITNESS: My name is Tony
17 Alexander Billips. My address is 13041 Blue
18 Woods Road, Laurinburg, North Carolina 28352.

19 THE COURT: Thank you, sir. All
20 right.

21 DIRECT EXAMINATION

22 BY MR. SAUTTER:

23 Q. Mr. Billips, who is your father?

24 A. Alex Billips.

25 Q. And was he the founder of Alex's?

1 A. Yes, sir.

2 Q. And how long have you been involved with
3 the Alex's Restaurant with your father?

4 A. All my life.

5 Q. When did you first start with Alex's?
6 Was it called Alex's, Inc., back then?

7 A. Yeah. I mean, there was a couple names
8 before Alex's. And I would just wash dishes as a
9 little kid and then progressed from there.

10 Q. All right. And what store did you
11 primarily work at when you were a little kid?

12 A. Mt. Pleasant.

13 Q. And y'all lived in Mt. Pleasant?

14 A. Yes, sir.

15 Q. And where did y'all live?

16 A. Rifle Range Road.

17 Q. Okay. And Alex, Sr., is your father,
18 and at some point, your father and your mother
19 became divorced?

20 A. Yes, sir.

21 Q. And when did Ms. Carolyn come on the
22 scene? How old were you?

23 A. Six years old, I believe.

24 Q. Okay. And how old were you when your
25 father died?

1 A. 13.

2 Q. All right. That's seven years ago. And
3 you were involved with the Alex's Restaurant all
4 during that time period?

5 A. Well, I would just ride with my dad when
6 I could. I mean, I lived with my mother, you
7 know, so I was bouncing back and forth, I guess.

8 Q. Okay. So in what -- you know, even
9 before your father died or once you got old
10 enough, what with your role with Alex's, Inc.?
11 What did you do for Alex's, Inc.?

12 A. Manager. I mean, I just always
13 considered myself a manager or owner.

14 Q. Of what, just the one store or all of
15 them?

16 A. It was five and then six and then I
17 helped with seven.

18 Q. Okay. Well, let's -- what's store
19 number 1? Which one was that?

20 A. Mt. Pleasant.

21 Q. Okay. What's store number 2?

22 A. Goose Creek.

23 Q. And what's store number 3?

24 A. Rivers Avenue.

25 Q. What's store number 4?

1 A. Dorchester.

2 Q. What is store number 5?

3 A. Savannah Highway.

4 Q. What's store number 6?

5 A. Moncks Corner.

6 Q. Well, store number 6, is that

7 Summerville?

8 A. Oh, yes, Summerville. I'm sorry.

9 Q. Okay. What is store number 7?

10 A. Moncks Corner.

11 Q. All right. And I've got -- was there a
12 laundromat involved?

13 A. The number 3 Rivers Avenue location we
14 converted into a laundromat.

15 Q. Okay. And that's right next to the
16 Rivers Avenue Alex's Restaurant?

17 A. We closed the restaurant and gutted it
18 and put in a laundromat.

19 Q. Okay. And when did you leave the
20 employment -- or when did you leave the
21 employment of Alex's, Inc., for the last time?

22 A. The last time?

23 Q. Yes, sir.

24 A. 2010 or '11. I'm not a hundred percent
25 sure.

1 Q. Okay. And once you left, where did you
2 go?

3 A. I went to my mother's in North Carolina.

4 Q. And what did you do for a living?

5 A. Just whatever I could do to survive.

6 Cut grass, paint, just anything. I took care of
7 my parents.

8 Q. All right. And prior to when you left
9 Alex's, Inc., did you have a company credit card?

10 A. Yes.

11 Q. Did you have a company car?

12 A. At times I did.

13 Q. Okay. Did you have health insurance?

14 A. At times.

15 Q. Was there a time after you left Alex's
16 where you had dental problems?

17 A. Yes.

18 Q. And did you speak to Ms. Billips about
19 it?

20 A. Yes.

21 Q. What did she tell you?

22 A. To go to the clinic.

23 Q. What clinic?

24 A. MUSC.

25 Q. Okay. And what did you need to have

1 done?

2 A. The same work I still need to have done,
3 crowns and what have you.

4 Q. And Ms. Billips, did she have work done
5 through insurance, dental work done?

6 A. I don't know how she paid for it. She
7 had work done.

8 Q. Like major work, over \$100,000 worth, to
9 your knowledge?

10 A. It was a lot.

11 Q. Yes, sir. All right. And did things
12 change with your contact and communication with
13 Ms. Billips, with Alex's, Inc., with your
14 brothers after you left Alex's?

15 A. Yes.

16 Q. In 2011?

17 A. Yes, sir.

18 Q. How did it change?

19 A. I was cutoff.

20 Q. Why?

21 A. I feel like it was -- we were intimate,
22 and I -- when I walked out, that might have been
23 stepping on some toes and hurting some feelings.

24 MR. RANNIK: Judge, I would ask
25 that that answer be stricken from the record for

1 the reasons we have previously discussed.

2 MR. SAUTTER: Judge, I intend to
3 make an offer of proof, whether this Court will
4 consider it now. I think it's necessary to show
5 the motive of where we are in this thing.

6 I think it goes to everybody's
7 credibility, and I would offer it. It's relevant
8 material, significant evidence. It's the only --
9 I asked her point blank why did -- why did this
10 all happen, and she couldn't give me an answer.
11 And I'm asking him.

12 THE COURT: Are we talking about in
13 the 2011 time frame?

14 MR. SAUTTER: Yes, sir.

15 THE COURT: Is that where we're
16 putting this time frame at?

17 MR. SAUTTER: Yes, sir.

18 MR. RANNIK: And, Judge, I believe
19 this is going to go to whether Mr. Billips is
20 entitled on the question of liability. This
21 doesn't factor into the question of valuation of
22 his share of Alex's Restaurants, Inc.

23 THE COURT: All right. I'm going
24 to allow the question, but I'm going to limit it
25 to that time frame, and let's just move on from

1 there. Okay? All right.

2 BY MR. SAUTTER:

3 Q. 2011, what do you believe to be the
4 source of lack of communication with Ms. Billips
5 with Alex's, Inc., with your brothers? What was
6 it?

7 A. I left. I mean, I was cutoff. I don't
8 know.

9 Q. And were you intimate up until 2011 with
10 Ms. Billips?

11 A. Yes.

12 Q. Did y'all go on vacations together?

13 A. Yes, sir.

14 Q. Did y'all meet privately in the mountain
15 house?

16 A. Yes, sir.

17 Q. Did y'all meet privately anywhere you
18 could?

19 A. Yes, sir.

20 Q. Was there sexual relations involved?

21 A. Yes, sir.

22 Q. These are hard questions. Does anybody
23 know this? Have y'all talked about it with
24 anybody?

25 MR. RANNIK: Judge, I believe we're

1 getting outside of the realm of what the Court
2 has allowed.

3 THE COURT: I'm going to sustain
4 that. I think that -- I think that's sufficient.

5 MR. SAUTTER: I'm not going to ask
6 anymore about the intimacy aspect.

7 BY MR. SAUTTER:

8 Q. But how involved were you in the running
9 of these Alex's businesses, Alex, Inc., with
10 Ms. Carolyn Billips from the time up until 2011?

11 A. We were side by side. I mean, we worked
12 together good.

13 Q. Did you understand that you were an
14 owner of Alex's, Inc.?

15 A. I've always considered myself one.

16 Q. In what percentage?

17 A. 18 percent or more.

18 Q. Okay. Did you get any distributions
19 when Mt. Pleasant was sold?

20 A. No, sir.

21 Q. How did you find out that the
22 Mt. Pleasant location was sold?

23 A. I got a phone call that the doors were
24 locked from a couple of the employees.

25 Q. Ms. Billips didn't discuss with that

1 with you?

2 A. No, sir.

3 Q. Is that after y'all fell out?

4 A. Yes, sir.

5 Q. Okay. What's been previously introduced
6 into evidence as Defendant's Exhibit No. 1, can
7 you identify this document?

8 A. Just from being shown to me from my
9 lawyer.

10 Q. And does that document have your
11 signature on it?

12 A. Yes, sir.

13 Q. Is that your signature?

14 A. Yes, sir, it looks like it.

15 Q. All right. Let me ask you this: Was
16 there ever a meeting of the shareholders of
17 Alex's, Inc., in May of 2012?

18 A. No, sir.

19 Q. And -- there was no shareholder meeting,
20 correct?

21 A. No, sir.

22 Q. You had no knowledge of Mt. Pleasant
23 being sold, right?

24 A. No, sir. I would not have allowed it.

25 Q. You wouldn't have?

1 A. No, sir. I would have came back and
2 bought it.

3 Q. All right. So you didn't sign a
4 document saying she could sell -- that she could
5 sell Mt. Pleasant, right?

6 A. No, sir.

7 Q. Well, how do you explain your signature
8 there on that document?

9 A. Do I just give my opinion?

10 Q. Yeah. What is your knowledge?

11 A. I feel like that these -- this is
12 photocopied.

13 Q. Cut and paste?

14 A. Cut and paste.

15 Q. And when you look at it, it says --
16 whose handwriting is that on the top of the
17 document?

18 A. Carol's.

19 Q. What does it say?

20 A. Tony signed and faxed from his mom back
21 in -- back to the office, and it has a timestamp
22 and date.

23 Q. What date is that?

24 A. It's stapled. Let me see. I believe
25 it's 2011. I don't know if that's the fifth

1 month or the third month. It's the seventh day
2 of the fifth or the third month.

3 Q. All right. Is that document even
4 correct? What percentage does it say that you
5 have in it initially?

6 A. Initially it has 16.85.

7 Q. And what is your correct percentage?

8 A. 18 and a third.

9 Q. Okay. And do you recognize that
10 handwriting there?

11 A. The handwriting?

12 Q. The 18.3 and the --

13 A. Yes.

14 Q. Whose is that?

15 A. Carol's.

16 Q. And you're familiar with her
17 handwriting?

18 A. Yes.

19 Q. Did you initial that change to
20 straighten out what percentage that you actually
21 have?

22 A. No, sir.

23 Q. What percentage does it say that your
24 brother has? And I think it's Alex, right?

25 A. Alex Lee. I believe it says 16.85 also.

1 Q. Is that correct?

2 A. No, sir.

3 Q. And that's not changed, is it?

4 A. To my knowledge, no, sir.

5 Q. Okay. You have no knowledge of a
6 shareholder meeting around that time, right?

7 A. No, sir.

8 Q. Were you consulted as to how the
9 proceeds of Mt. Pleasant were to be split up?

10 A. No, sir.

11 Q. So what did you -- were you familiar
12 with the operation of the Mt. Pleasant business?

13 A. Yes, sir.

14 Q. And how would you be familiar with it?
15 And we're talking about this time, you know,
16 before you left, 2010, 2011.

17 A. Well, actually, in that time period, I
18 was a chef over there, cooking outside on a
19 grill.

20 Q. Okay.

21 A. Well, I was there.

22 Q. But in your past, I mean, what was your
23 involvement with the Mt. Pleasant location?

24 A. In and out, helping out through the
25 weekend, whatever needed to be done.

1 Q. Okay. And did you see documents that
2 are called -- and I always get it messed up --
3 daily -- what is it? Daily --

4 A. Cost control sheets.

5 Q. -- cost control sheets.

6 A. Yes, sir.

7 Q. Did you see those?

8 A. Yes, sir.

9 Q. How often would you see them?

10 A. I live by them.

11 Q. You lived by them?

12 A. Yep.

13 Q. And you kept those in your car with you
14 when you go around to --

15 A. They were hanging on every office door,
16 at our home, Carol's home, but I lived there.
17 And they were just everywhere. And I kept one
18 with me, and it's something we discussed all the
19 time.

20 Q. And what would you use those cost sheets
21 for?

22 A. Comparison from one day this year to a
23 day of last year or a week, you know, up or down,
24 increase or decrease. Food costs, keeping the
25 food costs at a certain level; payroll at a

1 certain level; linens. All of your bills pretty
2 much except for utilities.

3 Q. Okay. And were those daily -- were
4 those daily sheets kept?

5 A. They were everywhere.

6 Q. The cost control sheets, they were kept?

7 A. Everywhere.

8 Q. Where were they kept?

9 A. Well, I know we kept a set at the house
10 in the, you know, kitchen, dining room, and then
11 they would be literally hanging on every
12 restaurant door, the office doors.

13 Q. And out of those daily cost control
14 sheets, would a weekly report be generated?

15 A. They would go to the office, and they
16 would generate reports like that, I would
17 believe.

18 Q. Okay. So you're familiar with the daily
19 costs and the daily expenses and the daily
20 revenues of the restaurants: Mt. Pleasant, Goose
21 Creek, Rivers, Dorchester, Savannah Highway and
22 the Summerville location and Moncks Corner?

23 A. Yes, sir.

24 Q. As part of these cost sheets, were
25 bonuses determined off of those cost sheets as

1 well?

2 A. Yes, sir. There was -- at the time.
3 Not all the time, but yeah.

4 Q. Well, let me just kind of cut to the
5 chase here about the distributions. Did you ever
6 receive a distribution from the sale of the
7 Mt. Pleasant property?

8 A. No, sir.

9 Q. Did you ever receive a distribution from
10 the sale of Goose Creek? Goose Creek has not
11 been sold. Rivers?

12 A. No, sir.

13 Q. Dorchester?

14 A. No, sir.

15 Q. Savannah Highway?

16 A. No, sir.

17 Q. Summerville?

18 A. No, sir.

19 Q. What do you know about the Summerville
20 restaurant? Did you consider it to be part
21 Alex's, Inc.?

22 A. Yeah. When we first rented the liquor
23 store, or that little spot, I was up there. I
24 helped open the store. I was the original
25 manager that trained a manager, and then I just

1 moved on. I drove from Mt. Pleasant to
2 Summerville every day for a long time.

3 Q. And you considered it to be all part of
4 the Alex's, Inc.?

5 A. Yeah. The menus, everything was the
6 same.

7 Q. All right.

8 A. The shirts, the uniforms.

9 Q. Those T-shirts that say Alex's on the
10 back that the waitress wear?

11 A. Yeah.

12 Q. Okay. Tell us a little bit about the
13 Rivers Avenue location. There's been some
14 testimony about a stereo shop and things of that
15 nature. Can you tell the Court how it was all
16 set up and what was sold and when and things of
17 that nature?

18 A. Well, originally, it was a restaurant,
19 and I don't know -- I don't really remember the
20 year exactly that my brother, Alex, Jr., built a
21 building into the back corner of the parking lot.
22 And I don't -- I don't know how any of that came
23 about. I wasn't part of it. I just know it
24 happened.

25 Q. Okay. And so was there a shared parking

1 lot behind the restaurant?

2 A. Yes. It was a parking lot that his
3 business would use and the restaurant would use,
4 anybody at the restaurant or the shop.

5 Q. What happened to his business, if you
6 know?

7 A. I don't know the details. He closed it
8 and sold it.

9 Q. Okay. And that shared parking lot and
10 the Alex's Restaurant was sold, right?

11 A. No, sir. He sold his shop, the shop and
12 the property that it sat on.

13 Q. Okay. But Rivers was ultimately sold?

14 A. We turned it into a laundromat.

15 Q. But it was still all part of Alex's,
16 Inc.?

17 A. Yes. That was sold here recently.
18 Well, a few years ago.

19 Q. Did you get any money from that?

20 A. No, sir.

21 Q. Were there any kind of shareholder
22 meetings, you know, we've got to sell
23 Mt. Pleasant, and we've got to apply this?

24 A. No, sir. I remember, I think, two
25 whenever I was probably in my early 20's.

1 Q. And what do you recall about the
2 meetings that you do recall?

3 A. I had gotten mad about something and
4 threw out a term or a phrase, I just wanted to
5 sell out and be done with it. And the next thing
6 I know, I was sitting in a lawyer's office. And
7 that's when it was appointed to me, these are
8 your shares -- your shares. That was about the
9 time we actually got a stock certificate.

10 Q. When were those stock certificates
11 issued?

12 A. Oh, gosh, I was 25; so that would have
13 been a long time ago.

14 THE COURT: What year would have
15 turned 25, just to help me out?

16 THE WITNESS: It was '85. Now you
17 know my age.

18 BY MR. SAUTTER:

19 Q. And so you were supported by Alex's,
20 Inc., Restaurants up until the time you left in
21 2011; is that right?

22 A. Yes, sir. I mean, there was a time in
23 '08, I had just took a leave of absence. I went
24 and got my CDL license and drove a truck, and I
25 helped my brother with a landscaping company with

1 a dump truck.

2 He had me driving it for about a year.
3 That was in 2008. That was 2007, '08, and when
4 the market crashed, that was the end of that.

5 Q. Okay. So what did you do after? Did
6 you come back?

7 A. Yeah.

8 Q. And then what did you do?

9 A. Cook.

10 Q. For Alex's, Inc.?

11 A. Yes.

12 Q. In Mt. Pleasant?

13 A. Mt. Pleasant and Dorchester.

14 Q. So the Dorchester location had a house
15 next to it, right?

16 A. Oh, yes. Yes, sir.

17 Q. Did you ever live there?

18 A. Yes, sir, in 1991. I remember that year
19 because I bought a '91 Mustang.

20 Q. Okay. And so when you came back in
21 2009, where did you live?

22 A. With Carol.

23 Q. And you lived there up until you left in
24 2011?

25 A. Yes.

1 Q. And at some point, did you marry?

2 A. I got married in 1998, and it lasted
3 about a year and 11 months, 10 months.

4 Q. Okay. Did you consider yourself to be
5 Carol's partner after your father died and after
6 you became of age?

7 A. I don't know the definition of partner.
8 Her partner, business partner --

9 Q. Were y'all working together?

10 A. I was all --

11 Q. All of it?

12 A. Yes.

13 Q. Okay. Now, Mr. Billips, I'm handling
14 you some documents here, and we will go right
15 down and see how far we can get. The first --
16 those are your notes?

17 A. Yes, sir.

18 Q. And what are they?

19 A. These are my memory of studying cost
20 control sheets.

21 Q. And cost --

22 MR. RANNIK: I'm sorry, Judge, but
23 have these been produced in this litigation? I
24 don't think I've ever seen these documents that
25 he's referring to, and I don't have a copy of

1 them as I sit here.

2 THE COURT: Do you have a copy for
3 Mr. Rannik to review?

4 MR. ELLIS: That's the only copy we
5 have with us right now.

6 MR. SAUTTER: I'm not going to
7 admit them into evidence, Judge. He's just going
8 to testify those are his notes, to refresh his
9 recollection.

10 MR. RANNIK: Can I just review them
11 before we get into this --

12 THE COURT: Yes, absolutely.

13 MR. RANNIK: -- and see if I have
14 any objections?

15 MR. SAUTTER: And I will say on the
16 record, that's me. I scratched out the blue. It
17 was 18 percent, and the other. But I could get
18 him to clarify that on the record.

19 MR. RANNIK: Judge, can Mr. Billips
20 state when these were created?

21 THE COURT: Yeah. Let me -- you're
22 not trying to introduce the documents; is that
23 right?

24 MR. SAUTTER: That's correct, Your
25 Honor.

1 THE COURT: And you're saying you
2 provided them to refresh his memory, but I don't
3 recall him saying he had forgotten something. So
4 do you want to help me out there?

5 MR. SAUTTER: Yes, sir.

6 BY MR. SAUTTER:

7 Q. Mr. Billips, were those notes that may
8 be of assistance to you to refresh your
9 recollection to this Court as to what the daily
10 sheets --

11 A. Yes. Whenever I was told that there was
12 no more cost control sheets, I sat down and tried
13 to -- you know, I spent a lot of time in each
14 restaurant; so in the studying those sheets, that
15 those are my best memory, and those are from when
16 I first started.

17 Q. For what year? Oh, you made that --
18 that you created that?

19 A. Yeah, right. I would say that those
20 numbers are numbers I can remember from 2010, but
21 I'm going a long way back.

22 Q. Yeah. And when did you actually create
23 that sheet, those sheets? 2014?

24 A. Yes, sir, sounds correct.

25 Q. Would those notes be of benefit to you

1 in testifying --

2 A. Just from memory, yeah, and that's ten
3 years ago or eight years ago, I mean.

4 MR. RANNIK: Judge, if these were
5 created in 2014, I'm at an absolute loss to
6 understand why these haven't been produced since
7 litigation.

8 He said they were created after he
9 learned the cost control reports were no longer
10 available. That didn't happen until about a year
11 ago in this litigation when they asked for the
12 cost control reports. So there's no way that
13 those are consistent.

14 If this was from 2014, they should have
15 been produced. If it's from more recently, I
16 don't see that it's going to assist him in
17 refreshing his recollection, and I object to this
18 being issued.

19 MR. SAUTTER: I'm not seeking to
20 admit it into evidence, Judge.

21 THE COURT: And I realize that.
22 You'll have to get him to testify about it first,
23 and then go from there. Okay? Because it's
24 either a past recollection recorded, which makes
25 it admissible.

1 But it hasn't been discovered yet or
2 disclosed, and I'm not going to let it in. And
3 if it's to refresh his memory, that's something
4 altogether different, but he's going to have to
5 testify and not have a memory first.

6 MR. SAUTTER: All right.

7 THE COURT: So don't hand it to
8 him.

9 BY MR. SAUTTER:

10 Q. Based upon your recollection, what would
11 be the daily take in Mt. Pleasant?

12 A. What day of the week?

13 Q. For Monday through Thursday.

14 A. Anywhere from 1,500 to 2,000.

15 Q. All right.

16 A. I mean, those -- I sat down and spent a
17 lot of time on it; so my memory is --

18 Q. Well, would these notes that you made --

19 A. Those are my notes.

20 Q. -- assist your testimony today to gain
21 an understanding with the Court?

22 A. Yes.

23 MR. RANNIK: Judge, I'm still not
24 sure I heard him say that he didn't remember.

25 THE COURT: Yeah.

1 MR. RANNIK: He just answered that
2 he did remember.

3 THE COURT: He gave a number. Is
4 that -- why don't you quantify that number. Is
5 that a gross number, or is that a net number?
6 What is that?

7 THE WITNESS: That's a gross
8 number.

9 THE COURT: All right. Okay.
10 Well, that's a number, so he don't need it yet.
11 BY MR. SAUTTER:

12 Q. Okay. And were there different incomes
13 expected for Friday and Saturday --

14 A. Yes.

15 Q. -- for Mt. Pleasant?

16 A. Yes.

17 Q. Okay. And what would be the -- if you
18 recall, the gross numbers for Friday and
19 Saturday?

20 A. Day shift \$2,000; night shift, second
21 shift, about \$1,500.

22 Q. All right.

23 A. And -- yeah.

24 Q. Go ahead. What else do you recall?

25 A. I'm really just reaching to try to

1 remember this.

2 Q. Okay. And would the restaurant do more
3 business on a Sunday?

4 A. Yes, sir.

5 Q. And what do you recall -- what is a
6 number for Sunday?

7 A. I can remember \$6,000 and \$7,000, but I
8 did a lot of helping on Sundays.

9 Q. Okay. And how much per week do you
10 recall that Mt. Pleasant generated in a gross
11 number?

12 A. I'm trying to add this up in my head.
13 It's \$42,000 maybe.

14 Q. Okay.

15 A. And when I did those, I had a calculator
16 sitting beside me.

17 Q. All right. So is it your testimony that
18 Mt. Pleasant generated \$42,000 a week in gross
19 sales?

20 A. To my best memory.

21 Q. All right. And if we multiply that
22 number times 52, you would get a yearly gross
23 sales for Mt. Pleasant. Do you have any
24 recollection of what that would be?

25 A. Maybe 2 million 200.

1 Q. Okay. How about Goose Creek? Now,
2 Goose Creek is still active, correct?

3 A. Yeah. Yes, sir.

4 Q. All right. Do you recall what the
5 average Monday through Thursday sales were in
6 Goose Creek?

7 A. No, sir.

8 Q. Friday and Saturday?

9 A. I don't recall.

10 Q. Sunday?

11 A. Goose Creek on a Sunday, 4, \$5,000.

12 Q. Okay. Do you have recollection of what
13 Goose Creek would earn gross per week?

14 A. They were pretty high up there, too.
15 They're just -- I can't remember. \$30,000.

16 Q. Okay.

17 A. I can't recall.

18 Q. If you multiple that number times 52,
19 you get how much?

20 MR. SAUTTER: Judge, may I show him
21 this document to refresh his recollection?

22 THE COURT: All right. Any
23 objection to that?

24 MR. RANNIK: Same objection, Judge.

25 THE COURT: All right. Show it to

1 him.

2 BY MR. SAUTTER:

3 Q. All right. You've got number 2, Goose
4 Creek.

5 A. Yes. Those are my numbers.

6 Q. Those are your numbers?

7 A. Yes, sir.

8 Q. Does that document refresh your
9 recollection?

10 A. Yes, sir.

11 Q. What is the weekly number that you have
12 for Goose Creek?

13 A. \$26,900.

14 Q. And what about the Sunday? What did
15 you --

16 A. An average Sunday was \$5,700.

17 Q. Okay. What's the yearly gross intake
18 for Goose Creek?

19 A. 1.4 million.

20 Q. All right. And does this include when
21 the poker machines were in there?

22 A. No, sir.

23 Q. All right. How about Rivers? Do you
24 need this document to refresh your recollection?

25 A. Yes, sir.

1 Q. Okay. I'm showing you the document now,
2 number 3, Rivers. What's the weekly gross --
3 gross pay?

4 A. Weekly for the restaurant was \$13,800.
5 That was actually one of the slowest restaurants.
6 It was the slowest restaurant.

7 Q. In Rivers?

8 A. Yes, sir. It was converted into the
9 laundromat.

10 Q. And what's the -- what was the yearly on
11 Rivers?

12 A. \$731,000.

13 Q. Okay. Now, look at Dorchester. What's
14 the weekly gross?

15 A. \$30,100.

16 Q. What's the yearly?

17 A. \$1,595,300.

18 Q. Okay. And this is just for operations,
19 right?

20 A. Yeah. They had -- as you can tell,
21 having a third shift, we eventually stopped
22 having a third, and it was just a first and
23 second.

24 Q. Let me ask you something now since we're
25 talking about gross proceeds. What about cash?

1 Were you -- were you there when every dollar of
2 cash got deposited into the bank accounts of
3 Alex's, Inc.?

4 A. I can't say every dollar, sir.

5 Q. Okay. How about the video poker? When
6 video poker was in, how did that work between
7 Alex's, Inc. -- were you familiar with how it
8 worked between Alex's, Inc., and the amusement
9 company?

10 A. Yes, sir.

11 Q. Who was y'all's amusement company?

12 A. Collins.

13 Q. And who was the Collins contact?

14 A. Dale Law.

15 Q. Okay. And you had a relationship with
16 him? I mean, y'all were friends?

17 A. Yeah. We hung out together. We were on
18 the golf team.

19 Q. Okay. So what was the split between the
20 restaurant, Alex's, Inc., Restaurant and the
21 amusement company as far as video poker proceeds?

22 A. 50/50.

23 Q. And it was all in cash?

24 A. Yes, sir.

25 Q. Quarters?

1 A. For a long time, it was quarters, and
2 then they started taking bills.

3 Q. And when it was quarters, would that
4 involve any special duties for you?

5 A. Oh, sure. The restaurant would run out
6 of quarters. You know, I'd get up and go roll
7 quarters at 2 or 3 in the morning sometimes.

8 Q. Okay. Did all of those quarters make
9 the deposit sheet for the restaurant?

10 A. That I know of, yes, sir.

11 Q. Okay. At any time, are you aware of
12 Carolyn keeping cash at the home?

13 A. Sure.

14 Q. Where did the cash come from?

15 A. I don't know.

16 Q. Like, how much cash?

17 A. I don't know.

18 Q. What was it kept in?

19 A. A safe at the house.

20 Q. Did have you access to the safe?

21 A. No, sir.

22 Q. Let me ask you this: Did you have
23 access to the profit and loss statements and
24 things of that nature?

25 A. Pretty much daily stuff, I did, but when

1 it got into mortgages and things like that, they
2 were locked away.

3 Q. The weekly stuff was locked away?

4 A. Well, eventually, it got locked away.

5 Q. Okay. And did you request to see some
6 of that information from time to time?

7 A. Yeah, I did once or twice.

8 Q. And what was the -- what was the result?

9 A. Usually I got shifted in other
10 directions.

11 Q. Okay. And in other directions, an
12 intimate relationship with Ms. Billips?

13 A. Yeah.

14 Q. Okay. All right. You haven't had the
15 chance to review any of the profit and loss
16 sheets generated in this case, have you?

17 A. No, sir.

18 Q. And you haven't had a chance to review
19 any of the daily cost sheets, right?

20 A. No, sir.

21 Q. Weekly reports, right?

22 A. No, sir.

23 Q. All right. So Savannah Highway, is that
24 also a store of Alex's, Inc..?

25 A. Yes, sir.

1 Q. What was the weekly?

2 A. \$24,800.

3 Q. And what was the yearly gross?

4 A. 1,314,000.

5 Q. Okay. Let's go to Summerville, number

6 6. What was the weekly?

7 A. \$26,100.

8 Q. And what's the yearly figure?

9 A. \$1,383,000.

10 Q. Okay. Did you have any kind of personal
11 tax liens or anything like that?

12 A. No, sir.

13 Q. And did Ms. Carolyn either discuss,
14 like, well, we've got to sell Mt. Pleasant and
15 pay --

16 A. No, sir. I mean, I had heard that we
17 had tax problems years ago, but never to the
18 point of selling.

19 Q. Okay. What was her involvement in the
20 businesses?

21 A. The main office was her control.

22 Q. Okay. And you would turn in these daily
23 cost sheets to the main office?

24 A. Well, the daily reports.

25 Q. Daily reports?

1 A. Each day you'd go in the morning and
2 you'd do the day before. You did first, second,
3 third shift, and then what to spend money on.
4 You know, food trucks or if you had to go buy
5 something for the store. And then you would turn
6 that into the office, and then they would produce
7 the cost control sheet.

8 And that's where, if your payroll or
9 your food cost isn't in line, it was brought to
10 my attention, and one of us would either go talk
11 to the manager or whoever needed to fix the
12 problem.

13 Q. Okay. And also had the Moncks Corner
14 store?

15 A. Yes, sir.

16 Q. What was the weekly?

17 A. Moncks Corner was \$18,300.

18 Q. What was the yearly?

19 A. \$969,000.

20 Q. Okay. And the laundromat, is that still
21 part of Alex's, Inc.?

22 A. Yes, sir. The restaurant just converted
23 into a laundromat.

24 Q. Okay. And are you asserting that you're
25 entitled to 18.3?

1 A. Yes, sir.

2 Q. What includes -- all right. So what was
3 the weekly on the laundromat? What was the
4 daily?

5 A. It was according to different times of
6 the week. I mean, we had people going to do
7 their laundry when they got paid, you know, like
8 the 1st and the 15th. Then on Friday, it would
9 be busier than Mondays.

10 So every -- every day of the month
11 actually made a difference, because like I said,
12 you -- government checks come in at a certain
13 time of the month, and that would bring the
14 neighborhood in to do their laundry.

15 Q. Yes, sir.

16 A. So paydays, government paydays were more
17 than the average week.

18 Q. All right. Were there also tanning beds
19 in there?

20 A. Yes.

21 Q. And did that generate income?

22 A. Yes.

23 Q. How much?

24 A. About \$6,000 a month.

25 Q. So what was the weekly income from the

1 laundromat or the monthly income? I don't know.

2 A. I've got \$20,300 on the laundromat,
3 and --

4 Q. Is that per week or month or --

5 A. I believe that was for a month, yes,
6 sir.

7 Q. All right. And how much per year?

8 A. \$243,000 for the laundry and about
9 \$72,000 for the tanning bed.

10 Q. All right.

11 A. There was a couple of tanning beds, I'm
12 sorry.

13 Q. So you were intimately familiar with
14 these business and what they were bringing in --

15 A. Yes, sir.

16 Q. -- each day?

17 A. Yes, sir.

18 Q. As far as what they did with them in
19 their weekly reports, you weren't so familiar
20 with that?

21 A. No.

22 Q. You just turned it all over to her?

23 A. Correct.

24 Q. Took it on home with you, if not the
25 office?

1 A. Yes, sir.

2 Q. And these reports were all over the
3 place?

4 A. Yes, sir.

5 Q. And how many of them have you seen in
6 this case?

7 A. None. And I've called some people
8 that's worked in the restaurants, and there's
9 none to be found.

10 Q. None to be found. How are they doing it
11 now, if you know?

12 A. I have no idea.

13 Q. So did the -- so I guess in 2011, did
14 they have computerized cash registers and things
15 of that nature, point of sale?

16 A. That was about a transition time
17 actually, you know, going from the old registers
18 to computers.

19 Q. To the point of sale?

20 A. Yes, sir.

21 Q. And point of sale receipts could give
22 you an idea of whether people were buying
23 scrambled eggs and that kind of thing?

24 A. Yes, sir.

25 Q. And what kind of coffee they were

1 drinking and stuff?

2 A. Yes, sir.

3 Q. Iced tea, sweet tea, things of that
4 nature?

5 A. Yes, sir.

6 Q. All right. But prior to that, it was
7 all just old fashioned cash registers?

8 A. Yes, sir.

9 Q. Did those businesses generate a
10 significant amount of cash?

11 A. Yes, sir.

12 Q. Like, how would you describe it? For
13 larger tickets, smaller tickets, how --

14 A. You know, years ago, it was -- everybody
15 carried cash. And then it just slowly went into
16 credit card machines.

17 Q. Okay. Do you have any knowledge of how
18 Carolyn got into the payroll tax problem with the
19 South Carolina Department of Revenue?

20 A. No.

21 Q. You had nothing to do with how the money
22 was -- if the unit was sold, like Mt. Pleasant,
23 you weren't even consulted about what would
24 happen?

25 A. No, sir.

1 Q. And what did happen to the money in
2 Mt. Pleasant? Is that reflected on that exhibit?

3 A. What I've heard today, that's all I
4 know.

5 Q. Is that the first time you ever heard
6 what happened with it?

7 A. Yes, sir.

8 Q. And have you ever received any
9 distributions from the company?

10 A. Years ago, we sold -- or I sold my
11 shares of a piece of land in Moncks Corner, and I
12 might have received -- I received a check for, I
13 think, \$20,000 in my -- when I was in my 20's.

14 Q. Okay. So let's kind of straighten out a
15 few things. Ms. Roxanne, she was the secretary
16 that prepared a lot of the documents up to a
17 certain point, right?

18 A. Yes.

19 Q. What happened to Ms. Roxanne?

20 A. She passed away. She was a good friend
21 of mine.

22 Q. Okay. And when did she die?

23 A. I didn't even know about it until it was
24 after the fact, so...

25 Q. After you left?

1 A. Yeah.

2 Q. Okay. And do you know Ms. April?

3 A. Yes.

4 Q. So is that who you would give the daily
5 cost sheets and reports to?

6 A. Yeah.

7 Q. At the time that you created the notes,
8 how confident were you of your recollection of
9 the business at that time?

10 A. I was -- I mean, you know, they were
11 just going off of memory. I was pretty
12 confident. I mean, I looked at these so long --
13 so many years that I just kind of, you know,
14 become a part of it actually.

15 Q. Okay. Were you interviewed by Mr. Ewart
16 in this litigation, Mr. Jim Ewart here, the
17 accountant?

18 A. Sir?

19 Q. The CPA? Were you interviewed by him in
20 this? Did you talk to Mr. Ewart?

21 A. Yeah, we talked.

22 Q. And did you provide him with your
23 recollection of the numbers that --

24 A. Yes.

25 Q. -- you have testified to here today?

1 A. Yes.

2 Q. All right. After you testified, is
3 there any changes you'd like to make, or is there
4 any kind of explanation that you would like to
5 further give the Court about those numbers?

6 A. No, sir.

7 Q. And you believe them to be accurate?

8 A. To my knowledge, yes, sir.

9 Q. And in your knowledge, you --

10 A. To my memory.

11 Q. -- you would have sufficient knowledge
12 and information to calculate those figures,
13 correct?

14 A. Yes.

15 Q. Basically, was it your life? You know,
16 back there before 2011, was your whole life --

17 A. Yeah.

18 Q. -- in these Alex's, Inc., Restaurants?

19 A. I mean, 2011 was the time that I
20 actually came back. I mean, when I say I left, I
21 didn't go anywhere. I went to work with Alex,
22 Jr.

23 But I always stayed in touch. I still
24 looked at these sheets. I lived with Carol and
25 we studied these sheets, and you know, there were

1 just -- they were always there.

2 Q. That was your life, wasn't it? That was
3 everything?

4 A. Pretty much, yeah. I mean, this was a
5 big discussion of ours all the time, the cost
6 control sheets.

7 Q. And that was important?

8 A. Very important.

9 Q. To figure out what kind of flour you
10 would need, to figure out what the labor costs
11 were --

12 A. Sure.

13 Q. -- things of that nature?

14 A. Yes, sir.

15 Q. And it all goes to the value of the
16 business, right?

17 A. I thought that it did, yes, sir.

18 MR. SAUTTER: Your Honor, may I
19 have just one minute?

20 THE COURT: Mr. Sautter, before you
21 close -- I don't know if you're getting ready to
22 close or not, but before you do that, we might
23 want to break this off and then come back
24 tomorrow. We'll talk about that in a second, but
25 I do want to get her out of here timely. So

1 we're getting close to 5:15.

2 MR. SAUTTER: Yes, sir. That's
3 fine. I can conclude at this moment. I'm
4 getting ready to get into a whole another area.

5 THE COURT: Okay. All right.
6 Before you go into that?

7 MR. SAUTTER: Yes, sir.

8 THE COURT: All right. Why don't
9 we conclude today. I'm assuming you still
10 haven't heard?

11 MR. RANNIK: I have, actually. It
12 was a deposition in your favorite Hotel Bennett
13 case, but it's been continued.

14 THE COURT: Well, I'm glad to hear
15 that stopped moving forward, too. All right. So
16 then we can reconvene in the morning?

17 MR. RANNIK: We can.

18 THE COURT: Does that work for
19 y'all?

20 MR. ELLIS: Yes, sir.

21 THE COURT: All right. Let's start
22 back at 9:30 tomorrow morning. Can we do that?

23 MR. ELLIS: 9:30?

24 THE COURT: Yeah. And we'll just
25 pick up with Mr. Billips' testimony again. We've

1 covered some of that. Are your witnesses okay?

2 MR. RANNIK: Yes, sir. Thank you,
3 Judge.

4 THE COURT: All right. Very good.

5 MR. SAUTTER: Thank you, Your
6 Honor.

7 THE COURT: All right. Let's do
8 that then. Thank y'all. We've plowed some
9 ground today. It was a little slow, but we
10 plowed a little ground.

11 Mr. Billips, thank you. You can step
12 down. You'll still be under oath tomorrow, but
13 you can -- because you're still on direct, you
14 can talk to your attorneys, which is why I wanted
15 to stop before we got to cross. All right. Very
16 good.

17 (The hearing adjourned at 5:11
18 p.m.)

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1 CERTIFICATE OF REPORTER
2 STATE OF SOUTH CAROLINA
3 COUNTY OF DORCHESTER

4 I, Jennifer M. Huggins, Certified
5 Shorthand Reporter and Notary Public for the
6 State of South Carolina at Large, do hereby
7 certify that the witness whose attached in the
8 foregoing hearing was by me duly sworn to testify
9 to the truth, the whole truth, and nothing but
10 the truth in the within-entitled cause; that said
11 hearing was taken at the time and location
12 therein stated; that the testimony of the witness
and all objections made at the time of the
examination were recorded stenographically by me
and were thereafter transcribed by computer-aided
transcription; that the foregoing is a full,
complete and true record of the testimony of the
witness and of all objections made at the time of
the examination; and that the witness was given
an opportunity to read and correct said hearing
and to subscribe the same.

Should the signature of the witness
not be affixed to the hearing, the witness shall
not have availed himself/herself of the
opportunity to sign or the signature has been
waived.

I further certify that I am neither
related to nor counsel for any party to the cause
pending or interested in the events thereof.

Witness my hand, I have hereunto
affixed my official seal on October 8, 2021 at
Charleston, Charleston County, South Carolina

20 _____
21 Jennifer M. Huggins
22 Court Reporter And Notary Public
23 My commission expires: 02/07/2022
24
25