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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. II**

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1 STATE OF SOUTH CAROLINA
 2 IN THE COURT OF COMMON PLEAS
 3 COUNTY OF CHARLESTON
 4 FOR THE NINTH JUDICIAL CIRCUIT

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 -versus-)

12 CAROLYN A. BILLIPS,)
 13 individually and as Trustee)
 14 for the benefit of Anthony)
 15 Billips, William Casey)
 16 Tvey, and Alex Billips, and)
 17 as controlling person of)
 18 Alex's Restaurants, Inc.)
 19 and ALEX'S RESTAURANTS,)
 20 INC.,)
 21 Defendants.)

22 -----
 23 Hearing before the Honorable Mikell R.
 24 Scarborough, reported by Jennifer M. Huggins,
 25 Court Reporter and Notary Public, at 9:38 a.m. on
 August 25, 2021 at 100 Broad Street, Courtroom
 2A, Charleston, South Carolina.

Jennifer M. Huggins, Court Reporter
 Master-in-Equity
 P.O. Box 80711
 Charleston, SC 29416

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1 THE COURT: All right.

2 Mr. Billips, you're still under oath. If you
3 would, go ahead and have a seat.

4 THE WITNESS: Yes, sir.

5 THE COURT: And we will pick up
6 where we left off yesterday. Hope everybody had
7 a good night. It's good to see the crowd back
8 together again.

9 MR. SAUTTER: Your Honor, excuse me
10 for a minute.

11 THE COURT: That's all right.

12 DIRECT EXAMINATION

13 BY MR. SAUTTER:

14 Q. Now, Mr. Billips, you testified
15 yesterday, correct?

16 A. Yes, sir.

17 Q. And you're still under oath?

18 A. Yes, sir.

19 Q. All right. So you talked about these
20 various sheets of paper --

21 A. Yes, sir.

22 Q. -- as your recollection of the -- I'm
23 going to screw it up again -- of the cost control
24 reports for the various restaurants?

25 A. Yes. These are just like daily sale

1 averages to my -- what I can remember.

2 Q. The daily reports and that kind of
3 thing?

4 A. Yes.

5 Q. All right. And those are to the best of
6 your recollection?

7 A. Yes.

8 MR. SAUTTER: And, Your Honor, I
9 would now move this one, two, three, four, five,
10 six, seven, eight -- I'm going to move this eight
11 page document into evidence as the next
12 plaintiff's exhibit.

13 And in anticipation of an objection from
14 Mr. Rannik, he -- the very same information was
15 provided to Mr. Rannik, which is included in
16 Exhibit 4 of Jim Ewart's report, which I -- it
17 has, for each of the locations, Mt. Pleasant
18 \$2,226,000; Goose Creek -- it's the same numbers
19 that Mr. Billips testified and is on his sheet.

20 But this has been -- this information
21 was provided to the defense in the course of the
22 discovery. And I would move them both into
23 evidence.

24 THE COURT: On what basis do you
25 put them in?

1 MR. SAUTTER: Well, on the basis
2 that the notes of Mr. -- of the plaintiff are
3 relevant to determine his recollection of the
4 daily reports, and the -- it goes right to the
5 value of the business.

6 And further, that this information was
7 provided to counsel for the defense when Mr.
8 Ewart's report was provided to him in the course
9 of discovery, and it's got the same figures. And
10 I talked to counsel about it. I'm offering both
11 into evidence that go the material issue as to
12 the values of the business which goes to his
13 interest in the businesses.

14 THE COURT: All right. I want to
15 make sure this was -- these records were not
16 created contemporaneously with the documents he
17 reviewed. He did it based upon his recollection;
18 is that my --

19 MR. SAUTTER: Yes, sir.

20 THE COURT: -- my recollection?

21 MR. SAUTTER: Yes, sir.

22 THE COURT: And I think
23 he testified it was like the 2014 time period --

24 THE WITNESS: Yes, sir.

25 THE COURT: -- that he prepared

1 these --

2 THE WITNESS: Yes, sir.

3 THE COURT: -- based upon memory
4 from the 2011 --

5 THE WITNESS: Probably closer to
6 2015, Your Honor.

7 THE COURT: Probably prepared in
8 '15, but based upon information that you recall
9 from what time period?

10 THE WITNESS: 2014.

11 THE COURT: So '15 or '14?

12 THE WITNESS: Just what I remember
13 from the last time I seen one.

14 THE COURT: Okay. All right.

15 THE WITNESS: It was around 2014.

16 THE COURT: Got it. Thank you.

17 All right.

18 MR. RANNIK: Judge, a couple
19 things. The information that is included in
20 Exhibit 4 of Mr. Ewart's report, it is not
21 anything close to all of the information that's
22 on those sheets. It does have a list at the very
23 top here, and let me -- if I can approach, Your
24 Honor.

25 THE COURT: Sure.

1 MR. RANNIK: So the top line
2 here -- oh, it looks like he's already handed you
3 one.

4 THE COURT: Yeah.

5 MR. RANNIK: The top line gives the
6 base year gross sales, so we received that. The
7 rest I have not seen. I have no problem with
8 this coming in with Mr. Ewart.

9 I don't know that there's proper
10 foundation for this particular document to be
11 used for Mr. Billips. And because the 2015
12 document was never produced to us in the course
13 of this litigation, we would object to that being
14 admitted into evidence.

15 THE COURT: The actual documents,
16 correct?

17 MR. RANNIK: Yes. And he's already
18 testified to what the numbers are on there
19 anyway; so it's in the record.

20 THE COURT: Right. Okay. I'm
21 going to sustain the objection. I'll state for
22 the record my basis for that, and this is that
23 this is -- it's being offered as an exception to
24 the hearsay rule. It's 803(5) is the rule.

25 And I'll just read it in the record so

1 y'all are familiar with it. 803(5), recorded
2 recollection.

3 A memo or record concerning a matter
4 about which a witness once had knowledge but now
5 has insufficient recollection to enable the
6 witness to testify fully and accurately; shown to
7 have been made or adopted by the witness when the
8 matter was fresh in the witness's memory and to
9 reflect that knowledge correctly, first sentence.

10 Second sentence, if admitted, the
11 memorandum may be read into evidence but may not
12 itself be received as an exhibit unless offered
13 by an adverse party.

14 It's on that basis that I will deny
15 that. If you want to proffer it, make it a part
16 of the record, I don't have a problem with that.
17 But the document itself is not admissible into
18 evidence, okay, on that basis.

19 MR. SAUTTER: Yes, sir. He -- Mr.
20 Billips has testified extensively about his
21 recollection of the numbers.

22 THE COURT: Right.

23 MR. SAUTTER: And I -- you know,
24 Exhibit 4 to Mr. Ewart's report was provided, and
25 we'll fight that battle as far as getting that

1 into evidence during the course of Mr. Ewart's
2 testimony.

3 THE COURT: Sure, sure. Okay. But
4 the document itself -- he's already testified to
5 it, but the document itself just doesn't come in.

6 MR. SAUTTER: Yes, sir.

7 THE COURT: Okay.

8 MR. SAUTTER: Yes, sir.

9 THE COURT: And I'm assuming it
10 forms some basis from Mr. Ewart's testimony, but
11 we'll -- like you say, we'll cross that bridge
12 when we get there. All right?

13 MR. SAUTTER: All right.

14 THE COURT: Very good. So it will
15 be -- I'm going to make a note. It says
16 Plaintiff's Exhibit 12. It will be just for
17 identification only. Okay? It will be a
18 proffer.

19 (PLF. EXH. 12 was marked for
20 identification and proffered.)

21 MR. SAUTTER: And would that
22 include Exhibit No. 4 to Mr. Ewart's -- is it
23 within the --

24 THE COURT: Are you offering that
25 through him?

1 MR. SAUTTER: Yes, sir.

2 MR. RANNIK: I don't know that
3 there's a proper foundation for that, Judge. I
4 think it will be proper when Mr. Ewart is on the
5 stand.

6 THE COURT: I agree. You want to
7 mark that for ID purposes now?

8 MR. SAUTTER: Yes, sir.

9 THE COURT: So call that 13 for ID
10 and try and get that in later? You can do that.

11 (PLF. EXH. 13 was marked for
12 identification.)

13 BY MR. SAUTTER:

14 Q. Mr. Billips, last night, did you look on
15 the internet and personally view the Alex's
16 Restaurant website?

17 A. Yes, sir.

18 Q. And does it contain statements of
19 Carolyn Billips?

20 A. Yes.

21 MR. RANNIK: Judge, brief objection
22 here. Mr. Sautter objected to my reading of the
23 witness yesterday when I was on
24 cross-examination. I didn't push it yesterday,
25 hoping we could move this through. We're here

1 for a second day. I would like, if possible, for
2 Mr. Sautter not to lead so much.

3 And secondly, I would like to confirm
4 whether there was a conversation between counsel
5 and the client last night about what he did or
6 did not do, as he was still under oath and such a
7 conversation would not have been appropriate.

8 MR. SAUTTER: Your Honor, we -- per
9 the Court's instruction, we were allowed to
10 confer.

11 And he brought up that he did review
12 this website, and he forwarded the actual
13 statements of the adverse party about the nature
14 of the business, that Summerville and Goose
15 Creek, the remaining locations are all Alex's.
16 And that's how -- that's how it's dealt with.

17 THE COURT: All right. So the
18 purpose of the testimony is to establish what
19 Alex's Restaurants' website says about itself?

20 MR. SAUTTER: Yes, sir.

21 THE COURT: Any objection to that?

22 MR. RANNIK: No objection to the
23 testimony, Judge, other than I -- my
24 understanding of the Court's --

25 THE COURT: Just the leading?

1 MR. RANNIK: -- instruction last
2 night was that the -- counsel could not consult
3 with his client because he was --

4 THE COURT: No. I intentionally
5 kept him in the direct so he could, yes. It
6 was -- if he had finished with his direct before
7 you got on to cross, I would not have allowed
8 that.

9 MR. RANNIK: Okay. I
10 misunderstood. I apologize.

11 THE COURT: Yeah, okay. Because
12 he's on direct, I allow that. Okay.

13 BY MR. SAUTTER:

14 Q. So let me just hand you this. Well,
15 there's two things. Is this the text of the
16 Alex's website without the pictures and without
17 the menu and things of that nature?

18 A. Yes, sir.

19 Q. And who wrote that? Is it signed?

20 A. It's not signed, but it says Carol B. at
21 the end of it.

22 Q. And who do you believe that to be?

23 A. Carol.

24 Q. Carolyn Billips?

25 A. Billips, I'm sorry.

1 Q. Okay. What does she say about the
2 existing Alex's Restaurants?

3 A. Let's see.

4 Q. Okay. It's on page 1. I refer you to
5 the third paragraph, the last sentence.

6 A. Okay. Alex's and Flowertown Restaurant
7 moved from remodeling the store. Let's see. I
8 don't think that's the one. Highway 78.

9 Q. Just start it right there where it says,
10 Goose Creek and Summerville.

11 MR. RANNIK: And Judge?

12 THE COURT: Just one second. Go
13 ahead.

14 MR. RANNIK: Might I have a look at
15 this? I have a copy of Alex's website up on my
16 phone right now, and it doesn't say a thing about
17 Summerville. And this was apparently reviewed
18 last night and printed last night. I don't
19 believe that that's credible.

20 MR. SAUTTER: Your Honor, these are
21 the statements of his own client, which she
22 personally signed as Carol B. It would be
23 admissible as an exception to hearsay as
24 admission of an adverse party.

25 MR. RANNIK: And, Judge, what I

1 would like to clear up is when Mr. Billips viewed
2 this and what his knowledge of this is as opposed
3 to --

4 THE COURT: All right. Well, I
5 will let you do that on cross-examination,
6 certainly.

7 MR. RANNIK: Thank you, sir.

8 THE COURT: All right. Go ahead.
9 You can proceed.

10 BY MR. SAUTTER:

11 Q. All right. What does it say -- starting
12 on that third paragraph, please read slowly into
13 the record, starting with, in 1984.

14 A. In 1984, Carol remodeled a former liquor
15 store in Summerville. It's now the Mustard Seed
16 by the railroad tracks because in 1998, Alex's,
17 Flowertown Restaurant moved from the remodeled
18 liquor store building to its current larger
19 location, 78 address in Summerville.

20 Goose Creek and Summerville are the only
21 restaurants today, and that's the perfect Carol,
22 who is now able to spend more time focused on her
23 loving family.

24 Q. All right. And somewhere in here, she
25 talks about how the name of the restaurants

1 became Alex's. What is your recollection of why
2 the restaurants were named Alex's?

3 A. My daddy was Alex.

4 Q. Did it have anything to do with the son,
5 Alex, as far as you know?

6 A. Not that I know of.

7 Q. Okay.

8 MR. SAUTTER: Your Honor, I would
9 move this admission into evidence as the next
10 plaintiff's exhibit.

11 MR. RANNIK: Judge, before it is
12 officially -- I would request that for now it be
13 offered for identification only. I think it
14 needs to be established whether Carolyn Billips
15 actually wrote this.

16 And I think the only way we can do that
17 is through the testimony of Ms. Billips. It's
18 not an adverse party admission if she didn't
19 write it.

20 MR. SAUTTER: Your Honor, it's on
21 the Alex's Restaurant, where she's at least a 63
22 and a third percent owner of it.

23 It's got her name on it as Carol B.
24 She's got a mission statement for faith and
25 family. I mean, I'm prepared to cross-examine

1 her on it when it comes time for her to do her
2 direct testimony.

3 THE COURT: Sure. All right. Let
4 me make sure I understand the basis for it.

5 Mr. Billips, you went online last night;
6 is that correct?

7 THE WITNESS: Yes, sir, 1:15, 1:30.

8 THE COURT: In the morning?

9 THE WITNESS: Yeah. I didn't
10 sleep.

11 THE COURT: Okay. Sorry about
12 that. I understand how trials go, though. And
13 you found that there?

14 THE WITNESS: Yes,
15 www.alexrestaurants.com.

16 THE COURT: And then you downloaded
17 it and printed off what you saw?

18 THE WITNESS: I e-mailed it to
19 myself, and then this morning, I forwarded it to
20 their printer.

21 THE COURT: All right.

22 THE WITNESS: Their office.

23 THE COURT: And it was printed off?

24 THE WITNESS: Yes, sir.

25 THE COURT: All right. So that's

1 the source of the information?

2 THE WITNESS: Yes, sir.

3 THE COURT: All right. I'm going
4 to allow it. I'm going to allow it in on that
5 basis. I think the foundation has been laid for
6 it. Certainly again it's subject to
7 cross-examination.

8 MR. SAUTTER: Thank you, Your
9 Honor.

10 (PLF. EXH. 14 was marked for
11 identification and admitted into evidence.)

12 BY MR. SAUTTER:

13 Q. Mr. Billips, you talked a little bit
14 about cash yesterday and how cash was handled.
15 To your knowledge, was all cash reported or
16 deposited into the bank?

17 A. To my knowledge, it was at one time or
18 another, but then we had like cash on hand. You
19 know, we kept -- that was to make change with,
20 things like that. You know, money boxes in the
21 restaurants.

22 Q. Well, how about money boxes at Carol's
23 house?

24 A. Her safe.

25 Q. Did you see the safe?

1 A. Yes.

2 Q. What kind of safe was it?

3 A. I lived with her. It was a gun safe,
4 about 5 foot by 4 foot, 3 foot.

5 Q. And did you observe cash in the safe?

6 A. I didn't go in the safe, but I was there
7 when cash was deposited in the safe.

8 Q. How much cash are we talking about?

9 A. I couldn't tell you, sir.

10 Q. Was it stacks of cash, or what was it?

11 A. Yeah, stacks of money, money bags.

12 Q. Like over \$10,000?

13 A. Numbers, I can't say yes or no to, I
14 mean.

15 Q. Do you believe it was over \$10,000?

16 A. Yes, sir.

17 Q. Do you believe it was over \$50,000?

18 A. Yes, sir.

19 Q. And that was just kept by Ms. Carol?

20 A. Yes, sir.

21 Q. Okay.

22 A. I mean, there was times I would bring
23 home a cash bag. And, you know, we lived
24 together; so I'd lay it on the counter and she'd
25 put it away.

1 Q. In the safe?

2 A. Yes.

3 Q. And all the money did -- in other words,
4 did all the money go into -- did all the cash go
5 into the banks?

6 A. Evidently not.

7 Q. I mean --

8 A. Yeah. I mean, no, because I watched it
9 go in the safe, sir.

10 Q. All right. And -- okay. All right.
11 Now, let's get to the value of these different
12 locations. I guess we could start at Goose
13 Creek. Did you offer to purchase Goose Creek
14 from Carol Billips?

15 A. Dorchester, sir.

16 Q. Dorchester, I'm sorry. We're talking
17 about Dorchester Road. I'm skipping around. I'm
18 a little scattered this morning. Did you offer
19 to purchase the Dorchester Road location unit,
20 Alex's Restaurant from --

21 A. Yes, sir.

22 Q. All right. And what was your offer?

23 A. 320. 320,000.

24 Q. And your offer to buy it from her, did
25 that -- \$320,000, but you already owned 18.3

1 percent of it, correct?

2 A. I took that into consideration.

3 Q. All right. So if you take 3.2 percent,
4 18.3 percent of the 320; so what was your actual
5 offer to her, 320 plus?

6 A. 375 to 400.

7 Q. 375?

8 A. Yes, sir.

9 Q. All right.

10 A. But, I mean, I didn't bring that up in
11 the conversation. We were in the parking lot,
12 and I said -- she was telling me that she had
13 bills due, and I said, well, let me help me you
14 out. Let me buy you out of Dorchester Road and
15 take that pressure. And she got irate and walked
16 off.

17 Q. And so the property was ultimately sold
18 for how much?

19 A. From what I seen yesterday, sir, I think
20 it was 320.

21 Q. And you didn't receive any -- 18 percent
22 of anything?

23 A. I didn't find out it was sold until a
24 week or so after.

25 Q. Okay. So you testified as to your role

1 in this business, the daily cost sheets, correct?
2 Inventory control?

3 A. Yes, the daily reports --

4 Q. All right.

5 A. -- every day. That was just something
6 we did every day at every restaurant, the
7 managers did.

8 Q. Now, so when you left in 2011, do you
9 have any knowledge of whether these daily cost
10 sheets or these daily reports existed?

11 A. Oh, yes, sir.

12 Q. How?

13 A. They were hanging on every office door.

14 Q. Are we talking stacks of cost sheets?

15 A. Each restaurant would have one. The
16 main office had however many they wanted to print
17 out. And Carol always kept one at home. I
18 carried one around with me. Not all the time but
19 most of the time. And Carol and I lived
20 together; so they're right there on the counter
21 or kitchen table.

22 Q. How would you describe the volume of
23 these cost sheets?

24 A. Well, I know we kept at the house -- you
25 know, we just kept stacking them up, stacking

1 them up.

2 You know, there wasn't -- you know, I
3 looked at one and throw it in the trash, but they
4 were kept. So you could flip back to six months
5 ago, eight months ago and see, well, what were
6 the sales during Easter, you know, of last year,
7 which it says it on there.

8 But Carol was real particular about
9 writing on them and making notes. She would flip
10 back to days, like a certain day of the week, you
11 know, if it doesn't look right. And it'll -- you
12 know, she'd bring it to my attention, this time,
13 that day last year, you know, why or do I know?
14 Have any suggestions?

15 Q. So y'all worked together on all of this
16 stuff?

17 A. Yeah. Sometimes I helped make them out
18 but not too often.

19 Q. What was your --

20 A. That was a long time ago when I did that
21 kind of stuff.

22 Q. What was your familiarity with all of
23 these units of Alex's Restaurants, Inc.?

24 A. I was very familiar. I mean, I was in
25 and out of all of them, even when I did leave and

1 drive a truck -- to take leave and drive this
2 dump truck. I still got phone calls. I stopped
3 by. They would call and complain on each other.
4 And I would calm them down. So, yeah, I was very
5 familiar with all the locations, every location.

6 Q. And so you -- the cost sheets were just
7 stacked up?

8 A. Yeah, at the house. That's just kind of
9 where they ended, you know, at the end.

10 Now, mine, you know, I would throw it
11 away when I got a new one, you know. And the
12 restaurants would throw theirs away when they got
13 a new one. But at home, it was just like a
14 habit, you know. Just something that she did and
15 kept them.

16 Q. So I'm holding up a big stack of
17 documents here --

18 A. Oh, yes.

19 Q. -- which are Plaintiff's Exhibit 11A.
20 How would the stack of daily cost sheets compare
21 to this stack that I'm holding up, which is --

22 A. At least.

23 Q. At least as big as this?

24 A. Yeah, at least, or more.

25 THE COURT: So describe for the

1 record how tall that is.

2 THE WITNESS: A foot and a half. A
3 foot to a foot and a half.

4 THE COURT: Okay.

5 THE WITNESS: Kept in the china
6 cabinet.

7 BY MR. SAUTTER:

8 Q. And you would go over those continually
9 with Ms. Carol, right?

10 A. Yeah. If she would want something added
11 on. And it was whether I could fix it or not.
12 You know, I was there. We were together, and she
13 would vent, I guess, in a way. And I'd offer if
14 I could. If I couldn't, I just sat there.

15 Q. Did you have the same kind of access to
16 the profit and loss statements?

17 A. No, sir.

18 Q. Where were they kept?

19 A. I mean, I have looked at them a long
20 time ago. She would bring one home or something,
21 and she would be sitting there looking at it.
22 And I might lean over or something.

23 Q. Well, were the profit and loss sheets in
24 all of those reconciled reports kept in the
25 office?

1 A. Yes. There was a lot of room in the
2 office.

3 Q. Did you have a key?

4 A. No, sir.

5 Q. Who controlled all of that?

6 A. Carol did. And I believe the secretary
7 may have as well. I'm sure she's got a key too.

8 Q. Okay. But you weren't allowed access?

9 A. No.

10 Q. And so after you left, what kind of
11 access did you have -- after you left in 2011,
12 what kind of access did you have to any of this
13 information?

14 A. Well, I wasn't here -- there for a
15 little while. I went to my parents.

16 Q. Yeah.

17 A. You know, I mean, I -- then, when I'd
18 come back, you know, I just -- I still had access
19 up until the dental issue came up when she told
20 me to go see the clinic. You know, I didn't have
21 access to the --

22 Q. Did you have access to the profit and
23 loss sheets?

24 A. No, sir.

25 Q. Did you have access to the interworkings

1 of the company after you left?

2 A. No, sir.

3 Q. Who had the only access to all of that?

4 A. Carol.

5 Q. Okay. All right. Now, so let's go back
6 to these -- based upon your knowledge,
7 information, and experience, we'll go by
8 location, what value do you place on
9 Mt. Pleasant? What would you be willing to pay
10 for the Mt. Pleasant action -- unit?

11 A. In today's, that's a 4 million dollar
12 location.

13 Q. How about back in 2012 when it was sold?
14 What would you have been --

15 A. The property alone in my view, my
16 personal -- I'm not a professional, but that
17 property and the location was worth 4 million
18 dollars.

19 Q. Where was the property located?

20 A. Coleman Boulevard, about a quarter mile
21 from Shem Creek.

22 Q. In Old Village?

23 A. I don't -- do they call that the Old
24 Village?

25 Q. All right.

1 A. I mean, I'm from there, but I didn't
2 keep up with all that kind of stuff.

3 Q. Okay. So 4 million dollars on the
4 Mt. Pleasant location for the dirt alone?

5 A. Yeah. The dirt alone is at least worth
6 that.

7 Q. All right. How about Rivers Avenue,
8 including the laundromat? What value do you
9 place on that unit?

10 A. The laundromat and all the units or the
11 machines, the dirt and building and everything
12 was maybe 1 million 5.

13 Q. How about Dorchester Road?

14 A. About the same, Dorchester and Rivers --

15 Q. We already talked about the --

16 A. -- location.

17 Q. You already talked about Dorchester
18 Road, right?

19 A. Yes, sir.

20 Q. How about Savannah Highway? What value
21 do you place on that? What would you be willing
22 to pay?

23 A. At today's cost, that's a million dollar
24 piece of property. It's small, but it's still
25 the location.

1 Q. Well, what -- when these -- these
2 properties were all sold, right?

3 A. Yes, sir.

4 Q. What would you have offered at the time
5 that they were sold? 2011, 2010, 2012? Let's
6 just start back from the beginning. What would
7 you have offered for -- what value did you assign
8 to the Mt. Pleasant location back when it was
9 sold in 2012?

10 A. \$4 million.

11 Q. How about Goose Creek?

12 A. \$4 million.

13 Q. How about Rivers Avenue and the
14 laundromat?

15 A. One million 5.

16 Q. How about Dorchester Road? I think
17 you've already testified to that.

18 A. Yeah, the same as Rivers.

19 Q. Okay. What about the Savannah Highway
20 location?

21 A. Probably about \$800,000 to a million.

22 Q. How about Summerville?

23 A. \$4 million.

24 Q. How about the Moncks Corner location?

25 A. About a 1 million dollars.

1 Q. And you have -- what is your
2 acknowledged interest in the Alex's, Inc.?

3 A. I've always knew that I was a 18.3
4 percent owner.

5 Q. All right. So when the Alex's, Inc. --
6 or after your father died, there was the trust,
7 right?

8 A. Yes, sir.

9 Q. And what percentage did Carol receive?

10 A. 45.

11 Q. And who got the other -- the other 55
12 percent?

13 A. Myself, my brother, Alex Lee, and my
14 stepbrother, William Casey.

15 Q. So she owned 45 percent, and y'all owed
16 55 percent, correct?

17 A. Correct.

18 Q. And was there another sister?

19 A. Yes. I had two sisters.

20 Q. Did they receive anything in this?

21 A. My older sister did not. My younger
22 sister got -- I can't remember the dollar amount,
23 but so much money was put away for her until she
24 reached an age, and then she got it.

25 Q. But she didn't get a percentage of

1 Alex's, Inc., did she?

2 A. No, sir.

3 Q. So Carol had 45 percent going in. Was
4 there -- to your knowledge, was there a time when
5 Casey transferred his 18.3 percent shares to
6 Carol?

7 A. Yes.

8 Q. Do you know why? What is your
9 understanding?

10 A. To pay legal fees.

11 Q. For what?

12 A. Casey got into some trouble.

13 Q. What kind of trouble?

14 A. I don't believe it, but he got in
15 trouble for something that happened with his
16 child.

17 Q. Serious criminal trouble, right?

18 A. Yes, sir.

19 Q. The child died, didn't they?

20 A. Again, sir, I don't believe that it
21 happened, but --

22 Q. I understand that. But we're talking
23 about charges. And he was charged?

24 A. Yes, sir.

25 Q. Did he have to go to prison?

1 A. Yes, sir.

2 Q. And do you believe that that's -- and
3 once Carol got his 18.3 percent, how much did she
4 own of the company then?

5 A. Well, I believe that's -- if I'm adding
6 it right, about 63 percent maybe.

7 Q. All right. Did she also -- and that was
8 for Casey's shares, right?

9 A. Yes, sir.

10 Q. And the other son, weren't those shares
11 transferred back and forth?

12 A. Yes, sir. That was not to my knowledge
13 until this had started.

14 Q. But who had control over Alex's, Inc.?

15 A. Carol did.

16 Q. And she could do what she wanted with
17 it, right?

18 A. Yeah.

19 Q. And you never received any 18.3 percent
20 distribution?

21 A. No, sir.

22 Q. Did you receive any 18.3 distribution?

23 A. No, sir. No, sir.

24 MR. SAUTTER: Your Honor, I have no
25 further questions at this time of Mr. Billips.

1 THE COURT: All right.

2 Mr. Rannik?

3 CROSS-EXAMINATION

4 BY MR. RANNIK:

5 Q. Good morning, Mr. Billips.

6 A. Good morning.

7 Q. We met briefly via a very patchy zoom
8 call --

9 A. Yeah.

10 Q. -- a few months ago. But it's good to
11 see you in person.

12 A. Good to see you, too, sir.

13 Q. Mr. Billips, what do you do for a living
14 today?

15 A. I work for Coca-Cola. I'm a delivery
16 driver.

17 Q. And how long have you been doing that?

18 A. I've been with them since 2018.

19 Q. Okay. Do you enjoy it?

20 A. Excuse me?

21 Q. Do you enjoy it?

22 A. Getting up at 4 in the morning is not
23 too fun, but I get up at 3 to be there at 4, but,
24 you know.

25 Q. And, Mr. Billips, when did you last work

1 at Alex's? I think you testified that it was
2 around 2010, 2011; is that right?

3 A. Well, I had left and came back in 2014.

4 Q. Okay. So you worked at Alex's in 2014?

5 A. I believe I was a cook.

6 Q. And which location?

7 A. Dorchester and -- yeah, Dorchester I got
8 my own notes that I wrote. Can I look at them?
9 And just -- it was last night to recollect my
10 memory. I mean, I sat down and wrote my own
11 notes. I don't know.

12 Q. If they're notes you wrote last night, I
13 wouldn't have an objection. But I would ask that
14 they be --

15 A. I wrote them last night.

16 Q. -- that you let me see them.

17 A. Sure, if you can read my handwriting.

18 Q. I have similar handwriting.

19 A. They're just notes of kind of what years
20 of my life, '89, like Hugo, where I was at, what
21 I was doing.

22 Q. All right. Well, what I would like to
23 do is continue my questioning, and then --

24 A. Okay. No problem.

25 Q. Let's hold off looking at that.

1 A. Okay.

2 Q. Now, so is it your testimony that your
3 recollection is, you worked as a cook for Alex's
4 in the Dorchester location around 2014?

5 A. I believe so, sir.

6 Q. Okay.

7 A. Let's see. I believe so. I was -- I
8 know I was there in '13 because my sister died,
9 and I was cooking. And she died November the
10 20th of '13.

11 Q. Is it possible that -- well, if I were
12 to tell you the Dorchester sold in January of
13 '13, would that change your testimony?

14 A. I guess it definitely was sold, yeah. I
15 would have to go back maybe a year.

16 Q. Okay. When did you last see a cost
17 control report?

18 A. What I was cooking. When I was cooking.

19 Q. Okay. And cost control reports were
20 used in part to provide some sort of healthy
21 competition between managers at different
22 locations, right?

23 A. Correct.

24 Q. And so one manager can look at what the
25 other manager is doing in terms of profit

1 margins?

2 A. Yes.

3 Q. And it can be a basis for getting
4 bonuses for those managers that perform well?

5 A. Yes, sir.

6 Q. When there were no more locations, would
7 there be any -- except for the one, would there
8 be any reason to have cost control reports?

9 A. Well, I would think that you would have
10 to have one for the location that you're at, just
11 a daily record.

12 Q. Can you do the same thing in QuickBooks?

13 A. Oh, yes. I'm sure you can now. I'm not
14 very familiar with that.

15 Q. Now, I think it's well established, you
16 have an 18.3 percent interest in Alex's, correct?

17 A. Yes, sir.

18 Q. And you received that interest as part
19 of an inheritance from your father, correct?

20 A. Yes, sir.

21 Q. And that interest was held in trust for
22 a time after your father's death by Ms. Carolyn
23 Billips and Debra Billips until you came of age;
24 is that correct?

25 A. Yes, sir.

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

4 A. Yeah, from the -- what was given to me
5 when it was given to me.

6 Q. And that would be based on the value
7 today of --

8 A. Correct.

9 Q. -- the operations?

10 A. Yes, sir.

11 Q. Okay. And now you provided estimates to
12 Mr. Ewart, and we've gone -- talked a lot about
13 these estimates?

14 A. Yes, sir.

15 Q. And those were for 2010, I believe; is
16 that correct?

17 A. I don't -- I don't think it was that
18 long ago. I can't remember exactly when I hired
19 my lawyers, to begin with. It's been so long
20 that this has been going on.

21 Q. And so let me make sure my question is
22 clear.

23 A. Okay.

24 Q. I believe you testified that you made --
25 in your notes of the estimates in about 2015, but

1 that they are your recollection of the revenues
2 of the various restaurants as of 2010; is that --

3 A. Yeah, correct, because Mt. Pleasant,
4 Dorchester had already been sold. I couldn't
5 tell you what the sales were when they sold them.

6 Q. Right, right.

7 A. But from what I remember, yes, sir.

8 Q. I didn't mean to interrupt you.

9 A. I'm sorry. That's okay.

10 Q. And so it had to be before the
11 restaurants were sold, and so therefore, you put
12 it around 2010?

13 A. Yes, sir.

14 Q. And have you totaled up all of the
15 annual revenues, based on your recollection?

16 A. I haven't sat down and actually
17 calculated, you know, for an official total or
18 anything.

19 Q. Why don't you do that? Exhibit for
20 identification here --

21 THE COURT: Should be here.

22 Q. I'm going to show you this for
23 identification. This has been previously marked
24 as Plaintiff's 12. And these are the notes we
25 were just talking about, correct?

1 A. Yes, sir.

2 Q. Would you please -- I don't know if you
3 have a blank piece of paper and a pen, but would
4 you please --

5 A. There's a calculator sitting here.

6 Q. Even better. This is a well-prepared
7 courtroom.

8 A. It would have taken me forever, so...

9 Q. So if I could just get you to add up the
10 total annual revenues for all of the locations,
11 please.

12 THE COURT: If you want to
13 follow-up with that pen and paper, you certainly
14 can.

15 MR. RANNIK: Thank you.

16 BY MR. RANNIK:

17 Q. And, actually, can I have you go ahead
18 and do it on paper as well so that we have a
19 record of it?

20 A. No problem. Just give me a few minutes,
21 please.

22 Q. Thank you. And, Mr. Billips, your
23 counsel just reminded me that the final page of
24 the exhibit I handed you was taken out. That's
25 regarding the video poker machines; so you can

1 ignore the last page of the exhibit.

2 A. Okay. I wouldn't put my life on this,
3 but total 12 million and 1,540, and that's
4 including the last sheet, the tanning and laundry
5 because the poker machines aren't in here.

6 Q. Okay. All right. And so based on your
7 recollection, Mr. Billips, and the recollections
8 that you provided to Mr. Ewart in this case,
9 Alex's annual gross revenues are approximately
10 \$12 and a half million?

11 A. Per year, yes, sir.

12 Q. Okay. Is it your testimony that Carol
13 Billips stole millions of dollars from Alex's
14 year by year?

15 A. No, sir.

16 Q. If the tax returns filed for Alex's for
17 2010 show less than \$2 million in gross revenues,
18 what happened to the other \$10 million?

19 A. I would have no idea, sir. I've never
20 seen them.

21 Q. But your testimony is that there's an
22 extra \$10 million floating around there somewhere
23 that never ended up on their tax return?

24 MR. SAUTTER: Objection, Your
25 Honor. That's not his testimony at all.

1 THE COURT: Overruled. Go ahead.

2 You can answer it if you can.

3 A. No I have no clue what's happened to it.

4 Q. But you think it exists?

5 A. I'm sure there's some out there
6 somewhere.

7 Q. \$10 million?

8 A. Well, no, I didn't think 10 million.
9 There's some cash out there somewhere, sir.

10 Q. Well, sir, you said that there's \$12 and
11 a half million in profits. There's less than 2
12 million on the tax returns. That's a \$10 million
13 difference, and I'm asking you if --

14 A. Yes, sir. We can go with that number.

15 Q. Okay. And so you're saying somewhere in
16 2010, \$10 million got squirreled away by Carolyn
17 Billips?

18 A. I can't put a dollar amount on it, sir.
19 I mean, I have no idea what's happened to it all
20 to -- from what I'm hearing sitting here in
21 court, it's not in the tax papers. So what else
22 could have happened?

23 Q. \$10 million, okay. Now, let's clarify a
24 few things about investments. You did not have
25 any documents in your possession, whatsoever,

1 when you were estimating these revenues?

2 A. No, sir. I was in North Carolina just
3 sitting at a table and trying to remember it.

4 Q. Okay. And you haven't seen any
5 documents since then that would corroborate your
6 recollection, have you?

7 A. No, sir.

8 Q. Do you have any knowledge of what Alex's
9 revenues are today?

10 A. No, sir.

11 Q. Do you have any knowledge of what they
12 have been since 2015?

13 A. No, sir.

14 Q. Did you know, when you were working at
15 Alex's, that Michael Fox was the accountant for
16 Alex's?

17 A. Yes, sir. I've known Michael Fox my
18 whole life.

19 Q. Okay. You mentioned that certain annual
20 profit and loss statements, you didn't have
21 access to because only Carol had access to them;
22 is that correct?

23 A. Yeah. I just -- I just never asked
24 really. I mean, I was living with Carol, and I
25 trusted her judgment.

1 Q. And so you never asked Michael Fox for
2 those records?

3 A. Oh, no, sir.

4 Q. Okay. Now, I believe you testified
5 moments ago that, in your opinion, when Coleman
6 Boulevard was sold, the Mt. Pleasant location of
7 Alex's, it was worth approximately \$4 million for
8 the property alone; is that correct?

9 A. I'm not a professional, but in my --
10 from what I learned in just being 56 years old,
11 that's a very happening location.

12 Q. And just to be clear, you never offered
13 to buy it for \$4 million, did you?

14 A. Oh, no.

15 Q. Did anybody else offer to buy it for \$4
16 million?

17 A. No, sir, that I know of.

18 Q. Is it your testimony that Ms. Billips
19 intentionally sold it for much less than it was
20 worth?

21 A. I didn't find out what it sold for until
22 this started.

23 Q. But are you contesting before this
24 Court, that Ms. Billips intentionally sold the
25 property that was worth \$4 million for \$1.395

1 million?

2 A. I had no say so in that, sir.

3 Q. And so do you accuse her of selling it
4 for less than it's worth?

5 A. Yes, sir.

6 Q. Why do you think -- why do you believe
7 she sold it --

8 A. Because of the location, Coleman
9 Boulevard, and I know the restaurant was a good
10 restaurant, a busy restaurant.

11 Q. But why would she do that?

12 A. You would have to ask her, sir.

13 Q. Okay. And you said that you believe
14 Goose Creek is worth \$4 million today; is that
15 correct?

16 A. At least.

17 Q. Are you offering to pay \$4 million for
18 that?

19 A. I own 18.3 percent of it.

20 Q. And so will you pay the prorated
21 balance? Would you pay -- I guess that would
22 be -- I'm not good at math. That's why I went to
23 law school.

24 A. No, sir. I'm not in the market to move
25 back to South Carolina.

1 Q. Okay.

2 A. I wouldn't buy anything down here.

3 Q. Okay. When your counsel yesterday asked
4 Ms. Billips yesterday if she would turn over the
5 operations of Goose Creek to you in resolution of
6 this action, that's not something you would be
7 interested in?

8 A. Could you say that again, sir?

9 Q. Do you remember yesterday, Ms. Billips
10 was asked by your counsel if she would consider
11 turning over Goose Creek to you in satisfaction
12 of whatever is alleged in this action? Do you
13 remember that?

14 A. Yes, sir.

15 Q. You just told me you don't have any
16 plans to move back to South Carolina. So do I
17 take it that you would not be interested in --

18 A. If it was offered to me, and it
19 happened, I would just sell it.

20 Q. Okay.

21 A. I have too many bad memories here; so
22 soon as I get finished --

23 MR. RANNIK: All right. Your
24 Honor, if you would just give me a moment.

25 THE COURT: Sure.

1 MR. RANNIK: All right. Mr.
2 Billips, thank you very much. Nothing further.

3 THE WITNESS: No problem, sir.
4 Thank you.

5 THE COURT: Anything, Mr. Sautter?

6 MR. SAUTTER: May I just have one
7 moment?

8 THE COURT: Sure.

9 REDIRECT EXAMINATION

10 BY MR. SAUTTER:

11 Q. So just to clarify, you were still
12 involved with the operations of the Alex's, Inc.,
13 restaurants up until 2014, correct?

14 A. Yes, sir, one way or another.

15 Q. You were still looking at these daily
16 cost sheets at home?

17 A. Yeah, until I left Carol's home.

18 Q. Okay. So you -- all right. And so how
19 many hours a day do you think were devoted to
20 Alex's, Inc., business, even at the end, 2014?

21 A. For me?

22 Q. Yes.

23 A. Eight to ten, you know.

24 Q. Eight to ten at the shop, right?

25 A. Yeah, wherever I was at, that location.

1 Q. How about after hours?

2 A. Even today, I get phone calls. I
3 consider that, you know, I'm still doing
4 something. Even a week or two weeks ago.

5 Q. So back at the time in 2014, when you
6 finally left Alex's and the relationship with
7 Ms. Billips, what -- 24 hours in a day, how many
8 hours a day were you involved in the business of
9 Alex's, Inc., and Carolyn Billips?

10 A. Zero.

11 Q. Before you left?

12 A. Oh, before I left, yeah, at least -- I
13 mean, I worked. The job, it was eight hours
14 plus.

15 Q. How about after work?

16 A. Sometimes it could be a couple hours.

17 Q. How many hours a day do you think you
18 average doing -- before you left, doing the
19 business of Alex, Inc., and Carolyn Billips?

20 A. 10 hours.

21 Q. 10 hours. And so your -- these daily
22 cost sheets, that -- how significant was that to
23 you in your role with Alex's Inc.?

24 A. It was very. I mean, that's how we kept
25 control of the -- what was going in and out of

1 the restaurant. You know, it was -- it kept us
2 to keep our food costs down, you know, the
3 payroll down.

4 You know, the payroll goes up, you can
5 cut back employees. Food cost goes up, you find
6 out if you're just ordering too much, you've got
7 too much on hand. Why? So you go and do an
8 inspection of the refrigerators. Just different
9 things like that. It was very important, though.

10 MR. SAUTTER: Thank you, Your
11 Honor. No more questions.

12 MR. RANNIK: Can I recross very
13 quickly?

14 THE COURT: Go ahead.

15 RE-CROSS-EXAMINATION

16 BY MR. RANNIK:

17 Q. Mr. Billips, when you worked for Alex's,
18 did you receive compensation?

19 A. When I worked for Alex's, I drew a
20 paycheck.

21 Q. And I believe you said you worked
22 broadly across Alex's, so different restaurants,
23 different locations?

24 A. Yes, sir.

25 Q. And you claim that you have an interest

1 in the Summerville location, correct?

2 A. I just always considered it one of the
3 restaurants.

4 Q. Have you ever made any capital
5 contributions to Alex's?

6 A. No, sir. I was never asked to.

7 Q. Have you ever made any -- you said you
8 were never asked to?

9 A. No. I mean, there was plenty of times
10 I -- in any way I can help. That statement I've
11 said before in the past, but as far as actually
12 asking me, no.

13 MR. RANNIK: Your Honor, may I
14 approach the witness?

15 THE COURT: Sure.

16 BY MR. RANNIK:

17 Q. Have you ever seen this letter? And
18 before you answer, I'm going to give a copy to
19 the Court.

20 THE COURT: And before you go back,
21 hand him Defendant's 1 because I'm going to ask
22 him a question about that.

23 MR. SAUTTER: Your Honor, I object.
24 I don't know where Mr. Rannik is going with this
25 but this is a letter between counsel trying to

1 resolve these issues. I would object that it's
2 not relevant. I don't ever know if Mr. Billips
3 has ever seen it. This is the first time I've
4 ever seen it.

5 But my involvement in this case has been
6 limited. This is a letter that he's trying to
7 get in April 10th, 2020. I assume he is trying
8 to get in -- to Mr. Ellis. Basically, I mean, it
9 says what it says, but I just object to the
10 letter coming in.

11 THE COURT: All right. What's the
12 purpose and what are you looking to?

13 MR. RANNIK: I just asked if he had
14 ever made a capital contribution, and he said
15 he'd never been asked to.

16 THE COURT: Right.

17 MR. RANNIK: And I was going to ask
18 him if he's ever seen this letter, which does ask
19 him to provide equity and.

20 THE WITNESS: I've never seen this
21 before, sir, and I'm having a hard time reading
22 it. But, no, I've never seen this before.

23 THE COURT: Okay.

24 MR. RANNIK: All right. Thank you,
25 Judge. I would like to offer that as Defendant's

1 2.

2 MR. SAUTTER: Your Honor, same
3 objections. Mr. Billips has not -- I don't know
4 that he's ever even seen this.

5 THE COURT: I will sustain the
6 objection on that ground.

7 MR. RANNIK: Thank you, Judge. And
8 nothing further.

9 THE COURT: Yep. Very good. All
10 right. Mr. Billips, I do have a couple of
11 questions for you.

12 THE WITNESS: Yes, sir.

13 THE COURT: Four areas. One, you
14 testified that you offered to buy the Dorchester
15 Road property from Ms. Billips or from Alex's, I
16 should say. Do you have any written record of
17 that?

18 THE WITNESS: No, sir.

19 THE COURT: Did you put that in
20 writing to her? Did y'all sign any kind of
21 document, or it was just oral?

22 THE WITNESS: It was oral. We
23 were -- can I explain, sir?

24 THE COURT: Sure.

25 THE WITNESS: We were in the

1 Dorchester Road parking lot, and I could tell she
2 was upset and walked over and was trying to
3 comfort her. And I was -- and I had already
4 spoke to my dad -- my stepdad, I'm sorry, and I
5 said, well, Carol, can buy this one from -- buy
6 your shares out of this one and it would take a
7 load off of you.

8 And her reply was, what good is that
9 going to do me and stormed off. And then later
10 on that night, we just -- I didn't want to bring
11 it up again.

12 THE COURT: And so was this right
13 about the time that it did go to sale?

14 THE WITNESS: No, sir.

15 THE COURT: Long before it went to
16 sale?

17 THE WITNESS: Yes, sir.

18 THE COURT: All right. And you say
19 she was upset. Why was she upset, if you know?

20 THE WITNESS: Just -- I don't
21 really know the details of her being upset.
22 Being that we were partners, I could just
23 recognize that she was really frustrated about
24 something.

25 THE COURT: Okay. And then you

1 testified that those daily cost sheets were
2 helpful to compare year over year sales, and then
3 she would vent from time to time. Was she
4 venting because she was trying to make sure that
5 the business stayed afloat and the doors stayed
6 open?

7 THE WITNESS: Yeah. And she was
8 venting that the numbers weren't in line, and,
9 you know, us -- we were living together; so I was
10 a venting person to take it. And if there was
11 anything I could do to go to that location and
12 help, that's what I did.

13 THE COURT: All right. Very good.
14 As to the settlement statements that we've looked
15 at -- and I think they're in evidence as 1, 2,
16 maybe 3 and 4, do you have any reason to doubt
17 that those were the actual sales figures and how
18 the funds were then distributed from the sales?

19 THE WITNESS: The first time I seen
20 them was yesterday, sir. And I really haven't
21 looked at it. I believe there are documents from
22 those -- I don't think I answered your question
23 correctly. Could you please ask it again?

24 THE COURT: Well, they show that
25 the property was sold on a particular date.

1 THE WITNESS: Yes, sir.

2 THE COURT: And for how much it was
3 sold for.

4 THE WITNESS: Yes, sir.

5 THE COURT: The question number one
6 is, do you have any information that would state
7 that that's not what it sold for --

8 THE WITNESS: Oh, no, sir.

9 THE COURT: -- on those particular
10 dates?

11 THE WITNESS: No, sir.

12 THE COURT: And then it goes on to
13 show where the funds went. Some was to pay
14 mortgages off; some was to pay tax liens; some
15 was to pay other liens, other debts. But do you
16 have any question, any way that you would -- that
17 you doubt that's where the money went?

18 THE WITNESS: No, sir.

19 THE COURT: All right. Very good.
20 And I think I had one more, and that had to do
21 with Defendant's 1 that's right in front of you.

22 THE WITNESS: Yes, sir.

23 THE COURT: And you had testified
24 yesterday that that was your signature on that
25 document, but you do not recall, you know, having

1 the meeting and that you would have been opposed
2 to the sale. And I think that was -- wasn't that
3 the Coleman Boulevard? Wasn't that the Moncks
4 Corner property?

5 THE WITNESS: Yes, sir.

6 THE COURT: All right. So look up
7 at the top, and you'll see some telephone
8 numbers.

9 THE WITNESS: Yes, sir.

10 THE COURT: Those are fax numbers.

11 THE WITNESS: Yes, sir.

12 THE COURT: That 919, isn't that
13 North Carolina?

14 THE WITNESS: Yes, sir.

15 THE COURT: So that would have --
16 would that have been your fax number at that
17 time?

18 THE WITNESS: My parents.

19 THE COURT: Okay. So does that
20 refresh your recollection as to how your
21 signature got on there?

22 THE WITNESS: On this particular --
23 what it says, sir?

24 THE COURT: Yes.

25 THE WITNESS: Can I --

1 THE COURT: Sure.

2 THE WITNESS: For one, where it
3 says 16.85, we're only talking a three-hour
4 drive. I would have come back just to question
5 why my percentages dropped so much.

6 THE COURT: Okay.

7 THE WITNESS: Because there wasn't
8 a cross through and 18 put in. So that was --
9 that would have been a three-hour drive with no
10 problem. And I would have wanted to know how
11 much you're selling it for. I definitely would
12 have wanted -- I needed to know that figure. I
13 mean, in my heart, that was, you know, bad.

14 THE COURT: Okay. And can you
15 tell -- what was the date on that document? Do
16 you recall?

17 THE WITNESS: Sir, there's a staple
18 through it; so I'm not sure if it's '05, the
19 month, whether it be April or May.

20 THE COURT: Of what year?

21 THE WITNESS: 2011.

22 THE COURT: All right. And does
23 that refresh your memory as to when that store
24 was sold?

25 THE WITNESS: No, sir.

1 THE COURT: Okay. All right. And
2 we'd have to look at the settlement statement.
3 But you have no recollection of having signed
4 that document; is that fair to say? That's your
5 testimony?

6 THE WITNESS: Yes, sir. That's my
7 signature.

8 THE COURT: Okay. And then, just
9 along those lines, to what extent did y'all ever
10 have any shareholder meetings of the corporation?

11 THE WITNESS: I can remember -- I
12 can't tell you what they were about, but two of
13 them where we met at Tom Worley, our lawyer, when
14 I was probably in my 20's.

15 THE COURT: Okay. When you
16 first --

17 THE WITNESS: Those are the only
18 two that I know of.

19 THE COURT: Is that when you first
20 got your interest and got involved --

21 THE WITNESS: Yes, sir.

22 THE COURT: -- in the business?

23 THE WITNESS: Yes, sir.

24 THE COURT: That was actually --
25 one of the meetings was when we got our stock

1 certificates.

2 THE COURT: Okay. Because they did
3 actually issue stock certificates, correct?

4 THE WITNESS: Yes.

5 THE COURT: Do you still have
6 those?

7 THE WITNESS: We have a copy of it
8 now. Mine disappeared.

9 THE COURT: Okay. Help me out a
10 little bit with the family. You're the -- from
11 what I gather of the three boys, you're the
12 middle one; is that right?

13 THE WITNESS: No, sir. I'm the
14 oldest.

15 THE COURT: You're the oldest,
16 okay. All right. And then the next in line was
17 whom? The next brother?

18 THE WITNESS: Carol's son, Casey.

19 THE COURT: Casey, okay. And he is
20 the son of Carol?

21 THE WITNESS: Yes.

22 THE COURT: And then so that
23 finally gets us into Alex, Jr.?

24 THE WITNESS: Yes, sir.

25 THE COURT: And Alex, Jr., was the

1 son of Debra; is that right? Was that the other
2 one?

3 THE WITNESS: No, sir. It was
4 Carol and my dad, Alex.

5 THE COURT: Okay. So the two other
6 boys are both Carol's sons with your father?

7 THE WITNESS: Correct.

8 THE COURT: And you were from --

9 THE WITNESS: No. Casey is Carol's
10 son with a previous husband.

11 THE COURT: Okay. Gotcha. All
12 right. And today, which one no longer has an
13 interest in the business?

14 THE WITNESS: Casey.

15 THE COURT: Is that Casey?

16 THE WITNESS: Yes, sir.

17 THE COURT: And he did do time, but
18 is he now out or is he still doing time?

19 THE WITNESS: Yes. That was a long
20 time ago, sir.

21 THE COURT: Okay.

22 THE WITNESS: I don't know the
23 dates.

24 THE COURT: All right. He's out.
25 But he gave up his interest and gave that to

1 Carol?

2 THE WITNESS: Yes, sir.

3 THE COURT: The best of your
4 knowledge, Alex still has his interest, and you
5 still have yours?

6 THE WITNESS: Yes, sir.

7 THE COURT: All right. So from the
8 standpoint of the three brothers, do y'all talk
9 to one another?

10 THE WITNESS: No, sir.

11 THE COURT: Okay. And have not for
12 a while?

13 THE WITNESS: They cut me off. I
14 don't -- no reason.

15 THE COURT: And when would that
16 have taken place? Give me a time frame.

17 THE WITNESS: When I left Carol,
18 2014.

19 THE COURT: Okay.

20 THE WITNESS: I was trying to go
21 back.

22 THE COURT: I think my notes said
23 you were there -- y'all were together from --
24 like 20 years, from '91 to 2011; is that --

25 THE WITNESS: Yeah, at least. More

1 than that.

2 THE COURT: Okay. 2011 or 2014,
3 whatever that was?

4 THE WITNESS: Yes.

5 THE COURT: And that's sort of what
6 started the genesis of this whole process and
7 then the lawsuit was filed; is that right? My
8 understanding is this percolated for a while
9 before the lawsuit got filed.

10 THE WITNESS: Yes, sir.

11 THE COURT: Just trying to help it
12 along.

13 THE WITNESS: It's crazy, sir.

14 THE COURT: All right. Do y'all
15 got any questions to follow-up mine? I'm happy
16 to hear from you.

17 REDIRECT EXAMINATION

18 BY MR. SAUTTER:

19 Q. So you were -- the sale in 2011, that
20 was for the Mt. Pleasant location and not Moncks
21 Corner, correct?

22 A. Correct.

23 MR. SAUTTER: Nothing further, Your
24 Honor.

25 MR. RANNIK: Nothing for me.

1 THE COURT: Very good. Thank you,
2 Mr. Billips. You may step down.

3 Do y'all want to take a little break?
4 Let's take a break, and then we're still on the
5 plaintiff's case. And then I assume you're going
6 to call your expert, but don't know. So let's
7 take five minutes and come right back. Okay?

8 (A recess transpired.)

9 THE COURT: Jaan, did you want to
10 mark that for ID purposes the same as what we did
11 before?

12 MR. RANNIK: Thank you, yes.

13 THE COURT: Okay. Let's call
14 that -- that was Defendant's 2, I think it was.

15 MR. RANNIK: Defendant's 2, right.

16 (DFT. EXH. 2 was marked for
17 identification and proffered.)

18 THE COURT: And just do it as a
19 proffer, but I --

20 MR. ELLIS: Can we also mark for
21 identification, his notes that he -- his
22 calculation?

23 THE COURT: Okay. All right. Run
24 that by him, and I don't have a problem with
25 that.

1 MR. RANNIK: Okay.

2 (PLF. EXH. 15 was marked for
3 identification.)

4 MR. ELLIS: Thank you. Your Honor,
5 at this time, I would call James Ewart to the
6 stand.

7 (JAMES EWART, having first been
8 duly sworn, testified as follows:)

9 THE COURT: All right. Please have
10 a seat and when you get comfortable, give us your
11 full name and address, please, sir.

12 THE WITNESS: James, J-A-M-E-S; D,
13 as in David; E-W-A-R-T. 230 Burnham Court,
14 Charleston, South Carolina 29414.

15 THE COURT: Thank you, sir. All
16 right. Mr. Ellis?

17 DIRECT EXAMINATION

18 BY MR. ELLIS:

19 Q. Mr. Ewart, you retained by the plaintiff
20 as an expert in this case; is that correct?

21 A. Initially as a consultant, and then,
22 yes, as an expert.

23 Q. And then you're an expert in accounting
24 and business valuation; is that correct?

25 A. And business valuations, yes.

1 Q. Okay. I want to ask you about your
2 educational background. Tell me about your
3 post-high school education.

4 THE COURT: Let me stop you. He's
5 been qualified as an expert before. Do you have
6 any objection to his qualifications?

7 MR. RANNIK: None at all.

8 THE COURT: He's highly qualified.
9 Based upon my experience, I'm happy to have him
10 qualified as an expert in business valuations,
11 correct?

12 MR. ELLIS: Yes, Your Honor.

13 THE COURT: All right. Very good.
14 Jim and I go back a long way.

15 THE WITNESS: Thank you, Your
16 Honor.

17 BY MR. ELLIS:

18 Q. Mr. Ewart, as part of your work in this
19 case, you've also prepared a report; is that
20 correct, a May 4th, 2021 report?

21 A. Yes.

22 Q. If I may show you that.

23 MR. ELLIS: Your Honor, you don't
24 need a copy, do you?

25 MR. RANNIK: It's the same?

1 MR. ELLIS: It is. It's the May 4,
2 2021.

3 THE COURT: Do you got one of those
4 for me?

5 MR. ELLIS: Yes, Your Honor.

6 THE COURT: Thank you, Mr. Ellis.

7 THE WITNESS: Your Honor, I do have
8 a correction to this, if I May.

9 THE COURT: All right, sir.

10 THE WITNESS: On page 9, I still
11 list North Carolina, that I'm certified. I
12 carried a license in North Carolina. I no longer
13 carry the license in North Carolina.

14 THE COURT: All right, sir.

15 BY MR. ELLIS:

16 Q. So Mr. Ewart, this document before you
17 that's a May 4, 2021 report, this is a report
18 that you provided for this case; is that correct?

19 A. That's correct.

20 Q. Okay. In issuing your report, the May
21 4, 2021 report, what data did you use to come to
22 the conclusions you come to in this report?

23 A. I was provided -- what is described in
24 my report is Fox underscore 1 through Fox 1233.

25 Q. Okay. And what is it that you believe

1 that data is? Where did it come from?

2 A. My understanding was that it was
3 Mr. Fox's work papers.

4 Q. Okay. And I'll represent to you that
5 that same paperwork has been marked as Exhibit
6 11A in this case. Is that the same documents
7 that you reviewed from Michael Fox underscore --
8 or it's Bates stamped Fox 1 through Fox 1233?

9 A. Well, if they're numbered through that,
10 yes.

11 Q. Okay. In reviewing that -- those
12 documents as produced by Mr. Fox's office, were
13 you able to place a value on the business, Alex's
14 Incorporated?

15 A. I was not.

16 Q. And why is that?

17 A. Well, I found them to be not complete
18 for my purposes. I couldn't reconcile them.

19 THE WITNESS: And as a result of
20 those two things, Your Honor, I wasn't able to
21 conclude they were reliable for the purpose for
22 which I was undertaking. And the primary issue
23 that I had, Your Honor, was the reconciliation of
24 the income statement for profit and loss to the
25 balance sheet.

1 And as Mr. Fox testified yesterday, he
2 indicated he -- that the balance sheet wasn't
3 important to what -- to the work that he was
4 doing, which was primarily preparing the tax
5 return. And I certainly respect that; so I'm not
6 being critical with respect to his work.

7 I'm just saying, for my purposes, I
8 couldn't rely on it. I scheduled out from 1996,
9 I guess it was, through 2018, the information
10 that was contained in those files with respect to
11 the profit and loss. And there were various
12 documents in there. Some were handwritten. Some
13 were typed.

14 I learned yesterday that the typed was
15 more probably from the company as opposed to work
16 that he had developed, but I didn't know that at
17 the time. And I was able to reconcile the profit
18 and loss to the tax return once I considered the
19 asset sale transactions. The profit and loss did
20 not include those at all, nor the cash, nor
21 anything related to those sales.

22 So I was able to get the income
23 statement, but a large component of what I do as
24 a valuator is, I need to understand the balance
25 sheet because I need -- that tells me where the

1 cash went. It either went to operations or it
2 went to buy assets or assets sold, pay off debt,
3 distribute debt. Those are typically the places
4 where cash goes.

5 And because the balance sheet was not
6 complete, I was unable to reconcile the cash.
7 And as Your Honor knows in valuation, cash is
8 what drives value. There are other methods.
9 There is the income approach. There is the
10 market approach and the asset approach.

11 The income approach is all cash driven.
12 That's P&L. And then after you have the profit
13 and loss for the year, you then add back
14 depreciation. And if you're valuing equity, you
15 would reduce debt repayments, for example. You
16 would take out interest, and then you would --
17 that would give you the cash flow, ongoing cash
18 flow for the business.

19 So without the balance sheet, you can't
20 do that, right? And it's not -- it's consistent
21 throughout the entire history of what those work
22 papers have. So it's -- and it's also then
23 consistent with what Mr. Fox testified to
24 yesterday.

25 THE COURT: Right.

1 THE WITNESS: But, yeah, when I
2 heard that. So not being able then -- and the
3 papers also do not have individual units. It's
4 all in total.

5 THE COURT: Right. It's all
6 combined?

7 THE WITNESS: Yeah. So you can't
8 tell what -- what Summerville was doing. You
9 can't tell what Mt. Pleasant was doing,
10 Dorchester, Rivers, Moncks Corner. You can't
11 tell. It's all in the aggregate.

12 So I was aware that there were
13 transactions; so I took an alternative approach
14 to that.

15 THE COURT: Okay.

16 THE WITNESS: And what I did was,
17 if I had the units -- and by the way, we're
18 looking at a fiscal year that ends July 31st of
19 each year, as opposed to 12/31.

20 So if a property sold in May, for
21 example, I knew then that for the next fiscal
22 year, there would be no revenues attributable to
23 that unit. So if I took the difference in the
24 revenues that would be reported on the profit and
25 loss statement, those should be attributable to

1 the unit -- the assumption was, they would be
2 attributable to the unit that sold.

3 And one of the methods to value is the
4 market approach, and the market approach is
5 derived from multiples that are developed from
6 industry data. And what I did was, there's a
7 database that I use consistently, and it's
8 DealStats.

9 And DealStats this -- transactions by
10 SIC code or an NAICS code. So I put in the NAICS
11 code for restaurants, and I got somewhere in the
12 neighborhood of 750, 800 transactions.

13 And they were anything from full service
14 with liquor to fast food, pizza, bakeries,
15 kiosks, all of that. So when I went through the
16 700-and-some-odd transactions and weeded out
17 those that I didn't think would be comparable to
18 Alex's. And I ended up with 147.

19 And then I looked at median multiple of
20 those 147 within the confines of the -- of the
21 initial run I did, which was, I believe, sales --
22 revenues up to 3 million. And I came out with
23 .28. I know from experience that that multiple
24 of review typically is around .35.

25 And then to that, after you get the

1 multiple revenue, you then would add FF&E, and
2 depending with the -- often, there's wear,
3 supplies, other things like that, get added to
4 it, to come up with a value would be for a
5 particular unit. So at this time, I couldn't
6 rely on -- I couldn't rely on any of the
7 information because I couldn't reconcile it.

8 THE COURT: Okay.

9 THE WITNESS: So I went to
10 Mr. Billips and interviewed -- and interviewed
11 him as part of the process that I'm required to
12 do under my standards, valuation standards, it is
13 to interview management.

14 Mr. Billips was involved; so he had
15 relevant knowledge -- that's the other two things
16 I need to have. I need to have relevant -- I
17 need to have relevant information, and I need to
18 exercise due professional care. And what I did
19 with Mr. Fox's work papers is, due professional
20 care.

21 I just can't accept that which I get.
22 I've got to do something to it to make sure that
23 it's reliable. And Mr. Billips gave me the --
24 the revenues by those stores. And what I used it
25 for --

1 THE COURT: That would be
2 consistent with what he testified to today,
3 correct?

4 THE WITNESS: Yes, sir.

5 THE COURT: All right.

6 BY MR. ELLIS:

7 Q. And, Mr. Ewart, that's -- the revenues
8 for the Court are on Exhibit 4?

9 A. Exhibit 4, right. And I used that then
10 just as a basis to say, okay, if I use that .28
11 multiple times that revenue, it's going to give
12 me a value. And I could compare that value then
13 to what was the transacted value of the unit.

14 Now, that's real estate. So you would
15 expect that that value that I would derive would
16 be less than the total sales price. And it is,
17 and it's higher than that which I would receive
18 if I did that with and without calculation of
19 revenues between years.

20 But they're both within the confines of
21 the total sales price but for Dorchester Road. I
22 believe it's Dorchester. Let me check real
23 quick. Yeah, but for Dorchester Road. And I
24 still am unable to reconcile that. I don't
25 question the sold -- what it sold for.

1 THE COURT: Right.

2 THE WITNESS: It's just that what
3 it sold for just isn't clicking as to why it
4 would sell for that. So what I was able to do
5 then was do a calculation of value for the Goose
6 Creek store.

7 And I -- my calculated value, based on
8 what I just explained, was \$361,000. For the
9 other locations, I want unable to ascertain a
10 value for those, but there is a transaction that
11 took place, right?

12 THE COURT: Right.

13 THE WITNESS: The question then
14 becomes, in my mind, Your Honor, relative to the
15 value that was received, was whether those were
16 repressed values because of the situation that
17 the company and Mr. Billips was in at the time.

18 And whether that -- whether or not those
19 forced sales that would not otherwise be taking
20 place. And we -- and I don't know whether they
21 did -- would or not. And I don't know how much
22 that entered into it. I haven't had access to
23 have those kinds of conversations.

24 THE COURT: Would that be an
25 indicia of an explanation for the Dorchester Road

1 sale?

2 THE WITNESS: It could be, yes.

3 THE COURT: Okay.

4 THE WITNESS: It could be very
5 well. So that's what this report is saying, Your
6 Honor.

7 THE COURT: Sure.

8 THE WITNESS: And then it also
9 documents the basis upon which I got there. So I
10 have in here -- I have the exhibit that shows the
11 development of the .28 multiple.

12 THE COURT: Okay.

13 THE WITNESS: And it also has other
14 material that I understand is not appropriate for
15 me to talk about today.

16 THE COURT: Okay. All right.

17 THE WITNESS: Sorry, that was a
18 long answer.

19 BY MR. ELLIS:

20 Q. So just to summarize, Mr. Ewart, you're
21 saying that you cannot rely upon Fox's
22 information, correct?

23 A. For my purposes, that's correct.

24 Q. Okay. And so you went to an alternative
25 set of data, which was Mr. Billips; is that

1 correct?

2 A. That's correct.

3 Q. And so just looking at page 2 of your
4 report. Do you have that before you?

5 A. Yes, sir.

6 Q. So under number 3, you have numbers next
7 to Goose Creek and Moncks Corner. Are those the
8 numbers that you got based upon your alternative
9 base calculated value?

10 A. Yes.

11 Q. And Goose Creek is ongoing, so that
12 was -- that was the number you got for Goose
13 Creek?

14 A. Correct.

15 Q. Okay. And then Moncks Corner was sold;
16 so is that your alternative base calculated value
17 of Moncks Corner at the time it sold, \$246,000?

18 A. Well, based on the revenues that were
19 provided to me by Mr. Billips, yes.

20 Q. Okay. And through your alternative base
21 calculated value?

22 A. Yes.

23 Q. Okay. And then looking at number 4, you
24 have the line, alternative base calculated value.
25 Do you see that?

1 A. Yes.

2 Q. And those numbers to the right under
3 their corresponding store, those are -- those are
4 the alternative base calculated value that you
5 came to using Mr. Billips' number; is that
6 correct?

7 A. Correct.

8 Q. And just to put into the record these
9 numbers; so for Goose Creek, you had \$361,000; is
10 that correct?

11 A. Yes, sir.

12 Q. For Moncks Corner, you had \$246,000; is
13 that correct?

14 A. That's correct.

15 Q. For Coleman Boulevard and Rivers Avenue
16 together you had 768,900; is that correct?

17 A. That's correct.

18 Q. For Dorchester Road, you had \$404,200,
19 correct?

20 A. Yes.

21 Q. Okay. For Savannah Highway, you had
22 \$319,200; is that correct?

23 A. Yes.

24 Q. And so for each -- each of those stores,
25 other than Goose Creek, it would have been as of

1 the time the unit was sold; is that correct?

2 A. Yes.

3 Q. Okay. Now, on the front of your report,
4 under -- on the first page, the second paragraph,
5 the purpose of this report.

6 You said, this report is intended to
7 have been prepared in conformity of the American
8 Institute of Certified Public Accountants
9 statements on standards for valuation services
10 via section 100, and the National Association of
11 Certified Valuers and Analysis -- Analysts,
12 excuse me. Do you believe this report conformed
13 with those standards you cite?

14 A. I believe it complied with those
15 standards, yes.

16 Q. Okay. Now, also attached to this is
17 your CV; is that correct?

18 A. Yes.

19 Q. Beginning on page 10?

20 THE COURT: It starts before that.

21 MR. ELLIS: Maybe 9.

22 BY MR. ELLIS:

23 Q. And I will give you a pen so you can
24 mark off the North Carolina license that you
25 talked about.

1 A. Oh, okay.

2 Q. Did you make the correction you talked
3 about earlier, Mr. Ewart?

4 A. Yeah. You want me to initial it or
5 anything?

6 Q. Please. So other than that change --
7 now, with that change, is that an accurate and
8 correct CV for you?

9 A. I believe it is, yes.

10 MR. ELLIS: Okay. Your Honor, I
11 would like to move this report and CV together as
12 one exhibit.

13 THE COURT: Okay.

14 MR. RANNIK: No objection.

15 THE COURT: Without objection. I
16 believe that's Plaintiff's 16.

17 (PLF. EXH. 16 was marked for
18 identification and admitted into evidence.)

19 THE COURT: And we haven't talked
20 about it, but there was one we marked for ID
21 purposes that was the figure 4, I think.

22 MR. ELLIS: Exhibit 4, yes, sir.

23 THE COURT: Exhibit 4. Where is
24 that in this report?

25 THE WITNESS: It's on page 15, sir.

1 THE COURT: Page 15. All right.

2 Just so we cross-reference the same thing.

3 THE WITNESS: Yes, sir.

4 THE COURT: Exhibit 4. Got it.

5 Okay.

6 MR. ELLIS: Do you have it up here?

7 THE COURT: I think it is up there.

8 If it got handed it up today, it would be in that
9 stack, I believe. I see it right there. That
10 was number what?

11 MR. ELLIS: 13.

12 THE COURT: No. 13?

13 MR. ELLIS: Yes, Your Honor.

14 BY MR. ELLIS:

15 Q. Mr. Ewart, what's been marked as
16 Plaintiff's Exhibit 13, is that indeed Exhibit 4
17 of your report?

18 A. Yeah, I believe it is, sir.

19 Q. Okay.

20 THE COURT: Looks to be the same?

21 THE WITNESS: Yes, sir.

22 THE COURT: Okay. Do you want to
23 move that one in then?

24 MR. ELLIS: Yes, Your Honor, I'd
25 like to do that.

1 THE COURT: It's repetitive, but I
2 think Plaintiff's 13 is also Exhibit 4 to
3 Plaintiff's Exhibit 16, just so we're clear on
4 that. All right?

5 MR. ELLIS: Your Honor, I have no
6 further questions for Mr. Ewart at this time.

7 THE COURT: I'll bet you Mr. Rannik
8 does.

9 CROSS-EXAMINATION

10 BY MR. RANNIK:

11 Q. Morning, Mr. Ewart.

12 A. Good morning.

13 Q. It's good to see you again as always.

14 A. Likewise.

15 Q. Now, this might seem a little
16 repetitive, but I just want to make sure I have
17 the -- my ideas clear here, which is always a
18 dangerous proposition for me anyway.

19 In making your calculations that are --
20 that form the basis of what you've included in
21 Plaintiff's Exhibit 16, you used estimates you
22 received from the plaintiff, correct?

23 A. I did, yes.

24 Q. And these were revenue estimates for the
25 various units or locations of Alex's Restaurants?

1 A. That's correct.

2 Q. Okay. Was there any way for you to
3 verify the accuracy of those estimates?

4 A. No. Well, I take that back. I tested
5 those against what was shown on the -- what was
6 represented to me as -- in tax work papers as to
7 what the revenue was for -- in total.

8 Q. Okay.

9 A. And then I tested that against the
10 actual transacted sales prices of those units
11 that included real estate, just to get a sense of
12 the relationship with those operating numbers to
13 the total.

14 Q. Okay. And you found the estimates of
15 the revenues to be consistent with the tax papers
16 and materials that -- or you found them to be
17 credible based on your review of the tax papers
18 to Mr. Fox?

19 A. I found them to be credible in the sense
20 that -- with the work I did, yes.

21 Q. Okay. Mr. Ewart, do you have a copy of
22 your report in front of you?

23 A. I do.

24 Q. Can we look at page 2, please? And I
25 want to ask you about -- in the summary of

1 conclusions, paragraph number 3, I want to ask
2 you about your determination, your calculation as
3 to Moncks Corner.

4 Now, section 3 says -- and I will read
5 it, and please tell me if I say anything
6 incorrect. Based on the alternative procedures
7 described below, the calculated value of the
8 remaining units as of 2014 are as follows: And
9 then under Moncks Corner, you say, 246,000.

10 So do I properly understand that your
11 calculation as to Moncks Corner is of that
12 location as a going concern?

13 A. As of 2010, which was the revenue based
14 upon what Mr. Billips gave me, yes.

15 Q. Okay. So the --

16 A. That one correction to be, though, the
17 unit sold -- I learned that the unit sold prior
18 to that or prior to -- it's no longer owned.
19 Let's try it that way.

20 Q. Okay. But it does here say that, this
21 is a calculated value of the remaining units as
22 of 2014?

23 A. It does say that, yes.

24 Q. So in this report, do I understand that
25 that is the value of it as a going concern?

1 A. Yes, as of 2010.

2 Q. Okay. Okay. Now, can we please turn to
3 page 15 of your report, which is Exhibit 4?

4 A. Let's make sure. It's 2010 as of Moncks
5 Corner, not Goose Creek. Goose Creek would be as
6 of '14. And I apologize for that confusion.

7 THE COURT: Those differences are
8 based upon the information you were provided by
9 Mr. Billips, right?

10 THE WITNESS: That's right.

11 THE COURT: Okay. All right.

12 BY MR. RANNIK:

13 Q. Well, let's look at that a little more
14 carefully. Can we look at page 15 of your report
15 please?

16 A. Sure.

17 Q. Now, this is Exhibit 4 to your report,
18 and the top line of this says, base -- section A,
19 base year gross sales.

20 A. I'm sorry, you're right. I'm sorry.

21 Q. So when you say I'm right, you mean that
22 the Goose Creek was also valued as of 2010?

23 A. Yes.

24 Q. Okay.

25 A. I apologize.

1 THE COURT: Okay. All right.

2 Q. I have another question about this
3 exhibit. Now, what I take is that you have found
4 a net of sales tax amount of revenues for each of
5 these units, and to do so, you've applied a 10.5
6 percent sales tax rate and subtracted that from
7 the gross sales; is that right?

8 A. Yes.

9 Q. I'd like you to check your math, please.
10 Under Goose Creek, it says, the base of your
11 gross sales is \$1.425 million, but the sales tax
12 is only 135, which would seem to be less than 10
13 percent of those gross sales. Do you agree that
14 that number might be a little low?

15 A. Seems like it. I would have to check my
16 formula. I would have to check the formula to
17 see what's -- why that Goose Creek was different.
18 It could be that there was a change in the taxes.

19 Q. If you would look across all of these
20 units, does it seem like all of the sales tax
21 calculations are less than 10 percent?

22 A. They do. And that's what I'm saying.
23 There's -- I think there's an adjustment that --
24 I should have changed the 10 and a half, I
25 believe, because I think that there -- one of

1 these taxes I have taken out.

2 I don't recall which one. Because they
3 were as of -- I believe as of 2010, and there's
4 been changes. So I would have to go back and
5 check that --

6 Q. Okay.

7 A. -- as to why. I should have changed
8 that to whatever it is, but I think they're
9 consistent across.

10 Q. Now, Mr. Ellis asked you a couple
11 questions about the report generally, and I would
12 like to do the same. You testified you were not
13 able to determine a valuation of Alex's
14 Restaurants, correct?

15 A. That's correct.

16 Q. And this report does not purport to do
17 so?

18 A. That's correct.

19 Q. You note that a calculation engagement,
20 which is what you were retained to perform, does
21 not include all of the procedures required in a
22 valuation engagement, correct?

23 A. That's correct.

24 Q. And you note also in your report that
25 this report, as a result, may not contain all of

1 the information required by a calculation report
2 as required by BS100, correct?

3 A. Well, it has what's required for a
4 calculation report. It doesn't have -- it may
5 not having everything that would be as part of
6 an -- if I was rendering an opinion of that.

7 Q. Okay. And that makes sense, and I think
8 I read from your report and I think I understood
9 it to be a typo. If you'll look with me at the
10 bottom of page 1.

11 A. Yep.

12 Q. There's a sentence towards the bottom of
13 the last paragraph that begins, as a result, the
14 report may not contain all of the information
15 required by a calculation report as required by
16 BS100.

17 Are we right to assume that that's a
18 typo and you mean it's not required -- it doesn't
19 contain the information required by a valuation
20 report?

21 A. Okay. So what this -- what that is
22 referring to, is that under the standards, there
23 are no reporting requirements if it's in
24 litigation.

25 THE WITNESS: So, Your Honor,

1 there's an -- the reporting is exempt. But if
2 you're doing something for any other purpose,
3 like divorce, estate gift, or whatever, then
4 there's an expectation of what is expected in
5 reports that's enumerated in the standards.

6 All right. So both calculation report
7 and an opinion of value report are exempted from
8 that. So because this is a calculation report, I
9 have referenced that as not containing all --
10 everything that may be required as part of the
11 standards to be part of the calculation report
12 because of that exemption.

13 BY MR. RANNIK:

14 Q. Okay. Thank you, sir. The last
15 sentence on that page, no other use of this
16 report is appropriate, and it should not be
17 distributed, cited, or used in any manner other
18 than for that specific and limited purpose,
19 correct?

20 A. Yes.

21 Q. That's the intention of this report?

22 A. Yes.

23 Q. So, for example, this would not be
24 provided to a prospective buyer of shares in
25 Alex's, for example?

1 A. I've restricted it. It doesn't mean
2 that I wouldn't remove the restriction, if I
3 understood better what it was going to be. But,
4 no, this was -- it was developed for this case
5 here and presentation to the Judge.

6 Q. I'd like to ask you briefly about the
7 conclusion number 5, unpaid royalties. As an
8 initial matter, you were not asked to determine
9 whether a royalty is actually owing to Alex's,
10 correct?

11 A. That's a legal question in my mind, so
12 no.

13 Q. Okay. Now, I believe you calculated
14 that a reasonable royalty would be 8 percent of
15 revenues, of annual revenues; is that correct?

16 A. I believe that's correct.

17 Q. And in your deposition --

18 MR. ELLIS: Objection, Your Honor.
19 I'd like to object to this line of questioning
20 Mr. Rannik is going down. This goes in --
21 Mr. Ewart prepared this report when we were
22 amending our complaint to bring in the royalty
23 issue, and you denied our amended complaint.

24 This -- his report was prepared on this
25 royalty basis, and so it's my understanding this

1 royalty basis, because the amended complaint was
2 denied, is not part of this accounting action
3 today.

4 MR. RANNIK: Judge, if there's --
5 if it's stipulated that there's no contention,
6 there's an unpaid royalty owing as part of this
7 accounting, then I don't need to go into this
8 line of questioning.

9 But it is in his report, and so if the
10 report is in evidence, I want to make sure it's
11 covered, if it's something that the plaintiff is
12 contending.

13 MR. ELLIS: Well, there's a
14 contention, but we're not admitting Mr. Ewart's
15 report for the purpose of establishing a royalty.
16 There is a contention that's owed. I'm not
17 stipulating that there's no contention.

18 THE COURT: Well, I'm going to let
19 him go into it then. Okay? All right. Object
20 overruled.

21 BY MR. RANNIK:

22 Q. So I'm sorry, I believe you said that,
23 yes, you believe 8 percent is what you opined as
24 to a reasonable royalty?

25 A. Yeah. I need to go back, but I believe

1 that's correct, yes.

2 Q. Now, Mr. Ewart, when we first met in
3 your deposition, you testified that you had
4 broken that 8 percent -- or you came to that 8
5 percent in two parts.

6 5 percent of it represented the use of
7 recipes, menus, trademarks, and things like that.
8 And 3 percent was for advertising, and that got
9 to 8 percent. Does that sound correct?

10 A. That's correct.

11 Q. Now, you don't know whether Alex's has
12 any kind of protectable mark, correct?

13 A. I do not.

14 Q. And am I correct that you did not
15 determine what that 5 percent would become in a
16 situation where there was not any use of a mark,
17 where the menus were different and, you know,
18 maybe the recipes are the same, but it's two
19 different restaurants, correct?

20 A. All of those are legal questions that
21 would be provided to me if I was doing the
22 valuation, but based on what my understanding
23 was, what you just said wasn't, was.

24 Q. Okay. Well, that was an elegantly put
25 answer. But I believe in your deposition you

1 said, you did not try to -- you took what was
2 represented to you as accurate and made your
3 calculation based on that, and you did not try to
4 determine what that 5 percent would look like if
5 some of those assumptions were not correct; is
6 that accurate?

7 A. That's correct. I had no information
8 that would provide me the ability to do that.
9 That's correct.

10 Q. And I believe you used comparables --
11 I'm sure that's not the right word, but -- in
12 order to determine what a reasonable royalty
13 would be, correct?

14 A. That's correct.

15 Q. And I believe you identified eight
16 agreements, licensing agreements that you thought
17 might be comparable.

18 MR. RANNIK: And this is -- Judge,
19 I'm on page 5 of the report.

20 THE COURT: Okay.

21 BY MR. RANNIK:

22 Q. I think you said that there were a
23 number of agreements you found. You ruled some
24 out because they weren't the right type of
25 restaurant or for one reason or another. And

1 then you landed on eight that you thought would
2 give you a royalty rate, correct?

3 A. That's correct.

4 Q. Of those eight, am I correct that five
5 of them are for Buffalo Wild Wings International?

6 A. Let me count here. Yeah, I believe
7 that's correct.

8 Q. Okay. And then you multiplied the 8
9 percent rate that you determined by the
10 Flowertown revenues estimated by Mr. Billips,
11 correct?

12 A. Correct.

13 Q. And so, again, the calculation of the
14 royalty was based on the estimates of
15 Mr. Billips?

16 A. That's correct.

17 MR. ELLIS: Your Honor, I would
18 like to renew my objection that -- and we can
19 stipulate that the royalty issue is not an issue
20 of controversy in this pending litigation. We're
21 just making it clear that we're not waiving that
22 as a contention between these parties.

23 THE COURT: I got you on that. I'm
24 with you.

25 MR. ELLIS: What we're stipulating

1 is not an issue in controversy in the present --
2 presently filed action in this case.

3 THE COURT: I'm with you. So
4 noted. Objection is overruled. You can
5 continue.

6 MR. RANNIK: Thank you. I think I
7 might be finished, Judge. Can I have one moment
8 to confer?

9 THE COURT: Certainly.

10 MR. RANNIK: Thank you, Judge.
11 Nothing further.

12 THE COURT: All right.

13 MR. RANNIK: Thank you, Mr. Ewart.

14 MR. ELLIS: One second, Your Honor.

15 THE COURT: Sure.

16 REDIRECT EXAMINATION

17 BY MR. ELLIS:

18 Q. Mr. Ewart, you heard the Dixon Hughes
19 report referenced in yesterday's testimony, did
20 you not?

21 A. I did.

22 Q. Okay. And have you had a chance to
23 review that Dixon Hughes report?

24 A. I have.

25 Q. Okay. And last night, did you run those

1 numbers?

2 A. I did early this morning. What is your
3 definition of last night?

4 Q. Nobody slept last night, it sounds like.

5 A. Very little.

6 Q. And did you create some -- just some
7 calculations based upon that?

8 A. I did.

9 Q. Okay. And is that what you created?

10 A. Yes.

11 Q. And can you explain to the Court what
12 you did in those calculations?

13 THE WITNESS: Well, Your Honor,
14 what -- as you know, I was part of Dixon
15 Hughes --

16 THE COURT: Yeah.

17 THE WITNESS: -- for many years.

18 THE COURT: Yep.

19 THE WITNESS: And I believe you --
20 as you know, I also have experience in these
21 kinds of filings. I was not involved with this
22 case, that Dixon Hughes performed, this work. I
23 had no knowledge of it.

24 THE COURT: Refresh my memory. It
25 was in the 2011 time frame, wasn't it?

1 THE WITNESS: Yeah. I think they
2 did the work in 2012. And for Your Honor's
3 benefit, I was full-time in Charlotte, North
4 Carolina at that time. I wasn't even in --

5 THE COURT: You saw the light and
6 moved to Charleston, right.

7 THE WITNESS: Well, if you really
8 want to know, they retired me, but I call it
9 aging out. And thank you for letting me get that
10 on the record.

11 THE COURT: That's a different
12 light.

13 THE WITNESS: But what I found
14 intriguing about the report was that they were
15 able to get monthly unit information for Goose
16 Creek that had damages.

17 And, you know, the testimony has been --
18 and the representation has been to me that there
19 is not information relative to the -- each of
20 those units. But in 2012, Dixon Hughes was able
21 to get it.

22 So I'm saying, that's -- to me, that's
23 reliable in the sense that they had the
24 information. They calculated the lost profits.
25 And I subtracted that number by the estimated --

1 there was -- in that schedule, there were
2 reimbursed operating expenses, and there were
3 other expenses that the company incurred.

4 I reduced their number by those two
5 expenses. They were reimbursed for them, but
6 nonetheless, they would have incurred them had
7 they been in business.

8 THE COURT: Sure.

9 THE WITNESS: So that comes down to
10 \$160,000 of profit relative to the Goose Creek
11 store. I do know, from my experience, that we're
12 looking at three to five multiples in
13 restaurants.

14 It's typically based on EBITDA, but
15 this -- so this isn't a EBITDA number, but I
16 applied the lower realm of that. And I came up
17 with a value, a calculated value based on that of
18 \$482,706.

19 BY MR. ELLIS:

20 Q. And that's for the Goose Creek revenue?

21 A. For Goose Creek. And then I just -- I
22 rolled forward the revenues, the value that I
23 calculated for Goose Creek for Mr. Billips'
24 numbers. Those were 2010. I rolled those up for
25 two years and -- to the same time frame. And I

1 come up with 398,762.

2 And then I looked at the revenues for
3 Mr. Fox's work papers that were used to prepare
4 the tax return for 2014. And I applied the
5 multiples that I just described that I developed
6 from the database of .28 and came up with
7 \$349,000.

8 So I did this, Your Honor, just to
9 get -- put in perspective that, if I was doing a
10 valuation and had all the information, these
11 would be my boundaries that I would be looking at
12 for purposes of where my conclusions should fall.

13 THE COURT: Okay. So that you're
14 playing in the right ballpark?

15 THE WITNESS: That's right.

16 THE COURT: That's what you're
17 looking for?

18 THE WITNESS: That's all the --
19 where are the two foul lines.

20 THE COURT: Okay.

21 BY MR. ELLIS:

22 Q. And, Mr. Ewart, is Tony Billips' number
23 pretty close in the median of those two, of the
24 Dixon Hughes report and the Fox?

25 A. Well, it would be the median.

1 Q. Okay.

2 A. Well, because there's three, and it's
3 the middle.

4 Q. Is it close to the average then?

5 A. It would be that, too.

6 Q. Okay.

7 A. Yeah.

8 MR. ELLIS: Also the reason I
9 became a lawyer, Your Honor.

10 THE COURT: I see that a lot.
11 Don't worry.

12 MR. ELLIS: Your Honor, I'd like to
13 move this into evidence as the next plaintiff's
14 exhibit.

15 MR. RANNIK: Without objection.

16 THE COURT: All right. This was
17 just prepared last night, right?

18 THE WITNESS: This morning.

19 THE COURT: Well, early this
20 morning?

21 THE WITNESS: Early.

22 THE COURT: All right. Gotcha.

23 MR. ELLIS: This is Plaintiff's 17.

24 THE COURT: All right, sir.

25 (PLF. EXH. 17 was marked for

1 identification and admitted into evidence.)

2 MR. ELLIS: Nothing further, Your
3 Honor.

4 MR. RANNIK: Judge, I might have a
5 few questions on this.

6 THE COURT: Sure, absolutely.

7 MR. RANNIK: May I approach and
8 steal it back?

9 THE COURT: Yes, sir.

10 RECROSS-EXAMINATION

11 BY MR. RANNIK:

12 Q. I think I just have one question about
13 this, Mr. Ewart.

14 MR. RANNIK: And may I approach the
15 witness, Your Honor?

16 THE COURT: You certainly may.

17 BY MR. RANNIK:

18 Q. I'd like to look with you at this line
19 here, which says calculated value per TBillips
20 revenue 2014. What estimates did you receive of
21 any revenues as of 2014 for Mr. Billips?

22 A. None. It's scrolled forward. If you
23 recall in my calculation of the royalties, I
24 develop the CPI index. That's what that came
25 from, and that's the calculations.

1 MR. RANNIK: Got it. Understood.
2 Thank you very much. Nothing further.

3 THE COURT: Okay. All right. So
4 my turn. I've got to understand this. All
5 right. So you -- your testimony, Mr. Ewart, is
6 that you still do not have an opinion of value;
7 is that correct?

8 THE WITNESS: That's correct.

9 THE COURT: All right. And that's
10 because the data that you've gotten is
11 unreliable.

12 THE WITNESS: That's correct.

13 THE COURT: You could not test it
14 is how that -- what that means? You could not
15 test it against what information you were
16 provided?

17 THE WITNESS: That's correct.

18 THE COURT: Had you received the
19 monthly reports, as you saw in the Dixon Hughes
20 Goodman report, that would have helped
21 substantially?

22 THE WITNESS: Yes. As part of the
23 valuation process, you rely on both what the
24 outside accountant does and then records you get
25 from the company. What was represented to me was

1 that the accountant had all the records. And so
2 that was the basis upon which I was entering into
3 the review of those work papers.

4 THE COURT: Okay.

5 THE WITNESS: And they're
6 insufficient to do the work.

7 THE COURT: Okay. And so based
8 upon that, rather than rendering an opinion of
9 value, you've done a calculation of value?

10 THE WITNESS: That's correct, sir.

11 THE COURT: And that would be more
12 of a qualified opinion? Would that be fair to
13 say?

14 THE WITNESS: Yes, sir. Yes, sir.

15 THE COURT: Okay.

16 THE WITNESS: Right, it is.

17 THE COURT: It's qualified? It's
18 not giving what you would, I guess --

19 THE WITNESS: I don't know if that
20 would be my opinion or not.

21 THE COURT: Okay.

22 THE WITNESS: It's close, though.

23 THE COURT: Okay. What I want to
24 then go into is, to get to a value, you would
25 have an expected income divided by a discount

1 rate, which I think you've talked in terms of a
2 performance.

3 THE WITNESS: Yeah. Under the
4 income approach, Your Honor, I would -- I would
5 ascertain what cash flow is for the unit.

6 THE COURT: Right.

7 THE WITNESS: And I can do that --
8 or for the business or the unit. And I would do
9 that on either a full cost of capital, which is
10 equity plus debt or I would do it just on the
11 equity component.

12 THE COURT: Okay.

13 THE WITNESS: I can do it either
14 way under the income approach. In this case, I
15 was unable to do the income approach. That's why
16 when I became aware of the Dixon Hughes
17 calculations, I had the opportunity to come up
18 with income at least for one store.

19 THE COURT: Right, right.

20 THE WITNESS: Right.

21 THE COURT: Some basis?

22 THE WITNESS: Some basis.

23 THE COURT: Okay.

24 THE WITNESS: Now, under the market
25 approach, right, the market approach is based on

1 database and as long as you are comfortable with
2 the revenues and you've developed the multiple
3 correctly, then that's the market approach. So
4 that would give you the income and the market
5 approach.

6 And then asset approach is clearly based
7 off the balance sheet. And what was never on the
8 balance sheet is -- is company goodwill, and
9 that's derived from the other two.

10 THE COURT: Yeah.

11 THE WITNESS: So, because of that,
12 I was -- because of the limitations of the
13 information, I ended -- that's why I ended up
14 where I did.

15 THE COURT: Okay. It would stime
16 you in your ability to get to --

17 THE WITNESS: That's right.

18 THE COURT: -- where you wanted to
19 go?

20 THE WITNESS: That's right.

21 THE COURT: So take me back into
22 your report; so I just want to -- I want to be
23 clear on this. When you came -- I'm looking at
24 your summary of conclusions on page 2.

25 THE WITNESS: Yes, sir.

1 THE COURT: We can look elsewhere
2 for supporting data, but you're trying to get a
3 value, a calculated value of the units as of '14.
4 And the one that exists today is the Goose Creek
5 store, as I recall, and that value came to was
6 \$361,000.

7 THE WITNESS: That's correct.

8 THE COURT: Right?

9 THE WITNESS: That's correct.

10 THE COURT: That's your calculated
11 value.

12 THE WITNESS: That's correct.

13 THE COURT: Moncks Corner was just
14 under \$250,000. And those are consistent with
15 your Exhibit 4 from your report, as I see.

16 THE WITNESS: Yeah, they are.

17 THE COURT: Yeah. Okay. Now,
18 explain to me what you've done -- at number 4 on
19 your summary and conclusions, you've got Coleman
20 Boulevard and Rivers Avenue lumped together, I'm
21 assuming, because of the year?

22 THE WITNESS: That's correct. That
23 was -- that was the issue.

24 THE COURT: Okay. All right. So
25 you put that into one year?

1 THE WITNESS: That's right.

2 THE COURT: You did the alternative
3 base calculated value. My question there, is
4 that the same value as you're putting above in 3,
5 or are you getting to that through the next
6 transaction, the calculated transaction? I'm
7 trying to determine what you're doing right here.

8 THE WITNESS: Yes, sir.

9 THE COURT: You're subtracting one
10 or the other to get a difference. I see that.

11 THE WITNESS: Yeah. If you go to
12 Exhibit 4, Your Honor.

13 THE COURT: Okay.

14 THE WITNESS: And I'll walk you
15 through that.

16 THE COURT: Okay.

17 THE WITNESS: The net sales, after
18 sales tax, from Mt. Pleasant, for example is --
19 in my calculations, is \$2 million. The multiple
20 is .28. So that would give me a stand-alone
21 value of \$564,054, and that's as of, I believe,
22 2010. The sale was in May of '11.

23 So I rolled it forward by the CPI that I
24 had developed in the royalty to come up with the
25 \$768,870. That would be my calculated value,

1 which is consistent with this \$768,9 on page -- 1
2 rounded it out.

3 THE COURT: Okay. Gotcha.

4 THE WITNESS: And I did the same
5 thing for each of the other stores.

6 THE COURT: Okay.

7 THE WITNESS: And I compared that,
8 Your Honor, on page 2, what I'm doing there,
9 which is also going to be on -- also on page 15
10 is, I took the change in revenues and identified
11 the years here between '11 and '12. The
12 reduction in revenues was \$1,563,140 that was
13 shown on the Mr. Fox's information.

14 THE COURT: Okay.

15 THE WITNESS: And that would -- at
16 .28, that would give you \$437,688 value --

17 THE COURT: Okay.

18 THE WITNESS: -- of the operations.
19 And that -- that compares to the 768. So that's
20 why it moved up, and the difference between the
21 768 and 433 is the 331.

22 THE COURT: Okay.

23 THE WITNESS: Do you got it?

24 THE COURT: The difference being
25 this -- that would be anticipated lost revenue

1 from the sale of the store? Is that really what
2 that boils down to or no?

3 THE WITNESS: What it boils down
4 to, sir, is, there's still a disconnect on the
5 revenues.

6 THE COURT: Yeah.

7 THE WITNESS: What I was trying to
8 ascertain there was, if, for example, we go back
9 to Mt. Pleasant, it sold for 1 million 8. And if
10 you use the calculated value of 768, that would
11 leave roughly 1 million 1 for the dirt.

12 THE COURT: Okay.

13 THE WITNESS: And if you use the
14 revenue reduction, that would leave roughly 1
15 million 3 and change --

16 THE COURT: Okay.

17 THE WITNESS: -- for the dirt.

18 THE COURT: Okay.

19 THE WITNESS: So I was just trying
20 to get a sense of, you know -- I know one of
21 these that's in there somewhere, but I don't know
22 which one.

23 THE COURT: Okay.

24 THE WITNESS: That's the issue.

25 THE COURT: If the whole kit and

1 caboodle sold as one package --

2 THE WITNESS: That's correct.

3 THE COURT: -- you can divide it
4 however you want. But you're going to come to a
5 value of --

6 THE WITNESS: That's right. And
7 often, when the tax return, you know, is done,
8 there's left -- less value attributable to the
9 assets because you've got depreciation recaptured
10 that's taxed at ordinary income, lands' capital
11 gain.

12 THE COURT: Right.

13 THE WITNESS: So, you know,
14 there's -- you have that. So there's really no
15 real -- there's no piece of paper or pieces of
16 paper that tell you how that allocation should be
17 unless you absolutely had appraisals of the real
18 estate.

19 THE COURT: Right.

20 THE WITNESS: And if you had that,
21 then you could solve it.

22 THE COURT: Okay. And we did see
23 that in one instance. I think that was the
24 Dorchester Road sale.

25 THE WITNESS: I think that came

1 into evidence yesterday.

2 THE COURT: Right.

3 THE WITNESS: I didn't recall what
4 the number was.

5 THE COURT: Sold for 320. They had
6 an appraisal of 315, but there were two other
7 properties that went with that.

8 THE WITNESS: Well, there you go.

9 THE COURT: And we talked in terms
10 of whether or not that was a forced sale.

11 THE WITNESS: Right.

12 THE COURT: We discussed that.

13 THE WITNESS: Right, yeah.

14 THE COURT: And then did you see
15 the settlement statements on the other -- on the
16 sales of the stores?

17 THE WITNESS: I did.

18 THE COURT: Was that provided to
19 you?

20 THE WITNESS: I did.

21 THE COURT: And was that of any
22 benefit in helping to calculate what your
23 calculated value was?

24 THE WITNESS: No because that -- I
25 say no. What it told me was, what did they sell

1 for.

2 THE COURT: Right.

3 THE WITNESS: It didn't tell me why
4 they were selling. I could figure -- you can
5 kind of figure out why the sales were taking
6 place because the liens were being paid out of
7 the proceeds.

8 THE COURT: Correct.

9 THE WITNESS: But I don't know if
10 that was the motive, right?

11 THE COURT: Okay.

12 THE WITNESS: But it doesn't help
13 as far as, you know, how much went to the
14 operations and how much went to the real estate
15 values.

16 THE COURT: Right.

17 THE WITNESS: And that's what I'm
18 after.

19 THE COURT: In an ideal world on a
20 market calculation, you're looking for an arm's
21 length transaction: Willing buyer, willing
22 seller?

23 THE WITNESS: Yes, sir.

24 THE COURT: When you've got
25 substantial liens against the property, there may

1 be a reason for why the property is being sold
2 separately.

3 THE WITNESS: Well, you may have an
4 unwilling seller --

5 THE COURT: Right.

6 THE WITNESS: -- and a willing
7 buyer, which is the worst thing you could have.

8 THE COURT: Yeah, for value.

9 THE WITNESS: For value.

10 THE COURT: Sure. Okay. Let me
11 see if I have any other questions on this one.
12 You did mention the .28 percentage, but you also
13 made reference to a .35. Is that. 35 was sort
14 of standard in the industry? Is that what you
15 indicated?

16 THE WITNESS: Yeah. So if I sit
17 down with the client and we're talking about
18 selling the unit or -- I would typically look at
19 about .35 as a marker.

20 THE COURT: Sale of any business or
21 what are we talking about?

22 THE WITNESS: Yeah, specifically
23 restaurants.

24 THE COURT: Okay. Restaurants.

25 THE WITNESS: Specifically

1 restaurants.

2 THE COURT: Okay.

3 THE WITNESS: And I know that, you
4 know, your -- you know, this is the way he does
5 it, isn't going to be good enough for the Court;
6 so that's why I went with the -- went through and
7 looked at those transactions and weeded them down
8 to the 147 that I did use.

9 And, Your Honor, I failed to mention
10 this: What I did do is I stratified that over
11 time to see whether or not that multiple changes,
12 and it really doesn't.

13 THE COURT: Okay.

14 THE WITNESS: So I know for years
15 I've been using that .35, and it's, you know,
16 served me well. But then this kind of confirms
17 that, at least for that database and how my --
18 what the selection criteria is.

19 THE COURT: Okay.

20 THE WITNESS: So I went with the
21 lower numbers.

22 THE COURT: Did you -- or were you
23 asked to do a valuation of the Flowertown store,
24 the Flowertown Restaurant?

25 THE WITNESS: I was asked to value,

1 you know, Alex's and realized I couldn't. I
2 could possibly come up with a calculated value
3 for one unit and then derive some other means to
4 come up with values with the other units.

5 But I don't believe the only number I
6 had would be for Flowertown for Mr. Billips, and
7 I had no other data relative to Flowertown. So
8 no, I did not do any calculation.

9 THE COURT: Okay. And was it your
10 understanding that Flowertown's income was not
11 reflected in the data that you had gotten?

12 THE WITNESS: That is -- yes,
13 that's my understanding, that there was a
14 separate tax return filed, yes.

15 THE COURT: And you were not privy
16 to that?

17 THE WITNESS: I don't recall seeing
18 it, no, sir.

19 THE COURT: Okay. All right. Any
20 follow-up, Mr. Ellis?

21 MR. ELLIS: Just real quickly, Your
22 Honor.

23 REDIRECT EXAMINATION

24 BY MR. ELLIS:

25 Q. Mr. Ewart, you were asking for royalty,

1 if Flowertown owes some royalty to Alex's, which
2 would be the Summerville restaurant. That's what
3 you were asked to do, correct?

4 The Summerville Alex's is Flowertown; so
5 you were asked to do a royalty rather than a
6 valuation of the Summerville Alex's?

7 A. Yes.

8 MR. ELLIS: Okay. All right.

9 THE COURT: Okay. Just to clear
10 up. Mr. Rannik?

11 MR. RANNIK: Nothing for me. Thank
12 you.

13 THE COURT: And the royalty -- we
14 talked about the royalty. There was an objection
15 made, and now it's been asked about. But that
16 would be whether or not that would flow over to
17 Alex's? Is that the idea of the royalty?

18 THE WITNESS: Yes, sir. The -- I
19 have worked with many multi-unit businesses,
20 restaurants, and an example would be -- and I'm
21 not disclosing that I have, but an example would
22 be Zaxby's.

23 THE COURT: Okay.

24 THE WITNESS: For every unit --
25 they're a franchise, right? But they also have

1 company stores. And every store pays for the
2 rights to the menus, the recipes, advertising,
3 point of sale systems, all of that, back of the
4 house.

5 All of that gets shared and charged
6 through a royalty, and it's done through the
7 point of sale system.

8 THE COURT: Okay.

9 THE WITNESS: So when you have
10 situations -- and I've also dealt with a local
11 firm here that had multi-units, and we set up the
12 same arrangement. And the reason you do that is
13 because each unit benefits from the overall. So,
14 therefore, they need to pay for their fair share.

15 THE COURT: Okay.

16 THE WITNESS: And then that is --
17 that is then what is used to pay for the overhead
18 of the business.

19 THE COURT: Yes, sir. It's a cost
20 of doing business --

21 THE WITNESS: It's just the regular
22 cost of doing business.

23 THE COURT: -- that's reflected in
24 there?

25 THE WITNESS: Yes, sir.

1 THE COURT: Okay. All right. And
2 so when you calculated the amount of the unpaid
3 royalty, was that figure that you came up with,
4 is that what -- you have calculated that to be on
5 an -- okay. Determine how? Is that a one-time
6 fee? Is that an ongoing fee? How do you --

7 THE WITNESS: It's the aggregation
8 of many years of fees that were unpaid.

9 THE COURT: Gotcha. Okay. All
10 right. So over time --

11 THE WITNESS: Yes, sir.

12 THE COURT: -- calculated?

13 THE WITNESS: Yes, sir.

14 THE COURT: All right. Thank you,
15 sir. Any follow up?

16 MR. RANNIK: I do have one follow
17 up on that, if I may?

18 THE COURT: Sure. Yeah.

19 RE-CROSS-EXAMINATION

20 BY MR. RANNIK:

21 Q. Mr. Ewart, are royalties usually
22 determined by agreement?

23 A. There are -- typically, to document it
24 for IRS purposes, there are agreements, but
25 not -- I'm not aware of a rule that says all

1 royalties have to have agreements. That's I
2 guess a legal question.

3 Q. But in your experience, generally, it's
4 a negotiation as to what the royalty rates are
5 going to be, and as a franchise, you're probably
6 bound to it because it's not much like --

7 A. Yeah. It's not much of a negotiation
8 there, but I think it's fair to say that they're
9 bargained.

10 MR. RANNIK: Thank you, sir.

11 THE WITNESS: If you have third
12 parties, true third parties.

13 THE COURT: Right. All right.
14 Anything further for Mr. Ewart?

15 MR. ELLIS: Nothing, Your Honor.

16 THE COURT: Very good. Thank you,
17 Jim. You may step down.

18 THE WITNESS: Thank you, sir.

19 MR. ELLIS: And, Your Honor, at
20 this time, the plaintiff would rest.

21 THE COURT: All right, sir.
22 Mr. Rannik?

23 MR. RANNIK: At this time, Judge,
24 I'd like to make a very brief motion --

25 THE COURT: Sure.

1 MR. RANNIK: -- on Rule 50(a).
2 Judge, the plaintiff's case has concluded. There
3 is no evidence or opinion that has been offered
4 by the plaintiff as to the value of Alex's to
5 date. None.

6 Now, Mr. Billips -- the complaint asks
7 presently, it says, for an accounting of
8 plaintiff's interest in Alex's Restaurants, Inc.,
9 as filed in 2017. Mr. Billips acknowledged today
10 that what he's asking the Court to do is cash him
11 out and determine the value of his interest as of
12 today.

13 All of the evidence is based on revenues
14 from 2010. There are estimates that the
15 reliability of which, you know, is challenged by
16 us. And, Judge, on that basis, there is no
17 evidence on which the Court could determine from
18 the plaintiff's case that there is any value to
19 Alex's as of today. That would be the basis for
20 our motion.

21 THE COURT: All right. Very good.
22 Mr. Ellis?

23 MR. ELLIS: Thank you, Your Honor.
24 We think, at the very least, that Mr. Tony
25 Billips' valuation of this company is a reliable

1 valuation. He has had multiple years of
2 experience. As he said, he lived, breathed the
3 revenues of the different restaurants.

4 And, again, his recollection was of the
5 2010, 2011 numbers, which is the relevant numbers
6 of -- Goose Creek is still the only ongoing -- as
7 long as you don't count Summerville as an Alex's,
8 which the defendants do not.

9 So we think that there's definitely
10 evidence admitted in today that the Court can
11 consider a valuation of this company. And again,
12 at the beginning of this case, we said that
13 malfeasance of the defendant is a large factor in
14 determining the valuation of this case.

15 And we've heard testimony from Mr. Fox,
16 there were many other financial records that were
17 never produced to us through discovery, which
18 limited our expert's ability to have the true,
19 reliant information from the defendant to come to
20 a true value.

21 He was able to come to an
22 alternative-based calculated value based upon
23 information from Mr. Billips, which he did test
24 against Dixon Hughes for at least the Dorchester
25 store and was -- showed that it was reasonably

1 reliable.

2 And so we did hear Mr. Fox testify that
3 there was lots of other financial information
4 that was regularly kept by the defendant. It was
5 never produced to us and we think that they're
6 limiting of our ability to give that information
7 to our expert.

8 It should not be to their benefit, but
9 at the very least, again, we do have a valuation
10 from Mr. Billips, as an owner, as a manager, as
11 an experienced operator in this company.

12 THE COURT: All right. Thank you,
13 sir.

14 Anything?

15 MR. RANNTK: Very briefly, Judge.
16 Mr. Fox's records were produced in the beginning
17 of 2019. The plaintiff never took his
18 deposition. It was obvious from his records that
19 the defendants used Quickbooks. If they had
20 wanted additional records, they could have asked
21 for them.

22 We produced everything that was ever
23 asked of us, and any shortage of what's necessary
24 to provide an expert to generate a valuation, had
25 it been asked of us, we could have given it. It

1 was not.

2 THE COURT: I got it. I'm going
3 to -- I'm going to deny the motion at this time,
4 and let me tell you why. I was not so sure,
5 first of all, where we were going with this, but,
6 frankly, it was the input of data yesterday --
7 and I forget which exhibit it was. I think it
8 was 7.

9 But clearly, when Dixon Hughes Goodman
10 did an analysis of -- I believe it was the Goose
11 Creek store in 2011, that certainly formed a
12 basis for which you could render a valuation, I
13 believe. And I think that Mr. Ewart's testimony
14 just received shows that it's in the same
15 ballpark as to what he's indicated.

16 So I do find that there is some evidence
17 presented by the plaintiffs on the issue of value
18 of the business where the Court -- for the Court
19 to be able to be able to make a decision. So on
20 that basis, I'm going to deny the motion for --
21 really it's a motion for non-suit, but I'm going
22 to deny it at this time.

23 I'm going to allow the defendant to
24 proceed. Do you wish to -- it's like right at
25 noon. Do you wish to proceed now, or do you want

1 to take lunch now and come back or how would
2 you -- what is your preference?

3 MR. RANNIK: Judge, I think we can
4 probably wrap this up in an hour.

5 THE COURT: All right.

6 MR. RANNIK: In which case, if the
7 Court would prefer that we do so, we would be
8 happy to proceed; and if the Court would prefer
9 we take a break and come back after lunch, we can
10 do that.

11 THE COURT: I'm happy to press on
12 if y'all are. All right. Does anybody need to
13 take a break before we get rolling?

14 THE WITNESS: Yes, sir.

15 THE COURT: Okay. All right.
16 Let's do that. We'll take five minutes and come
17 on right back. Okay. All right.

18 MR. ELLIS: And, Your Honor, before
19 we do that, we would like to excuse Mr. Ewart for
20 the rest of the day.

21 THE COURT: Certainly.

22 (A recess transpired.)

23 THE COURT: All right.

24 MR. RANNIK: The defense calls
25 Ms. Billips.

1 THE COURT: All right.

2 Ms. Billips, you've already been sworn so go
3 ahead -- you're fine, just take your seat. All
4 right.

5 THE WITNESS: Okay. Thank you.

6 DIRECT EXAMINATION

7 MR. RANNIK:

8 Q. All right. Good afternoon, Ms. Billips,
9 how are you doing today?

10 A. Fine.

11 Q. Ms. Billips, please tell the Court, how
12 old are you?

13 A. I'll be 75 in a few months.

14 Q. And where were you born?

15 A. Hiawassee, Georgia.

16 Q. And do you come from a large family?

17 A. Yes.

18 Q. And how many siblings do you have?

19 A. I have -- living now, I have two
20 brothers and three sisters. There was five girls
21 and five boys in my family. I'm at the top.

22 Q. So you're the oldest daughter?

23 A. Yes.

24 Q. Now, you testified a lot already about
25 Alex's Restaurants and Alex and when you and he

1 met; so we're going to cut through a lot of that.
2 But can you please remind the Court when Alex,
3 Sr., passed away?

4 A. February 11, 1980.

5 Q. And what were his wishes regarding the
6 running of Alex's Restaurants after his death?

7 MR. SAUTTER: Objection, Your
8 Honor. That's the dead man's statute, and I
9 don't know if that's relevant to anything. We're
10 talking about what happened in 1988 and now we're
11 in 2021.

12 THE COURT: Why don't you just have
13 her tell us what he provided for in his will and
14 we can go that way. Okay?

15 MR. RANNIK: Absolutely.

16 BY MR. RANNIK:

17 Q. What was provided for in Mr. Billips'
18 will with regard to the running of Alex's after
19 his death?

20 A. If the -- if Debbie and I could do it,
21 if it would work, if it worked, we were to run it
22 and be -- Alex's 55 percent would be in trust
23 until they were of age.

24 Q. And what provision, if any, was there in
25 the will regarding what the sons would have to do

1 to obtain their interest?

2 A. Just if they worked in it, then they got
3 a paycheck.

4 Q. And then they would receive their
5 interest when they become of age?

6 A. Yes.

7 Q. Would you please describe for Judge
8 Scarborough what you have done to try and keep
9 this business afloat through the difficult times,
10 starting -- let's start around 2000 when the
11 poker machines closed down.

12 A. I -- when it closed down, when that
13 money wasn't there, our business dropped off, I
14 remember that. And that made a huge difference
15 because, when the machines had been there, that's
16 how we were able to grow and build another
17 restaurant.

18 But -- so I cut expenses anywhere I
19 could. I looked at how to try to do that, what I
20 could. And I worked with the employees with --
21 because the employees were the key thing, working
22 with them to get them to -- you know, to work and
23 be happy with their work and what have you.

24 So, I mean, it was a lot of interaction
25 with that. And I -- but for money, I mortgaged

1 property. The -- my personal property. I put
2 mortgages on property that there was no loan, no
3 debt on, put a piece of property I inherited.

4 And I did those -- I did that because
5 frankly, to the best of my recollection, that was
6 easiest -- if it was in my name, it was the
7 easiest for me to do. Just -- I mean, that's
8 what I thought.

9 I mean, this was all a learning and a
10 working process as we went -- as I went. So
11 because I hadn't did this -- you know, I hadn't
12 done this before. I dropped out of school in the
13 11th grade and got married.

14 But being in the restaurants, I just did
15 what -- you know, got money where I could and
16 added, you know, put in the business. And I
17 really didn't think about it. I just expected,
18 you know, sooner or later things would work out
19 and things pick back up.

20 Q. Ms. Billips, I would like to show you a
21 few documents.

22 MR. RANNIK: Judge, may I approach?

23 THE COURT: Certainly. All right,
24 sir.

25 MR. RANNIK:

1 Q. Now, Carol, do you recognize this first
2 document? And what you're looking at is the one
3 that says, 2602 Stark Lane at the very top.

4 A. Yes.

5 Q. And please tell the Judge what the
6 document is.

7 MR. SAUTTER: Your Honor, I'm going
8 to object to the relevance. I think this has to
9 do with her personal residence, and we're not
10 trying to claim any value of her personal
11 residence in this accounting action.

12 THE COURT: Are these the two
13 properties that went with the Dorchester Road?

14 MR. RANNIK: That's correct.

15 THE COURT: At the same time frame?

16 MR. RANNIK: Yes, Judge.

17 THE COURT: I find it very
18 relevant. I'm going to overrule that. Do you
19 want to mark these?

20 MR. RANNIK: I do. Yes, please. I
21 guess this would be plaintiff --

22 THE COURT: Defendant's 3 and 4?

23 MR. RANNIK: Defendant's 3 and 4.

24 THE COURT: I think we're at
25 Defendant's 3 and 4. I'll just have them mark

1 mine, and then I'll try not to write on them.

2 MR. RANNIK: Thank you, Judge.

3 (DFT. EXH. 3 and 4, were marked for
4 identification.)

5 BY MR. RANNIK:

6 Q. Now, Ms. Billips, looking at the top of
7 this first document, it seems that there are
8 three -- actually four properties listed there.
9 There's 2602 Stark Lane and 2623 Ferrara Drive.
10 And next to that, there's a value. What are
11 those two properties?

12 A. The -- I think the 2602 -- well, the --
13 that would be -- one is Dorchester Road and the
14 2623 is part of the parking lot.

15 Q. And there are two properties listed
16 below, and what are those properties?

17 A. 2619 was the office and -- or 2621 was
18 the office; 2619 was a rental house.

19 Q. And who owned those two properties?

20 A. I did.

21 Q. And were they a part of this
22 transaction?

23 A. They had to be. That's the only way I
24 could make the sale.

25 Q. And what value was ascribed to those

1 particular properties as a part of this full
2 sale?

3 A. I'm assuming the amount that they've got
4 here.

5 Q. So \$120,000 for those two properties?

6 MR. SAUTTER: Objection, Your
7 Honor. That's leading.

8 THE WITNESS: Yes, sir.

9 THE COURT: I will sustain that.

10 BY MR. RANNIK:

11 Q. Would you please state for the Court --

12 MR. SAUTTER: Move to strike her
13 response.

14 MR. RANNIK: No objection.

15 BY MR. RANNIK:

16 Q. Would you please state for the Court the
17 amount that was received -- strike that.

18 Would you please state for the Court the
19 value of these two properties that was realized
20 in the sale reflected on this document?

21 A. 120.

22 Q. \$120,000?

23 A. Yes.

24 Q. I'd like you to now look at the next
25 document that I handed you, which has been marked

1 as Defendant's 4. The third block there, it
2 says, name of entity, St. George. Please tell
3 the Court what that property was.

4 A. It was some land, just vacate land that
5 I had in St. George.

6 Q. And you said you had owned -- who was
7 the owner?

8 A. I was the owner.

9 Q. What happened to this piece of property?

10 A. I had to -- I sold it. I had to sell
11 it. I mean, this was one of the things that was
12 sold.

13 Q. And do you remember approximately when
14 it was sold?

15 A. It looks like 2001 on the top.

16 Q. Okay. If you look about halfway down in
17 that block, the line that begins seller financing
18 and then there's a date at the end, does that
19 look like it might be the approximate date of the
20 sale in 2010?

21 A. Where are you at? Yes. Yes. I'm
22 sorry, yes.

23 Q. Okay. And would you please explain the
24 significance of the last line of that block
25 beginning with \$40,000.

1 A. \$40,000 to pay taxes. They were due and
2 had to be paid.

3 Q. And so does that mean \$40,000 of the
4 proceeds, you gave to Alex's to pay taxes?

5 MR. SAUTTER: Objection, Your
6 Honor. That's leading.

7 Q. Please explain to us the significance of
8 that last line.

9 A. \$40,000 went to pay Alex's, Inc., for
10 taxes that had to be paid.

11 MR. RANNIK: Your Honor, may I
12 approach?

13 THE COURT: Yes, sir. All right,
14 sir.

15 BY MR. RANNIK:

16 Q. I would like to show you --

17 MR. RANNIK: And I ask that this be
18 marked as Exhibit 3 -- or I'm sorry.

19 THE COURT: This should be 5 now.

20 MR. RANNIK: 5, yeah. Thank you
21 very much.

22 THE COURT: Okay.

23 (DFT. EXH. 5 was marked for
24 identification.)

25 BY MR. RANNIK:

1 Q. And I'll ask: Ms. Billips, do you
2 recognize this document?

3 A. I do.

4 Q. Was this an exhibit to your deposition?
5 Do you remember?

6 A. Yes, yes.

7 Q. Now, another version of this document
8 already exists in the record. I believe it's
9 Plaintiff's 1 or 2. But this is the version from
10 your deposition, and I would like to look at --
11 with you at the second page. Now, there's a
12 line about halfway down that says, Harbor
13 National Bank --

14 MR. SAUTTER: Your Honor, if we're
15 going back and covering ground in a deposition, I
16 don't think that the -- that the deposition
17 excerpts or the deposition testimony was
18 designated for use at trial today.

19 I mean, it is what it is, but we already
20 have this -- the main face page in evidence as
21 one of the plaintiff's exhibits, which is further
22 explanation, which I assume to be all these --
23 the second page, which wasn't even part of it --
24 was not designated for use at trial today. And
25 we object to it on that basis.

1 THE COURT: Overruled. Go ahead.

2 MR. RANNIK: Thank you, Judge.

3 BY MR. RANNIK:

4 Q. In the middle of the page there, there's
5 a line that says, Harbor National Bank, three
6 checks to Carolyn Billips, and then it lists
7 three checks.

8 Can you please explain to the Court what
9 those checks were used for, refreshing your
10 memory with this document?

11 A. South Carolina Department of Revenue,
12 Flowertown, Alex's, \$4,851, counter check 417,
13 South Carolina Department of Revenue, \$94,045.76.
14 Counter check, South Carolina Department of
15 Revenue, Flowertown and Goose Creek, which was
16 the same thing for the one that was \$94,045.76 --
17 for \$7,807.59.

18 Q. So all of these checks were used to pay
19 tax liabilities; is that --

20 A. Yes.

21 Q. -- your testimony?

22 A. Yes, sir.

23 Q. And please explain to the Judge the
24 handwritten note at the bottom left of that page.
25 What does that reflect? Well, first, is that

1 your handwriting?

2 A. The -- this is -- I think it's the --
3 this came from the checks because the copy of the
4 checks, if I'm not mistaken, are there.

5 Q. It's a breakdown of what each of those
6 checks listed --

7 A. Yes.

8 Q. -- above is?

9 A. Yes, uh-huh, and the check number.

10 Q. Is it your handwriting?

11 A. Part of it is and part of it, I think,
12 is -- the top of it is Mr. Fox.

13 Q. And when you say, "the top", do you mean
14 the --

15 A. Yes.

16 Q. -- circled parts at the top?

17 A. Yes. Designating Flowertown in Goose
18 Creek. The -- like I said, part of it is mine
19 and part of it, I think, is from -- I'm not sure
20 if it was -- if it was Roxanne or not. I'm not
21 sure.

22 Q. Okay.

23 A. But I know what it is. I mean, I know
24 that's the breakdown of it.

25 Q. Ms. Billips, why did you have to sell

1 properties, whether yours or Alex's?

2 A. Because we were so behind in the state
3 and IRS taxes; so I had -- I mean, I had to.

4 Q. And explain to the Court, please, why it
5 was that you fell behind in payroll taxes while
6 paying, say, your employees?

7 A. I need the employees to keep the door
8 open, and, yes, I know it's the payroll taxes.
9 But working for the time --

10 Q. Was it that --

11 A. That was -- that had to be done. I
12 couldn't have their checks bouncing. That had to
13 be done. And I picked and chose on which was the
14 most pressing.

15 Q. Can you describe for the Court how you
16 would have paid back the tax liens, if you had to
17 close the restaurants because you didn't have any
18 employees?

19 A. Oh, there -- if I had to close the
20 restaurants, there wouldn't be -- they would all
21 be lost. They would all -- there wouldn't be any
22 Alex's Restaurant, period.

23 Q. Ms. Billips, why not declare bankruptcy?

24 A. No. I didn't really think about that
25 because I didn't know if I could work it out or

1 not, and I did not want to. I couldn't just
2 quit. So to me, that wasn't an option.

3 Q. Now, there's been some testimony about
4 this, but do you believe you got fair market
5 value for the sales of properties?

6 A. No, because I was in a desperate
7 situation. The -- one, (inaudible) I thought I
8 sold it for and two, that's the only offer I had.
9 I mean, and I was on a deadline. The doors
10 were -- I was going to be shut down, and then
11 there wouldn't be -- then none would be saved.
12 None would be open.

13 Q. If you know, how many of the Alex's
14 properties that were sold are still restaurants
15 today?

16 A. Well, I know that the Okra Grill is.
17 That is -- and he's done very well with those.
18 They've expanded that. It's beautiful and big
19 and a lot of money in it, a lot of money in it.
20 And they sell different things than we did.

21 Q. And when you say, "a lot of money in
22 it", do you mean a lot of money invested in it?

23 A. No, with the renovations and all that I
24 can see. A lot of changes from what we've had.
25 And the one on Savannah Highway, it was the Early

1 Bird -- Early Bird Restaurant, I think. But I
2 know it was Early Bird.

3 I don't know if it's still open or not,
4 but I did go there a couple of times to see what
5 they had done with it. And to me, they paid a --
6 the downtown, the younger -- it's a different
7 menu -- different menu totally than what I had
8 before.

9 Q. And any of the other locations, are they
10 restaurants today?

11 A. Moncks Corner is a flooring place. The
12 Rivers Avenue is still a laundromat, and
13 Dorchester Road is a store that sells beer -- and
14 I think beer and cigarettes and food is what they
15 advertise.

16 Q. Flowertown, does it have the same -- how
17 would you describe the food and atmosphere at
18 Flowertown relative to Alex's?

19 A. It's the same. I would say the same
20 atmosphere because I did the same menus, and --
21 but the menus -- I know country cooking.

22 I know a lot of our local -- a lot of
23 our regular people that -- to me, that's what
24 they come for. And it's just a family
25 atmosphere, which is -- that's just what I do.

1 it's where I'm from and what I do. That's all I
2 know.

3 Q. Now, you testified yesterday about
4 changing the name of Flowertown to Alex's. But
5 what I wanted to ask you is, what effect, if any,
6 did that have on the revenues at Flowertown?

7 A. I don't think I noticed. I don't -- I
8 didn't really notice much difference on either
9 for either one. My hopes was that it would be.

10 You know, I thought it -- you know, like
11 I say, I looked at it as advertising. I have the
12 same food. The -- it's cooked, you know, it's
13 the same. And like when I say the same, I buy
14 from the same buyers all the time.

15 But to me, their location, I didn't
16 really -- you know, I mean, I didn't really
17 notice a lot. There might have -- I mean, I
18 noticed the talk from the regular customers, you
19 know, that noticed it because they go to --

20 MR. SAUTTER: Objection, Your
21 Honor. That would be hearsay.

22 THE WITNESS: They go to the same
23 restaurants. They -- if you liked our food,
24 that -- you know, some go to Summerville; some go
25 to Goose Creek.

1 MR. SAUTTER: I'll withdraw the
2 objection, Your Honor.

3 THE COURT: All right.

4 BY MR. RANNIK:

5 Q. Is it fair to say you didn't notice any
6 decrease in revenues in Goose Creek?

7 A. No.

8 Q. Who has been -- who is the owner of the
9 property that the Flowertown Restaurant operates
10 out of?

11 A. I am.

12 Q. Was that property ever owned by Alex's?

13 A. No.

14 Q. Where are Flowertown's revenues
15 reported? And to the IRS, for example?

16 A. Oh. The Flowertown Restaurant, LLC.
17 I -- when I changed the name or put a different
18 sign up, I didn't change any of our bookkeeping
19 or accounting stuff. It still stayed the same.

20 Q. And it stayed separate from Alex's?

21 A. Yes, yes.

22 Q. Was there ever any discussion between
23 you and the other shareholders about a royalty
24 being paid to Flowertown?

25 A. No. This is the first I've heard about

1 it today.

2 Q. Is there a mortgage on the Goose Creek
3 restaurant?

4 A. The -- it is actually my mortgage on
5 Summerville. Goose Creek is listed as collateral
6 also.

7 Q. Does Goose Creek have a separate
8 mortgage?

9 A. No. There is no mortgage.

10 Q. Okay. Now, has Alex's ever made any
11 distributions of profits to its shareholders?

12 A. No.

13 Q. Why not?

14 A. There's never really been the -- been
15 the money for that, and I -- if there had been --
16 even if there had been, I mean, I would just
17 think it -- let it grow and you work.

18 Q. When you say, "let it grow", what do you
19 mean?

20 A. It stay in the business.

21 Q. Has Alex's ever required capital
22 contributions from its shareholders?

23 A. No.

24 Q. But you have put money into the business
25 personally, correct?

1 A. Yes.

2 Q. Now, please tell Judge Scarborough about
3 the finances of Alex's Restaurants, Inc., today.

4 A. The finances now, we are working with
5 the help of the two PPP loans and businesses --
6 employees is a real -- it's a real problem.

7 Q. Meaning finding qualified employees?

8 A. Finding workers, yes. It's very much a
9 problem.

10 Q. What impact, if any, does that have on
11 Alex's finances?

12 A. A lot. I'm closing shifts, and I'm
13 working with -- I'd say finding -- you have to
14 have qualified people working to get the -- you
15 know, for the food to stay right. And, I mean,
16 they're not out there.

17 Q. What impact on overtime, for example, is
18 there by the shortage of workers?

19 A. It's a little -- we're having -- the
20 employees that are working, they're working --
21 the ones that will, I mean. It's some of them.
22 I mean, they will if they want to. But some
23 don't, but it's -- we've got overtime.

24 Otherwise, we wouldn't -- I wouldn't
25 have -- I would be closing more shifts than I am

1 now; so that's a big expense, especially with the
2 increase in payroll. It is -- I definitely see
3 that.

4 Q. How about food prices? What's happening
5 with that?

6 A. They're going up, very much so, very
7 much so. So that's -- those two things, I mean,
8 that's -- you know, that is it. But they're --
9 it's high. So it's a making a big -- having a
10 big impact on it.

11 I mean, I'm hoping to stay -- stay open
12 and stay running. I'm hoping things will
13 straighten out with the employees, with the
14 COVID. But I just don't know what's going to
15 happen.

16 Q. I'd like to show you a document here
17 which we'll mark -- will be marked as Defendant's
18 6.

19 (DFT. EXH. 6, was marked for
20 identification.)

21 BY MR. RANNIK:

22 Q. Now, Ms. Billips, you mentioned PPP
23 loans. Did you have to submit financial
24 information to get those PPP loans?

25 A. We did.

1 Q. Do you recognize this as material
2 submitted to the SBA as part of that application?

3 A. Yes.

4 Q. And let's look at the first page. What
5 does this show in terms of net income for Alex's
6 Restaurants for 2020?

7 A. A loss of \$55,114.81.

8 Q. And if you will flip to the pages 2 and
9 then onto 3. This is a different time period.
10 This is July of 2019 through March 27, 2021.
11 What does that show in terms of net income?

12 A. Minus \$71,763.79.

13 Q. I will leave this here so I don't take
14 it with me. Ms. Billips, do you have an opinion
15 as to what Alex's Restaurants is worth?

16 A. I don't have any idea.

17 Q. In your experience, having sold
18 locations, how would you ascribe the ease with
19 which you could find a buyer today?

20 A. I don't have any idea on this, I really
21 don't. When I think about that, I think about,
22 you know, having a little bit more -- or having a
23 lot more expectation of what the future holds.
24 And I think that's just really up in the air now.

25 Q. Why did Alex's stop using cost control

1 sheets?

2 A. With one -- with one Alex's and
3 Flowertown, I didn't need a cost control sheet.
4 The -- when there was several stores, yes,
5 because of the different locations. But if I --
6 there was no need for it.

7 Q. And when was the last Alex's location
8 sold?

9 A. I don't remember exactly the year.

10 Q. But it's been a number of years?

11 A. Yes.

12 Q. Now, Mr. Billips testified that you keep
13 cash in a safe in your house. How do you respond
14 to that?

15 A. I was shocked, but I will say, when I
16 was going -- when we were -- when I was going
17 from bank to bank and when I was having to cash
18 the -- cash a check, get a check and cash it, in
19 order to make my payroll, they had their checks.
20 I would put cash in the envelope.

21 I was the only -- I was the one that
22 could get the money to do that; so, you know, I
23 did that. I didn't -- I wouldn't leave it at the
24 office. I took it home and put it in the safe.
25 But I knew exactly what it was, and that's what

1 it was used for.

2 But I -- that's the only. I don't have
3 any -- like I said, I was shocked at his
4 testimony. I don't know what he is talking
5 about.

6 Q. Mr. Billips, you haven't stolen money
7 from Alex's Restaurant, Inc., have you?

8 A. No, I have not.

9 Q. What would you like Judge Scarborough to
10 do in this case?

11 A. I would just like him to do what's
12 right. I've worked and tried to keep these, for
13 something I just -- for selling them to not
14 happen. I did my best to help and not hurt.
15 Always to help, to make it better, to make the
16 customers happier, which I enjoy the restaurants.
17 I always have or I wouldn't have done it all
18 these years but -- because we have some wonderful
19 ones.

20 I don't know a hundred percent when I
21 sold those properties, and that was a hard thing.
22 That was a hard thing to do. It was a very hard
23 thing to go to different banks, worrying about
24 the money and putting into -- I had to do it
25 because the checks had to be there.

1 And there was nothing if I didn't keep
2 the doors open. I just -- I don't know because
3 it was -- it was very stressful, very trying,
4 very embarrassing, very. It made me feel very
5 bad to have to -- you're basically running from
6 the state, the IRS to keep things -- try to keep
7 things going before they locked the doors.

8 But I knew I had to do it. But from
9 the -- from the sales, I knew they were very low,
10 but I couldn't do anything that -- there was
11 nothing else. My -- I was backed into a corner.
12 And so I honestly don't know if the corporation
13 owes me anything or if I owe them.

14 And that's the truth. I have -- that's
15 why I have my notes on everything. I tried to
16 keep the exact so I would know so I could --
17 whoever could get paid back, really not thinking
18 it's -- thinking about me but knowing that if
19 the -- if I owed, the corporation is owed.

20 I'm still working, still trying to keep
21 at least -- you know, I kept the one, keep it
22 going. And I want to straighten it all out
23 because I honest to God -- and I just want you to
24 do what you think is right because that's all I
25 want because this has been extremely hard,

1 extremely hard.

2 And if I owe any money, then I want to
3 pay it. But I don't want to pay what -- give
4 money that we need or try to get money that I
5 know we may need if I don't owe it.

6 MR. RANNIK: Thank you very much.
7 Nothing further.

8 THE COURT: All right.
9 Mr. Sautter?

10 MR. SAUTTER: Thank you, Your
11 Honor.

12 CROSS-EXAMINATION

13 BY MR. SAUTTER:

14 Q. I'm going to try to be brief,
15 Ms. Billips. This has been hard on everybody.
16 There's no question in your mind that, when these
17 various locations were sold, that you applied the
18 money as you could -- as you saw fit?

19 That was the dilemma with the IRS, with
20 the South Carolina Department of Revenue, all in
21 an effort to keep the doors open; isn't that
22 true?

23 A. That's true.

24 Q. And as part of the way the money was
25 allocated from the sale of the -- of these units,

1 your personal obligations were paid as well,
2 weren't they?

3 A. Yes, sir.

4 Q. And as part of what -- the money that
5 went and -- so you come from 10 children,
6 correct, and you're the oldest, right?

7 A. Yes, sir.

8 Q. So you're used to being in charge; is
9 that right?

10 A. I don't really understand what you're
11 saying.

12 Q. You're used to being in control. And I
13 will take it forward. You were in control of all
14 of Alex's, Inc., empire, correct?

15 A. Yes.

16 Q. You also were in sole control of
17 Flowerstown, correct?

18 A. Yes, sir.

19 Q. And did Tony offer to help you? Do you
20 recall whether he offered to purchase Dorchester
21 Road or not?

22 A. No, he did not.

23 Q. He did not?

24 A. No, he did not.

25 Q. Did he ever offer to help you with the

1 financial problems?

2 A. Not financial, no. That was the
3 exception. I'll help you do all I can, but you
4 know I don't have any money.

5 Q. Don't have any money. He was getting
6 his salary, correct?

7 A. Yes, sir.

8 Q. Well, how else did he offer to help you
9 if he didn't -- if you testify that he didn't
10 offer to help you financially?

11 A. Sir, he did not have the money to help
12 financially. I knew that --

13 Q. You controlled all the money, right?

14 A. -- before he told me.

15 Q. You controlled all the money, correct?

16 A. I was in -- yes, if you're asking if I
17 was in charge of what it was spent for, yes.

18 Q. You controlled his employment as well,
19 right?

20 A. No, sir, I didn't. He did that.

21 Q. He did that?

22 A. Yes.

23 Q. What was your relationship with Tony
24 Billips? Was it as an employee? What was it?

25 A. It was as an employee, and then it did

1 go the wrong way.

2 Q. What do you mean?

3 MR. RANNIK: And, Judge, I think
4 we're getting a little beyond the scope of the
5 direct examination here. This has been covered.
6 We have orders about this subject matter.

7 THE COURT: Right. Where are you
8 going?

9 MR. SAUTTER: Credibility, Your
10 Honor. She testified to one thing, and I think
11 she's getting ready to testify as to the more
12 complete -- their more complete relationship,
13 which would explain her motivation and things of
14 that nature.

15 THE COURT: All right. I will give
16 you some leeway, but I want you to keep the --

17 BY MR. SAUTTER:

18 Q. What do you mean when, "the relationship
19 went the wrong way"?

20 MR. RANNIK: Judge, I think that
21 question has been answered. That's in evidence.

22 THE COURT: I'm not sure.
23 Overruled. Go ahead.

24 THE WITNESS: Ask me again.

25 BY MR. SAUTTER:

1 Q. You just testified that the relationship
2 went the wrong way under my direct examination
3 today. What do you mean by that? How did the
4 relationship go the wrong way? What happened?

5 A. I went along with something that I
6 should not have.

7 Q. And what was that?

8 A. An intimate relationship that I did not
9 want to, did not plan to. And so my sons
10 wouldn't -- my children, grandchildren wouldn't
11 find out, I continued because I was told one
12 time, it doesn't make any difference between one
13 time or how many times.

14 And the joke of, what do you think
15 Debbie Jackson or Casey and Alex would think if
16 they knew. Yes, I made a big mistake.

17 Q. Who is Debbie Jackson?

18 A. She was Alex's wife when he died.

19 Q. So you weren't even married to him
20 anymore, right? And when was that will created?

21 A. Excuse me?

22 Q. You weren't married to Big Alex at the
23 time of his death; isn't that true?

24 A. No, sir, I was not.

25 Q. And when was that will created?

1 A. I don't -- before he died. It was
2 created in the hospital.

3 Q. When he was on his death bed; isn't that
4 true?

5 A. Yes.

6 Q. And at some point, you obtained 18.3
7 shares that were -- that were Casey's shares,
8 correct?

9 A. Yes.

10 Q. And why? Why did he transfer those to
11 you?

12 A. Because he was going to be gone and
13 if -- for a while. If his signature was needed
14 on something, he wouldn't be available.

15 Q. Where was he going?

16 A. He went to jail, sir.

17 Q. Who paid for his legal fees?

18 A. I did.

19 Q. Who was the lawyer?

20 A. Thomas Worley.

21 Q. How much did you -- did you pay him?

22 A. I don't -- I don't remember exactly, but
23 that was -- that was our family lawyer at the
24 time.

25 Q. Yes, ma'am. So -- and I don't know

1 where this document is. Here it is. I'm handing
2 you Exhibit No. 14. Is that what -- do you
3 recognize that?

4 A. No, I don't, but the wording and all, I
5 would say that one of the -- it looked like
6 something either Roxanne or April would have
7 done.

8 Q. So what is that? Is that off the Alex's
9 website?

10 A. I don't know what you can find on it. I
11 don't even know how to use a computer.

12 Q. Yes, ma'am. Can you identify that?

13 A. This is the first time I've seen it.

14 Q. All right. Well, who does this refer to
15 on page 2 of that, Carol B? Who is that?

16 A. That's me, which is what April and
17 Roxanne would always do.

18 Q. Okay.

19 A. If they were doing something and this
20 would be for the restaurant, money was put on
21 them, not their's.

22 Q. All right. But you're in charge of all
23 the restaurants and everything, right?

24 A. Yes.

25 Q. You're in control?

1 A. Yes.

2 Q. And that says that the only remaining
3 Alex's Restaurants are Goose Creek and
4 Summerville. That's true, right?

5 A. Goose Creek is open.

6 Q. Yes, ma'am.

7 A. And Flowertown Family Restaurant is open
8 still, yes.

9 Q. And the family restaurant, is that the
10 one in Summerville?

11 A. Yes.

12 Q. And same menu, correct?

13 A. Yes.

14 Q. Same control people, you, correct?

15 A. Yes.

16 Q. And obligations of family restaurant,
17 Flowertown, Summerville, whatever we want to call
18 it, were paid out of the sale of these other
19 units, right?

20 A. Some of them were.

21 Q. Yeah. And so it's all -- so when you
22 came -- when you came to Charleston, what kind of
23 assets did you have and then what did you gain
24 once you married Big Alex? I mean, you didn't
25 come here with much, right?

1 A. No, sir, I didn't.

2 Q. And everything was gained over the
3 course of -- how long were you here before you
4 married Big Alex?

5 A. I came here on a July 4th holiday with
6 my uncle in 1964.

7 Q. And when did you marry Big Alex?

8 A. 1970.

9 Q. Okay. And is it fair to say that you
10 came here with nothing and that everything that
11 you've built up was through Big Alex?

12 A. No, it's not fair to say that.

13 Q. All right. Where else did your assets
14 come from?

15 A. When Alex died, we were deeply in debt.
16 I had an insurance policy at the time is all that
17 is what was -- is what was there. There was
18 nothing paid for. Everything was mortgaged.

19 Q. So you were the beneficiary of an
20 insurance policy?

21 A. I had -- yes, I had a policy on him.

22 Q. And was it still in effect because y'all
23 were divorced at the time of his death? They
24 paid out on it?

25 A. When he died, there was an -- I had an

1 insurance policy that went into the -- it went
2 into the business.

3 We owed taxes when he died. There was
4 taxes owed. Alex did not have anything paid for.
5 There was nothing paid for. When I married him
6 and when -- when we were divorced, nothing was
7 paid for.

8 Q. Yes, ma'am. So when you talk about,
9 "had to sell my house", where did that money come
10 from for your house?

11 A. The -- we sold where we lived on -- in
12 Mt. Pleasant. I'm drawing a blank.

13 Q. Off of Rifle Range Road?

14 A. No. That's not where the -- that's not
15 where Alex and I first lived.

16 Q. Okay.

17 A. We lived on Vincent Drive. We had a
18 house there. We sold it there.

19 Q. And let me just make sure that I
20 understand. You talked about cash in. Did you
21 engage in a practice of cashing the employees'
22 paychecks and giving them cash?

23 A. No, sir, I didn't. I had never been in
24 that position before. My goal was to make sure
25 they did get the money, they did get the checks,

1 and the check -- their paycheck, which was in
2 cash because the banks were going to -- I knew my
3 accounts were going to be frozen.

4 Q. So that cash that was used to pay the
5 employees was not deposited in any bank?

6 A. It was deposited in the bank. I wrote a
7 check, went to the bank and cashed it; got the
8 money and paid the employees.

9 THE COURT: What time frame are we
10 referring to now? Is this back when Alex died,
11 or is this more recent?

12 THE WITNESS: No. That's when --
13 that wasn't when he died. That was -- when I'm
14 talking about the cash there with that, that was
15 in -- just when I -- just when I had to sell the
16 properties.

17 So that would have been -- the machines
18 were gone. Everything was boarding up, dying up
19 a lot. You know, and so that -- then things were
20 just really bad.

21 THE COURT: All right. So the
22 settlement statements, 2011, '12, '13 time frame?

23 THE WITNESS: Yes, yes.

24 THE COURT: Okay. Thank you.

25 BY MR. SAUTTER:

1 Q. So I'm still trying to figure out -- so
2 do you admit that there was cash in a safe during
3 that time period at your house?

4 A. It was there until I -- for the length
5 of time it took for me to -- I wrote the checks
6 for what -- to pay the bills. I paid some bills
7 with cash. I couldn't -- I was worried about the
8 banks -- money not being in the bank.

9 Q. Okay. So you kept a separate amount of
10 cash to deal with those kind of things, correct?

11 A. I only did -- I only did the --

12 Q. You're talking about a lot of money,
13 aren't you?

14 A. No, I'm not.

15 Q. Over \$10,000?

16 A. I don't remember what the checks were,
17 but that's how -- that's where it came from. I
18 wrote the checks, went to the bank and brought it
19 back to the office, and we put it in the
20 envelopes, the check stubs and their cash. I
21 have no earthly idea what he's talking about,
22 \$50,000. I have no idea.

23 Q. Well, I'm just -- so you don't have
24 any -- do you dispute Mr. Ewart's figures?

25 A. I don't know. I don't -- I don't

1 understand. I didn't understand that at all.

2 Q. So you personally can't dispute his
3 figures, right?

4 A. No. I didn't really understand those at
5 all.

6 Q. Did you use the Goose Creek unit as
7 collateral for indebtedness to -- on Flowertown?

8 A. I am.

9 Q. And all of this stuff was all insured
10 together, right? Billips, Enterprises, Carol
11 Billips, Flowertown Restaurant, Carol Billips
12 d/b/a Alex's Restaurant, 522 Magnolia, LLC? It
13 was all under the same insurance umbrella,
14 correct?

15 A. Each location had its own and was
16 paid -- Flowertown paid for Flowertown, and the
17 check was written -- is written for designating
18 what it is, that it's for Flowertown and Alex's,
19 Inc., so Mr. Fox knows.

20 Q. Okay. I'm handing you what's a document
21 that's been previously identified as C Billips
22 181 common policy declarations. Who is listed as
23 the named insured on that singular policy?

24 A. Billips Enterprise, Inc., Carol Billips,
25 Flowertown Restaurant, LLC, Alex, Inc., Carol

1 Billips doing business as Alex's Restaurant, 522.

2 Q. So it's all insured under that same
3 policy, correct?

4 A. Yes. I guess you could say that, yes.

5 Q. All right.

6 A. But they were separately.

7 MR. SAUTTER: All right. Your
8 Honor, I would move that in as the next
9 plaintiff's exhibit.

10 MR. RANNTK: Can I have a look at
11 it? No objection.

12 THE COURT: Go ahead.

13 (PLF. EXH. 18, was marked for
14 identification and admitted into evidence.)

15 BY MR. SAUTTER:

16 Q. You have commingled all of these assets,
17 correct? Flowertown, Goose Creek. They're all
18 under the same Carol Billips umbrella, right?

19 A. Are you talking about the sheet that
20 you --

21 Q. Yes, ma'am. I'm talking about
22 everything. It's all the same, although they
23 have different names, correct?

24 A. They're not all the same. They're
25 different companies.

1 Q. All right. But you control all of those
2 companies?

3 A. I'm responsible, yes, sir.

4 Q. And did Alex -- I'm sorry. Did Tony
5 Billips get any benefit about all of those
6 entities being controlled or being lumped
7 together?

8 A. I don't consider them lumped together.

9 Q. Yes, ma'am.

10 A. Because they are paid for separately.

11 Q. Well, you would agree with me that Tony
12 didn't get any benefit by the way things were
13 handled in the dilemma? There was no
14 distributions?

15 A. No, there wasn't, no.

16 Q. Ever?

17 A. No, there was not.

18 Q. So if Flowertown defaults on their
19 obligations, there goes Goose Creek as well?

20 A. It would, yes.

21 MR. SAUTTER: Nothing further, Your
22 Honor.

23 REDIRECT EXAMINATION

24 BY MR. RANNIK:

25 Q. Carol, you were just asked whether Tony

1 receives any benefits from your work saving
2 Alex's Restaurants. Would Alex's Restaurants
3 exist today if you hadn't lent it money?

4 A. No.

5 Q. Does Tony Billips still have an interest
6 in Alex's Restaurants today?

7 A. Yes.

8 Q. And does he claim that it's worth
9 something?

10 A. Yes.

11 Q. So he's benefited?

12 A. Yes.

13 Q. I want to look at the website that you
14 were just shown. This is Plaintiff's Exhibit 14.
15 And would you please read from here on for the
16 record.

17 A. Just treat your customers, employees
18 like family. In fact, some of Alex's employees
19 have been with the company for more than 30 years
20 with their own children and grandchildren now
21 working there.

22 Q. Ms. Billips, is that the culture you've
23 tried to create at Alex's?

24 A. Yes.

25 Q. Thank you.

1 MR. RANNIK: Nothing further.

2 MR. SAUTTER: Nothing further, Your
3 Honor.

4 THE COURT: Okay. Ms. Billips let
5 me ask you just a few questions. I was looking
6 at these financial statements that were provided.
7 There's one profit and loss for the calendar year
8 2020.

9 There's an another profit and loss
10 basically from July of '19 through March 27th of
11 '21. I think that's Defendant's 3 and 4 is what
12 we've got. Just in looking at those, I'm
13 assuming those were prepared to get the PPP
14 loans.

15 THE WITNESS: Yes, sir.

16 THE COURT: Okay. Does it reflect
17 the income? Do either of those reflect the loan
18 or the income received in that gross profit,
19 gross revenue?

20 I'm showing \$400,000 in 2020. I don't
21 know what y'all were doing in 2020, but I know
22 that I call that the lost year. No one was doing
23 much of anything. And then the other one through
24 March of this year is \$1.14 million.

25 Do you know whether or not that includes

1 that -- I think you testified earlier there were
2 two PPP loans: One for 227, I think, and one for
3 202 or something.

4 THE WITNESS: Yes. And what was
5 the -- what --

6 THE COURT: Yeah, they're two
7 separate time periods.

8 THE WITNESS: Yeah, from July
9 through March, that -- I'm sorry. I was looking
10 for the --

11 THE COURT: I'm just looking to
12 show if -- if you're showing that on your books
13 as part of the income for the company.

14 THE WITNESS: I don't -- it should
15 be either at the bottom or the top is what we
16 were -- is where we had it. But I don't see it
17 there, sir, so I --

18 THE COURT: I don't see it
19 specifically either.

20 THE WITNESS: Yeah. The --

21 THE COURT: Do you assume it's not
22 in there?

23 THE WITNESS: Yes, sir.

24 THE COURT: Would that be your
25 assumption?

1 THE WITNESS: Yes, sir.

2 THE COURT: Okay. The first one is
3 for, like I said, the calendar year. And I know
4 the testimony has been that y'all keep books on a
5 fiscal year, August 1 to July 31. So the second
6 one is almost two years. It's 21 months. And
7 I've got --

8 THE WITNESS: From July of 2019,
9 through March 27, 2021.

10 THE COURT: Right. So that's
11 essentially --

12 THE WITNESS: That's the -- that
13 should be 2019 and '20.

14 THE COURT: Right.

15 THE WITNESS: Not 2021.

16 THE COURT: Right. It should be to
17 '20?

18 THE WITNESS: Because it's a year.

19 THE COURT: Well, I think this is a
20 different time period. So it's five months of
21 '19 and it's 12 months of '20 and only three
22 months of '21; so that's really 20 months.

23 THE WITNESS: Right, yeah.

24 THE COURT: Okay. But I'm assuming
25 you can compare it because that's what I was

1 doing. I was comparing it to 2020.

2 THE WITNESS: I mean, yes. That's
3 not, because that's got the wrong -- that's
4 printed out the wrong one because it's more than
5 a year.

6 THE COURT: Yeah, yeah. It's a
7 longer time period. And then, as I looked at
8 those, did they seem to be -- they did seem to be
9 consistent in this. Your number one expense
10 every month appears to be payroll?

11 THE WITNESS: Yes, sir.

12 THE COURT: Paying employees?

13 THE WITNESS: Yes, sir.

14 THE COURT: And then right behind
15 that is food?

16 THE WITNESS: Yes, sir.

17 THE COURT: And then third, it
18 looks to be the withholding taxes?

19 THE WITNESS: Yes, sir.

20 THE COURT: And that's with -- is
21 that what the gist of these liens have arisen
22 from is the withholding taxes?

23 THE WITNESS: Yes.

24 THE COURT: Okay. All right. And
25 I appreciate you putting in the second page of

1 the settlement statement from the sale of the
2 laundry because it explains what was going on. I
3 noticed that some of those settlement statements
4 were pretty high.

5 When you were selling the business, was
6 it done through a business broker or exactly how
7 was the commission determined? Is that on a
8 percentage basis, I assume?

9 THE WITNESS: Well, I know that
10 the -- yeah. I'm sure it was. The taxes and all
11 this was paid from the -- from the attorney's
12 office.

13 THE COURT: Okay. As part of the
14 closing, right?

15 THE WITNESS: Yes, it was.

16 THE COURT: All right. They
17 tallied them up and paid them off?

18 THE WITNESS: Yes.

19 THE COURT: And on this one, you
20 can see that the -- and I think that goes into
21 what Mr. Billips testified to earlier today.
22 Store number 2 and store number 6 are defined as
23 Goose Creek and Flowertown is what -- that was
24 the handwritten language on the top of the --

25 THE WITNESS: Yes, sir.

1 THE COURT: -- second page of that?

2 THE WITNESS: Yes, sir.

3 THE COURT: It looks to be
4 Mr. Fox's handwriting.

5 THE WITNESS: Yes, sir.

6 THE COURT: But just if you can --
7 so you can track them, you go --

8 THE WITNESS: Yes, sir.

9 THE COURT: One goes to one, and
10 one goes to the other?

11 THE WITNESS: Right, yes.

12 THE COURT: Okay. All right. And
13 I know that you say the ownership of Flowertown
14 is different, but we're seeing Flowertown bills
15 being paid from the Alex's account, are we not?

16 THE WITNESS: Yes.

17 THE COURT: And then I want to make
18 sure I'm clear on this. There's a mortgage on
19 the Flowertown property?

20 THE WITNESS: Yes.

21 THE COURT: But it's for the
22 benefit of the Goose Creek property?

23 THE WITNESS: No. To get the -- to
24 get the loan and to get what's selling these
25 properties and staying afloat, to get refinanced,

1 I'm -- the bank that would -- that refinanced it
2 for me, they wanted me to sign it, be personally
3 responsible, and they wanted for a time period,
4 me to use Goose Creek because Goose Creek had no
5 liens on it.

6 THE COURT: Okay.

7 THE WITNESS: And I already -- I
8 mean, there was -- you know, that was a big
9 mortgage. I mean, I've paid down on it a lot.

10 THE COURT: On Goose Creek?

11 THE WITNESS: On some of it because
12 it's -- in reality, it is Flowertown's mortgage,
13 not Goose Creek's.

14 THE COURT: Okay.

15 THE WITNESS: I pay it, and it's
16 paid out of Flowertown but Goose Creek is
17 supposed to be -- because he wanted that as
18 collateral in order to make the -- to do the
19 refinancing.

20 THE COURT: All right. So you
21 cross-collateralized the --

22 THE WITNESS: Yes.

23 THE COURT: You've got two
24 properties for one loan is what you've got?

25 THE WITNESS: Yes.

1 THE COURT: Okay. All right. The
2 mortgage is --

3 THE WITNESS: Which is --

4 THE COURT: The mortgage is
5 applicable to both, but it really is for the
6 benefit of Flowertown; is that right?

7 THE WITNESS: Yes.

8 THE COURT: Okay.

9 THE WITNESS: And I'm to the point
10 with that now that I'm 99 and nine-tenths sure,
11 because it's been a few years now and I based it
12 out of Flowertown, it's been basically cut in
13 half. But it's -- I think we will take -- we'll
14 have no problem with it just being at Flowertown
15 in my name.

16 THE COURT: Okay. Are you in the
17 process of refinancing that? Is that what you're
18 doing?

19 THE WITNESS: I'm going to, yes.
20 I'm going to. I haven't talked to him yet.
21 He's -- you know, I've got calls from him, you
22 know, from the bank. And so, like I say, I'm
23 comfortable with Flowertown because I've cut it
24 in half and haven't missed a payment.

25 THE COURT: Okay. All right. Is

1 the Goose Creek -- can I presume that, since
2 there's no debt on Goose Creek, that it's one of
3 your more profitable stores?

4 THE WITNESS: Goose Creek, the --
5 yeah. It has been. And Goose Creek is --
6 Flowertown is having -- they've got PPP loans,
7 too.

8 THE COURT: Right.

9 THE WITNESS: So I'm having the
10 same trouble with employees and food and that
11 now.

12 THE COURT: We're all having those,
13 no matter what business you're in.

14 THE WITNESS: Yeah. But, yes,
15 Goose Creek was -- is a bigger store.

16 THE COURT: Okay. And therefore,
17 it generates a little more profit?

18 THE WITNESS: Yes. And the
19 location of Goose Creek.

20 THE COURT: Okay. St. James
21 Avenue?

22 THE WITNESS: Yes.

23 THE COURT: And then the Flowertown
24 store, is that the most recently acquired of the
25 stores?

1 THE WITNESS: No, because
2 Summerville -- Flowerdown has been there on 78
3 since, I think, '98.

4 THE COURT: Okay. All right. And
5 is it your plan to keep both of those stores
6 running for now?

7 THE WITNESS: Yes, sir, my hope is,
8 yes.

9 THE COURT: Okay. Do you know
10 whether or not you have to pay back those PPP
11 loans or what the status of those is?

12 THE WITNESS: I don't know at all
13 about the second one. The first one, what
14 they -- at this point, it may -- it looks like
15 it's going to be forgiven. In their application
16 and all, it's -- they have a time period there
17 so, you know.

18 THE COURT: If you stay afloat long
19 enough, they will waive it, right?

20 THE WITNESS: I think, yeah. I
21 mean, because nothing -- you know, there's
22 nothing wrong that they're going to -- you know,
23 because they just have -- the numbers are what
24 they were. You know, but the second one, I don't
25 have any idea --

1 THE COURT: Okay. All right.

2 THE WITNESS: -- for the other
3 store.

4 THE COURT: If you were to sell the
5 Goose Creek store today, what would you ask for
6 it?

7 THE WITNESS: I don't know, sir, I
8 honestly don't.

9 THE COURT: How would you come to a
10 price? What would you do to come to a price?

11 THE WITNESS: The only -- to me,
12 the property is what it is, and I see -- I don't
13 think property values are going to -- right now,
14 I don't see the property values being a problem
15 for people because they seem to be going up.

16 You know, I don't know. But as far as
17 the restaurant, I honestly don't know on that
18 because I don't have an -- I really don't even
19 have a feel for what -- how this thing is going
20 to --

21 THE COURT: I understand that, but
22 it looks like in the past what you've done is
23 you've gotten an appraisal of the property,
24 right?

25 THE WITNESS: Yes, sir, I did.

1 THE COURT: You got an appraisal.

2 THE WITNESS: Yes.

3 THE COURT: You got an appraisal of
4 the land at least?

5 THE WITNESS: Yes.

6 THE COURT: And then it is an
7 ongoing concern so it's got value there, does it
8 not?

9 THE WITNESS: Yes.

10 THE COURT: Okay. And would the
11 same go for the Flowertown store?

12 THE WITNESS: Yes, sir.

13 THE COURT: Is there one that
14 you're more likely or less likely to sell than
15 the other?

16 THE WITNESS: I have shared parking
17 in Summerville. The parking is in -- is in
18 between the two locations -- you know, the two --
19 the 522 and the restaurant. And from what I
20 understand, they -- or I got a letter. They may
21 be going to be doing some -- they are supposed to
22 be doing something on 78 coming down. I don't
23 know how that's going to affect being in
24 Summerville.

25 THE COURT: Like, put a median in

1 so you can't turn across all four lanes?

2 THE WITNESS: They did that in
3 Goose Creek.

4 THE COURT: Yeah.

5 THE WITNESS: They've done that in
6 Goose Creek. But from what I understand in
7 Summerville, they're widening 78 all the way down
8 to Berlin G. Myers. So I don't know -- and I
9 haven't officially got something from the state
10 on it.

11 But I did from an attorney friend with
12 an overhead shot of it, telling me. You know, it
13 was solicitation for their services because they
14 say that that's coming. I don't know how that's
15 going to affect me in Summerville.

16 THE COURT: Would that take some
17 parking away if they do that, or would it be --

18 THE WITNESS: I'm close to the
19 highway.

20 THE COURT: Yeah.

21 THE WITNESS: I'm close to the
22 highway, and the one side -- the restaurant is on
23 like two-thirds of the building and a third is a
24 rental.

25 You know, I don't know what that's going

1 to do. So I -- really, it's just kind of up in
2 the air, and that, I just -- like a month ago, I
3 just got that in the mail. And I do know they
4 are working on 78.

5 THE COURT: All right. Thank you,
6 ma'am. That's all I have.

7 MR. SAUTTER: Judge?

8 THE COURT: Mr. Sautter?

9 MR. SAUTTER: A matter has come up,
10 and I will be brief on it. And I'm just going to
11 ask her to identify a document.

12 MR. RANNIK: May I see the
13 document?

14 MR. SAUTTER: This is part of the
15 PPP application.

16 RECROSS-EXAMINATION

17 BY MR. SAUTTER:

18 Q. And so we've been talking about PPP
19 funds and things of that nature. As part of
20 applying for a PPP loan, you have to get together
21 documents and kind of know what you're doing as
22 far as the business, correct?

23 A. Yes, sir, yeah.

24 Q. Yes, ma'am. And which store is this one
25 for?

1 A. It's Goose Creek.

2 Q. Goose Creek. And what did you show as
3 the -- I'm sorry, I can't see. What did you show
4 as the net sales for 2019 on that PPP application
5 for Goose Creek?

6 MR. RANNIK: Objection. I don't
7 there's -- I'm sorry. Go ahead.

8 BY MR. SAUTTER:

9 Q. What do you show as the gross sales on
10 that?

11 A. January through December, it is -- it
12 says \$1 million 742.

13 Q. All right. And you were present when
14 Tony testified that, based upon his knowledge and
15 experience, that the Goose Creek sales would be
16 \$1,425,700; isn't that true?

17 A. I mean, if you say so.

18 Q. Yeah. Well, I'll show you what he
19 testified to. It's number 2, Goose Creek. What
20 amount did he put down?

21 A. Okay. Yes, sir.

22 Q. What amount did he put down?

23 A. \$1,425,700.

24 Q. So you would agree with me that the
25 amount that the company disclosed in giving a PPP

1 application is even more than was estimated by
2 Tony Billips on that exhibit marked for
3 identification in number 2, Goose Creek; isn't
4 that true?

5 A. This is January through December.

6 Q. Which number is higher?

7 A. The accounting. That's what I'm trying
8 to tell you. The months may make a difference on
9 it. I don't know, looking at this, whether this
10 is January through December. Our accounting is
11 July 31st.

12 Q. Okay. But which number is higher? The
13 number that you reported for your PPP application
14 or the number that Tony Billips testified to as
15 to the gross sales for Goose Creek for a year
16 period?

17 A. What he said, this was ending in --
18 January through December for the year '19, fiscal
19 year. It says \$1,742,553.

20 Q. And Tony testified to \$1,400,000
21 something, correct?

22 A. In gross, in sales.

23 Q. So the company reported PPP -- to the
24 PPP application, the company reported more gross
25 sales than Tony testified to, correct?

1 A. They asked for -- they tell you what
2 they want, what time period they want. But the
3 numbers, yes, that he has versus this, yes, this
4 is more for this time period.

5 Q. The numbers that you use for PPP were
6 more than what Tony testified to; isn't that
7 true, as to Goose Creek?

8 A. Yes.

9 MR. SAUTTER: Your Honor, I would
10 move that PPP application part of it into
11 evidence as the next exhibit on behalf of the
12 plaintiff.

13 THE COURT: I think we're up to 19.

14 MR. RANNIK: No objection.

15 (PLF. EXH. 19, was marked for
16 identification and moved into evidence.)

17 MR. SAUTTER: And that's it for
18 this witness.

19 MR. RANNIK: Just two questions,
20 Judge.

21 THE COURT: Sure.

22 REDIRECT EXAMINATION

23 BY MR. RANNIK:

24 Q. Carol, Tony testified that the gross
25 receipts for Alex's Restaurants for a year across

1 all locations would be \$12 and a half million.
2 Did Alex's ever generate \$12 and a half million
3 in revenues in a single year?

4 A. Not that I recall at all.

5 Q. Anything close?

6 A. No.

7 MR. RANNIK: Okay. Thank you very
8 much.

9 THE COURT: I don't have anything
10 further. Thank you, Ms. Billips.

11 Let's take 30 minutes and come right
12 back at 2 o'clock. Let's just take a little
13 break. Does that work?

14 MR. RANNIK: Okay. That sounds
15 great.

16 (A recess transpired.)

17 MR. RANNIK: Judge, defendants
18 would call Michael Fox.

19 THE COURT: All right. Mr. Fox,
20 come on back. Mr. Fox, you've also previously
21 been sworn; so we'll keep it just like that. How
22 about that?

23 THE WITNESS: Thank you, sir.

24 THE COURT: Yes, sir.

25 MR. RANNIK: Thank you, Judge.

1 DIRECT EXAMINATION

2 BY MR. RANNIK:

3 Q. Mr. Fox, how old are you?

4 A. I am 74 years old. I will be 75 in
5 March, coming up.

6 Q. And where are you from?

7 A. Ravenel, South Carolina.

8 Q. And I believe you testified yesterday,
9 you've been an accountant for 51 years?

10 A. 51 years, yes, sir.

11 Q. And that you've done work for Alex's
12 Restaurants that entire time?

13 A. Probably a few months before. I was
14 doing work for him before I got married, and I've
15 been married for 51 years.

16 Q. Okay. How long have you -- do you do
17 work for Carolyn Billips?

18 A. Yes, sir.

19 Q. And for how long?

20 A. It was right after Carolyn married Alex,
21 or it was -- I got Carolyn from Alex at the same
22 time. I've never really -- I can't remember
23 doing work for Alex and Carolyn using another
24 accountant. It's been over -- well over 40
25 years, I know.

1 Q. Okay. Now, it has been testified to or
2 argued that there is commingling of assets and
3 funds of Alex's and Flowertown. Would you
4 describe for the Court if that's consistent with
5 your experience?

6 A. Well, it may have occurred. It's not --
7 it's not something that consistently happens. It
8 only occurred during times of -- for sales, the
9 properties having -- required to be sold to
10 liquidate tax liens and tax levies.

11 Q. What overlap, if any, is there between
12 Alex's books and Ms. Billips' books?

13 A. Absolutely none that I'm aware of. Both
14 of them are independent sets of books. I could
15 do work for either one of them and not the other
16 one and never know the difference. I mean,
17 there's no extenuating circumstances between the
18 two. They're extremely independent of one
19 another.

20 Q. Now, Mr. Fox, have you prepared tax
21 returns for Alex's, Inc., over your career?

22 A. Yes, sir. I've prepared for the entire
23 time that I did accounting work for. I did the
24 accounting work as well as the tax returns.

25 Q. And you testified about this a little

1 bit yesterday, but I'd like to make sure the
2 record is clear. How do you go about preparing
3 these returns?

4 A. I used the P&Ls that they generate to
5 start out with, and I always -- not sometimes, I
6 always request the bank statements that
7 facilitate the 12 months.

8 And I compare the two, and I take -- if
9 I find that there's a difference, I take the
10 higher amount, if it's not justified. And that's
11 where I get the gross income for Alex's
12 Restaurants.

13 There's nothing left to the imagination
14 if the bank statements are correct and they tie
15 into the -- I think they refer to the cost
16 sheets, cost control sheets or income statements,
17 that type.

18 Q. Okay. I would like to show you this.
19 Now, Mr. Fox, I've handed you a stack of
20 documents. Do you recognize what these documents
21 are?

22 A. Yes, sir. They are corporation returns
23 for Alex's Restaurant, Incorporated.

24 Q. And these are the forms -- the returns
25 that you prepared and filed?

1 A. Yes.

2 MR. RANNIK: Judge, I would move
3 that these be admitted as defendant's whatever
4 we're up to now.

5 COURT REPORTER: 7.

6 THE COURT: Defendant's 7.

7 Mr. Ellis?

8 MR. ELLIS: No objection, Your
9 Honor.

10 THE COURT: Without objection.
11 Very good.

12 (DFT. EXH. 2 through 6, were
13 admitted into evidence.)

14 (DFT. EXH. 7 was marked for
15 identification and admitted into evidence.)

16 BY MR. RANNIK:

17 Q. Let's look at these returns, Mr. Fox.
18 So I've tried to put these in order. Tell us
19 about 2010. What were the net revenues for
20 Alex's in 2010? Sorry, let me clarify that.
21 What were the gross revenues, the gross income?

22 A. The gross revenues for 2010 are -- this
23 included sales of property. Are you talking
24 about including sales of property as well?

25 Q. Yes, sir.

1 A. It's \$2,320,000 and that's including
2 \$935,000 worth of capital gains and the sale of
3 property.

4 Q. All right, sir.

5 THE COURT: Let me make sure I'm on
6 the same page with y'all. Where are you?

7 MR. RANNIK: Sorry, Judge. It's
8 Bates labeled Fox 0384, which is the fourth page
9 in which -- the first page of the federal tax
10 return for 2010. And that one did get a little
11 out of order.

12 THE COURT: I don't think -- hold
13 on. I'm starting -- mine starts with 2011.

14 MR. RANNIK: Okay. Sorry, Judge.
15 I thought there was an extra --

16 THE COURT: There's an extra one in
17 here from South Carolina?

18 MR. RANNIK: Yes, Judge.

19 THE COURT: All right. Your
20 federal is in here. I'm sorry.

21 BY MR. RANNIK:

22 Q. And so, Mr. Fox, just to recap, you
23 said, including the sales of the properties, the
24 revenues were \$2.3 million?

25 A. Yes, sir.

1 Q. Okay. Let's continue on, and let's look
2 at 2011. Would you do the same thing?

3 A. The gross income was \$345,763.

4 Q. And how about the taxable income for
5 that year?

6 A. The taxable income was minus \$162,000.

7 Q. All right. Thank you, sir. How about
8 2012?

9 A. 2012, the gross income was \$732,000, not
10 including a \$14,000 loss over the sale of some
11 properties.

12 Q. And if you look at line 11 there, what
13 do you show as the total income?

14 A. \$519,000.

15 Q. Okay. And then the taxable income for
16 that year?

17 A. A negative \$163,000.

18 Q. Thank you, sir. 2013, what is the gross
19 receipts or sales?

20 A. The gross receipts was \$1,246,000.

21 Q. And the total income?

22 A. That is the -- well, that's the gross
23 income. Are you talking about the net profit?

24 Q. I'm talking about line 11 where it says
25 total income.

1 A. Line 11 was \$869,000.

2 Q. And the taxable income for that year?

3 A. \$42,889.

4 Q. To 2014, please, sir. What was the --

5 Let's just go to total income for 2014.

6 A. The gross income was \$1,268,000.

7 Q. And the total income in line 11?

8 A. \$951,000.

9 Q. And the taxable income?

10 A. It was a loss of \$5,577.

11 Q. How about 2015? What were the gross
12 receipts?

13 A. All right. I don't think I have 2015
14 before me.

15 Q. Then it might be in --

16 A. Well, see, I've got -- I've got the tax
17 year ending in 2015, but that's just what I gave
18 you previously. I was looking at many of them.

19 Q. Okay. Is it stuck possibly?

20 A. Okay.

21 THE COURT: I did find it, yeah.

22 THE WITNESS: Yes, okay. For 2015,
23 I'm sorry, I'm up-to-date with you now. For
24 2015, the gross receipts was \$1,516,000.

25 BY MR. RANNIK:

1 Q. And the total income in line 11?

2 A. \$1,025,000.

3 Q. And the taxable income?

4 A. \$79,000.

5 Q. All right, sir. 2016?

6 A. The gross income was \$1,565,000.

7 Q. Total income?

8 A. \$1,050,000.

9 Q. And taxable income?

10 A. \$3,863.

11 Q. All right. Thank you, sir. 2017?

12 A. The gross receipts was \$1,705,000, and
13 the total income was \$1,122,000, and the taxable
14 income was \$57,000.

15 Q. And then in 2018?

16 A. 2018, the gross income was -- well, it
17 was \$485,000 in cash and checks; and in credit
18 cards, it was \$1,240,000.

19 Q. And just to explain for the Court there,
20 where you looking to get those two numbers?
21 Which two lines?

22 A. The gross income by cash and checks was
23 item number 1. Item number 10, it's broken out
24 in the 1099-Ks you get from the -- from the bank
25 at the end of the year, and that reports all of

1 the credit card actions.

2 And the IRS wants that broken out in
3 many cases. Some businesses, you don't get
4 feedback from the IRS on it; other business, you
5 do. So we tried to break them out whenever we
6 can get this 1099-Ks.

7 Q. All right. And then the total income in
8 line 11?

9 A. \$1,163,000.

10 Q. And the taxable income?

11 A. Was \$17,000.

12 Q. All right. 2019?

13 A. The gross income from cash and checks
14 was \$373,000, and from 1099-Ks, it was -- from
15 the credit cards was \$1,300,000.

16 Q. And then the total income?

17 A. And the gross -- and the total income
18 was \$1,144,000.

19 Q. And the taxable income?

20 A. Taxable income was \$43,000.

21 Q. Mr. Fox, as you sit here today, do you
22 stand by the accuracy of these returns?

23 A. Sir?

24 Q. Do you stand by the accuracy of these
25 returns, as you sit here today?

1 A. Of the profit and loss statements,
2 without question, absolutely.

3 Q. And so the taxable income numbers, that
4 would be part of what you're saying you stand by
5 absolutely?

6 A. Absolutely, yes, sir, without question
7 in my mind on it.

8 Q. Now, does Alex's pay Ms. Billips'
9 salary?

10 A. Ms. Billips does get paid a salary out
11 of Alex's Restaurant.

12 Q. Would you describe for the Court whether
13 you think it is a market salary?

14 MR. ELLIS: Objection. I don't
15 know the basis of knowledge has been established
16 for him to know what a market salary is for
17 somebody in Ms. Billips' position.

18 MR. RANNIK: Can I lead into that?

19 THE COURT: Sure.

20 BY MR. RANNIK:

21 Q. Mr. Fox, you've been an accountant for
22 51 years?

23 A. Yes, sir, I have.

24 Q. And you've had over 750 different
25 clients?

1 A. I certainly have.

2 Q. Have you had any other clients in the
3 restaurant industry?

4 A. I certainly have, many.

5 Q. Are you familiar with, generally
6 speaking, salaries that are earned in the
7 restaurant industry in the Charleston area?

8 A. I certainly am.

9 Q. What is your opinion of the market of
10 Ms. Billips' salary relatively to the market
11 salary?

12 MR. ELLIS: Objection, Your Honor.
13 I still don't think the basis of knowledge has
14 been established for what a market restaurant
15 owner's salary is based upon having filed tax
16 returns in -- for any number of years.

17 THE COURT: Overruled. Go ahead.

18 BY MR. RANNIK:

19 Q. You may answer, sir.

20 A. I proceed?

21 Q. Please.

22 A. You would have to pay to -- to hire
23 someone in Ms. Carolyn Billips' place, Counselor,
24 you would have to pay him in excess of --

25 MR. ELLIS: Objection.

1 THE WITNESS: \$100,000 a year.

2 MR. ELLIS: Objection. Your Honor,
3 now, he is offering testimony as to what it takes
4 to hire somebody rather than just provide an
5 average. I don't think he's a vocational expert.

6 THE COURT: I'm going to -- come
7 back and have him restate it based on the
8 original question.

9 MR. RANNIK: Certainly.

10 BY MR. RANNIK:

11 Q. Do you believe Carolyn Billips earns a
12 market salary from Alex's?

13 A. Absolutely not. No, sir, she did not.

14 MR. ELLIS: Your Honor, I'd just
15 renew my main objection to that.

16 THE COURT: Objection noted.

17 BY MR. RANNIK:

18 Q. And --

19 A. It was substandard.

20 Q. Why do you say that?

21 A. Sir?

22 Q. Why do you say that?

23 A. There was -- there was some period of
24 time that -- I remember one time she only -- she
25 didn't even earn \$6,000 for the year, and she

1 worked, I know, between 70 and 80 hours a week to
2 keep these restaurants going.

3 Q. Now, of all your clients, Mr. Fox, how
4 does Alex's rank in terms of being a profitable
5 business?

6 A. The corporation today is not a
7 profitable business.

8 Q. And can you elaborate on that?

9 A. I certainly can. The last two years to
10 date, if it hadn't have been for the \$440,000 in
11 PPP loans, you and I wouldn't have a job today.
12 The corporation would be closed.

13 Q. Mr. Fox, based on your knowledge of
14 Alex's finances and operations and your
15 experience as an accountant, how much would you
16 pay for this business?

17 MR. ELLIS: Objection. I don't
18 think he's qualified to place a value on a
19 business. He's -- he testified yesterday he is a
20 licensed tax preparer, and I don't think that in
21 any way qualifies him to value businesses.

22 And his testimony yesterday was that he
23 prepares tax returns based upon profits and
24 losses provided to him and to avoid audits by the
25 IRS. So I don't think that qualifies him to

1 value a business.

2 MR. RANNIK: Judge, my response
3 would be that, Mr. Billips has offered his
4 opinion of the value of this business, and he has
5 no experience valuing businesses, whatsoever.

6 I think we're entitled to offer
7 experience based on the history with this
8 business of 51 years, knowledge of the finances
9 and the operations.

10 He's been through thick and thin with
11 them, the sale of properties. I think he is in a
12 very advantageous to advise the Court on what he
13 believes the value of business for -- and that is
14 a weight of the evidence question.

15 THE COURT: I don't think he's
16 qualified for that, at least not based upon the
17 record that you've made. Mr. Billips is a part
18 owner, and I think the rule is pretty
19 straightforward that an owner of property can
20 give their opinion of value. The Court puts
21 whatever weight it does on it.

22 But he has been offered not as a
23 valuation expert, as the plaintiff's did, but
24 instead as an accountant who has done the work.
25 He's familiar with the business and how it's done

1 at the operations. But what he would sell it
2 for, that's really Ms. Billips' question. And I
3 asked her that question, as a matter of fact.

4 MR. RANNIK: You did indeed, sir.
5 All right. Thank you, sir.

6 BY MR. RANNIK:

7 Q. Mr. Fox, did you have awareness or any
8 involvement or discussions about the sale of
9 Alex's properties over the years?

10 A. No, sir.

11 Q. Did Carol ever come to you and tell you
12 she was needing to sell properties?

13 A. Only at the point that she was virtually
14 required to do it.

15 Q. What difficulty, if any, did she
16 encounter in finding buyers on her properties?

17 Mr. Ellis: Objection, hearsay.
18 Earlier he testified he had no involvement in the
19 selling of the restaurants.

20 MR. RANNIK: And he just clarified
21 that he had discussions with her when it came --

22 MR. ELLIS: Which is hearsay.

23 THE COURT: I'm going to overrule
24 it. She's here; he's here. I'm going to allow
25 it.

1 BY MR. RANNIK:

2 Q. So, Mr. Fox, the question was, what
3 difficulties, if any, did Alex's have in finding
4 buyers for the properties?

5 A. Repeat that question again.

6 Q. What difficulties, if any, did Alex's
7 have in finding buyers for their properties?

8 A. She had -- she had big problems in doing
9 it because I communicated with the IRS agents and
10 state agents at the -- a number of times, and
11 they told me that they virtually didn't have any
12 choice but to close the business and sell --

13 MR. ELLIS: Objection, hearsay.

14 THE WITNESS: -- the property if he
15 couldn't get paid. And Ms. Carolyn was looking
16 for --

17 MR. ELLIS: Objection, hearsay.

18 THE COURT: That objection is
19 sustained. I understand it.

20 BY MR. RANNIK:

21 Q. And so, Mr. Fox, is it fair to say, it
22 is your understanding, it was difficult to find
23 buyers at times?

24 A. Most difficult, most difficult.

25 Q. Why was it difficult?

1 A. Well, number one, she couldn't sell the
2 businesses (inaudible) --

3 MR. ELLIS: Objection.

4 THE WITNESS: -- because they
5 weren't profitable.

6 MR. ELLIS: Objection, Your Honor.
7 Again, he said he had no -- he was not involved
8 in the sale of these businesses is what he
9 testified to three minutes ago. And, again,
10 everything he would know would be based upon what
11 Ms. Billips told him, which again is hearsay.

12 THE COURT: Overruled.

13 BY MR. RANNIK:

14 Q. Please continue.

15 A. And repeat the question.

16 Q. The question was why?

17 A. Oh, why can't she sell them? It was
18 because of the same reason she couldn't sell the
19 restaurants today. They have no -- they couldn't
20 produce a profit. I couldn't give the
21 perspective buyers a profit and loss statement
22 showing that they were a profitable business to
23 buy.

24 And from my experience over the years --
25 and I have a lot -- when I have a client that

1 comes to me and wants to sell their business, if
2 they can't produce profit and loss statements
3 that are healthy, I'm going to tell you, the only
4 thing they get to sell is the assets of the
5 business or the assets of the corporation.

6 They don't -- there's no goodwill on
7 that closing statement or covering not to compete
8 in many instances. And that's why she
9 couldn't -- that's why these business have no
10 value when they sold them because it wasn't
11 nothing there but the bare walls.

12 Mr. Ellis: Objection. Again, Your
13 Honor, he's getting into valuation, which he's
14 not qualified to do.

15 THE COURT: Sustained. Go ahead.

16 BY MR. RANNIK:

17 Q. Mr. Fox, do you believe Alex's would
18 exist today if not for Carolyn Billips?

19 MR. ELLIS: Objection.

20 A. No, sir.

21 MR. RANNIK: Judge, this is the
22 accountant for the firm. He's been with them for
23 51 years.

24 He has intimate knowledge of their
25 finances and operations. He's been through the

1 difficulties with them, and I think he is in a
2 good position to say, in his opinion, for
3 whatever that is worth to the Court.

4 THE COURT: I'll allow that one.
5 Overruled.

6 BY MR. RANNIK:

7 Q. Mr. Fox, do you believe that Alex's
8 would still exist today if not for the efforts of
9 Carolyn Billips?

10 A. I don't know of anybody -- I don't know
11 of anybody that would push as hard as Ms. Carolyn
12 Billips has to keep these businesses open and
13 running today.

14 I mean, she works -- I work a lot of
15 hours a week. I mean, I work a lot of hours a
16 week, and she even tells me when I get to work
17 and whenever I go home, if I want to know what
18 time I go home because she goes past my offices
19 coming and going in the morning to work.

20 And she -- she works on Saturdays, and
21 she works on Sundays whenever she has to. And
22 she does everything from empty the trash to make
23 the schedules up for the workers. And on the
24 holidays and those type, Christmas dinners and
25 Thanksgiving dinners, she works harder than

1 anybody in her establishments to facilitate her
2 customers, you know.

3 And on top of that, she even feeds the
4 hungry people in the community during those
5 special days that -- that don't have food to eat
6 themselves, and she's taking money out of her own
7 pocket to feed them.

8 MR. RANNIK: Thank you, Mr. Fox.
9 Nothing further, Judge.

10 THE WITNESS: I've seen that happen
11 more times than one, two, or three.

12 MR. RANNIK: Thank you, sir.

13 THE COURT: All right. Mr. Ellis?

14 MR. ELLIS: May it please the
15 Court.

16 CROSS-EXAMINATION

17 BY MR. ELLIS:

18 Q. So, Mr. Fox, you said that there has
19 been commingling of the assets of Alex's and
20 Flowertown, correct?

21 A. Sir?

22 MR. RANNIK: Objection, misstates
23 his testimony.

24 BY MR. ELLIS:

25 Q. Mr. Fox, earlier you testified that

1 there's been limited instances of commingling of
2 Alex's Restaurants and Flowertown; is that
3 correct?

4 A. I said that, yes, sir.

5 Q. And in your preparation of tax returns
6 for Alex's Restaurants, Incorporated, the only
7 sources you used to get your numbers of profits
8 and losses as provided by the client and the bank
9 statements, and that's for the client; is that
10 correct?

11 A. That's correct.

12 Q. Okay. You don't take anything else in
13 consideration when preparing your tax returns?

14 A. I don't know what else there is to put
15 on the table.

16 Q. So other than the representations made
17 by your client to you, together with what you can
18 see was actually deposited in the bank, that
19 you -- you don't have any other knowledge of any
20 other information for the finances of Alex's
21 Restaurant, Inc.; is that correct?

22 A. I don't.

23 Q. So you get the profits and losses from
24 the client, correct?

25 A. I do.

1 Q. And do you --

2 A. And I have generated them before myself
3 when we kept the books.

4 Q. When did you keep the books?

5 A. I don't know. We keep them for a number
6 of years.

7 Q. Before 2000 or after 2000?

8 A. It was probably before -- before
9 Ms. Roxanne came on the scene.

10 Q. And she was there forever, you said
11 yesterday, right?

12 A. Pardon?

13 Q. She was there forever, right? That's
14 what you said yesterday.

15 A. No. I didn't say she was there forever.
16 She left five years ago.

17 Q. But she was there for a very long time,
18 correct?

19 A. I don't know how -- what period of time
20 that she was there, but I didn't say that she was
21 there forever.

22 Q. Okay. So when did you stop doing the
23 books for Alex's, Inc.?

24 A. I think whenever they got an in-house
25 bookkeeper.

1 Q. Do you have any idea when that was?

2 A. I don't really recall that.

3 Q. So Mr. Rannik went through the tax
4 returns that you prepared for the years 2012
5 through 2019 -- no, excuse me, 2010 through 2019.
6 Were you doing the books for Alex's, Inc.?

7 A. No, not in-house, no. We were just
8 doing the tax returns at the end of the year.
9 They had in-house bookkeepers at that time.

10 Q. Okay. And so for the time span of the
11 tax returns that Mr. Rannik went over with you,
12 the only information you would have to do your
13 tax returns would be the profit and losses as
14 prepared by the client and given to you and the
15 bank statements? Is that your testimony?

16 A. Uh-huh.

17 Q. Is that your testimony?

18 A. And we had -- well, you know the sheets
19 that Tony said that was pasted all over the
20 place, the cost control sheets.

21 Q. Yes, sir.

22 A. We used those from time to time as well.

23 Q. Okay. So you said that --

24 A. So I really had three sources that I
25 went to.

1 Q. Okay. So you always used profits and
2 losses, correct, in preparing tax returns?

3 A. I always use profit. I have considered
4 those every time I did a tax return, yes, sir.
5 They were considered.

6 Q. And you always used the bank statements?

7 A. They were considered simultaneously and
8 integrated.

9 Q. And sometimes you would use the cost
10 control reports?

11 A. I would use other -- I would use the
12 cost control for testing.

13 Q. How often would you view the cost
14 control reports?

15 A. Whenever I deem necessary.

16 Q. And any idea when you -- when would you
17 deem it necessary?

18 A. Probably a month out of the year, every
19 year.

20 Q. Okay. So, again, the cost control
21 reports are generated by the client?

22 A. I used every means possible to report
23 the correct income and portray it on the tax
24 return.

25 Q. And yesterday you testified as to not

1 putting certain things -- certainly liabilities
2 in tax returns because the IRS doesn't really
3 care above those. Do you recall testifying to
4 that?

5 A. Ask me that question again now.

6 Q. Do you recall yesterday testifying about
7 you don't always put things in tax returns
8 because the IRS doesn't care about certain things
9 like that?

10 A. That's true. I do recall that.

11 Q. Okay. And so in preparing your tax
12 returns, are you primarily focused on what is the
13 income, what's taxable income, in order to avoid
14 an audit from the IRS?

15 A. I am mostly concerned about the profit
16 and loss statement, the gross income, absolutely.
17 No question about that.

18 Q. Okay. And again, you get the gross
19 income from the documents produced by the client
20 and what you see is actually deposited in the
21 bank account, correct?

22 A. And I test it against the income sheets,
23 too.

24 Q. That are also produced by the client?

25 A. (No audible response.)

1 Q. Is that a yes?

2 A. Yeah. They are produced by the client
3 or the shift manager, whoever -- whoever writes
4 them up.

5 Q. In-house for -- that's your concern is,
6 the documents produced in-house by your client
7 and what you actually see deposited?

8 A. I don't know who they're produced by.
9 Whether it's the shift manager or in-house
10 employees, I'm not sure.

11 Q. Okay. So documents given to you by the
12 client?

13 A. Right.

14 Q. Okay.

15 A. Right.

16 Q. How do you know what Ms. Billips' salary
17 was at various times?

18 A. Ask me that question again.

19 Q. Mr. Rannik questioned you about what
20 Ms. Billips' salary has been since you've been
21 doing the accounting, the tax returns.

22 A. He didn't question me of what had it
23 been.

24 Q. Okay. Excuse me. I will ask it another
25 way. How do you have knowledge of what

1 Ms. Billips pays herself from Alex's Restaurants,
2 Incorporated?

3 A. That's a good question, Counselor. I
4 prepared the W-2 for her every year. Not some
5 years, every year. I record her payroll every
6 week. Not some weeks, and -- well, every two
7 weeks. Not some every two weeks. 26 times a
8 year.

9 Q. Okay.

10 A. I do the payroll tax on her checks that
11 she draws.

12 Q. And how do you know the number for her
13 salary? What information tells you the number
14 for the salary she's paid for?

15 A. The check register, the payroll
16 register.

17 Q. Okay. So the documents you get from
18 Ms. Billips tells you how much Ms. Billips paid
19 herself?

20 A. No. She tells us the number -- she
21 tells us the wages she makes for the week, and we
22 write the payroll check for it.

23 Q. Is Ms. Billips an hourly employee?

24 A. Yes, she's a salary.

25 Q. Okay.

1 A. So we know that all -- we know that
2 every two weeks.

3 Q. Okay. So the amount of money
4 Ms. Billips has taken out of Alex's Restaurant --
5 the only way you have knowledge of the amount of
6 money Ms. Billips' has taken out of Alex's
7 Restaurant is based upon what Ms. Billips tells
8 you?

9 A. No. It's based on the checks that are
10 cashed.

11 Q. Who wrote the checks?

12 A. We write the checks.

13 Q. Who is we?

14 A. I write them.

15 Q. You write the checks?

16 A. My computer does.

17 Q. Who tells you how much to put on the
18 checks for Ms. Billips?

19 A. April turns in payroll every two weeks
20 to us for everybody, for all employees.

21 Q. So the amount of money -- so the amount
22 of money that Ms. Billips -- your knowledge of
23 the amount of money that Ms. Billips takes out of
24 Alex's Restaurant, Incorporated, in compensation
25 for herself comes from Ms. Billips, correct?

1 A. Ms. Billips never tells me how much
2 money she makes.

3 Q. Okay. Is it an Alex's Restaurant,
4 Incorporated, employee that says, Mr. Fox, this
5 is how much Ms. Billips is getting paid?

6 A. As well as the other 60 employees who
7 work there.

8 Q. Okay.

9 A. I get that sheet every two weeks.

10 Q. So the only knowledge that you have of
11 how much money Ms. Billips takes out of Alex's
12 Restaurant, Incorporated, for her own
13 compensation is based upon what Alex's
14 Restaurant, Incorporated, tells you?

15 A. Her salary is based on the checks that
16 clear the bank. She gets paid by check.

17 Q. So you look at checks from Alex's
18 Restaurant, Incorporated, issued to Ms. Billips,
19 and that's your only knowledge for how much money
20 she takes out --

21 A. We get computer printouts of her check
22 program and her payroll every -- every year when
23 we go to do the tax return. We get a printout,
24 and we can tell you every check that she wrote to
25 anybody that -- that got a check for that given

1 year.

2 Q. And so the only knowledge you have of
3 the amount of money Ms. Billips takes out of the
4 corporation to pay herself is from payroll; is
5 that correct?

6 A. From payroll.

7 Q. Is that correct?

8 A. That's correct.

9 Q. Okay. All right. Is Ms. Billips paid
10 as a W-2 employee?

11 A. Sir?

12 Q. Is she paid as a W-2 employee?

13 A. Absolutely. Every time.

14 Q. Does she get a K-1 return as well?

15 A. A K-1?

16 Q. As an owner of the company.

17 A. An owner of what company?

18 Q. Alex's Restaurant, Incorporated?

19 A. No, sir.

20 Q. Okay. She does not get whatever the tax
21 filing is for owner of the company?

22 A. She just -- you asked me, did she get a
23 K-1?

24 Q. Yes, sir.

25 A. She does not get a K-1 from Alex's,

1 incorporated.

2 Q. Okay. Do you do payroll for Flowertown
3 as well?

4 A. Let me make a comment on that. Do you
5 know why -- the reason she doesn't get a K-1 is
6 because regular US corporations don't issue K-1s.
7 Only subchapter S corporations issue a K-1. The
8 1120 is not a flow-through.

9 Q. Okay. Do you do payroll for Flowertown,
10 LLC, as well?

11 A. We do.

12 Q. All right. Does Ms. Billips draw a
13 salary from Flowertown as well?

14 A. No, sir.

15 Q. Okay. She doesn't pay herself at all --

16 A. No, sir.

17 Q. -- from Flowertown, LLC, to your
18 knowledge?

19 A. That is very true.

20 Q. Okay.

21 A. Proprietorships don't pay their owners
22 W-2 money.

23 Q. Does she get a K-1 out of Flowertown?

24 A. No, sir. Proprietorships don't issue
25 K-1s. She has a drawing account. That's the way

1 schedule C self-employed people get paid. It's
2 just through their drawing account.

3 Q. Does she get paid on a drawing account
4 for Flowertown?

5 A. Yes, sir.

6 Q. How much and how often is it?

7 A. You would have to show me the books, and
8 I'll have to go through with you and tell you
9 every penny she gets.

10 Q. Well, a second ago, you had extensive
11 knowledge of this company to testify that --

12 A. Do what?

13 Q. A second ago, you had extensive
14 knowledge to answer Mr. Rannik's question about
15 the profitability of this business.

16 A. I do.

17 Q. Okay. Well, so Flowertown, you don't,
18 though; is that correct?

19 A. Come again?

20 Q. For Flowertown and how much Ms. Billips
21 gets out of Flowertown, you don't have knowledge,
22 as you sit here today?

23 A. I don't have knowledge of -- I do have
24 knowledge.

25 Q. Okay. So how much does Ms. Billips

1 receive from Hlowertown?

2 A. I don't have those books before me.

3 Q. Do you have any idea?

4 A. If I had access to the books, I'd tell
5 you every penny.

6 Q. Do you have any idea of how much?

7 A. Not right now.

8 Q. No ballpark at all?

9 A. I do over -- between 350 and 400 tax
10 returns a year. I don't keep up with the exact
11 amount each one draws. I have an idea of how
12 much many of my clients draw, but I've never had
13 a reason to know exactly how much that she drew
14 out of her drawing account.

15 Q. So Ms. Billips' accountant knows the
16 amount of hours she works, every holiday she
17 works, but does not know how much she is getting
18 paid?

19 A. Counselor, every two weeks, I'm reminded
20 of how much she makes and every one of her
21 employees. I have only reason to glance at her
22 drawing account if I so choose to once a year
23 when I do her personal tax return. And if I
24 don't have a reason to look at her drawing
25 account at that point, I don't look at it.

1 Q. So you don't always have a reason to
2 look at her drawing account in filing her
3 individual tax returns?

4 A. I do not have a reason to look at her
5 drawing account when I'm filing her personal
6 return.

7 Q. Well, how do you relay that information
8 to the tax agencies then if you don't look at the
9 drawing account?

10 A. That's a good question, Counselor.
11 Number 2, her drawing account is charged to a
12 balance sheet account. Okay?

13 It doesn't appear on the profit and loss
14 statement. She gets the profit of the company or
15 the loss of the company reported on her personal
16 return through filing of the schedule C.

17 Q. So the profit and loss statements that
18 you get do not show the whole financial picture
19 of the company? Is that what you're saying?

20 A. The profit and loss statement only shows
21 the income and expense. It does not show the
22 balance sheet. It doesn't show the increase or
23 decrease in the balance sheet accounts.

24 Q. The draw account is not an expense? I
25 mean, there's money flowing out of the company,

1 isn't there?

2 A. I've never known in the past 51 years as
3 it being an expense on a proprietorship account.

4 Q. It's not --

5 A. And if I put it on a schedule C, I'm
6 sure I'd be the first one to know about it
7 whenever I sent it to Chamblee, Georgia, or --

8 Q. It's not an owner paying themselves?

9 A. It is, but it is not reflected on the
10 profit and loss statement. It goes to the tax
11 return. It's a balance sheet item. You don't
12 follow a balance sheet on schedule C when you
13 file the return. You only file on a partnership
14 and a corporation.

15 Q. And you do not use the balance sheets
16 when preparing the tax returns? The 2010 tax
17 returns through the 2019 tax returns that you
18 went over through -- with Mr. Rannik, do not
19 include the numbers on the balance sheets?

20 A. For Flowertown?

21 Q. Alex's Restaurant, Incorporated?

22 A. Wait a minute. Wait a minute. You were
23 talking about Flowertown. Which one did you --

24 Q. For Alex's Restaurant, Incorporated --

25 A. For Alex's Restaurant, Incorporated?

1 Q. -- you don't use balance sheets to come
2 up with the numbers you filed --

3 A. I follow balance sheets on every 1120
4 for the past 51 years.

5 Q. And owners of companies can pay
6 themselves on draw accounts, and that is not
7 reflected in the numbers that you're reporting in
8 your tax returns; is that correct?

9 A. A corporation doesn't have an account
10 called a drawing account. I am confused with
11 your terminology.

12 Q. Does Ms. Billips have a drawing account
13 on Alex's Restaurant, Incorporated?

14 A. Zero, zero. Absolutely zero.

15 Q. Okay.

16 A. There's no such thing. There's no such
17 thing in a corporation's set of books as a
18 drawing account.

19 Q. Is there something similar?

20 A. (No audible response.)

21 Q. Is there something similar?

22 A. No, sir. Well, I reckon you can call it
23 a W-2, a salary, a payroll check.

24 Q. Okay. So Ms. Billips gets a W-2; is
25 that correct?

1 A. From which business?

2 Q. From Alex's Restaurant, Incorporated?

3 A. Yes, sir.

4 Q. Okay. And so was her payroll tax
5 being -- whenever you got into the payroll tax
6 dilemma, was her payroll tax being paid, or was
7 that also in the lien amount?

8 A. Ask me that question again.

9 Q. Whenever Alex's Restaurant, Incorporated
10 got behind on the payroll tax -- I believe they
11 have a couple times.

12 A. More than a couple.

13 Q. Was Ms. Billips' W-2 payroll taxes being
14 paid or were they included in the amount that the
15 lien was placed on?

16 A. When you file payroll tax reports, you
17 don't file and pay taxes on any one individual
18 employee. You file and pay it on a 941 form.
19 Ms. Billips' W-2 was on a 941 form along with the
20 other 59 employees as a group, as a form 9,
21 according to the report. She was included in
22 that army of employees --

23 Q. Okay. So --

24 A. -- collectively.

25 Q. Gotcha.

1 A. Not individually.

2 MR. RANNIK: Judge, can I just
3 briefly state, I have no problem with counsel
4 checking it with cocounsel, but I can't really
5 tell who's performing this examination with the
6 number of whispers I'm hearing. Can we have one
7 counsel please cross-examine Mr. Fox?

8 THE COURT: Mr. Ellis is doing
9 that.

10 MR. RANNIK: Thank you, Judge.

11 MR. ELLIS: Nothing further, Your
12 Honor.

13 REDIRECT EXAMINATION

14 BY MR. RANNIK:

15 Q. Mr. Fox, what are your obligations to
16 the IRS when you file a tax return on behalf of
17 the client?

18 A. My obligation is to file a tax return
19 that -- that pays the IRS what is due to be paid
20 to reflect income and expense as they would
21 expect it to be reported.

22 Q. Do you have an obligation to report
23 accurately?

24 A. I do.

25 Q. Do you take that obligation seriously?

1 A. As long as I enjoy my freedom. Yes,
2 sir. I take it most -- I take it very seriously,
3 Mr. Rannik.

4 Q. And so do you have any reason to doubt
5 the veracity of the information you receive from
6 Alex's, Inc.?

7 A. About the -- you mean, about the lack of
8 knowledge?

9 Q. Do you have any reason to doubt the
10 veracity of the information you receive from
11 Alex's, Inc.?

12 A. You mean the correctness of it?

13 Q. Correct.

14 A. Counselor, none at all. I've never -- I
15 have -- in the past 51 years, I have never -- and
16 never is a bad word to use. I mean, it's loosely
17 used. I've never had Alex, Sr., or Carolyn
18 Billips to ask me to do one thing to avoid paying
19 income tax on their behalf.

20 As much as they may have gotten behind,
21 they have always -- and I can assure you that if
22 I filed the incorrect tax return for them, that
23 would disappoint the IRS' expectations, I
24 wouldn't be sitting here today. There's no doubt
25 in my mind.

1 I have got to maintain a certain
2 standard for Ms. Billips to be -- continue to be
3 hired by her. She does not tolerate errors on my
4 part, I can assure you of that.

5 Q. Now, Mr. Fox, you heard Tony Billips
6 testify as to his estimates of annual revenues
7 from Alex's Restaurant. Do you remember that?

8 A. Yes, sir.

9 Q. And he testified that Alex's would
10 generate \$12 and a half million in annual
11 revenues. Do you remember that?

12 A. I do.

13 Q. Has Alex's, to your knowledge, ever
14 generated annual revenues anything like that?

15 A. If I had been slightly aware of that, me
16 and Al Capone would be laying in the same bed
17 today.

18 Q. So in other words, no, that's not an
19 accurate revenue?

20 A. It's absolutely frivolous. It is
21 absolutely frivolous, without a doubt.

22 MR. RANNIK: Thank you, sir.
23 Nothing further, Judge.

24 THE COURT: Would you hand him --
25 well, actually, hand me that Defense Exhibit to

1 the left, all the way to the left. Let me see
2 that one. I think that's what I'm after.

3 Mr. Fox, let me turn your attention
4 to -- it's Defendant's Exhibit 6. I believe it's
5 in front of you on the table there. It's the
6 profit and loss that says December of 2020,
7 January through December 2020.

8 THE WITNESS: Yes, sir.

9 THE COURT: All right. And then
10 following that is profit and loss for almost a
11 two-year period, the July '19 through March 2021
12 time period. Is that behind it?

13 THE WITNESS: We're in -- this
14 first one is January through December. It covers
15 a calendar year.

16 THE COURT: Correct.

17 THE WITNESS: Which Alex's is on a
18 fiscal year as we know.

19 THE COURT: Right. Yes, yeah. I
20 wanted to get that. And then the next -- if you
21 flip over, at least on the document I got --

22 THE WITNESS: Right.

23 THE COURT: -- it takes in a
24 two-year period of time.

25 THE WITNESS: Yes, sir.

1 THE COURT: July '19 through March
2 of 2021.

3 THE WITNESS: Yes, sir.

4 THE COURT: Can you reconcile those
5 two? I've got about \$400,000 over the course of
6 a calendar year, but if we add another eight
7 months, two-thirds of a year, I get over --

8 THE WITNESS: And you got a
9 \$400,000 difference?

10 THE COURT: I got a \$700,000
11 difference.

12 THE WITNESS: Well, the January
13 through December covers 12 months there.

14 THE COURT: So then --

15 THE WITNESS: You're not comparing
16 apples to apples here when you're talking about
17 January through December and then --

18 THE COURT: We're off the tax
19 returns, right? We're off the standard profit
20 and loss. We're just showing what's gross
21 income.

22 THE WITNESS: I don't know -- I
23 don't know why you said we were off \$700,000.

24 THE COURT: Well, I've got --

25 THE WITNESS: Because we're not

1 comparing two like items.

2 THE COURT: I got four round
3 numbers. I got \$400,000 of income in calendar
4 year 2020. If I had five months of 2019 and
5 three months of 2021, I'm at \$740,000 --
6 actually, \$750,000 of income. That 440 has got
7 to be included within the 1.14, wouldn't it?

8 THE WITNESS: Sir?

9 THE COURT: The \$400,000 from
10 January through December of '20, the first page,
11 has got to be included within the gross profit
12 for the same period of time.

13 THE WITNESS: You might be talking
14 about the PPP loans missing.

15 THE COURT: Well, that was where I
16 was with Ms. Billips earlier today. I'm trying
17 to figure out if this included the PPP money or
18 what's going on here.

19 THE WITNESS: I do not see where
20 this includes PPP money at this point. I can't
21 locate it one here. My guess is that those two
22 PPP loans are not on these statements.

23 THE COURT: Okay.

24 THE WITNESS: But they were on my
25 tax returns when I filed them.

1 THE COURT: They were?

2 THE WITNESS: Absolutely, yes, sir.

3 THE COURT: Okay, okay.

4 THE WITNESS: Without question,
5 absolutely.

6 THE COURT: And then, do you have
7 those tax returns in front of you that we were
8 just going over?

9 THE WITNESS: I do.

10 THE COURT: All right. Help me
11 out. Let's start with 2010. I've got really two
12 questions just to finalize some of my thought
13 process here.

14 On the federal return for 2010 for
15 Alex's Restaurant -- we went over this earlier.
16 Total income was 2.3 million; taxable income was
17 786,157, but then there was a loss at line item
18 number 29.

19 THE WITNESS: Yes, sir.

20 THE COURT: Can you tell me where
21 that came from? Because I'm assuming your
22 taxable income then went to zero; is that right?

23 THE WITNESS: That loss -- if my
24 memory serves me correctly, and I almost know it
25 is, that was when the blackjack machines were

1 taken out of South Carolina the year before. And
2 it was devastating to this company.

3 THE COURT: Right, right. Okay.
4 All right. Substantial difference in income from
5 the --

6 THE WITNESS: Yes, sir. No
7 comparison. Yes, sir, especially the profit
8 line.

9 THE COURT: -- from 2010 to 2011.
10 And then flip on over to 2011 if you would. Here
11 we had total income of only 345 that year, and
12 the taxable income was a loss.

13 THE WITNESS: Yeah. When the
14 gambling machines were taken out, the people quit
15 coming in.

16 THE COURT: Okay. All right. And
17 I think we went through -- we went through that
18 line by line from there. I did some
19 calculations. Hold on a second.

20 Where was the -- maybe you can help me
21 out. I think it must be the Plaintiff's Exhibit
22 19, the Alex's two weekly sales reports. Do you
23 have that in front of you? It's a single page
24 sheet. It says January to March '19, April to
25 June '19? Do y'all have that one?

1 THE WITNESS: Judge, I don't have
2 anything for '19.

3 THE COURT: All right. So again
4 this is for a calendar year basis. Let me hand
5 this to Mr. Fox if you would.

6 Again, this is a calendar basis and not
7 the tax year, but it divides the -- it looks like
8 it divides gross sales into quarters; each
9 quarter one, two, three, and four.

10 THE WITNESS: Yes, sir.

11 THE COURT: Have you seen that?
12 Does that look familiar at all?

13 THE WITNESS: I am going to -- I
14 have to tell you, Judge, I've never seen the
15 likes of this in my lifetime.

16 THE COURT: Okay. Okay. That's
17 not how you receive information, is it?

18 THE WITNESS: No, sir.

19 THE COURT: I think the testimony
20 was that that was prepared for the PPP
21 application.

22 THE WITNESS: Well, it certainly
23 could. I mean, the computer has the capabilities
24 of dividing and subdividing.

25 THE COURT: Okay. And so back to

1 that same time frame, if I tally those up
2 correctly, gross for the year is somewhere around
3 \$1.742 million. Is that reflected on there?

4 THE WITNESS: It shouldn't because
5 this -- this is a calendar year reporting, and my
6 corporations are a fiscal year.

7 THE COURT: I'm with you on that.
8 I'm moving you away from the tax returns onto
9 whatever financial statement has been provided.

10 THE WITNESS: Okay. Yes, sir.

11 THE COURT: Again for the PPP
12 loans, right?

13 THE WITNESS: Okay. Yes, sir.

14 THE COURT: You've got to qualify
15 for those PPP loans. So they're showing for --
16 what that shows me, assuming it's correct, is
17 almost \$1.75 million of gross sales in 2019.
18 Does that conform with what you're seeing?

19 THE WITNESS: Yes, sir.

20 THE COURT: And we had discussed
21 earlier today when Mr. Ewart was here. I think
22 he had taken numbers that Mr. Billips had
23 provided and used a figure of 1.425 million for
24 that calendar year, that 2019 year or that
25 location. I think it's that location.

1 That would be accumulative -- to the
2 best of your knowledge, is that an accumulative
3 document, or you just had no knowledge of that
4 thing, whatsoever, do you?

5 THE WITNESS: This?

6 THE COURT: Yes, sir.

7 THE WITNESS: I don't -- I've never
8 seen this before.

9 THE COURT: Okay. Okay. All
10 right. I'm with you. I'm with you.

11 THE WITNESS: But that doesn't mean
12 that they don't produce them every day at their
13 shop. I mean, they never have a reason to give
14 these to me.

15 THE COURT: Right. I'm with you.
16 Okay. All right. I just wanted to make sure I
17 was clear on that one. Do y'all have any
18 questions about that? That was the one I wanted
19 the numbers on earlier today.

20 MR. ELLIS: Just real quickly, Your
21 Honor.

22 REXCROSS-EXAMINATION

23 BY MR. ELLIS:

24 Q. Mr. Fox, did you prepare the payroll
25 protection program application on behalf of

1 Alex's, Incorporated?

2 A. I'm going to tell you the -- one of my
3 secretaries may have helped April do it. I
4 personally had no knowledge of it.

5 Q. Okay. And so that would be the -- the
6 payroll protection program, would that be --

7 A. This looks like something that would
8 supplement the PPP forgiveness application.

9 Q. Is the payroll protection program, is
10 that a representation to the IRS?

11 A. Not the -- well, it's the same
12 difference, SBA. I mean, it's federal.

13 Q. Okay.

14 A. It's a Federal Agency.

15 Q. So your office would strive to relay
16 accurate information, correct?

17 A. We never strive to relay any inaccurate
18 information, Counselor.

19 MR. ELLIS: Thank you.

20 THE COURT: Very good. Anything
21 further?

22 MR. RANNIK: None for me, Judge.
23 Thank you.

24 THE COURT: Thank you very much,
25 Mr. Fox. I appreciate your help.

1 MR. RANNIK: And, Judge, with that
2 the defense rests.

3 THE COURT: Very good. Thank you,
4 sir. All right. Tell me we don't have anything
5 in rebuttal.

6 MR. ELLIS: No, sir, we don't.

7 THE COURT: There you go. All
8 right. Do you want to be heard briefly? And
9 what is it that plaintiff seeks? I'll be glad to
10 hear from y'all as to what y'all think the values
11 are and what you see.

12 MR. ELLIS: Your Honor, it appears
13 that the defense has offered nothing as far as
14 value today.

15 We believe that Mr. Ewart's -- based
16 upon him being limited by the amount of
17 information that was given to us and learning
18 that indeed Alex's has monthly, weekly, and daily
19 reports as Mr. Fox testified to, we believe
20 Mr. Ewart did a fantastic job coming up with his
21 alternative-based calculated values.

22 The only numbers we were able to
23 actually corroborate with Mr. Billips were the
24 Goose Greek numbers, and the payroll protection
25 plan is very close the Dixon Hughes numbers that

1 Mr. Ewart got were very close.

2 And that lends the reliability and
3 credibility of Mr. Billips' numbers as to that
4 restaurant, and it suggests that he also has
5 reliability and credibility as far as his
6 recollection of the gross sales of the remaining
7 Alex's Restaurants.

8 And so we do think that Mr. Ewart's
9 alternative-based calculated values is a fair and
10 accurate representation for the Court to consider
11 in placing the value on the individual units.
12 You also heard Mr. Billips testify as to his
13 knowledge and experience in owning and operating
14 these restaurants and the numbers he placed on
15 those.

16 And so, Your Honor, we do not ask for a
17 specific number, but we do think there is ample
18 evidence before the Court to make a fair and
19 accurate valuation in the Court's discretion.

20 THE COURT: All right. So let's
21 talk about that just for a second because what
22 I'm -- I've got to give y'all the numbers is what
23 I'm going to have to do.

24 So is it your position that each of the
25 individual units should be tallied up and create

1 a value for Alex's, Inc.? Is that the
2 plaintiff's position?

3 MR. ELLIS: Yes, Your Honor.

4 THE COURT: All right. And is that
5 notwithstanding the fact that at least five
6 locations have been sold? Y'all still think that
7 there's a value that's owed for those five that
8 have been sold?

9 MR. ELLIS: Well, and that gets
10 into why it's hard to do without going into the
11 malfeasance, which -- of the defendants in this
12 case because we do think that these multiple
13 units were grossly undervalued because they were
14 liquidated for paying for Ms. Billips' individual
15 liabilities and for her other companies'
16 liabilities.

17 So that was the reason in the beginning
18 we thought that with this Court not having
19 jurisdiction or the remaining causes of action,
20 we thought it was proper to go to the other court
21 with all of it.

22 So the fact that the individual units
23 were attributed value by Mr. Ewart as of the time
24 they sold, we think that those -- and then you
25 heard Mr. Fox testify that those units would not

1 have been sold, but for the tax lien. So we
2 think the reason they're not ongoing restaurants
3 today is because of the malfeasance that has been
4 in liquidating the assets.

5 So we do think that it's fair to place a
6 valuation on the units individually as of the
7 time they sold and of course with Mr. Ewart's
8 alternative-based calculated value.

9 THE COURT: All right. Very good.

10 MR. ELLIS: And which, of course,
11 those numbers are minus the dirt, which
12 Mr. Billips did provide insight into the
13 valuation of the dirt.

14 THE COURT: You're not trying to
15 value the dirt; is that right?

16 MR. SAUTTER: The value of the dirt
17 is what it was sold for --

18 THE COURT: Right.

19 MR. SAUTTER: -- and what came out
20 of the, you know, the sales purchase.

21 THE COURT: Essentially, that's
22 what I saw.

23 MR. SAUTTER: Yes, sir.

24 THE COURT: I assume that was
25 consistent throughout.

1 MR. SAUTTER: Yes, sir.

2 THE COURT: All right. Very good.
3 Mr. Rannik?

4 MR. RANNIK: Thank you, Judge. As
5 you might imagine, I see this differently.

6 THE COURT: I'm calling this the
7 tale of two sides. Okay? This is almost like a
8 coin.

9 MR. RANNIK: And to pick up where
10 we just started, I believe the plaintiff's
11 position is that the tax liens existed because
12 there was malfeasance.

13 The tax liens existed because the
14 restaurants were not profitable because of
15 recessions, loss of video poker revenue, increase
16 in competition in the area, rising food prices,
17 you name it. That is a bridge that there is no
18 causal link between any malfeasance. No
19 malfeasance has been shown. There's just been
20 innuendo, but there's certainly no causal link
21 between a tax lien and malfeasance.

22 So let me start there. No, we do not
23 agree that any current value would exist on the
24 units that were sold. They were sold to keep the
25 business afloat. The business would not be here

1 today if those units had not been sold.

2 Now, some of the proceeds, yes, we
3 acknowledge, were used to pay off other
4 obligations for Flowertown. Judge, the evidence
5 before you, I think you will find that \$192,000
6 is the total amount that ended up going to
7 Flowertown debts.

8 THE COURT: Okay.

9 MR. RANNIK: You will also find
10 that over \$160,000 of Ms. Billips' personal
11 assets came in to pay Alex's obligations.

12 So, okay, maybe there's a delta, and,
13 actually, I have the calculation here. It
14 basically came to about \$20,000 of a delta there.
15 And we acknowledge that's there, and Ms. Billips
16 wants to know what her obligation is, and she
17 will take care of it.

18 But, no, Judge, the requested relief was
19 a valuation of Mr. Billips' interest in Alex's
20 Restaurants, Inc. The interest must be
21 calculated as it exists today; otherwise, we're
22 picking arbitrary years. 1985 was a good year.
23 Let's use that year.

24 The other thing is, it's a minority
25 interest, and there hasn't been any evidence

1 about what the impact of a discount for a
2 minority interest is. But we would ask that the
3 Court take that into account.

4 And, you know, Mr. Ewart has calculated
5 a value of \$361,000 for Goose Creek. You know,
6 we don't have a financial expert. Maybe that's
7 right. I don't think so, though, because it's
8 based on information that has not been proven to
9 be reliable.

10 Now, the Court has before it the
11 revenues from Alex's from 2010 onward, and the
12 Court will make its determination, and we thank
13 the Court for its report.

14 THE COURT: Let me -- let's talk
15 about Mr. Ewart's report here for a second
16 because we -- ultimately, I think they showed two
17 separate numbers, and I think it was that -- if
18 memory serves me right, I wrote it down. The
19 number, as he calculated it from Mr. Billips'
20 testimony, was sort of the median, I think he
21 testified to earlier, if I'm right about that.

22 MR. ELLIS: That was the number
23 that he gave at 158.

24 THE COURT: Yeah, yeah. I have a
25 calculated value of 361 for Goose Creek. My

1 notes reflected that if we took the value of -- I
2 believe it was Mr. Billips, we came in around
3 398. If we followed the tax returns, which was
4 supposed to be effective in '14 and he later
5 corrected that to '10, it came to around \$349,000
6 with a high value of 482.

7 So 361 is certainly within that range,
8 and I think that anybody would tell you that
9 you're looking at a -- looking at a dynamic
10 number. You're looking at a number that's
11 probably going to move. So then you've got to
12 calculate what that figure would be.

13 The reason that I went into the -- I was
14 giving y'all my thoughts. Okay? The reason I
15 went into that 2019 income statement -- it's not
16 really an income statement. It's a statement of
17 gross income for the year '19 -- was that it
18 appeared for that time period.

19 And again, I was trying to figure out
20 where that came from. How much income was being
21 generated by the restaurant during that year?
22 That's one of the most recent full years that
23 we've got available here. And I came up with the
24 1.7 -- close to \$1.75 million in gross sales.

25 So in order to do taxes, you back out

1 all these expenses, I understand that. But
2 you've got to value the business as a going
3 concern, it seems like to me. So what's the
4 value of the going concern? Is it a going
5 concern? Question number one. Two, can it be a
6 going concern?

7 I think the evidence before the Court is
8 that it would not be a going concern but for the
9 efforts of Ms. Billips. Okay? So I meant to ask
10 that question. She testified about some life
11 insurance. I don't know whether that was key man
12 life insurance.

13 I meant to ask that question as to
14 whether or not she had that on her. But anyway,
15 she testified the insurance went into the
16 business to keep the -- it kept the business
17 going and allowed it to expand in the '80s, which
18 was an expansive economy at the time.

19 MR. RANNIK: It was indeed. Judge,
20 can I respond to one thing that Your Honor said?

21 THE COURT: Sure.

22 MR. RANNIK: Your Honor said that
23 the last full year on record that we have is
24 2019. I believe the 2020 is up there.

25 THE COURT: Yep. I've got the 2020

1 statement here, and this does say January 2020.
2 Of course, that's the COVID year, right?

3 MR. RANNIK: It is. And
4 unfortunately, it's the reality that the business
5 still operates in.

6 THE COURT: Yeah. And that's why I
7 flip -- kept flipping over on -- this is
8 Defendant's Exhibit 6 we're talking about. I
9 kept flipping over to the second page, which
10 picked up again five months of '19 and three
11 months of '21.

12 And I was having a hard time
13 reconciling. You've got \$400,000 of income in
14 '20, but you've got another almost \$750,000, if
15 you just add those other eight months to it. So
16 that's a substantial difference that shows what
17 can happen in a decent market, if we could ever
18 get rid of this COVID crises.

19 But let me just say that I'm well
20 familiar -- because I've been sitting up here
21 long enough, I guess, to know it. I'm well
22 familiar with what happened in this economy, in
23 this world, in this country in 2008 and the
24 following years. And it took years to climb out
25 of that crisis.

1 And I'm well aware of what's happened in
2 the last year and a half since COVID has hit us.
3 It has just been unbelievable. So I think I do
4 have to put those into consideration as to what I
5 do.

6 So let me tell you -- just, I'm going to
7 give y'all some of my -- again, some of my
8 thoughts. I'm not ready to make a final
9 decision, but I wanted y'all to get some idea as
10 to where I'm coming from.

11 I don't know that a valuation in and of
12 itself can be gleaned from the tax returns, and
13 that was some of the testimony that Jim Ewart
14 gave this morning. I'm familiar with Mr. Ewart,
15 as y'all saw. He has testified in this Court a
16 number of times.

17 What gives me concern, of course, is his
18 inability to render an opinion of value. That I
19 have a problem with, and he had a problem with
20 it. But it was because he couldn't -- didn't
21 have the data he needed to test the data for
22 reliability. He did, however, come to his
23 calculated transacted value, and so he was able
24 to give some rendering of value.

25 So if I were to take his figure of

1 \$361,000 as the calculated value of the units of
2 Goose Creek -- and I think that's the only one
3 that we're really dealing with here. I'm talking
4 about Flowertown in a second. I assume that
5 Mr. Billips' interest in that would be the 18.33
6 percent.

7 Okay. To that, there generally is a
8 reduction in value for a minority interest.
9 That's a figure that can be calculated any number
10 of ways. I see it often in a buyout of a
11 partnership interest. Generally, this Court
12 deals with real estate matters.

13 This is an ongoing business, and it's
14 largely dependent upon the efforts of Ms. Billips
15 over there. I don't think if it was for her,
16 that the business would still be open is what it
17 sounds like to me. And so there should be some
18 credit there.

19 I don't have -- I don't believe I have
20 enough information to render a value as to the
21 other units that have been sold. It would appear
22 to me that they were sold, and I don't know
23 anybody that sells for less than what they think
24 they can get. That's just the way of the world.
25 Nobody wants to go into something to sell it at a

1 loss.

2 So I believe that there was a reason for
3 the essentially forced sale of the business. I'm
4 trying not to step into the plaintiff's other
5 causes of action here. I just want y'all to know
6 why I'm saying what I'm saying. However, it is
7 very clear to this Court that from those sales of
8 the property, there were payments made on behalf
9 of the Flowertown Restaurant.

10 And so again, I'm going to try not to
11 step into the realm, but there's some question as
12 to the commingling of funds, whether or not that
13 should in fact be considered a part of the
14 Alex's, Inc., process.

15 So I think there's got to be some way
16 for this Court to make some sort of determination
17 of what that value is. Either the value of the
18 Flowertown Restaurant, which has not been
19 presented to me, or I think what Mr. Ewart did
20 was say there was some sort of royalty or stream
21 of payments that should be made.

22 That's exactly what Mr. Rannik was
23 talking about just now when he got to a delta of
24 some \$20,000. I'm not sure I totally got the
25 \$160,000 figure versus what that was, but I'm

1 going to ask y'all to prepare orders along these
2 lines so y'all can -- y'all can establish that
3 for the benefit of the Court based upon the
4 record that we do have. Okay?

5 Ultimately, I've got to give y'all a
6 number, and the sad part about this, at least
7 unless y'all can resolve it is, this doesn't end
8 the litigation.

9 That's one of the reasons I was so
10 adamant that, let's get this thing over and done
11 with. Y'all have been living with this thing
12 long enough. Plaintiffs tried to sneak out from
13 under me. I wasn't going to let them do that.

14 MR. SAUTTER: It wasn't the
15 plaintiff; it was his counsel.

16 THE COURT: I wasn't going to let
17 you squirm out from under me. I've got a job
18 I've got to do. Okay. So those are really my
19 thoughts. That's kind of where I am on this
20 thing.

21 I've got what I think is a range. It's
22 a range anywhere of a negative number because the
23 tax returns say we don't make -- we don't make
24 income anymore up to what I saw in 2019 of \$1.75
25 million, the ability to make that income. And

1 that always figures into what the value of the
2 business could be.

3 But ultimately, the value is determined
4 by arm's length transactions. Okay? And so
5 clearly, plaintiffs made one offer. I will be
6 glad for you to give me that value, and the
7 defendant is entitled to sell it to them if they
8 want to sell it to them or not sell it to them if
9 they don't want to sell it to them. That's how
10 you get to those sort of transactions.

11 So when I see the size of the liens that
12 are on the settlement statements, and then I saw
13 the basis for it on page 2; so that was very
14 helpful to the Court's analysis as well. It
15 would appear to me that these are less than arm's
16 length transactions.

17 They all seem to have been taken, and
18 they also all have been -- all occurred, at least
19 the numbers I've looked at, in the 2011, '12, '13
20 timeframe. And I know for a fact that in 2010,
21 you couldn't give some property away in this
22 town.

23 And it really took until about 2014 to
24 sort of get out of that ballpark. So we've had a
25 pretty good run for the last six years until

1 March of last year when everything -- this
2 economy just totally stopped. So I'm trying to
3 get that ball rolling again.

4 I hope that helps, but I need proposed
5 orders setting forth why you -- and supporting
6 why it is that you think your case is worth a
7 million dollars or zero dollars. Okay? We'll
8 take a look at those, and I may call y'all back
9 for some more information.

10 I may contact you for more information
11 so I can have a clear understanding of what it is
12 that we're doing. Okay? But I'm trying to
13 answer the question that's been put before me and
14 not answer the questions that aren't before me.
15 All right? Okay. Anything further? I will
16 start with the defense.

17 Any further, Mr. Rannik, on your side?

18 MR. RANNIK: Judge, I was going to
19 ask if the Court would consider sealing the
20 record. There has been some sensitive, personal
21 matters raised in this week's coverage. I
22 understand why the Court needed to hear what it
23 needed to hear.

24 But I don't know that there's any reason
25 for the -- that to become public record, and we

1 would ask the record to be sealed.

2 MR. SAUTTER: Judge, it's rare to
3 seal any kind of record these days. We've got an
4 open skylight policy on it. These issues that
5 came up were admitted ultimately by Ms. Billips.
6 It is what it is.

7 And maybe we can reach some kind of
8 agreement to settle this case and to seal the
9 record. But we're going to need that information
10 to go across the hall and we are going to, you
11 know -- I just oppose to any kind of sealing of
12 the record.

13 THE COURT: I understand the
14 request, and we've tried to dance around it. I
15 would, for the benefit of y'all -- you know, this
16 was brought before me, I think on very first
17 hearings we had. That must have been at least
18 three years ago.

19 And I just didn't find it to be relevant
20 to the issue of what's the value of this
21 business. Okay? Clearly this is -- it's a
22 family matter. Okay? I call this Court the
23 family court of real estate. This is a business.
24 All right? This is a family business is what
25 this boils down to.

1 So it's no different from that
2 standpoint. I think it's a difficult thing that
3 I often find. Frankly, I find that things can be
4 cathartic that way; if you can get that stuff out
5 and get it behind you and move on with your
6 lives.

7 But that having been said, I don't think
8 it's relevant on this particular inquiry. We
9 acknowledged it. I think we danced around the
10 head of the pen.

11 I do think if y'all get into whatever
12 takes up malfeasance, I think it's going to be a
13 tougher issue for the trial court in front of a
14 jury to make a decision as to how that's going to
15 be played out. And that's why I was willing to
16 give a little bit of leniency on the issue today.

17 But I'm not inclined to seal the record
18 based on what's going on in this case so far. I
19 do think y'all got a bigger issue to deal with
20 here, and if this case progress as it may well.
21 But again, I don't think that's something I have
22 to touch. That's not going to be my -- within my
23 jurisdiction, I hope. Okay?

24 So based on that, I'm not going to do
25 that. But I understand what you're asking me.

1 To the extent that it needs to be addressed
2 either in this order or in the future, I'm happy
3 to do that. But I don't generally seal the
4 record. I've been getting a lot of requests to
5 seal the records lately. I'm not sure what
6 that's all about.

7 But I'm not generally in favor of it,
8 and I know, as a general rule, our Rules of Civil
9 Procedure are not in favor of that. So there's a
10 certain procedure to follow if y'all want to do
11 that. It's Rule 41.1. And I don't have the
12 motion in front of me; so I'm not going to grant
13 it on that basis. All right?

14 MR. RANNIK: Understood. Thank
15 you, Judge.

16 THE COURT: Very good.

17 Mr. Ellis, anything?

18 MR. ELLIS: Nothing from the
19 plaintiff, Your Honor.

20 THE COURT: All right. Very good.
21 For the benefit of the parties, you know, we've
22 got this thing. It is and has been a long
23 onslaught of information.

24 And I think y'all have done a good job
25 of -- as the lawyers, of fine-tuning this thing

1 to get it down to a record that needs to be put
2 before the Court. I'm well aware that any case
3 that comes in here is the most important case in
4 your lives. I'm well aware of that.

5 Ms. Billips, I appreciate the comments
6 that -- what I write down, to do the right thing,
7 okay. Just do the right thing. That's
8 ultimately what this Court is designed for. It
9 is a court of equity. I've got to follow the
10 law, but it is a court of equity. We try to do
11 what's the right thing in the case.

12 So my general practice -- and I'm going
13 to do that here -- I give the lawyers 30 days or
14 so to prepare a proposed order. To the extent
15 that y'all need a transcript, you can certainly
16 request that of my court reporter. If you need
17 any additional time, just let me know.

18 And then my goal is to give y'all an
19 answer within 30 days of that. Okay? So I know
20 that you need that in order to proceed with this
21 case, in any event. I don't foreclose the
22 possibility of y'all settling the matter if you
23 can.

24 Y'all can certainly engage in those
25 discussions, but I think you need to be in the

1 same ballpark in order to be doing that. And I
2 think this helps, frankly. Getting it out there
3 helps to get to that point. So it just needs to
4 be put out there and go from there. All right.
5 Thank you all very much.

6 MR. SAUTTER: Thank you, Your
7 Honor.

8 MR. ELLIS: Thank you, Your Honor.

9 MR. RANNIK: Thank you, Your Honor.

10 THE COURT: All right. Very good.

11 (The hearing was concluded at 3:22 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.

13 Should the signature of the witness
14 not be affixed to the hearing, the witness shall
15 not have availed himself/herself of the
16 opportunity to sign or the signature has been
17 waived.

18 I further certify that I am neither
19 related to nor counsel for any party to the cause
20 pending or interested in the events thereof.

21 Witness my hand, I have hereunto
22 affixed my official seal on October 12, 2021 at
23 Charleston, Charleston County, South Carolina

24
25

Jennifer M. Huggins
Court Reporter And Notary Public
My commission expires: 02/07/2022

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STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF CHARLESTON

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

Plaintiff,

vs. CASE NO. 2016-CP-10-6265

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.

Hearing before the Honorable Mikell R.
Scarborough, reported by Christine A. Smith, Court
Reporter and Notary Public, at 3:04 p.m. on April
23, 2019 at 100 Broad Street, Courtroom 2A,
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

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P R O C E E D I N G S

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THE COURT: We are here in the case captioned Tony Billips, individually and as a shareholder of Alex's, as Plaintiff versus Carolyn Billips, individually as trustee of Alex's Restaurants and Alex's, Case No. 2016-CP-10-6265. Present today for the Plaintiff is Mr. Mike Ellis, and for the Defendants, Mr. Jaan Rannik.

Mr. Rannik, these look to be your motions, and looking at them I've got three -- let me make sure we're clear on what they are. We have Defendants' Motion for Clarification filed December 28th. The next document in my records is a proposed 30-minute scheduling order which I signed, Defendants' Motion for Protective Order and stay filed February 28th. Then April 4th I received Defendants' Motion to Compel Discovery. Do you have each of those, Mr. Ellis?

MR. ELLIS: Yes, Your Honor.

THE COURT: And you're prepared for those as well?

MR. ELLIS: Yes, Your Honor. If I may approach with some returns?

THE COURT: Sure. Thank you.

1 MR. ELLIS: Thank you.

2 THE COURT: So let me just address the first
3 one. So I think I understand what you're asking for.
4 The consent -- I just want to be clear on this -- the
5 consent order of reference in this case entered
6 May 3rd was that the matter was referred to me with
7 regard to the accounting requested by the Plaintiff.
8 That was consented to -- there was a Motion to
9 Dismiss. I assume it was the whole case. I can't
10 recall. Anyway, Defendants' Motion to Dismiss and
11 for Further Relief is respectfully denied.

12 Motion for Clarification, Mr. Rannik?

13 MR. RANNIK: Thank you, Judge. You're exactly
14 right. There was a Motion to Dismiss the Entire Case
15 which was filed in February of 2018.

16 THE COURT: Right.

17 MR. RANNIK: We had a hearing before
18 Your Honor two months later, in April, and exactly as
19 Your Honor just stated, the Court found the consent
20 order of reference did not allow the Court to rule on
21 the entirety of the motion because the only issue
22 before the Court was on the accounting.

23 As far as we understood it, Judge, that was
24 the ruling. There was no ability for the Court to
25 rule. If I could hand up the transcript from the

1 hearing --

2 THE COURT: Let me just state this: You would
3 like clarification on that so that it's not a
4 dispositive -- a substantive ruling, strictly a
5 procedural ruling, and the Court doesn't have
6 jurisdiction to entertain it; is that right?

7 MR. RANNIK: Well, that's right, Judge. I
8 think actually as we sit here, I don't think that
9 there actually was an order entered disposing of that
10 motion. There was an order entered after that
11 hearing on another Motion for Dispositive filed at
12 the same time, so just for clarification so that we
13 know whether we need to file another motion or
14 whether we needed to go ahead and get our answer
15 filed, we would just like to know what the Court's --
16 we're looking for its guidance on where that motion
17 stands.

18 THE COURT: Okay. Very good. Mr. Ellis?

19 MR. ELLIS: Yes, Your Honor. From my
20 recollection the Court just said that due to the
21 referral of just the accounting action to you, there
22 was no subject matter jurisdiction.

23 THE COURT: Right. It's really a subject
24 matter jurisdiction. Let me just tell you-all this.
25 Since this case -- I think I had one pending at the

1 time, but since that time I got one sent back up to
2 Roger Young and Roger Young in his inimitable way
3 said, Mikell, between me making an appearance that I
4 don't know what I'm doing versus you don't know what
5 you're doing, he said, I'm going to overrule your
6 ruling. So this was signed off on by the clerk, but
7 I can tell you what would happen if it went up there.

8 So it is -- it was not this Court's intention
9 to make any substantive ruling, strictly a procedural
10 ruling. The Court was not asked to rule on that
11 issue, so I don't have jurisdiction to do that. I'm
12 happy to either address in an order from this hearing
13 to clear it or just do another Form 4, whatever you'd
14 like, just to make sure I'm clear on that.

15 MR. ELLIS: And I don't think an order was
16 ever entered. I think there was no Form 4 order
17 entered in this.

18 THE COURT: That's what I'm getting at. There
19 was no order.

20 MR. RANNIK: Correct, Judge. No order.

21 THE COURT: The Motion to Dismiss or for
22 Further Relief does not address that question; is
23 that what you-all are telling me? Is that you-all's
24 understanding?

25 MR. RANNIK: Correct, Your Honor.

1 THE COURT: All right. We just need to
2 clearly state that. We'll do that. If it's okay
3 I'll do it in a Form 4.

4 That brings up my next question for you-all.
5 Okay? I'm going to rule on the accounting, but the
6 underlying lawsuit, the accounting issue, is
7 basically an equitable issue. Generally the legal
8 questions are taken care of before the equitable
9 questions are. I want to make sure we don't have the
10 cart before the horse.

11 MR. RANNIK: Judge, you're absolutely right.
12 That's normally the way that these things go. In
13 this case I think the first issue to determine is
14 whether there's actually an asset to fight over.
15 That is a lot of our contention, and we would like to
16 just get it resolved whether there is or not. I
17 think that will speed this along actually most
18 quickly.

19 THE COURT: Okay. That would be worthwhile or
20 worth looking into. I'm with you on that one.
21 That's the genesis of where we are and how we've been
22 presented that way?

23 MR. RANNIK: Yes, sir.

24 THE COURT: I just want to be clear on that.
25 I've been scratching my head on that one a little bit

1 from the background as well. So then that gets us
2 to, I suppose, the Motion for a Protective Order.

3 MR. RANNIK: Well, Judge, I wonder if I might
4 actually go in a reverse order?

5 THE COURT: That's fine.

6 MR. RANNIK: With regard to this Motion to
7 Compel, I wonder if we can also seal the record for
8 this portion of the hearing.

9 (Whereupon, the following proceedings
10 were heard under seal; to wit.)

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(Whereupon, the following proceedings were heard in open court as follows:)

MR. RANNIK: Judge, with regard to the protective order, this part of the record does not need to be sealed.

THE COURT: Okay.

MR. RANNIK: As has been the subject of --

THE COURT: Let me just say for the record, yes, I'll grant the motion as to the sealing of that language. Okay? Very good.

MR. RANNIK: As has been the subject of a number of our hearings in this case, the defense still does not know what the specific allegations are that Ms. Billips has done wrong in this case. We have raised this in the Motion to Dismiss that we spoke about earlier. The Court granted Plaintiff 30 days to amend the complaint to increase the specificity. That did not happen.

We sought to learn what the allegations were through discovery, and that was done through discovery requests, interrogatories, requests for

1 production. That was not fruitful. We requested
2 that the Court and the Court ordered that the
3 Plaintiff prepare his experts to be deposed, and we
4 all remember what happened with Mr. Freeman's
5 deposition.

6 THE COURT: Right.

7 MR. RANNIK: We still await updated discovery
8 responses that detail what the experts' opinions are
9 and where they stand in this case. Now, Plaintiff
10 subpoenaed records from Defendants' expert,
11 Mr. Michael Fox, and he gathered his materials
12 together. What I understand from him is he reached
13 out to Plaintiff's counsel to see how he could
14 deliver them, how he wanted them presented, and never
15 heard back. That was in February.

16 From our point of view we've produced
17 everything that's been requested of us. We've
18 answered every interrogatory. In this context where
19 despite our efforts and the Court's efforts, no
20 clarity seems to be emerging as to what Plaintiff is
21 contending that we did wrong in this case. It would
22 be unjust to subject a woman in her 70s to a fishing
23 expedition of a deposition to see what might stick.

24 So that's the context of our Motion for a
25 Protective Order, and we would request that she be

1 protected from a deposition until Plaintiff and
2 Plaintiff's experts have been deposed or the
3 complaint has been amended to add greater specificity
4 to the claims.

5 THE COURT: All right. Mr. Ellis?

6 MR. ELLIS: May it please the Court? Thank
7 you, Your Honor. I am not -- Mr. Fox has not reached
8 out to me on how to produce -- we have missed each
9 other. I've called him asking when he will produce
10 and left a message, and he's called back and left a
11 message. So that's where we are with getting a
12 response to my subpoenas sent to their experts.

13 THE COURT: Okay.

14 MR. ELLIS: As far as our experts, we still
15 differ on what the language in that order said. It
16 said to make them available for a deposition. I
17 don't think it said to have them prepared and trial
18 ready by a certain date. We had made them available,
19 and once we realized that they were going to have
20 Mr. Freeman fly across the country just to be told
21 that they were not ready to take his deposition is
22 when we sought the protective order for our remaining
23 two experts so that they did not have to be told at a
24 scheduled deposition that they were not ready to be
25 deposed. That's the reason we filed our two

1 protective orders.

2 They are still available to be deposed if the
3 Defendants do wish to take their deposition.

4 Mr. Billips is ready to be deposed if they want to
5 schedule that, take his deposition. I did not see
6 any rules stating what order parties had to be
7 deposed. We did seek to have Ms. Billips deposed in,
8 I believe, late February. February 26th we had it
9 scheduled at which time Mr. Rannik filed his
10 protective order. We do not believe that any
11 particular harm has been alleged by us taking her
12 deposition.

13 We are in account before the Court. She is
14 the most knowledgeable person of the running of
15 Alex's Restaurant. We think that any information she
16 might have might be vital to this account, an action
17 where we can look to find more important knowledge as
18 far as the assets of this corporation. So we do not
19 think there's any harm into her asking -- picking her
20 brain as to the corporate assets. Again, we do not
21 think any particular harm has been alleged as to what
22 is required to receive a protective order.

23 THE COURT: Okay. So help me out with the
24 process and the business itself. I'm assuming --
25 what was the husband's name?

1 MR. ELLIS: Tony. Alex.

2 THE COURT: Alex Billips was Alex's? Okay.
3 And then she was married to him at some point in
4 time?

5 MR. ELLIS: She was.

6 THE COURT: He died and she sort of took over
7 the running of the businesses? Is that a fair
8 statement?

9 MR. ELLIS: She actually -- prior to his death
10 she was a 45 percent owner of the corporation.

11 THE COURT: So she's the one person that's
12 been continually sort of in the business, right? My
13 recollection is there's maybe one Alex's still in
14 business, or am I incorrect about that?

15 MR. RANNIK: There's two or three.

16 THE COURT: Two or three still in business?
17 All right. And the Plaintiff has or had an interest
18 in the business?

19 MR. ELLIS: That's correct, Your Honor.

20 THE COURT: Is that as a stockholder --

21 MR. ELLIS: Yes, Your Honor.

22 THE COURT: -- individually? And as
23 shareholder, right? Derivative action, correct?

24 MR. ELLIS: Yes, Your Honor.

25 THE COURT: Okay. And was he at all involved

1 in the business, in the running of the businesses?
2 Did he have one that he ran or anything like that?

3 MR. ELLIS: He primarily ran the Dorchester
4 Road, but he floated all up and down them. He was
5 more running the restaurant aspect as far as
6 inventory, food, cooking, scheduling of staff.

7 THE COURT: Less of the business side?

8 MR. ELLIS: Not so much the bookkeeping.

9 THE COURT: Right. Who does the Plaintiff
10 contend was in charge of that? Carolyn Billips?

11 MR. ELLIS: Carolyn Billips and they referred
12 us to their accountant when we were waiting for the
13 subpoena to be responded to.

14 THE COURT: Okay. And who was the accountant?

15 MR. ELLIS: Michael Fox.

16 THE COURT: That's Mr. Fox. He's the company
17 accountant basically?

18 MR. RANNIK: Yes, sir. He's the CPA.

19 THE COURT: Okay. And have records been
20 received from Mr. Fox yet, or is that what you-all
21 are waiting on at this time?

22 MR. ELLIS: That's what we're waiting on at
23 this time.

24 THE COURT: Would that benefit you-all
25 tremendously for Ms. Billips, for that stuff to be

1 made available before her deposition is taken?

2 MR. ELLIS: I would prefer it be produced
3 prior to her deposition.

4 MR. RANNIK: And we had spoken about that.
5 That was one of the reasons we were actually delaying
6 her deposition. Then there's the question of getting
7 Mr. Fox with Mr. Ellis so they can get the documents
8 exchanged. Mr. Fox has them gathered. They're ready
9 to go. He's just waiting for the go-ahead to -- how
10 he wants them produced.

11 THE COURT: Other than the experts, are there
12 other financial people that would be involved that
13 would need to be -- the information would need to
14 be -- I understand what you're asking me, but I don't
15 know how many years of history we're going to go back
16 into.

17 Again, you've got multiple locations. You've
18 got multiple stuff. I'm assuming it all rises up at
19 some point in time at some corporate level so you can
20 figure out what is a profitable location and what is
21 not a profitable location. All that kind of stuff
22 has got to be looked into.

23 I can't remember how old Ms. Billips is.
24 She's in her late 70s if I remember right; is that
25 right?

1 MR. RANNIK: Mid-70s, yes, sir.

2 THE COURT: So rather than go searching for
3 something, it would be better if you had a document
4 and you could show it to her and that would refresh
5 her memory, and then you're not sitting there waiting
6 for her to scratch her head for a while. I can
7 understand the basis for that.

8 I do think that she was probably the --
9 between her and Mr. Fox, unless there's some other
10 financial person out there, that's going to be the
11 basis for them to find an answer. You-all want to
12 know where they're going because, as you say, is
13 there an asset or is there not an asset? That should
14 become fairly clear when the financial records show
15 up. There are different ways to make those financial
16 statements look, you know. I understand that as
17 well.

18 It would seem to me that they would be the
19 most likely source of that information. Frankly, the
20 sooner they do it the better because memory tends to
21 fade over time, not increase over time. So that's
22 one of the problems. I understand the whole purpose
23 behind the Motion to Dismiss to start with. I've got
24 you on that one as well.

25 I do think it's an inquiry. It's a

1 corporation. It still exists as a corporation today.
2 It's an ongoing entity to the extent that it's an
3 ongoing entity. So because of that I think they're
4 entitled to go take a look at that type of
5 information.

6 MR. RANNIK: We have no problems producing it.
7 We've already produced a substantial number of
8 financial records. Now it's just the financial
9 records that are in the possession of the CPA that
10 are waiting to be produced.

11 THE COURT: All right. So as to the motion
12 for the protective order, what is it particularly
13 that you seek to be protected, and then staying the
14 deposition until what?

15 MR. RANNIK: We seek a stay of the deposition
16 until we have some clarity as to what the allegations
17 are against Ms. Billips.

18 THE COURT: Okay.

19 MR. RANNIK: Which again goes back to our
20 original Motion to Dismiss. Alternatively, we can
21 try again. We were willing to try the first time.
22 Once the records have been reviewed by their experts,
23 their experts will be made available to offer their
24 opinions in a deposition. From there we will know
25 what we're dealing with, and then Ms. Billips will

1 sit for that deposition.

2 Again, it's largely, Judge, she's -- you know
3 as you mentioned, she's in her 70s. No clear
4 information has been given as to what facts she did
5 that were wrong, so she's thinking, Well, goodness.
6 I could be asked anything. It would be a long,
7 stressful deposition and we don't want to subject her
8 to that.

9 THE COURT: Okay.

10 MR. ELLIS: As far as the deposition, we're
11 still looking at this being of an accounting basis.
12 We want to ask Ms. Billips questions as to where to
13 look. We do want to go back some number of years.
14 We do want to sit down. We would love to have a talk
15 with her, but we have to take a deposition, of
16 course, and sit down and talk to her. Mr. Billips
17 has some knowledge, but of course we're alleging that
18 he's been locked out of the running of the business.
19 So he's been denied knowledge to many things that we
20 think Ms. Billips holds the key to.

21 So to be able to sit down and talk to her and
22 go through time with her can lead us to find more
23 avenues to explore. We, of course, think that we
24 should have the information to -- if Mr. Rannik wants
25 to take our experts' depositions prior to them having

1 all the information to which they're going to base
2 their opinions on, we can make them available to him,
3 but I think for the sake of judicial --

4 THE COURT: We've seen that happen. That's
5 not pretty. Been in that room. Not pretty.

6 MR. RANNIK: I would like to clarify one thing
7 that Mr. Ellis said. Mr. Freeman didn't travel
8 across the country for this deposition. He was here.
9 I asked ahead of time. He was here in the city. We
10 wouldn't have flown him across the country.

11 THE COURT: You wouldn't have wanted to. I
12 know that.

13 MR. RANNIK: And Judge, to the extent that
14 there's a limited scope of inquiry that they seek to
15 get from Ms. Billips, perhaps they can send us the
16 topics they wish to discuss. We can narrow it down,
17 have a look at its impact, limit it to these kinds of
18 things, and it's not going to be burdensome by all
19 means.

20 THE COURT: Well, on an accounting basis, that
21 should seem fairly straightforward. I'm sure they're
22 going to want to know as to each store what records
23 they've got, what goes on, and like you say, how it
24 rolls up to the corporate headquarters level. I
25 would think they would want that information.

1 Let me go back to the Defendants on that
2 basis. Is there any other financial witness that
3 you-all would have other than Mr. Fox or Ms. Billips
4 that could provide the Plaintiff's with information
5 as to the accounting records of the corporation?

6 MR. RANNIK: I don't believe so, Judge. The
7 reason I say that is Mr. Cordray was involved early
8 on in the process. He was quite ill. I don't think
9 he's been involved in the running of Alex's for
10 possibly a decade at this point or two decades at
11 this point. So while he may have some knowledge, no.
12 His partner, Michael Fox, is --

13 THE COURT: That's the Cordray Fox Accounting
14 Firm that are on Remount? Are they still on Remount?

15 MR. RANNIK: They are indeed.

16 THE COURT: I knew the name, but it didn't
17 ring until just now. So Mr. Cordray may have
18 something but he's not in good health?

19 MR. RANNIK: He's not. That's my
20 understanding.

21 THE COURT: I only know him by name. So when
22 do you expect to get the information from Mr. Fox to
23 Mr. Ellis so he can review that? Where does that
24 stand?

25 MR. RANNIK: The documents are ready to be

1 produced. Mr. Fox is just waiting on some guidance
2 as to what form they want the documents in.

3 THE COURT: Okay.

4 MR. ELLIS: Whatever's most convenient for
5 Mr. Fox.

6 THE COURT: Electronic or paper? Whatever?
7 Okay. All right. Let's get that one in 15 days.
8 Okay? Let's get that to the Plaintiff within
9 15 days. You can give them 15 days to review it, and
10 then -- that's, what, 30 days out?

11 Mr. Ellis?

12 MR. ELLIS: Yes, Your Honor?

13 THE COURT: Would you be in a position then to
14 send the -- you can do your deposition of Ms. Billips
15 at that time, once you've got that information. Send
16 them the areas of inquiry you want to get. It's a
17 discovery deposition is what it is, so it should be
18 fairly -- I would think it would be fairly broad, but
19 it's going to be focused on the financial issues,
20 correct?

21 MR. ELLIS: That's correct, Your Honor.

22 THE COURT: I think you can limit it to that
23 scope. Again, whatever particular areas you want to
24 go into, I'm going to grant you -- I'm going to deny
25 the motion as to the protective order. As to her

1 deposition, I'm going to allow the deposition to
2 proceed, but it's going to come after they've gotten
3 these documents so it's just not a total fishing
4 expedition. She will have something in hand as well
5 so she can look at it. Okay?

6 I'm not going to require that the Plaintiff's
7 experts be deposed prior to her deposition. She just
8 needs to come in there and say that this is what we
9 have, and this is what we've got. Okay? Based upon
10 that -- either the Plaintiff's expert's got something
11 or they don't. We'll hash that one out later. Okay?

12 MR. RANNIK: Thank you, Judge.

13 THE COURT: I think that's the best way to go
14 ahead and do that. So sometime after the 30 days.
15 If there's an issue with that, you-all let me know.
16 If you-all have a hard time quantifying the
17 parameters of the deposition, you-all let me know.
18 I'll be glad to take that telephone call.

19 MR. RANNIK: Thank you. And Judge, I suppose
20 we're probably going to need a new scheduling order
21 as well.

22 THE COURT: I just blew that one off. You-all
23 see what you can do. Why don't we get through the
24 discovery phase. It's now late April. We're now
25 talking late May anyway. Let's see if we can't have

1 the end of discovery in the May/June timeframe, and
2 let's just come back here and see what you-all can
3 do. If you-all work something out in the meanwhile
4 that's fine with me. This is the third -- the
5 proposed third amended scheduling order so we're
6 already looking at a fourth. This will be the third
7 case today where a scheduling order is questionable.

8 MR. RANNIK: Thank you, Judge.

9 THE COURT: It's not a frivolous piece of
10 paper as David Norton says across the street.

11 All right, gentlemen. I hope that helps with
12 that. I'll do the Form 4 then on the Ruling. Just
13 make sure it clearly states the Court didn't have
14 jurisdiction to entertain the Motion to Dismiss.
15 That's my basis for that. I think that should go
16 from there.

17 Do you-all want to work on the language of
18 what we talked about here today? Is there any
19 question about that, Mr. Ellis?

20 MR. ELLIS: Would you just like for us to
21 agree on proposed orders to submit to you?

22 THE COURT: If you can. And if you can't then
23 I'll make a Ruling. All right? I think I'm fairly
24 clear as to what's going to go on. Okay? Just so
25 it's covered and the record, I think, is relatively

1 clear. That would be that -- the Motion for
2 Clarification is granted. I'll do that. The Motion
3 to Compel Discovery is essentially withdrawn on the
4 basis that there's no allegation of abuse that needs
5 to be brought up.

6 As to the Motion for Protective Order and --
7 is it the Stay of the Deposition? Actually, I'm
8 actually going to grant the stay until such time as
9 Plaintiff's have had an opportunity to review the
10 financial records, in other words, those have been
11 responded to, and then 30 days hence I'm going to
12 give them the opportunity to depose Ms. Billips.

13 I'll deny it as to that, the protective order,
14 but I'm granting it in part and denying it in part.
15 Whatever you want to call it. Just give her some
16 time. She should have access to that information.
17 Mr. Fox has clearly got it. She just needs to
18 refresh her memory and go do the best she can. All
19 right?

20 MR. RANNIK: Thank you, Your Honor.

21 MR. ELLIS: Thank you, Your Honor.

22 THE COURT: Good to see you-all.

23 (The proceedings were concluded at 2:53 p.m.)
24
25

1 State of South Carolina)
2 County of Charleston) C E R T I F I C A T E

3
4 I, Christine A. Smith, Court Reporter and
5 Notary Public for the State of South Carolina at
6 Large, do hereby certify that the foregoing
7 transcript is a true, accurate, and complete record.

8 I further certify that I am neither related to
9 nor counsel for any party to the cause pending or
10 interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 8th day of May, 2019 at
13 Charleston, Charleston County, South Carolina.

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Christine A. Smith
Notary Public
My Commission Expires
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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
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P R O C E E D I N G S

1
2
3 THE COURT: So we are together in the Billips
4 case, Billips v. Billips, 2016-CP-10-6265.
5 Mr. Ellis, you're here for the Plaintiffs?

6 MR. ELLIS: Correct, Your Honor.

7 THE COURT: Mr. Rannik and Mr. Epting for the
8 Defendants?

9 MR. EPTING: Yes, sir.

10 MR. RANNIK: Yes, sir.

11 THE COURT: Very good. So I have a number of
12 motions, it looks like have been filed, and I've been
13 back through the file just to cover that. Some are
14 discovery, but some are also comparatively
15 dispositive; is that right?

16 MR. RANNIK: That's right, Your Honor. There
17 are two general main issues here. The first is the
18 viability of a lis pendens, and then the second
19 relates to some discovery issues. There's a little
20 overlap, but that's what we're here to talk about.

21 THE COURT: All right. These are your
22 motions, I think, Mr. Rannik?

23 MR. RANNIK: They are indeed, yes.

24 THE COURT: You may proceed.

25 MR. RANNIK: Thank you, Your Honor. May it

1 please the Court? I just went about saying that this
2 is a Motion to Dismiss, and while that is the case,
3 and it focuses on the allegations in the Complaint, I
4 think maybe a little bit of general background would
5 be helpful here, too.

6 THE COURT: Sure.

7 MR. RANNIK: Judge, the Defendant, Carolyn
8 Billips, is the majority shareholder of Alex's
9 Restaurants. She's run that business since 1980.
10 1980 is the year when Alex, Senior died. At the time
11 of his death he owned 55 percent of the corporation
12 and Carolyn owned 45 percent of the corporation.

13 In Alex's Will, he left his interest into her
14 three sons to be held in trust until they turned 25
15 and Ms. Billips was one of the co-trustees of this
16 trust. They all turned 25 and received their shares,
17 and the last disbursement was, I believe, in 1999.

18 Subsequently, Ms. Billips bought some of the
19 shares from her sons, and now is a 63 percent
20 shareholder in the corporation. Judge, she's
21 stewarded the business through some very tough times.
22 She's paid herself a very small salary and sometimes
23 no salary for a period of years. In one particular
24 instance she ended up having to sell off personal
25 assets to put money into the company to keep it

1 afloat. Now, with that I'll get to my motions.

2 THE COURT: Okay.

3 MR. RANNIK: Now, Judge, we believe that
4 certain claims in the amended complaint are subject
5 to dismissal, mainly the tenth cause of action, which
6 is for a constructive trust; the 11th, which is for a
7 resulting trust; and I'm going to go back, the 7th,
8 which is a derivative shareholder suit.

9 Judge, the leading cause of action for a
10 constructive trust under South Carolina law is you
11 have to identify some specific misconduct. That
12 hasn't happened here, which makes it difficult for us
13 to defend the claim. Not only does the Complaint not
14 specify any specific misconduct, but when we sent in
15 interrogatories saying, Please identify the specific
16 misconduct that you allege that Ms. Billips
17 undertook, we got very general answers back.

18 Now, the reason this is important in a Motion
19 to Dismiss context, fraud must be pled with
20 particularity, and fraud is an essential element of a
21 constructive trust. That is what the South Carolina
22 Supreme Court stated in 1987 in a case called Lollis
23 v. Lollis, which is L-O-L-L-I-S. That's 291 S.C. 525.

24 Judge, here we just don't have the
25 particularity. We have some very general statements,

1 and we haven't been able to get the discovery either,
2 so we believe that that claim could be subject to
3 dismissal on that basis.

4 The next cause of action was the resulting
5 trust. Judge, the resulting trust applies under
6 South Carolina -- under a really narrow circumstance.
7 Basically, if one party puts up money, purchase
8 money, for some real property and then the real
9 property is titled in somebody else's name, the
10 person who put up the money gets a resulting trust.
11 It's an equitable remedy.

12 Here there's just no allegation that that has
13 any applicability to this situation. There's no
14 allegation that the property was purchased by the
15 Plaintiffs in Ms. Billips' name and that he intended
16 to get a trust from it. For that we believe it's all
17 subject to dismissal.

18 Additionally, as I referred to the trust in my
19 little introduction, there was a real -- there was an
20 actual express trust, and it did not fail. Where
21 there's an express trust you don't have a resulting
22 trust.

23 THE COURT: And I assume that trust at this
24 point in time is gone; is that right?

25 MR. RANNIK: That's correct.

1 THE COURT: All the children are now over the
2 age of 25, and the trust itself has been
3 extinguished, and they've got their own individual
4 interest; is that right?

5 MR. RANNIK: That's exactly right, Judge.

6 THE COURT: Okay.

7 MR. RANNIK: Now, Judge, the reason I -- the
8 significance of these two claims being dismissed or
9 being subject to dismissal, if the Court agrees, is
10 that there were two lis pendens filed with the
11 Complaint: One on a property that is owned by Alex's
12 Restaurants and one on a piece of property that was
13 owned by Carolyn Billips, individually, since 1996
14 that's never been part of the Alex's Restaurants'
15 umbrella.

16 Now, the only causes of action that affect
17 title to real property are the constructive and
18 resulting trust claims. So if those were to be
19 dismissed or subject to dismissal, the lis pendens
20 would have to be dismissed as well. Now, with regard
21 to the piece of property that's owned in Ms. Billips'
22 name entirely, that should be dismissed in any event
23 because there is no cause of action that affects
24 title to that piece of property.

25 On the face of the lis pendens itself, it

1 gives the property description. The property
2 description is perfectly clear that the property was
3 conveyed to Carolyn A. Billips by deed of John Derek
4 Mickalis, dated May 20, 1996. There's no mention of
5 Alex's on here. It's just not part of it.

6 Additionally, Judge, I believe that the purpose of
7 the lis pendens was to alleviate a concern on the
8 part of the Plaintiff, which was that there would be
9 some wholesale -- selling off of corporate assets,
10 and there would be. To alleviate that Ms. Billips,
11 at the very outset of this case, agreed not to sell
12 or encumber any property under the Alex's umbrella
13 without giving notice to the Plaintiffs. We believe
14 that that would take care of any concern.

15 The final cause of action I was hoping to go
16 over with Your Honor, is the derivative shareholder
17 suit. First, it's just a technical matter. Per the
18 Rules of Civil Procedure, you have to file a verified
19 Complaint alleging a derivative shareholder's suit.
20 That was not done.

21 More specifically what I wanted to talk about
22 is the requirement that the Complaint alleged with
23 particularity the efforts made to obtain whatever
24 result is sought from the directors or from the
25 board. The reasons, if you didn't make that demand,

1 why not?

2 So Judge, the Rule is nice and clear. It says
3 that the Plaintiffs must allege with particularity
4 the efforts made, if any, by the Plaintiff to obtain
5 the action he desires from the directors or
6 comparable authority and the reasons for his failure
7 to obtain the action or for not making the effort.

8 So here, Judge, primarily the relief that is
9 sought is an accounting of the corporation,
10 presumably because the Plaintiff would like to be
11 bought out of his shares and he seeks also judicial
12 intervention to prevent some selloff of assets. He
13 alleges he did not make a demand and says it would be
14 futile, but the only grounds that were given for it
15 being futile were that, quote -- and this is from
16 Paragraph 66(c) of the Complaint -- Ms. Billips,
17 would certainly not agree to essentially bring a
18 lawsuit against herself.

19 Now, again, let me go back to the rule. I
20 haven't said this very clearly yet. The demand has
21 to be with regard to the action that you're trying to
22 get from the corporation. Now, if the action that
23 was sought from the corporation is a lawsuit to be
24 brought against Ms. Billips, then he has adequately
25 pled futility. To the extent that he's seeking an

1 accounting or a judicial intervention to protect the
2 interests of the corporation, there has been no
3 allegation as to why such a demand would be futile.
4 Again, when asked not to transfer or encumber any
5 properties after this suit was filed, Ms. Billips
6 agreed, so it would not have been futile.

7 So Judge, we've worked well with the other
8 side on this case generally speaking, and perhaps the
9 easiest thing to do here, because this is a technical
10 matter, is to give them time to amend the Complaint
11 as necessary to satisfy these issues if the Court
12 agrees that they're issues.

13 In the meantime, however, we would like the
14 lis pendens to be dismissed, so that is the basis of
15 my Motion to Dismiss. Would you like me to go into
16 the Motion to Compel, or would you like to hear from
17 the other side?

18 THE COURT: Let's hold off on that. Let's
19 stick with this one. This is more significant at
20 this point in time, then we'll go from there.

21 MR. RANNIK: Thank you, Your Honor.

22 THE COURT: Mr. Ellis?

23 MR. ELLIS: Thank you, Your Honor. May it
24 please the Court?

25 THE COURT: Yes.

1 MR. ELLIS: And Your Honor, I was not prepared
2 to defend us against that. The only notice we've
3 received as far as today's 12(b)(6) motion was as to
4 certain counts of Plaintiffs' Amended Complaint.
5 Reading that together with the Consent Order of
6 Reference referring this case to the Master, the
7 Consent Order of Reference only dealt with the first
8 two counts being before the Master, the issues of
9 accounting.

10 THE COURT: Okay.

11 MR. ELLIS: So based upon that I was under the
12 impression that we were just going to be talking
13 about the first two causes of action.

14 THE COURT: You might be right. Let's look it
15 up. When was that? I saw it in -- Judge Jefferson,
16 I think, signed the order, right?

17 MR. ELLIS: May 3, 2017, is the file date.

18 THE COURT: Okay.

19 MR. ELLIS: It was his consent order that was
20 actually signed by Julie Armstrong.

21 THE COURT: Okay. I saw something that
22 Judge -- I thought I saw something. Julie
23 Armstrong's one does clearly say accounting. I
24 thought I saw Dee Dee Jefferson signed something.
25 That might have been a different case. Mr. Rannik?

1 MR. RANNIK: Judge, that may be correct. When
2 we filed our motion we just filed it with the Court,
3 and it was assigned to Your Honor.

4 THE COURT: Okay. Well, I guess the case has
5 been referred over here, but it sounds like you-all
6 might have bifurcated this thing, whether that was
7 intentional or not intentional I don't know. That's
8 what I hear you saying; is that right?

9 MR. ELLIS: That is what I'm saying. I cannot
10 say. I took over this case from another associate.

11 THE COURT: Yes, and I just found Judge
12 Jefferson's order. That's the consent order
13 substituting counsel. I think Grant Williamson must
14 have left you-all's firm or something?

15 MR. ELLIS: Correct, Your Honor.

16 THE COURT: And then Grady was substituted and
17 you're over at the firm so that works. Okay. So in
18 appearing that the above-titled action -- I'm reading
19 from the Consent Order of Reference -- is a proper
20 matter to refer to the Master-in-Equity for
21 Charleston County so he may preside over the
22 accounting requested by the Plaintiff, a motion of
23 Mr. Epting, attorney for the Defendants, with the
24 consent of the Plaintiffs order, that the matter is
25 referred to Mikell Scarborough, Master-in-Equity of

1 Charleston County, with regard to the accounting
2 requested by the Plaintiff.

3 Mr. Rannik, I hate to tell you this, but I'm
4 not sure I've got jurisdiction over anything with the
5 accounting. That was by agreement. That's what
6 Mr. Ellis is telling me. I don't know if that was
7 the intention, but that's what it says. As
8 Master-in-Equity I only get what I'm given. There
9 are plenty of cases out there on that one, on
10 jurisdictional issues. What your reference says is
11 what it says. What we've gone into is the two trusts
12 and the derivative shareholder cause of action.
13 Those may still be ripe in another forum. I'm not
14 sure they're ripe in front of me. That's my concern.
15 Okay?

16 MR. RANNIK: I definitely understand, Your
17 Honor. The one additional consideration I might
18 raise, and I don't know that it overcomes anything is
19 of course the constructive and resulting trusts
20 are -- or resulting trusts are an equitable remedy.
21 That matter then becomes the issue of --

22 THE COURT: It comes as a 12(b)(6) and then I
23 saw the reference to 23(b)(1), and it looks like
24 even -- I was scratching my head on that one, only
25 because the caption of Rule 23 is Class Actions. Is

1 that a number of shareholders other than just these
2 parties?

3 MR. RANNIK: No, Judge, but Rule 23(b)(1)
4 refers specifically to derivative shareholders.

5 THE COURT: Sure, yes.

6 MR. EPTING: Judge, could I ask a question?

7 THE COURT: Sure, Mr. Epting.

8 MR. EPTING: Is the objection one of notice?
9 I just wonder if we aren't going to get down the
10 wrong road here, Judge. We've got equitable matters
11 that should be heard by you because --

12 MR. ELLIS: That's correct. I was only --
13 based upon what was before the Judge and not knowing
14 exactly what you-all -- what certain counts. I just
15 assumed it before Judge Scarborough.

16 THE COURT: I went back and went through the
17 whole file, and the original answer alleged the same
18 thing as to the derivative cause of action. The new
19 one was fairly similar to that one. I didn't go
20 through it line-by-line. It's a technical argument
21 as to the derivative shareholder suit. What I hear
22 you-all saying, what's really impacting you right
23 now, are these filings of these lis pendens. Do
24 you-all have some agreement outside of the case
25 itself that nothing is going to be encumbered or

1 mortgaged or transferred?

2 MR. RANNIK: We do, Judge. We have a copy of
3 the letter.

4 THE COURT: Mr. Ellis, are you agreeing with
5 that?

6 MR. ELLIS: I just want to see the letter.

7 MR. RANNIK: Of course. This was to Grant
8 before.

9 MR. ELLIS: Okay.

10 MR. RANNIK: I'll hand a copy to you, Judge.

11 THE COURT: Sure. Thank you.

12 MR. RANNIK: This is not one that I marked.
13 Sorry.

14 THE COURT: This looks like it's forming the
15 basis for the referral as well, does it not?

16 MR. RANNIK: It was at the beginning of our
17 discussion to that, Judge.

18 MR. EPTING: Judge, might I make --

19 THE COURT: It's your letter. You certainly
20 could expand on it.

21 MR. EPTING: Well, I just thought you are
22 practical, Judge. What the rub is here is Alex's
23 doesn't own this piece of property.

24 THE COURT: This third-party piece?

25 MR. EPTING: This third-party piece.

1 THE COURT: It's in her individual name,
2 apparently.

3 MR. EPTING: That loan is up for renewal. The
4 Plaintiff would be advantaged by the lis pendens
5 remaining on Alex's and the debt being able to be
6 transferred exclusively to the third piece of
7 property. We're simply trying to deal with that
8 issue, and since the lis pendens is improper in the
9 first instance, that's our practical concern. So we
10 would like either before you -- we think we're
11 correct on the issue about is the lis pendens proper,
12 but maybe there's a way just to sort of go straight
13 to it because I think my logic is pretty unescapable.

14 Secondly, all this ties in in this way. They
15 have listed Mr. Hartnett, Mr. Wood, and Mr. Freeman
16 as experts. The way this relates, Judge, in not
17 getting responses to -- well, what are the
18 allegations of fraud? Mr. Hartnett, of course, I
19 know, and in passing I said, I see you turned up as
20 an expert. He said, I don't know anything about it.

21 So Mr. Freeman had, what, two e-mails? So
22 everywhere we go to try to figure out what is the
23 discovery piece here, we're not getting anywhere. So
24 more than anything, we're happy with another
25 scheduling order, but we need some specificity about

1 what are these allegations, a date or a time when
2 these experts will be prepared, and we can take them
3 and amend the Complaint consistent with whatever
4 they're going to say in the interrogatories so we can
5 get the discovery going in this case. That's the
6 larger piece.

7 MR. ELLIS: I completely understand what
8 Mr. Epting is referring to, and we are -- our entire
9 case is we are on the outside looking in, so we are
10 dependent upon getting our discovery from them to
11 give to our next person so they can then evaluate it
12 and give reports.

13 I know that you-all have been frustrated with
14 getting depositions scheduled of our experts, but we
15 still need to have our experts have the --

16 THE COURT: You need the data to give to the
17 experts. I'm with you.

18 MR. EPTING: If I could ask, what is it that
19 we haven't -- I thought we had turned over all the
20 accounting information to you.

21 MR. ELLIS: There's still some corporate tax
22 returns outstanding. April 11th, I did get some
23 responses -- two weeks ago today -- I did get some
24 more property descriptions, and then also they did
25 describe that we had our outside agreement that we

1 were limiting our corporate tax returns, so we're
2 still waiting on those as well.

3 THE COURT: Mr. Ellis, what's your position
4 relative to this lis pendens on this
5 individually-owned piece of property into
6 Ms. Billips?

7 MR. ELLIS: I would love to talk to
8 Ms. Billips and I would love to talk to opposing
9 counsel outside of the courtroom and understand what
10 it is exactly they're saying. If it makes sense, I
11 would most likely advise my client to consent to
12 that, but I would need his consent prior to doing so.

13 THE COURT: Well, I can cut to that for you.
14 What is your claim as to her individually? I assume
15 it could only be individually. She was named
16 individually and as trustee, but I'm informed that
17 the trust doesn't exist anymore.

18 MR. ELLIS: Your Honor, we're still asking for
19 an accounting of the trust. That is the two actions
20 that have been referred to, the accounting of the
21 trust and the accounting of the corporation, and one
22 of those is breach of fiduciary duty as cotrustee.

23 THE COURT: Okay.

24 MR. ELLIS: There is worry that she maybe used
25 funds inappropriately for personal gain. We call

1 into question some of the purchases of the
2 outstanding shares from our client's step or half
3 brothers. We are thinking that she may have
4 personally gained, as a result of her role as trustee
5 and as controlling shareholder, resulting in unequal
6 distributions which then can be traced to her
7 individual home.

8 THE COURT: Okay. And I assume that's what
9 this property is? It's her home; is that right?

10 MR. ELLIS: Correct, Your Honor.

11 MR. RANNIK: It's actually not, Judge. It's a
12 shopping center out in Summerville. There's a couple
13 of businesses there that she rents out. That's not
14 where she lives. She lives elsewhere.

15 MR. ELLIS: Is that the one with Alex's
16 corporate office in it?

17 MR. RANNIK: I think that's the Goose Creek
18 property, and that's owned by Alex's. This is just a
19 separate business enterprise.

20 MR. ELLIS: So basically from the time of
21 Alex, Senior's death, we're saying that she has had
22 potential to mismanage the funds, funnel funds her
23 way to purchase --

24 THE COURT: You mean over 36 years? He died
25 in 1980?

1 MR. ELLIS: Correct, Your Honor.

2 THE COURT: Well, that's a different motion
3 there. We'll cross that one another day. I'm not
4 even sure that one is in front of me either, but on
5 the issue of accounting it might be.

6 I don't see how -- if this lady is -- if this
7 is a separate piece of property -- what are you-all
8 trying to do? Refinance it? You're not trying to
9 sell it, are you?

10 MR. EPTING: That's all, Judge. We have no
11 intention of disposing of it. It's purely an issue
12 with the bank. Whatever the value -- as an aside,
13 Judge, whatever the value -- as an aside, Judge,
14 whatever the value of Alex's might be as an ongoing
15 business, whatever it is, it's going to be more than
16 represented by the value of Alex's. Which if this
17 loan is taken off of the property owned by Alex's and
18 put on the shopping center that is in Summerville --
19 well, there's going to be plenty of assets, Judge,
20 given the nature of the value of these shares in this
21 business.

22 THE COURT: Okay. And how many Alex's
23 Restaurants are still out there? There used to be
24 tons of them. I don't know if there are tons of them
25 anymore.

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

1 the Complaint or in the interrogatories, just to have
2 a better idea of what the timing is.

3 THE COURT: Right.

4 MR. EPTING: Essentially, what I think the
5 issue is, and it may be helpful to the Court and you
6 might know this, but the larger piece of property,
7 the most profitable one -- at the time that I'm
8 talking about there was another location. It was on
9 Dorchester Road. It's since been sold and whatever
10 monies came out, wherever it was supposed to go,
11 leaving two.

12 The most profitable one was in Goose Creek.
13 They had a very large storm. The insurance company
14 decided that since there was a code violation in the
15 roofing truss that when the roof failed and the
16 restaurant closed that they wouldn't pay anything.
17 That's how I met Ms. Billips. So the restaurant was
18 closed for a long, long time, Judge.

19 The first thing was to get the insurance
20 company to pay to restore the restaurant so we could
21 reopen. By that time there were all sorts of tax
22 issues, payroll taxes and the like.

23 Eventually, say five years ago, we got a
24 settlement from the insurance company, and the money
25 went into Alex's to basically fund that business and

1 get it back on its feet.

2 In the process, Ms. Billips had to sell her
3 own assets, and in order to keep things going as best
4 they could, Alex's owned the note. We had to
5 discount that note in order to get the funds in order
6 to pay the taxes.

7 That's what's in here. Ms. Billips wasn't
8 even drawing a salary because the company couldn't
9 afford to pay her. We're obviously being paid by
10 Alex's. We'd like to move this thing as quickly as
11 possible. Ms. Billips is 76 years old. You're not
12 as old as me, so I can say, She's just like your
13 grandmother.

14 THE COURT: Actually, that would be my mother.
15 I'm older than you think.

16 MR. EPTING: So anyway, we're trying to
17 facilitate -- let's find out what's at issue. Let's
18 get the discovery. If there are going to be experts
19 let's tee them up. Let's move this thing. This is
20 not a whole lot of money. And something
21 that Mr. Rannik didn't say is -- I think the
22 Plaintiff own 16 and 2/3 of a percent.

23 MR. RANNIK: 18 and 1/3.

24 MR. EPTING: 18 and 1/3. Just for the Court's
25 information.

1 THE COURT: This is my second restaurant
2 dispute of the day, I'll have you-all know, and the
3 percentages are very similar. So how can I help
4 you-all from a discovery standpoint? I'm interested
5 in doing that for no other reason than I like -- for
6 some reason I'm a get 'er done kind of guy. I like
7 to move things along. Mr. Ellis, what is it that you
8 need? You're seeking some additional information?

9 MR. ELLIS: Yes, Your Honor. So we have some
10 corporate returns for Ms. Billips. It's not like
11 they're extremely overdue with those. We are finding
12 out what we need and then asking for them. We have
13 retained an accountant to go through the stuff we are
14 receiving as we receive those things. He goes
15 through them and then we find out more questions we
16 need to have answers to.

17 We are running up against our consent
18 scheduling order. It probably needs to be modified,
19 I would think, to get this within those parameters.
20 Right now we don't know all the questions we should
21 be answering. Questions keep popping up.

22 THE COURT: Okay. And you know, I'm happy to
23 amend the scheduling order to meet what criteria is
24 going to keep the ball rolling and in play. The only
25 thing I saw, other than these Motions to Dismiss was

1 a Motion to Compel, and that was because they were
2 trying to get your expert witnesses up for a
3 deposition. Somebody sent me a litany of some
4 e-mails back and forth which I glanced at. I didn't
5 see a whole lot of them, but I saw some e-mail
6 correspondence about agreeing not to do the
7 deposition now and they can do something later. I
8 think that was between the two of you-all. I'm not
9 even sure how I saw it, but it was in here somewhere.

10 So anyway, have you-all named -- has each
11 party named their experts at this point in time? We
12 are past that according to the scheduling order I
13 looked at.

14 MR. ELLIS: And we are under the duty to name
15 our experts first. We do believe we have all of our
16 experts that we want named. Of course -- I will
17 agree that our experts are not up to speed. They are
18 not ready to go. The Defense might want to add
19 additional experts upon seeing our experts' reports.
20 They have named two experts?

21 MR. RANNIK: We named one expert, Judge, and
22 reserve the right to name rebuttal experts.

23 THE COURT: Sure. Okay. Very good. So is
24 there any additional information that you-all need
25 other than getting these experts ready for

1 depositions? That was the gist of that Motion to
2 Compel.

3 MR. RANNIK: It was and I think again, just
4 what we were talking about -- just general
5 information about what the claims actually are.

6 THE COURT: Okay. And then I think that's one
7 thing that you-all need to talk about. Is this
8 something that you-all just want to try? Mr. Ellis,
9 this is really in your ballpark since you're the one
10 raising it. Is this something that you want to try
11 from an accounting standpoint over here and then go
12 to Common Pleas and be in front of a jury on these
13 other claims, or do you-all want to punt that and
14 bring it on over here, non-jury?

15 You don't have to answer that question to me
16 right now, but you need to be thinking about that.
17 To me it doesn't make sense to go try the same case
18 in two different venues. That's just me. Okay?
19 That's just duplication of effort, but if you don't
20 like it the first time, you get a second bite at the
21 apple. I understand that. I did the exact same
22 thing this morning. I sent these people away and
23 told them for 60 days they need to go get something
24 worked out.

25 If you're going to amend your Complaint I

1 think you can do that, just exactly what Mr. Rannik
2 suggested. I did that this morning. I would suggest
3 you do it again if you want to move under the -- seek
4 to amend your Complaint again to bring it in
5 compliance with the Rule that would probably be in
6 your best interest, and then you-all need to re-up
7 the scheduling order.

8 MR. EPTING: We will consent, Your Honor.
9 It's fine by us, whatever time Mike needs to amend
10 it, we just ask that it be more specific as to what
11 the allegations are and you can do whatever you want
12 to with a derivative action and we'll work with you.

13 THE COURT: All right.

14 MR. ELLIS: All right.

15 THE COURT: Does that work?

16 MR. ELLIS: It works.

17 THE COURT: So coming out of here I'm going
18 to -- I hate to do this to you, Mr. Rannik, but I'm
19 going to take the soft side of the equation, and I'm
20 not going to go outside of the Order of Reference
21 here on the accounting issue, but I am interested in
22 keeping you-all on track and the ball rolling forward
23 on that issue unless and until you-all can come to
24 some other terms as to what the other causes of
25 action are. I'm happy to hear them or happy to not

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
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Master-in-Equity

The Honorable Mikell R. Scarborough
2016-CP-10-06265

Appellate Case No.: 2022-000078

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

vs.

Caroline 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.

MEMORANDUM OF RESPONDENT AS TO APPEALABILITY

Respondent shares the Court's concern as to the appealability of the order(s) of the
Charleston County Master in Equity who presided over the accounting requested by
Respondent-Plaintiff upon motion of Andrew K. Epting, Attorney for Appellants-
Defendants.

ORDER OF REFERENCE

By the May 3, 2017 Order, the accounting matter requested by Respondent (plaintiff)
was referred to the Honorable Mikell R. Scarborough as Master in Equity for Charleston
County. (See Consent Order of Reference attached as Exhibit 1.)

11-22-2021 ORDER UNDER APPEAL

The November 22, 2021 Order, under appeal provides in pertinent part:

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 Billups' eighteen and one-third percent stake in Alex's Restaurants Inc.,

The Court valued Mr. Billups' interest to be \$ 44,143.08 and,

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

Thereafter, each of the parties requested that the Master Reconsider.

12-21-21 Form 4CE SCRCF Order under Appeal

By Order on Form 4CE SCRCF filed December 21, 2021, the Master ordered the following:

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 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. (emphasis added)

ORDER INFORMATION

This order ___ ends does not end the case.

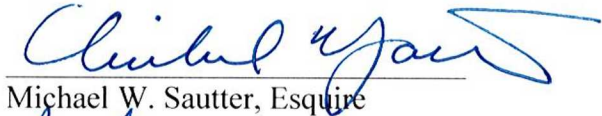
An appeal ordinarily may be pursued only after a party has obtained a final judgement. *Mid-State Distributors, Inc., v. Century Importers, Inc.*, 310 S.C. 330, 335, 426 S.E. 2d 777, 777, 780-781 (S. Ct. 1993). Absent a specialized statute an order must generally fall into one of several categories within S. C. Code § 14-3-330 to be immediately appealable. An order will be deemed interlocutory and not immediately appealable when there is some further act that must be done by the trial court prior to the determination of a

parties' rights; as the litigant, "had not arrived at the end of the road" *Mid-State*, 310 S.C. 334-335, 426 S.E. 2d at 780. Cited with approval in *Ex Parte Capital u-Drive it Inc., v. Beaver*, 369 S.C. 1, 630 S.E.2d 464 (S.Ct. 2006).

The orders under appeal in the case at bar do not fall within the categories set forth in S. C. Code Ann. § 14-3-330. The Court ordered this action be REMANDED to the Circuit Court on the remaining causes of action of Respondent-Plaintiff's amended complaint. The appealed orders do not determine the underlying action, and do not prevent a judgment from which an appeal might be taken. The litigants in this case have not arrived at the end of the road.

Respondent therefore requests that the Court dismiss the Appeal.

Respectfully Submitted,



Michael W. Sautter, Esquire



Michael H. Ellis, Esquire
Query Sautter & Associates, LLC
147 Wappoo Creek, Ste. 202
Charleston, SC 29412
843-795-9500
Attorneys for Respondent

This 3^d day of February, 2022

Other Counsel of Record:
Jaan Gunnar Rannik, Esquire
Epting & Rannick, LLC
46A State Street
Charleston, SC 29401
Attorneys for Appellants

EXHIBIT

1

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-10-6265

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.

CONSENT ORDER OF REFERENCE

and

ALEX'S RESTUARANTS, INC.,

Defendants.

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

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.

Julie J. Armstrong
RESIDING JUDGE/CLERK OF COURT
5/1/17

Charleston, South Carolina

I SO MOVE:

I SO CONSENT:

Andrew K. Epting
Andrew K. Epting, Esquire
Attorney for Defendants

Grant A. Williamson
Grant A. Williamson, Esquire
Attorney for Plaintiff

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

STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Master-in-Equity

The Honorable Mikell R. Scarborough
2016-CP-10-06265

Appellate Case No.: 2022-000078

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

vs.

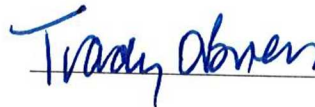
Caroline A. Billips, individually and as Trustee for the benefit of Anthony Billips,
William Casey Ivey, and Alex Billips, and as controlling person of Alex's Restaurants,
Inc., and Alex's Restaurants, Inc., APPELLANTS.

PROOF OF SERVICE

I, the undersigned, hereby certify that I served a copy of the Memorandum of
Respondent as to Appealability upon Jaan Rannik, attorney for the Appellantss, via E-
filing and via email:

Jaan Rannik, Esquire
jgr@epting-law.com

Dated: 02/03/22



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.*

APPELLANTS’ MEMORANDUM REGARDING APPEALABILITY

The Appellate Courts of South Carolina shall entertain appeals of orders that are either final, “involve the merits,” or “affect a substantial right.” S.C. Code § 14-3-330. The Master in Equity’s orders appealed by Appellants involve the merits of the dispute — as defined in this State’s appellate jurisprudence — and are immediately appealable. Appellant Carolyn Billips responds to this Court’s inquiry regarding appealability as follows.

I. The Orders Involve the Merits

By statute, South Carolina’s appellate courts shall entertain appeals of intermediate orders “involving the merits” of the dispute:

The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal:

(1) Any intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas and general sessions, brought there by original process or removed there from any inferior court or jurisdiction

S.C. Code Ann. § 14-3-330. “An order involves the merits if it finally determines some substantial matter forming the whole or part of some cause of action or defense in the case.”

Long v. Sealed Air Corp., 391 S.C. 483, 489, 706 S.E.2d 34, 37 (Ct. App. 2011) (citing *Hunt v. Whitt*, 366 S.C. 379, 387 (Ct. App. 2005)).

A. The Orders Fully and Finally Resolve the Accounting Cause of Action

In this matter, which concerns disputes regarding the running of a small family business, Plaintiff’s accounting cause of action was referred to the Master in Equity by consent order filed May 3, 2017 and was tried before the Master on August 24 and 25, 2021. The Master’s November 22, 2021 order fully disposed of Plaintiff’s accounting cause of action. Accordingly, the order (in conjunction with the December 21, 2021 order on Plaintiff’s motion for reconsideration) “involves the merits” because it “finally determined some substantial matter forming the whole or part of some cause of action.” It is therefore immediately appealable pursuant to S.C. Code § 14-3-330.

B. The Orders Resolve Substantial Matters Relating to the Remaining Causes of Action

Significantly however, the Master’s orders also determined “substantial matters forming the whole or part” of Plaintiff’s remaining causes of action. At trial, Plaintiff contended that a determination of the factual allegations underlying his other causes of action were essential to any decision as to the accounting cause of action:

[O]f course, the malfeasance goes into the value of Mr. Billips' share, of the value of the business.

[. . .]

Your Honor, we believe that the malfeasance does directly go to the value of the business.

Trial Tr. (Aug. 24, 2021) at 18:1–2, 18:14–16. Further, Plaintiff's counsel stated:

THE COURT: Y'all still think that there's a value that's owed for those five [units] that have been sold?

MR. ELLIS: Well, and that gets into why it's hard to do without going into the malfeasance, which – of the defendants in this case because we do think that these multiple units were grossly undervalued because they were liquidated for paying for Ms. Billips' individual liabilities and for her other companies' liabilities.

Trial Tr. (Aug. 25, 2021) at 232:6–16. Plaintiff introduced evidence of alleged malfeasance and sought to prove the same at trial.

The Master considered the factual allegations and the evidence adduced related thereto in resolving the accounting cause of action:

The Court finds that the 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.

Order (Nov. 22, 2021) at 3. Indeed, the Court stated on the record — in contravention of Plaintiff's contentions of malfeasance — that Defendant is responsible for keeping the business afloat:

This is an ongoing business, and it's largely dependent on the efforts of Ms. Billips over there. I don't think if it was [*sic*] for her, that the business would still be open is what it sounds like to me.

Trial Tr. (Aug. 25, 2021) at 241:13–17.

Accordingly, the Master's order dealt with those factual contentions, and his rulings bind Plaintiff as to his remaining causes of action, as the South Carolina Supreme Court noted in

Lawson v. Rogers:

Lawson and Houck raise a final issue, which is that the order below went beyond the scope of the accounting by making conclusions of fact and law which should be left for the tort claims. We disagree. The pleadings reflect all the claims arise out of the same set of facts and wrongdoing. Lawson and Houck, having chosen to proceed in an accounting action, have made an election of remedies, and may not now proceed with alternative remedies for the same wrong.

312 S.C.492, 501, 435 S.C. 853, 858–59 (1993). The Supreme Court reached this conclusion citing the following language from *Corpus Juris Secundum*:

[A] decree in a suit for an accounting is conclusive on the defendants on the question of their liability to the plaintiff as to all matters dealt with in the decree, and is equally conclusive on the plaintiff as determining that he has no other claim against the defendant growing out of the subject matter involved.

1A C.J.S. *Accounting* § 55(a) at 61 (1985). Plaintiff is bound by the Master's determinations regarding his factual allegations, and Plaintiff's remaining causes of action are founded on those same contentions. Accordingly, the Master's orders "involve the merits" of the remaining causes of action too and are immediately appealable on that basis too pursuant to S.C. Code § 14-3-330(1).

II. Appellants Are an Aggrieved Party

The Master's order ascribed a value to Plaintiff's interest in a family business based on the trial testimony despite Plaintiff failing to adduce any competent evidence as to the present value of that interest. Appellants therefore argued that the value of Plaintiff's interest could only be found to be \$0. The Master disagreed and found the value was approximately \$40,000;

Appellants are aggrieved, preserved the issue, and are entitled to appeal. Rule 201(b), S.C.A.C.R.

III. Interlocutory Orders May Be Reviewed in Conjunction With Immediately Appealable Orders

Appellants also appeal the substance of the Master’s Ruling on Plaintiff’s Motion to Reconsider as it relates to the Plaintiff’s choice of remedies and the denial of relief requested by Appellants. While these limited rulings would not normally be immediately appealable, “an order that is not directly appealable will be considered if there is an appealable issue before the court.” *Cox v. Woodmen of the World Ins. Co.*, 347 S.C. 460, 469, 556 S.E.2d 402 (Ct. App. 2001).

Because the Master’s orders involve the merits and are immediately appealable as discussed above, these rulings in the December 21, 2021 order following Plaintiff’s Motion to Reconsider are also properly before this Court.

IV. Conclusion

The Master’s orders are immediately appealable. Appellants request that the briefing deadlines be held in abeyance pending the Court’s determination.

Respectfully submitted:

EPTING & RANNIK, LLC

February 4, 2022
Charleston, South Carolina

/s/ Jaan Rannik
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ATTORNEY FOR DEFENDANTS/APPELLANTS

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' FIRST SET OF
 INTERROGATORIES**

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

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

**Tony Billips
 c/o Query Sautter & Associates, LLC
 147 Wappoo Creek Dr., Suite 202
 Charleston, SC 29412**

**Deborah Jackson
 118 Folly Road Blvd.
 Charleston, SC 29407**

**Addie Dix
 2680 Madden Drive
 N Charleston, SC 29405**

**Dilly Brant
2680 Madden Drive
N Charleston, SC 29405**

**Louis Borris
101 T. Myers Drive
St Stephen, SC 29479**

**Nancy Thames
155 Farley Road
Cameron, NC 28326**

**Jennings Thames
155 Farley Road
Cameron, NC 28326**

**All employees of Alex's Restaurant in the time span of 198-2011.
It is believed that Defendants have these witnesses' last know
addresses.**

2. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

**ANSWER: Tony Billips
Mr. Billips will testify as to his personal knowledge regarding the formation and management of the trust and corporation that are the subject matter of this litigation.**

**Deborah Jackson
Ms. Jackson will testify as to her personal knowledge regarding the formation and management of the trust and corporation that are the subject matter of this litigation.**

**Addie Dix
Ms. Dix will testify as to her personal knowledge regarding the formation and management of the trust and corporation that are the subject matter of this litigation.**

Dilly Brant

Mr. Brant will testify as to his personal knowledge regarding the formation and management of the trust and corporation that are the subject matter of this litigation.

Louis Borris

Ms. Borris will testify as to her personal knowledge regarding the formation and management of the trust and corporation that are the subject matter of this litigation.

Nancy Thames

Ms. Thames will testify as to her personal knowledge regarding the formation and management of the trust and corporation that are the subject matter of this litigation.

Jennings Thames

Mr. Thames will testify as to his personal knowledge regarding the formation and management of the trust and corporation that are the subject matter of this litigation.

All employees of Alex's Restaurant in the time span of 198-2011.

It is believed that Defendants have these witnesses' last know addresses.

These witnesses will testify as to their personal knowledge regarding the formation and management of the trust and corporation that are the subject matter of this litigation.

Plaintiff is not in possession of any written statements by the above witnesses.

3. Set forth a list of photographs, plats, sketches, or other prepared documents in your possession or control that relate to any claim or defense in this case.

ANSWER: Quitclaim Deed for Summerville Alex's Restaurant, Bate Stamped Billips 1-8;

Quitclaim Deed for Goose Creek Alex's Restaurant, Bate Stamped Billips 9-17;

Will of Alex L. Billips, Bate Stamped Billips 18-28;

Deed for North Charleston Alex's Restaurant, Bate Stamped Billips 29-34;

Deed for Mount Pleasant Alex's Restaurant, Bate Stamped Billips 35-38;

Deed of Property from Alex's Restaurants, Inc. to Ibrahim Dabit, Bate Stamped Billips 39-42;

Deed of Trust Property to Alex's Restaurants, Inc., Bate Stamped Billips 43-47;

Deed of Property from Carolyn Billips to Gypsy Plantation, LLC, Bate Stamped Billips 48-51;

Deed of Property from Alex's Restaurants, Inc. to Lynette D. Morris, Bate Stamped Billips 52-55;

Deed of Property from Alex's Restaurants, Inc. to Venetian Properties, LLC, Bate Stamped Billips 56-61;

Deed of Trust Property from Alex's Restaurants, Inc. to Beneficiaries, Bate Stamped Billips 62-65;

Deed of Trust Property from Alex's Restaurants, Inc. to Beneficiaries, Bate Stamped Billips 66-69.

4. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.

ANSWER: It is unknown at this time what the extent of Plaintiff's damages are.

5. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

ANSWER: None at this time.

6. Identify with specificity the basis for your belief that Carolyn Billips has acted improperly with regard to the Trust, her management of Alex's Restaurant, or her actions as a shareholder of Alex's Restaurants.

ANSWER: She has:

- a. Failed to act within good faith and in accordance with the purposes of the trust;
- b. Failed to act solely for the benefit of the beneficiaries of the trust;
- c. Failed to perform her duty to inform and report;
- d. Wasted assets of the corporation;
- e. Failed to provide accountings upon demand.

7. Specifically identify every instance of impropriety that you allege related to Carolyn Billips' administration of the Trust.

ANSWER:

- a. Failed to act within good faith and in accordance with the purposes of the trust;
- b. Failed to act solely for the benefit of the beneficiaries of the trust;
- c. Failed to perform her duty to inform and report

8. Specifically identify every instance of impropriety that you allege related to Carolyn Billips' management of Alex's Restaurants, Inc.

ANSWER:

- a. Wasted assets of the corporation;
- b. Failed to provide accountings upon demand.

9. Specifically identify every improper act that you allege related to Carolyn Billips' actions as a shareholder of Alex's Restaurants, Inc.

ANSWER:

- a. Wasted assets of the corporation;
- b. Failed to provide accountings upon demand.

10. Identify the nature of your work for Alex's Restaurants, including the years you worked, the location or locations where you worked, and the position or positions you held there.

ANSWER: Manager, Cook, waiter, bookkeeping, janitor, performed renovations and repairs, hiring, firing, ran warehouse, opened new restaraunts.

1983-2012

All locations. All positions stated above.

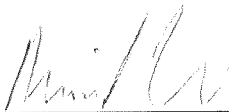
11. Identify the date or dates you received any distribution under the Trust.

ANSWER: Only distribution received was approximately \$6,000.00 from the sell of some rental homes in the late 1990's.

12. Identify the property you received as part of any distribution under the Trust.

ANSWER: The property referenced in the documents Bate Stamped Billips 62-69.

QUERY SAUTTER & ASSOCIATES, LLC



O. Grady Query, Esquire (SC Bar: 4610)
E. Brooks Hurt, Esquire (SC Bar: 100649)
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: 10/24/17
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

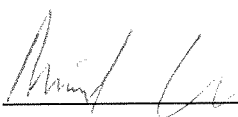
CERTIFICATE OF SERVICE

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: 10/24/2017



**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' FIRST SET OF
INTERROGATORIES TO PLAINTIFF**

TO: MIKE ELLIS, ESQUIRE ATTORNEY FOR PLAINTIFF

Defendants, by and through counsel requests that the Plaintiff answer each of the interrogatories set forth below in writing and under oath within thirty (30) days after service of these interrogatories pursuant to Rule 33 of the South Carolina Rules of Civil Procedure.

These interrogatories shall be deemed to continue from the time of service, until the time of trial of the action so that information sought, which comes to the knowledge of a party, or his representative or attorney, after original answers to interrogatories have been submitted, shall be promptly transmitted to the other party.

DEFINITIONS AND INSTRUCTIONS

1. "*Communication*" refers to any and all written or oral communications between two or more persons via any means, including but not limited to, documents, letters, memoranda, recordings, emails, telephone conversations or messages, personal conferences, meetings or otherwise.

2. "*Claim*" refers to any lawsuit or demand for arbitration filed, any claim against a bond, or any other communication requesting or demanding payment or any other type of relief, relating to the Project.

3. "*Document*" shall include any written or graphic matter or other means of preserving thought or expression and all tangible things from which information can be processed or transcribed, including the originals and all non-identical copies and drafts, whether different from the original by reason of any notation made on such copy or otherwise, including, but not limited to, any printed, written, recorded, taped, electronic, graphic, or other tangible matter from whatever source, however produced or reproduced, whether in draft or otherwise, whether sent or received or neither, including the original, all amendments and addenda and any non-identical copy (whether different from the original because of notes made on or attached to such copy or otherwise) of any and all writings, correspondence, letters, telegrams, telex communications, cables, notes, notations, papers, newsletters, memoranda, interoffice communications, electronic mail, releases, agreements, contracts, books, pamphlets, studies, minutes of meetings, recordings or other memorials or any type of personal or telephone conversations, meetings or conferences, reports, analyses, evaluations, estimates, projections, forecasts, receipts, statements, accounts, books of account, diaries, calendars, desk pads, appointment books, stenographer's notebooks, transcripts, ledgers, registers, worksheets, journals, statistical records, cost sheets, summaries, lists, tabulations, digests, canceled checks or drafts, vouchers, charge slips, invoices, purchase orders, accountant's reports, financial statements, newspapers, periodical or magazine materials, and any material underlying, supporting or used in the preparation of any documents. The term "*Document*" also means any and all computer records, data and information of whatever kind, whether printed out or stored on or retrievable from any floppy diskette, compact diskette, magnetic tape, optical or magnetic-optical disk, hard drive or rapid access memory, including without limitation, all back-up copies, undeleted data, and dormant or remnant files.

4. The terms "*relating to,*" "*relate to,*" "*related,*" "*relevant*" and any similar terms shall mean, unless otherwise indicated, having any relationship or connection to, concerning, being connected to, commenting on, responding to, containing, evidencing, showing, memorializing, describing, analyzing, reflecting, pertaining to, comprising, constituting, or otherwise establishing any reasonable, logical, or causal connection.

5. “*Person*” or “*persons*” mean all entities, including, but not limited to, all individuals, associations, companies, partnerships, joint ventures, corporations and governmental bodies.

6. “*Knowledge*” means having or possessing information derived from any source, including hearsay knowledge.

7. To “*identify*” a person means to provide his or her: (a) full name; (b) present or last known address or business address and residence and business telephone numbers, including area code; and (c) present or last known employer, position, or title and job description.

8. To “*identify*” a document means:

- (a) to provide a description of the document;
- (b) to state the identity of the person(s) who authored or prepared it;
- (c) in the case of an agreement or contract, to state the identity of the signatory parties;
- (d) to state the identity of the addressee(s) and the recipient(s), if any, of the original document and any copy thereof;
- (e) to state the title thereof, if any, and a description of the general nature of its subject matter;
- (f) to state the date on the document, or if none, the approximate date of its preparation;
- (g) to state the present location of any and all copies of the document; and
- (h) to state the identity of the person(s) who now have custody, control, or possession of the document or copies thereof.

9. The term “*identify*” when used in reference to an oral communication, means to

- (a) The type of communication;
- (b) The time, date and place of communication;
- (c) The identity of all persons speaking and all persons present at the time of the communication;
- (d) The approximate length of the communication;
- (e) The substance of the communication;
- (f) The identity of all documents that are referred to, concern, or otherwise relate to the communication; and

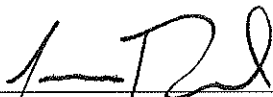
- (g) If all copies of the document have been destroyed, the names and current addresses of the person or persons who authorized the destruction of the document and the date the document was destroyed.

INTERROGATORIES

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.
2. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.
3. Set forth a list of photographs, plats, sketches, or other prepared documents in your possession or control that relate to any claim or defense in this case.
4. Set forth an itemized statement of all damages, exclusive of pain and suffering, claimed to have been sustained by the party.
5. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.
6. Identify with specificity the basis for your belief that Carolyn Billips has acted improperly with regard to the Trust, her management of Alex's Restaurants, or her actions as a shareholder of Alex's Restaurants.
7. Specifically identify every instance of impropriety that you allege related to Carolyn Billips' administration of the Trust.
8. Specifically identify every instance of impropriety that you allege related to Carolyn Billips' management of Alex's Restaurants, Inc.

9. Specifically identify every improper act that you allege related to Carolyn Billips' actions as a shareholder of Alex's Restaurants, Inc.
10. Identify the nature of your work for Alex's Restaurants, including the years you worked, the location or locations where you worked, and the position or positions you held there.
11. Identify the date or dates you received any distribution under the Trust.
12. Identify the property you received as part of any distribution under the Trust.

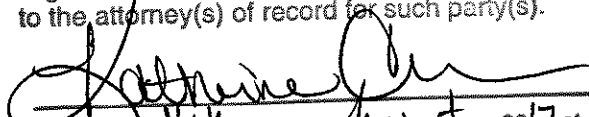
ANDREW K. EPTING, JR., LLC

BY: 
 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

On this 16th day of August, 2017
 Charleston, South Carolina

THE UNDERSIGNED HEREBY CERTIFY 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 S. Mail, postage prepaid, properly addressed to the attorney(s) of record for such party(s).


 Signed this 16th day of August, 2017 at
 Charleston, South Carolina



Case Number 2016CP1006265
Case Subtype Breach of Cont 140
Filed Date 11-21-2016
Status Referred To Master

Plaintiff Tony A Billips et al
Defendant Carolyn A Billips et al
Assigned Judge Clerk Of Court C P, G S, And Family Court
File Type Non-Jury

Show/Hide Participants

Name	Description	Type	File Date
Tony A Billips	NEF(06-01-2022 01:07:23 PM) Order/Consent Order	Filing	06-01-2022 01:07:40 PM
Tony A Billips	Order/Consent Order Granting Leave f/Defnt to Deposit Funds	Order	06-01-2022 01:07:23 PM
Tony A Billips	NEF(06-01-2022 12:38:43 PM) Order/Protection from Court ...	Filing	06-01-2022 12:39:02 PM
Tony A Billips	Order/Protection from Court Appearance	Order	06-01-2022 12:38:43 PM
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Tony A Billips	Order/Order Cover Sheet \$25.00	Filing	05-25-2022 11:51:55 AM
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Carolyn A Billips	Notice Of Appeal As To Granted Motion To Reconsider-EX_1	Filing	01-20-2022 03:43:06 PM
Carolyn A Billips	Notice Of Appeal As To Granted Motion To Reconsider-EX_2	Filing	01-20-2022 03:43:06 PM
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Carolyn A Billips	Motion/Seal and Relief & Opposition to Motion/Reconsider-EX_	Motion	12-17-2021	05:25:08 PM
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Tony A Billips	NEF(12-02-2021 01:08:05 PM) Motion/Reconsider	Filing	12-02-2021	01:52:48 PM
Tony A Billips	NEF(12-02-2021 12:58:35 PM) Motion/Reconsider	Filing	12-02-2021	01:51:31 PM
Tony A Billips	Motion/Reconsider Master's Order	Motion	12-02-2021	01:08:05 PM
Tony A Billips	Motion/Reconsider Master's Order-EX_1	Motion	12-02-2021	01:08:05 PM
Tony A Billips	Motion/Reconsider Master's Order & Crf/Srv	Motion	12-02-2021	12:58:35 PM
Tony A Billips	NEF(11-22-2021 01:49:09 PM) Master/Order/Other	Filing	11-22-2021	01:55:23 PM
Tony A Billips	Master Order/Tender Sum \$44143.08 Mr Billips be Transfer Cor	Order	11-22-2021	01:49:09 PM
Tony A Billips	NEF(11-02-2021 04:39:22 PM) Proposed Master/Order/Other	Filing	11-02-2021	04:42:40 PM
Tony A Billips	Order/Order Cover Sheet \$25.00	Filing	11-02-2021	04:39:22 PM
Tony A Billips	NEF(08-27-2021 02:25:07 PM) Letter/Letter	Filing	08-27-2021	02:51:05 PM
Tony A Billips	NEF(08-27-2021 02:12:49 PM) Letter/Letter	Filing	08-27-2021	02:50:13 PM
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Tony A Billips	NEF(08-27-2021 01:29:04 PM) Letter/Letter	Filing	08-27-2021	02:45:31 PM
Tony A Billips	NEF(08-27-2021 01:56:58 PM) Letter/Letter	Filing	08-27-2021	02:26:34 PM
Tony A Billips	Letter In Re to Trial Exhibit 11A	Filing	08-27-2021	02:25:07 PM
Tony A Billips	Letter In Re to Trial Exhibit 11A-EX_1	Filing	08-27-2021	02:25:07 PM
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Tony A Billips	NEF(08-27-2021 01:10:15 PM) Letter/Letter	Filing	08-27-2021	02:17:33 PM
Tony A Billips	Letter In Re to Trial Exhibit 11A	Filing	08-27-2021	02:12:49 PM
Tony A Billips	Letter In Re to Trial Exhibit 11A-EX_1	Filing	08-27-2021	02:12:49 PM
Tony A Billips	Letter In Re to Trial Exhibits 11A	Filing	08-27-2021	02:06:36 PM
Tony A Billips	Letter In Re to Trial Exhibits 11A-EX_1	Filing	08-27-2021	02:06:36 PM
Tony A Billips	Letter In Re to Trial Exhibits 11A	Filing	08-27-2021	02:03:37 PM
Tony A Billips	Letter In Re to Trial Exhibits 11A-EX_1	Filing	08-27-2021	02:03:37 PM
Tony A Billips	Letter In Re to Trial Exhibit 11A	Filing	08-27-2021	01:56:58 PM
Tony A Billips	Letter In Re to Trial Exhibit 11A-EX_1	Filing	08-27-2021	01:56:58 PM
Tony A Billips	Letter In Re to Trial Exhibit 11A	Filing	08-27-2021	01:52:39 PM
Tony A Billips	Letter In Re to Trial Exhibit 11A-EX_1	Filing	08-27-2021	01:52:39 PM
Tony A Billips	Letter In Re to Trial Exhibit 11A	Filing	08-27-2021	01:45:50 PM
Tony A Billips	Letter In Re to Trial Exhibit 11A-EX_1	Filing	08-27-2021	01:45:50 PM
Tony A Billips	Letter In Re to Trial Exhibit 11A	Filing	08-27-2021	01:41:28 PM
Tony A Billips	Letter In Re to Trial Exhibit 11A-EX_1	Filing	08-27-2021	01:41:28 PM
Tony A Billips	Letter In Re to Trial Exhibit 11A	Filing	08-27-2021	01:33:26 PM
Tony A Billips	Letter In Re to Trial Exhibit 11A-EX_1	Filing	08-27-2021	01:33:26 PM
Tony A Billips	Letter In Re to Trial Exhibit 11A	Filing	08-27-2021	01:29:04 PM
Tony A Billips	Letter In Re to Trial Exhibit 11A-EX_1	Filing	08-27-2021	01:29:04 PM
Tony A Billips	Letter In Re to Trial Exhibit 11A	Filing	08-27-2021	01:21:56 PM
Tony A Billips	Letter In Re to Trial Exhibit 11A-EX_1	Filing	08-27-2021	01:21:56 PM
Tony A Billips	Letter In Re to Trial Exhibit 11A	Filing	08-27-2021	01:10:15 PM
Tony A Billips	Letter In Re to Trial Exhibit 11A-EX_1	Filing	08-27-2021	01:10:15 PM
Tony A Billips	NEF(08-27-2021 11:25:59 AM) Letter/Letter	Filing	08-27-2021	11:49:25 AM
Tony A Billips	Letter in re: Trial Exhibits 1-11	Filing	08-27-2021	11:25:59 AM
Tony A Billips	Letter in re: Trial Exhibits 1-11-EX_1	Filing	08-27-2021	11:25:59 AM
Carolyn A Billips	NEF(08-26-2021 03:04:00 PM) Notice/Other	Filing	08-26-2021	03:58:06 PM
Carolyn A Billips	Notice of Filing Trial Exhibits	Filing	08-26-2021	03:04:00 PM

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Carolyn A Billips	Notice of Filing Trial Exhibits-EX_1	Filing	08-26-2021	03:04:00 PM
Carolyn A Billips	Notice of Filing Trial Exhibits-EX_2	Filing	08-26-2021	03:04:00 PM
Carolyn A Billips	Notice of Filing Trial Exhibits-EX_3	Filing	08-26-2021	03:04:00 PM
Tony A Billips	NEF(08-23-2021 05:30:37 PM) Trial Brief	Filing	08-24-2021	08:00:39 AM
Tony A Billips	Pre Trial Brief	Filing	08-23-2021	05:30:37 PM
Tony A Billips	NEF(08-10-2021 10:07:15 AM) Order/Electronic Form 4	Filing	08-10-2021	10:07:25 AM
Tony A Billips	Order/motion to exclude denied & granted. Compel resolved	Order	08-10-2021	10:07:15 AM
Carolyn A Billips	NEF(08-09-2021 09:38:28 AM) Filing/Other	Filing	08-09-2021	09:42:02 AM
Carolyn A Billips	Defendants Pre Trial Brief	Filing	08-09-2021	09:38:28 AM
Tony A Billips	NEF(08-06-2021 02:26:27 PM) Motion/Compel	Filing	08-06-2021	02:39:49 PM
Tony A Billips	Notice of Motion and Motion to Compel Discovery/Srv	Motion	08-06-2021	02:26:27 PM
Tony A Billips	Notice of Motion and Motion to Compel Discovery/Srv-EX_1	Motion	08-06-2021	02:26:27 PM
Tony A Billips	Notice of Motion and Motion to Compel Discovery/Srv-EX_2	Motion	08-06-2021	02:26:27 PM
Tony A Billips	Notice of Motion and Motion to Compel Discovery/Srv-EX_3	Motion	08-06-2021	02:26:27 PM
Tony A Billips	NEF(08-06-2021 02:04:48 PM) Response	Filing	08-06-2021	02:21:40 PM
Tony A Billips	PL Return to DF Motion to Exclude	Filing	08-06-2021	02:04:48 PM
Tony A Billips	PL Return to DF Motion to Exclude-EX_1	Filing	08-06-2021	02:04:48 PM
Tony A Billips	PL Return to DF Motion to Exclude-EX_2	Filing	08-06-2021	02:04:48 PM
Tony A Billips	PL Return to DF Motion to Exclude-EX_3	Filing	08-06-2021	02:04:48 PM
Tony A Billips	NEF(08-04-2021 04:58:33 PM) Motion/Compel	Filing	08-05-2021	09:16:32 AM
Tony A Billips	Motion/Compel Discovery & Crt/Srv	Motion	08-04-2021	04:58:33 PM
Carolyn A Billips	NEF(07-22-2021 04:52:10 PM) Motion/Exclude	Filing	07-23-2021	09:25:38 AM
Billips, Carolyn A as Trustee	Motion to Exclude	Motion	07-22-2021	04:52:10 PM
Billips, Carolyn A as Trustee	Motion to Exclude-EX_1	Motion	07-22-2021	04:52:10 PM
Tony A Billips	NEF(05-26-2021 11:58:48 AM) Order/Protection from Court ...	Filing	05-26-2021	12:08:32 PM
Tony A Billips	Order/Protection from Court Appearance	Order	05-26-2021	11:58:48 AM
Tony A Billips	NEF(05-24-2021 02:03:36 PM) Order/Order Cover Sheet \$25....	Filing	05-24-2021	02:20:20 PM
Tony A Billips	Order/Order Cover Sheet \$25.00	Filing	05-24-2021	02:03:36 PM
Tony A Billips	NEF(05-17-2021 11:47:43 AM) Motion/Continuance	Filing	05-17-2021	12:05:51 PM
Tony A Billips	Motion/Continuance & Crt/Srv	Motion	05-17-2021	11:47:43 AM
Tony A Billips	NEF(05-13-2021 11:38:57 AM) Order/Electronic Form 4	Filing	05-13-2021	11:39:27 AM
Tony A Billips	Order:Denying Motion/Exclude & Motion/Take Deposition Grant	Order	05-13-2021	11:38:57 AM
Carolyn A Billips	NEF(05-11-2021 03:13:46 PM) Motion/Exclude	Filing	05-11-2021	03:42:03 PM
Carolyn A Billips	Motion/Exclude	Motion	05-11-2021	03:13:46 PM
Tony A Billips	NEF(04-26-2021 03:01:53 PM) Order/Electronic Form 4	Filing	04-26-2021	03:02:07 PM
Tony A Billips	Order/Multiple Motions	Order	04-26-2021	03:01:53 PM
Carolyn A Billips	NEF(04-23-2021 01:49:15 PM) Response	Filing	04-23-2021	02:39:29 PM
Carolyn A Billips	Response to Plntff's Motion F/Continuance	Filing	04-23-2021	01:49:15 PM
Tony A Billips	NEF(04-22-2021 03:03:29 PM) Motion/Continuance	Filing	04-22-2021	03:22:04 PM
Tony A Billips	Motion/Continuance	Motion	04-22-2021	03:03:29 PM
Tony A Billips	NEF(04-16-2021 04:06:36 PM) Order/Protection from Court ...	Filing	04-16-2021	04:06:48 PM
Tony A Billips	Order/Protection from Court Appearance	Order	04-16-2021	04:06:36 PM
Carolyn A Billips	NEF(04-14-2021 02:39:44 PM) Memo/Memo in Opposition	Filing	04-16-2021	10:06:37 AM
Carolyn A Billips	NEF(04-14-2021 02:57:49 PM) Motion/Strike	Filing	04-14-2021	03:08:59 PM
Carolyn A Billips	Motion/Strike	Motion	04-14-2021	02:57:49 PM
Carolyn A Billips	Motion/Strike-EX_1	Motion	04-14-2021	02:57:49 PM
Carolyn A Billips	Motion/Strike-EX_2	Motion	04-14-2021	02:57:49 PM
Carolyn A Billips	Motion/Strike-EX_3	Motion	04-14-2021	02:57:49 PM
Carolyn A Billips	Motion/Strike-EX_4	Motion	04-14-2021	02:57:49 PM
Carolyn A Billips	Defendants Memo in Opposition Of Motion To Amend	Filing	04-14-2021	02:39:44 PM
Tony A Billips	NEF(04-14-2021 01:22:38 PM) Order/Order Cover Sheet \$25....	Filing	04-14-2021	02:32:16 PM
Tony A Billips	Order/Order Cover Sheet \$25.00	Filing	04-14-2021	01:22:38 PM
Tony A Billips	NEF(04-12-2021 03:42:17 PM) Order/Protection from Court ...	Filing	04-12-2021	03:42:30 PM
Tony A Billips	Order/Protection from Court Appearance	Order	04-12-2021	03:42:17 PM
Tony A Billips	NEF(04-08-2021 03:17:11 PM) Memo/Memo in Support	Filing	04-08-2021	03:58:46 PM
Tony A Billips	Memo in Support Of Motion/Amend Complaint & Srv	Filing	04-08-2021	03:17:11 PM
Tony A Billips	Memo in Support Of Motion/Amend Complaint & Srv-EX_1	Filing	04-08-2021	03:17:11 PM
Tony A Billips	NEF(04-08-2021 11:59:40 AM) Proposed Order/Protection fr...	Filing	04-08-2021	12:02:55 PM
Tony A Billips	Order/Order Cover Sheet \$25.00	Filing	04-08-2021	11:59:40 AM
Tony A Billips	NEF(03-22-2021 11:52:46 AM) Response	Filing	03-22-2021	11:58:27 AM

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Tony A Billips	Pltffs Response to Defendants Motion For Summ/Judgment	Filing	03-22-2021	11:52:46 AM
Carolyn A Billips	NEF(03-19-2021 03:37:08 PM) Memo/Memo in Support	Filing	03-19-2021	03:42:17 PM
Carolyn A Billips	Defendants Memo/Support of Motion For Summ/Judgment	Filing	03-19-2021	03:37:08 PM
Carolyn A Billips	Defendants Memo/Support of Motion For Summ/Judgment-EX_1	Filing	03-19-2021	03:37:08 PM
Carolyn A Billips	Defendants Memo/Support of Motion For Summ/Judgment-EX_2	Filing	03-19-2021	03:37:08 PM
Tony A Billips	NEF(02-23-2021 12:36:21 PM) Order/Order Cover Sheet \$25....	Filing	02-23-2021	12:43:41 PM
Tony A Billips	Motion/Compel Deposition & Crt/Srv	Motion	02-23-2021	12:36:21 PM
Tony A Billips	Motion/Compel Deposition & Crt/Srv-EX_1	Motion	02-23-2021	12:36:21 PM
Carolyn A Billips	NEF(01-25-2021 08:59:13 AM) Motion/Summary Judgment	Filing	01-25-2021	09:39:14 AM
Carolyn A Billips	Motion/Summary Judgment	Motion	01-25-2021	08:59:13 AM
Carolyn A Billips	Motion/Summary Judgment-EX_1	Motion	01-25-2021	08:59:13 AM
Tony A Billips	NEF(12-22-2020 02:39:42 PM) Order/Protection from Court ...	Filing	12-22-2020	02:39:48 PM
Tony A Billips	Order/Protection from Court Appearance	Order	12-22-2020	02:39:42 PM
Tony A Billips	NEF(12-22-2020 01:01:03 PM) Order/Order Cover Sheet \$25....	Filing	12-22-2020	01:26:47 PM
Tony A Billips	Order/Order Cover Sheet \$25.00	Filing	12-22-2020	01:01:03 PM
Tony A Billips	NEF(11-11-2020 11:25:48 AM) Amended/Amended Summons And ...	Filing	11-12-2020	10:37:11 AM
Tony A Billips	NEF(11-11-2020 12:30:22 PM) Order/Order Cover Sheet \$25....	Filing	11-12-2020	10:21:51 AM
Tony A Billips	Motion/Leave to Amend Complaint	Motion	11-11-2020	12:30:22 PM
Tony A Billips	Motion/Leave to Amend Complaint-EX_1	Motion	11-11-2020	12:30:22 PM
Tony A Billips	2nd Amended Summons And Complaint	Filing	11-11-2020	11:25:48 AM
Tony A Billips	NEF(10-23-2020 04:24:10 PM) Order/Protection from Court ...	Filing	10-23-2020	04:24:16 PM
Tony A Billips	Order/Protection from Court Appearance	Order	10-23-2020	04:24:10 PM
Tony A Billips	NEF(10-23-2020 11:42:06 AM) Proposed Order/Protection fr...	Filing	10-23-2020	12:00:47 PM
Tony A Billips	Order/Order Cover Sheet \$25.00	Filing	10-23-2020	11:42:06 AM
Carolyn A Billips	NEF(01-30-2020 10:26:42 AM) Notice/Other	Filing	01-30-2020	11:17:11 AM
Carolyn A Billips	Notice of Transfer from Atty Epting to Atty Rannik	Filing	01-30-2020	10:26:42 AM
Billips, Carolyn A as Trustee	Consent Fourth Amended Scheduling Order	Order	07-30-2019	04:50:30 PM
	Order/Order Filing Fee	Filing	07-30-2019	08:58:06 AM
	Masters Order on Motions, Stay of Deposition & Sealed Docs	Order	06-19-2019	11:29:04 AM
	Certain Defendants Answer To Amended Complaint, crt/srv	Filing	05-15-2019	10:11:02 AM
	Master's Order on Motion/Dismiss & Motion/Clarification	Order	04-26-2019	11:58:11 AM
	Plaintiff's Return to Motion for Protective Order & Stay	Filing	04-23-2019	08:50:20 AM
	Plaintiff's Return to Defendant's Motion to Compel Discovery	Filing	04-23-2019	08:47:50 AM
Alexs Restaurants Inc	Motion/Motion Filing Fee	Filing	04-04-2019	01:55:07 PM
Jaan Gunnar Rannik	Defnt Motion/Compel Discovery & Crt/Srv	Motion	04-04-2019	01:01:00 PM
Case Party Inactive	Defnt Motion/Protective Order & Crt/Srv	Motion	02-28-2019	11:51:55 AM
Carolyn A Billips	Motion/Motion Filing Fee	Filing	02-28-2019	11:16:12 AM
	3rd Amended Scheduling Order	Order	01-15-2019	04:30:54 PM
	Miscellaneous Documents	Filing	01-09-2019	11:40:18 AM
	Plaintiff's Return to Dfnt's Motion/Clairification, crt/srv	Filing	01-07-2019	09:10:42 AM
Jaan Gunnar Rannik	Defnt Motion/Clarification & Crt/Srv	Motion	12-28-2018	04:32:17 PM
Carolyn A Billips	Motion/Motion Filing Fee	Filing	12-28-2018	03:56:28 PM
Carolyn A Billips	Motion/Motion Filing Fee	Filing	12-28-2018	03:55:22 PM
Jaan Gunnar Rannik	Consent Motion/Amend Scheduling Order	Motion	12-28-2018	10:39:07 AM
	Master's Order Denying defendant Motion to Dismiss & Relief	Order	12-28-2018	09:22:47 AM
	Pltff's Return to Motion to Dismiss and for Further Relief	Filing	12-19-2018	09:41:22 AM
Carolyn A Billips	Order/Order Filing Fee	Filing	12-13-2018	01:35:10 PM
	order to seal memo filed 9-6-18-replaced w/ redacted copy	Order	12-13-2018	01:30:27 PM
Carolyn A Billips	Motion/Motion Filing Fee	Filing	10-04-2018	11:33:31 AM
Case Party Inactive	Defnt Motion/Dismiss & Crt/Srv	Motion	10-04-2018	08:53:40 AM
	Defendants' Opposition to Plaintiff's Motion to Compel, srv	Filing	09-07-2018	09:16:57 AM
	Plaintiff Memo in Support of Motion to Quash etc, crt/srv	Filing	09-06-2018	11:21:33 AM
Michael A. Uricchio	Pltff Motion/Compel Discovery & Crt/Srv	Motion	09-04-2018	04:24:05 PM
Tony A Billips	Motion/Motion Filing Fee	Filing	09-04-2018	02:02:03 PM
Tony A Billips	Motion/Motion Filing Fee	Filing	08-13-2018	04:53:07 PM
Tony A Billips	Motion/Motion Filing Fee	Filing	08-13-2018	04:50:58 PM
Case Party Inactive	Pltff Motion/Clarify sec. Amended Scheduling Order & Crt/Srv	Motion	08-13-2018	04:01:12 PM
Case Party Inactive	Pltff Motion/Quash and Order of Protection & Crt/Srv	Motion	08-13-2018	03:59:38 PM
	Master's Order-dismissing LP & 2nd Amended Scheduling Order	Order	06-01-2018	10:43:24 AM
Jaan Gunnar Rannik	Motion/Compel by Defendant, crt/srv	Motion	02-28-2018	02:28:49 PM

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Carolyn A Billips	Motion/Motion Filing Fee	Filing	02-28-2018	11:19:44 AM
Case Party Inactive	Amended Motion/Dismiss by Defendant, crt/srv	Motion	02-28-2018	09:54:57 AM
Case Party Inactive	Defnts Motion to Dismiss Pltffs Amended Complaint, srv	Motion	02-13-2018	03:54:04 PM
Carolyn A Billips	Motion/Motion Filing Fee	Filing	02-13-2018	02:10:11 PM
	Certificate Of Service	Filing	01-24-2018	12:31:25 PM
Tony A Billips	Order/Order Filing Fee	Filing	01-18-2018	02:26:03 PM
Tony A Billips	Amended Complaint	Filing	01-18-2018	09:53:11 AM
Tony A Billips	Consent order to amend cmplt	Order	01-18-2018	09:51:33 AM
Tony A Billips	Order/Order Filing Fee	Filing	09-14-2017	12:36:57 PM
	Master's Consent Scheduling Order	Order	09-14-2017	12:29:35 PM
	Master's Consent Confidentiality & Protective Order	Order	08-17-2017	04:50:24 PM
Tony A Billips	ADR/Alternative Dispute Resolution (Workflow)	Action	06-19-2017	11:04:30 AM
Tony A Billips	Order/Substitution Of Counsel-Query in place of Williamson	Order	05-25-2017	04:34:08 PM
Tony A Billips	Order/Referred to Master	Order	05-03-2017	01:15:34 PM
Alexs Restaurants Inc	Order/Order Filing Fee	Filing	04-28-2017	02:22:54 PM
	Answer of certain defendants, crt/srv	Filing	01-31-2017	11:12:14 AM
	Service/Affidavit Of Service	Filing	12-15-2016	11:18:25 AM
Tony A Billips	Summons & Complaint	Filing	11-21-2016	11:02:30 AM

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Jan 20 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

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.

NOTICE OF APPEAL

Defendants, CAROLYN A. BILLIPS and ALEX’S RESTAURANTS, INC., appeal from the orders of the Honorable Mikell Scarborough dated November 22, 2021 (**Exh. A**) and December 21, 2021 (**Exh. B**), the latter of which granted in part Plaintiff’s motion to reconsider the Court’s November 22, 2021 order. Defendant received notice of the latter order on December 21, 2021.

EPTING & RANNIK, LLC

January 20, 2022
Charleston, South Carolina

/s/ Jaan Rannik
Jaan G. Rannik
46A State Street
Charleston, SC 29401
Phone: 843-377-1871
Fax: 843-377-1310
jgr@epting-law.com

ATTORNEYS FOR DEFENDANTS/APPELLANTS

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Jan 20 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

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.

PROOF OF SERVICE

I certify that I have served the Notice of Appeal dated January 20, 2022 on opposing counsel via e-mail, on January 20, 2022, addressed to Respondent’s counsel of record.

Michael W. Sautter, Esq. – mikewsautter147@aol.com

O. Grady Query, Esq. – gquery@qlawsc.com

Michael H. Ellis, Jr., Esq. – mellis@qlawsc.com

A copy of the e-mail is attached to this Proof of Service as Exhibit A.

January 20, 2022
Charleston, South Carolina

EPTING & RANNIK, LLC

/s/ Angela Gross_____

Angela Gross

Legal Assistant to Jaan G. Rannik

46A State Street

Charleston, SC 29401

Phone: 843-377-1871

Fax: 843-377-1310

agg@epting-law.com

EXHIBIT A

Angela Gross

From: Angela Gross
Sent: Thursday, January 20, 2022 2:48 PM
To: Grady Query; Mike Ellis; mikewsautter147@aol.com
Cc: Jaan Rannik; Angela Gross
Subject: Billips vs Billips
Attachments: 2022 01 20 - Notice of Appeal.pdf; 2022 01 18 - EXH A - Master's Order.pdf; 2022 01 18 - EXH B - Order on Motion to RECONSIDER and to SEAL.pdf; 2022 01 20 - Ltr to Ct. Apps enc filing fee for NOA (Billips v. Billips).pdf

Counselors:

Attached for service please find Defendants' Notice of Appeal, with exhibits, dated January 20, 2022, together with our firm's letter to the S.C. Court of Appeals in the above referenced matter. A Proof of Service of the Notice of Appeal will follow under a separate email.

Angela

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

EPTING & RANNIK, LLC

ATTORNEYS AT LAW

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

JAAN G. RANNIK · JGR@EPTING-LAW.COM

January 20, 2022

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
1220 Senate Street
Columbia, SC 29201

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

Dear Ms. Kitchings:

Enclosed is our firm's check for \$250.00 as payment of the filing fee associated with the Notice of Appeal filed on January 20, 2022 in the above-referenced matter.

We have in our possession the transcript of the proceedings related to the order dated November 22, 2021. There was no hearing to relating to Plaintiff's motion to reconsider that order, which was decided in a December 21, 2021 order. Therefore, there are no further transcripts to obtain.

With kindest regards,

EPTING & RANNIK, LLC

/s/Jaan G. Rannik

Jaun G. Rannik
JGR/agg

Enclosures

cc: The Honorable Julie Armstrong, Clerk of Court
South Carolina Court Administration
All counsel of record

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Jan 20 2022

SC Court of Appeals

**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.

and

ALEX’S RESTAURANTS, INC.,

Defendants.

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Jan 20 2022

SC Court of Appeals

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. 3**³); 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

EXHIBIT B

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

RECEIVED
Jan 20 2022
SC Court of Appeals

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), SCRPC.



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

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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

RECEIVED

Dec 14 2022

SC 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.*

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that, pursuant to Rule 210(g) of the South Carolina Rules of Appellate Procedure, that the Amended Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Respectfully submitted:

EPTING & RANNIK, LLC

/s/ Jaan Rannik

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