THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Cynthia Graham Howe
Master-in-Equity, Fifteenth Judicial Circuit

Case No.: 2009-CP-26-620
Appellate Case No.: 2016-001075

Ellis E. Smith, individually and on behalf of A&E Constructors and Consultants, Inc., a South Carolina Corporation .....Plaintiffs,

vs.

Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc., Linda C. Vereen, Arthur W. Vereen, as Trustee of the Arthur W. Vereen Residence Trust, and Linda C. Vereen, as Trustee of the Linda C. Vereen Residence Trust, ... Defendants,

AND

Arthur Wayne Vereen, individually and on behalf of A&E Constructors and Consultants, Inc. and 29th Place Developers, Inc., ... Third-Party Plaintiffs,

vs.

E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc. and Ellis E. Smith, individually, ...Third-Party Defendants.

OF WHOM Arthur Wayne Vereen, individually and on behalf of A&E Constructors and Consultants, Inc., Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction Company, Inc., Linda C. Vereen, Arthur W. Vereen, as Trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, as Trustee of the Linda C. Vereen Residence Trust and 29th Place Developers, Inc. are ..... Appellants,

AND

Ellis E. Smith, individually and on behalf of A&E Constructors and Consultants, Inc., a South Carolina Corporation and E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc. and Ellis E. Smith, individually are ..... Respondents.

RECORD ON APPEAL

James K. Gilliam, Esquire
Henrietta U. Golding, Esquire
MCNAIR LAW FIRM, P.A.
Post Office Box 336
Myrtle Beach, SC 29578-0336
(843) 444-1107
ATTORNEYS FOR APPELLANTS

Julian M. DuRant, Esquire
Frank H. DuRant, Esquire
DURANT & DURANT, P.A.
2107 Farlow Street
Myrtle Beach, SC 29577
(843) 448-1541
ATTORNEYS FOR ELLIS E. SMITH, INDIVIDUALLY, AND ON BEHALF OF A & E CONSTRUCTORS AND CONSULTANTS, INC.

J. Jackson Thomas, Esquire
THOMAS & BRITTAIN, P.A.
Post Office Box 1290
Myrtle Beach, SC 29578
(843) 692-2628
ATTORNEY FOR E. SMITH AND SONS CONSTRUCTION, LLC, EES CONSTRUCTION AND CONSULTING, INC., AND ELLIS E. SMITH, INDIVIDUALLY

INDEX

ORDERS:

Order of Reference signed by the Honorable Larry J. Hyman, Jr. dated July 23, 2009. 9

"Pre-Trial Order" of Judge Howe dated October 15, 2010 and recorded October 18, 2010 11

Order signed by the Honorable Cynthia Graham Howe dated March 23, 2015 and entitled "Judgment Against the Defendants Arthur W. Vereen, individually and as trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, Individually, and as trustee of the Linda C. Vereen Residence Trust, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, and Arthur Vereen Construction Company, Inc., Jointly and Severally." 17

Form 4 signed by the Honorable Cynthia Graham Howe dated March 23, 2015 59

Nunc Pro Tunc Order Amending Judgment Total signed by the Honorable Cynthia Graham Howe dated March 24, 2015 61

Form 4 signed by the Honorable Cynthia Graham Howe dated March 25, 2015 63

Order Disposing of Post-Trial Motions signed by the Honorable Cynthia Graham Howe dated April 25, 2016 65

This Court's September 22, 2016 Order 71

This Court's March 22, 2018 Order.....75

MOTIONS:

Defendants' and Third-Party Plaintiffs' Motions to Reconsider Order dated April 20, 2015.....77

Defendants' Motion to Reopen Hearing for Taking Testimony and Evidence Effecting Subject Matter and Relief Sought in Case, dated August 21, 2014, and attached exhibits A & B attached thereto 159

Motion to Dismiss Appeal with attached exhibits evidencing service of Judgments and Form 4s 199

PLEADINGS:

Complaint of Ellis E. Smith 417

Answer, Counterclaims, and Third Party Complaint filed by Appellants 458

Reply of Third-Party Complaint and Answer to Counterclaims 470

TRANSCRIPTS:

Complete and entire trial transcripts before the Honorable Cynthia Graham Howe. According to the information provided, the complete and entire trial transcripts include testimony taken on:

February 15 and 16, 2011 480
Testimony of Arthur W. Vereen:
Direct Examination by Mr. Durant 486
Cross Examination by Ms. Cook 707
Cross Examination by Mr. Thomas 716
Testimony of Susan E. Brady
Direct Examination by Mr. Durant 717
Cross Examination by Ms. Cook 721
Re-Direct Examination by Mr. Durant 729
Testimony of Ellis Smith
Direct Examination by Mr. Durant 871
Cross Examination by Ms. Cook 1015

Transcript of Hearing; June 13, 14, and 16, 2011 1269
Continued Testimony of Susan Brady:
Continued Direct Examination by Mr. Durant 1273
Continued Cross Examination by Ms. Cook 1344
Re-Direct Examination by Mr. Durant 1609
Continuing Testimony of Ellis Smith 1614
Cross Examination by Ms. Cook 1618

October 11, 12, and 13, 2011 1768
Testimony of Ellis Smith
Direct Examination by Ms. Cook 1776
Cross Examination by Mr. Durant 2018
Testimony of Elizabeth Sisson
Direct Examination by Ms. Cook 2039

August 27, 28, 29, and 30, 2012 2440
Testimony of Arthur Wayne Vereen 2500
Direct Examination by Mr. Durant 2500
Cross Examination by Ms. Cook 2722
Cross Examination by Mr. Thomas 2798
Re-Cross Examination by Ms. Cook 2823
Re-Cross Examination by Mr. Thomas 2826
Re-Re-Cross Examination by Ms. Cook 2858
Re-Re-Cross Examination by Mr. Thomas 3068
Re-Re-Cross Examination by Ms. Cook 3092

November 17, 2014 Transcript of hearing before the Honorable Cynthia Graham Howe.....3117

May 11, 2015 Transcript of hearing before the Honorable Cynthia Graham Howe 3155

EXHIBITS:

Defendant's Exhibit #15: Check from Vereen in amount of $50,000 3235

Defendant's Exhibit #18: E. Smith and Sons Construction, LLC filing with South Carolina Secretary of State 3236

Defendant's Exhibit #19: E. Smith and Sons Construction, LLC application to LLR.....3237

Defendant's Exhibit #21: Land Sales Contract between 29th Place Developers, Inc. and Ellis E. Smith.....3244

Defendant's Exhibit #22: Cost of Construction Materials.....3250

Defendant's Exhibit #24: Applications for Permit for construction for Perez, Davis, McMillan, and Sealy.....3252

Defendant's Exhibit #41: Building Permit for Condolux 3257

Defendant's Exhibit #48: Building Permit for Condolux 3258

Defendant's Exhibit #49: Documents reflecting work performed for Cari Ann Davis.....3261

Defendant's Exhibit #50: Certificate of Occupancy for Cari Ann Davis' house 3285

Defendant's Exhibit #51: Documents reflecting work performed for Robert Sealy 3286

Defendant's Exhibit #53: Documents reflecting work performed for McMillans 3298

Defendant's Exhibit #54: Certificate of Occupancy for McMillans.....3312

Defendant's Exhibit #55: Documents reflecting work performed for Perez 3313

Defendant's Exhibit #59: Contracting license to E. Smith and Sons Construction, LLC 3321

Defendant's Exhibit #65: Agreement signed by Ellis Smith on behalf of A&E 3323

Defendant's Exhibit #66: Building Permit for Condolux 3325

Defendant's Exhibit #67: Building Permit for Condolux 3326

Defendant's Exhibit #68: Building Permit for Condolux 3327

Defendant's Exhibit #69: Building Permit for Condolux 3328

Defendant's Exhibit #70: Building Permit for Condolux 3329

Defendant's Exhibit #71: Building Permit for Condolux 3330

Defendant's Exhibit #72: Building Permit applied for by Smith for Capital Partners IV, LLC 3331

Defendant's Exhibit #74: Documents reflecting loan to Smith 3332

Defendant's Exhibit #87: Letter from Turner Padgett dated July 30, 2007 3337

Defendant's Exhibit #88: Ledger reflecting payments made in 2008 on behalf of A&E 3339

Defendant's Exhibit #89: Ledger reflecting payments made in 2008 on behalf of A&E 3351

Defendant's Exhibit #102: Mr. Vereen's Application to be A&E's Qualifying Party signed Oct. 2, 2017 3353

Plaintiff's Exhibit #1: 2004 Notebook by Susan Brady, CPA 3357

Plaintiff's Exhibit #2: 2005 Notebook by Susan Brady, CPA 3515

Plaintiff's Exhibit #3: 2006 Notebook by Susan Brady, CPA 3705

Plaintiff's Exhibit #4: 2007 Notebook by Susan Brady, CPA 4025

Plaintiff's Exhibit #6: Business Records of A&E, job ledgers, and index of job records 4216
- Book 2 4216
- Book 3 4882
- Book 5 5601
- Book 6 5998

Plaintiff's Exhibit #7: Complete deposition of Carrie Drewett admitted into evidence and A&E's written general ledger 6515
- Exhibit 1 6682
- Exhibit 2 6846
- Exhibit 3 7206
- Exhibit 4 7496
- Exhibit 5 7700
- Exhibit 6 7798
- Exhibit 7 7889
- Exhibit 8 7934

Exhibit 9 8109
Exhibit 10 8112
Exhibit 11 8144
Exhibit 12 8148
Exhibit 13 8150
Exhibit 14 8162
Exhibit 15 8163
Exhibit 16 8164
Exhibit 17 8170
Exhibit 18 8178
Exhibit 19 8179
Exhibit 20 8180
Exhibit 21 8183
Exhibit 22 8184
Exhibit 23 8185
Exhibit 24 8186
Exhibit 25 8187
Exhibit 26 8188
Exhibit 27 8212
Exhibit 28 8218
Exhibit 29 8224
Exhibit 30 8227
Exhibit 31 8231
Exhibit 32 8233
Exhibit 33 8297
Exhibit 34 8305
Exhibit 35 8306
Exhibit 36 8312
Exhibit 37 8316
Exhibit 38 8324
Exhibit 39 8327
Exhibit 40 8329
Exhibit 41 8331
Exhibit 42 8337
Exhibit 43 8368
Exhibit 44 8370
Exhibit 45 8382
Exhibit 46 8383
Exhibit 47 8395
Exhibit 48 8398

Plaintiff's Exhibit #8: Incorporation Documents of A&E, Organizational Meeting, Sub S Election; Initial Deposit Ticket 8401

Plaintiff's Exhibit #9: Demand Letter of Smith 8405

Plaintiff's Exhibit #10: Licensing and Incorporation Documents for all parties.....8428

Plaintiff's Exhibit #11: List of Permits from the City of Myrtle Beach for A&E and Grand Strand Builders.....8444

Plaintiff's Exhibit #12: The Willoughby Job Documents.....8456

Plaintiff's Exhibit #13: The Kempe Job Documents.....8666

Plaintiff's Exhibit #14: Dr. Erol Lane Job Documents a/k/a South Strand Cardiology.....8694

Plaintiff's Exhibit #15: Park Place Properties, LLC Job, Pointe Marsh and Black Pearl Putt Job Documents.....8717

Plaintiff's Exhibit #16: Parkway Offices, LLC Job Documents.....8846

Plaintiff's Exhibit #17: Plantation Lakes Job Documents.....8860

Plaintiff's Exhibit #18: Financial Statements for Mr. & Mrs. Vereen from NBSC.....8888

Plaintiff's Exhibit #20: Arthur Vereen Const. Company and A&E Business records (contained in Box 20 as a group).....8893

Plaintiff's Exhibit #21: bank checking account records for A&E from 12/31/07 to 12/31/08.....12178

Plaintiff's Exhibit #24: HUD-1 statements from Park Place Pointe Marsh closings.....12281

Plaintiff's Exhibit #25: Check from daughter Elizabeth Sisson dated 10-28-08 in the amount of $35,803.10 payable to and deposited into Park Place Properties.....12284

Plaintiff's Exhibit #26: Letters regarding 2006 Worker's Comp. audit of A&E; refund check of $49,221.00 payable to A&E and deposit record of deposit of check into account of Park Place Properties.....12285

Plaintiff's Exhibit #27: wages paid to Arthur Vereen and Linda Vereen as reported on personal tax returns showing payment of wages from A&E: $30,000.00 in 2004; $52,000 in 2005; $70,800 in 2006; $70,800 in 2007; $96,566.40 from 1-2008 until 3-18-09 from Company payroll record.....12291

Plaintiff's Exhibit #28: Defendants' Answer lo Plaintiffs Interrogatories.....12306
Plaintiff's Exhibit #30: Deposition of Linda Vereen.....12351

Plaintiff's Exhibit #31: Business checks.....12412

Plaintiff's Exhibit #32: Single check from Whitley for $11,533.00 payable to A&E and deposited into Park Place Properties acct.....12427

Plaintiff's Exhibit #33: Settlement Statement Lot 20, Point Marsh 12428

Plaintiff's Exhibit #34: Settlement Statement Lot 21, Point Marsh 12431

Plaintiff's Exhibit #35: Smith Sapp's A&E accounts receivable as of 12/31/2005.....12435

Plaintiff's Exhibit #36: Smith Sapp's A&E accounts receivable as of 12/31/2004.....12439

Plaintiff's Exhibit #37: construction check from First Palmetto for $79,855.06 payable to A&E and Park Place Properties.....12440

Plaintiff's Exhibit #38: A&E jobs outstanding as of 12-31-06.....12441

Plaintiff's Exhibit #39: Invoice from Stock Builders and A&E check payable for $22,000 for material for Park Place Properties.....12442

Plaintiff's Exhibit #40: Summary Analysis of Non-Corporate Activity of A&E Constructors and Consultants prepared by Susan Brady, CPA (Has been called Plaintiff s Exhibit 5, contains "Consented Amounts") 12453

Plaintiff's Exhibit #40-A: "Amended Summary Analysis of Non-Corporate Activity of A&E Constructors and Consultants with Amended Proposed Statement of Assets, Liabilities and Equity as of 12.31.2007" reducing Defendants' accounts receivables and Ms. Brady's bill of $142,268.00 from Brady. Sent post-trial at direction of Court and served on all parties (no original exhibit number, mentioned in the Final Judgment) 12535

OTHER MATERIALS

April 6, 2015 Letter from Attorney Cook to Judge Howe regarding missing page 37 (no exhibit number).....12537

Exhibit 1 to May 2015 Transcript: Joint Post Trial Brief sent to Judge Howe as Ordered 12538

Letter from DuRant, Attorney for Respondents, dated March 25, 2015 serving Form 4 and Judgment upon the Appellants, with attachments.....12544

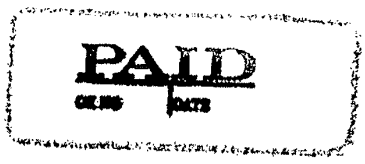
Letter from DuRant to Appellants dated March 27, 2015 serving Form 4 and Nunc Pro Tunc Order upon Appellants with attachments.....12593

Affidavit from DuRant dated July 20, 2015 with attached certificates of service, filed with Court of Appeals supporting Motion to Dismiss Appeal.....12600

Letter from Cook, attorney for Appellants, dated April 20, 2015, serving Respondents with attached Motion for Reconsideration.....12605

Affidavit of Kathryn M. Cook 12688

Certificate of Counsel 12737



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	CIVIL ACTION NO.: 2009-CP-26-620
COUNTY OF HORRY	)	

Ellis Smith, individually, and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation,	)	
Plaintiff,	)	
vs.	)	ORDER OF REFERENCE
Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc., and Linda C. Vereen,	)	
Defendants.	)	

2009 JUL 23 PM 3:12
RELANE HOWARD
CLERK OF COURT

This is a shareholder's derivative action seeking a full accounting from the Defendants and a dissolution of the corporation, A & E Constructors and Consultants, Inc., a South Carolina corporation. The Plaintiff is represented by Frank H. DuRant and the Defendants are represented by Daniel J. MacDonald, both of the Horry County Bar.

The parties agree that the issues of accounting and dissolution are equitable in nature and should be referred to the Master In Equity with full authority to issue a final decision in the cause. It is anticipated that detailed discovery will be issued in this case and that the Master should have the authority to resolve all issues during the pendency of this action.

It is therefore Ordered, with the consent of the parties, that the within cause be referred to the Honorable Cynthia Graham Howe, Master In Equity for Horry County with authority to issue any and all final Orders in the cause and all appeals shall be to the

South Carolina Supreme Court or Court of Appeals as provided by the South Carolina Appellate Court Rules..

Circuit Court Judge

July 23, 2009

Larry B. Hyman, Jr.
Presiding Judge
15th Judicial Circuit

We Consent:

Frank H. DuRant, Esq.
Attorney for Plaintiff

Daniel J. MacDonald, Esq.
Attorney for the Defendants

Deposit in the Amount of $ 125.00
Paid by Frank H. DuRant
Date 7-6-09
Received by the Master In Equity
For Horry County

Hearing Scheduled for _____

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO.: 2009-CP-26-620
	)	
ELLIS E. SMITH, Individually, and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., a South Carolina Corporation,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
ARTHUR WAYNE VEREEN, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, ARTHUR VEREEN CONSTRUCTION, INC. and LINDA C. VEREEN, et. al.,	)	PRETRIAL ORDER
	)	
Defendants	)	

FILED
HORRY COUNTY
2010 OCT 18 PM 12:51
PLAINTIFF HUGGINS-WARD
CLERK OF COURT

Date of Hearing: October 11, 2010
Present: Frank H. DuRant, attorney for A & E
J. Jackson Thomas, attorney for Smith
Kathryn Cook, attorney for Defendants

This matter came before me for a Pre-Trial Conference to simplify the issues in the trial of this case. Present were the attorneys of records and by subpoena, the five certified public accountants identified as witnesses or expert witnesses in this case: Susan Brady, Bartlett Buie, Richard Crumpler, Elizabeth Montgomery and Bert Huggins. This is a shareholder's derivative action and breach of fiduciary duty action brought by Ellis E. Smith and A & E Constructors and Consultants, Inc. (the "Company") against Arthur Wayne Vereen ("Vereen") and others as a result of alleged financial irregularities by Mr. Vereen, who was a 50% shareholder, the Treasurer and a board member of the company. The parties agreed in the pleadings to judicial termination of the corporation. The Plaintiff's expert accounting witnesses have basically

completed their accounting of the company records and have provided all information to the Defendants, with the exception of the final 2007 report.

Based upon the requests of the parties and arguments presented before me, I hereby Order the following concerning the trial of this case, which has been referred to me with finality:

(1) That the Plaintiff A & E's request to add the Defendants Arthur Wayne Vereen, Trustee of the Arthur Wayne Vereen Residence Trust and Linda C. Vereen, as Trustee of the Linda C. Vereen Residence Trust as defendants in their capacities as "Trustees" of the legal entity holding title to their marital home in Georgetown County, is hereby granted without specific amendment of the pleadings for the purposes of Plaintiff's claim that assets from this corporation were diverted and comingled to such Trustees in the purchase and building of the real property of such Trustees, which is the marital home of the Defendants in Georgetown County. This is a claim identical to the claims made by the Plaintiffs against the real property owned by the named Defendants and is not a "new" claim that would require additional discovery as a Notice of Lis Pendens has been filed for months against the real property owned by the named Defendants as Trustees. No additional responses shall be required by the defendants in their capacities as trustees as the claims will be deem denied by such Defendants, in their capacities as "Trustees."

(2) To simplify the presentation of evidence in this accounting case of the Plaintiffs, it is Ordered that copies of business records, accounting records, tax records, checks and deposits, banking records, bills and invoices and the like for the named parties shall be admitted into evidence without authentication and as copies, provided however, that the same are business records of the parties and have been presented to the opposing parties in the discovery portion of this case. These records are the basis of the Plaintiffs' experts' opinions, which were gathered

during the discovery portion of this case and from the records of the Company maintained in the Defendants office. It is the intention of this order that the Plaintiff and its experts will not have to authenticate the copies or prove the records of the Defendants as ordinary business records of the named parties, as long as the documentary evidence was earlier disclosed or to the other party or in the possession of the Defendants and furthermore, that copies of original shall be admitted without producing the original. I reserve decision on the issue of business records to be submitted by the Defendants to support claims for reimbursement or claims for payment made on behalf of A&E for which they are entitled to credit since these documents have not been produced and inspected by the Plaintiffs. I reserve the right to make a similar ruling after discovery has been provided to the Plaintiff.

(3) The Plaintiff's expert Brady has just completed the 2007 "accounting" and shall produce and deliver a copy to the Defendant within two weeks. Defendant shall pay for the cost of copying such record.

(4) The Plaintiff shall deliver another copy of its Answers to the Defendants Interrogatories and Requests for Production by Friday, October 15, 2010.

(5) That the Defendants did not verify the Answers to Plaintiff's Interrogatories as required by the Rules of this Court. The Defendants shall immediately verify the Answers as required by Rule 33, SCRCP and provide the required verifications to the Plaintiff. The Defendants have not responded to the Plaintiffs Requests for Production served in July, 2010 and shall provide responses by December 1, 2010 as required by Rule 34, SCRCP.

(6) That the Defendants have informed the Court that they have elected not to have an accounting expert or other "expert" in this accounting case. It is therefore Ordered, that the Defendants shall be precluded from using an accounting expert or other expert in the trial of this

case. This Order is predicated upon the request of the Plaintiff to the Court to require that the Defendants' accounting expert(s) meet with the accounting experts of the Plaintiff in an attempt to simplify the issues and resolve accounting issues according to standard accounting practices. The Defendants have informed the Court that Elizabeth V. Sisson, an employee of A & E, an attorney and the daughter of the Defendants Vereen was gathering this information and that the Attorneys Cook and Sisson would meet with the Plaintiff's expert in an attempt to simplify these issues. The Plaintiffs objected that such persons were not independent, were not accountants or trained in accounting practices, and lacked the ability to objectively review the evidence. It is not in the province of this Court to require the Defendants to obtain expert accounting advice or witnesses as the CPA's for the Defendants and the Plaintiffs were present in Court and the Defendants do not desire to use them in the trial of this case. Once the information is gathered, the representatives of the Defendants shall meet with the Plaintiffs experts to attempt to resolve accounting issues and attempt to simplify the issues at trial. The attorneys for the Plaintiffs shall immediately inform the Court if meaningful progress is not made toward simplification of these issues and I reserve the right to take further action to simplify these accounting issues.

(7) The CPA's Montgomery, Crumpler and Huggins were present under subpoena at the hearing and had been advised by Defendants' attorney, Ms. Cook, not to talk or communicate with the Plaintiffs or their attorney, except through her office. These CPA's are members of the firm that prepared the tax returns and tentative tax returns of the Plaintiff A & E and the named Defendants. Since the attorney for the Defendants does not represent the accounting firm of Smith, Sapp or its members and it has not and cannot employ these certified public accountants as an expert witnesses in this case, it is improper for the Defendants to advise the CPAs not to discuss this matter with the Plaintiff as this firm prepared the tax returns of the Plaintiff. It is

ordered that the Plaintiff shall be entitled to discuss any matter concerning the tax returns and liabilities of the Plaintiff A & E with its accountants without limitation, notification or the presence of the Defendants and their attorney. This shall not be interpreted to require the firm to provide such services for no charge. The Plaintiff will have to make arrangements for reasonable compensation for the services requested and shall be entitled to receive copies of any documentation in the files of such accountants pertaining to the tax and accounting affairs of the Plaintiff A & E and any ancillary information used to prepare such returns or tentative returns and such accountants can remain as "factual" witnesses in this case.

(8) The Plaintiff informed the Court that it intended to impeach the creditability of the "employee" of the Plaintiff, if she testified or gathered the factual information to support the Defendants accounting defenses and/or counterclaims, as was discussed at the hearing. This information was provided to the Court in the Plaintiff's pre-trial brief and in Court so the Defendant would not claim surprise when this issue may be explored in more detail at trial. The Court noted the information provided by the Plaintiff and no decision was requested or made concerning such issues.

(9) The Defendants shall gather and deliver to the Plaintiffs attorneys all accounting information to support its claims for set-off or reimbursement by December 1, 2010 and the Plaintiff is granted leave to depose any witness concerning such claims or issues, including the previously deposed witnesses, as these are claims that were not presented when these depositions were taken. The Defendants shall present evidence of the actual invoice or bill for services or labor rendered and the cancelled check for payment made pursuant to such invoice. The Plaintiffs shall schedule its depositions immediately after receipt of this information. If the information is not delivered to the Plaintiffs within such deadline, it is Ordered that that such

accounting records and information shall not be presented in the trial of the case by the Defendants.

(10) The Defendants informed the Court that they had not deposed any witnesses and desired to depose the Plaintiff and its experts. The Defendants shall complete any depositions by the end of January, 2010 and this case shall be scheduled for trial in on February _____, 2010. I am mindful that the Defendants have not completed any depositions, but the Defendants have had opportunity to complete their discovery as required by the Rules of this Court. This matter shall not be rescheduled without my direct order.

(11) The attorneys for the parties shall attempt to pre-mark all exhibits and agree upon the introduction of all documentary evidence to be used in the trial of this case.

If and when the Defendants deliver the accounting records to the Plaintiffs, the parties shall notify the Court if they have conducted meaningful accounting review of the accounting records of both parties and I expect a report from the Plaintiff's attorney as to whether meaningful resolution of the accounting issues has been reach by the Plaintiffs' experts and the representative of the Defendants. If meaningful discussions have not been held, the Court shall be advised by the Plaintiffs' experts in summary form.

AND IT IS SO ORDERED.

CINDY GRAHAM HOWE
Master-In-Equity

Conway, South Carolina
October 15, 2010

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY	FIFTEENTH JUDICIAL CIRCUIT
	CASE NO.: 2009-CP-26-620
ELLIS E. SMITH, Individually, and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., a South Carolina Corporation,	
Plaintiff,	JUDGMENT AGAINST THE DEFENDANTS ARTHUR W. VEREEN, INDIVIDUALLY AND AS TRUSTEE OF THE ARTHUR W. VEREEN RESIDENCE TRUST, LINDA C. VEREEN, INDIVIDUALLY, AND AS TRUSTEE OF THE LINDA C. VEREEN RESIDENCE TRUST, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, AND ARTHUR VEREEN CONSTRUCTION COMPANY, INC., JOINTLY AND SEVERALLY
vs.	
ARTHUR WAYNE VEREEN, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, ARTHUR VEREEN CONSTRUCTION COMPANY, INC., LINDA C. VEREEN, ARTHUR W. VEREEN, AS TRUSTEE OF THE ARTHUR W. VEREEN RESIDENCE TRUST, and LINDA C. VEREEN, AS TRUSTEE OF THE LINDA C. VEREEN RESIDENCE TRUST,	
Defendants.	
and	
ARTHUR WAYNE VEREEN, individually and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., and 29th PLACE DEVELOPERS, INC.,	
Third Party Plaintiffs,	
vs.	
E. SMITH AND SONS CONSTRUCTION, LLC, AND EES CONSTRUCTION AND CONSULTING, INC., and ELLIS E. SMITH, individually,	
Third Party Defendants.	

HORRY COUNTY
2015 MAR 24 PM 1:08

Appearances:

Attorney for A & E, Smith:	Frank H. DuRant
Attorney for Smith, EES and E. Smith & Sons:	J. Jackson Thomas
Attorney for the Defendants and Third Party Plaintiffs:	Kathryn M. Cook

PROCEDURAL HISTORY

This matter was referred to me for hearing pursuant to an Order of Reference of the Honorable Larry B. Hyman, Jr., dated July 23, 2009, with authority to issue a final Order in this matter. The parties presented testimony and hundreds of accounting records over four separate weeks. The case took more than a year to try because of various circumstances.

This is a shareholder's derivative action brought by Ellis E. Smith ("Smith"), individually and on behalf of A & E Constructors and Consultants, Inc. ("the Company") against Arthur Wayne Vereen ("Vereen"), the treasurer and remaining shareholder, and Vereen's wife, as well as some companies which Vereen controlled. Smith and the Company have sued for an accounting as well as for a dissolution of the Company, asserting that Vereen converted corporate assets.

Vereen and the Defendant entities generally denied the allegations, agreed to an orderly dissolution of the Company, and asserted counterclaims for an accounting, indemnification, and misappropriation of the Company's opportunities. Vereen, individually and on behalf of A&E, brought in an additional party, 29th Place Developers, Inc. (29th Place), without court approval, but without objection, and sued E. Smith and Sons Construction, LLC (E. Smith) and EES Construction and Consulting, Inc. (EES) and Smith, individually (Smith) as third party defendants.

I have reviewed the entire Court file, weighed the testimony and evidence presented, and find damages for the Plaintiff Company and against the Defendants Vereen individually and as trustee of the Arthur Wayne Vereen Residence Trust and Linda C. Vereen individually and as trustee of the Linda C. Vereen Residence Trust, Park Place Properties of Myrtle Beach, LLC,

Parkway Offices, LLC, and Arthur Vereen Construction Company, Inc. as discussed below. I find that each of these named Defendants conspired together to misappropriate and convert the assets of the Plaintiff Company and its other shareholder Smith.

DISCUSSION

The Plaintiff Smith and Defendant Vereen are the sole shareholders, officers, and directors of the Company, which was incorporated on October 28, 2003, as a construction company. The Company made a timely subchapter "S" taxation election under the Internal Revenue Code, and Vereen was elected treasurer. At all times, Vereen exclusively handled the Company's finances including managing and controlling the Company's checkbook. Smith and Vereen had equal ownership of the Company's shares of stock and served as its board of director members. When they began the Company, Smith and Vereen agreed that each would finish any pre-existing jobs under the names of their own separate companies and at their own separate expense.

Defendant Arthur Vereen Construction Company, Inc. ("AVCC") is a South Carolina Corporation owned by Vereen. Vereen operated his construction business out of AVCC for many years, but AVCC and Vereen's commercial building licenses expired in October 2003, about the time the Company began. Third Party Defendant EES Construction and Consulting, Inc. ("EES") is a South Carolina Corporation owned by Smith. The Defendant Park Place Properties of Myrtle Beach, LLC ("Park Place") is a South Carolina Limited Liability Company, which is owned 5% by Vereen and 95% by Defendant Linda C. Vereen, Vereen's wife ("Wife"), but managed and controlled by Vereen. The Defendant Parkway Offices, LLC ("Parkway") is a South Carolina Limited Liability Company owned by Wife, but also managed and controlled by Vereen. Parkway and Wife owned several buildings, including one space shared as offices with the other Defendants on Grissom Parkway in Myrtle Beach. E. Smith and Sons Construction, LLC ("E. Smith"), a South

Carolina Limited Liability Company created in April 2007, is owned solely by Smith. 29th Place Developers, Inc. (29th Place) is a corporation owned by Vereen.

The Company became a licensed commercial contractor in January 2004. The Company paid no salaries until June 2004, but beginning in January 2004, Smith and Vereen met each morning at the Company's office on Grissom Parkway. That office also served as an office for AVCC, Vereen's company, Parkway, Wife's company that Vereen managed and controlled, and Vereen's daughter's law practice.

Vereen began receiving a salary of $1,000.00 per week in June 2004. Smith was still finishing prior jobs at EES, and instead of receiving a salary, Smith invoiced the Company, through EES, for his time at $25.00 per hour and for EES's pro-rata expenses spent on Company business. Vereen approved and paid these EES invoices from the Company account at Carolina First Bank; Vereen charged the expenses to jobs performed by the Company on its job ledgers.

In early 2004, the Company began construction of a speculative residential home for Vereen in the Plantation Lakes subdivision near Myrtle Beach and also began several new, large, multi-family jobs. The Company was extremely busy and profitable during its first three years of operation. These years, 2004-2007, coincided with the three peak years of the real estate boom in the Grand Strand area. Opportunities for construction companies were numerous; construction companies were profitable. The Company permitted and performed several large jobs for Defendants Park Place, Parkway, and Wife; these included several jobs for Vereen's family members. Vereen told Smith that the Company would treat the family jobs just like any other job, and the Company would be paid overhead and profit.

A South Carolina corporation is required to maintain "appropriate accounting records" and is required to furnish its shareholders with annual financial statements that include the

corporation's year-end balance sheet, income statement, and statement of changes in shareholder's equity. See SC Code Ann. §33-16-101, et seq. (1976). If the financial statements are reported on by a public accountant, the accountant's report must accompany the financial statement. See SC Code Ann. §33-16-200 (1976). Smith never received an annual statement from Vereen, the Company's treasurer, or the Company's accountant, Richard Crumpler, CPA. Gains or losses from this subchapter "S" corporation were passed through and allocated to the two shareholders, Vereen and Smith, on an equal basis, which were included in the shareholders' taxable income and gains for each tax year.

The Company's CPA, Crumpler, informed Smith in 2007 that the Company had a large profit. When Smith asked Vereen about these profits, Vereen denied that the Company had any profits in 2007, instead asserting that the Company's large expenses offset its profits, leaving no net profits. At that time, the Company had completed construction of 23 resort homes[1] in a subdivision known as "Pointe Marsh" in the Cherry Grove Section in North Myrtle Beach for Park Place, had performed extensive construction on a putt-putt golf course owned by Park Place in North Myrtle Beach, and had performed extensive renovations on office buildings owned by Parkway and Wife on Grissom Parkway in Myrtle Beach. Smith began investigating the office records in early 2007, and he concluded that Vereen, in conspiracy with the remaining Defendants, had engaged in fraudulent practices with the Company. Smith made demand upon Vereen to rectify the wrongdoings. Vereen, however, denied any wrongdoing and refused to account for his actions. Smith suspected Vereen and Park Place were engaging in improper sales practices in selling the 23 homes at Pointe Marsh owned by Park Place.

[1] The Pointe Marsh homes were sold for prices ranging from $500,000.00 to $750,000.00.

Smith thereafter initiated the present shareholder's derivative action on behalf of the Company against Vereen, Wife, Park Place, Parkway and the Vereen's in their capacities as trustees, who owned the Vereen personal residence in Murrells Inlet, SC. The residence[2] was transferred into their names as Trustees of two separate Trusts in 2007 by Vereen and Wife. Smith alleged that the Defendants conspired together to wrongfully convert the Company assets to their own use; he requested an accounting of the Company's books, records, and other items, which are contained in the pleadings. Smith served detailed discovery requests upon the Defendants, and the Defendants served joint discovery responses. The Defendants filed an Answer and Counterclaim and a Third Party Complaint against E. Smith, EES and Smith.

In the Defendants' responsive pleadings, they denied that Vereen controlled the Company's finances or that the disbursements made by Vereen were not for the complete benefit of the Company. Vereen, individually and on behalf of A&E and 29th Place, alleged that he loaned monies from his companies to Smith in the 1990's for which he was to be reimbursed by Smith. He also asserted that EES improperly billed the Company for work allegedly performed for it. Vereen also demanded an accounting. Vereen's corporation, 29th Place, filed a third-party claim against Smith based upon an old promissory note. This Court granted Smith's motion for a directed verdict as to that claim.

AVCC counterclaimed against Smith for refusing to pay Vereen and AVCC for the use of AVCC contractor's license in a condo project 10 years earlier based upon an oral agreement for a 10% commission of the price of construction. This Court dismissed this claim on Smith's motion for a directed verdict.

[2] The Vereen residence is a large house located in an exclusive neighborhood in Murrells Inlet, South Carolina.

As to the Counterclaim for Breach of Contract concerning the alleged improper use of the AVCC license by EES at Carolina Keys, I find that AVCC and Vereen failed to prove their claim by a preponderance of the evidence. Specifically, I find that Vereen and AVCC orally agreed to allow Smith and EES to use the license in return for 10% of the profits earned by Smith and EES, not the cost, and that Smith and EES lost money, and thus owed no money to Vereen and AVCC. Furthermore, I find that the oral contract is illegal and cannot be enforced in South Carolina, as a contractor is prohibited from allowing a non-licensed entity to borrow a commercial license to perform construction. See SC Code Ann. §40-11-200 (1976). Finally, I find the claim, if proper, would be barred by the three year statute of limitations, as I specifically find that Vereen authorized the use of the license and was aware of its use for over nine years prior to the institution of this action. See SC Code Ann. §15-3-530.

Throughout this trial, the Defendants AVCC, Park Place, Parkway, Wife and Vereen referred to themselves as the "Vereen Entities." The Vereen Entities denied the specific allegations of wrongdoing in responding to the Company's discovery requests. The Plaintiff employed Susan Brady, an experienced, local Certified Public Accountant, as an expert witness to determine the nature and extent of the Company's damages. The Court found her testimony most insightful.

Even though not required, the Vereen Entities did not submit any accounting testimony, not even the Company's own accountant, Richard Crumpler. Mr. Crumpler is a well-respected certified public accountant who is the senior partner at a local CPA firm. The very fact that he was not called to testify was telling, especially when he presumably prepared the Company's tax returns based upon information provided by the Company's treasurer.

Ms. Brady conducted a lengthy investigation, testified, and submitted to the Court a detailed written report (the "Brady Report") of the fraudulent or "non-corporate" actions of the

Defendants, which were documented by written evidence. For the calendar years 2004 through 2007, Brady detailed an "Analysis of Non Corporate Activity" for each year, listing each and every improper act by the Defendants that caused the Company financial harm. The evidence of each improper act was contained in numbered tabs along with supporting documentation. As the trial progressed, the Brady Reports were amended to correct any errors, concessions and additions found during late produced discovery and during the trial. Ms. Brady's accounting task was complicated by Vereen's almost complete failure to maintain separate accounting records for the Company and the various Vereen Entities and his consistent commingling of the entities' income and expenses without documentation.

At the trial's end, Ms. Brady submitted her "Amended Summary Analysis of Non-Corporate Activity of A & E Constructors and Consultants," simply referred to as the final "Brady Report." In it, Ms. Brady documented damages sustained by the Company in the amount of $2,712,503.31, directly caused by Defendants' wrongful actions. These findings were fully supported by the evidence. The Company's accounting records, consisting of the Peachtree accounting system ledger, the checking accounts and tax returns, were submitted into evidence, without objection. The Defendants' checking account records and depositions from the Vereen Entities' bookkeeper Drewett and Defendant Linda Vereen were introduced into evidence. The Plaintiff introduced copies of checks for payment for services it rendered; Vereen then deposited the checks into Defendants' accounts. By clear and convincing evidence, the Plaintiff established that the Defendants conspired to convert the Company's assets to their own use with the intent to defraud the Plaintiff as detailed in the final Brady Report. I find the final Brady Report to be credible, accurate and complete. I hereby adopt the findings of the final Brady Report as conclusive evidence of the actual damages sustained by the Plaintiff as a result of the Defendants' actions.

LEGAL ISSUES

The Plaintiff brought this derivative action pursuant to Rule 34, SCRCP, and detailed the efforts he made to resolve these issues with shareholder Vereen prior to instituting this action. I am confident that this litigation was the only avenue available in this matter. Smith was the only party that could represent the Company's interests against the alleged wrongdoers, the Defendants.

Title 33 of the SC Code of Laws defines the duties and obligations of a corporation's officers and directors. It requires a corporation's director and officer to act in good faith, with the care an ordinarily prudent person would exercise under similar circumstances, and in a manner he reasonably believes to be in the best interest of the corporation and its shareholders. See, SC Code Ann. §33-8-300 (1976). In this matter, Vereen had a conflict of interest because of the construction performed by the Company for the Vereen Entities due to the ownership interests of Vereen and Wife in the transactions. See SC Code Ann. §33-8-310 (1976).

The conflict of interest stated in 33-8-310 could be overcome only if Vereen disclosed the material facts of each construction job to Smith, who had to officially authorize, approve or ratify the transaction. See SC Code Ann. §33-8-310(a)(1). If the test's first two prongs are established ([a]disclosure of material facts and [b] authorization, approval or ratification of transaction), the transaction must still be fair to the Company. See, SC Code Ann. §33-8-310(a)(3). Vereen allowed the Company to perform substantial construction for the Defendants even where there was no written construction contract. Vereen also allowed the Company to pay the Defendants' costs and expenses without billing them. Moreover, Vereen paid the Defendants' expenses from the Company's checking account without seeking reimbursement. Since Vereen acknowledged that he did not disclose the secret nature of these wrongdoings to Smith, I did not need to determine

the fairness to Smith of these transactions. The misappropriation of a Company asset can never be fair to an unknowing shareholder.

S. C. Code Ann. §33-8-320 prohibits the Company from loaning money to a director unless strict approval requirements are met. At trial Vereen admitted that he did not disclose these wrongdoings to Smith. Of course, Smith could not approve of any of Vereen's actions of which he was unaware. A director who assents to an unlawful distribution of company funds has a duty to repay the funds under SC Code Ann. §33-8-320. As to any funds converted by or diverted to the Defendants or for their use from the Company account, I find that Vereen failed to establish that Smith approved of the unlawful transactions. Vereen directed the unlawful distributions of the Company's funds; he has a duty to repay the funds.

An officer's duty to a corporation is defined in SC Code Ann. §33-8-410, et seq. He must act in good faith and only in a manner that he reasonably believes to be in the best interest of the Corporation and its shareholders. See SC Code Ann. §33-8-420. These statutory provisions define what has always been the law in this State; the Corporation, through its officers and directors, must always act in the best interest of the Corporation. A breach of these fiduciary duties or responsibilities, whether as officer or director, imposes liability upon the breaching party for any damages sustained by the Corporation and clearly places upon the wrongdoer the burden of proof to establish consent, approval and fairness. Id.

In each contract that the Company had with the Defendants, Vereen, as the Company's treasurer and the financial manager, failed to get a written contract for the construction. He also advanced payment from the Company's account to the Defendants without authorization for construction expenses, and further, he failed to invoice or collect payments and costs from the

Defendants. When payments were made, Vereen on occasion did not deposit the collected payments in the Company account but instead placed them in accounts belonging to one of the other Defendants.

The Defendant Vereen, in conspiracy with the Defendant Vereen Entities, breached his statutory duties to the Company in the following transactions where he had a material conflict of interest:

1. The construction of 23 homes and the renovation of a putt-putt golf course and arcade on Sea Mountain Highway for the related party, Defendant Park Place: Wife gave Vereen exclusive management and control of Park Place. The Company advanced payment for over $900,000.00 in construction expenses for these 23 homes; however, it did not have a construction contract obligating Park Place to pay the Company for the construction, and the Company did not invoice or collect payment for the expenses it advanced. Wife gave Vereen control of the banking accounts of Park Place. The balances in the Park Place banking account were sufficient to pay the Company for the expenses advanced and the costs of construction, but payment to the Company was not made.

2. The construction of a home in Plantation Lakes for the Defendant Vereen in 2004: Vereen owned a lot in the Plantation Lakes subdivision. The Company paid for the construction expenses for Vereen's new home built beginning in early 2004. Vereen did not prepare a construction contract requiring payment for the construction, and Vereen, the Company's treasurer, did not invoice or collect payment for the Company's expenses. I find that the Defendant Vereen obtained a construction loan to pay for the cost of construction but did not use the loan proceeds for that purpose.

3. The construction of improvements made on office buildings owned by the Defendants Parkway and Wife located on Robert Grissom Parkway: The Company advanced payment for construction expenses for buildings owned by Wife and Parkway but did not have a written construction contract obligating the Wife and Parkway to pay the Company for the cost of construction. Vereen, the Company's treasurer, did not invoice or collect payment for the expenses advanced by the Company.

4. The payment of construction expenses for Defendant AVCC: Vereen, as the Company's treasurer, paid construction costs and expenses for AVCC jobs from the Company account without Smith's knowledge and did not invoice or collect for the expenses advanced. Vereen billed and collected from the third parties for the AVCC charges and placed the funds in to the AVCC account or other accounts of the Defendants.

5. The payment of construction expenses for Vereen and Wife: Vereen, as the Company's treasurer, paid for construction expenses out of the Company account for his and Wife's personal home, now owned by the Trustees named as defendants. Vereen, on behalf of the Company, did not require that Vereen and Wife sign a construction contract with the Company obligating Vereen and Wife to pay for construction costs and did not invoice or collect payment for the expenses advanced by the Company. Further, Vereen did not tell Smith that the Company was paying for construction costs of the Vereens' personal home from the Company account. The Vereens received a newly-constructed house at the Company's expense without Smith's knowledge.

6. Vereen had multiple unwritten construction contracts with members of Vereen's and Wife's family, and Vereen paid for construction expenses from the Company account: The Company advanced funds to pay for construction on multiple jobs for members of Vereen and

Wife's family members. There were no written construction contracts obligating the owner to pay for the cost of construction and, on many occasions, Vereen and the Company did not invoice or collect payment for the expenses advanced by the Company.

7. Vereen entered multiple construction contracts through AVCC, which contracts were performed by the Company: AVCC entered into multiple written construction contacts when it was not licensed to perform construction in South Carolina and when the Company obtained all permits and paid for the construction costs of such projects from the Company account. Vereen did not tell Smith that he entered into the secret contracts with the customers of the Company or that he invoiced the owners in the name of AVCC. On multiple occasions, even though the payments for such construction belonged to the Company, Vereen deposited the payments into the Defendants' accounts.

8. Vereen paid for construction expenses from the Company account for improvements made to the home of Elizabeth Vereen Sisson, daughter of Vereen and Wife, who also is a Company employee: Vereen did not require the Company to have a written construction contract obligating his daughter Sisson, a South Carolina lawyer, to pay the Company for the construction on her home. The Company paid over $150,000.00 in construction expenses on her home, and Vereen, as the Company's treasurer, never invoiced Sisson for the expenses. The Plaintiff received a partial payment for the expenses on this job. A large payment from Sisson erroneously was made to Park Place rather than the Company. Vereen admitted, at trial, that over $15,000.00 in labor charges which should have been repaid to the Company for the Sisson job never were made.

9. Vereen, with the tacit assistance of the other Vereen Entities which he controlled, billed third parties for services performed by the Company; Vereen thereafter deposited the

payments from the responsible parties into various accounts of the Defendants, not the Company's account. Smith was unaware of Vereen's improper actions in these matters.

THE ACCOUNTING TRIAL

Vereen admitted at trial that he signed construction contracts in the name of AVCC in 2004, when AVCC was unlicensed, and when the Company had obtained the building permits and paid for the costs of the construction. Vereen further admitted that AVCC billed the Company's customers for these expenses, even though AVCC did not pay for the cost of construction. Moreover, Vereen admitted he did not tell Smith of these practices. Vereen's testimony was contrary to the Defendants' interrogatory responses. The Defendants' united response at trial was that the "Vereen Entities put in more money than they took out." Expert witness Brady accounted for all money the Vereen Entities deposited into the Company checking account, properly giving appropriate credit for each deposit. Brady compiled notebooks for the 2004 – 2007 calendar years, which detailed the ultra vires and improper actions of the Vereen Entities against the Company.

Pursuant to the Court's October 15, 2010 Pretrial Order, the Company's and the Defendants' business records, accounting records, tax records, checks and deposits, banking records, accounting and tax records were admitted into evidence without authentication. In the Pretrial Order, this Court required that the Defendants deliver all accounting information to the Plaintiff's attorneys to support the Defendants' claims for set-off or reimbursement by December 1, 2010. Defendants' claims allegedly occurred from 2004 to 2007. The Court's Order required that the Defendants "shall present evidence of the actual **invoice or bill** for services rendered or labor rendered and the **cancelled check** for payment made pursuant to such invoice (emphasis added)." If the Defendants did not comply by the deadline, the Order provided that "such

accounting records and information shall not be presented in the trial of the case by the Defendants."

During trial, the Court repeatedly sustained the Plaintiff's objections to the Defendants' attempts to introduce records into evidence that did not meet these requirements because they were either not produced by the deadline, or were not original invoices for goods or labor accompanied by the cancelled check of the Defendants for payment. Defendants proffered these records. From this Court's examination of the Company records, Vereen regularly sought reimbursement for expenses he paid on the Company's behalf, which were documented, charged to a job ledger on the Company's accounting system, and were immediately reimbursed to Vereen by a Company check he signed. The Company would then bill the customer for the expense incurred or add it to general overhead. The Defendants submitted invoices paid by the Defendants for improvements made on the Defendants' properties. These invoices were not proper for reimbursement, because the Company had no obligation to pay any of the Defendants' expenses on their own properties. The Defendants submitted claims for reimbursement for Company jobs performed from 2004 until 2007. The Company would not have the ability to invoice the customer or deduct the expense on its tax returns, as the request was submitted over three years after the Company had completed the last job and after the tax returns had or should have been prepared. Finally, if the Defendants did not provide the cancelled check and the invoice for the expense, the Company could not document the expense as a Company's expense or as an expense paid by the Defendant claiming the reimbursement. The Defendants attempted to mass produce claims for reimbursement or offset that were not documented appropriately and as required in the Court's Pretrial Order. As to claimed deductions for 2004 and 2005, the Company's tax returns already had been filed and could not be

amended. The Company accepted approximately $80,000.00 in credits, which are outlined in the Brady Report, which were credited against the Defendants' accounts receivable.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the testimony and other evidence presented, I make the following findings of fact and conclusions of law:

1. I find that the Plaintiff complied with the requirements of the South Carolina Rules of Civil Procedure and properly brought a derivative action against the Defendants in this action.

2. I find that the Plaintiff alleged in the verified Complaint that the Defendants conspired together to wrongfully convert Plaintiff's assets and to injure Plaintiff. The Defendants generally denied the allegations and counterclaimed against the Plaintiff Smith and his entities, EES and E. Smith.

3. The Counterclaims and Third Party Complaints: After reviewing the credibility of the testimony and evidence presented, I find that the Defendants and Third Party Plaintiffs did not meet their burden of proof by a preponderance of the evidence in establishing that Smith, EES or E. Smith owed any monies to the Defendants or to the Company that was not otherwise accounted for by Brady in her Final Report. To that extent, I find that the Defendants failed to meet their burden of proof that Smith owed Vereen or AVCC for any monies related to the construction of Smith's home in the 1990's, or that Smith owed any sums for the use of the AVCC license in the construction of the condominiums in North Myrtle Beach. Closing documents from the Smith home clearly establish payment in full at closing. As to the Counterclaim by AVCC against Smith, I specifically find that the oral agreement was for Smith and EES to pay Vereen and AVCC 10% of the profits they earned on the Carolina Keys project; Smith and EES did not earn any profits. Accordingly, Smith and EES owed nothing to Vereen and AVCC for the Carolina Keys project.

Moreover, even if there had been profits, I find that an agreement to use the AVCC license is an illegal contract that is unenforceable in Court. See SC Code Ann. §40-11-200 (1976).

As to 1990 debts allegedly due from Smith to the Vereen entities, I find that these debts were either discharged in Bankruptcy or are time barred under the Statute of Limitations. See SC Code Ann. §15-3-530(1). Furthermore, I find as a matter of fact that there was no agreement or discussion at the time this Company was formed for Smith to pay Vereen or the Defendants monies due from the past.

Further, I find that the Defendants failed to meet their burden of proof that Smith, EES or E. Smith misappropriated any corporate assets of the Company that was not accounted for by Brady in her Report. Specifically, I find that the Defendants and Third Party Plaintiffs failed to prove, by a preponderance of the evidence, that Smith or EES submitted any invoice for payment to the Company that was not properly reviewed and paid by Vereen, who approved and signed all Company checks. I find that the Defendants and Third Party Plaintiffs failed to establish that Smith, EES, or E. Smith used corporate assets for their own personal benefit, such as flooring and tile, other than the floor covering that was accounted for, admitted, and contained in the Report of Brady.

As to the claims contained in Paragraph 32 of the Counterclaim, the Court dismissed items 32 (a)(b)(c)(d)(l)(m)(o) and (p) on motion for directed verdict. I specifically find that Smith informed Vereen of the use of the Company license for items (a) through (k), which were instances where the Company license was used with permission of Smith and Vereen, and no monies were paid to the parties and no expense paid by the Company. Vereen produced no evidence of damages sustained by the Company for these actions. As to (l) to (p), I find that the Company's license was

not used and no Company funds were advanced for construction. The Counterclaims are thus dismissed.

I find that the Defendant E. Smith did enter into a construction contract with Martin Brown for the construction of the Condolux Office building in late 2007, after Smith left the Company. However, I find that Vereen had previously rejected the construction proposal as not being profitable. I find that E. Smith did in fact use the Company's construction license to perform the work; however, E. Smith obtained liability insurance for the job and paid each and every expense from its separate funds. I find that the Company has not suffered any damages as the result of Smith's actions and that Smith was the qualifying party with the Contractors Licensing Board for the Company. Smith had already left the Company at the time construction began, when he was receiving 14 weeks of paid leave for unused vacation time. I find that Vereen was aware of Smith's actions and made no complaint against him until this lawsuit was initiated.

4. I find that Vereen and Smith agreed that each could engage in outside construction activities to earn additional income, but any such activities would be at their own expense and in their separate time. Smith engaged in outside activities that did not involve Vereen or the Company, which were done on his own free time and expense. Smith's complaints against the Defendants involved transactions where the Company was performing and paying for construction services and yet, payment from third parties for its services was being made, via Vereen, to Vereen's companies. Smith's activities in performing labor on an hourly basis on his free time caused no legal or financial harm to the Company.

5. I expressly adopt the findings and conclusions contained in the Brady Report, which reflect the actual losses sustained by the Company in transactions between the Company and the Vereen Entities and for other non-corporate actions by Vereen. The Brady Report is detailed and

is supported by clear and convincing evidence. Due to the complexity and the material wrongdoings in several transactions, I make the following additional factual findings of the Defendants' misconduct, resulting in the Company's material damages:

(a) The Plantation Lakes home: In early 2004, Vereen employed the Company to build a residential home on his property in Plantation Lakes near Myrtle Beach. Vereen paid, by Company check, Plantation Lakes construction job expenses in the amount of $132,574.94, which are detailed in the Company job ledger and in the Brady Report. However, Vereen simultaneously had obtained a construction loan from Horry County State Bank to pay for the construction costs which was secured by a first mortgage loan upon the property. In addition to the basic construction job expenses, the Company incurred payroll costs for workers compensation, social security and payroll expense, liability insurance, office overhead, and salaried employees on the Plantation Lakes residence. Smith knew the Company was performing the job, but he was unaware that Vereen was not paying the Company for the construction costs from the Horry County State Bank construction loan.

Vereen sold the house to the Whitleys for an amount that exceeded the balance of the construction mortgage by $102,000.00. On the date of the 2005 real estate closing, Vereen executed a deed into the Company for a stated consideration of "$5.00 and assumption of mortgage" without Smith's knowledge or consent. The Company, by Vereen's signature, then transferred the property on that same day to the Whitleys for the stated purchase price. The HUD closing statement, signed by Vereen for the Company, reflected that Vereen's personal construction mortgage in the amount of $281,000.00 was paid by the closing agent, and the Company received the net proceeds from the sale of $102,480.96. When the Company's 2005 state and federal tax returns were prepared and filed by Vereen's CPA, the $102,480.96 check to the

Company was classified on the Company's books and tax returns as a "loan" from Vereen to the Company. Vereen did not report the income received on his and Wife's tax returns. As a result of these actions, the Company was not repaid the $132,574.94 it had advanced in construction costs, nor the payroll, overhead and profit expected for the construction of the house. Vereen admitted that he did not tell Smith of the same-day transfers, the advances made by the Company for construction expenses, the lack of billing or payment, and the tax treatment given to the transaction on the 2005 tax returns. Vereen offered no explanation for his actions.

Vereen testified that he may have done some "quirky things", but in the end, the Vereen Entities "put more money in than they collectively took out." Smith learned about the transaction when his attorney searched the public records of Horry County. As a result, the Company was defrauded of all the paid construction expenses, plus the indirect costs and expenses, including profit. When the Company later billed the Whitleys for additions they requested after purchase, Vereen deposited their check for payment made to the Company into the account of Defendant Park Place, instead of depositing it into the Company's account. The Brady Report details the losses sustained by the Company, including overhead, profit and expense. Vereen explained that he transferred the home to the Company because it was a "Company" venture, yet he failed to explain why his business partner had no knowledge of the transaction, and why the only revenues received from the sale were treated as a loan from Vereen to the Company.

(b) Willoughby Place: I find that Vereen had a conflict of interest with the Willoughby Place construction job, which was a $4,000,000.00 multi-family construction job performed by the Company from 2004 through 2006. The Company obtained all construction permits from the City of Myrtle Beach, and a construction loan was obtained by the Developer, Willoughby Family Investments, LLC, to pay the costs of construction. The Defendants never produced a copy of the

written construction contract between the Company and the Developer Willoughby Family Investments, LLC, but Defendants' Interrogatory responses stated that this was a job performed by the Company for Defendant AVCC. I find that such an agreement is improper in South Carolina, as AVCC had no construction license at that time and thus could not subcontract the job to a licensed entity. See SC Code Ann. §40-11-200 and §40-11-330 (1976). AVCC submitted multiple construction draw requests from AVCC, from AVCC d/b/a A & E, and from the Company. Vereen then deposited the construction draw payments into the Defendants' accounts.

I find that Willoughby checks totaling $113,480.00 were deposited into the AVCC account. Although the Defendants denied these actions in their pleadings and discovery responses, Vereen admitted at trial that the invoices came from the Defendant AVCC and that he deposited the payments into accounts other than the Company's account. I find that bills for "extras" to Willoughby were billed in the Company's name, and Vereen deposited the payments into Park Place's account. When the Company was sued for copyright infringement over the plans for this project, the Company paid for a portion of the defense and settlement expenses, but mysteriously the Company's "construction contract" could not be located. I find that the Defendants failed to produce a full accounting of these expenses, payments and reimbursements from the insurance carrier and the project's owner. The Brady Report details each misappropriated deposit and the invoices, third party checks and the deposit tickets to the Defendants, which were admitted into evidence. I find that the Defendant Vereen, AVCC, Park Place, and Parkway conspired together to defraud the Plaintiff by billing these charges improperly and in depositing the payment into their accounts.

(c) Dr. Lale job: I find that Vereen had a conflict of interest in the Dr. Lale remodel job. The job was contracted and permitted in the name of the Company on January 30, 2004. The

Company paid the costs and expenses of the job. According to the Defendants' discovery responses, this job was "performed by the Company for AVCC," but AVCC billed Dr. Lale rather than the Company. Vereen then deposited the Lale payments into accounts other than the Company's account. It is illegal in South Carolina for an unlicensed contractor to subcontract with a licensed contractor to perform construction services. See SC Code Ann. §40-11-200 and §40-11-330 (1976). The misappropriations are documented in the Brady Report, as part of the Company's actual damages. I find that Vereen and AVCC conspired to defraud Smith and the Company by billing charges improperly and by then failing to deposit payments received into the Company account. I find that AVCC was not licensed to perform this work, could not subcontract the job to the Plaintiff because it was not licensed, and did not pay for the construction costs. I furthermore find that Vereen failed to disclose these matters to Smith.

(d) Parkway Offices and Wife: I find that Vereen had a conflict of interest in the Company's job performed on Grissom Boulevard for Wife and Parkway Offices. Wife requested that the Company perform the construction contract on a "cost only" basis. I find that Wife and Parkway did not execute a written contract with the Company for the construction. Moreover, the Company did not bill for the services rendered, and Wife and Parkway did not pay for any of the construction at the office location. I find that Vereen wrote checks from the Company's account totaling $107,000.00 for construction costs but never billed Wife and Parkway for such expenses. I find that Vereen admitted he had no discussion with Smith about the job being a "cost only" job or that the Company had not been paid for the construction expenses. Again, the Defendants' explanation was that "the Vereen Entities put more money in than they took out." Each expense listed on the job ledger was paid by a Company check signed by Vereen and assigned to the Parkway Offices job ledger. I find that the Brady Report correctly detailed the Company's losses,

including overhead and profit, due to Wife and Parkway's failure to pay for any of the construction. I find that Vereen, Wife, and Parkway conspired together to defraud the Company..

(e) The Park Place Putt-Putt job: I find that Vereen had a conflict of interest in the Company's construction job performed at the Black Pearl Putt-Putt Golf Course, owned by the Defendant Park Place. Wife owns a 95% interest in Park Place and Vereen the other 5% interest. Vereen managed Park Place, making all decisions for the Company. I find that the Plaintiff established that it paid over $114,290.72 in actual labor and expenses for this job from the Company account, but there was no written construction contract, no invoicing, and no payment for the costs of construction. Defendants asserted that this was a "cost only" job. The expenses were established from the Company job ledger, and Vereen wrote each check from the Company account reflected on the ledger. I find that the Brady Report outlines the losses sustained by the Company caused by the Defendant's failure to pay for this construction, including overhead and profit. I find that although the Defendants challenged the charges maintained on the Plaintiff's accounting records attributed to "shop," the items paid and attributed to the "shop" were not included in this job ledger and were not expensed to the Defendants. I find the Defendants' explanations to be unbelievable and contrary to the documented written evidence. I find that Vereen admitted that he did not tell Smith that there was no written contract for construction, that the Company had not paid for the construction costs, and that the Defendants were not invoiced and did not pay for the construction. I find as a matter of fact that Wife authorized the actions of her husband. Moreover, she and Park Place received the benefit of substantial improvements without payment.

(f) The 23 homes constructed for Park Place: I find that the Defendants had a conflict of interest in the 23 homes that the Company constructed for Park Place at Pointe Marsh, located

on Sea Mountain Highway in North Myrtle Beach. The Company performed these construction jobs, permitted in their name, over a two year period without any written construction contracts on a "cost only" basis." I find that Vereen signed $973,875.47 in Company checks for labor and materials for the 23 homes, and yet, the Company never billed Park Place for any services rendered or materials used. I find that Vereen, on behalf of Park Place, deposited checks he had signed in to the Company account, which were accounted for by the Company in the Brady Report. I find that when the Park Place project was completed, Park Place owed the Company $496,039.57 for the Company's construction costs (with no overhead or profit charged or paid). The Defendant Park Place procured 15 construction loans, which could have provided funds to pay the intended purpose of the loan, construction costs of the houses. Instead, Park Place neglected to use the loan funds for their intended purpose. I find that the Brady Report details the amounts due for labor and materials paid for by the Company, with added costs for payroll, overhead, insurance and expected profit. I find that the Defendants Vereen and Wife, the owners of Park Place, offered no excuse or logical explanation for their actions. I find that the accounting records of Park Place reflected a profit exceeding $6,000,000.00 on the sale of the homes, after payment of construction costs. I find that Vereen admitted that he did not tell Smith that he was paying the construction expenses from the Company account, that he was not invoicing for such charges, and that the defendants did not pay the Company for the construction. I find that in her report, Brady properly computed the payroll, insurance, overhead and expected profit for these jobs, which I expressly adopt as being calculated based upon established standards in the industry. I find that Wife authorized the actions of Park Place and Vereen. I furthermore find that the Brady Report also correctly charged the Defendants with specific checks written out of the Company account to pay interest on the Park Place Development loan.

(g) The Sisson Remodel: I find that Defendant Vereen had a conflict of interest in the Elizabeth Vereen Sisson construction job performed by the Company. Sisson is the daughter of the Wife and Vereen. Sisson, a licensed attorney, was employed by the Company. I find that Vereen signed over $150,000.00 in Company checks to pay for labor and material on the Sisson residence. I also find that that there was no written construction contract or evidence of billing on the Sisson job. According to the Defendants, the Company permitted the Sisson job in 2007 and finished it in early 2008. The Sisson job was "cost only", with no construction contract and no billings. I find that the Defendants failed to explain why the Company advanced any money to pay Sisson's construction expenses. I find that Sisson paid the last payment of $35,803.10 (of the advanced expenses) by a check written to Park Place rather than the Company, which paid for the expenses. I find that the Company did not receive any payment for payroll expenses, insurance, overhead or profit. I find that Vereen admitted that the Company paid an additional $15,000.00 in labor expense to its master carpenter for his work at the Sisson house, which was not charged to the Sisson job ledger in the Company records. I find that the Brady Report outlines the Company's losses sustained because of these unauthorized expenditures from the Company account, together with the overhead and expected profit on this job. The Brady Report gives credit for all of Sisson's payments finally that were deposited in the Company account. Neither the Defendants nor Sisson gave any explanation for their actions.

(h) The Kemp Job: I find that the Defendant Vereen had a conflict of interest in the Company's job performed for Mr. Kemp, a job the Company permitted in 2004. The construction contract was signed in the name of AVCC on January 31, 2004, when AVCC did not have a contractor's license. I find that the Company paid for the Kemp expenses from the Company

account. I find that the Brady Report correctly reports the Company's losses because of its expenditures, and Kemp's payments made which were not deposited in the Company account.

(i) I find that the Defendant Vereen had a conflict of interest when he paid himself "supervisor fees" of $103,760.68 in 2004 and $27,121.62 in 2005 from the Company checking account. I find that these payments were unauthorized payments to Vereen, and that these payments were not reported as W-2 income to Vereen on the Company's 2004 and 2005 state and federal tax returns. Vereen made sure that Smith was not notified of these payments.

(j) I find that in 2004, Vereen took $21,320.15 from the Company account at Carolina First Bank to purchase a cashier's check payable to the Horry County Treasurer to pay his and Wife's real property taxes. This payment is correctly reflected on the Brady report. I find that Vereen and Wife offered no explanation for this payment.

(k) I find that Vereen paid $17,385.27 in expenses related to AVCC's Seven Oaks construction project from the Company checking account. This job was not a job of the Company, and Vereen and AVCC never repaid the funds. I find that these expenses are correctly reflected in the Brady report.

(l) I find that Vereen paid monthly rent from the Company checking account for a storage unit from Paul Thomas, where Vereen stored his personal vehicle and other personal items for many years. Vereen previously paid this expense from the AVCC account. I find that the use of the rental was personal to Vereen and was unauthorized. The amount of such expense is detailed in the Brady Report.

(m) I find that Vereen paid for the construction costs on a two car garage on a house partially owned by Vereen and Wife in the Bahamas and for repairs on their Gamecock football stadium "caboose" from the Company account. Although Vereen initially rationalized that the

Bahamas expenses were for a Company "sponsored" vacation, he subsequently conceded that the expenses were personal. The amount of such expenses is correctly detailed in the Brady report.

(n) I find that Vereen paid for personal insurance by check or pre-authorized draft from the Company account each month. Vereen admitted that these expenses were personal and improper. The amount of such expenses is detailed in the Brady Report. [3]

(o) I find that Vereen incurred monthly charges on multiple credit cards and paid for such expenses from the Company checking account. I find that the Company does not have any credit cards of its own, and these expenses were not Company expenses. For example, Vereen paid his daughter's gasoline charges on a Shell credit card from the Company account. The amount of such expenses is detailed in the Brady Report.

(p) I find that Vereen paid monthly dry cleaning bills for four years from the Company account for his family's personal dry cleaning. When confronted with this issue, Vereen admitted these expenses were personal. The amount of such expenses, annually, is detailed in the Brady Report.

(q) I find that Vereen deposited a $15,000 check from the Tahitian Princess job, a Company job, not into the Company account, but instead, into AVCC's account. This $15,000 deposit is included in the Brady report.

(r) I find that Vereen paid his personal monthly 29th Place HOA dues from the Company checking account. The Company does not own any real property at 29th Place. Vereen admitted that this was a personal expense. The amount of such expenses is detailed in the Brady Report.

[3] In her Final Report, Brady corrected an error in the amount of the charges.

(s) I find that Vereen paid the monthly cell phone bill for a third party from the Company account. The account was for one of Vereen's friends, not a Company employee. Vereen alleged that the Company paid the phone expense of Seth Smith, as a defense. However, the Company paid Seth Smith's cell phone charges while he was employed there. The Company's payment of Vereen's friend's cell phone charges was improper. I find that the Brady report correctly details these improper expenses.

(t) I furthermore find that from the Company account, Vereen paid for the labor and materials for the construction of his and Wife's house. These expenses are detailed in a Company job ledger. Vereen did not notify Smith of this important matter. I find that these payments were improper advances to Vereen and Wife that were never billed to or paid by the Company. I find that the amount of such expenses is detailed in the Brady Report.

(u) I find that Vereen paid for a $9,045 City of North Myrtle Beach construction permit for the Park Place job from the Company account. This expenditure was not included in the Park Place job ledger maintained by the Company and was never charged to the Park Place account on the Company's job ledger. This unauthorized payment is correctly detailed in the Brady Report.

(v) I find that Vereen used the Company's lull and skid for several years while the Company was constructing 23 homes for Park Place. At the same time, the Company had to rent a comparable lull and skid to use on its multi-family jobs. I find that Vereen did not list this expense on the Park Place job ledger maintained by the Company. I find that the Company established the costs that the Company paid for rental of a similar lull and skid, which were calculated and shown as the Defendants' account receivable on the Brady Report. I find Vereen and Park Place utilized the Company's equipment with full knowledge that the Company had to rent comparable equipment for its other jobs.

(w) In 2006, Vereen paid a $5,000 "commission" to his daughter, Elizabeth Vereen Sisson, from the Company checking account. Smith did not authorize this payment as this was a conflict of interest transaction. This payment was to an employee, not a shareholder, and was not reported as W-2 income to Sisson on the Company's income tax return. The amount is shown as an account receivable from Vereen on the Brady report.

(x) I further find that Vereen paid from the Company account the sum of $22,049.48 to Stock Builders for an invoice for materials delivered to the Park Place construction site, which was not charged to that job on the Company job ledger. Vereen reluctantly admitted that it was an expense that he and Park Place owed. The amount is shown on the Brady report as the Defendants' expense.

(y) I find that Vereen paid from the Company account multiple checks to Hartford Insurance and Companion Property & Casualty for insurance for property not owned by the Company. Such improper expenses are delineated on the Brady report.

(z) I find that Vereen improperly paid the expenses for his and Wife's vehicles by Company check. The Company did not own these vehicles, and it was improper for the Company to pay for their expenses. These expenses are shown on the Brady Report.

(aa) I find that Vereen claimed $208,577.66 in "construction in progress" expenses that he alleged were advances by AVCC to the Company in 2006, but for which he produced no backup as is required by the Court's Pre-trial Order and the Internal Revenue Service regulations. Vereen's daughter, Sisson, gave the list of these expenses to the Company's accountant with no documentation to support the claimed expense. I find that the Defendants failed to submit proper documentation to support these claims for reimbursement or offset, as required by the Order, and

I have disallowed these expenses as credits or offsets against the balances due by the Defendants. The amounts disallowed are shown as an accounts receivable on the Brady Report.

(bb) I find that Vereen improperly advanced Company funds to pay for his family members' construction expenses, which were not invoiced by the Company to such persons and were not paid. These expenses are shown on the Brady Report as unauthorized advances made by Vereen to third parties related to Vereen and Wife.

(cc) I find that all construction work performed for the Defendants Park Place, AVCC, Parkway Offices, Vereen, Wife and other "family" members, were, unlike other jobs, not based upon written construction contracts that obligated the owner to pay the Company for the services rendered. I find that although Vereen had a job ledger created at the Company for these jobs, Vereen paid the expenses of these jobs from the Company account but never billed for the labor and materials paid for and provided, the additional payroll expense, the cost of labor provided by salaried employees, the cost of liability insurance and the expected overhead and profit of 15%. Although Vereen initially claimed that these jobs were for "cost" only, on many occasions no payment was received at all. I find that Vereen conceded at trial that these entities should have paid the payroll expenses, liability insurance and expected overhead and profit of 15%. I find that Brady properly calculated the actual payroll costs by multiplying the actual payroll by 140% to determine the actual payroll costs to the Company, which included worker's compensation, FICA and Medicare match, and state and federal unemployment. I find that Brady properly calculated the cost of liability insurance ~~cost~~ at 2% of the costs of construction, and that overhead and profit were properly calculated at 15% of the cost of construction, which was used to determine the amount that should have been paid by the Defendants on each job. I find as a matter of fact that the calculations performed by Brady are reasonably calculated to provide what the Company

should have charged and collected for each and every job performed for the Defendants or their family members, with the exception of the Vereen personal home. The amounts and the method of calculation are contained in the Brady Report.

(dd) I find that an audit was completed of the Company's 2007 worker's compensation policy, which resulted in a refund check payable to the Company of approximately $49,000.00. I find that Vereen endorsed the check and deposited the check into the Park Place checking account, rather than the Company account. The amount of the check is included in the Brady Report.

6. Vereen, as the controlling Member, Managing Member, or President of each of the Defendant entities, treated the Defendants and the Company as if they were one large one entity, ignoring the corporate formalities required by law, and ignoring the requirements of the Internal Revenue Service concerning reporting of income and benefits paid by the Company to these Defendants. I find that checks payable to the Company were endorsed and paid by Vereen into Park Place, AVCC, Parkway and the Vereens' personal accounts. The Company, via Vereen, advanced funds from its account for construction expenses for Parkway, Park Place, AVCC, Vereen's family members and for Vereen and Wife without invoice or repayment. The Company paid for expenses of Park Place, Parkway, AVCC, Wife and Vereen unrelated to construction. Vereen took Company deposits and placed them into banking accounts of Park Place, Parkway, AVCC and Vereen. Vereen billed for services rendered by the Company in the name of AVCC and deposited the monies in other accounts which he controlled. The Company paid for the costs of constructing a two car garage in the Bahamas on a home partially owned by the Defendants Vereen and for repairs on a University of South Carolina "cockaboose" at the football stadium. Vereen received construction loan disbursements for the Company's construction expenses; he deposited the money into the Defendants' accounts rather than into the Company account. The

common denominator in each transaction is that Vereen personally controlled the financial and legal affairs of each entity and solely made all its decisions. Wife authorized Vereen to act for the entities she owned. When asked about her involvement in Park Place's transactions, Wife stated she had not read the Complaint and didn't know why she was sued. Her professions of ignorance are unconvincing. She either knew or should have known of her husband's misappropriations. In any event, Wife has clearly received the benefit of her husband's actions and has testified that they were authorized.

7. I find, for all accounting purposes in this case, that the Company ceased to perform business on December 31, 2007, and that expert Brady properly disregarded all financial transactions after that date, with the exception of accounts receivable and payments made for warranty work. According to the testimony presented, I find that the only job remaining at the Company after December 2007 was the Elizabeth Vereen Sisson job. According to Bookkeeper Drewitt, the Company had no jobs after 2007.

I find that the Defendants shall not be allowed any credit or offsets for checks of Park Place deposited into the Company account after 2007. From these deposits, Vereen issued checks from the Company account to pay himself, Sisson, and Drewitt, who were then employed by Grand Strand Builders, LLC. Grand Strand Builders, LLC is a licensed construction company owned by Vereen's daughter and son in law. I find that all expenses paid from the Company account after December 31, 2007 were expenses of Grand Strand Builders, LLC, where Vereen is the licensed builder. Beginning in 2008, Vereen and Sisson permitted new jobs in the name of Grand Strand Builders, and the telephone was answered as Grand Strand Builders. I find that the Defendants submitted fraudulent claims for reimbursement to the Court for these expenses advanced by Park Place to the Company. I have examined the checking account records of Grand Strand and Park

Place. I find that construction disbursements and payments for Grand Strand Builders permitted jobs after February 2008 were deposited by Vereen into the Park Place checking account rather than the Grand Strand Builder's account or the account of the Company; however, Park Place was not the developer or owner of these properties. Sisson testified she spent 80% of her time defending this civil action while she worked for, and acted as President of, Grand Strand Builders. Had the records of the Company been kept as they should have instead of being commingled with the Defendants' records, they would not have taken numerous hours to untangle. That is no one's fault but Vereen's fault. I find that the Brady Report properly disregarded advances by Park Place to the Company.

8. Based upon the evidence presented, I find, by clear and convincing evidence, that Park Place, Parkway Offices, AVCC, Arthur Wayne Vereen and Linda C. Vereen, individually and as Trustees, conspired together to convert the assets of the Company to their own benefit. The act of one was the act of the other, and each Defendant shared in the ill-gotten gains. The Defendants together conspired to commit accounting fraud upon the Plaintiff, and commingled funds without regard to ownership or the taxation of such funds to the recipient. I find that most of the ill-gotten gains went to Defendant Park Place, which is owned 95% by Wife. The funds were used to pay Wife a large weekly salary, even though she admitted she did not work for that Company; to construct the Vereen and Wife's personal house; and to pay Wife and Vereen's other personal expenses. Wife worked several years for the Defendants' accountants in Myrtle Beach and taught business courses at Coastal Carolina University for many years. I find that Wife is well educated in business affairs and should have been cognizant of her husband's (mis)management of the companies she owned. I find that according to the Park Place accounting records, Park Place earned over $6,000,000.00 in profits after allowing for payment of construction costs for the 23

Park Place houses the Company constructed. The Defendants had the capacity to make full payment for these construction costs, but instead, sold each of these houses at a substantial profit without paying for the costs of construction.

9. I find that the Company incurred accounting expenses in the amount of $142,268.00 from expert witness Susan Brady, CPA, to uncover and detail the Defendants' improper actions. I find that the Plaintiff shall be entitled to recover, as part of his damages, the Company's expenses incurred for the employment of Susan Brady. I furthermore find that the Defendants shall be responsible for the payment of any and all fines and penalties incurred by the Company in correcting and preparing state and federal income tax returns for the Company.

10. The Plaintiff has requested that the Court disregard the corporate formalities and differences between the defendants and award its judgment against the Defendants jointly and severally, as each Defendant is the alter ego of the others. Such "piercing of the corporate veil" is allowed when the Defendants do not separate their business, personal and corporate identities and act without regard to their separate identities. Mid-South Mgt. Co. v. Sherwood Development Corp., 374 S.C. 588, 597; 649 S.E.2d 135, 140. (S.C. App. 2007). The "alter ego" theory examines the relationship between the Defendant entities and their owners. An alter ego theory requires a showing of total domination and control of one entity by another and inequitable consequences caused thereby. Id. at 603. In this case, Vereen managed and controlled AVCC, Park Place, and Parkway and expended corporate assets for each without regard for the legal rights of the Company and its other owner, Smith. Wife authorized the actions of Vereen. The corporate theft benefited Wife because the majority of the misappropriated assets and monies went to Park Place and Parkway, which she owned. Vereen controlled all of the improper actions and Wife benefited from each and every improper transaction. The Company paid for construction loan interest incurred by

Park Place and for construction expenses at Pointe Marsh and at the putt-putt, which are owned by Park Place. The Company paid for the renovation of Wife's and Parkway's buildings and for home construction costs. I find that from the improper gains, Vereen and Wife built their home in Murrells Inlet. The Defendants referred to themselves as the "Vereen Entities" in the presentation of their defense and in their claims for reimbursement from the Company, lending credence to the amalgamation of identities theory. I find that each Defendant was the alter ego of the other. I find that for all practical purposes, Vereen controlled AVCC, Park Place, Parkway and Wife, with the express permission of Wife.

The first part of the two prong test for piercing the veil involves an eight factor analysis of the shareholder's relationship to the corporate entities, or here, the corporation AVCC, and the limited liability companies Park Place and Parkway, as discussed in Sturkie v. Sifly, 280 S.C. 453, 313 S.E.2d 316 (Ct. App. 1984). These eight factors look to: (1) observance of the corporate formalities by the dominant shareholders; (2) the capitalization of the companies; (3) the failure to observe corporate formalities; (4) the non-payment of dividends; (5) the siphoning of funds of the corporation(s) by the dominant shareholder; (6) the non-functioning of other officers or directors; (7) absence of corporate records; and (8) whether the corporation(s) were merely a façade for the operations of the dominant shareholder; Multimedia Publishing of S.C., Inc. v. Mullins, 314 S.C. 551, 431 S.E.2d 569 (1993); University Medical Associates of S.C. v. UnumProvident Corp., 335 F. Supp. 2d 702, 707 (D.S.C. 2004).

The conclusion to disregard the corporate entity must involve a number of the eight factors, but need not involve them all. Dumas v. InfoSafe Corporation, 320 S.C. 188, 192, 463 S.E.2d 641, 644 (Ct.App. 1995). In the case at hand, the Defendants failed to follow corporate formalities; there was a non-functioning of other officers or other directors in the Defendant entities; there was

siphoning of funds from the Plaintiff to the Defendant entities by the dominant shareholder; there were no payment of dividends to shareholder Smith, when there were clearly funds available to pay dividends; the Defendant corporate entities were merely a façade for the operations of the dominant shareholder Vereen; a dominant officer, manager or family member (Vereen) controlled the Plaintiff and Defendant entities; there is an absence of corporate records supporting the improper actions of the Defendants; and the acts of the Defendants' entities were merely a façade for the operations of Vereen in his multiple capacities. Vereen's acts were the acts of each of the Defendants. Dewitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co., 540 F.2d 682 (4th Cir. 1976). Once it is established that the requirements of the first prong are met, the second prong of the test requires that "there be an element of injustice or fundamental unfairness if the acts of the corporation be not regarded as the acts of other parties." See Sturkie, 280 S.C. at 458. When the notion of legal entity is used to protect fraud, justify wrong, or defeat public policy, the law will regard the corporation as an association of persons. Here, the Defendant Vereen siphoned all of the assets of the Plaintiff to the Defendant entities that he solely controlled, making the Plaintiff insolvent. When Vereen siphoned all of the assets of the Plaintiff, he prevented the Plaintiff from paying or being able to pay dividends, meeting the requirements of both prongs of the test. When the unfairness consists of misappropriation of assets, the second prong of the test is almost always met, and may be proved or established by showing the Defendants' reckless disregard for the rights of the Plaintiff. See Multimedia, 314 S.C. at 555, 431 S.E.2d at 572. Vereen's siphoning of over $2,000,000.00 of the Plaintiff's earnings to the Defendants is the major factor in meeting both the first and second prongs of the test. Hunting v. Elders, 359 S.C. 217, 597 S.E.2d. 803 (Ct.App. 2004). I am confident that Vereen and Wife were aware of the actions taken against the Company, their responsibility for such actions, and the self-serving actions of the Defendants in regards to

the property and assets misappropriated to their benefit. Vereen is the sole owner of AVCC ; his knowledge is imputed to AVCC. Vereen is the manager of Parkway and Park Place; his knowledge is imputed to Park Place and Parkway.

I find that Wife had actual knowledge of her husband's actions and benefited by the improper gains which she and her companies, Park Place and Parkway, received. Vereen, with the assistance of the Defendants, siphoned all of the assets of the Company through the schemes discussed earlier, which benefited the Defendants. I find by clear and convincing evidence that each of the Defendants is the alter ego of the other, that the corporate identities of the Defendants should be pierced, and that judgment should be rendered against the Defendants jointly and severally for the damages sustained by the Plaintiff.

11. I have examined the fee agreement of the Company with Frank H. DuRant, Attorney for the Plaintiff. I find that without the services of Mr. DuRant on a contingency basis, the Company would not have been able to proceed with this action. I am convinced that without the diligent, time consuming and costly discovery, the Plaintiff would have been unable to establish proof of the Defendants' improper actions and the amount of damages incurred. I therefore approve the contingency fee agreement as reasonable, fair and necessary to protect the Company's interests. I find that Plaintiff shall be entitled to an award of attorney's fees as a part of the Company's damages.

ACTUAL DAMAGES

(a) Prejudgment interest: The Plaintiff requested prejudgment interest in the Complaint and shall be entitled to pre-judgment interest on the misappropriated balance due of $2,588,125.90 commencing January 23, 2009 and ending March 23, 2015 at the rate of 8.75% per annum or the

sum of $ 138,396.78. The interest is based upon the amount of misappropriated assets as determined by Brady in the final Brady Report minus the total due from Ellis E. Smith as contained in the final Brady Report. See QHG of Lake City, Inc. v. McCutcheon, 360 S.C. 196, 600 S.E.2d 105 (Ct. App. 2004) and S. C. Code Ann. §34-31-20(A). The law allows prejudgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable and the sum is certain or cable of being reduced to certainty. Babb v. Rothrock, 310 S.C. 350, 353, 426 S.E.2d 789, 791 (1993). The fact that the sum due is disputed does not render the claim unliquidated for purposes of an award of prejudgment interest. Id. The Court has the discretion to award prejudgment interest in an action to recover under the theory of quantum merit, to make the Plaintiff whole. Id.; Boykin Contracting, Inc. v. Kirby, (Opinion No. 5133, Ct. App. 5/15/13). I have awarded prejudgment interest from the date the Plaintiff complaint in this matter, the date payment was demanded. Prejudgment interest was demanded in Paragraph 18 of the Complaint and has been awarded in conversion cases. Dixie Bell v. Redd, 656 S.C. 765, 768, 376 S.C. 361, 363 (Ct. App. 2007). As a general rule, the measure of damages in a case for conversion of property is the value of the property taken with interest thereon. Industrial Welding Supplies, Inc. v. Atlas Vending Co., Inc., 276 S.C. 196, 277 S.E.2d 196. (S.C.1981); Mack v. Riley, 282 S.C. 100, 316 S.E.2d 731 (S.C.App. 1984). Otherwise, the Defendants would be rewarded with free use of the Plaintiff's funds.

(b) It is therefore Ordered, Adjudged and Decreed that the Plaintiff A & E Constructors and Consultants, Inc. shall have judgment for actual damages against the Defendants Arthur Wayne Vereen, individually and as Trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, individually, and as Trustee of the Linda C. Vereen Residence Trust, Arthur Vereen Construction Company, Inc., Park Place Properties of Myrtle Beach, LLC and Parkway Offices,

LLC, jointly and severally, in the amount of Two Million Five Hundred Eight Thousand One Hundred Twenty Five and 90/100 ($2,588,125.90) in actual damages; for prejudgment interest at the annual rate of 8.75% from January 23, 2009 to March 23, 2015 in the amount of $ 138,396.78, as outlined in (a) above; for the additional sums of $142,268.00 in accounting expenses; together with punitive damages, as described below, together with the costs of this action, including the Court Reporter fees incurred. This amount reflects the balance due from the Defendants on the September 4, 2012 Brady Final Report, minus a credit in the amount of $124,377.41 for benefits received by shareholder Ellis E. Smith. I hereby adopt the findings of the Final Brady Report as the findings of the Court concerning the monies Defendants misappropriated from the Plaintiff herein.

PUNITIVE DAMAGES

The Plaintiffs have requested punitive damages from the Defendants. "Punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future." Mellen v. Lane, 377 S.C. 261, 290; 659 S.E.2d 236, 251 (Ct. App. 2008) (citing Clark v. Cantrell, 339 S.C. 369, 378-379, 529 S.E.2d 528, 533 (2000)). "They serve to vindicate a private right by requiring the wrongdoers to pay money to the injured party." Id. Punitive damages are recoverable in conversion cases if the defendant's acts are "willful, reckless, and/or committed with conscious indifference to the rights of others." Oxford Finance Companies, Inc. v. Burgess, 303 S.C. 534, 402 S.E.2d 480 (1991) (citing Hunt v. Jordan, 286 S.C. 340, 333 S.E.2d 569 (Ct.App.1985)). "In any civil action where punitive damages are claimed, the plaintiff has the burden of proving such damages by clear and convincing evidence." Mellen, supra, (quoting S.C. Code Ann. §15-33-135 (Supp. 2003)).

The following factors are relevant when considering punitive damages: "(1) the defendants degree of culpability; (2) duration of the conduct; (3) defendants awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonable related to the harm likely to result from such conduct; (7) defendants ability to pay; and finally (8) other factors as noted in Haslip, and other factors 'deemed appropriate." Gamble vs. Stevenson, 305 S.C. 104, 111-112, 406 S.E.2d 350, 354 (1991); Pacific Mutual Life Insurance Co. v. Haslip, 499 U.S. 1, 111 S. Ct. 1032 (1991). The trial court is not required to make findings of fact for each factor to uphold a punitive damage award. Welch v. Epstein, 342 S.C. 279, 306, 536 S.E.2d 408, 422 (Ct. App. 2000).

Here, I find that punitive damages are warranted because of the deliberate, willful misconduct of the Defendants. Vereen owed a fiduciary duty to the Company as its treasurer, board member and exclusive manager of its checking account. Vereen repeatedly converted assets of the Company to his own personal use and to the use of the named Defendants which he exclusively controlled. The Defendants failed to report any of the converted income on tax filings. What is most disturbing is that when confronted with proof of the misconduct, the Defendants refused to accept the responsibility for their collective misconduct and engaged in a four week trial where the proof of misconduct was all but absolute.

It is therefore ordered that Plaintiffs shall be granted punitive damages against the Defendants Arthur Wayne Vereen, Linda C. Vereen, individually and as Trustees, Arthur Vereen Construction Company, Inc., Parkway Offices, LLC and Park Place Properties in the amount of $100,000.00.

The parties both pled that the Company should be dissolved, and I have no dispute with that. However, there was no proof or argument presented concerning how that should be accomplished. Accordingly, I leave that for another day.

CONCLUSION

It is therefore **Ordered, Adjudged and Decreed** that the Plaintiff A & E Constructors and Consultants, Inc. be granted:

(1) Judgment against the Defendants Arthur Wayne Vereen, individually and as Trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, individually and as Trustee of the Linda C. Vereen Residence Trust, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC and Arthur Vereen Construction Company, Inc., jointly and severally, as follows:

Amount of monies misappropriated	$ 2,588,125.90
Prejudgment interest from 1/23/2009 until 3/23/2015	138,396.78[44]
Accounting fees due Susan Brady	142,268.00
Punitive Damages	100,000.00
	$ 2,968,790.68

or the sum of $2,968,790.68 in actual and punitive damages, inclusive of pre-judgment interest at 8 ¾% from January 23, 2009 through March 23, 2015.

(2) Frank H. DuRant, PA's contingency fee agreement is expressly approved and shall constitute a first lien upon any recovery in this action and shall be paid by the Company as Ordered when income is received from the Defendants or any other source.

(3) The bill of Susan Brady, CPA, of $142,268.00 for her investigative and accounting work in this case is expressly approved and shall constitute a second lien upon any recovery in this action and shall be paid by the Company as Ordered, when income is received from the Defendants or any other source.

[44] Per diem interest is 61.537.

(4) The taxable costs and expenses of this action, including any Court Reporter fees for the trial, shall be added to the judgment amount against the Defendants. In the event that the Plaintiff incurs late fees and penalties as a result of amending and filing late federal and state tax returns, the amount of such penalties and late fees shall be paid by the Defendants or added to the judgment amount rendered.

(5) The Counterclaims of the Defendants and Third Party Complaints of the Third Party Plaintiff(s) are hereby dismissed with prejudice.

AND IT IS SO ORDERED!

CYNTHIA GRAHAM HOWE
Master In Equity

Conway, South Carolina
March 23, 2015

FORM 4

STATE OF SOUTH CAROL[redacted] JUDGMENT I[redacted] CIVIL CASE
COUNTY OF
IN THE COURT OF COMMON PLEAS CASE NO. 2009-CP-26-620

Ellis E. Smith, Individually, and on behalf of A & E Constructors and Consultants, Inc.
PLAINTIFF(S)

Arthur Wayne Vereen, et al.
DEFENDANT(S)

Submitted by:	Attorney for : ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

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

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
A & E Constructors and Consultants, Inc.	Arthur Wayne Vereen, individually and as Trustee of the Arthur W. Vereen Residence Trust	$2,968,790.68
	Linda C. Vereen, individually and as Trustee of the Linda C. Vereen Residence Trust,	$2,968,790.68
	Park Place Properties of Myrtle Beach, LLC	$2,968,790.68
	Arthur Vereen Construction Company, Inc.	$2,968,790.68

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

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

Master in Equity

3073
Judge C

3/23/15
Date

For Clerk of Court Office Use Only

This judgment was entered on the 24 day of MAR, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Frank H. Durant
J. Jackson Thomas

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kathryn M. Cook

ATTORNEY(S) FOR THE DEFENDANT(S)

Melanie Huggins Ward
CLERK OF COURT

Court Reporter:

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

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

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ELLIS E. SMITH, Individually, and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., a South Carolina Corporation.

Plaintiff,

vs.

ARTHUR WAYNE VEREEN, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, ARTHUR VEREEN CONSTRUCTINO COMPANY, INC., LINDA C. VEREEN, ARTHUR W. VEREEN, AS TRUSTEE OF THE ARTHUR W. VEREEN RESIDENCE TRUST, and LINDDA C. VEREEN, AS TRUSTEE OF THE LINDA C. VEREEN RESIDENCE TRUST,

Defendants,

and

ARTHUR WAYNE VEREEN, individually and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., and 29th PLACE DEVELOPERS, INC.,

Third Party Plaintiffs,

vs.

E. SMITH AND SONS CONSTRUCTION, LLC, and EES CONSTURCTION AND CONSULTING, INC., and ELLIS E. SMITH, individually,

Third Party Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-26-620

NUNC PRO TUNC ORDER AMENDING JUDGMENT TOTAL AND FORM 4

2015 MAR 25 AM 11:21

IT APPEARING to the Court that a mathematical error occurred in the computation of prejudgment interest in the Order signed March 23, 2015 and clocked with the Horry County Clerk of Court on March 24, 2015, and that certain parties were left off the Judgment Index on the Form 4 signed and clocked on the same respective days. The per diem rate of prejudgment interest of 8.75% would be six hundred twenty dollars and forty four cents and not 61.537 as indicated by Footnote 4 on Page 41 of that Order. Therefore, total interest between the dates of January 23, 2009 and March 23, 2009 would be $1,395,990.00. The total judgment amount should therefore be amended to reflect the amount shown below:

Amount of monies misappropriated	$2,588,125.90
Prejudgment Interest from 1/23/2990 until 3/23/2015	$1,395,990.00
Accounting fees due Susan Brady	$142,268.00
Punitive Damages	$100,000.00
TOTAL:	**$4,226,383.90**

Defendant Parkway Offices, LLC should also be added to the Judgment Index on the Form 4 as indicated by paragraph (1) on Page 41 of the Order.

IT IS SO ORDERED.

The Honorable Cynthia Graham Howe
Master in Equity for Horry County

Conway, South Carolina
24th day of March, 2015

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-26-620

Ellis E. Smith, Individually, and on behalf of A & E Constructors and Consultants, Inc.,
PLAINTIFF(S)

Arthur Wayne Vereen, et al.
DEFENDANT(S)

Submitted by: The Honorable Cynthia Graham Howe	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **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.

2015 MAR 25 AM 11:21

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Amended Form 4 following Nunc Pro Tunc Order

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
A & E Constructors and Consultants, Inc.	Arthur Wayne Vereen, Individually, and as Trustee of the Arthur W. Vereen Residence Trust	$4,226,383.90
	Linda C. Vereen, Individually, and as Trustee of the Linda C. Vereen Residence Trust	$4,226,383.90
	Park Place Properties of Myrtle Beach, LLC	$4,226,383.90
	Parkway Offices, LLC	$4,226,383.90
	Arthur Vereen Construction Company, Inc.	$4,226,383.90

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

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

Master in Equity | 3073 Judge Code | 3/25/15 Date

For Clerk of Court Office Use Only

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

Frank H. Durant
J. Jackson Thomas

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kathryn M. Cook

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-26-00620
ELLIS E. SMITH, Individually, and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., a South Carolina Corporation,

Plaintiff,

vs.

ARTHUR WAYNE VEREEN, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, ARTHUR VEREEN CONSTRUCTION COMPANY, INC., LINDA C. VEREEN, ARTHUR W. VEREEN, AS TRUSTEE OF THE ARTHUR W. VEREEN RESIDENCE TRUST, and LINDA C. VEREEN, AS TRUSTEE OF THE LINDA C. VEREEN RESIDENCE TRUST,

Defendants.

and

ARTHUR WAYNE VEREEN, individually and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., and 29th PLACE DEVELOPERS, INC.,

Third Party Plaintiffs,

vs.

E. SMITH AND SONS CONSTRUCTION, LLC, AND EES CONSTRUCTION AND CONSULTING, INC., and ELLIS E. SMITH, individually,

Third Party Defendants.

2016 APR 25 PM 4:09
CLERK OF COURT

ORDER
DISPOSING OF POST TRIAL MOTIONS

Attorney for A & E, Smith:	Frank H. DuRant
Attorney for Smith, EES and E. Smith & Sons:	J. Jackson Thomas
Attorney for the Defendants and Third Party Plaintiffs:	Kathryn M. Cook
Court Reporter:	Melissa M. Decker

Defendants move to reopen the hearing in this matter for the taking of testimony and presentation of evidence as to events effecting (sic) the subject matter of this accounting action and the relief sought relating to A&E Constructors and Consultants, Inc. (the Company). Specifically, two independent civil actions after the final hearing in this action have been filed against the Company and are presently pending. Defendants wish to reopen the hearing to take testimony concerning those two cases. Additionally, Defendants move for reconsideration of the final judgment. They now request that an independent forensic accountant be appointed and assert that one is required before a full and complete judicial accounting can be completed. However, Defendants never requested that an independent forensic accountant be appointed in this action until they filed their motion for reconsideration.

Except as stated below, Defendants' motions are denied.

This case has been quite frustrating, not only for the parties and the attorneys, but for the Court, as well. It is, at heart, an accounting action, involving a closely held construction corporation between two former close friends operating in a small community. The lawsuit was filed in 2009, when the foreclosure crisis was beginning to hit South Carolina, and particularly, Horry County, hard. The case was referred to this Court on July 23, 2009.

There were discovery issues between the parties almost immediately, and in October 2010, this Court held a pretrial hearing. All attorneys were present, and additionally, five certified public accountants who were involved in some matter also attended: Susan Brady, Bartlett Buie, Richard

Crumpler, Elizabeth Montgomery, and Bert Huggins.[1] Ms. Brady was presented as the Plaintiff's accounting expert witness. Defendants informed the Court that they intended to proceed to trial without an accounting expert. In fact, Defendants' attorney stated emphatically that no accountant was needed because the evidence was simply a matter of adding and subtracting, and certainly, "rocket science" was not involved. Even though five well-qualified certified accountants were present at the pre-trial conference, no attorney there requested that the Court appoint any of them, or, for that matter, any other accountant as an independent forensic accountant so that the Court could complete a full judicial accounting.

When the October 2010 pretrial conference occurred, Defendants had taken no depositions. The Court ordered that Defendants complete discovery by the end of January 2011 so that trial could begin in February 2011.

In this Court, the parties schedule their own hearings. By February 2011, this Court's trial schedule was overly burdened with foreclosure hearings, so it was almost impossible to schedule several consecutive, full days for trial. Two days of trial in this matter were held on February 15–16, 2011. In June, two and a half more days of trial, June 13–15, 2011, were held. Before several more consecutive full days were available, four months had passed. The trial resumed on October 11, 2011, and ran through October 13, 2011. The trial finished on August 27, 2012, through August 30, 2012. At some point during the trial, one of the attorneys became quite ill, and the trial had to be delayed.

At the end of the trial on August 30, 2012, because of the length of trial, and more specifically, because of the disjointed way the case was tried, this Court requested a Memoranda

[1] Three of the accountants had been called to the conference because they had worked for the firm that had prepared the Company's tax returns. Defendants' attorney had advised those accountants not to communicate with Plaintiff's attorneys concerning this matter, except through her office. That obviously put the Plaintiff's attorneys at a disadvantage. That issue was addressed by this Court's Pretrial Order.

of Law from the parties summarizing their positions. This Court received a Memoranda from the Plaintiff in September. By February of 2013, six months after the trial ended, Defendants had not sent a memorandum. (To date, Defendants have never sent one.) On March 23, 2015, this Court issued its final order.

The 42-page Order was filed on March 24, 2015. On March 25, 2015, the Court's law clerk scanned and emailed the Order to all counsel of record. Plaintiff's counsel also mailed a copy of the Order to Defendants on March 25, 2015. On that same date, the Court issued a *nunc pro tunc* order, correcting the amount of prejudgment interest and adding a defendant's name to the Form 4 only (it already was in the final order). On March 27, 2015, the Plaintiff's attorney mailed the *nunc pro tunc* order and the Form 4 to all attorneys of record.

Subsequently, Defendants' counsel realized that she had not received Page 37 of the Order. Instead of obtaining the missing page from the clerk's file, she requested it from the trial judge. The judge's office thereafter emailed the missing page to all attorneys. Defendants' attorney then moved for reconsideration, serving and filing the motion on April 20, 2015. Plaintiff contends the motion comes too late. I agree.

Both Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure (SCRCP) require that any motions thereunder be made no later than ten days after "receipt of written notice of the entry of the order." *See also, Diamond Jewelers of Spartanburg, Inc. v. Naegele*, 290 S.C. 260, 260-62, 349 S.E.2d 888, 888 (1985). Essentially, there are two ways notice of entry of the order can be given under Rule 77(d) of the SCRCP. Clerks of court can serve notice of the entry, or a party may serve notice in any fashion authorized by Rule 5 of the SCRCP. In this case, Plaintiff's attorney served notice of entry of the order on March 27, 2015, at the latest, when he served a copy of the *nunc pro tunc* order and the Form 4. Computing ten days from March 27,

2015, and adding five days for mailing [Rule 6(e), SCRCP], and then allowing the period to run until Monday because the last day fell on a Saturday, the last day for Defendants to file their Motion for Reconsideration pursuant to Rules 52(b) and 59(e) was Monday, April 13, 2015. Defendants failed to file their post-trial motion until April 20, 2015, a week too late. Their only excuse was that they were waiting on the **Court** to send them Page 37 of the Order before their ten days began to run.

Even though I have determined that the motion for reconsideration was too late, I conclude that the issue is best left for our appellate courts because of the Order's missing page, Page 37, and its effect on the finality of the Order. Accordingly, I will address the motion as if it were timely and leave for the appellate court to determine the timeliness of the motion. As previously stated, I deny the motion, except as stated below.

1. I grant Defendants' motion in regard to the grounds of piercing the corporate veil. Instead, I find that the Defendants should be held liable under an amalgamation of interest or blurred identity theory. The test to determine whether a corporate veil should be pierced is applied rather strictly. *See Sturkie v. Sifly*, 280 S.C. 453, 313 S.E.2d 316 (Ct. App. 1984). It consists of two prongs, with the first prong requiring eight factors. The second part requires that there be an element of injustice or fundamental unfairness if the veil not be pierced.

Arthur Vereen blurred the identity of his various entities. They shared the same office, employees, construction jobs, and shareholders. Mr. Vereen paid debts for one entity out of another entity's checking account. Mr. Vereen also deposited into one entity's checking account funds belonging to another entity. This created an accounting nightmare. It also was the basis for this lawsuit: Ellis Smith was a shareholder only in A&E Constructors and Consultants, Inc. and

not in any of the Defendant corporations. I conclude that Mr. Vereen used the various entities as an extension of himself to pay whatever debts he needed to pay, whether they were personal, family, or any of his corporations' debts. This was a classic amalgamation theory case. *See Kincaid v. Landing Dev. Corp.*, 289 S.C. 89, 344 S.E.23 869 (Ct. App. 1986).

2. I grant Defendants' motion as to judicial dissolution. Both the Plaintiff and the Defendants demanded judicial dissolution. I previously did not grant judicial dissolution because neither side addressed that during the trial. They did not suggest how winding up should occur or whether a receiver should be appointed, or, for that matter, whether an accountant should be appointed to review the corporate records. Nevertheless, I conclude that the parties should follow S.C. Code Ann. §§ 33-14-106 through 107 as to how to deal with claimants of a dissolved corporation. If any other issues arise, the parties may request an additional hearing.

AND IT IS SO ORDERED!

CYNTHIA GRAHAM HOWE
Master In Equity for Horry County

Conway, South Carolina
April 25 2016

The South Carolina Court of Appeals

Ellis E. Smith, individually, and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation, Plaintiffs,

v.

Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction Company, Inc., Linda C. Vereen, Arthur W. Vereen, As Trustee of the Arthur W. Vereen Residence Trust, and Linda C. Vereen, As Trustee of the Linda C. Vereen Residence Trust, Defendants.

And

Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc., and 29th Place Developers, Inc., Third-Party Plaintiffs,

v.

E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc. and Ellis E. Smith, individually, Third-Party Defendants,

Of whom Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc., Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction Company, Inc., Linda C. Vereen, Arthur W. Vereen, as Trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, as Trustee of the Linda C. Vereen Residence Trust, and 29th Place Developers, Inc. are the Appellants,

And

Ellis E. Smith, individually and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation and E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, individually are the Respondents.

Appellate Case No. 2016-001075

ORDER

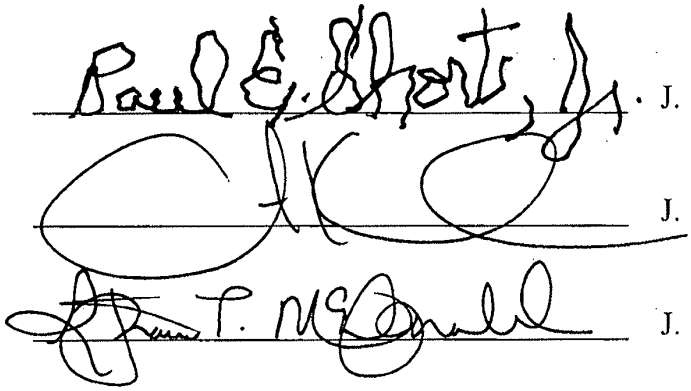
This case was tried before the Honorable Cynthia Graham Howe over nine days, concluding on August 30, 2012. On March 23, 2015, over two and a half years after the last day of trial, a law clerk for Judge Howe emailed the parties the 42 page judgment. The email stated "Attached is a PDF copy of the clocked Order in the above referenced case executed today." Attached to the email was the filed judgment; however, the attachment inadvertently omitted page 37 of the 42 page order. On March 24, 2015, the law clerk sent another email to the parties, attaching a *nunc pro tunc* order and an amended Form 4 order, which increased the amount of the judgment due to a previous accounting error and added the name of a judgment defendant. On April 6, 2015, 13 days after Appellants received the March 24, 2015 email, Appellants contacted Judge Howe to request a copy of page 37 of her order. Appellants received a copy of the entire order on April 10, 2015, and filed their motion to reconsider on April 20, 2015. Over a year later, on April 25, 2016, Judge Howe denied the motion to reconsider. Appellants served their notice of appeal on May 19, 2016. Respondents have now filed a motion to dismiss based on untimely service of the notice of appeal.

"The notice of appeal from an order or judgment issued by a master or special referee shall be served in the same manner as provided by Rule 203(b)(1)." Rule 203(b)(4), SCACR. Under Rule 203(b)(1), the "notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment." Only a *timely* motion to alter or amend a judgment tolls the time for service of the notice of appeal. *See* Rule 203(b)(1), SCACR; Rule 59(f), SCRCP. In order to be timely, the motion to alter or amend must "be served not later than 10 days after receipt of written notice of the entry of the order." Rule 59(e), SCACR.

In *Wells Fargo Bank, N.A. v. Fallon Properties South Carolina, LLC*, this court held that an email notifying the parties that an order or judgment has been entered constitutes "written notice of entry of the order." 413 S.C. 642, 646–47, 776 S.E.2d 575, 577–78 (Ct. App. 2015).

In this case, Appellants received written notice of entry of the judgement through the emails from Judge Howe's law clerk on March 23, 2015 and March 24, 2015. Thus, starting the time for serving the motion to alter or amend on March 24, 2015, Appellants' motion should have been served no later than April 3, 2015. However, Appellants neither served their motion nor even requested a full copy of the order by that date.[1] Accordingly, because no timely motion to alter or amend was served, the time to serve the notice of appeal began to run on March 24, 2015. Appellants did not serve their notice of appeal until May 19, 2016, which is more than thirty days after receiving written notice the judgment had been entered. Therefore, this court lacks appellate jurisdiction, and Respondents' motion to dismiss is granted. *See* Rule 263(b), SCACR ("The time prescribed by these Rules for performing any act except the time for serving the notice of appeal under Rules 203 and 243 may be extended or shortened by the appellate court, or by any judge or justice thereof."); *USAA Prop. & Cas. Ins. Co. v. Clegg*, 377 S.C. 643, 651, 661 S.E.2d 791, 795 (2008) ("The requirement of service of the notice of appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to 'rescue' the delinquent party by extending or ignoring the deadline for service of the notice."). The remittitur will be sent as required by Rule 221(b), SCACR.

[1] This court notes Appellants argue the March 23, 2015 and March 24, 2015 emails should not constitute written notice of entry of the order because page 37 was omitted from the attached copy of the order. This court disagrees. The requirements of Rule 59(e), SCRCP and Rule 201(b)(1), SCACR do not require Appellants to receive a copy of the underlying order, but rather to merely receive *notice* the order had been entered. Appellants received notice through the email of Judge Howe's law clerk alerting the parties that the order had been entered.



J.

J.

J.

Columbia, South Carolina

FILED
September 22, 2016

cc:
Henrietta U. Golding, Esquire
James Keith Gilliam, Esquire
Frank H. DuRant, Esquire
J. Jackson Thomas, Esquire

The South Carolina Court of Appeals

Ellis E. Smith, individually, and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation, Plaintiffs,

v.

Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction Company, Inc., Linda C. Vereen, Arthur W. Vereen, As Trustee of the Arthur W. Vereen Residence Trust, and Linda C. Vereen, As Trustee of the Linda C. Vereen Residence Trust, Defendants.

And

Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc., and 29th Place Developers, Inc., Third-Party Plaintiffs,

v.

E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc. and Ellis E. Smith, individually, Third-Party Defendants,

Of whom Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc., Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction Company, Inc., Linda C. Vereen, Arthur W. Vereen, as Trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, as Trustee of the Linda C. Vereen Residence Trust, and 29th Place Developers, Inc. are the Appellants,

And

Ellis E. Smith, individually and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation and E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, individually are the Respondents.

Appellate Case No. 2016-001075

ORDER

After careful consideration, the petition for rehearing is granted, and this appeal is reinstated. *See Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC,* Op. No. 27773 (S.C. Sup. Ct. filed Feb. 28, 2018) (Shearouse Adv. Sh. No. 9 at 100) ("[W]e hold an email sent from the court, an attorney of record, or a party that provides written notice of entry of an order or judgment triggers the time for serving a notice of appeal for purposes of Rule 203(b)(1), SCACR. For the reasons stated, our holding shall be applied prospectively . . . ."). Nothing in this order of reinstatement prevents the parties from arguing the issue of timeliness in their briefs along with the merits of the appeal.

FOR THE COURT

Columbia, South Carolina

FILED
March 22, 2018

cc:
Henrietta U. Golding, Esquire
James Keith Gilliam, Esquire
Frank H. DuRant, Esquire
J. Jackson Thomas, Esquire

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)
Ellis E. Smith)
☐ Plaintiff)
v.)
Arthur Wayne Vereen)
☒ Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.
2004-CP-26-620

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney: Frank Dufford, Bar No.	Defendant's Attorney: Kathryn M. Cook, Bar No. 1371
Address: * Jack Thomas	Address: 396 Calhoun Road Myrtle Beach
phone: fax:	phone: 843 fax: 232-2116
e-mail: other:	e-mail: other: KMCook55@gmail.com

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider
Estimated Time Needed: 1 hr. Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

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

Kathryn M. Cook — 4/22/15
Signature of Attorney for ☐ Plaintiff / ☒ Defendant — Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT:
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	_____ JUDGE
☐ Other:	CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:
Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA)) COUNTY OF HORRY)	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2009-CP-26-620
Ellis E. Smith, individually and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation, Plaintiffs v. Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc. and Linda C. Vereen, Defendants AND Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc. and 29th Place Developers, Inc., Third-Party Plaintiffs v. E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, individually, Third-Party Defendants	**DEFENDANTS' and THIRD- PARTY PLAINTIFFS' MOTION to RECONSIDER ORDER**

TO: ELLIS E. SMITH, individually and on behalf of A & E CONSTRUCTORS and CONSULTANTS, INC. and their attorneys, Frank H. DuRant and J. Jackson Thomas

YOU WILL PLEASE TAKE NOTICE that the undersigned will move before the Honorable Cynthia Graham Howe, Master in Equity, at the Horry County Courthouse in Conway, South Carolina within 10 days or as soon thereafter as counsel may be heard for reconsideration of her Order filed March 24, 2015, a complete copy of which was received by Defendants' counsel on April 15, 2015 and her Nunc Pro Tunc Order filed March 25, 2015 received by Defendants' counsel on March 30, 2015. A copy of the Orders are attached hereto. This motion to reconsider is made pursuant to Rule 52(b) and Rule 59(e) of the South Carolina Rules of Civil Procedure. Defendants request that the Court reconsider and amend the Orders and find that a full and complete judicial accounting by an independent forensic accountant is required and order the same. The grounds for this motion include, but are not limited to, that the Court erred as follows:

1. In making a final ruling in this case before ruling on the pending motion to reopen this matter due to post-trial/pre-ruling events involving and effecting the Plaintiff A & E, its liabilities and the accounting sought by the parties. The post-trial motion to reopen the hearing was filed on August 21, 2014 and heard by the Court on November 17, 2014. No ruling has been issued in that matter.

2. In accepting the report of Susan Brady, Plaintiff Smith's personal accountant, as constituting a full and complete judicial accounting of Plaintiff A & E when Ms. Brady unequivocally testified she **did not undertake to perform an accounting,** but had only reviewed certain transactions as pointed out to her by Plaintiff Smith and had not attempted to do a complete review or audit of the accounts of A &E as is required.

3. In not ordering a full and complete judicial accounting which requires the review and adjustment to all the accounts of the parties and the ascertaining of the balance owed by each party, if any, to the corporation as requested by all parties to this litigation. *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 673 S.E.2d 448 (2009); *Historic Charleston Holdings, LLC v. Mallon*, 365 S.C. 524, 617 S.E.2d 388 (Ct. App. 2005); 1 Am. Jur.2d *Accounts and Accounting* §§ 52 & 56 (2005).

4. In not requiring the performance of a full accounting to determine the assets, liabilities, discharge of the obligations to creditors of the corporation and distribution of any surplus to the shareholders if applicable. A full accounting of all accounts, not just selected transactions of certain accounts is required under the request of all parties and is required under the S.C Corporate Code as part of the judicial dissolution and winding up process which was requested by Plaintiff.

5. In finding the Defendants jointly and severally liable for the damages awarded and piercing the corporate veils of the Defendants when the same was not requested in the pleadings.

6. In finding any liability on the part of Arthur Wayne Vereen and Linda C. Vereen as trustees of the Arthur W. Vereen Residence Trust and Linda C. Vereen Residence Trust., respectively, in this accounting matter.

7. In making an award of damages against the trustees above referenced and/or the Trusts above mentioned.

8. In awarding punitive damages against Defendant Vereen without undertaking the legal requirements and analysis for such an award required under the United States and South Carolina case law.

9. In making an award of attorney fees without making findings as required under South Carolina law and without proper evidentiary support as to each factor or requirement in that mandate.

10. In making an award of prejudgment interest when the sum was not liquidated in this matter. *See Historic Charleston Holdings, LLC, Id.* at 673 S.E.2d 448, 458.

11. In making an award of prejudgment interest at 8.75% for the more than three years the Court has had this case under consideration.

12. In wrongfully excluding evidence proffered by Defendants which did not violate the Court's Pre-Trial Order and which documents and evidence had all been provided to Plaintiff's counsel and expert in advance of the Court's deadline.

13. In failing to find that Ellis Smith was President and Secretary of A&E and owed the same duties and obligations to the corporation as did Vereen.

14. In failing to find that Smith , from the inception of the corporation until he abandoned the business in early 2007, had the same and unfettered access to all books, records, files and accounting information and financial records as did Vereen and in fact hired his own personal accountant, Susan Brady, to serve as the accountant for A&E.

15. In failing to find and consider that it was Smith himself that directed Vereen that Smith was not to be a signatory on the A&E bank account, but none the less had access to the records of that account and the Peachtree accounting system.

16. In failing to find that Susan Brady was the accountant for A&E from 2003 through 2005 or early 2006 and it was she who failed to file the 2003, 2004 and 2005 tax returns such that the records she had were ultimately turned over to Richard Crumpler.

17. In finding any significance as to Richard Crumpler not being called as a witness by any party in this litigation and in making a ruling based on blatant hearsay evidence of a statement attributed to Mr. Crumpler stated by Smith at trial.

The Defendants believe that the Court misunderstood the following evidence presented at the trial in this case and should reconsider and examine the same:

1. The Court Order states that "Smith invoiced the Company through EES, for his time at $25.00 per hour and for EES's pro-rata expenses spent on Company business." Smith testified that each member was to receive $1,000.00/week in salary, and that he charged the Company $25.00/hour, which included all of his overhead and everything to be charged to the Company. However, the evidence presented shows that the Company paid Smith $82,002 in supervisory fees from June 2004 until April 2005, which amounts to $50.00/hour, or $2,000/week. The Brady Report does not address the supervisory fees received by Smith over and above the $1,000.00/week agreed by the members.

2. The Court Order states that "[i]n early 2004, the Company began construction of a

speculative residential home for Vereen in the Plantation Lakes subdivision." Vereen testified that the Plantation Lakes job was a speculative job for the Company, and Smith stated that he believed the same to be true, until the lawsuit was filed. The land was titled in Vereen's name, but the building permit, the HOA application, and the sales contract were all in the name of the Company. The settlement statement listed the Company as the seller, and the proceeds of the sale were deposited into the Company's checking account. A mistake by the Company's bookkeeper coding the proceeds as a loan to the Company is not instructive on this issue.

3. The Court Order states that the "Vereen residence is a large house located in an exclusive neighborhood in Murrells Inlet, South Carolina." There is no testimony in the record to support the Court's statement, which is not true. The Vereen residence is located on Highway 17 Business in Murrells Inlet, which is not exclusive or in a neighborhood. Approximately $26,800.00 of the construction costs on the Vereen residence was paid for with Company checks. Smith testified in Court that profit and overhead is not due to the Company for those amounts related to the Company's job ledger for Vereen's personal home.

4. The Court Order states that "Vereen authorized the use of [AVCC's] license and was aware of its use [by Smith in North Myrtle Beach] for over nine years prior to the institution of this action." Vereen presented evidence that after this lawsuit was filed, the Company received a phone call from the new owner of the Cari Davis home, one of the many construction projects licensed by Smith, without Vereen's knowledge, using the Company's license. In response to this call, Vereen obtained copies of permitting files from the various local building departments, and thereafter was able to identify numerous jobs permitted under the Company's name which were unknown to him. This fact triggered Vereen's request for a

search of permits issued under his former company, which revealed Smith's activities on the North Myrtle Beach project.

5. The Court Order states that Vereen "did not submit any accounting testimony," and that Vereen's failure to call the Company's accountant, Richard Crumpler, to testify "was telling." Vereen conducted a thorough investigation of the Company's documents and records, and identified expenses and costs due from Smith and Vereen. For example, during the course of such thorough investigation, Vereen identified several deposits intended for the Company, but received by Vereen, which were unknown to the Plaintiff, and alerted them to the same. On the other hand, the Brady Report is not based on a review of the Company's business records at all, buts relies solely on the information electronically stored in the Company's accounting software, and instructions from Smith that certain amounts were not Company expenses, but rather Vereen's personal expenses. When presented with Company records and invoices in support of the checks written by the Company, Smith and Brady refused to consider over 80% of the Company records. Vereen could have employed Crumpler to present similar one-sided biased testimony based on a limited set of facts. Vereen instead chose to present a complete and full accounting of all of the parties, complete with documentation to both contradict the Brady Report and support Vereen's claims for reimbursement/offset.

6. The Court Order states that the Brady Report was "documented by written evidence." The Brady Report did not include supporting backup documentation; the only information included behind the tabs of the Brady Report are print outs from the Company's accounting software. The Brady Report is merely a compilation of those items identified by Smith as improper expenses paid by the Company from a review of the Company's general ledger.

Neither Brady nor Smith reviewed or research any of the Company's business records to determine whether there was support for such expenses. Simply, the Brady Report is nothing more than a summarization of Smith's instructions. In stark contrast, Vereen researched each entry in the Brady Report, provided Smith and Brady with copies of such support, and identified those that are legitimate business expenses, and those which are not.

7. The Court Order states that the final Brady Report is "conclusive evidence of the actual damages sustained by the Plaintiff." However, Brady testified that she did not perform and audit of the Company's records, and that she only performed a compilation. She further testified that a compilation is based on receipts, if they are available, and those expenses that are reasonably believed to be legitimate business expenses, but does not involve pulling invoices, and does not hold her to be financially responsible for her results. The Brady Report is not an audit, and does not follow the guidelines, established by Brady herself.

8. The Court Order states that South Carolina law "requires a corporation's director and officer to act in good faith, with the care an ordinarily prudent person would exercise under similar circumstances, and in a manner he reasonably believes to be in the best interest of the corporation and its shareholders." Smith was the President of the Company, and is equally responsible to the Company, but the Brady Report and the Court held the two members of the Company to different standards.

9. The Court Order states that "Vereen, as the Company's treasurer, paid construction costs and expenses for AVCC jobs from the Company." Smith and Vereen agreed that old jobs of Smith and Vereen and their former companies, in existence as of October 2003, were to be completed in a timely fashion, and that new jobs were to be rolled into the Company. Smith did not roll any jobs into the Company. Vereen rolled the following new AVCC jobs into the

Company: Tahitian Princess, Beach Dunes, Willoughby Place, Kempe, and Lale; these jobs became Company jobs, and were completed by the Company. The AVCC jobs were negotiated and contracted by Vereen, prior to the Company's inception; therefore, AVCC performed work on these jobs, and costs were incurred on these jobs, prior to January 30, 2004. The benefit of work performed by AVCC was realized by the Company; Vereen treated AVCC as nothing more than a subcontractor for the Company, similar to Smith's treatment of EES as a subcontractor for the Company. Vereen should be credited for work performed and expenses paid by AVCC.

10. The Court Order states that "AVCC entered into multiple written construction contracts when it was not licensed to perform construction in South Carolina and when the Company obtained all permits and paid for the construction costs of such projects from the Company account." AVCC was a licensed unlimited general contractor for over ten years prior to October 2003, when Vereen and Smith agreed to start the new Company. The undisputed testimony and evidence at trial showed that in October 2003, it was time for Vereen to pay the annual $350 renewal fee and renew the AVCC license, but because of his agreement with Smith to start the Company, Vereen did not pay the renewal fee. Vereen intended to move his license into the newly formed Company. The Company was formed on October 28, 2003, and Smith insisted on using his license as the qualifying party for the Company. Thereafter, the Company was licensed on January 30, 2004. On the other hand, Smith's situation is much different and much more egregious. Smith performed work for the Company, and others, under his former company, EES Construction and Consulting for over ten years without ever being licensed, even after the Company was formed and his license was used as the qualifier for the Company.

11. The Court Order states that "On multiple occasions, even though the payments for such construction belonged to the Company, Vereen deposited the payments into the Defendants' accounts." Vereen has admitted that payments in the Company name were deposited into the Defendants' accounts, and Vereen has presented evidence to account for each occurrence, and evidence to show that those amounts were due to the Defendants for payment of Company expenses. Smith, on the other hand, deposited payments in the Company's name into his personal and/or business accounts, and has no evidence that those amounts were due to him either as a distribution from the Company, or as reimbursement for expenses paid by him. Smith's only defense is that he forgot that he had done so.

12. The Court Order states that "AVCC billed the Company's customers for these expenses, even though AVCC did not pay for the cost of construction." Vereen presented evidence that AVCC paid $149,067 in direct costs of labor and materials on Company jobs between 2003 and 2006. Vereen presented evidence that AVCC received payment from the Company and Company clients over and above the amount of direct costs, but the Brady Report does not give Vereen credit for any costs or expenses paid by AVCC on behalf of Company jobs. If it is the Court's intent to disallow these expenses as an offset to amounts which are owed by Vereen simply because AVCC was an unlicensed contractor, then it would follow that Smith would, likewise, be responsible to the Company for the $349,448 paid to EES for work performed on behalf of Company jobs without a license.

13. The Court Order states that "Brady accounted for all money the Vereen Entities deposited into the Company checking account, properly giving appropriate credit for each deposit." The Brady Report failed to give Vereen credit for a 2004 $40,000 deposit made by Parkway Offices, and also failed to give Vereen credit for his $50,000 initial capital contribution.

14. The Court Order states that "[p]ursuant to the Court's October 15, 2010 Pretrial Order, the Company's and the Defendants' business records, accounting records, tax records, checks and deposits, banking records, accounting and tax records were admitted into evidence without authentication. In the Pretrial Order, this Court required that the Defendants deliver all accounting information to the Plaintiff's attorney to support the Defendants' claims for set-off or reimbursement by December 1, 2010." Vereen presented evidence that the Defendants compiled several notebooks containing checking account records and corresponding invoices from the Defendants' business records, if available, and provided the same to the Plaintiff. The Defendants production was organized monthly, and invoices supporting payments from the checking account were grouped accordingly. The Plaintiffs complained about the method of production. Thereafter, the Defendants re-organized the production, and reproduced the same information. The Defendants supplemented its original production with those documents – documents maintained by the Company in its business records. All of the Company's business records, including the checking account statements, accounts payable files, and job files, had been produced, in total, earlier in 2010, on two separate occasions at the former offices of the Company. Therefore, the Defendants argued that the Plaintiffs were not burdened by this supplementation. Vereen presented further evidence that even if a receipt or invoice did not exist, in 2010, several years after the checks were written, his request for reimbursement is no different than those of Smith that were submitted without a receipt or invoice, totaling $184,035, and for which payment was nonetheless given by the Company.

15. The Court Order states that "[t]he Defendants submitted invoices paid by the Defendants for improvements made on the Defendants' properties. These invoices were not proper for

reimbursement, because the Company had no obligation to pay for any of the Defendants' expenses on their own properties. The Defendants submitted claims for reimbursement for Company jobs performed from 2004 until 2007. The Company would not have the ability to invoice the customer or deduct the expense on its tax returns, as the request was submitted over three years after the Company had completed the last job and after the tax returns had or should have been prepared." The Defendants submitted invoices for reimbursement/offset pertaining to the following Company jobs: Willoughby Place, Tahitian Princess, Dr. Lale, the Fountains, Ocean Blue, Tahitian Pearl, Mathi, Jack Frost, Prospective Jobs, Greg Sisson, Britt, Ron Kim, Charlie Russell, and O'Laughlin. Smith does not deny that these were Company jobs. The Defendants also submitted invoices for reimbursement/offset as they pertained to the overhead expenses of the Company, i.e., warehouse rental, utilities, insurance, maintenance, etc. Smith denies that any amounts for Company overhead are due to Vereen for the use of his offices, warehouses, trucks, and equipment. The invoices submitted by the Defendants for Company jobs and Company expenses are proper and should have been included as an offset in the Brady Report.

16. The Court Order states that "as to claimed deductions [by Vereen] for 2004 and 2005, the Company's tax returns already had been filed and could not be amended." Vereen presented evidence of direct expenses paid on behalf of the Company and checks received by him from the Company and Company clients, all of which are accounted for in the tax returns. Vereen also presented evidence that as of December 31, 2005, the Company still owed Vereen $160,066 for his direct contributions, in excess of payments received by him. The 2007 Accounts Receivable for Vereen included in the Brady Report shows that as of December 31, 2005, the tax return for the Company shows an amount owed to Vereen of $48,760. Vereen

also presented evidence that the Company has not reimbursed him for his 2004 $50,000 capital contribution and a $40,000 loan from Parkway Offices. Therefore, as on December 31, 2005, the only claimed deductions which have not been addressed amount to $21,306.

17. The Court Order states that there was no "proof that Smith, EES or E. Smith misappropriated any corporate assets of the Company that was not accounted for by Brady in her Report." However, Vereen presented evidence that the Company paid $26,292 in direct expenses for side jobs performed by Smith and EES. Smith testified that if he changed the name of job on an Invoice, it was by mistake, and if the Company paid expenses on his side jobs, then those were amounts that were due to the Company. The Brady Report does not reflect those amounts on Smith's Accounts Receivable.

18. The Court Order states that "the Company has not suffered any damages as the result of Smith's actions [in licensing the Condolux job under the Company's license]. However, the Court is aware that the Company has been sued on this job, and in incurring attorneys' fees in order to defend this litigation. In addition, the Court is aware that Smith's company E. Smith was not licensed at the time the job was performed under the Company's license; thereby, exposing the Company to unlimited liability for such construction, and any defects associated therewith.

19. The Court Order states that "the Company incurred payroll costs for workers compensation, social security, and payroll expense, liability insurance, office overhead, and salaried employees on the Plantation Lakes residence." However, the Court ignores the fact that the Brady Report refuses to give Vereen credit for payment of the office overhead, or payment of salaried Company employees, during this period of construction; thereby creating the situation where the Company did not pay for either, and is not due to be reimbursed. In fact,

with respect to all jobs that the Brady Report identifies as personal or family jobs of Vereen, office overhead is included in the profit and overhead calculations as an amount due from Vereen to reimburse the Company. However, the Company paid no office expenses; therefore, this should not be included in the profit and overhead calculations.

20. The Court Order states that, with respect to the Willoughby Place litigation, "the Defendants failed to produce a full accounting of these expenses, payments and reimbursements from the insurance carrier and the project's owner." On behalf of the Company, Vereen paid $112,749 towards attorneys' fees, expenses, and settlement of litigation where the Company was a named party. Smith participated in meetings with the Company's attorneys, discovery, and depositions, but Smith refused, at the last minute, to attend the settlement conference. Vereen presented evidence of the payments made, but the Brady Report credits Vereen for only $19,000.00 of those amounts. There is an additional $93,749 that should be credited to Vereen. Smith has presented no evidence that shows that Vereen has already been reimbursed for these amounts. The Defendants have produced each and every checking account record for 2003 through 2009; any purported amounts for reimbursement are not shown on those records.

21. With respect to the Dr. Lale job, the Court Order states that "[t]he Company paid the costs and expenses of the job." Vereen presented evidence that Parkway Offices and AVCC also paid for some of the costs and expenses of that job.

22. The Court Order states that "the Defendants challenged the charges maintained on the Plaintiff's accounting records attributed to "shop," the items paid and attributed to "shop" were not included in the [Park Place Putt-Putt] job ledger and were not expensed to the Defendants." However, the Defendants challenged the charges maintained on the Plaintiff's

accounting records attributed to "shop" charges on the Parkway Offices job ledger. Vereen provided evidence that Company employees, working on Company jobs at the Company's offices, would write "shop" on their timecard, and those expenses would be entered on the Parkway Offices job ledger. Vereen presented evidence that Drewett improperly included such entries totaling $58,373.00 on the Parkway Offices job ledger. However, the Brady Report does not provide any consideration for this erroneous practice.

23. The Court Order states that, with respect to the 23 homes constructed for Park Place, "the Brady Report details the amounts due for labor and materials paid for by the Company, with added costs for payroll, overhead, insurance and expected profit." The Brady Report charges $228,464 in profit and overhead on expenses paid by the Company on the Pointe Marsh job. The Brady Report then charges over $565,075.00 to Vereen for lost profit and overhead on those expenses paid by Vereen on the Pointe Marsh job. Although Vereen continues to dispute that any profit and overhead is due to the Company on the $959,287 paid by the Company on behalf of the Pointe Marsh job, the Court cannot have intended to allow the Company to recoup profit and overhead on work performed and expenses paid by a third party, i.e., the $3,767,172 in estimated construction costs included in the Brady Report, paid out of the construction loans secured by Vereen with First Palmetto Bank. If this was the Court's intent, then Smith's 2007 licensure of almost $1.4 million in construction, using the Company's license, and Smith's licensure of his side jobs, under the Company's license, are also subject to the same profit and overhead calculation. In addition, it is telling that the Brady Report distinguishes between the two different profit and loss calculations on this job – one is based on direct expenses paid by the Company, and the other is based on the estimated construction cost paid by others. The Brady Report further fails to include any

similar profit and overhead calculations for those expenses paid by the Company on behalf of Smith personally or Smith's side jobs.

24. The Court Order states that, with respect to the 23 homes constructed for Park Place, "[t]he Company advanced payment for over $900,000 in construction expenses . . . . and the Company did not invoice or collect payment for the expenses it advanced." The Brady Report includes copies of the job ledgers for the Pointe Marsh job which shows that the Company collected payment in an amount of $611,000 for this job. Vereen presented evidence that Park Place made an additional $43,720 in deposits to the Company, and made payments on behalf of the Company for expenses on Company jobs in an amount of $346,432 between 2004 and 2007. Therefore, the evidence presented to the Court is proof that Park Place reimbursed the Company for the $959,287 paid for construction expenses on the Pointe Marsh job.

25. The Court Order states that, with respect to the Sisson Remodel, "Vereen admitted that the Company paid an additional $15,000.00 in labor expense to its master carpenter for his work at the Sisson house, which was not charged to the Sisson job ledger in the Company records." Vereen would argue that his testimony was that Sisson was not charged for additional labor expenses, in the form of payroll costs. There is no testimony that any Company employee received additional payroll for work performed on the Sisson job.

26. The Court Order states, with respect to the Kempe job, "the Company paid for the Kemp[e] expenses from the Company account." Vereen presented evidence that AVCC also paid for some of the costs and expenses of that job.

27. The Court Order states that "Vereen had a conflict of interest when he paid himself "supervisor fees" of $103,760.68 in 2004 and $27,121.62 in 2005 from the Company's

checking account." However, the Court ignores testimony from Smith that the members were to receive $1,000/week in the formal of salary. In addition, the Court ignores the evidence presented that Smith invoiced the Company through EES $2,000/week in supervisory fees during 2004 and 2005.

28. The Court Order states that "Vereen took $21,320.15 from the Company account at Carolina First Bank to purchase a cashier's check payable to the Horry County Treasurer to pay his Wife's real property taxes." Vereen presented evidence that the $21,320.15 withdrawal from the Company's account represents two checks written out of the Company's account – one check was payable to Rockford Manufacturing for Company expenses in an amount of $17,426.80, and the second check was payable to the Horry County Treasurer in an amount of $3,893.35, which Vereen admits was for a personal expense. This correction has been included in the final Brady Report.

29. The Court Order states that "Vereen incurred monthly charges on multiple credit cards and paid for such expenses from the Company checking account. I find that the Company does not have any credit cards of its own, and these expenses were not Company expenses." Vereen presented evidence that the Company did not own any credit cards, and that Vereen and Smith used their personal credit cards to charge materials for Company jobs. Smith and Vereen were reimbursed by the Company for these charges; however, the Brady Report and the Court have disallowed Vereen's reimbursements, but have ignored reimbursement by the Company for charges made to Smith's personal credit cards.

30. The Court Order states that "Vereen paid for a $9,045 City of North Myrtle Beach construction permit for the Park Place job from the Company account. This expenditure was not included in the Park Place job ledger maintained by the Company and was never charged

to the Park Place account on the Company's job ledger." The Brady Report includes a copy of the Company's job ledger for the Pointe Marsh job. The $9,045 payment for the permit is included on page 31 of that job ledger. The Brady Report does not make a correction for this duplicate charge to Vereen.

31. The Court Order states that "Vereen used the Company's lull and skid for several years while the Company was constructing 23 homes for Park Place. At the same time, the Company had to rent a comparable lull and skid to use on its multi-family jobs." Vereen presented evidence that Vereen paid for rental equipment to be used at the Pointe Marsh job. The Brady Report charges Vereen $75,650.00 in equipment rental, without any proof or substantiation of such charges, and despite evidence that Vereen paid a third party for rental of such equipment.

32. The Court Order states that "Vereen paid from the Company account multiple checks to Hartford Insurance and Companion Property & Casualty for insurance for property not owned by the Company." The Brady Report fails to take into consideration the coverage of those insurance policies. Vereen presented evidence that the Hartford Insurance policies provided auto, equipment, premises, and other insurance coverage for the benefit of the Company, and that the Companion insurance policies provided coverage for an automobile owned by Smith and EES. Therefore, those expenses are improper included on Vereen's Accounts Receivables in the Brady report.

33. The Court Order states that "Vereen claimed $208,577.66 in "construction in progress" expenses ... were advances by AVCC to the Company in 2006, but for which he produced no backup as is required by the Court's Pre-trial Order and the Internal Revenue Service regulations." Vereen produced evidence that AVCC made $149,067 in direct contributions

on behalf of Company jobs between 2003 and 2006.

34. The Court Order states that "Vereen's daughter, Sisson, gave the list of [AVCC] expenses to the Company's accountant with no documentation to support the claimed expense." Sisson testified that the Company's accountant requested that the Company identify significant amounts of expenses reported on the Company's jobs in progress report, but not coded to a particular job. This request had nothing to do with AVCC and was well before the filing of the lawsuit. Sisson further testified that she and Drewett, the Company's office manager and bookkeeper, identified the majority of those uncoded expenses, pull the corresponding invoices, and provided that information to the Company's accountant. These are reasonable actions in response to a request from the Company's accountant.

35. The Court Order states that, during the Condolux construction, "Smith had already left the company . . . when he was receiving 14 weeks of paid leave for unused vacation time." Vereen presented evidence that paid vacation was not contemplated as a term of employment with the Company. Smith did not present evidence of a written agreement authorizing paid vacation for either Vereen or Smith, or any other employees. Therefore, Smith was not entitled to paid vacation. Likewise, Smith was not entitled to receive salary after unilaterally terminating his employment in 2007. The Brady Report does not address paid vacation benefits received by Smith; or the $35,000 that Smith received in income after his termination. These are amounts which are due from Smith to the Company.

36. The Court Order states that "Brady properly calculated overhead and profit at 15% of the cost of construction." However, the Court ignores the fact that such profit and overhead contemplates a breakdown of 10% profit and 5% overhead and that such overhead includes office, warehouse, trucks, and equipment overhead. The Company paid for no offices,

warehouses, trucks, or equipment, but utilized those assets of Vereen; therefore, if 5% overhead is reasonable and expected, then the Company owes Vereen 5% of $20,000,000, or $1,000,000, for the use of Vereen's offices, warehouses, trucks, and equipment.

37. The Court Order states that "Vereen did not tell Smith that he entered into secret contracts with the customers of the Company." Smith admitted that he and Vereen met each morning to discuss Company jobs and where the Company's employees would be working for that day. Smith was aware of all jobs performed by the Company, all jobs performed for Vereen or any of Vereen's family members, and all jobs where Company resources were being used. Until Smith and Vereen's disagreement over the Condolux job, and Smith's decision to leave the company, Smith stated no objection to those jobs, no objection to employees or materials being sent to those jobs, and no objection to those customers. On the other hand, Smith admitted that he performed numerous side jobs, while employed by the Company, without telling Vereen about them. Jobs performed by Vereen were not secret; they were known to Smith, the Company, and the Company's employees. Jobs performed by Smith were secret, and were not discovered until after Smith left the Company.

38. The Court Order states that "all accounting purposes in this case ... the Company ceased to perform business on December 31, 2007, and that expert Brady properly disregarded all financial transactions after that date, with the exception of accounts receivable and payments made for warranty work." However, the Brady Report provides no credit for warranty items performed on Company jobs. Evidence was presented at trial that Vereen undertook at address the issues of the Company's clients, after Smith failed to respond to those requests.

39. The Court Order states that "the Company incurred accounting expenses in the amount of $142,268.00 from the expert witness Susan Brady, CPA, to uncover and detail the

Defendants' improper actions." The Brady Report, according to Brady's own testimony, was nothing more than a screen shot of expenses contested by Smith, and cannot be believed to be supported by hundreds of hours of work. Brady did not pull copies of the checks or invoices supporting those expenses, and in some cases, did not even make sure that the checks had been cashed. Similarly, Brady did not follow her own established guidelines – to treat the members equally, to "take receipts, if you have them," to look and see what was reasonable. Brady did not take into consideration the Company providing Smith with a vehicle, and not Vereen; Brady did not look to see if Smith had provided receipts for his reimbursements, and wholly ignored Vereen's receipts; and Brady did not take into consideration that the Company did not pay for office space, warehouse space, trucks, and equipment usage, despite insisting that Vereen reimburse the Company for the same.

40. The Court Order states that "the Defendants shall be responsible for the payment of any and all fines and penalties incurred by the Company in correcting and preparing state and federal income tax returns for the Company." The Company's delay and failure to file tax returns for 2006 through 2009 are, in part, due to Smith's failure, as President of the Company, to raise concerns regarding the Company's accounting practices, in 2005, when he first became aware of such practices. Had Smith insisted on a corporate accounting and financial statement, and a change in the bookkeeping methods, at that time, it is likely this litigation would have never been filed.

41. The Court Order states that "Wife authorized the actions of Vereen," that "Wife is well-educated in business affairs," and that Wife "should have been cognizant" and "benefitted" from Vereen's actions. The same can be said for Smith. Smith testified that he has built thousands of condos, and has worked with Vereen for many years. Smith also testified that

he was the President of the Company and allowed Vereen to be the Vice-President and Treasurer. Smith further testified that he had no money or capital to put into the Company, and looked to Vereen to do that. Finally, Smith testified that in 2005 when he presented Vereen with a list of concerns about the Company's accounting and Vereen answered those questions. Smith authorized the actions of Vereen; Smith is well-educated in the construction industry; Smith benefitted from Vereen's assets and capital which were invested into the Company, and as President of the Company, Smith should have been cognizant of Vereen's actions, especially after his personal CPA and long-time friend Brady made him aware of them. Vereen's Wife cannot be believed to have had any role in the operations of the Company, and how the Company's construction expenses were being funded or paid. In fact, Smith failed to present any testimony or evidence at the trial which can be used to argue that Wife took any actions against the Company. Therefore, if Wife's actions are deemed to be joint and several with those of Vereen, by virtue of her ownership in Park Place and of the office buildings, then surely Smith's actions and inactions, as a 50% member and President of the Company itself, can bind him to the actions of Vereen as well.

The Defendants believe that the Court failed to issue a ruling on the following evidence presented at the trial in this case:

1. Liabilities for the Company will exist until all pending litigation is completed and/or until eight years has expired from the date of the Certificate of Occupancy for the last job completed by the Company, or until the end of 2015. However, Smith's use of the Company's license on the Condolux building and the Martin Brown projects will extend those potential liabilities.
2. The employees of the Company were employees of both Smith and Vereen, and all corporate

documents and records were documents and records of both Smith and Vereen; both members had equal access to all of the Company's employees, and the Company's documents and records.

3. In early 2005, Smith took information compiled by Drewett, for the 2004 calendar year, to his personal CPA, Susan Brady, to prepare the Company's corporate returns. Smith selected Brady for such work, because Brady and Smith had a long term business relationship. Brady identified several concerns regarding deposits into, and payments made out of, the Company's checking account, and this information was shared with Smith and Vereen, at that time. Vereen testified that he told Brady that he was due credits for rent on the offices, warehouses, trucks, and equipment to offset some of the expenses paid on his behalf by the Company. Smith testimony was consistent with this, and he stated that Vereen answered all of Brady's questions. Nevertheless, Brady did not prepare the returns, and the documents compiled by Drewett were taken to Richard Crumpler at Smith Sapp, who filed the Company's 2004 returns. Smith failed to demand, as early as 2005, that Drewett and/or Vereen maintain the Company's records and accounting in a different manner. Thereafter, Crumpler also filed the Company's 2005 returns. Smith received a K-1 for both years – 2004 and 2005. Smith did not raise his concerns about the Company's accounting again until 2007, when he left the Company.

4. Smith cannot be believed to have been shocked and surprised by payments made and expenses paid by the Company either before 2005 or after. Smith routinely reviewed corporate billing and payments, and requested job ledgers and general ledgers from Drewett throughout his employment with the Company.

5. Vereen made an initial $50,000 capital contribution to the Company, and transferred personal

assets into the Company's name as basis for the Company's license; Smith did not, at any time, make any cash or other capital contributions to the Company. Brady testified that she performed the initial audit of the Company and identified the assets and capital contribution of Vereen. However, the Brady Report failed to give credit to Vereen for the initial capital contribution of $50,000. The Brady Report also fails to give Vereen any credit for other personal assets (offices, warehouses, trucks, and equipment) used by the Company.

6. Vereen allowed the Company to use Vereen's offices, warehouses, trucks, and equipment. Vereen never intended for the Company to use these resources for free, and discussed the same with Smith. There was no written agreement, but Vereen is due to be compensated for those contributions. Vereen presented evidence of those amounts at trial. Smith testified to varying amounts that were agreed upon for rent to be paid by the Company, from $600.00 to $1,200.00.

7. The Brady Report charges Vereen for expenses, totaling $11,327.20, paid by the Company on behalf of a van titled in Smith's former company's name. There was no written agreement between the members that this was to be a Company expense, or that this was to be an expense paid by Vereen. As these expenses were paid on behalf of Smith's former company, Smith should be responsible to pay these costs back to the Company.

8. Salaries for Company employees, including Vereen, Carrie Drewett, and Elizabeth Sisson, were paid by AVCC prior to June 2004. Drewett was the Company's Office Manager and Bookkeeper, and Sisson was a project manager for the Company. The Brady Report did not give Vereen credit for such payments. Vereen is due to be reimbursed for these amounts.

9. Expenses and costs paid for Vereen to respond to warranty items after 2007 on Company jobs are the expense of the Company. The Brady Report did not give Vereen credit for such

expenses.

10. The Company provided Smith with a corporate vehicle, paid for all fuel, insurance, and property tax expenses associated with that vehicle. Vereen was due the same consideration. Vereen presented evidence that he is due a credit for truck expenses, including the cost of the truck, fuel expenses, insurance premiums, and property taxes, totaling $57,498.00, all of which were similarly paid for Smith, through 2009, when the corporate vehicle was ultimately titled in Smith's name. The Brady Report does not address this issue.

11. Vereen did not dispute or refuse payment of any requests for reimbursement made by Smith; Vereen expected to be given the same consideration by Smith and Brady, Smith's expert. Brady testified that both members should be treated the same.

12. Prospective activities are routinely conducted in the performance of corporate business development; this Company is no different. Vereen presented evidence that the Company engaged in such prospective activities in an attempt to secure speculative opportunities, with the full knowledge of and participation by Smith. However, the Brady Report charges Vereen for the full cost of those such activities. These amounts should not be included as a charge back to Vereen in the Brady Report.

13. The Brady Report also refuses to give Vereen credit for expenses paid on behalf of the Company if there is no readily available receipt to support such expense; however, she did not apply the same standard to Smith. Vereen presented evidence that Smith requested over $203,041 from the Company in the form of reimbursement without being held to the same standard.

14. All parties agree that the Company paid Smith large sums of money, in the form of advances and commissions, totaling $85,842, and that those sums have not been reimbursed by Smith.

All parties also agree that the Company paid for materials for Smith's personal residence, totaling $3,471, and that those sums have not been reimbursed by Smith. [NOTE: Brady records this amount as $3,420]. All parties further agree that Smith deposited a payment totaling $19,280, intended for the Company, into Smith's personal account. Vereen also presented evidence that Smith received $2,317 from the Tahitian Princess job, that Smith received $41,619 from the Ocean Blue job, and that the Company paid for construction costs of some of Smith's side jobs, totaling $24,038, none of which was reimbursed by Smith. Despite testimony by the owner of the Tahitian Princess building, and an Invoice created by Smith himself for the Ocean Blue job [NOTE: Smith whited out the mailing address on this Invoice], and Company records presented to Smith during trial, the Brady Report fails to include amounts in Smith's Accounts Receivables for the Company.

15. Vereen routinely infused the Company with personal funds; Smith never made any cash or other financial contributions to the Company.

16. Company jobs total more than $20 million between 2003 and 2007. In 2003, Vereen rolled over $7 million in new jobs into the new Company, and secured over $8 million in new jobs for the Company over the next four years. The remaining $5 million in construction jobs were from repeat clients of the Company.

17. Vereen offered his personal jobs at Pointe Marsh and the Putt Putt to the Company, but Smith refused them. Thereafter, Vereen hired a superintendent to oversee and perform those jobs not out of revenue or money of Company.

18. After Smith left the Company in 2007, Vereen continued to fund and pay all of the Company's financial responsibilities, including financing agreements for equipment owned

by the Company, and the vehicle titled in the Company's name which was driven by Smith and retained by him after he left the Company.

The Defendants believe that the Court's Order should be changed based on the following evidence discovered after the trial in this case:

1. Coinciding with his departure from the Company, Smith permitted a $1,400,000 commercial building under the Company's license. Smith did not disclose this information to Vereen, but rather stated that the building was permitted under Smith's newly formed and separate company. Vereen had no reason, at that time, to believe this was a lie. Smith's separate company paid for the construction costs and expenses for this job. At trial, Smith and Smith's attorneys, DuRant and Thomas, emphatically denied that the construction of the building was a Company job, and that Smith's separate company was wholly responsible for the construction and solely entitled to receipts, including profit and overhead for this job. In 2009. a guest at the building fell, and the Company was sued. When served a copy of the Complaint, Smith filed a claim under the Company's insurance policy, but did not notify Vereen of the lawsuit. Thereafter, Smith engaged DuRant to represent the Company and file an Answer on the Company's behalf. When Vereen discovered the lawsuit, Smith assured him that DuRant would straighten out the facts, make sure all parties knew that Smith separate company was responsible for the construction, and that the Company would be dismissed from the lawsuit. Vereen requested an opportunity to review the Answer being prepared by DuRant, prior to its filing. DuRant ignored Vereen's request, and filed an Answer, as the Company's attorney, stating the Company was the Contractor for the building, and that Smith's separate company served as a subcontractor of the Company. DuRant failed to file an indemnity claim against Smith's separate company, on behalf of and

protecting the Company from Smith's actions. Furthermore, DuRant represented Smith's separate company in an action brought by the insurance company for a declaratory judgment on insurance coverage. Based on this newly discovered information, Vereen argues that Smith owes the Company lost profit and overhead consistent with the award of profits and overhead on Vereen's Pointe Marsh job.

Vereen admits that the corporate records were not properly maintained and that based on a review of the accounting performed by all of the parties, there are costs and expenses which Vereen owes to the corporation. Vereen alleges that those expenses, totaling $652,048.54, which are owed by him, are an offset to the amounts which the corporation owes Vereen for his direct and indirect contributions to the corporation, which have not been reimbursed. Vereen alleges that the corporation owes him approximately $482,560.00 for direct contributions made by him in the form of payments to the corporation, or payments to others on behalf of the corporation, through 2007, and that the corporation also owes him for indirect contributions, including, at the very minimum, rent on the office space, through 2007, as agreed by Smith, in an amount of $76,800.00, and vehicle expenses, in an amount of $57,498.00, which represents similar expenses paid on behalf of Smith, through 2009. Vereen alleges this brings the total due from him to the corporation to $35,190.00, for these relevant time periods. Vereen alleges that he continued to incur expenses on behalf of the corporation in 2008 and 2009, and continues to incur expenses to date, for which he has not been reimbursed. Vereen presented this information in his accounting summary for the Court's review.

Vereen further alleges that a detailed analysis of Brady's accounting arrives at the same conclusion. Brady alleges that Vereen owes the corporation $2,712,503.31. However, after the corrections or adjustments which Vereen alleges are required by the facts of the case, are made, that total is reduced to $32,707.25. Specifically, Vereen alleges the following corrections are necessary: (1) a deduction of $836,568.34 in legitimate business expenses paid by the corporation and supported by the Company's business records; (2) a deduction of $925,394.33 in profit and overhead calculations Brady, which were improperly calculated; (3) a deduction of $63,535.62 in corporate

payments received by Vereen after December 31, 2007, when Brady did not consider any corporate expenses after that date; (4) a credit of $23,306.64 which Brady applied to Vereen for receipts on the Perry and Abston jobs, which were Company jobs; (5) a deduction of $653,306.41 in reimbursements requested by Vereen, for Company expenses; (6) a deduction of $90,000, for the 2003 $50,000 capital contribution paid by Vereen, and the 2004 $40,000 loan from Parkway Offices, which are not reflected by Brady on Vereen's Accounts Receivable; (7) a deduction of $76,800.00 in rent due as a credit to Vereen, per Smith; and (8) a deduction of $57,498.00 for truck expenses paid by Vereen. Vereen alleges that when you consider both parties equal, under both accountings, the conclusion is that Vereen owes the corporation approximately $35,000.00. Vereen further alleges that the amount owed by Smith to the corporation far exceeds $35,000.00, and at a minimum, is $124,377.41, as calculated by Brady.

Based on the foregoing, Defendants request the Court reconsider its Order and find that a full and complete accounting of the Company must be done as requested by the parties and as required under S.C. statutory law for the winding up and dissolution of the corporation by an independent forensic accountant rather than relying and adopting the report of Smith's personal accountant who candidly admitted she did not do a full accounting in this matter, but only look at specific accounts and specific transactions as instructed by Ellis Smith.

This motion will be further supplemented by way of oral argument before the Court.

Respectfully Submitted,

Kathryn M. Cook, Esquire

SC Bar No.: 1371
Myrtle Beach, SC 29577
Email: kifcook55@gmail.com
Attorney for Defendants

Myrtle Beach, South Carolina

Date: 4/20/15

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-26-620

Ellis E. Smith, Individually, and on behalf of A & E Constructors and Consultants, Inc.
PLAINTIFF(S)

Arthur Wayne Vereen, et al.
DEFENDANT(S)

Submitted by:	Attorney for : ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
A & E Constructors and Consultants, Inc.	Arthur Wayne Vereen, Individually and as Trustee of the Arthur W. Vereen Residence Trust	$2,968,790.68
	Linda C. Vereen, Individually and as Trustee of the Linda C. Vereen Residence Trust,	$2,968,790.68
	Park Place Properties of Myrtle Beach, LLC	$2,968,790.68
	~~Arthur Vereen Construction Company, Inc.~~	~~$2,968,790.68~~

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

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

000109

Master in Equity

3073
Judge Code

3/23/15
Date

For Clerk of Court Office Use Only

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

Frank H. Durant
J. Jackson Thomas

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kathryn M. Cook

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	CASE NO.: 2009-CP-26-620
ELLIS E. SMITH, Individually, and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., a South Carolina Corporation, Plaintiff, vs. ARTHUR WAYNE VEREEN, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, ARTHUR VEREEN CONSTRUCTION COMPANY, INC., LINDA C. VEREEN, ARTHUR W. VEREEN, AS TRUSTEE OF THE ARTHUR W. VEREEN RESIDENCE TRUST, and LINDA C. VEREEN, AS TRUSTEE OF THE LINDA C. VEREEN RESIDENCE TRUST, Defendants. and ARTHUR WAYNE VEREEN, individually and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., and 29th PLACE DEVELOPERS, INC., Third Party Plaintiffs, vs. E. SMITH AND SONS CONSTRUCTION, LLC, AND EES CONSTRUCTION AND CONSULTING, INC., and ELLIS E. SMITH, individually, Third Party Defendants.	JUDGMENT AGAINST THE DEFENDANTS ARTHUR W. VEREEN, INDIVIDUALLY AND AS TRUSTEE OF THE ARTHUR W. VEREEN RESIDENCE TRUST, LINDA C. VEREEN, INDIVIDUALLY, AND AS TRUSTEE OF THE LINDA C. VEREEN RESIDENCE TRUST, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, AND ARTHUR VEREEN CONSTRUCTION COMPANY, INC., JOINTLY AND SEVERALLY

Appearances:
Attorney for A & E, Smith: Frank H. DuRant
Attorney for Smith, EES and E. Smith & Sons: J. Jackson Thomas
Attorney for the Defendants
and Third Party Plaintiffs: Kathryn M. Cook

PROCEDURAL HISTORY

This matter was referred to me for hearing pursuant to an Order of Reference of the Honorable Larry B. Hyman, Jr., dated July 23, 2009, with authority to issue a final Order in this matter. The parties presented testimony and hundreds of accounting records over four separate weeks. The case took more than a year to try because of various circumstances.

This is a shareholder's derivative action brought by Ellis E. Smith ("Smith"), individually and on behalf of A & E Constructors and Consultants, Inc. ("the Company") against Arthur Wayne Vereen ("Vereen"), the treasurer and remaining shareholder, and Vereen's wife, as well as some companies which Vereen controlled. Smith and the Company have sued for an accounting as well as for a dissolution of the Company, asserting that Vereen converted corporate assets.

Vereen and the Defendant entities generally denied the allegations, agreed to an orderly dissolution of the Company, and asserted counterclaims for an accounting, indemnification, and misappropriation of the Company's opportunities. Vereen, individually and on behalf of A&E, brought in an additional party, 29th Place Developers, Inc. (29th Place), without court approval, but without objection, and sued E. Smith and Sons Construction, LLC (E. Smith) and EES Construction and Consulting, Inc. (EES) and Smith, individually (Smith) as third party defendants.

I have reviewed the entire Court file, weighed the testimony and evidence presented, and find damages for the Plaintiff Company and against the Defendants Vereen individually and as trustee of the Arthur Wayne Vereen Residence Trust and Linda C. Vereen individually and as trustee of the Linda C. Vereen Residence Trust, Park Place Properties of Myrtle Beach, LLC,

Parkway Offices, LLC, and Arthur Vereen Construction Company, Inc. as discussed below. I find that each of these named Defendants conspired together to misappropriate and convert the assets of the Plaintiff Company and its other shareholder Smith.

DISCUSSION

The Plaintiff Smith and Defendant Vereen are the sole shareholders, officers, and directors of the Company, which was incorporated on October 28, 2003, as a construction company. The Company made a timely subchapter "S" taxation election under the Internal Revenue Code, and Vereen was elected treasurer. At all times, Vereen exclusively handled the Company's finances including managing and controlling the Company's checkbook. Smith and Vereen had equal ownership of the Company's shares of stock and served as its board of director members. When they began the Company, Smith and Vereen agreed that each would finish any pre-existing jobs under the names of their own separate companies and at their own separate expense.

Defendant Arthur Vereen Construction Company, Inc. ("AVCC") is a South Carolina Corporation owned by Vereen. Vereen operated his construction business out of AVCC for many years, but AVCC and Vereen's commercial building licenses expired in October 2003, about the time the Company began. Third Party Defendant EES Construction and Consulting, Inc. ("EES") is a South Carolina Corporation owned by Smith. The Defendant Park Place Properties of Myrtle Beach, LLC ("Park Place") is a South Carolina Limited Liability Company, which is owned 5% by Vereen and 95% by Defendant Linda C. Vereen, Vereen's wife ("Wife"), but managed and controlled by Vereen. The Defendant Parkway Offices, LLC ("Parkway") is a South Carolina Limited Liability Company owned by Wife, but also managed and controlled by Vereen. Parkway and Wife owned several buildings, including one space shared as offices with the other Defendants on Grissom Parkway in Myrtle Beach. E. Smith and Sons Construction, LLC ("E. Smith"), a South

Carolina Limited Liability Company created in April 2007, is owned solely by Smith. 29th Place Developers, Inc. (29th Place) is a corporation owned by Vereen.

The Company became a licensed commercial contractor in January 2004. The Company paid no salaries until June 2004, but beginning in January 2004, Smith and Vereen met each morning at the Company's office on Grissom Parkway. That office also served as an office for AVCC, Vereen's company, Parkway, Wife's company that Vereen managed and controlled, and Vereen's daughter's law practice.

Vereen began receiving a salary of $1,000.00 per week in June 2004. Smith was still finishing prior jobs at EES, and instead of receiving a salary, Smith invoiced the Company, through EES, for his time at $25.00 per hour and for EES's pro-rata expenses spent on Company business. Vereen approved and paid these EES invoices from the Company account at Carolina First Bank; Vereen charged the expenses to jobs performed by the Company on its job ledgers.

In early 2004, the Company began construction of a speculative residential home for Vereen in the Plantation Lakes subdivision near Myrtle Beach and also began several new, large, multi-family jobs. The Company was extremely busy and profitable during its first three years of operation. These years, 2004-2007, coincided with the three peak years of the real estate boom in the Grand Strand area. Opportunities for construction companies were numerous; construction companies were profitable. The Company permitted and performed several large jobs for Defendants Park Place, Parkway, and Wife; these included several jobs for Vereen's family members. Vereen told Smith that the Company would treat the family jobs just like any other job, and the Company would be paid overhead and profit.

A South Carolina corporation is required to maintain "appropriate accounting records" and is required to furnish its shareholders with annual financial statements that include the

corporation's year-end balance sheet, income statement, and statement of changes in shareholder's equity. See SC Code Ann. §33-16-101, et seq. (1976). If the financial statements are reported on by a public accountant, the accountant's report must accompany the financial statement. See SC Code Ann. §33-16-200 (1976). Smith never received an annual statement from Vereen, the Company's treasurer, or the Company's accountant, Richard Crumpler, CPA. Gains or losses from this subchapter "S" corporation were passed through and allocated to the two shareholders, Vereen and Smith, on an equal basis, which were included in the shareholders' taxable income and gains for each tax year.

The Company's CPA, Crumpler, informed Smith in 2007 that the Company had a large profit. When Smith asked Vereen about these profits, Vereen denied that the Company had any profits in 2007, instead asserting that the Company's large expenses offset its profits, leaving no net profits. At that time, the Company had completed construction of 23 resort homes[1] in a subdivision known as "Pointe Marsh" in the Cherry Grove Section in North Myrtle Beach for Park Place, had performed extensive construction on a putt-putt golf course owned by Park Place in North Myrtle Beach, and had performed extensive renovations on office buildings owned by Parkway and Wife on Grissom Parkway in Myrtle Beach. Smith began investigating the office records in early 2007, and he concluded that Vereen, in conspiracy with the remaining Defendants, had engaged in fraudulent practices with the Company. Smith made demand upon Vereen to rectify the wrongdoings. Vereen, however, denied any wrongdoing and refused to account for his actions. Smith suspected Vereen and Park Place were engaging in improper sales practices in selling the 23 homes at Pointe Marsh owned by Park Place.

[1] The Pointe Marsh homes were sold for prices ranging from $500,000.00 to $750,000.00.

Smith thereafter initiated the present shareholder's derivative action on behalf of the Company against Vereen, Wife, Park Place, Parkway and the Vereen's in their capacities as trustees, who owned the Vereen personal residence in Murrells Inlet, SC. The residence[2] was transferred into their names as Trustees of two separate Trusts in 2007 by Vereen and Wife. Smith alleged that the Defendants conspired together to wrongfully convert the Company assets to their own use; he requested an accounting of the Company's books, records, and other items, which are contained in the pleadings. Smith served detailed discovery requests upon the Defendants, and the Defendants served joint discovery responses. The Defendants filed an Answer and Counterclaim and a Third Party Complaint against E. Smith, EES and Smith.

In the Defendants' responsive pleadings, they denied that Vereen controlled the Company's finances or that the disbursements made by Vereen were not for the complete benefit of the Company. Vereen, individually and on behalf of A&E and 29th Place, alleged that he loaned monies from his companies to Smith in the 1990's for which he was to be reimbursed by Smith. He also asserted that EES improperly billed the Company for work allegedly performed for it. Vereen also demanded an accounting. Vereen's corporation, 29th Place, filed a third-party claim against Smith based upon an old promissory note. This Court granted Smith's motion for a directed verdict as to that claim.

AVCC counterclaimed against Smith for refusing to pay Vereen and AVCC for the use of AVCC contractor's license in a condo project 10 years earlier based upon an oral agreement for a 10% commission of the price of construction. This Court dismissed this claim on Smith's motion for a directed verdict.

[2] The Vereen residence is a large house located in an exclusive neighborhood in Murrells Inlet, South Carolina.

As to the Counterclaim for Breach of Contract concerning the alleged improper use of the AVCC license by EES at Carolina Keys, I find that AVCC and Vereen failed to prove their claim by a preponderance of the evidence. Specifically, I find that Vereen and AVCC orally agreed to allow Smith and EES to use the license in return for 10% of the profits earned by Smith and EES, not the cost, and that Smith and EES lost money, and thus owed no money to Vereen and AVCC. Furthermore, I find that the oral contract is illegal and cannot be enforced in South Carolina, as a contractor is prohibited from allowing a non-licensed entity to borrow a commercial license to perform construction. See SC Code Ann. §40-11-200 (1976). Finally, I find the claim, if proper, would be barred by the three year statute of limitations, as I specifically find that Vereen authorized the use of the license and was aware of its use for over nine years prior to the institution of this action. See SC Code Ann. §15-3-530.

Throughout this trial, the Defendants AVCC, Park Place, Parkway, Wife and Vereen referred to themselves as the "Vereen Entities." The Vereen Entities denied the specific allegations of wrongdoing in responding to the Company's discovery requests. The Plaintiff employed Susan Brady, an experienced, local Certified Public Accountant, as an expert witness to determine the nature and extent of the Company's damages. The Court found her testimony most insightful.

Even though not required, the Vereen Entities did not submit any accounting testimony, not even the Company's own accountant, Richard Crumpler. Mr. Crumpler is a well-respected certified public accountant who is the senior partner at a local CPA firm. The very fact that he was not called to testify was telling, especially when he presumably prepared the Company's tax returns based upon information provided by the Company's treasurer.

Ms. Brady conducted a lengthy investigation, testified, and submitted to the Court a detailed written report (the "Brady Report") of the fraudulent or "non-corporate" actions of the

Defendants, which were documented by written evidence. For the calendar years 2004 through 2007, Brady detailed an "Analysis of Non Corporate Activity" for each year, listing each and every improper act by the Defendants that caused the Company financial harm. The evidence of each improper act was contained in numbered tabs along with supporting documentation. As the trial progressed, the Brady Reports were amended to correct any errors, concessions and additions found during late produced discovery and during the trial. Ms. Brady's accounting task was complicated by Vereen's almost complete failure to maintain separate accounting records for the Company and the various Vereen Entities and his consistent commingling of the entities' income and expenses without documentation.

At the trial's end, Ms. Brady submitted her "Amended Summary Analysis of Non-Corporate Activity of A & E Constructors and Consultants," simply referred to as the final "Brady Report." In it, Ms. Brady documented damages sustained by the Company in the amount of $2,712,503.31, directly caused by Defendants' wrongful actions. These findings were fully supported by the evidence. The Company's accounting records, consisting of the Peachtree accounting system ledger, the checking accounts and tax returns, were submitted into evidence, without objection. The Defendants' checking account records and depositions from the Vereen Entities' bookkeeper Drewett and Defendant Linda Vereen were introduced into evidence. The Plaintiff introduced copies of checks for payment for services it rendered; Vereen then deposited the checks into Defendants' accounts. By clear and convincing evidence, the Plaintiff established that the Defendants conspired to convert the Company's assets to their own use with the intent to defraud the Plaintiff as detailed in the final Brady Report. I find the final Brady Report to be credible, accurate and complete. I hereby adopt the findings of the final Brady Report as conclusive evidence of the actual damages sustained by the Plaintiff as a result of the Defendants' actions.

LEGAL ISSUES

The Plaintiff brought this derivative action pursuant to Rule 34, SCRCP, and detailed the efforts he made to resolve these issues with shareholder Vereen prior to instituting this action. I am confident that this litigation was the only avenue available in this matter. Smith was the only party that could represent the Company's interests against the alleged wrongdoers, the Defendants.

Title 33 of the SC Code of Laws defines the duties and obligations of a corporation's officers and directors. It requires a corporation's director and officer to act in good faith, with the care an ordinarily prudent person would exercise under similar circumstances, and in a manner he reasonably believes to be in the best interest of the corporation and its shareholders. See, SC Code Ann. §33-8-300 (1976). In this matter, Vereen had a conflict of interest because of the construction performed by the Company for the Vereen Entities due to the ownership interests of Vereen and Wife in the transactions. See SC Code Ann. §33-8-310 (1976).

The conflict of interest stated in 33-8-310 could be overcome only if Vereen disclosed the material facts of each construction job to Smith, who had to officially authorize, approve or ratify the transaction. See SC Code Ann. §33-8-310(a)(1). If the test's first two prongs are established ([a]disclosure of material facts and [b] authorization, approval or ratification of transaction), the transaction must still be fair to the Company. See, SC Code Ann. §33-8-310(a)(3). Vereen allowed the Company to perform substantial construction for the Defendants even where there was no written construction contract. Vereen also allowed the Company to pay the Defendants' costs and expenses without billing them. Moreover, Vereen paid the Defendants' expenses from the Company's checking account without seeking reimbursement. Since Vereen acknowledged that he did not disclose the secret nature of these wrongdoings to Smith, I did not need to determine

the fairness to Smith of these transactions. The misappropriation of a Company asset can never be fair to an unknowing shareholder.

S. C. Code Ann. §33-8-320 prohibits the Company from loaning money to a director unless strict approval requirements are met. At trial Vereen admitted that he did not disclose these wrongdoings to Smith. Of course, Smith could not approve of any of Vereen's actions of which he was unaware. A director who assents to an unlawful distribution of company funds has a duty to repay the funds under SC Code Ann. §33-8-320. As to any funds converted by or diverted to the Defendants or for their use from the Company account, I find that Vereen failed to establish that Smith approved of the unlawful transactions. Vereen directed the unlawful distributions of the Company's funds; he has a duty to repay the funds.

An officer's duty to a corporation is defined in SC Code Ann. §33-8-410, et seq. He must act in good faith and only in a manner that he reasonably believes to be in the best interest of the Corporation and its shareholders. See SC Code Ann. §33-8-420. These statutory provisions define what has always been the law in this State; the Corporation, through its officers and directors, must always act in the best interest of the Corporation. A breach of these fiduciary duties or responsibilities, whether as officer or director, imposes liability upon the breaching party for any damages sustained by the Corporation and clearly places upon the wrongdoer the burden of proof to establish consent, approval and fairness. Id.

In each contract that the Company had with the Defendants, Vereen, as the Company's treasurer and the financial manager, failed to get a written contract for the construction. He also advanced payment from the Company's account to the Defendants without authorization for construction expenses, and further, he failed to invoice or collect payments and costs from the

Defendants. When payments were made, Vereen on occasion did not deposit the collected payments in the Company account but instead placed them in accounts belonging to one of the other Defendants.

The Defendant Vereen, in conspiracy with the Defendant Vereen Entities, breached his statutory duties to the Company in the following transactions where he had a material conflict of interest:

1. The construction of 23 homes and the renovation of a putt-putt golf course and arcade on Sea Mountain Highway for the related party, Defendant Park Place: Wife gave Vereen exclusive management and control of Park Place. The Company advanced payment for over $900,000.00 in construction expenses for these 23 homes; however, it did not have a construction contract obligating Park Place to pay the Company for the construction, and the Company did not invoice or collect payment for the expenses it advanced. Wife gave Vereen control of the banking accounts of Park Place. The balances in the Park Place banking account were sufficient to pay the Company for the expenses advanced and the costs of construction, but payment to the Company was not made.

2. The construction of a home in Plantation Lakes for the Defendant Vereen in 2004: Vereen owned a lot in the Plantation Lakes subdivision. The Company paid for the construction expenses for Vereen's new home built beginning in early 2004. Vereen did not prepare a construction contract requiring payment for the construction, and Vereen, the Company's treasurer, did not invoice or collect payment for the Company's expenses. I find that the Defendant Vereen obtained a construction loan to pay for the cost of construction but did not use the loan proceeds for that purpose.

3. The construction of improvements made on office buildings owned by the Defendants Parkway and Wife located on Robert Grissom Parkway: The Company advanced payment for construction expenses for buildings owned by Wife and Parkway but did not have a written construction contract obligating the Wife and Parkway to pay the Company for the cost of construction. Vereen, the Company's treasurer, did not invoice or collect payment for the expenses advanced by the Company.

4. The payment of construction expenses for Defendant AVCC: Vereen, as the Company's treasurer, paid construction costs and expenses for AVCC jobs from the Company account without Smith's knowledge and did not invoice or collect for the expenses advanced. Vereen billed and collected from the third parties for the AVCC charges and placed the funds in to the AVCC account or other accounts of the Defendants.

5. The payment of construction expenses for Vereen and Wife: Vereen, as the Company's treasurer, paid for construction expenses out of the Company account for his and Wife's personal home, now owned by the Trustees named as defendants. Vereen, on behalf of the Company, did not require that Vereen and Wife sign a construction contract with the Company obligating Vereen and Wife to pay for construction costs and did not invoice or collect payment for the expenses advanced by the Company. Further, Vereen did not tell Smith that the Company was paying for construction costs of the Vereens' personal home from the Company account. The Vereens received a newly-constructed house at the Company's expense without Smith's knowledge.

6. Vereen had multiple unwritten construction contracts with members of Vereen's and Wife's family, and Vereen paid for construction expenses from the Company account: The Company advanced funds to pay for construction on multiple jobs for members of Vereen and

Wife's family members. There were no written construction contracts obligating the owner to pay for the cost of construction and, on many occasions, Vereen and the Company did not invoice or collect payment for the expenses advanced by the Company.

7. Vereen entered multiple construction contracts through AVCC, which contracts were performed by the Company: AVCC entered into multiple written construction contacts when it was not licensed to perform construction in South Carolina and when the Company obtained all permits and paid for the construction costs of such projects from the Company account. Vereen did not tell Smith that he entered into the secret contracts with the customers of the Company or that he invoiced the owners in the name of AVCC. On multiple occasions, even though the payments for such construction belonged to the Company, Vereen deposited the payments into the Defendants' accounts.

8. Vereen paid for construction expenses from the Company account for improvements made to the home of Elizabeth Vereen Sisson, daughter of Vereen and Wife, who also is a Company employee: Vereen did not require the Company to have a written construction contract obligating his daughter Sisson, a South Carolina lawyer, to pay the Company for the construction on her home. The Company paid over $150,000.00 in construction expenses on her home, and Vereen, as the Company's treasurer, never invoiced Sisson for the expenses. The Plaintiff received a partial payment for the expenses on this job. A large payment from Sisson erroneously was made to Park Place rather than the Company. Vereen admitted, at trial, that over $15,000.00 in labor charges which should have been repaid to the Company for the Sisson job never were made.

9. Vereen, with the tacit assistance of the other Vereen Entities which he controlled, billed third parties for services performed by the Company; Vereen thereafter deposited the

payments from the responsible parties into various accounts of the Defendants, not the Company's account. Smith was unaware of Vereen's improper actions in these matters.

THE ACCOUNTING TRIAL

Vereen admitted at trial that he signed construction contracts in the name of AVCC in 2004, when AVCC was unlicensed, and when the Company had obtained the building permits and paid for the costs of the construction. Vereen further admitted that AVCC billed the Company's customers for these expenses, even though AVCC did not pay for the cost of construction. Moreover, Vereen admitted he did not tell Smith of these practices. Vereen's testimony was contrary to the Defendants' interrogatory responses. The Defendants' united response at trial was that the "Vereen Entities put in more money than they took out." Expert witness Brady accounted for all money the Vereen Entities deposited into the Company checking account, properly giving appropriate credit for each deposit. Brady compiled notebooks for the 2004 – 2007 calendar years, which detailed the ultra vires and improper actions of the Vereen Entities against the Company.

Pursuant to the Court's October 15, 2010 Pretrial Order, the Company's and the Defendants' business records, accounting records, tax records, checks and deposits, banking records, accounting and tax records were admitted into evidence without authentication. In the Pretrial Order, this Court required that the Defendants deliver all accounting information to the Plaintiff's attorneys to support the Defendants' claims for set-off or reimbursement by December 1, 2010. Defendants' claims allegedly occurred from 2004 to 2007. The Court's Order required that the Defendants "shall present evidence of the actual **invoice or bill** for services rendered or labor rendered and the **cancelled check** for payment made pursuant to such invoice (emphasis added)." If the Defendants did not comply by the deadline, the Order provided that "such

accounting records and information shall not be presented in the trial of the case by the Defendants."

During trial, the Court repeatedly sustained the Plaintiff's objections to the Defendants' attempts to introduce records into evidence that did not meet these requirements because they were either not produced by the deadline, or were not original invoices for goods or labor accompanied by the cancelled check of the Defendants for payment. Defendants proffered these records. From this Court's examination of the Company records, Vereen regularly sought reimbursement for expenses he paid on the Company's behalf, which were documented, charged to a job ledger on the Company's accounting system, and were immediately reimbursed to Vereen by a Company check he signed. The Company would then bill the customer for the expense incurred or add it to general overhead. The Defendants submitted invoices paid by the Defendants for improvements made on the Defendants' properties. These invoices were not proper for reimbursement, because the Company had no obligation to pay any of the Defendants' expenses on their own properties. The Defendants submitted claims for reimbursement for Company jobs performed from 2004 until 2007. The Company would not have the ability to invoice the customer or deduct the expense on its tax returns, as the request was submitted over three years after the Company had completed the last job and after the tax returns had or should have been prepared. Finally, if the Defendants did not provide the cancelled check and the invoice for the expense, the Company could not document the expense as a Company's expense or as an expense paid by the Defendant claiming the reimbursement. The Defendants attempted to mass produce claims for reimbursement or offset that were not documented appropriately and as required in the Court's Pretrial Order. As to claimed deductions for 2004 and 2005, the Company's tax returns already had been filed and could not be

amended. The Company accepted approximately $80,000.00 in credits, which are outlined in the Brady Report, which were credited against the Defendants' accounts receivable.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the testimony and other evidence presented, I make the following findings of fact and conclusions of law:

1. I find that the Plaintiff complied with the requirements of the South Carolina Rules of Civil Procedure and properly brought a derivative action against the Defendants in this action.

2. I find that the Plaintiff alleged in the verified Complaint that the Defendants conspired together to wrongfully convert Plaintiff's assets and to injure Plaintiff. The Defendants generally denied the allegations and counterclaimed against the Plaintiff Smith and his entities, EES and E. Smith.

3. The Counterclaims and Third Party Complaints: After reviewing the credibility of the testimony and evidence presented, I find that the Defendants and Third Party Plaintiffs did not meet their burden of proof by a preponderance of the evidence in establishing that Smith, EES or E. Smith owed any monies to the Defendants or to the Company that was not otherwise accounted for by Brady in her Final Report. To that extent, I find that the Defendants failed to meet their burden of proof that Smith owed Vereen or AVCC for any monies related to the construction of Smith's home in the 1990's, or that Smith owed any sums for the use of the AVCC license in the construction of the condominiums in North Myrtle Beach. Closing documents from the Smith home clearly establish payment in full at closing. As to the Counterclaim by AVCC against Smith, I specifically find that the oral agreement was for Smith and EES to pay Vereen and AVCC 10% of the profits they earned on the Carolina Keys project; Smith and EES did not earn any profits. Accordingly, Smith and EES owed nothing to Vereen and AVCC for the Carolina Keys project.

Moreover, even if there had been profits, I find that an agreement to use the AVCC license is an illegal contract that is unenforceable in Court. See SC Code Ann. §40-11-200 (1976).

As to 1990 debts allegedly due from Smith to the Vereen entities, I find that these debts were either discharged in Bankruptcy or are time barred under the Statute of Limitations. See SC Code Ann. §15-3-530(1). Furthermore, I find as a matter of fact that there was no agreement or discussion at the time this Company was formed for Smith to pay Vereen or the Defendants monies due from the past.

Further, I find that the Defendants failed to meet their burden of proof that Smith, EES or E. Smith misappropriated any corporate assets of the Company that was not accounted for by Brady in her Report. Specifically, I find that the Defendants and Third Party Plaintiffs failed to prove, by a preponderance of the evidence, that Smith or EES submitted any invoice for payment to the Company that was not properly reviewed and paid by Vereen, who approved and signed all Company checks. I find that the Defendants and Third Party Plaintiffs failed to establish that Smith, EES, or E. Smith used corporate assets for their own personal benefit, such as flooring and tile, other than the floor covering that was accounted for, admitted, and contained in the Report of Brady.

As to the claims contained in Paragraph 32 of the Counterclaim, the Court dismissed items 32 (a)(b)(c)(d)(l)(m)(o) and (p) on motion for directed verdict. I specifically find that Smith informed Vereen of the use of the Company license for items (a) through (k), which were instances where the Company license was used with permission of Smith and Vereen, and no monies were paid to the parties and no expense paid by the Company. Vereen produced no evidence of damages sustained by the Company for these actions. As to (l) to (p), I find that the Company's license was

not used and no Company funds were advanced for construction. The Counterclaims are thus dismissed.

I find that the Defendant E. Smith did enter into a construction contract with Martin Brown for the construction of the Condolux Office building in late 2007, after Smith left the Company. However, I find that Vereen had previously rejected the construction proposal as not being profitable. I find that E. Smith did in fact use the Company's construction license to perform the work; however, E. Smith obtained liability insurance for the job and paid each and every expense from its separate funds. I find that the Company has not suffered any damages as the result of Smith's actions and that Smith was the qualifying party with the Contractors Licensing Board for the Company. Smith had already left the Company at the time construction began, when he was receiving 14 weeks of paid leave for unused vacation time. I find that Vereen was aware of Smith's actions and made no complaint against him until this lawsuit was initiated.

4. I find that Vereen and Smith agreed that each could engage in outside construction activities to earn additional income, but any such activities would be at their own expense and in their separate time. Smith engaged in outside activities that did not involve Vereen or the Company, which were done on his own free time and expense. Smith's complaints against the Defendants involved transactions where the Company was performing and paying for construction services and yet, payment from third parties for its services was being made, via Vereen, to Vereen's companies. Smith's activities in performing labor on an hourly basis on his free time caused no legal or financial harm to the Company.

5. I expressly adopt the findings and conclusions contained in the Brady Report, which reflect the actual losses sustained by the Company in transactions between the Company and the Vereen Entities and for other non-corporate actions by Vereen. The Brady Report is detailed and

is supported by clear and convincing evidence. Due to the complexity and the material wrongdoings in several transactions, I make the following additional factual findings of the Defendants' misconduct, resulting in the Company's material damages:

(a) The Plantation Lakes home: In early 2004, Vereen employed the Company to build a residential home on his property in Plantation Lakes near Myrtle Beach. Vereen paid, by Company check, Plantation Lakes construction job expenses in the amount of $132,574.94, which are detailed in the Company job ledger and in the Brady Report. However, Vereen simultaneously had obtained a construction loan from Horry County State Bank to pay for the construction costs which was secured by a first mortgage loan upon the property. In addition to the basic construction job expenses, the Company incurred payroll costs for workers compensation, social security and payroll expense, liability insurance, office overhead, and salaried employees on the Plantation Lakes residence. Smith knew the Company was performing the job, but he was unaware that Vereen was not paying the Company for the construction costs from the Horry County State Bank construction loan.

Vereen sold the house to the Whitleys for an amount that exceeded the balance of the construction mortgage by $102,000.00. On the date of the 2005 real estate closing, Vereen executed a deed into the Company for a stated consideration of "$5.00 and assumption of mortgage" without Smith's knowledge or consent. The Company, by Vereen's signature, then transferred the property on that same day to the Whitleys for the stated purchase price. The HUD closing statement, signed by Vereen for the Company, reflected that Vereen's personal construction mortgage in the amount of $281,000.00 was paid by the closing agent, and the Company received the net proceeds from the sale of $102,480.96. When the Company's 2005 state and federal tax returns were prepared and filed by Vereen's CPA, the $102,480.96 check to the

Company was classified on the Company's books and tax returns as a "loan" from Vereen to the Company. Vereen did not report the income received on his and Wife's tax returns. As a result of these actions, the Company was not repaid the $132,574.94 it had advanced in construction costs, nor the payroll, overhead and profit expected for the construction of the house. Vereen admitted that he did not tell Smith of the same-day transfers, the advances made by the Company for construction expenses, the lack of billing or payment, and the tax treatment given to the transaction on the 2005 tax returns. Vereen offered no explanation for his actions.

Vereen testified that he may have done some "quirky things", but in the end, the Vereen Entities "put more money in than they collectively took out." Smith learned about the transaction when his attorney searched the public records of Horry County. As a result, the Company was defrauded of all the paid construction expenses, plus the indirect costs and expenses, including profit. When the Company later billed the Whitleys for additions they requested after purchase, Vereen deposited their check for payment made to the Company into the account of Defendant Park Place, instead of depositing it into the Company's account. The Brady Report details the losses sustained by the Company, including overhead, profit and expense. Vereen explained that he transferred the home to the Company because it was a "Company" venture, yet he failed to explain why his business partner had no knowledge of the transaction, and why the only revenues received from the sale were treated as a loan from Vereen to the Company.

(b) Willoughby Place: I find that Vereen had a conflict of interest with the Willoughby Place construction job, which was a $4,000,000.00 multi-family construction job performed by the Company from 2004 through 2006. The Company obtained all construction permits from the City of Myrtle Beach, and a construction loan was obtained by the Developer, Willoughby Family Investments, LLC, to pay the costs of construction. The Defendants never produced a copy of the

written construction contract between the Company and the Developer Willoughby Family Investments, LLC, but Defendants' Interrogatory responses stated that this was a job performed by the Company for Defendant AVCC. I find that such an agreement is improper in South Carolina, as AVCC had no construction license at that time and thus could not subcontract the job to a licensed entity. See SC Code Ann. §40-11-200 and §40-11-330 (1976). AVCC submitted multiple construction draw requests from AVCC, from AVCC d/b/a A & E, and from the Company. Vereen then deposited the construction draw payments into the Defendants' accounts.

I find that Willoughby checks totaling $113,480.00 were deposited into the AVCC account. Although the Defendants denied these actions in their pleadings and discovery responses, Vereen admitted at trial that the invoices came from the Defendant AVCC and that he deposited the payments into accounts other than the Company's account. I find that bills for "extras" to Willoughby were billed in the Company's name, and Vereen deposited the payments into Park Place's account. When the Company was sued for copyright infringement over the plans for this project, the Company paid for a portion of the defense and settlement expenses, but mysteriously the Company's "construction contract" could not be located. I find that the Defendants failed to produce a full accounting of these expenses, payments and reimbursements from the insurance carrier and the project's owner. The Brady Report details each misappropriated deposit and the invoices, third party checks and the deposit tickets to the Defendants, which were admitted into evidence. I find that the Defendant Vereen, AVCC, Park Place, and Parkway conspired together to defraud the Plaintiff by billing these charges improperly and in depositing the payment into their accounts.

(c) Dr. Lale job: I find that Vereen had a conflict of interest in the Dr. Lale remodel job. The job was contracted and permitted in the name of the Company on January 30, 2004. The

Company paid the costs and expenses of the job. According to the Defendants' discovery responses, this job was "performed by the Company for AVCC," but AVCC billed Dr. Lale rather than the Company. Vereen then deposited the Lale payments into accounts other than the Company's account. It is illegal in South Carolina for an unlicensed contractor to subcontract with a licensed contractor to perform construction services. See SC Code Ann. §40-11-200 and §40-11-330 (1976). The misappropriations are documented in the Brady Report, as part of the Company's actual damages. I find that Vereen and AVCC conspired to defraud Smith and the Company by billing charges improperly and by then failing to deposit payments received into the Company account. I find that AVCC was not licensed to perform this work, could not subcontract the job to the Plaintiff because it was not licensed, and did not pay for the construction costs. I furthermore find that Vereen failed to disclose these matters to Smith.

(d) Parkway Offices and Wife: I find that Vereen had a conflict of interest in the Company's job performed on Grissom Boulevard for Wife and Parkway Offices. Wife requested that the Company perform the construction contract on a "cost only" basis. I find that Wife and Parkway did not execute a written contract with the Company for the construction. Moreover, the Company did not bill for the services rendered, and Wife and Parkway did not pay for any of the construction at the office location. I find that Vereen wrote checks from the Company's account totaling $107,000.00 for construction costs but never billed Wife and Parkway for such expenses. I find that Vereen admitted he had no discussion with Smith about the job being a "cost only" job or that the Company had not been paid for the construction expenses. Again, the Defendants' explanation was that "the Vereen Entities put more money in than they took out." Each expense listed on the job ledger was paid by a Company check signed by Vereen and assigned to the Parkway Offices job ledger. I find that the Brady Report correctly detailed the Company's losses,

including overhead and profit, due to Wife and Parkway's failure to pay for any of the construction. I find that Vereen, Wife, and Parkway conspired together to defraud the Company..

(e) The Park Place Putt-Putt job: I find that Vereen had a conflict of interest in the Company's construction job performed at the Black Pearl Putt-Putt Golf Course, owned by the Defendant Park Place. Wife owns a 95% interest in Park Place and Vereen the other 5% interest. Vereen managed Park Place, making all decisions for the Company. I find that the Plaintiff established that it paid over $114,290.72 in actual labor and expenses for this job from the Company account, but there was no written construction contract, no invoicing, and no payment for the costs of construction. Defendants asserted that this was a "cost only" job. The expenses were established from the Company job ledger, and Vereen wrote each check from the Company account reflected on the ledger. I find that the Brady Report outlines the losses sustained by the Company caused by the Defendant's failure to pay for this construction, including overhead and profit. I find that although the Defendants challenged the charges maintained on the Plaintiff's accounting records attributed to "shop," the items paid and attributed to the "shop" were not included in this job ledger and were not expensed to the Defendants. I find the Defendants' explanations to be unbelievable and contrary to the documented written evidence. I find that Vereen admitted that he did not tell Smith that there was no written contract for construction, that the Company had not paid for the construction costs, and that the Defendants were not invoiced and did not pay for the construction. I find as a matter of fact that Wife authorized the actions of her husband. Moreover, she and Park Place received the benefit of substantial improvements without payment.

(f) The 23 homes constructed for Park Place: I find that the Defendants had a conflict of interest in the 23 homes that the Company constructed for Park Place at Pointe Marsh, located

on Sea Mountain Highway in North Myrtle Beach. The Company performed these construction jobs, permitted in their name, over a two year period without any written construction contracts on a "cost only" basis." I find that Vereen signed $973,875.47 in Company checks for labor and materials for the 23 homes, and yet, the Company never billed Park Place for any services rendered or materials used. I find that Vereen, on behalf of Park Place, deposited checks he had signed in to the Company account, which were accounted for by the Company in the Brady Report. I find that when the Park Place project was completed, Park Place owed the Company $496,039.57 for the Company's construction costs (with no overhead or profit charged or paid). The Defendant Park Place procured 15 construction loans, which could have provided funds to pay the intended purpose of the loan, construction costs of the houses. Instead, Park Place neglected to use the loan funds for their intended purpose. I find that the Brady Report details the amounts due for labor and materials paid for by the Company, with added costs for payroll, overhead, insurance and expected profit. I find that the Defendants Vereen and Wife, the owners of Park Place, offered no excuse or logical explanation for their actions. I find that the accounting records of Park Place reflected a profit exceeding $6,000,000.00 on the sale of the homes, after payment of construction costs. I find that Vereen admitted that he did not tell Smith that he was paying the construction expenses from the Company account, that he was not invoicing for such charges, and that the defendants did not pay the Company for the construction. I find that in her report, Brady properly computed the payroll, insurance, overhead and expected profit for these jobs, which I expressly adopt as being calculated based upon established standards in the industry. I find that Wife authorized the actions of Park Place and Vereen. I furthermore find that the Brady Report also correctly charged the Defendants with specific checks written out of the Company account to pay interest on the Park Place Development loan.

(g) The Sisson Remodel: I find that Defendant Vereen had a conflict of interest in the Elizabeth Vereen Sisson construction job performed by the Company. Sisson is the daughter of the Wife and Vereen. Sisson, a licensed attorney, was employed by the Company. I find that Vereen signed over $150,000.00 in Company checks to pay for labor and material on the Sisson residence. I also find that that there was no written construction contract or evidence of billing on the Sisson job. According to the Defendants, the Company permitted the Sisson job in 2007 and finished it in early 2008. The Sisson job was "cost only", with no construction contract and no billings. I find that the Defendants failed to explain why the Company advanced any money to pay Sisson's construction expenses. I find that Sisson paid the last payment of $35,803.10 (of the advanced expenses) by a check written to Park Place rather than the Company, which paid for the expenses. I find that the Company did not receive any payment for payroll expenses, insurance, overhead or profit. I find that Vereen admitted that the Company paid an additional $15,000.00 in labor expense to its master carpenter for his work at the Sisson house, which was not charged to the Sisson job ledger in the Company records. I find that the Brady Report outlines the Company's losses sustained because of these unauthorized expenditures from the Company account, together with the overhead and expected profit on this job. The Brady Report gives credit for all of Sisson's payments finally that were deposited in the Company account. Neither the Defendants nor Sisson gave any explanation for their actions.

(h) The Kemp Job: I find that the Defendant Vereen had a conflict of interest in the Company's job performed for Mr. Kemp, a job the Company permitted in 2004. The construction contract was signed in the name of AVCC on January 31, 2004, when AVCC did not have a contractor's license. I find that the Company paid for the Kemp expenses from the Company

account. I find that the Brady Report correctly reports the Company's losses because of its expenditures, and Kemp's payments made which were not deposited in the Company account.

(i) I find that the Defendant Vereen had a conflict of interest when he paid himself "supervisor fees" of $103,760.68 in 2004 and $27,121.62 in 2005 from the Company checking account. I find that these payments were unauthorized payments to Vereen, and that these payments were not reported as W-2 income to Vereen on the Company's 2004 and 2005 state and federal tax returns. Vereen made sure that Smith was not notified of these payments.

(j) I find that in 2004, Vereen took $21,320.15 from the Company account at Carolina First Bank to purchase a cashier's check payable to the Horry County Treasurer to pay his and Wife's real property taxes. This payment is correctly reflected on the Brady report. I find that Vereen and Wife offered no explanation for this payment.

(k) I find that Vereen paid $17,385.27 in expenses related to AVCC's Seven Oaks construction project from the Company checking account. This job was not a job of the Company, and Vereen and AVCC never repaid the funds. I find that these expenses are correctly reflected in the Brady report.

(l) I find that Vereen paid monthly rent from the Company checking account for a storage unit from Paul Thomas, where Vereen stored his personal vehicle and other personal items for many years. Vereen previously paid this expense from the AVCC account. I find that the use of the rental was personal to Vereen and was unauthorized. The amount of such expense is detailed in the Brady Report.

(m) I find that Vereen paid for the construction costs on a two car garage on a house partially owned by Vereen and Wife in the Bahamas and for repairs on their Gamecock football stadium "caboose" from the Company account. Although Vereen initially rationalized that the

Bahamas expenses were for a Company "sponsored" vacation, he subsequently conceded that the expenses were personal. The amount of such expenses is correctly detailed in the Brady report.

(n) I find that Vereen paid for personal insurance by check or pre-authorized draft from the Company account each month. Vereen admitted that these expenses were personal and improper. The amount of such expenses is detailed in the Brady Report.[3]

(o) I find that Vereen incurred monthly charges on multiple credit cards and paid for such expenses from the Company checking account. I find that the Company does not have any credit cards of its own, and these expenses were not Company expenses. For example, Vereen paid his daughter's gasoline charges on a Shell credit card from the Company account. The amount of such expenses is detailed in the Brady Report.

(p) I find that Vereen paid monthly dry cleaning bills for four years from the Company account for his family's personal dry cleaning. When confronted with this issue, Vereen admitted these expenses were personal. The amount of such expenses, annually, is detailed in the Brady Report.

(q) I find that Vereen deposited a $15,000 check from the Tahitian Princess job, a Company job, not into the Company account, but instead, into AVCC's account. This $15,000 deposit is included in the Brady report.

(r) I find that Vereen paid his personal monthly 29th Place HOA dues from the Company checking account. The Company does not own any real property at 29th Place. Vereen admitted that this was a personal expense. The amount of such expenses is detailed in the Brady Report.

[3] In her Final Report, Brady corrected an error in the amount of the charges.

(s) I find that Vereen paid the monthly cell phone bill for a third party from the Company account. The account was for one of Vereen's friends, not a Company employee. Vereen alleged that the Company paid the phone expense of Seth Smith, as a defense. However, the Company paid Seth Smith's cell phone charges while he was employed there. The Company's payment of Vereen's friend's cell phone charges was improper. I find that the Brady report correctly details these improper expenses.

(t) I furthermore find that from the Company account, Vereen paid for the labor and materials for the construction of his and Wife's house. These expenses are detailed in a Company job ledger. Vereen did not notify Smith of this important matter. I find that these payments were improper advances to Vereen and Wife that were never billed to or paid by the Company. I find that the amount of such expenses is detailed in the Brady Report.

(u) I find that Vereen paid for a $9,045 City of North Myrtle Beach construction permit for the Park Place job from the Company account. This expenditure was not included in the Park Place job ledger maintained by the Company and was never charged to the Park Place account on the Company's job ledger. This unauthorized payment is correctly detailed in the Brady Report.

(v) I find that Vereen used the Company's lull and skid for several years while the Company was constructing 23 homes for Park Place. At the same time, the Company had to rent a comparable lull and skid to use on its multi-family jobs. I find that Vereen did not list this expense on the Park Place job ledger maintained by the Company. I find that the Company established the costs that the Company paid for rental of a similar lull and skid, which were calculated and shown as the Defendants' account receivable on the Brady Report. I find Vereen and Park Place utilized the Company's equipment with full knowledge that the Company had to rent comparable equipment for its other jobs.

(w) In 2006, Vereen paid a $5,000 "commission" to his daughter, Elizabeth Vereen Sisson, from the Company checking account. Smith did not authorize this payment as this was a conflict of interest transaction. This payment was to an employee, not a shareholder, and was not reported as W-2 income to Sisson on the Company's income tax return. The amount is shown as an account receivable from Vereen on the Brady report.

(x) I further find that Vereen paid from the Company account the sum of $22,049.48 to Stock Builders for an invoice for materials delivered to the Park Place construction site, which was not charged to that job on the Company job ledger. Vereen reluctantly admitted that it was an expense that he and Park Place owed. The amount is shown on the Brady report as the Defendants' expense.

(y) I find that Vereen paid from the Company account multiple checks to Hartford Insurance and Companion Property & Casualty for insurance for property not owned by the Company. Such improper expenses are delineated on the Brady report.

(z) I find that Vereen improperly paid the expenses for his and Wife's vehicles by Company check. The Company did not own these vehicles, and it was improper for the Company to pay for their expenses. These expenses are shown on the Brady Report.

(aa) I find that Vereen claimed $208,577.66 in "construction in progress" expenses that he alleged were advances by AVCC to the Company in 2006, but for which he produced no backup as is required by the Court's Pre-trial Order and the Internal Revenue Service regulations. Vereen's daughter, Sisson, gave the list of these expenses to the Company's accountant with no documentation to support the claimed expense. I find that the Defendants failed to submit proper documentation to support these claims for reimbursement or offset, as required by the Order, and

I have disallowed these expenses as credits or offsets against the balances due by the Defendants. The amounts disallowed are shown as an accounts receivable on the Brady Report.

(bb) I find that Vereen improperly advanced Company funds to pay for his family members' construction expenses, which were not invoiced by the Company to such persons and were not paid. These expenses are shown on the Brady Report as unauthorized advances made by Vereen to third parties related to Vereen and Wife.

(cc) I find that all construction work performed for the Defendants Park Place, AVCC, Parkway Offices, Vereen, Wife and other "family" members, were, unlike other jobs, not based upon written construction contracts that obligated the owner to pay the Company for the services rendered. I find that although Vereen had a job ledger created at the Company for these jobs, Vereen paid the expenses of these jobs from the Company account but never billed for the labor and materials paid for and provided, the additional payroll expense, the cost of labor provided by salaried employees, the cost of liability insurance and the expected overhead and profit of 15%. Although Vereen initially claimed that these jobs were for "cost" only, on many occasions no payment was received at all. I find that Vereen conceded at trial that these entities should have paid the payroll expenses, liability insurance and expected overhead and profit of 15%. I find that Brady properly calculated the actual payroll costs by multiplying the actual payroll by 140% to determine the actual payroll costs to the Company, which included worker's compensation, FICA and Medicare match, and state and federal unemployment. I find that Brady properly calculated the cost of liability insurance ~~cost~~ at 2% of the costs of construction, and that overhead and profit were properly calculated at 15% of the cost of construction, which was used to determine the amount that should have been paid by the Defendants on each job. I find as a matter of fact that the calculations performed by Brady are reasonably calculated to provide what the Company

should have charged and collected for each and every job performed for the Defendants or their family members, with the exception of the Vereen personal home. The amounts and the method of calculation are contained in the Brady Report.

(dd) I find that an audit was completed of the Company's 2007 worker's compensation policy, which resulted in a refund check payable to the Company of approximately $49,000.00. I find that Vereen endorsed the check and deposited the check into the Park Place checking account, rather than the Company account. The amount of the check is included in the Brady Report.

6. Vereen, as the controlling Member, Managing Member, or President of each of the Defendant entities, treated the Defendants and the Company as if they were one large one entity, ignoring the corporate formalities required by law, and ignoring the requirements of the Internal Revenue Service concerning reporting of income and benefits paid by the Company to these Defendants. I find that checks payable to the Company were endorsed and paid by Vereen into Park Place, AVCC, Parkway and the Vereens' personal accounts. The Company, via Vereen, advanced funds from its account for construction expenses for Parkway, Park Place, AVCC, Vereen's family members and for Vereen and Wife without invoice or repayment. The Company paid for expenses of Park Place, Parkway, AVCC, Wife and Vereen unrelated to construction. Vereen took Company deposits and placed them into banking accounts of Park Place, Parkway, AVCC and Vereen. Vereen billed for services rendered by the Company in the name of AVCC and deposited the monies in other accounts which he controlled. The Company paid for the costs of constructing a two car garage in the Bahamas on a home partially owned by the Defendants Vereen and for repairs on a University of South Carolina "cockaboose" at the football stadium. Vereen received construction loan disbursements for the Company's construction expenses; he deposited the money into the Defendants' accounts rather than into the Company account. The

common denominator in each transaction is that Vereen personally controlled the financial and legal affairs of each entity and solely made all its decisions. Wife authorized Vereen to act for the entities she owned. When asked about her involvement in Park Place's transactions, Wife stated she had not read the Complaint and didn't know why she was sued. Her professions of ignorance are unconvincing. She either knew or should have known of her husband's misappropriations. In any event, Wife has clearly received the benefit of her husband's actions and has testified that they were authorized.

7. I find, for all accounting purposes in this case, that the Company ceased to perform business on December 31, 2007, and that expert Brady properly disregarded all financial transactions after that date, with the exception of accounts receivable and payments made for warranty work. According to the testimony presented, I find that the only job remaining at the Company after December 2007 was the Elizabeth Vereen Sisson job. According to Bookkeeper Drewitt, the Company had no jobs after 2007.

I find that the Defendants shall not be allowed any credit or offsets for checks of Park Place deposited into the Company account after 2007. From these deposits, Vereen issued checks from the Company account to pay himself, Sisson, and Drewitt, who were then employed by Grand Strand Builders, LLC. Grand Strand Builders, LLC is a licensed construction company owned by Vereen's daughter and son in law. I find that all expenses paid from the Company account after December 31, 2007 were expenses of Grand Strand Builders, LLC, where Vereen is the licensed builder. Beginning in 2008, Vereen and Sisson permitted new jobs in the name of Grand Strand Builders, and the telephone was answered as Grand Strand Builders. I find that the Defendants submitted fraudulent claims for reimbursement to the Court for these expenses advanced by Park Place to the Company. I have examined the checking account records of Grand Strand and Park

Place. I find that construction disbursements and payments for Grand Strand Builders permitted jobs after February 2008 were deposited by Vereen into the Park Place checking account rather than the Grand Strand Builder's account or the account of the Company; however, Park Place was not the developer or owner of these properties. Sisson testified she spent 80% of her time defending this civil action while she worked for, and acted as President of, Grand Strand Builders. Had the records of the Company been kept as they should have instead of being commingled with the Defendants' records, they would not have taken numerous hours to untangle. That is no one's fault but Vereen's fault. I find that the Brady Report properly disregarded advances by Park Place to the Company.

8. Based upon the evidence presented, I find, by clear and convincing evidence, that Park Place, Parkway Offices, AVCC, Arthur Wayne Vereen and Linda C. Vereen, individually and as Trustees, conspired together to convert the assets of the Company to their own benefit. The act of one was the act of the other, and each Defendant shared in the ill-gotten gains. The Defendants together conspired to commit accounting fraud upon the Plaintiff, and commingled funds without regard to ownership or the taxation of such funds to the recipient. I find that most of the ill-gotten gains went to Defendant Park Place, which is owned 95% by Wife. The funds were used to pay Wife a large weekly salary, even though she admitted she did not work for that Company; to construct the Vereen and Wife's personal house; and to pay Wife and Vereen's other personal expenses. Wife worked several years for the Defendants' accountants in Myrtle Beach and taught business courses at Coastal Carolina University for many years. I find that Wife is well educated in business affairs and should have been cognizant of her husband's (mis)management of the companies she owned. I find that according to the Park Place accounting records, Park Place earned over $6,000,000.00 in profits after allowing for payment of construction costs for the 23

Park Place houses the Company constructed. The Defendants had the capacity to make full payment for these construction costs, but instead, sold each of these houses at a substantial profit without paying for the costs of construction.

9. I find that the Company incurred accounting expenses in the amount of $142,268.00 from expert witness Susan Brady, CPA, to uncover and detail the Defendants' improper actions. I find that the Plaintiff shall be entitled to recover, as part of his damages, the Company's expenses incurred for the employment of Susan Brady. I furthermore find that the Defendants shall be responsible for the payment of any and all fines and penalties incurred by the Company in correcting and preparing state and federal income tax returns for the Company.

10. The Plaintiff has requested that the Court disregard the corporate formalities and differences between the defendants and award its judgment against the Defendants jointly and severally, as each Defendant is the alter ego of the others. Such "piercing of the corporate veil" is allowed when the Defendants do not separate their business, personal and corporate identities and act without regard to their separate identities. Mid-South Mgt. Co. v. Sherwood Development Corp., 374 S.C. 588, 597; 649 S.E.2d 135, 140. (S.C. App. 2007). The "alter ego" theory examines the relationship between the Defendant entities and their owners. An alter ego theory requires a showing of total domination and control of one entity by another and inequitable consequences caused thereby. Id. at 603. In this case, Vereen managed and controlled AVCC, Park Place, and Parkway and expended corporate assets for each without regard for the legal rights of the Company and its other owner, Smith. Wife authorized the actions of Vereen. The corporate theft benefited Wife because the majority of the misappropriated assets and monies went to Park Place and Parkway, which she owned. Vereen controlled all of the improper actions and Wife benefited from each and every improper transaction. The Company paid for construction loan interest incurred by

Park Place and for construction expenses at Pointe Marsh and at the putt-putt, which are owned by Park Place. The Company paid for the renovation of Wife's and Parkway's buildings and for home construction costs. I find that from the improper gains, Vereen and Wife built their home in Murrells Inlet. The Defendants referred to themselves as the "Vereen Entities" in the presentation of their defense and in their claims for reimbursement from the Company, lending credence to the amalgamation of identities theory. I find that each Defendant was the alter ego of the other. I find that for all practical purposes, Vereen controlled AVCC, Park Place, Parkway and Wife, with the express permission of Wife.

The first part of the two prong test for piercing the veil involves an eight factor analysis of the shareholder's relationship to the corporate entities, or here, the corporation AVCC, and the limited liability companies Park Place and Parkway, as discussed in Sturkie v. Sifly, 280 S.C. 453, 313 S.E.2d 316 (Ct. App. 1984). These eight factors look to: (1) observance of the corporate formalities by the dominant shareholders; (2) the capitalization of the companies; (3) the failure to observe corporate formalities; (4) the non-payment of dividends; (5) the siphoning of funds of the corporation(s) by the dominant shareholder; (6) the non-functioning of other officers or directors; (7) absence of corporate records; and (8) whether the corporation(s) were merely a façade for the operations of the dominant shareholder; Multimedia Publishing of S.C., Inc. v. Mullins, 314 S.C. 551, 431 S.E.2d 569 (1993); University Medical Associates of S.C. v. UnumProvident Corp., 335 F. Supp. 2d 702, 707 (D.S.C. 2004).

The conclusion to disregard the corporate entity must involve a number of the eight factors, but need not involve them all. Dumas v. InfoSafe Corporation, 320 S.C. 188, 192, 463 S.E.2d 641, 644 (Ct.App. 1995). In the case at hand, the Defendants failed to follow corporate formalities; there was a non-functioning of other officers or other directors in the Defendant entities; there was

siphoning of funds from the Plaintiff to the Defendant entities by the dominant shareholder; there were no payment of dividends to shareholder Smith, when there were clearly funds available to pay dividends; the Defendant corporate entities were merely a façade for the operations of the dominant shareholder Vereen; a dominant officer, manager or family member (Vereen) controlled the Plaintiff and Defendant entities; there is an absence of corporate records supporting the improper actions of the Defendants; and the acts of the Defendants' entities were merely a façade for the operations of Vereen in his multiple capacities. Vereen's acts were the acts of each of the Defendants. Dewitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co., 540 F.2d 682 (4th Cir. 1976). Once it is established that the requirements of the first prong are met, the second prong of the test requires that "there be an element of injustice or fundamental unfairness if the acts of the corporation be not regarded as the acts of other parties." See Sturkie, 280 S.C. at 458. When the notion of legal entity is used to protect fraud, justify wrong, or defeat public policy, the law will regard the corporation as an association of persons. Here, the Defendant Vereen siphoned all of the assets of the Plaintiff to the Defendant entities that he solely controlled, making the Plaintiff insolvent. When Vereen siphoned all of the assets of the Plaintiff, he prevented the Plaintiff from paying or being able to pay dividends, meeting the requirements of both prongs of the test. When the unfairness consists of misappropriation of assets, the second prong of the test is almost always met, and may be proved or established by showing the Defendants' reckless disregard for the rights of the Plaintiff. See Multimedia, 314 S.C. at 555, 431 S.E.2d at 572. Vereen's siphoning of over $2,000,000.00 of the Plaintiff's earnings to the Defendants is the major factor in meeting both the first and second prongs of the test. Hunting v. Elders, 359 S.C. 217, 597 S.E.2d. 803 (Ct.App. 2004). I am confident that Vereen and Wife were aware of the actions taken against the Company, their responsibility for such actions, and the self-serving actions of the Defendants in regards to

the property and assets misappropriated to their benefit. Vereen is the sole owner of AVCC ; his knowledge is imputed to AVCC. Vereen is the manager of Parkway and Park Place; his knowledge is imputed to Park Place and Parkway.

I find that Wife had actual knowledge of her husband's actions and benefited by the improper gains which she and her companies, Park Place and Parkway, received. Vereen, with the assistance of the Defendants, siphoned all of the assets of the Company through the schemes discussed earlier, which benefited the Defendants. I find by clear and convincing evidence that each of the Defendants is the alter ego of the other, that the corporate identities of the Defendants should be pierced, and that judgment should be rendered against the Defendants jointly and severally for the damages sustained by the Plaintiff.

11. I have examined the fee agreement of the Company with Frank H. DuRant, Attorney for the Plaintiff. I find that without the services of Mr. DuRant on a contingency basis, the Company would not have been able to proceed with this action. I am convinced that without the diligent, time consuming and costly discovery, the Plaintiff would have been unable to establish proof of the Defendants' improper actions and the amount of damages incurred. I therefore approve the contingency fee agreement as reasonable, fair and necessary to protect the Company's interests. I find that Plaintiff shall be entitled to an award of attorney's fees as a part of the Company's damages.

ACTUAL DAMAGES

(a) Prejudgment interest: The Plaintiff requested prejudgment interest in the Complaint and shall be entitled to pre-judgment interest on the misappropriated balance due of $2,588,125.90 commencing January 23, 2009 and ending March 23, 2015 at the rate of 8.75% per annum or the

sum of $ 138,396.78. The interest is based upon the amount of misappropriated assets as determined by Brady in the final Brady Report minus the total due from Ellis E. Smith as contained in the final Brady Report. See QHG of Lake City, Inc. v. McCutcheon, 360 S.C. 196, 600 S.E.2d 105 (Ct. App. 2004) and S. C. Code Ann. §34-31-20(A). The law allows prejudgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable and the sum is certain or cable of being reduced to certainty. Babb v. Rothrock, 310 S.C. 350, 353, 426 S.E.2d 789, 791 (1993). The fact that the sum due is disputed does not render the claim unliquidated for purposes of an award of prejudgment interest. Id. The Court has the discretion to award prejudgment interest in an action to recover under the theory of quantum merit, to make the Plaintiff whole. Id.; Boykin Contracting, Inc. v. Kirby, (Opinion No. 5133, Ct. App. 5/15/13). I have awarded prejudgment interest from the date the Plaintiff complaint in this matter, the date payment was demanded. Prejudgment interest was demanded in Paragraph 18 of the Complaint and has been awarded in conversion cases. Dixie Bell v. Redd, 656 S.C. 765, 768, 376 S.C. 361, 363 (Ct. App. 2007). As a general rule, the measure of damages in a case for conversion of property is the value of the property taken with interest thereon. Industrial Welding Supplies, Inc. v. Atlas Vending Co., Inc., 276 S.C. 196, 277 S.E.2d 196. (S.C.1981); Mack v. Riley, 282 S.C. 100, 316 S.E.2d 731 (S.C.App. 1984). Otherwise, the Defendants would be rewarded with free use of the Plaintiff's funds.

(b) It is therefore Ordered, Adjudged and Decreed that the Plaintiff A & E Constructors and Consultants, Inc. shall have judgment for actual damages against the Defendants Arthur Wayne Vereen, individually and as Trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, individually, and as Trustee of the Linda C. Vereen Residence Trust, Arthur Vereen Construction Company, Inc., Park Place Properties of Myrtle Beach, LLC and Parkway Offices,

LLC, jointly and severally, in the amount of Two Million Five Hundred Eight Thousand One Hundred Twenty Five and 90/100 ($2,588,125.90) in actual damages; for prejudgment interest at the annual rate of 8.75% from January 23, 2009 to March 23, 2015 in the amount of $ 138,396.78, as outlined in (a) above; for the additional sums of $142,268.00 in accounting expenses; together with punitive damages, as described below, together with the costs of this action, including the Court Reporter fees incurred. This amount reflects the balance due from the Defendants on the September 4, 2012 Brady Final Report, minus a credit in the amount of $124,377.41 for benefits received by shareholder Ellis E. Smith. I hereby adopt the findings of the Final Brady Report as the findings of the Court concerning the monies Defendants misappropriated from the Plaintiff herein.

PUNITIVE DAMAGES

The Plaintiffs have requested punitive damages from the Defendants. "Punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future." Mellen v. Lane, 377 S.C. 261, 290; 659 S.E.2d 236, 251 (Ct. App. 2008) (citing Clark v. Cantrell, 339 S.C. 369, 378-379, 529 S.E.2d 528, 533 (2000)). "They serve to vindicate a private right by requiring the wrongdoers to pay money to the injured party." Id. Punitive damages are recoverable in conversion cases if the defendant's acts are "willful, reckless, and/or committed with conscious indifference to the rights of others." Oxford Finance Companies, Inc. v. Burgess, 303 S.C. 534, 402 S.E.2d 480 (1991) (citing Hunt v. Jordan, 286 S.C. 340, 333 S.E.2d 569 (Ct.App.1985)). "In any civil action where punitive damages are claimed, the plaintiff has the burden of proving such damages by clear and convincing evidence." Mellen, supra, (quoting S.C. Code Ann. §15-33-135 (Supp. 2003)).

The following factors are relevant when considering punitive damages: "(1) the defendants degree of culpability; (2) duration of the conduct; (3) defendants awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonable related to the harm likely to result from such conduct; (7) defendants ability to pay; and finally (8) other factors as noted in Haslip, and other factors 'deemed appropriate." Gamble vs. Stevenson, 305 S.C. 104, 111-112, 406 S.E.2d 350, 354 (1991); Pacific Mutual Life Insurance Co. v. Haslip, 499 U.S. 1, 111 S. Ct. 1032 (1991). The trial court is not required to make findings of fact for each factor to uphold a punitive damage award. Welch v. Epstein, 342 S.C. 279, 306, 536 S.E.2d 408, 422 (Ct. App. 2000).

Here, I find that punitive damages are warranted because of the deliberate, willful misconduct of the Defendants. Vereen owed a fiduciary duty to the Company as its treasurer, board member and exclusive manager of its checking account. Vereen repeatedly converted assets of the Company to his own personal use and to the use of the named Defendants which he exclusively controlled. The Defendants failed to report any of the converted income on tax filings. What is most disturbing is that when confronted with proof of the misconduct, the Defendants refused to accept the responsibility for their collective misconduct and engaged in a four week trial where the proof of misconduct was all but absolute.

It is therefore ordered that Plaintiffs shall be granted punitive damages against the Defendants Arthur Wayne Vereen, Linda C. Vereen, individually and as Trustees, Arthur Vereen Construction Company, Inc., Parkway Offices, LLC and Park Place Properties in the amount of $100,000.00.

The parties both pled that the Company should be dissolved, and I have no dispute with that. However, there was no proof or argument presented concerning how that should be accomplished. Accordingly, I leave that for another day.

CONCLUSION

It is therefore **Ordered, Adjudged and Decreed** that the Plaintiff A & E Constructors and Consultants, Inc. be granted:

(1) Judgment against the Defendants Arthur Wayne Vereen, individually and as Trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, individually and as Trustee of the Linda C. Vereen Residence Trust, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC and Arthur Vereen Construction Company, Inc., jointly and severally, as follows:

Amount of monies misappropriated	$ 2,588,125.90
Prejudgment interest from 1/23/2009 until 3/23/2015	138,396.78[44]
Accounting fees due Susan Brady	142,268.00
Punitive Damages	100,000.00
	$ 2,968,790.68

or the sum of $2,968,790.68 in actual and punitive damages, inclusive of pre-judgment interest at 8 ¾% from January 23, 2009 through March 23, 2015.

(2) Frank H. DuRant, PA's contingency fee agreement is expressly approved and shall constitute a first lien upon any recovery in this action and shall be paid by the Company as Ordered when income is received from the Defendants or any other source.

(3) The bill of Susan Brady, CPA, of $142,268.00 for her investigative and accounting work in this case is expressly approved and shall constitute a second lien upon any recovery in this action and shall be paid by the Company as Ordered, when income is received from the Defendants or any other source.

[44] Per diem interest is 61.537.

(4) The taxable costs and expenses of this action, including any Court Reporter fees for the trial, shall be added to the judgment amount against the Defendants. In the event that the Plaintiff incurs late fees and penalties as a result of amending and filing late federal and state tax returns, the amount of such penalties and late fees shall be paid by the Defendants or added to the judgment amount rendered.

(5) The Counterclaims of the Defendants and Third Party Complaints of the Third Party Plaintiff(s) are hereby dismissed with prejudice.

AND IT IS SO ORDERED!

CYNTHIA GRAHAM HOWE
Master In Equity

Conway, South Carolina
March 23 2015.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-26-620

Ellis E. Smith, Individually, and on behalf of A & E Constructors and Consultants, Inc.,
PLAINTIFF(S)

Arthur Wayne Vereen, et al.
DEFENDANT(S)

Submitted by: The Honorable Cynthia Graham Howe	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **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.

2015 MAR 25 AM 11:22 HORRY COUNTY CLERK OF COURT

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk : Amended Form 4 following Nunc Pro Tunc Order

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
A & E Constructors and Consultants, Inc.	Arthur Wayne Vereen, Individually, and as Trustee of the Arthur W. Vereen Residence Trust	$4,226,383.90
	Linda C. Vereen, Individually, and as Trustee of the Linda C. Vereen Residence Trust	$4,226,383.90
	Park Place Properties of Myrtle Beach, LLC	$4,226,383.90
	Parkway Offices, LLC	$4,226,383.90
	Arthur Vereen Construction Company, Inc.	$4,226,383.90

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

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

Master in Equity

3073
Judge Code

3/25/15
Date

For Clerk of Court Office Use Only

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

Frank H. Durant
J. Jackson Thomas

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kathryn M. Cook

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ELLIS E. SMITH, Individually, and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., a South Carolina Corporation.

Plaintiff,

vs.

ARTHUR WAYNE VEREEN, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, ARTHUR VEREEN CONSTRUCTINO COMPANY, INC., LINDA C. VEREEN, ARTHUR W. VEREEN, AS TRUSTEE OF THE ARTHUR W. VEREEN RESIDENCE TRUST, and LINDDA C. VEREEN, AS TRUSTEE OF THE LINDA C. VEREEN RESIDENCE TRUST,

Defendants,

and

ARTHUR WAYNE VEREEN, individually and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., and 29th PLACE DEVELOPERS, INC.,

Third Party Plaintiffs,

vs.

E. SMITH AND SONS CONSTRUCTION, LLC, and EES CONSTURCTION AND CONSULTING, INC., and ELLIS E. SMITH, individually,

Third Party Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-26-620

NUNC PRO TUNC ORDER AMENDING JUDGMENT TOTAL AND FORM 4

HORRY COUNTY
2015 MAR 25 AM 11:22
CLERK OF COURT

IT APPEARING to the Court that a mathematical error occurred in the computation of prejudgment interest in the Order signed March 23, 2015 and clocked with the Horry County Clerk of Court on March 24, 2015, and that certain parties were left off the Judgment Index on the Form 4 signed and clocked on the same respective days. The per diem rate of prejudgment interest of 8.75% would be six hundred twenty dollars and forty four cents and not 61.537 as indicated by Footnote 4 on Page 41 of that Order. Therefore, total interest between the dates of January 23, 2009 and March 23, 2009 would be $1,395,990.00. The total judgment amount should therefore be amended to reflect the amount shown below:

Amount of monies misappropriated	$2,588,125.90
Prejudgment Interest from 1/23/2990 until 3/23/2015	$1,395,990.00
Accounting fees due Susan Brady	$142,268.00
Punitive Damages	$100,000.00
TOTAL:	**$4,226,383.90**

Defendant Parkway Offices, LLC should also be added to the Judgment Index on the Form 4 as indicated by paragraph (1) on Page 41 of the Order.

IT IS SO ORDERED.

The Honorable Cynthia Graham Howe
Master in Equity for Horry County

Conway, South Carolina
24th day of March, 2015

STATE OF SOUTH CAROLINA)) COUNTY OF HORRY)	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2009-CP-26-620
Ellis E. Smith, individually and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation, Plaintiffs v. Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc. and Linda C. Vereen, Defendants AND Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc. and 29th Place Developers, Inc., Third-Party Plaintiffs v. E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, individually, Third-Party Defendants	**DEFENDANTS' and THIRD- PARTY PLAINTIFFS' CERTIFICATE OF SERVICE**

I certify that I have on April 20, 2015 hand delivered a copy of the Defendants' Motion to Reconsider the Orders of the Horry County Master in Equity to the Office of the Master in Equity and filed the original of the same with the Horry County Clerk of Court.

I also certify that a copy of this Motion to Reconsider is also being hand-delivered to counsel for Plaintiffs and Third –Party Defendants by Kathryn M. Cook, Counsel for Defendants this same day.

SWORN to before me this 24th

day of April, 2015

Notary Public for South Carolina

My Commission Expires: 1/13/2023

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	Fifteenth JUDICIAL CIRCUIT
COUNTY OF Horry	)	
	)	CASE NO.: 2009-CP-26-620
	)	
Ellis E. Smith, Individually and on behalf of A & E Constructors and Consultants, Inc.	)	**MOTION AND ORDER INFORMATION**
Plaintiff,	)	**FORM AND COVERSHEET**
vs.	)	Case is Before Master
Arthur Wayne Vereen, et al.	)	
Defendant.	)	

Plaintiff's Attorney:	Defendant's Attorney:
Frank H. DuRant, Bar No. _____	Kathryn M. Cook, Bar No. 1371
Address:	Address:
P.O. Box 960, Myrtle Beach, S.C. 29578	P.O. Box 4086, North Myrtle Beach, S.C.
Phone: 843-448-1541 Fax _____	Phone: 843-222-2116 Fax_____
E-mail: fdurant@yahoo.comOther: _____	E-mail: kifcook55@gmail.comOther: _____

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Reopen Case
Estimated Time Needed: 1hour Court Reporter Needed: ☒ **YES**/☐ **NO**

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

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

Kathryn M Cook 8/21/2014
Signature of Attorney for ☐ Plaintiff ☒ Defendant Date submitted

HORRY COUNTY
14 AUG 21 PM 12:29
MARIE HUGGINS-WARD
CLERK OF COURT

SECTION III: Motion Fee

☒ PAID – AMOUNT: $ 25.00
☐ EXEMPT: (check reason)
- ☐ Rule to Show Cause in Child or Spousal Support
- ☐ Domestic Abuse or Abuse and Neglect
- ☐ Indigent Status ☐ State Agency v. Indigent Party
- ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
- ☐ Motion for Stay in Bankruptcy
- ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
- ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
  Name of Court Reporter: _____
- ☐ Other: _____

JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order.	JUDGE CODE _____
☐ Other: _____	Date: _____

CLERK'S VERIFICATION

Collected by:_____ Date Filed: _____
☐ MOTION FEE COLLECTED: $ _____
☐ CONTESTED – AMOUNT DUE: $ _____

SCCA 233 (11/2003)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO.: 2009-CP-26-0620
Ellis E. Smith, Individually, and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation,	)	
Plaintiffs	)	**Defendants' Motion to Reopen Hearing For Taking Testimony and Evidence Effecting Subject Matter and Relief Sought in Case**
v.	)	
Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc. and Linda C. Vereen,	)	
Defendants	)	
AND	)	
Arthur Wayne Vereen, Individually and on behalf of A & E Constructors and Consultants, Inc., and 29th Place Developers, Inc.,	)	
Third-Party Plaintiffs	)	
v.	)	
E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, Individually,	)	
Third Party Defendants	)	

HORRY COUNTY
14 AUG 21 PM 12: 29
MELANIE HUGGINS-WARD
CLERK OF COURT

To: Frank DuRant and Jack Thomas, Attorneys for Plaintiffs and Third-Party Defendants

PLEASE TAKE NOTICE that the undersigned, as attorney for Defendants, will move before the Horry County Master in Equity in 10 days or as soon thereafter as counsel may be heard for an order reopening the hearing in the above caption case for the taking of testimony and presentation of evidence as to events effecting the subject matter of this accounting action and the relief sought relating to the construction business , A & E Constructors and Consultants, Inc. The matters set forth below have occurred after the conclusion of the testimony in this case which ended on 8/30/2012. No findings, orders or judgments have been issued and equity

demands that these claims and potential liabilities to third parties and other matters effecting Plaintiff A & E Constructors and Consultants, Inc. assets, liabilities, profits, losses and business be considered by the Master in making any rulings, accomplishing any accounting, and ordering any relief, including the Plaintiff's request for dissolution, in this case.

The matters effecting the requested accounting and relief sought include, but are not limited to the following:

1. Civil Action No. 2013-CP-26-979 entitled Tahitian Princess HPR, Tahitian Princess Property Owners Association, Inc.et al vs Tahitian Princess, LLC, A&E Constructors and Consultants, Inc. and Dowis Associates, Inc. See Exhibit A attached and incorporated herein.

2. Civil Action No. 2013-CP-26-7578 entitled Nora Rose Beckner vs CondoLux, Inc., A&E Constructors and Consultants, Inc., et al. See Exhibit B attached and incorporated herein.

Defendants hereby incorporate and request the Master take judicial notice of all pleadings and documents contained in each Civil Action referenced above file in the Horry County Clerk of Courts office in support of this motion and along with argument of counsel to be had at the motion hearing in this case.

Defendants respectfully request that the Master reopen this matter for the taking of testimony and evidence which is material and necessary for this Court to rule on this accounting and dissolution case.

Respectfully Submitted,

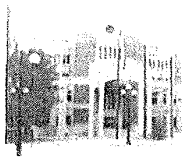
Kathryn M. Cook

Kathryn M. Cook
Attorney for Defendants
P.O.Box 4086
North Myrtle Beach, S.C.
29597

Date: 8/21 /2014

ALL-STATE LEGAL® Exh: 6+ 1A

Fifteenth Judicial Circuit
Court Rosters



Summary Court Dockets South Carolina Judicial Department Home Page Return To Roster Selection Motion Roster News MIE Roster News Jury Roster News Non-Jury Roster News

Court Agency	26002	Judge	Alford	Roster Description	CP JURY TRIALS (09/08/14--09/12/14) JUDGE LEE S. ALFORD (3A)
Roster Type	Jury Roster	Roster Begin Date	09/08/2014	Roster End Date	09/12/2014
Roster Id	487				

Attorney Bar Number Case # Filed From Filed Thru

Search | Print Version

#	Case / Case Caption	Plaintiff Attorney	Defendant Attorney	Filed Date	Sub Type	Status	Notes
1	2011CP2604922 Randy Fisher VS North Myrtle Beach City of , defendant, et al	Bruce Wyche Bannister (864) 298-0094	Derwood L. Aydlette III (803) 799-9311 Kenneth Ray Moss (843) 281-9901 x103 Charles Franklin Thompson Jr. (803) 254-3300	06/13/2011	Breach of Cont 140	Pending	
2	2012CP2606227 John Doe VS Horry County , defendant, et al	James Bernice Moore III (843) 277-6655	Hugh L. Willcox Jr. (843) 662-3258	08/10/2012	Personal Injury 350	Pending	Not Before Date: 02/01/2014
3	2012CP2607278 Bay View Golf Villas Horizontal Property Regime , plaintiff, et al VS S E Smith Construction Company Inc , defendant, et al	Luther O. McCutchen III (843) 449-3411	Douglas Charles Baxter (843) 448-1008 L. Dean Best (843) 991-6887 Robert Walton Buffington (843) 626-5700 Abbey Gail Cain (843) 839-3210 Robert J. Cardillo (843) 723-6470 Samuel Wallace Carnwath III	09/20/2012	Constructions 100	Pending	ENTERED IN ERROR. PER ORDER DATED (08/05/14) CASE IS STAYED FOR 90 DAYS AND WILL BE PLACED ON THE NEXT AVAILABLE ROSTER THEREAFTER.
4	2012CP2607487 Bridge Tender Owners Association Inc VS Bridge Tender LLC , defendant, et al	Stephan Charles Ouverson (843) 357-8888 Robert L. Wylie IV (843) 449-4800	Amanda Morgan Blundy (843) 576-2900 Brent Morris Boyd (803) 782-4100 x1210 John Patrick Turner Norris (843) 266-8219 Kent Taylor Stair (843) 727-0307 Philip Coleman Thompson Sr. (843) 248-5741 x3319	09/28/2012	Special-Comp/Oth 699	Pending	Not Before Date: 08/01/2014
5	2013CP2600979 Tahitian Princess Horizontal Property Regime , plaintiff, et al VS Tahitian Princess LLC , defendant, et al	Robert L. Wylie IV (843) 449-4800	L. Dean Best (843) 991-6887 Thomas Frank Dougall (803) 865-8858 Dowis Associates Inc James H. Elliott Jr. (843) 805-6550 Jenny Costa Honeycutt (843) 793-4744	02/15/2013	Special-Comp/Oth 699	Pending	
6	2013CP2601733 James R Kirby VS Kendall Nicole Edge	Dirk Julius Derrick (843) 248-7486	Lisa Poe Davis (843) 238-5648	03/11/2013	Motor Veh Accid 320	Pending	Not Before Date: 05/19/2014 CASE WAS ORIGINALLY FILED IN 2011 AND RESTORED IN 2013
7	2013CP2602320 Elizabeth McCaskill Smith , plaintiff, et al VS KDC Inc , defendant, et al	John Dwight Hudson (843) 692-9889 x102	Fred B. Newby Sr. (843) 449-9417 Matthew William Van Wie (843) 449-9417 x12	04/10/2013	Breach of Cont 140	Pending	Not Before Date: 09/01/2014
8	2013CP2602406 Lawrence Leary	Marcus LeFond Woodson (843) 423-1977	Robert Curt Calamari (843) 946-5660	04/12/2013	Torts/Other 399	Pending	

	VS Horry County Police Department , defendant, et al		G. Murrell Smith Jr. (803) 778-2471				
9	2013CP2602646 Corey Braverman VS Michelle Voigt , defendant, et al	Byron Preston David (843) 488-1415 Natasha M. Hanna (843) 839-6002	Linda Weeks Gangi (843) 248-5741 John Dwight Hudson (843) 692-9889 x102	04/18/2013	Motor Veh Accid 320	Pending	CASE WAS ORIGINALLY FILED IN 2010 AND RESTORED IN 2013
10	2013CP2602820 Glenn R Gangi VS Builders FirstSource Southeast Group LLC	Robert L. Wylie IV (843) 449-4800	David A. Root (843) 795-7800	04/19/2013	Real Prop/Other 499	Pending	Not Before Date: 09/01/2014
11	2013CP2602859 Creative Touch Interiors Inc , plaintiff, et al VS Artistic Tile Inc , defendant, et al	Eugene P. Corrigan III (843) 577-5450	Robert Trippett Boineau III (803) 227-4937 Phillip F. L. Hughes (843) 340-7683 Charles Bernhart Jordan Jr. (843) 692-2628 Shelley Sunderman Montague (803) 779-1833	04/29/2013	Constructions 100	Pending	
12	2013CP2603384 Saundra Bond VS Marina Inn @ Grande Dunes LLC , defendant, et al	Gene McCain Connell Jr. (843) 238-5648	James Christopher Clark (843) 848-6005 G. Michael Smith Sr. (843) 248-5741	05/20/2013	Personal Injury 350	Pending	
13	2013CP2603398 American Express Centurion Bank VS Jeri S Glenn	Karen Diane Washington (877) 366-7289	Glenn V. Ohanesian (843) 626-7193	05/20/2013	Debt Collections 110	Pending	
14	2013CP2604352 Climate Control Storage Inc VS Storage Partners-Surfside Beach LLC	Gene McCain Connell Jr. (843) 238-5648	George Trenholm Walker (843) 727-2208	06/18/2013	Breach of Cont 140	Pending	
15	2013CP2604393 GTB Properties Inc VS Kamal J Nandwani , defendant, et al	W. W. DesChamps Jr. (843) 448-2391	Willard D. Hanna Jr. (843) 651-9000	06/20/2013	Real Prop/Other 499	Pending	
16	2013CP2604394 GTB Properties Inc VS Kamal J Nandwani , defendant, et al	W. W. DesChamps Jr. (843) 448-2391	Willard D. Hanna Jr. (843) 651-9000	06/20/2013	Foreclosure 420	Pending	
17	2013CP2604410 Black Mouzon LLC , plaintiff, et al VS RTC Transport LLC , defendant, et al	Gene McCain Connell Jr. (843) 238-5648	Charles Bernhart Jordan Jr. (843) 692-2628	06/20/2013	Breach of Cont 140	Pending	
18	2013CP2605137 Bonnie J Eaddy , plaintiff, et al VS James A Brown	Jeffrey Edwin Johnson (843) 488-5333	James A Brown	07/26/2013	Breach of Cont 140	Pending	
19	2013CP2605162 Billy R Blackwell VS Randy M Kiriluk Md , defendant, et al	O. Fayrell Furr Jr. (843) 626-7621	John Reuben Long II (843) 248-5741 Marian Williams Scalise (843) 448-1008	07/29/2013	Medical Malpract 220	Pending	
20	2013CP2605273 Hugh Brian Wolverton VS Parc Myrtle Waves LLC , defendant, et al	Jeremy E. Bowers (843) 577-7700	Shanna Milcetich Stephens (843) 723-0185	08/02/2013	Premises Liab 330	Pending	

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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)

CIVIL ACTION COVERSHEET

Tahitian Princess Horizontal Property Regime, et al)
Plaintiff(s))

vs.

Tahitian Princess, LLC, et al)
Defendant(s))

2013-CP - 26- 979

(Please Print)
Submitted By: Robert L. Wylie, IV SC Bar #: 13052
Address: P. O. Box 1980 Telephone #: (843) 449-4800
Myrtle Beach, SC 29578 Fax #: (843) 497-0449
Other:
E-mail: rwylie@mullenwylie.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

FILED
HORRY COUNTY
2013 FEB 15 PM 3:55
JEANIE HIGGINS-WALKER
CLERK OF COURT

DOCKETING INFORMATION (*Check all that apply*)

If Action is Judgment/Settlement do not complete

☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)

Previous Notice of Intent Case # 20____-CP-_____-_____

- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Transfer of Structured Settlement Payment Rights Application (760)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☒ Other (699)

Const. Defects

- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Motion to Quash Subpoena in an Out-of-County Action (660)
- ☐ Sexual Predator (510)

Submitting Party Signature: _____ **Date: February 15, 2013**

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

TAHITIAN PRINCESS HORIZONTAL PROPERTY REGIME and TAHITIAN PRINCESS PROPERTY OWNERS ASSOCIATION, INC., in its corporate capacity as an Association and as Assignee for and on behalf of its Members, the Homeowners and Assignors, W. MICHAEL and DONNA C. DORULA TRUSTEES, JEFFREY A. TUCKER and PAMILA A. TUCKER, B, D & T DEVELOPMENT, LLC, and TAHITIAN PROPERTIES, LLC,

Plaintiffs,

vs.

TAHITIAN PRINCESS, LLC, A&E CONSTRUCTORS AND CONSULTANTS, INC. and DOWIS ASSOCIATES, INC.

Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NO. 2013-CP-26-979

SUMMONS
(Jury Trial Demanded)

FILED
HORRY COUNTY
2013 FEB 15 PM 3:55
MELANIE HUGGINS-WARD
CLERK OF COURT

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on subscriber at his office at Post Office Box 1980, Myrtle Beach, South Carolina 29578, within thirty (30) days after the service hereof, exclusive of the day of such service, AND IF YOU FAIL TO APPEAR AND DEFEND THE ACTION AS REQUIRED BY LAW, JUDGMENT BY DEFAULT WILL BE RENDERED AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.

MULLEN WYLIE, LLC

Robert L. Wylie, IV, Esq. (SC Bar No. 13052)
4710 Oleander Drive (29577)
Post Office Box 1980
Myrtle Beach, SC 29578
Tel: (843) 449-4800/Fax (843) 497-0449
Email: rwylie@mullenwylie.com

And

James E. Lady, Esquire (SC Bar No. 15135)
171 Church Street, Ste. 370
Charleston, SC 29401
Tel: (843) 853-6200/Fax: (843) 853-8994
Email: jlady@mullenwylie.com
ATTORNEYS FOR PLAINTIFFS

Myrtle Beach, South Carolina
February 15, 2013

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
TAHITIAN PRINCESS HORIZONTAL PROPERTY REGIME and TAHITIAN PRINCESS PROPERTY OWNERS ASSOCIATION, INC., in its corporate capacity as an Association and as Assignee for and on behalf of its Members, the Homeowners and Assignors, W. MICHAEL and DONNA C. DORULA TRUSTEES, JEFFREY A. TUCKER and PAMILA A. TUCKER, B, D & T DEVELOPMENT, LLC, and TAHITIAN PROPERTIES, LLC, Plaintiffs, vs. TAHITIAN PRINCESS, LLC, A&E CONSTRUCTORS AND CONSULTANTS, INC. and DOWIS ASSOCIATES, INC. Defendants.	CASE NO. 2013-CP-26- 979 **COMPLAINT** **(Jury Trial Demanded)**

FILED
HORRY COUNTY
2013 FEB 15 PM 3:55
MELANIE HUGGINS-WARD
CLERK OF COURT

The Plaintiffs, complaining of the Defendants herein, would respectfully show unto this Honorable Court as follows:

PARTIES AND JURISDICTION

1. Plaintiff Tahitian Princess Property Owners Association, Inc., is a non-profit corporation organized and existing under the laws of the State of South Carolina with its principal place of business in Horry County, South Carolina. Tahitian Princess Property Owners Association, Inc. brings this action in its corporate capacity and on behalf of all individual unit owners who constitute the members of the Association. Tahitian Princess Property Owners Association, Inc. was formed pursuant to the Master Deed of Tahitian Princess Horizontal Property Regime to maintain and repair the common elements and administer and enforce the covenants and restrictions of the Tahitian Princess condominium project (the "Project").

Tahitian Princess Property Owners Association, Inc. brings this action in its corporate capacity and on behalf of all individual unit owners who constitute the members of the Association.

2. Plaintiff Tahitian Princess Horizontal Property Regime is a horizontal property regime organized and existing under the laws of the State of South Carolina as provided in the Horizontal Property Act, S.C. Code Ann. § 27-31-10, *et. seq.* (1976, as amended) and located in Horry County, South Carolina.

3. Plaintiff Tahitian Princess Property Owners Association, Inc. is the Assignee for Plaintiff Homeowners and Assignors, W. MICHAEL and DONNA C. DORULA TRUSTEES, JEFFREY A. TUCKER and PAMILA A. TUCKER, B, D & T DEVELOPMENT, LLC, and TAHITIAN PROPERTIES, LLC.

4. Defendant Tahitian Princess, LLC (hereinafter "Developer") is, upon information and belief, a limited liability corporation organized and existing under the laws of the state of South Carolina and doing business in Horry County, South Carolina. Upon information and belief, Developer acted as developer for the construction of the Project.

5. Defendant A&E Constructors and Consultants, Inc. (hereinafter "General Contractor") is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina which was, at all times relevant hereto, conducting business in Horry County, South Carolina. Defendant A&E Constructors and Consultants, Inc. acted as General Contractor for the construction of the Project. Upon information and belief Defendant A&E Constructors and Consultants, Inc. hired subcontractors to perform all or a portion of the construction work at the Project.

6. Defendant Dowis Associates, Inc. (hereinafter "Architect") is, upon information and belief, a corporation organized and existing pursuant to the laws of the State of South Carolina which was, at all times relevant hereto, conducting business in Horry County, South

Carolina. Upon information and belief, said Defendant was responsible for the schematic design, design development, and construction documents and contract administration for the project.

7. This Court has jurisdiction over the subject matter of this action and the parties to this action.

8. The collective actions, conduct and agreements of the Defendants at all times contemplated the sale of the condominium units to individual purchasers and the formation of a property owners' association to be charged with the responsibility for the maintenance and repairs of the commons elements of the Project.

9. Upon information and belief, the Defendants did collectively design, develop, construct and sell the Project. Developer, as grantor and Declarant of the Project, caused to be prepared and filed in the RMC Office for Horry County, South Carolina, the Master Deed for Tahitian Princess, as well as By-laws for Tahitian Princess Property Owners Association, Inc., thereby committing the real estate with improvements thereon to the condominium form of ownership.

10. Since completion of the Project, problems with water infiltration into the interior of the building has occurred. An inspection of the building has resulted in the discovery of structural and safety defects. Upon information and belief, the problems or defects at the Project are a result of defective design and/or construction.

11. The defects in design and/or construction complained of include, but are not limited to, the following:

a. Lack of code required fire protection at the garage ceiling;

b. Lack of code required fire protection in the attics;

c. Lack of proper flashing at the balconies;

d. Lack of window sill flashing;

e. Lack of door sill flashing;

f. Lack of code required fire dampers in the HVAC system;

g. Water intrusion and extensive deterioration of wood framing and sheathing at the windows, balconies, privacy walls, and heated walls, a building code violation;

h. Interior damage due to water intrusion, a building code violation;

i. Lack of balcony privacy wall flashing;

j. Improper installation of siding;

k. Lack of proper nailing;

l. Improper installation of building wrap;

m. Improper reinforcing of concrete resulting in excessive cracking of concrete slabs;

n. Lack of required shear connections at balcony columns;

o. Insufficient bearing of balcony girders;

p. Improper connections of balcony columns;

q. Use of improper fasteners; and

r. Improper connection of rim joists to floor framing.

12. As a direct and proximate result and consequence of the numerous design and/or construction defects and problems at the Project, the Project has been severely damaged, including damage resulting from moisture intrusion and Plaintiff has spent, and will continue to spend, substantial sums of money for the extraordinary repairs and reconstruction of major portions of the common elements at the Project. The buildings at the Project have suffered actual damage caused by exposure to water seeping into the walls and slabs that resulted from the negligent construction and/or design methods of the Defendants.

FOR A FIRST CAUSE OF ACTION
(Negligence/Developer)

13. Plaintiffs incorporate into this cause of action the allegations in paragraphs 1-12 above as fully as if repeated verbatim herein.

14. Developer owed a duty to Plaintiffs to exercise that degree of skill necessary to select an architect and contractor and to oversee the Project and otherwise deliver the buildings free of construction defects and designed and built in conformity with the customary and ordinary standards of the building and construction industry.

15. The deficiencies and defects which exist at the Project are the proximate and direct result of the negligence and/or gross negligence of Developer in one or more of the following particulars:

a. in failing to properly select an architect and contractor so that the Project would be designed and built by methods of construction and design conforming with accepted industry standards;

b. in allowing and/or accepting non-conforming or defective work;

c. in failing to properly oversee the Project in order to ensure that all work proceeded in accordance with the plans and specifications and also in conformity with the customary and ordinary standards of the construction industry; and

d. in failing to inform the architect and contractor of any defects found in the Project.

16. As a direct and proximate result and consequence of the negligence and/or gross negligence of Developer, Plaintiffs have suffered injuries and damages in an amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the

expected life of the Project, loss of use, depreciation in value and such punitive damages as may be appropriate.

FOR A SECOND CAUSE OF ACTION
(Breach of Express Warranty/Developer)

17. Plaintiffs incorporate into this cause of action the allegations in paragraphs 1-16 above as fully as if repeated verbatim herein.

18. Developer represented and warranted that the Project, including the Project units and the common elements, was of the highest quality. Those representations and warranties were made in connection with the sale of the units and formation of Tahitian Princess Property Owners Association, Inc.

19. Developer breached its express warranty by producing, selling and turning over to Plaintiff an inferior and rapidly deteriorating Project plagued with extensive and severe construction defects and problems.

20. As a direct and proximate result and consequence of Developer's breach of its express warranty, Plaintiffs have suffered injuries and damages in an amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use and depreciation in value.

FOR A THIRD CAUSE OF ACTION
(Breach of Implied Warranty/Developer)

21. . Plaintiffs incorporate into this cause of action the allegations in paragraphs 1-20 above as fully as if repeated verbatim herein.

22. Developer, as developer, seller and grantor, made implied warranties of habitability and fitness for intended use.

23. Developer has breached its implied warranties by producing, selling and turning over to Plaintiff an inferior and rapidly deteriorating Project plagued with extensive and severe construction defects and problems.

24. As a direct and proximate result and consequence of Developer's breach of the implied warranties, Plaintiffs have suffered injuries and damages in an amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use and depreciation in value.

FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty/Developer)

25. Plaintiffs incorporate into this cause of action the allegations in paragraphs 1-24 above as fully as if repeated verbatim herein.

26. From its inception, and for a number of years afterward, Developer controlled the Board of Directors of Tahitian Princess Property Owners Association, Inc.

27. Developer, as a controlling individual on the Board of Directors, owed a fiduciary duty to Plaintiffs to inform them of any deficiencies in the construction of the Project.

28. Developer, as the controlling individual on the Board of Directors, also owed a fiduciary duty to disclose any defects in design of the Project.

29. Developer owed a duty to Plaintiffs to turn over the common elements of the Project to the Plaintiffs in good condition or to provide the Plaintiffs with the funds necessary to repair the common elements.

30. Developer breached these duties to Plaintiffs by failing to disclose design and/or construction defects to Plaintiffs prior to relinquishing control of the Board of Directors to the owners and by failing to turn over common elements in good condition and by failing to provide the funds necessary to repair the common elements.

31. As a direct and proximate result and consequence of Developer's breach of fiduciary duty, Plaintiffs have suffered damages in an amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structures, loss of use and diminution in value.

FOR A FIFTH CAUSE OF ACTION
(Negligence/General Contractor)

32. Plaintiffs incorporate into this cause of action the allegations in paragraphs 1-31 above as fully as if repeated verbatim herein.

33. General Contractor owed a duty to Plaintiffs to exercise that degree of skill necessary to construct, supervise and review the design and otherwise deliver a building free of construction defects and designed and built in conformity with customary and ordinary standards of the building and construction industry.

34. The deficiencies and defects which exist at the Project are the proximate and direct result of the negligence and/or gross negligence of General Contractor, as contractor, in one or more of the following particulars:

a. in failing to properly construct the Project by deviating from the plans and specifications and by failing to employ practices and methods of construction conforming with accepted industry standards; and/or using defective materials; and/or installing materials not in accordance with the plans and specifications, or in violation of the manufacturer's instructions;

b. in failing to properly supervise the subcontractors and/or other trades in order to ensure that all work proceeded in accordance with the plans and specifications and also in conformity with the customary and ordinary standards of the construction industry;

c. in accepting non-conforming or defective materials;

d. in accepting and performing deficient and/or defective workmanship and/or materials, without proper inspection to ensure the work was correct and in conformity with industry standards and in accordance with the plans and specifications and the manufacturer's instructions;

e. in constructing the Project in violation of applicable building codes; and

f. in failing to inform the architect and/or developer of the defects in the plans and specifications.

35. As a direct and proximate result and consequence of the negligence and gross negligence of General Contractor, Plaintiffs have suffered injuries and damages in an amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use, diminution in value and for such punitive damages as may be appropriate.

FOR A SIXTH CAUSE OF ACTION
(Breach of Express and Implied Warranties/General Contractor)

36. Plaintiffs incorporate into this cause of action the allegations in paragraphs 1-35 above as fully as if repeated verbatim herein.

37. Upon information and belief, General Contractor, as general contractor of the Project, made express warranties in connection with contracting to build the Project to the effect that the buildings would be free of construction defects.

38. General Contractor also impliedly warranted that the Project would be constructed in a careful, diligent and workmanlike manner, free of construction defects.

39. General Contractor breached its express and implied warranties in one or more of the following particulars:

a. in failing to properly construct the Project by deviating from the plans and specifications and/or failing to employ practices and methods of construction conforming to the customary and ordinary standards of the construction industry;

b. in using and supplying defective materials;

c. in installing materials not in accordance with the plans and specifications;

d. in installing materials in violation of manufacturer's instructions;

e. in performing work which violated applicable building codes;

f. in failing to properly supervise employees, agents and subcontractors to ensure that all work proceeded in accordance with the plans and specifications and in conformity with industry standards;

g. in accepting defective and/or non-conforming materials and labor;

h. in providing deficient and/or defective workmanship and/or materials, without proper inspections to ensure the work was correct and in conformity with customary industry standards and in accordance with the plans and specifications and the manufacturer's instructions; and

i. in failing to adequately construct a waterproofing system on the exterior of the building such as to allow water to infiltrate the interior of the building.

40. As a direct and proximate result and consequence of General Contractor's breach of its express and implied warranties, Plaintiffs have suffered injuries and damages in an amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structure, loss of use and diminution in value.

FOR A SEVENTH CAUSE OF ACTION
(Negligence/Architect)

41. Plaintiffs incorporate into this cause of action the allegations in paragraphs 1-40 above as fully as if repeated verbatim herein.

42. Defendant Architect was negligent, and/or grossly negligent in its design and inspection of the Project in one or more of the following particulars:

a. failure to adequately design a waterproofing system so as to prevent water infiltration into the interior portions of the building;

b. improper design of waterproofing of the exterior of the building and non-existent or improper design of flashing;

c. inadequate inspection and acceptance of defective or non-conforming construction work;

d. failure to design and insure construction in compliance with applicable building codes State and Federal laws and regulations and acceptable building practices; and

e. failure to properly specify appropriate materials to be used in the construction of the Project.

43. As a direct and proximate result and consequence of the negligence and gross negligence of Defendant Architect, Plaintiffs have suffered injuries and damages in an amount equal to the extraordinary repair, maintenance and reconstruction costs required and to be required over the expected life of the structures, loss of use, depreciation in value and such punitive damages as may be appropriate.

FOR AN EIGHTH CAUSE OF ACTION
(Breach of Express and Implied Warranty/Architect)

44. Plaintiffs incorporate into this cause of action the allegations in paragraphs 1-43 above as fully as if repeated verbatim herein.

45. Defendant Architect expressly and impliedly warranted that its design of the Project would be of the highest quality and in conformance with the generally accepted standards of the architectural and construction industry, and further, that the specifications of materials and procedures would comply with the generally accepted principals in the industry.

46. Defendant Architect further expressly and impliedly warranted that the plans and specifications prepared for the Project were suitable and fit for use in constructing the Project, and that the building, when complete, would be free of design defects.

47. The plans and specifications as provided by the Architect were not suitable or appropriate for their intended purpose, and as a result of the Architect's breach of warranties by designing the Project with severe structural and water intrusion problems, Plaintiffs are entitled to such actual damages as this Court may deem appropriate.

WHEREFORE, Plaintiffs pray for a judgment against the Defendants for such actual and punitive damages as this Court deems appropriate and for such other and further relief as is just and proper, including but not limited to, pre-judgment interest, post-judgment interest, attorney's fees and costs.

MULLEN WYLIE, LLC

Robert L. Wylie, IV, Esq. (SC Bar No. 13052)
4710 Oleander Drive (29577)
Post Office Box 1980
Myrtle Beach, SC 29578
Tel: (843) 449-4800/Fax (843) 497-0449
Email: rwylie@mullenwylie.com

And

James E. Lady, Esquire (SC Bar No. 15135)
171 Church Street, Ste. 370
Charleston, SC 29401
Tel: (843) 853-6200/Fax: (843) 853-8994
Email: jlady@mullenwylie.com
ATTORNEYS FOR PLAINTIFFS

Myrtle Beach, South Carolina
February 15, 2013

2013-979

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

AFFIDAVIT OF PETER E. SHERRATT

FILED
HORRY COUNTY
2013 FEB 5 PM 3:25
MELANIE HUGGINS-ARD
CLERK OF COURT

PERSONALLY appeared before me, PETER E. SHERRATT, who having being duly sworn, deposes and states as follows:

1. That I am a design professional and licensed architect in the State of South Carolina with my principal place of business on Hilton Head Island, Beaufort County, South Carolina;

2. That I have a specialty in forensic architecture and have been qualified as an expert in both State and Federal courts;

3. That I have inspected and observed the conditions at the Tahitian Princess Condominium Project located in Horry County, South Carolina; I have also reviewed documentation provided by the City of North Myrtle Beach Building Department pursuant to a Freedom of Information Act Request.

4. Based upon the information that is available to me at this time, I have been informed and believe that Dowis Associates, Inc. acted as the architect for the Tahitian Princess Condominium Project;

5. That in observing the conditions at the Tahitian Princess Condominium Project, I noted violations of the applicable building codes, industry standards and good architectural practices, specifically in regard to (1) lack of a proper and complete flashing system; (2) improper installation of wall siding and flashing; (3) lack of required fire protection; (4) improper installation of windows; and (5) other defects as set forth in Plaintiffs' Complaint.

6. The above referenced deficiencies have caused severe decay of building components and compromised the structural aspects of the building located at the Tahitian Princess Condominium Project.

7. That I have reviewed the documents provided by the City of North Myrtle Beach Building Department pursuant to a Freedom of Information Act request. In reviewing these documents, there is no indication that the project architect complied with South Carolina Architectural Regulation 11-12B(4), which provides:

> "On a project where a building permit has been issued and the sealing architect and the firm of record have not been engaged to perform at least minimum construction administration services, as defined in subsection (5) below, the sealing architect and firm must report to the permitting authority and the building owner that he and the firm has not been so engaged."

8. That as a result of my inspection of the Project and review of the documents provided by the City of North Myrtle Beach Building Department relating to the Project, it is my opinion that Dowis Associates, Inc. was negligent by failing to conform to the standard of care required by a design professional for the Tahitian Princess Condominium Project in that Dowis Associates, Inc. failed to properly perform contract administration services or notify the City of North Myrtle Beach Building Department that they would not be performing such services as required by the South Carolina Architectural Regulations.

FURTHER AFFIANT SAYETH NOT.

PETER E. SHERRATT

SWORN TO AND SUBSCRIBED BEFORE ME
THIS 14th DAY OF FEBRUARY, 2013.

Peggy A Medaglia (L.S.)
NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: 11-21-17

B04-195

City of North Myrtle Beach, South Carolina
Building Permit Application Form

Please print or type — Please print or type

Don't forget to sign application at bottom of page! — Applicant to complete numbered spaces only.

1. Location of Project: 33rd Ave. South & South Ocean Blvd., Lot 4, Block 3 3350 S Ocean Blvd — Zoning District: X

3. Proposed Use: Multi-Family (Use) — 4. Previous Use of Building or Space: SFR

5. Legal Description: Lot Nbr. 4 | Block 2 | Section | Tax Map Page Nbr. | Tax Map Block Nbr. | Tax Map Parcel Nbr. 156-07A-005 -006 -007

6. Owner of Property: Tabatian Princess or martin & Evelyn Brown, P.O. Box 4465, N. Myrtle Bch, SC 29597 (Mail Address, City/Zip, Phone, Fax)

7. Owner or Lessee of Building: Same as Line 6

8. Contractor (State # Owner/Builder): A & E Const. & Consultants, P.O. Box 2296, Myrtle Beach, SC. 448-374 — City License #: [illegible] — State License #: 109530

9. Name of ☐ Architect or ☐ Designer: Dowis Assoc., 406 S. McQueen St., Florence, SC 29501 (843) 669-5223 — State Reg. Nbr. 480

10. Name of Engineer: Pyramid Engineering, Inc., 3310 Poinsett St., N. Myrtle Bch, SC (843) 361-4444 — State Reg. Nbr. 18947

11. Class of Work: CHECK ONE: [X] New ☐ Addition ☐ Alteration ☐ Repair ☐ Move ☐ Remove ☐ Other

12. DESCRIBE WORK, PLEASE BE SPECIFIC — IF "OTHER" HAS ABOVE IS CHECKED, PLEASE DESCRIBE WORK SPECIFICALLY
Construction of a 5 units condominiums bldg.

COPY

13. VALUATION OF WORK: $ 1.2 Million
Work Valuation must state the cost of the entire work including all subcontract work. Separate permits are not required. The names of all subcontractors must be provided. A breakdown form is available.

Application Accepted By: SK | Zoning Approved By: [illegible] | Permit Approved By: [illegible]

Notice
1. This form is not a building permit. This is a building permit application form used as reference to issue a building permit. Building permits are prepared from this form and are transferred to computer generated permit application forms. The applicant is to complete numbered spaces only. If correct Tax Map or street address is not known, help is available. Please do not hesitate to ask. Please print or type.
2. A building permit application for any proposed work shall be deemed to have been abandoned 6 months after the date of filing for the permit application, unless before then a permit has been issued. Requests for extensions of permit applications are set out in section 104.1.5 of the 1994 Standard Technical Codes.
3. I hereby certify that I have read and examined this permit general permit application form. I hereby certify that I am authorized by the above listed owner or owner application for and to obtain a permit from the City of North Myrtle Beach. Granting of a permit does not presume to give authority to violate or cancel the provisions of any other local, state or local law regulating construction or the performance of construction.

Arthur W Vereen VP — 1-9-04
SIGNATURE OF CONTRACTOR OR AUTHORIZED AGENT (DATE)
Arthur W Vereen VP
PRINTED OR TYPED NAME OF CONTRACTOR OR AUTHORIZED AGENT

SIGNATURE OF OWNER (IF OWNER BUILDER) (DATE)
PRINTED OR TYPED NAME OF OWNER BUILDER

ORIGINAL - APPLICANT • 1 YELLOW - OFFICE FILE

A NEW PROJECT - NEW PROPERTY FILE REQUIRED: ☐ PROPERTY FILE EXISTS - NEW PERMIT: ☐ Data Entered By: _____

PLAN CHECK FEE	PERMIT FEE
Type of Const.	Occupancy Group	Size of Bldg. (Total) Sq. Ft.
No. of Stories	No. of Dwelling Units	No. Bedrooms	No. of Bathrooms
Zoning District	Flood Zone	Req. Flood Elevation: MSL
Number of Seats to Compute Applicable Water & Sewer Fees	Fire Sprinklers ☐ Yes ☐ No √

PROJECT COORDINATION

ORGANIZATION	REQ. √	FOR PERMIT √	FOR C.O. √
PUBLIC WORKS			
Water			
Sewer			
Streets & Drainage			
Sanitation			
FIRE			
Water Billing			
City Business Lic.			
Zoning			
Building Plans			
OUTSIDE AGENCIES			
DHEC			
DHEC - OCRM			

RECEIVED
FEB 02 2005
CITY OF NORTH MYRTLE BEACH

3300 S. Ocean Blvd.

B04532

City of North Myrtle Beach, South Carolina
Permit Application Form

City of North Myrtle Beach 1018 2nd Ave S, N Myrtle Beach, SC 29582 843-280-5540 Fax-843-280-5581

. 33RD AVE SOUTH & S. OCEAN BLVD		LOT 4 BLK 2	Zoning District: x R-4	
. MULTI-FAMILY		3. SINGLE FAMILY DWELLING		
Legal Description	156-0718-006/006/007	Lot 4	Block 2	Section
. TAHITIAN PRINCESS LLC DR. MARTIN & EVELYN BROWN			PO. BOX 1185 NMB, SC 29597	
. SAME AS LINE 5				
. A+E CONSTRUCTION & CONSULTANTS	PO BOX 2296	NMB. SC 29577	449-3174	City Licensed Yes License 109630
. MR. DOUG DENIS ARPAC.	406 S. MCLEOD ST	FLORENCE SC (AB) 29501	669223	490
. KEITH CRAIG	PYRAMID BLDG	3310 POINSETT ST (AB) NMB, SC	361-4414	1894-7

1. Class of Work: ✓ New ____ Addition ____ Alteration ____ Repair ____ Move ____ Remove ____ Other

2. Description of Work: (Please specify in detail the work to be performed and attach detailed construction drawing and a plot plan showing the location of any new structures)

FOUNDATION TO INCLUDE PILING AND CONCRETE SLAB FOR PARKING UNDER ELEC. FOR BUILDING TO BE

3. Valuation of Work: $ 51,000.00

Building / Structure Information: Please Complete	
Type of Foundation:	PILES
Heated Square Feet:	
Unheated SquareFt:	
Number of Stories:	
Number of Units:	
No. of Bedrooms:	
Number of Baths:	N/A
Garage:	

I, the undersigned, hereby certify that I have read and examined this permit application form and I am authorized by the property owner to make application for and obtain a permit from the City of North Myrtle Beach.

This is not a building permit. This is a building permit application form used as a reference to transfer information to a computer generated permit application. A building permit application for any proposed work shall be deemed to have been abandoned six (6) months after the date of filing or the permit application, unless before then, a permit has been issued. Granting of a permit does not presume to give authority to violate or cancel the provisions of any other federal, state or local law regulating construction or the performance of construction.

3-31-04

Signature of Owner or Authorized Agent — Date

ARTHUR WESTEEN VP

Printed Name

CONTRACTOR

Relationship to Property Owner

OFFICE USE ONLY

ZONING APPROVAL BY: BK/BK/AH

PERMIT APPROVAL BY

OCCUPANCY TYPE _____

CONSTRUCTION TYPE _____

Application Accepted By: MC
PLAN REVIEW PAID?

RECEIVED
APR 2004
Date stamp here
City of North Myrtle Beach

ICC INTERNATIONAL

Setting the Standard for Building Safety™

Birmingham Regional Office
900 Montclair Road • Birmingham, AL 35213-1206 U.S.A.
Tel: +1 (205) 591-1853 • Fax: +1 (205) 599-9891

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Dept. of Buildings and Inspections
Cleveland, Ohio

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Hampton, Virginia

JIM THOMAS
Executive Deputy Chief
Fire Department
Fort Worth, Texas

EX-OFFICIO MEMBERS
JAMES LEE WITT

March 19, 2004

Mr. Myron Cox, CBO
City of North Myrtle Beach
1018 Second Avenue South
North Myrtle Beach, SC 29582

Re: Plan Review – Tahitian Princess Condominiums - Plan Review #MM03-149

Dear Mr. Cox:

We have reviewed plans for the proposed 5-unit condominium building, designed by Mr. William S. Dowis, Jr., Architect, dated February 5, 2004. The structural plans were signed and sealed by Mr. Sidney Craig, P.E. and were dated February 9, 2004. Our review was for compliance with the 2000 International Building Code only. We are not responsible for the accuracy of the documents, calculations, drawings, tests and/or evaluations prepared by the designers of record for the referenced project. The following is the code analysis summary:

Code Edition:	2000 International Building Code
Principal Use:	Group R-2 Residential
Height in Stories:	Four
Height in Feet:	48'
Total Area (sq. ft.):	7,250 per story
Type of Construction:	Type V-B (with sprinkler height increase –Section 504.2 and grade parking exception – Section 508.5) or Type V-A (with only sprinkler height increase)
Sprinklered:	Yes, required by Section 903.2.8, although none are specified.
Special Note:	The review was for the building code requirements only. The structure is exempt from the accessibility requirements for physically disabled persons by Section 1107.5.4 Exception #3. No elevator is provided.

Based on our review the following items need to be addressed by the designer:

1. The notes on the index sheet and the balcony guardrail details on sheet 6 make an erroneous reference to the IRC (International Residential Code). This is not the correct code. Please correct all the references to reflect the correct code sections of the International Building Code (Section 101.2).
2. The designer has not provided the type of construction he proposes to use. If type VB is used then the grade level parking structure will have to meet Section 508.5. The floor system and the piers would all need to be Type I or IV with a minimum of 2 hour fire resistance for the floor and the floor would need to be non-combustible construction (Section 508.5). Provide details (Section 703.2).
3. If Type VA is to be utilized, then fire protection will be required for all the structural members (bearing walls, floors, roofs and columns). All structural members would have to be protected for one hour by tested assemblies (Table 601). Details are required (Section 703.2).

4. There was no site plan provided. I cannot verify the fire protection requirements for the exterior walls and openings (Table 602 and Table 704.8).
5. The tenant fire separation walls were not detailed. The tenant separation walls are required to be one-hour fire resistive (Section 708.1 and Section 703.2).
6. The fire rated doors(required for the enclosed exit stairs) must be shown on the plans and must be 90-minute fire doors with closers. See Item #15. (Section 714 and Table 714).
7. The attic space is required but not shown to be divided into 3000 sq. ft. areas with draftstopping material (Section 716.4.2). This is waived if a full NFPA 13 sprinkler system is installed in the attic space.
8. There were no partition or wall sections or details depicting the required firestopping in the concealed combustible wall cavities and floor cavities (Section 716.2).
9. The building is required to be protected by either a NFPA 13 or NFPA 13R sprinkler system. The plans should so specify. The shop drawings and calculations must be submitted to and approved by the authority having jurisdiction (Section 903.2.8).
10. Documentation is required to indicate that quick response sprinkler heads are provided in the dwelling units in all Group R occupancies (Section 903.3.2).
11. The electrical plans do not show smoke detectors in each bedroom and in the areas giving access to the bedrooms (Section 907.10.1.2). The plans or specifications must indicate that the smoke detectors within each dwelling unit or interconnected in accordance with Section 907.2.10.3.
12. The stairway details on sheet 6 and sheet S6 depict treads that are too small and risers that are too high to comply with Section 1003.3.3.3.
13. The balcony guard rail detail on sheet 6 exactly allows the passage of a 4"sphere. This is a violation of Section 1003.2.12.2.
14. The units have a capacity for over 10 persons and the common path of travel within the units is greater than 75 feet, therefore two means of egress are required from each unit. The two egress paths must be arranged to meet Section 1004.2.1 thru 1004.2.5.
15. The exit stairs in the parking level must be enclosed in two-hour fire resistive construction and openings into the stairs must be 90-minute fire rated doors (Section 1005.3.2 and Table 714.2).
16. The plans do not indicate any ventilation details for the attic spaces (Section 1202.2).
17. The plans do not indicate any access openings into the attic spaces (Section 1202.2.1).
18. The plans do not indicate any bathroom exhaust fans in the bathrooms (Section 1202.4.2.1).
19. The classification of the roof covering material is not specified. If type VA construction is required then a minimum of Class B roof covering is required (Table 1505.1).
20. The complete information required by Section 1603.1.4 on the wind load design criteria is not shown on the plans.
21. There are no details on the plans of the opening protection for the exterior walls against wind-borne debris (Section 1603).
22. The balcony loads must be 100 PSF. This is not verifiable from the calculations or the plans (Table 1607.1).
23. There were no seismic design calculations (Section 1614 and 1615).
24. The soil report did not give the site classification for the seismic design (Section 1615.1.1).
25. There were no calculations shown for the shear walls (Section 2305.3), the horizontal diaphragms (Section 2306.2) and the X-bracing of the pilings. The plans did not show any X-bracing of the pilings in the narrow direction.
26. The floor and roof trusses were not a part of this review. The code requires that all the information for the trusses shown in Section 2303.4.1 be submitted.
27. The earthquake design data on the index sheet does not give the design base shear value as required by Section 1603.1.5.
28. The structural plan review is limited to a review of the plans and design calculations of the professional engineer to ascertain that the minimum design loads in Chapter 16 have been referenced by the engineer. A check of the complete structural plans and the connection details is beyond the scope of this review. No response is necessary.

This report indicates code sections from the 2000 International Building Code and our comments on code sections for which compliance could not be determined due to insufficient detail and information on the submitted documents. It is recommended that this report be reviewed and compliance be obtained prior to issuance of a building permit.

Please be advised that in addition to the accessibility requirements of the International Building Code, there are federal laws, which further govern building accessibility for the physically disabled.

This office will review revised plans; specifications and calculations as a complimentary service, providing these documents are accompanied by an explanation of the action taken for each comment on our review. These explanations shall be in the numerical order of the comments and should changes be made in plans, specifications or calculations, the explanation shall indicate the specific location of the changes on these documents. However, substantial revisions or new designs will necessitate additional fees.

Sincerely,

James D. Connell, P.E.
Team Leader / A & E Services

CC: William S. Dowis, Jr., Architect
Sidney Craig, P.E.

COPY

Fire Prevention Bureau
City of North Myrtle Beach
May 18, 2004

COPY

Dowis Associates
406 S. McQueen Street
Florence, South Carolina 29501
(843) 669-5223 offices
(843) 669-

Ref: Tahitian Princess, 3300 S. Ocean Blvd. North Myrtle Beach, SC
Fire Marshal's Plan Review Comments

Dear Mr. Craig,

Below are the Fire Marshal's, building plan, review comments for the above referenced project. This review is intended to address code requirements from the 2000 International Building Code, 2000 International Fire Code, National Fire Code and local requirements. Any omissions or oversights do not preclude this structure complying with all applicable codes in effect at the time of permitting.

Please respond to these comments in written form.

1. NFPA 13R Automatic Fire Sprinkler System is required.
2. Fire Alarm Per NFPA 72 and local requirements is required as it applies to occupant notification and off site monitoring.
3. The plan review of comments from the International Code Congress cover all other issues

Should you have any questions or require clarification please contact this office at 843-280-5614.

Thank you,

Les Williamson, Fire Marshal
City of North Myrtle Beach

CC: Myron Cox – Building Official
Martin & Evelyn Brown – Owner
Pyramid Engineering - Engineer
A & E Construction – Contractor

ARTHUR VEREEN CONSTRUCTION CO., INC.

RESIDENTIAL - COMMERCIAL - INDUSTRIAL CONSTRUCTION
P.O. Box 2296
158 Robert Grissom Parkway
Myrtle Beach, South Carolina 29577
(843) 448-3741 — Fax (843) 626-6284

PRE-ENGINEERED METAL BUILDINGS

FAX TRANSMITTAL SHEET

DATE: 3/26/04

TO: Myron Cox
City of North Myrtle Beach

FROM: Wayne Vereen

NUMBER OF PAGES TO FOLLOW: 1

IF YOU HAVE ANY PROBLEMS RECEIVING THIS TRANSMISSION, PLEASE CALL: (843) 448-3741.

Message:

Comments received from Jack Dowidson Tahitian Princess.

COPY

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

NORA ROSE BECKNER,

Plaintiff(s)

vs.

CONDOLUX, INC., ET AL

Defendant(s)

ALL-STATE LEGAL® Exh. 64 B

E COURT OF COMMON PLEAS

VIL ACTION COVERSHEET

13-CP-26-7518

(Please Print)	SC Bar #: 13410
Submitted By: STANLEY LAW FIRM	Telephone #: 843-390-9111
Address: 3303 E. HWY. 9	Fax #: 843-390-9187
LITTLE RIVER, SC 29566	Other:
	E-mail: sstanley@stanleylawfirm.com

FILED IN THE COUNTY
13 NOV 12 PM 2:21
CLERK OF COURT HUGGINS-WARD

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

***If Action is Judgment/Settlement do not complete*

☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☒ This case is subject to **MEDIATION** pursuant to the Circuit Court Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☒ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Sexual Predator (510)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture (840)
- ☐ Other (899)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Administrative Law Judge (980)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Other (699)

Submitting Party Signature: _____ **Date:** 11-7-13

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Florence, Hor[redacted]Lexington, Richland, Greenville**, ar[redacted]nderson**

** Contact Respective County Clerk of Court for modified ADR Program Rules

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Case are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Cases which are appellate in nature such as appeals or writs of certiorari;

    c. Post Conviction relief matters;

    d. Contempt of Court proceedings;

    e. Forfeiture proceedings brought by the State;

    f. Cases involving mortgage foreclosures; and

    g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.

4. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference had been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY)	CIVIL ACTION NO. 13-CP-26-7578

NORA ROSE BECKNER,

Plaintiff,

vs.

CONDOLUX, INC., A & E CONSTRUCTORS AND CONSULTANTS, INC., ALLIGATOR INC. and R AND R MASONRY, INC.,

Defendants.

SUMMONS

(Premises Liability)
(Neglience)

(JURY TRIAL DEMANDED)

HORRY COUNTY
13 NOV 12 P 2:20
DELANE HUGGINS-WARD
CLERK OF COURT

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer on the subscriber at his office at 3303 East Highway 9, Little River, South Carolina 29566, within THIRTY (30) DAYS after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

STANLEY LAW FIRM

Stacy L. Stanley
3303 East Highway 9
Little River, SC 29566
(843) 390-9111
Attorney for the Plaintiff

11-7, 2013.

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO. 13-CP-26-7578

NORA ROSE BECKNER, Plaintiff, vs. CONDOLUX, INC., A & E CONSTRUCTORS AND CONSULTANTS, INC., ALLIGATOR, INC. and R AND R MASONRY, INC., Defendants.	)	**COMPLAINT** (Premises Liability) (Negligence) (JURY TRIAL DEMANDED)

HORRY COUNTY
13 NOV 12 PM 2:20
JANIE HUGGINS-WARD
CLERK OF COURT

The Plaintiff, complaining of the Defendants, would respectfully show unto this Honorable Court as follows:

1. Plaintiff is a citizen and resident of the State of Tennessee.

2. Defendant Condolux, Inc. is a South Carolina corporation doing business in Horry County, South Carolina and is doing business as CondoLux Luxury Vacation Rentals.

3. Defendant A & E Constructors and Consultants, Inc. is a South Carolina corporation doing business in Horry County, South Carolina and was a contractor during the construction of CondoLux Luxury Vacation Rentals.

4. Defendant Alligator, Inc. is a South Carolina corporation doing business in Horry County, South Carolina and was a contractor during the construction of CondoLux Luxury Vacation Rentals.

5. Defendant R and R Masonry, Inc. is a South Carolina corporation doing business in Horry County, South Carolina and was a contractor during the construction of CondoLux Luxury Vacation Rentals.

6. The accident which is subject of this action, occurred at CondoLux Luxury Vacation Rentals (hereinafter "Condolux") located in Horry County, South Carolina, and jurisdiction and venue are proper in Horry County.

FIRST CAUSE OF ACTION
(PREMISES LIABILITY: CONDOLUX, INC.)

7. On or August 19, 2011, Plaintiff was an invitee at CondoLux located in North Myrtle Beach, South Carolina.

8. Plaintiff, through no fault of her own, fell from the lowest landing area onto the steps at Condolux.

9. That the stairs at Condolux did not have a handrail as required by the City of North Myrtle Beach Building Code, which was unreasonably dangerous to the Plaintiff despite the ordinary caution exercised by the Plaintiff.

10. Defendant Condolux, Inc. knew or should have known that its failure to install a handrail along each side of the stairs at Condolux would create a dangerous condition at Condolux.

11. Defendant Condolux, Inc. owed the Plaintiff the duty to provide a safe environment for its patrons and to warn of any dangerous condition on the premises, and thereafter make the premises safe, which the Defendant Condolux, Inc. failed to do.

12. Defendant Condolux, Inc. breached its duty of due care to the Plaintiff by failing to take safety precautions to warn or eliminate the unreasonable risk to the Plaintiff.

13. That the Defendant Condolux, Inc. was negligent, reckless, willful and wanton in the following particulars:

a. In failing to install handrails along each side of the stairs at Condolux as required by the City of North Myrtle Beach Building Code;

b. In failing to provide safe conditions for customers;

c. In failing to adequately discover and correct the dangerous conditions which existed;

d. In failing to adequately warn customers that a dangerous condition existed;

e. In failing to properly train or supervise its employees so as to prevent dangerous conditions from existing;

f. In failing to put out cones or signs in the hazardous area so as to warn the Plaintiff and others of the dangerous condition of the stair.

14. Any one or more of the above-referenced act(s) of omission and/or commission were the proximate cause(s) of the injuries and damages suffered by the Plaintiff herein.

15. As a direct and proximate result of the Defendant Condolux, Inc.'s failure to exercise due, reasonable and ordinary care for the Plaintiff's safety, the Plaintiff fell and fractured both elbows and her right patella. As a result of her injuries, both of

Plaintiff's elbows required surgery. The left elbow required replacement and the right elbow was repaired with pins and plates.

16. That as a result, the Plaintiff suffered damages and injuries as follows:

a. Fracture to both elbows;

b. Left elbow replacement;

c. Fractured right patella;

d. Injuries to her face and knees;

e. Emotional distress, mental anguish and mental anxiety, depression, worry and loss of sleep;

f. Lost wages;

g. Loss of enjoyments of life;

h. Hospital and medical bills, both past and future.

17. Plaintiff is informed and believes that she is entitled to both actual and punitive damages against the Defendant Condolux, Inc.

SECOND CAUSE OF ACTION
(NEGLIGENCE: AS TO ALL DEFENDANTS)

18. Plaintiff references and incorporates every allegation set forth above as if fully repeated verbatim herein.

19. Defendants owed the Plaintiff the duty to provide a safe environment for patrons and to warn of any dangerous condition on the premises, and thereafter make the premises safe, which the Defendants failed to do.

20. Defendants breached its duty of due care to the Plaintiff by failing to take safety precautions to warn or eliminate the unreasonable risk to the Plaintiff.

21. That the Defendants were negligent, reckless, willful and wanton in the following particulars:

a. In failing to install handrails along each side of the stairs at Condolux as required by the City of North Myrtle Beach Building Code;

b. In failing to provide safe conditions for customers;

c. In failing to adequately discover and correct the dangerous conditions which existed;

d. In failing to adequately warn customers that a dangerous condition existed;

e. In failing to properly train or supervise its employees so as to prevent dangerous conditions from existing;

f. In failing to put out cones or signs in the hazardous area so as to warn the Plaintiff and others of the dangerous condition of the stair.

22. Any one or more of the above-referenced act(s) of omission and/or commission were the proximate cause(s) of the injuries and damages suffered by the Plaintiff herein.

23. As a direct and proximate result of the Defendants' failure to exercise due, reasonable and ordinary care for the Plaintiff's safety, the Plaintiff fell and fractured both elbows and her right patella. As a result of her injuries, both of Plaintiff's elbows required surgery. The left elbow required replacement and the right elbow was repaired with pins and plates.

24. That as a result, the Plaintiff suffered damages and injuries as follows:

a. Fracture to both elbows;

b. Left elbow replacement;

c. Fractured right patella;

d. Injuries to her face and knees;

e. Emotional distress, mental anguish and mental anxiety, depression, worry and loss of sleep;

f. Lost wages;

g. Loss of enjoyments of life;

h. Hospital and medical bills, both past and future.

25. Plaintiff is informed and believes that she is entitled to both actual and punitive damages against these Defendants.

WHEREFORE, Plaintiff demands judgment against the Defendants as follows:

A. For both actual and punitive damages;

B. For the costs and disbursements of this action; and

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

STANLEY LAW FIRM

Stacy L. Stanley
3303 East Highway 9
Little River, S.C. 29566
(843) 390-9111
Attorney for the Plaintiff

11-7, 2013.

803326
RECEIVED
JUL 21 2016
SC Court of Appeals

.THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Cynthia Graham Howe
Master-in-Equity, Fifteenth Judicial Circuit

Case No.: 2009-CP-26-620

Ellis E. Smith, individually and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation.....Plaintiffs,

v.

Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc., Linda C. Vereen, Arthur W. Vereen, as Trustee of the Arthur W. Vereen Residence Trust, and Linda C. Vereen, as Trustee of the Linda C. Vereen Residence Trust,.....Defendants,

AND

Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc., and 29th Place Developers, Inc.,.....Third-Party Plaintiffs,

v.

E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, individually,.....Third-Party Defendants,

Of whom Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc., Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction Company, Inc., Linda C. Vereen, Arthur Wayne Vereen, as Trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, as Trustee of the Linda C. Vereen Residence Trust, and 29th Place Developers, In. are the Appellants,

And

Ellis E. Smith, individually and on behalf of A & C Constructors and Consultants, Inc., a South Carolina Corporation and E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, individually are the Respondents.

MOTION TO DISMISS APPEAL

The Respondents jointly move before the Court to dismiss the Appeal of the Appellants because it was not timely filed with this Court. The Motion of the Respondents is based upon the case and statutory law, the South Carolina Rules of Civil Procedure, the South Carolina Appellant Court Rules and as specifically stated in the attached memorandum and affidavit of Respondent's attorney.

Frank H. DuRant
DuRant & Martin
P.O. Box 960 (29578)
Myrtle Beach, SC 29578
T: 843-448-1541 F: 843-626-7431
Email: fdurant@durantandmartin.com
SC Bar No.: 1802
Attorney for the Respondents Smith and A & E Constructors and Consultants, LLC

J. Jackson Thomas, Esq.
Thompson & Brittain, PA
PO Box 290
Myrtle Beach, SC 29578
T: 843-692-2628
Email: jthomas@myrlaw.com
SC Bar No.: 5527
Attorney for Respondents E. Smith & Sons, LLC, EES Construction and Consulting, LLC and Ellis E. Smith

Myrtle Beach, South Carolina
July 19, 2016

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
JUL 21 2016
SC Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Cynthia Graham Howe
Master-in-Equity, Fifteenth Judicial Circuit

Case No.: 2009-CP-26-620

Ellis E. Smith, individually and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation.....Plaintiffs,

v.

Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc., Linda C. Vereen, Arthur W. Vereen, as Trustee of the Arthur W. Vereen Residence Trust, and Linda C. Vereen, as Trustee of the Linda C. Vereen Residence Trust,.....Defendants,

AND

Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc., and 29th Place Developers, Inc.,.....Third-Party Plaintiffs,

v.

E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, individually,.....Third-Party Defendants,

Of whom Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc., Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction Company, Inc., Linda C. Vereen, Arthur Wayne Vereen, as Trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, as Trustee of the Linda C. Vereen Residence Trust, and 29th Place Developers, In. are the Appellants,

And

Ellis E. Smith, individually and on behalf of A & C Constructors and Consultants, Inc., a South Carolina Corporation and E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, individually are the Respondents.

CERTIFICATE OF SERVICE

Lauren Massimino certifies that she is an employee of the law firm DuRant & Martin, attorney for the Respondents Smith and A & E Constructors and Consultants, LLC, and that she mailed the document(s) listed below in the above entitled action to the addressee(s) below on July ___, 2016 and proper postage was attached thereto.

DOCUMENT(S): Motion to Dismiss Appeal, Memorandum in Support of Respondents' Motion to Dismiss, Affidavit of Frank H. DuRant

ADDRESSEE(S): Kathryn M. Cook, Esq.
Cook & Roy, LLC
PO Box 4086
N. Myrtle Beach, SC 29597

Kathryn M. Cook, Esq.
306 Calhoun Road
Myrtle Beach, SC 29577
Attorney for Appellants Arthur Wayne Vereen, Individually and as Trustee of the Arthur W. Vereen Residence Trust, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc., and Linda C. Vereen, Individually and as Trustee of the Linda C. Vereen Residence Trust

Henrietta U. Golding, Esq.
James K. Gilliam, Esq.
McNair Law Firm, P.A.
P.O. Box 336
Myrtle Beach, SC 29578
Attorney for Appellants Arthur Wayne Vereen, Individually and as Trustee of the Arthur W. Vereen Residence Trust, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc., and Linda C. Vereen, Individually and as Trustee of the Linda C. Vereen Residence Trust

J. Jackson Thomas, Esq.
Thompson & Henry, PA
1314 Professional Dr,
Myrtle Beach, SC 29577
Attorney for Respondents E. Smith & Sons, LLC, EES Construction and Consulting, LLC and Ellis E. Smith

Lauren Massimino

SWORN to before me this 20th
day of July, 2016

Notary Public for South Carolina
My Commission Expires: 5-24-21

AFFIDAVIT OF FRANK H. DURANT

Personally appeared before me, Frank H. DuRant, who being duly sworn, deposes and says:

That he is the attorney for Ellis E. Smith, individually and as a shareholder and owner of A & E Constructors and Consultants, Inc., who are Respondents in this Appeal. That I make this affidavit based upon facts known to me, or if stated upon information and belief, based upon facts believed to be true.

That on March 23, 2015, the Lower Court issued an Order granting judgment against the Appellants in this case. That on March 24, 2015, the Lower Court by letter from Stuart Miller ("Miller"), Law Clerk to Judge Howe, sent an email to all attorneys of record, which contained, as an attachment, the Judgment against the Appellants in the amount of $2,968,790.68 together with the Form 4C, indicating the filing with the Horry Clerk of Court indexing the Judgments. The following day, Miller sent another email to all attorneys of record, which contained, as an attachment the *nunc pro tunc* Order and amended Form 4C, which increased the amount of the Judgment because of an accounting error and added the name of a judgment defendant. Copies of the emails and attachments are attached as Exhibits 1 & 2. On March 25, 2015, my office sent a letter serving the Judgment and Form 4C on the Appellants' attorney, Kathryn Cook, and subsequently my office served the *nunc pro tunc* Order and Form 4C on the Appellant attorney Cook by letter dated March 27, 2015. Certificates of service of the Orders were then filed with the Horry Clerk of Court and are attached as Exhibits 3 & 4.

That pursuant to the SCRCP, the Appellants had ten days from the receipt of written notice of the entry of judgment to file a Rule 59 Motion to Reconsider. In this case, the Appellants received written notice of the entry of judgment by email directly from the Master's Office on March 24th and 25th, 2015. In her written Motion, the Appellants acknowledged receipt

of the Judgment on March 30, 2016. Under the Court's notice by email (which included written copies of the Orders), the Appellants would have until April 6, 2015 to file their post trial motions. In addition, my office served the Appellants notice of the entry of the Order, together with copies of the Orders by regular mail on March 25th and March 27th. Under the mailed service of process sent by mail by my office, the Appellants had 5 additional days to serve a Motion to Reconsider under Rule 59, which would be computed by adding 15 days to date of the letters of service on March 25th and/or 15 days from the date of the letter of service on March 27 for the *nunc pro tunc* Order or April 13, 2015. That according to the SCAR, the Appellants had until April 24, 2015 to appeal the Original Judgment and until April 27, 2015 to appeal the *nunc pro tunc* Order as April 26 was a Sunday. That on Friday, April 10, 2015, I received a letter from Appellants' attorney Cook that was written to Judge Howe requesting a copy of Page 37 of the Judgment. On that same day, I sent an email to attorney Cook, containing a scanned copy of Page 37 that she had requested from Judge Howe. The Appellants' Motion to reconsider was hand delivered to my office on April 20, 2015.

Respondents acknowledge that Page 37 was omitted from the 42 page Judgment, as it was omitted in the email sent by Miller, which was copied and served by mail by my office on the Appellants. However, Page 37 was contained in the Clerk of Court's filed Judgment and available at any time to the Appellants and their attorney. The Appellants never requested a copy of the missing page from the Respondents or the Clerk of Court, when the Appellants knew that a judgment exceeding four million dollars had been rendered against them. The Respondents (or the Court) were only required to serve upon the Appellants a notice of filing of the Judgment against them, which is accomplished by the two Form 4Cs served upon them, which were time and date stamped by the Clerk of Court. The Motion to reconsider was filed too late to be considered, a conclusion reached by Judge Howe in her Order denying the Motion to reconsider.

Since the Motion to reconsider was not timely filed, it did not stay the time to file a Notice of Appeal. The Notice to Appeal was not filed within 30 days of the service of the *nunc pro tunc* Order and the Appeal should be dismissed for that reason.

Frank H. DuRant

SWORN to before me this
20th day of July, 2016.

Lauren Massimino, Notary Public for SC
My Commission Expires: March 12, 2023

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Cynthia Graham Howe
Master-in-Equity, Fifteenth Judicial Circuit

Case No.: 2009-CP-26-620

Ellis E. Smith, individually and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation.....Plaintiffs,

vs.

Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc., Linda C. Vereen, Arthur W. Vereen, as Trustee of the Arthur W. Vereen Residence Trust, and Linda C. Vereen, as Trustee of the Linda C. Vereen Residence Trust,.....Defendants,

AND

Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc., and 29th Place Developers, Inc.,.....Third-Party Plaintiffs,

vs.

E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, individually,.....Third-Party Defendants,

Of whom Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc., Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction Company, Inc., Linda C. Vereen, Arthur Wayne Vereen, as Trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, as Trustee of the Linda C. Vereen Residence Trust, and 29th Place Developers, In. are the Appellants,

And

Ellis E. Smith, individually and on behalf of A & C Constructors and Consultants, Inc., a South Carolina Corporation and E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, individually are the Respondents.

MEMORANDUM IN SUPPORT OF RESPONDENTS' MOTION TO DISMISS

On March 24, 2015, the Lower Court filed and granted judgment in favor of the Respondent A & E Construction and Consultants, Inc. and against the Appellants, jointly and severally, in the amount of $2,968,790.68. On March 25, 2015, the Lower Court issued and filed a *nunc pro tunc* Order, which corrected the Judgment by increasing the amount of the Judgment to $4,226,383.90 and adding an additional Defendant's name to the Form 4C previously filed.

Any Rule 59 Motion to Reconsider is required under subsection (e) to be filed in a non-jury action "not later than 10 days after receipt of written notice of the entry of judgment or of the filing of an order disposing of the action, if no judgment has been entered." The Appellants were served with the written Orders (the original Judgment and the *nunc pro tunc* Order) by the Court, who had scanned and emailed the two Orders and Form 4Cs to Appellants' attorney Kathyrn M. Cook ("Attorney") and the other attorneys of record, on March 24, 2015 and March 25, 2015. The emails and attachments from R. Stewart Miller, Jr., Law Clerk from the Office of the Master in Equity, are attached hereto as Exhibits 1 and 2. The Appellants were again served the two Orders and Form 4Cs by DuRant, attorney for the Respondents, by regular mail to Attorney Cook on March 25 and March 27, 2015. Copies of the service letters and affidavits of service are attached hereto as Exhibits 3 and 4. Attorney Cook acknowledged in her filed Motion to Reconsider (the "Motion") that the mailed *nunc pro tunc* Order was received on March 30, 2015. See Motion attached as Exhibit 5.

Using the later filed *nunc pro tunc* Order as the final Order and the date of its transmission by email to counsel, the Motion was required to be filed by April 6, 2016. Using the Respondent's March 27, 2016 service of process letter, the Motion was required to be filed within 15 days of March 27, 2016 (allowing for the additional five days for service by mail) or

by April 13, 2016, as April 11 is a Saturday. The Appellants' Motion was filed on April 20, 2016, seven days after the deadline.

Subsequently, Appellants' attorney Cook realized that she had not received Page 37 of the 42 page Judgment, which was omitted in the Court's written emailed document and in the mailing by DuRant. Instead of obtaining the missing page from the Clerk of Court, Appellants' attorney wrote Trial Judge Howe a letter dated April 6, 2015, requesting the omitted page 37. The undersigned attorney DuRant received the Respondents' copy of the letter on Friday, April 10, 2015, which is attached as Exhibit 6. On that date, DuRant sent page 37 to attorney Cook by email on that date. When the Motion was argued, the Respondents moved to dismiss Appellants' Motion as being untimely filed.

The Lower Court held, in its "Order Disposing of Post Trial Motions" (the "Post Trial Order") dated April 25, 2016, attached as Exhibit 7, that the Appellants' Motion was untimely filed under Rule 59(b) and 59(e) of the South Carolina Rules of Civil Procedure, which require that any motion be made no later than ten days after "receipt of written notice of the entry of the order." See also, Diamond Jewelers of Spartanburg, Inc. v. Naegele, 290 S.C. 260, 349 S.E. 888 (1985). The Orders were served upon the Appellants both by the Court via email and by Respondents attorney DuRant, which required the additional 5 days. Because Appellants May 19, 2016 Notice of Appeal was filed more than more than 30 days after receipt of the Court's March 25, 2016 email containing the *nunc pro tunc* Order and more than 30 days after the service of the *nunc pro tunc* Order by the Respondents' attorney DuRant on March 27, 2016 by the written letter, the appeal is untimely and should be dismissed. See Wells Fargo v. Fallon Properties, South Carolina, LLC, et.al., Opinion No: 2015-08-26-01 (Ct. App.2015).

Since the Appellants failed to timely serve their Motion to reconsider, the time period for appeal is not stayed and the Appellants must serve and filed their Notice of Appeal within thirty

days of the receipt of written notice of the entry of order or judgment pursuant to Rule 203, SCACR. Because Appellants May 19, 2016 Notice of Appeal was filed more than more than 30 days after receipt of the Court's March 25, 2016 email containing the *nunc pro tunc* Order and more than 30 days after the service of the *nunc pro tunc* Order by the Respondents' attorney DuRant on March 27, 2016 by written letter, the appeal is untimely and should be dismissed. See Wells Fargo v. Fallon Properties, South Carolina, LLC, et.al., Opinion No: 2015-08-26-01 (Ct. App.2015). The failure to timely file a Notice of Appeal is jurisdictional, i.e., if a party misses the deadline, the appellate court lacks jurisdiction to consider the appeal and has no authority or discretion to "rescue" the delinquent party by extending or ignoring the deadline for service of the notice. Mears v. Mears, 287 S.C. 168, 337 S.E.2d 206 (1985).

The Respondents admit that Page 37 of the 42 page Judgment was inadvertently left out, in both the written notice of filing and service by the Court and in the letter service from Respondents' attorney, but both methods of service provided, with the Form 4C, notice to the Appellants of the filing of the two Orders with the Clerk of Court, as Law Clerk Stuart Miller, Jr. attached a copy of the "clocked" Judgment and Order with Forms 4C with each email. The Appellants cannot write a letter and send it by ordinary mail to the Trial Judge and request in that letter a copy of one missing page of a forty two page judgment for over four million dollars and expect that letter to "reset" the time deadlines for filing post trial motions and notices of appeal. Rule 59(b) and (e), SCRCP, state the period for filing a Motion thereunder as "10 days from the receipt of written notice of the entry of judgment or of the filing of an order disposing of the action." Rule 203(b)(1), SCAR, states that "a notice of appeal shall be served on all respondents within thirty (30) days after receipt of written notice of entry of the Order or judgment." The Judgment was duly and properly filed with the Clerk of Court for Horry County on March 24,

2015 and the subsequent *nunc pro tunc* Order on March 25, 2015. The filed Judgment contained page 37, which the Appellants could have obtained from the Clerk of Court at any time.

It is respectfully submitted that the Appellants' Notice of Appeal should be dismissed for the reasons above stated.

Respectfully submitted.

Frank H. DuRant
DuRant & Martin
P.O. Box 960 (29578)
Myrtle Beach, SC 29578
T: 843-448-1541; F: 843-626-7431
Email: fdurant@durantandmartin.com
SC Bar No.: 1802
Attorney for the Respondents Smith and A & E Constructors and Consultants, LLC

J. Jackson Thomas, Esq.
Thompson & Brittain, PA
PO Box 290
Myrtle Beach, SC 29578
T: 843-692-2628
Email: jthomas@myrlaw.com
SC Bar No.: 5527
Attorney for Respondents E. Smith & Sons, LLC, EES Construction and Consulting, LLC and Ellis E. Smith

EXHIBIT 1

Subject: Attached Order for Smith v. Vereen (2009-CP-26-0620)

From: Miller, Richard (millerr@HorryCounty.org)

To: fdurant@yahoo.com; JThomas@myrlaw.com; kifcook55@gmail.com;

Date: Tuesday, March 24, 2015 1:45 PM

Attached is a PDF copy of the clocked Order in the above referenced case executed today. If any of you have questions or concerns please don't hesitate to contact me.

Respectfully,

Stewart

R. Stewart Miller, Jr. | Law Clerk

Horry County Government

Office of the Master in Equity

P.O. Box 1236, Conway, South Carolina 29526

Tel 843.915.7853 | Fax 843.915.6310

millerr@horrycounty.org | www.horrycounty.org

All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA). This correspondence is intended exclusively for the individual or entity to which it is addressed and may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure

Attachments

- 2009-CP-26-620 Judgment.pdf (1.91MB)

FORM 4

STATE OF SOUTH CAROLINA **COUNTY OF** **IN THE COURT OF COMMON PLEAS**	**JUDGMENT IN A CIVIL CASE** **CASE NO. 2009-CP-26-620**
Ellis E. Smith, Individually, and on behalf of A & E Constructors and Consultants, Inc. PLAINTIFF(S)	Arthur Wayne Vereen, et al. DEFENDANT(S)

Submitted by:	**Attorney for :** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **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.

FILED
COUNTY
2014 MAR 24 P 1:08

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
A & E Constructors and Consultants, Inc.	Arthur Wayne Vereen, Individually and as Trustee of the Arthur W. Vereen Residence Trust	$2,968,790.68
	Linda C. Vereen, Individually and as Trustee of the Linda C. Vereen Residence Trust,	$2,968,790.68
	Park Place Properties of Myrtle Beach, LLC	$2,968,790.68
	Arthur Vereen Construction Company, Inc.	$2,968,790.68

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

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

Master in Equity

3073
Judge Code

3/23/15
Date

For Clerk of Court Office Use Only

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

Frank H. Durant
J. Jackson Thomas

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kathryn M. Cook

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ELLIS E. SMITH, Individually, and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., a South Carolina Corporation,

Plaintiff,

vs.

ARTHUR WAYNE VEREEN, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, ARTHUR VEREEN CONSTRUCTION COMPANY, INC., LINDA C. VEREEN, ARTHUR W. VEREEN, AS TRUSTEE OF THE ARTHUR W. VEREEN RESIDENCE TRUST, and LINDA C. VEREEN, AS TRUSTEE OF THE LINDA C. VEREEN RESIDENCE TRUST,

Defendants.

and

ARTHUR WAYNE VEREEN, individually and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., and 29th PLACE DEVELOPERS, INC.,

Third Party Plaintiffs,

vs.

E. SMITH AND SONS CONSTRUCTION, LLC, AND EES CONSTRUCTION AND CONSULTING, INC., and ELLIS E. SMITH, individually,

Third Party Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-26-620

JUDGMENT AGAINST THE DEFENDANTS ARTHUR W. VEREEN, INDIVIDUALLY AND AS TRUSTEE OF THE ARTHUR W. VEREEN RESIDENCE TRUST, LINDA C. VEREEN, INDIVIDUALLY, AND AS TRUSTEE OF THE LINDA C. VEREEN RESIDENCE TRUST, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, AND ARTHUR VEREEN CONSTRUCTION COMPANY, INC., JOINTLY AND SEVERALLY

HORRY COUNTY
2011 MAR 24 PM 1:08
CLERK OF COURT

Appearances:
Attorney for A & E, Smith: Frank H. DuRant
Attorney for Smith, EES and E. Smith & Sons: J. Jackson Thomas
Attorney for the Defendants
and Third Party Plaintiffs: Kathryn M. Cook

PROCEDURAL HISTORY

This matter was referred to me for hearing pursuant to an Order of Reference of the Honorable Larry B. Hyman, Jr., dated July 23, 2009, with authority to issue a final Order in this matter. The parties presented testimony and hundreds of accounting records over four separate weeks. The case took more than a year to try because of various circumstances.

This is a shareholder's derivative action brought by Ellis E. Smith ("Smith"), individually and on behalf of A & E Constructors and Consultants, Inc. ("the Company") against Arthur Wayne Vereen ("Vereen"), the treasurer and remaining shareholder, and Vereen's wife, as well as some companies which Vereen controlled. Smith and the Company have sued for an accounting as well as for a dissolution of the Company, asserting that Vereen converted corporate assets.

Vereen and the Defendant entities generally denied the allegations, agreed to an orderly dissolution of the Company, and asserted counterclaims for an accounting, indemnification, and misappropriation of the Company's opportunities. Vereen, individually and on behalf of A&E, brought in an additional party, 29th Place Developers, Inc. (29th Place), without court approval, but without objection, and sued E. Smith and Sons Construction, LLC (E. Smith) and EES Construction and Consulting, Inc. (EES) and Smith, individually (Smith) as third party defendants.

I have reviewed the entire Court file, weighed the testimony and evidence presented, and find damages for the Plaintiff Company and against the Defendants Vereen individually and as trustee of the Arthur Wayne Vereen Residence Trust and Linda C. Vereen individually and as trustee of the Linda C. Vereen Residence Trust, Park Place Properties of Myrtle Beach, LLC,

Parkway Offices, LLC, and Arthur Vereen Construction Company, Inc. as discussed below. I find that each of these named Defendants conspired together to misappropriate and convert the assets of the Plaintiff Company and its other shareholder Smith.

DISCUSSION

The Plaintiff Smith and Defendant Vereen are the sole shareholders, officers, and directors of the Company, which was incorporated on October 28, 2003, as a construction company. The Company made a timely subchapter "S" taxation election under the Internal Revenue Code, and Vereen was elected treasurer. At all times, Vereen exclusively handled the Company's finances including managing and controlling the Company's checkbook. Smith and Vereen had equal ownership of the Company's shares of stock and served as its board of director members. When they began the Company, Smith and Vereen agreed that each would finish any pre-existing jobs under the names of their own separate companies and at their own separate expense.

Defendant Arthur Vereen Construction Company, Inc. ("AVCC") is a South Carolina Corporation owned by Vereen. Vereen operated his construction business out of AVCC for many years, but AVCC and Vereen's commercial building licenses expired in October 2003, about the time the Company began. Third Party Defendant EES Construction and Consulting, Inc. ("EES") is a South Carolina Corporation owned by Smith. The Defendant Park Place Properties of Myrtle Beach, LLC ("Park Place") is a South Carolina Limited Liability Company, which is owned 5% by Vereen and 95% by Defendant Linda C. Vereen, Vereen's wife ("Wife"), but managed and controlled by Vereen. The Defendant Parkway Offices, LLC ("Parkway") is a South Carolina Limited Liability Company owned by Wife, but also managed and controlled by Vereen. Parkway and Wife owned several buildings, including one space shared as offices with the other Defendants on Grissom Parkway in Myrtle Beach. E. Smith and Sons Construction, LLC ("E. Smith"), a South

Carolina Limited Liability Company created in April 2007, is owned solely by Smith. 29th Place Developers, Inc. (29th Place) is a corporation owned by Vereen.

The Company became a licensed commercial contractor in January 2004. The Company paid no salaries until June 2004, but beginning in January 2004, Smith and Vereen met each morning at the Company's office on Grissom Parkway. That office also served as an office for AVCC, Vereen's company, Parkway, Wife's company that Vereen managed and controlled, and Vereen's daughter's law practice.

Vereen began receiving a salary of $1,000.00 per week in June 2004. Smith was still finishing prior jobs at EES, and instead of receiving a salary, Smith invoiced the Company, through EES, for his time at $25.00 per hour and for EES's pro-rata expenses spent on Company business. Vereen approved and paid these EES invoices from the Company account at Carolina First Bank; Vereen charged the expenses to jobs performed by the Company on its job ledgers.

In early 2004, the Company began construction of a speculative residential home for Vereen in the Plantation Lakes subdivision near Myrtle Beach and also began several new, large, multi-family jobs. The Company was extremely busy and profitable during its first three years of operation. These years, 2004-2007, coincided with the three peak years of the real estate boom in the Grand Strand area. Opportunities for construction companies were numerous; construction companies were profitable. The Company permitted and performed several large jobs for Defendants Park Place, Parkway, and Wife; these included several jobs for Vereen's family members. Vereen told Smith that the Company would treat the family jobs just like any other job, and the Company would be paid overhead and profit.

A South Carolina corporation is required to maintain "appropriate accounting records" and is required to furnish its shareholders with annual financial statements that include the

corporation's year-end balance sheet, income statement, and statement of changes in shareholder's equity. See SC Code Ann. §33-16-101, et seq. (1976). If the financial statements are reported on by a public accountant, the accountant's report must accompany the financial statement. See SC Code Ann. §33-16-200 (1976). Smith never received an annual statement from Vereen, the Company's treasurer, or the Company's accountant, Richard Crumpler, CPA. Gains or losses from this subchapter "S" corporation were passed through and allocated to the two shareholders, Vereen and Smith, on an equal basis, which were included in the shareholders' taxable income and gains for each tax year.

The Company's CPA, Crumpler, informed Smith in 2007 that the Company had a large profit. When Smith asked Vereen about these profits, Vereen denied that the Company had any profits in 2007, instead asserting that the Company's large expenses offset its profits, leaving no net profits. At that time, the Company had completed construction of 23 resort homes[1] in a subdivision known as "Pointe Marsh" in the Cherry Grove Section in North Myrtle Beach for Park Place, had performed extensive construction on a putt-putt golf course owned by Park Place in North Myrtle Beach, and had performed extensive renovations on office buildings owned by Parkway and Wife on Grissom Parkway in Myrtle Beach. Smith began investigating the office records in early 2007, and he concluded that Vereen, in conspiracy with the remaining Defendants, had engaged in fraudulent practices with the Company. Smith made demand upon Vereen to rectify the wrongdoings. Vereen, however, denied any wrongdoing and refused to account for his actions. Smith suspected Vereen and Park Place were engaging in improper sales practices in selling the 23 homes at Pointe Marsh owned by Park Place.

[1] The Pointe Marsh homes were sold for prices ranging from $500,000.00 to $750,000.00.

Smith thereafter initiated the present shareholder's derivative action on behalf of the Company against Vereen, Wife, Park Place, Parkway and the Vereen's in their capacities as trustees, who owned the Vereen personal residence in Murrells Inlet, SC. The residence[2] was transferred into their names as Trustees of two separate Trusts in 2007 by Vereen and Wife. Smith alleged that the Defendants conspired together to wrongfully convert the Company assets to their own use; he requested an accounting of the Company's books, records, and other items, which are contained in the pleadings. Smith served detailed discovery requests upon the Defendants, and the Defendants served joint discovery responses. The Defendants filed an Answer and Counterclaim and a Third Party Complaint against E. Smith, EES and Smith.

In the Defendants' responsive pleadings, they denied that Vereen controlled the Company's finances or that the disbursements made by Vereen were not for the complete benefit of the Company. Vereen, individually and on behalf of A&E and 29th Place, alleged that he loaned monies from his companies to Smith in the 1990's for which he was to be reimbursed by Smith. He also asserted that EES improperly billed the Company for work allegedly performed for it. Vereen also demanded an accounting. Vereen's corporation, 29th Place, filed a third-party claim against Smith based upon an old promissory note. This Court granted Smith's motion for a directed verdict as to that claim.

AVCC counterclaimed against Smith for refusing to pay Vereen and AVCC for the use of AVCC contractor's license in a condo project 10 years earlier based upon an oral agreement for a 10% commission of the price of construction. This Court dismissed this claim on Smith's motion for a directed verdict.

[2] The Vereen residence is a large house located in an exclusive neighborhood in Murrells Inlet, South Carolina.

As to the Counterclaim for Breach of Contract concerning the alleged improper use of the AVCC license by EES at Carolina Keys, I find that AVCC and Vereen failed to prove their claim by a preponderance of the evidence. Specifically, I find that Vereen and AVCC orally agreed to allow Smith and EES to use the license in return for 10% of the profits earned by Smith and EES, not the cost, and that Smith and EES lost money, and thus owed no money to Vereen and AVCC. Furthermore, I find that the oral contract is illegal and cannot be enforced in South Carolina, as a contractor is prohibited from allowing a non-licensed entity to borrow a commercial license to perform construction. See SC Code Ann. §40-11-200 (1976). Finally, I find the claim, if proper, would be barred by the three year statute of limitations, as I specifically find that Vereen authorized the use of the license and was aware of its use for over nine years prior to the institution of this action. See SC Code Ann. §15-3-530.

Throughout this trial, the Defendants AVCC, Park Place, Parkway, Wife and Vereen referred to themselves as the "Vereen Entities." The Vereen Entities denied the specific allegations of wrongdoing in responding to the Company's discovery requests. The Plaintiff employed Susan Brady, an experienced, local Certified Public Accountant, as an expert witness to determine the nature and extent of the Company's damages. The Court found her testimony most insightful.

Even though not required, the Vereen Entities did not submit any accounting testimony, not even the Company's own accountant, Richard Crumpler. Mr. Crumpler is a well-respected certified public accountant who is the senior partner at a local CPA firm. The very fact that he was not called to testify was telling, especially when he presumably prepared the Company's tax returns based upon information provided by the Company's treasurer.

Ms. Brady conducted a lengthy investigation, testified, and submitted to the Court a detailed written report (the "Brady Report") of the fraudulent or "non-corporate" actions of the

Defendants, which were documented by written evidence. For the calendar years 2004 through 2007, Brady detailed an "Analysis of Non Corporate Activity" for each year, listing each and every improper act by the Defendants that caused the Company financial harm. The evidence of each improper act was contained in numbered tabs along with supporting documentation. As the trial progressed, the Brady Reports were amended to correct any errors, concessions and additions found during late produced discovery and during the trial. Ms. Brady's accounting task was complicated by Vereen's almost complete failure to maintain separate accounting records for the Company and the various Vereen Entities and his consistent commingling of the entities' income and expenses without documentation.

At the trial's end, Ms. Brady submitted her "Amended Summary Analysis of Non-Corporate Activity of A & E Constructors and Consultants," simply referred to as the final "Brady Report." In it, Ms. Brady documented damages sustained by the Company in the amount of $2,712,503.31, directly caused by Defendants' wrongful actions. These findings were fully supported by the evidence. The Company's accounting records, consisting of the Peachtree accounting system ledger, the checking accounts and tax returns, were submitted into evidence, without objection. The Defendants' checking account records and depositions from the Vereen Entities' bookkeeper Drewett and Defendant Linda Vereen were introduced into evidence. The Plaintiff introduced copies of checks for payment for services it rendered; Vereen then deposited the checks into Defendants' accounts. By clear and convincing evidence, the Plaintiff established that the Defendants conspired to convert the Company's assets to their own use with the intent to defraud the Plaintiff as detailed in the final Brady Report. I find the final Brady Report to be credible, accurate and complete. I hereby adopt the findings of the final Brady Report as conclusive evidence of the actual damages sustained by the Plaintiff as a result of the Defendants' actions.

LEGAL ISSUES

The Plaintiff brought this derivative action pursuant to Rule 34, SCRCP, and detailed the efforts he made to resolve these issues with shareholder Vereen prior to instituting this action. I am confident that this litigation was the only avenue available in this matter. Smith was the only party that could represent the Company's interests against the alleged wrongdoers, the Defendants.

Title 33 of the SC Code of Laws defines the duties and obligations of a corporation's officers and directors. It requires a corporation's director and officer to act in good faith, with the care an ordinarily prudent person would exercise under similar circumstances, and in a manner he reasonably believes to be in the best interest of the corporation and its shareholders. See, SC Code Ann. §33-8-300 (1976). In this matter, Vereen had a conflict of interest because of the construction performed by the Company for the Vereen Entities due to the ownership interests of Vereen and Wife in the transactions. See SC Code Ann. §33-8-310 (1976).

The conflict of interest stated in 33-8-310 could be overcome only if Vereen disclosed the material facts of each construction job to Smith, who had to officially authorize, approve or ratify the transaction. See SC Code Ann. §33-8-310(a)(1). If the test's first two prongs are established ([a]disclosure of material facts and [b] authorization, approval or ratification of transaction), the transaction must still be fair to the Company. See, SC Code Ann. §33-8-310(a)(3). Vereen allowed the Company to perform substantial construction for the Defendants even where there was no written construction contract. Vereen also allowed the Company to pay the Defendants' costs and expenses without billing them. Moreover, Vereen paid the Defendants' expenses from the Company's checking account without seeking reimbursement. Since Vereen acknowledged that he did not disclose the secret nature of these wrongdoings to Smith, I did not need to determine

the fairness to Smith of these transactions. The misappropriation of a Company asset can never be fair to an unknowing shareholder.

S. C. Code Ann. §33-8-320 prohibits the Company from loaning money to a director unless strict approval requirements are met. At trial Vereen admitted that he did not disclose these wrongdoings to Smith. Of course, Smith could not approve of any of Vereen's actions of which he was unaware. A director who assents to an unlawful distribution of company funds has a duty to repay the funds under SC Code Ann. §33-8-320. As to any funds converted by or diverted to the Defendants or for their use from the Company account, I find that Vereen failed to establish that Smith approved of the unlawful transactions. Vereen directed the unlawful distributions of the Company's funds; he has a duty to repay the funds.

An officer's duty to a corporation is defined in SC Code Ann. §33-8-410, et seq. He must act in good faith and only in a manner that he reasonably believes to be in the best interest of the Corporation and its shareholders. See SC Code Ann. §33-8-420. These statutory provisions define what has always been the law in this State; the Corporation, through its officers and directors, must always act in the best interest of the Corporation. A breach of these fiduciary duties or responsibilities, whether as officer or director, imposes liability upon the breaching party for any damages sustained by the Corporation and clearly places upon the wrongdoer the burden of proof to establish consent, approval and fairness. Id.

In each contract that the Company had with the Defendants, Vereen, as the Company's treasurer and the financial manager, failed to get a written contract for the construction. He also advanced payment from the Company's account to the Defendants without authorization for construction expenses, and further, he failed to invoice or collect payments and costs from the

Defendants. When payments were made, Vereen on occasion did not deposit the collected payments in the Company account but instead placed them in accounts belonging to one of the other Defendants.

. The Defendant Vereen, in conspiracy with the Defendant Vereen Entities, breached his statutory duties to the Company in the following transactions where he had a material conflict of interest:

1. The construction of 23 homes and the renovation of a putt-putt golf course and arcade on Sea Mountain Highway for the related party, Defendant Park Place: Wife gave Vereen exclusive management and control of Park Place. The Company advanced payment for over $900,000.00 in construction expenses for these 23 homes; however, it did not have a construction contract obligating Park Place to pay the Company for the construction, and the Company did not invoice or collect payment for the expenses it advanced. Wife gave Vereen control of the banking accounts of Park Place. The balances in the Park Place banking account were sufficient to pay the Company for the expenses advanced and the costs of construction, but payment to the Company was not made.

2. The construction of a home in Plantation Lakes for the Defendant Vereen in 2004: Vereen owned a lot in the Plantation Lakes subdivision. The Company paid for the construction expenses for Vereen's new home built beginning in early 2004. Vereen did not prepare a construction contract requiring payment for the construction, and Vereen, the Company's treasurer, did not invoice or collect payment for the Company's expenses. I find that the Defendant Vereen obtained a construction loan to pay for the cost of construction but did not use the loan proceeds for that purpose.

3. The construction of improvements made on office buildings owned by the Defendants Parkway and Wife located on Robert Grissom Parkway: The Company advanced payment for construction expenses for buildings owned by Wife and Parkway but did not have a written construction contract obligating the Wife and Parkway to pay the Company for the cost of construction. Vereen, the Company's treasurer, did not invoice or collect payment for the expenses advanced by the Company.

4. The payment of construction expenses for Defendant AVCC: Vereen, as the Company's treasurer, paid construction costs and expenses for AVCC jobs from the Company account without Smith's knowledge and did not invoice or collect for the expenses advanced. Vereen billed and collected from the third parties for the AVCC charges and placed the funds in to the AVCC account or other accounts of the Defendants.

5. The payment of construction expenses for Vereen and Wife: Vereen, as the Company's treasurer, paid for construction expenses out of the Company account for his and Wife's personal home, now owned by the Trustees named as defendants. Vereen, on behalf of the Company, did not require that Vereen and Wife sign a construction contract with the Company obligating Vereen and Wife to pay for construction costs and did not invoice or collect payment for the expenses advanced by the Company. Further, Vereen did not tell Smith that the Company was paying for construction costs of the Vereens' personal home from the Company account. The Vereens received a newly-constructed house at the Company's expense without Smith's knowledge.

6. Vereen had multiple unwritten construction contracts with members of Vereen's and Wife's family, and Vereen paid for construction expenses from the Company account: The Company advanced funds to pay for construction on multiple jobs for members of Vereen and

Wife's family members. There were no written construction contracts obligating the owner to pay for the cost of construction and, on many occasions, Vereen and the Company did not invoice or collect payment for the expenses advanced by the Company.

7. Vereen entered multiple construction contracts through AVCC, which contracts were performed by the Company: AVCC entered into multiple written construction contacts when it was not licensed to perform construction in South Carolina and when the Company obtained all permits and paid for the construction costs of such projects from the Company account. Vereen did not tell Smith that he entered into the secret contracts with the customers of the Company or that he invoiced the owners in the name of AVCC. On multiple occasions, even though the payments for such construction belonged to the Company, Vereen deposited the payments into the Defendants' accounts.

8. Vereen paid for construction expenses from the Company account for improvements made to the home of Elizabeth Vereen Sisson, daughter of Vereen and Wife, who also is a Company employee: Vereen did not require the Company to have a written construction contract obligating his daughter Sisson, a South Carolina lawyer, to pay the Company for the construction on her home. The Company paid over $150,000.00 in construction expenses on her home, and Vereen, as the Company's treasurer, never invoiced Sisson for the expenses. The Plaintiff received a partial payment for the expenses on this job. A large payment from Sisson erroneously was made to Park Place rather than the Company. Vereen admitted, at trial, that over $15,000.00 in labor charges which should have been repaid to the Company for the Sisson job never were made.

9. Vereen, with the tacit assistance of the other Vereen Entities which he controlled, billed third parties for services performed by the Company; Vereen thereafter deposited the

payments from the responsible parties into various accounts of the Defendants, not the Company's account. Smith was unaware of Vereen's improper actions in these matters.

THE ACCOUNTING TRIAL

Vereen admitted at trial that he signed construction contracts in the name of AVCC in 2004, when AVCC was unlicensed, and when the Company had obtained the building permits and paid for the costs of the construction. Vereen further admitted that AVCC billed the Company's customers for these expenses, even though AVCC did not pay for the cost of construction. Moreover, Vereen admitted he did not tell Smith of these practices. Vereen's testimony was contrary to the Defendants' interrogatory responses. The Defendants' united response at trial was that the "Vereen Entities put in more money than they took out." Expert witness Brady accounted for all money the Vereen Entities deposited into the Company checking account, properly giving appropriate credit for each deposit. Brady compiled notebooks for the 2004 – 2007 calendar years, which detailed the ultra vires and improper actions of the Vereen Entities against the Company.

Pursuant to the Court's October 15, 2010 Pretrial Order, the Company's and the Defendants' business records, accounting records, tax records, checks and deposits, banking records, accounting and tax records were admitted into evidence without authentication. In the Pretrial Order, this Court required that the Defendants deliver all accounting information to the Plaintiff's attorneys to support the Defendants' claims for set-off or reimbursement by December 1, 2010. Defendants' claims allegedly occurred from 2004 to 2007. The Court's Order required that the Defendants "shall present evidence of the actual **invoice or bill** for services rendered or labor rendered and the **cancelled check** for payment made pursuant to such invoice (emphasis added)." If the Defendants did not comply by the deadline, the Order provided that "such

accounting records and information shall not be presented in the trial of the case by the Defendants."

During trial, the Court repeatedly sustained the Plaintiff's objections to the Defendants' attempts to introduce records into evidence that did not meet these requirements because they were either not produced by the deadline, or were not original invoices for goods or labor accompanied by the cancelled check of the Defendants for payment. Defendants proffered these records. From this Court's examination of the Company records, Vereen regularly sought reimbursement for expenses he paid on the Company's behalf, which were documented, charged to a job ledger on the Company's accounting system, and were immediately reimbursed to Vereen by a Company check he signed. The Company would then bill the customer for the expense incurred or add it to general overhead. The Defendants submitted invoices paid by the Defendants for improvements made on the Defendants' properties. These invoices were not proper for reimbursement, because the Company had no obligation to pay any of the Defendants' expenses on their own properties. The Defendants submitted claims for reimbursement for Company jobs performed from 2004 until 2007. The Company would not have the ability to invoice the customer or deduct the expense on its tax returns, as the request was submitted over three years after the Company had completed the last job and after the tax returns had or should have been prepared. Finally, if the Defendants did not provide the cancelled check and the invoice for the expense, the Company could not document the expense as a Company's expense or as an expense paid by the Defendant claiming the reimbursement. The Defendants attempted to mass produce claims for reimbursement or offset that were not documented appropriately and as required in the Court's Pretrial Order. As to claimed deductions for 2004 and 2005, the Company's tax returns already had been filed and could not be

amended. The Company accepted approximately $80,000.00 in credits, which are outlined in the Brady Report, which were credited against the Defendants' accounts receivable.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the testimony and other evidence presented, I make the following findings of fact and conclusions of law:

1. I find that the Plaintiff complied with the requirements of the South Carolina Rules of Civil Procedure and properly brought a derivative action against the Defendants in this action.

2. I find that the Plaintiff alleged in the verified Complaint that the Defendants conspired together to wrongfully convert Plaintiff's assets and to injure Plaintiff. The Defendants generally denied the allegations and counterclaimed against the Plaintiff Smith and his entities, EES and E. Smith.

3. The Counterclaims and Third Party Complaints: After reviewing the credibility of the testimony and evidence presented, I find that the Defendants and Third Party Plaintiffs did not meet their burden of proof by a preponderance of the evidence in establishing that Smith, EES or E. Smith owed any monies to the Defendants or to the Company that was not otherwise accounted for by Brady in her Final Report. To that extent, I find that the Defendants failed to meet their burden of proof that Smith owed Vereen or AVCC for any monies related to the construction of Smith's home in the 1990's, or that Smith owed any sums for the use of the AVCC license in the construction of the condominiums in North Myrtle Beach. Closing documents from the Smith home clearly establish payment in full at closing. As to the Counterclaim by AVCC against Smith, I specifically find that the oral agreement was for Smith and EES to pay Vereen and AVCC 10% of the profits they earned on the Carolina Keys project; Smith and EES did not earn any profits. Accordingly, Smith and EES owed nothing to Vereen and AVCC for the Carolina Keys project.

Moreover, even if there had been profits, I find that an agreement to use the AVCC license is an illegal contract that is unenforceable in Court. See SC Code Ann. §40-11-200 (1976).

As to 1990 debts allegedly due from Smith to the Vereen entities, I find that these debts were either discharged in Bankruptcy or are time barred under the Statute of Limitations. See SC Code Ann. §15-3-530(1). Furthermore, I find as a matter of fact that there was no agreement or discussion at the time this Company was formed for Smith to pay Vereen or the Defendants monies due from the past.

Further, I find that the Defendants failed to meet their burden of proof that Smith, EES or E. Smith misappropriated any corporate assets of the Company that was not accounted for by Brady in her Report. Specifically, I find that the Defendants and Third Party Plaintiffs failed to prove, by a preponderance of the evidence, that Smith or EES submitted any invoice for payment to the Company that was not properly reviewed and paid by Vereen, who approved and signed all Company checks. I find that the Defendants and Third Party Plaintiffs failed to establish that Smith, EES, or E. Smith used corporate assets for their own personal benefit, such as flooring and tile, other than the floor covering that was accounted for, admitted, and contained in the Report of Brady.

As to the claims contained in Paragraph 32 of the Counterclaim, the Court dismissed items 32 (a)(b)(c)(d)(l)(m)(o) and (p) on motion for directed verdict. I specifically find that Smith informed Vereen of the use of the Company license for items (a) through (k), which were instances where the Company license was used with permission of Smith and Vereen, and no monies were paid to the parties and no expense paid by the Company. Vereen produced no evidence of damages sustained by the Company for these actions. As to (l) to (p), I find that the Company's license was

not used and no Company funds were advanced for construction. The Counterclaims are thus dismissed.

I find that the Defendant E. Smith did enter into a construction contract with Martin Brown for the construction of the Condolux Office building in late 2007, after Smith left the Company. However, I find that Vereen had previously rejected the construction proposal as not being profitable. I find that E. Smith did in fact use the Company's construction license to perform the work; however, E. Smith obtained liability insurance for the job and paid each and every expense from its separate funds. I find that the Company has not suffered any damages as the result of Smith's actions and that Smith was the qualifying party with the Contractors Licensing Board for the Company. Smith had already left the Company at the time construction began, when he was receiving 14 weeks of paid leave for unused vacation time. I find that Vereen was aware of Smith's actions and made no complaint against him until this lawsuit was initiated.

4. I find that Vereen and Smith agreed that each could engage in outside construction activities to earn additional income, but any such activities would be at their own expense and in their separate time. Smith engaged in outside activities that did not involve Vereen or the Company, which were done on his own free time and expense. Smith's complaints against the Defendants involved transactions where the Company was performing and paying for construction services and yet, payment from third parties for its services was being made, via Vereen, to Vereen's companies. Smith's activities in performing labor on an hourly basis on his free time caused no legal or financial harm to the Company.

5. I expressly adopt the findings and conclusions contained in the Brady Report, which reflect the actual losses sustained by the Company in transactions between the Company and the Vereen Entities and for other non-corporate actions by Vereen. The Brady Report is detailed and

is supported by clear and convincing evidence. Due to the complexity and the material wrongdoings in several transactions, I make the following additional factual findings of the Defendants' misconduct, resulting in the Company's material damages:

(a) The Plantation Lakes home: In early 2004, Vereen employed the Company to build a residential home on his property in Plantation Lakes near Myrtle Beach. Vereen paid, by Company check, Plantation Lakes construction job expenses in the amount of $132,574.94, which are detailed in the Company job ledger and in the Brady Report. However, Vereen simultaneously had obtained a construction loan from Horry County State Bank to pay for the construction costs which was secured by a first mortgage loan upon the property. In addition to the basic construction job expenses, the Company incurred payroll costs for workers compensation, social security and payroll expense, liability insurance, office overhead, and salaried employees on the Plantation Lakes residence. Smith knew the Company was performing the job, but he was unaware that Vereen was not paying the Company for the construction costs from the Horry County State Bank construction loan.

Vereen sold the house to the Whitleys for an amount that exceeded the balance of the construction mortgage by $102,000.00. On the date of the 2005 real estate closing, Vereen executed a deed into the Company for a stated consideration of "$5.00 and assumption of mortgage" without Smith's knowledge or consent. The Company, by Vereen's signature, then transferred the property on that same day to the Whitleys for the stated purchase price. The HUD closing statement, signed by Vereen for the Company, reflected that Vereen's personal construction mortgage in the amount of $281,000.00 was paid by the closing agent, and the Company received the net proceeds from the sale of $102,480.96. When the Company's 2005 state and federal tax returns were prepared and filed by Vereen's CPA, the $102,480.96 check to the

Company was classified on the Company's books and tax returns as a "loan" from Vereen to the Company. Vereen did not report the income received on his and Wife's tax returns. As a result of these actions, the Company was not repaid the $132,574.94 it had advanced in construction costs, nor the payroll, overhead and profit expected for the construction of the house. Vereen admitted that he did not tell Smith of the same-day transfers, the advances made by the Company for construction expenses, the lack of billing or payment, and the tax treatment given to the transaction on the 2005 tax returns. Vereen offered no explanation for his actions.

Vereen testified that he may have done some "quirky things", but in the end, the Vereen Entities "put more money in than they collectively took out." Smith learned about the transaction when his attorney searched the public records of Horry County. As a result, the Company was defrauded of all the paid construction expenses, plus the indirect costs and expenses, including profit. When the Company later billed the Whitleys for additions they requested after purchase, Vereen deposited their check for payment made to the Company into the account of Defendant Park Place, instead of depositing it into the Company's account. The Brady Report details the losses sustained by the Company, including overhead, profit and expense. Vereen explained that he transferred the home to the Company because it was a "Company" venture, yet he failed to explain why his business partner had no knowledge of the transaction, and why the only revenues received from the sale were treated as a loan from Vereen to the Company.

(b) Willoughby Place: I find that Vereen had a conflict of interest with the Willoughby Place construction job, which was a $4,000,000.00 multi-family construction job performed by the Company from 2004 through 2006. The Company obtained all construction permits from the City of Myrtle Beach, and a construction loan was obtained by the Developer, Willoughby Family Investments, LLC, to pay the costs of construction. The Defendants never produced a copy of the

written construction contract between the Company and the Developer Willoughby Family Investments, LLC, but Defendants' Interrogatory responses stated that this was a job performed by the Company for Defendant AVCC. I find that such an agreement is improper in South Carolina, as AVCC had no construction license at that time and thus could not subcontract the job to a licensed entity. See SC Code Ann. §40-11-200 and §40-11-330 (1976). AVCC submitted multiple construction draw requests from AVCC, from AVCC d/b/a A & E, and from the Company. Vereen then deposited the construction draw payments into the Defendants' accounts.

I find that Willoughby checks totaling $113,480.00 were deposited into the AVCC account. Although the Defendants denied these actions in their pleadings and discovery responses, Vereen admitted at trial that the invoices came from the Defendant AVCC and that he deposited the payments into accounts other than the Company's account. I find that bills for "extras" to Willoughby were billed in the Company's name, and Vereen deposited the payments into Park Place's account. When the Company was sued for copyright infringement over the plans for this project, the Company paid for a portion of the defense and settlement expenses, but mysteriously the Company's "construction contract" could not be located. I find that the Defendants failed to produce a full accounting of these expenses, payments and reimbursements from the insurance carrier and the project's owner. The Brady Report details each misappropriated deposit and the invoices, third party checks and the deposit tickets to the Defendants, which were admitted into evidence. I find that the Defendant Vereen, AVCC, Park Place, and Parkway conspired together to defraud the Plaintiff by billing these charges improperly and in depositing the payment into their accounts.

(c) Dr. Lale job: I find that Vereen had a conflict of interest in the Dr. Lale remodel job. The job was contracted and permitted in the name of the Company on January 30, 2004. The

Company paid the costs and expenses of the job. According to the Defendants' discovery responses, this job was "performed by the Company for AVCC," but AVCC billed Dr. Lale rather than the Company. Vereen then deposited the Lale payments into accounts other than the Company's account. It is illegal in South Carolina for an unlicensed contractor to subcontract with a licensed contractor to perform construction services. See SC Code Ann. §40-11-200 and §40-11-330 (1976). The misappropriations are documented in the Brady Report, as part of the Company's actual damages. I find that Vereen and AVCC conspired to defraud Smith and the Company by billing charges improperly and by then failing to deposit payments received into the Company account. I find that AVCC was not licensed to perform this work, could not subcontract the job to the Plaintiff because it was not licensed, and did not pay for the construction costs. I furthermore find that Vereen failed to disclose these matters to Smith.

(d) Parkway Offices and Wife: I find that Vereen had a conflict of interest in the Company's job performed on Grissom Boulevard for Wife and Parkway Offices. Wife requested that the Company perform the construction contract on a "cost only" basis. I find that Wife and Parkway did not execute a written contract with the Company for the construction. Moreover, the Company did not bill for the services rendered, and Wife and Parkway did not pay for any of the construction at the office location. I find that Vereen wrote checks from the Company's account totaling $107,000.00 for construction costs but never billed Wife and Parkway for such expenses. I find that Vereen admitted he had no discussion with Smith about the job being a "cost only" job or that the Company had not been paid for the construction expenses. Again, the Defendants' explanation was that "the Vereen Entities put more money in than they took out." Each expense listed on the job ledger was paid by a Company check signed by Vereen and assigned to the Parkway Offices job ledger. I find that the Brady Report correctly detailed the Company's losses,

including overhead and profit, due to Wife and Parkway's failure to pay for any of the construction. I find that Vereen, Wife, and Parkway conspired together to defraud the Company..

(e) The Park Place Putt-Putt job: I find that Vereen had a conflict of interest in the Company's construction job performed at the Black Pearl Putt-Putt Golf Course, owned by the Defendant Park Place. Wife owns a 95% interest in Park Place and Vereen the other 5% interest. Vereen managed Park Place, making all decisions for the Company. I find that the Plaintiff established that it paid over $114,290.72 in actual labor and expenses for this job from the Company account, but there was no written construction contract, no invoicing, and no payment for the costs of construction. Defendants asserted that this was a "cost only" job. The expenses were established from the Company job ledger, and Vereen wrote each check from the Company account reflected on the ledger. I find that the Brady Report outlines the losses sustained by the Company caused by the Defendant's failure to pay for this construction, including overhead and profit. I find that although the Defendants challenged the charges maintained on the Plaintiff's accounting records attributed to "shop," the items paid and attributed to the "shop" were not included in this job ledger and were not expensed to the Defendants. I find the Defendants' explanations to be unbelievable and contrary to the documented written evidence. I find that Vereen admitted that he did not tell Smith that there was no written contract for construction, that the Company had not paid for the construction costs, and that the Defendants were not invoiced and did not pay for the construction. I find as a matter of fact that Wife authorized the actions of her husband. Moreover, she and Park Place received the benefit of substantial improvements without payment.

(f) The 23 homes constructed for Park Place: I find that the Defendants had a conflict of interest in the 23 homes that the Company constructed for Park Place at Pointe Marsh, located

on Sea Mountain Highway in North Myrtle Beach. The Company performed these construction jobs, permitted in their name, over a two year period without any written construction contracts on a "cost only" basis." I find that Vereen signed $973,875.47 in Company checks for labor and materials for the 23 homes, and yet, the Company never billed Park Place for any services rendered or materials used. I find that Vereen, on behalf of Park Place, deposited checks he had signed in to the Company account, which were accounted for by the Company in the Brady Report. I find that when the Park Place project was completed, Park Place owed the Company $496,039.57 for the Company's construction costs (with no overhead or profit charged or paid). The Defendant Park Place procured 15 construction loans, which could have provided funds to pay the intended purpose of the loan, construction costs of the houses. Instead, Park Place neglected to use the loan funds for their intended purpose. I find that the Brady Report details the amounts due for labor and materials paid for by the Company, with added costs for payroll, overhead, insurance and expected profit. I find that the Defendants Vereen and Wife, the owners of Park Place, offered no excuse or logical explanation for their actions. I find that the accounting records of Park Place reflected a profit exceeding $6,000,000.00 on the sale of the homes, after payment of construction costs. I find that Vereen admitted that he did not tell Smith that he was paying the construction expenses from the Company account, that he was not invoicing for such charges, and that the defendants did not pay the Company for the construction. I find that in her report, Brady properly computed the payroll, insurance, overhead and expected profit for these jobs, which I expressly adopt as being calculated based upon established standards in the industry. I find that Wife authorized the actions of Park Place and Vereen. I furthermore find that the Brady Report also correctly charged the Defendants with specific checks written out of the Company account to pay interest on the Park Place Development loan.

(g) The Sisson Remodel: I find that Defendant Vereen had a conflict of interest in the Elizabeth Vereen Sisson construction job performed by the Company. Sisson is the daughter of the Wife and Vereen. Sisson, a licensed attorney, was employed by the Company. I find that Vereen signed over $150,000.00 in Company checks to pay for labor and material on the Sisson residence. I also find that that there was no written construction contract or evidence of billing on the Sisson job. According to the Defendants, the Company permitted the Sisson job in 2007 and finished it in early 2008. The Sisson job was "cost only", with no construction contract and no billings. I find that the Defendants failed to explain why the Company advanced any money to pay Sisson's construction expenses. I find that Sisson paid the last payment of $35,803.10 (of the advanced expenses) by a check written to Park Place rather than the Company, which paid for the expenses. I find that the Company did not receive any payment for payroll expenses, insurance, overhead or profit. I find that Vereen admitted that the Company paid an additional $15,000.00 in labor expense to its master carpenter for his work at the Sisson house, which was not charged to the Sisson job ledger in the Company records. I find that the Brady Report outlines the Company's losses sustained because of these unauthorized expenditures from the Company account, together with the overhead and expected profit on this job. The Brady Report gives credit for all of Sisson's payments finally that were deposited in the Company account. Neither the Defendants nor Sisson gave any explanation for their actions.

(h) The Kemp Job: I find that the Defendant Vereen had a conflict of interest in the Company's job performed for Mr. Kemp, a job the Company permitted in 2004. The construction contract was signed in the name of AVCC on January 31, 2004, when AVCC did not have a contractor's license. I find that the Company paid for the Kemp expenses from the Company

account. I find that the Brady Report correctly reports the Company's losses because of its expenditures, and Kemp's payments made which were not deposited in the Company account.

(i) I find that the Defendant Vereen had a conflict of interest when he paid himself "supervisor fees" of $103,760.68 in 2004 and $27,121.62 in 2005 from the Company checking account. I find that these payments were unauthorized payments to Vereen, and that these payments were not reported as W-2 income to Vereen on the Company's 2004 and 2005 state and federal tax returns. Vereen made sure that Smith was not notified of these payments.

(j) I find that in 2004, Vereen took $21,320.15 from the Company account at Carolina First Bank to purchase a cashier's check payable to the Horry County Treasurer to pay his and Wife's real property taxes. This payment is correctly reflected on the Brady report. I find that Vereen and Wife offered no explanation for this payment.

(k) I find that Vereen paid $17,385.27 in expenses related to AVCC's Seven Oaks construction project from the Company checking account. This job was not a job of the Company, and Vereen and AVCC never repaid the funds. I find that these expenses are correctly reflected in the Brady report.

(l) I find that Vereen paid monthly rent from the Company checking account for a storage unit from Paul Thomas, where Vereen stored his personal vehicle and other personal items for many years. Vereen previously paid this expense from the AVCC account. I find that the use of the rental was personal to Vereen and was unauthorized. The amount of such expense is detailed in the Brady Report.

(m) I find that Vereen paid for the construction costs on a two car garage on a house partially owned by Vereen and Wife in the Bahamas and for repairs on their Gamecock football stadium "caboose" from the Company account. Although Vereen initially rationalized that the

Bahamas expenses were for a Company "sponsored" vacation, he subsequently conceded that the expenses were personal. The amount of such expenses is correctly detailed in the Brady report.

(n) I find that Vereen paid for personal insurance by check or pre-authorized draft from the Company account each month. Vereen admitted that these expenses were personal and improper. The amount of such expenses is detailed in the Brady Report. [3]

(o) I find that Vereen incurred monthly charges on multiple credit cards and paid for such expenses from the Company checking account. I find that the Company does not have any credit cards of its own, and these expenses were not Company expenses. For example, Vereen paid his daughter's gasoline charges on a Shell credit card from the Company account. The amount of such expenses is detailed in the Brady Report.

(p) I find that Vereen paid monthly dry cleaning bills for four years from the Company account for his family's personal dry cleaning. When confronted with this issue, Vereen admitted these expenses were personal. The amount of such expenses, annually, is detailed in the Brady Report.

(q) I find that Vereen deposited a $15,000 check from the Tahitian Princess job, a Company job, not into the Company account, but instead, into AVCC's account. This $15,000 deposit is included in the Brady report.

(r) I find that Vereen paid his personal monthly 29th Place HOA dues from the Company checking account. The Company does not own any real property at 29th Place. Vereen admitted that this was a personal expense. The amount of such expenses is detailed in the Brady Report.

[3] In her Final Report, Brady corrected an error in the amount of the charges.

(s) I find that Vereen paid the monthly cell phone bill for a third party from the Company account. The account was for one of Vereen's friends, not a Company employee. Vereen alleged that the Company paid the phone expense of Seth Smith, as a defense. However, the Company paid Seth Smith's cell phone charges while he was employed there. The Company's payment of Vereen's friend's cell phone charges was improper. I find that the Brady report correctly details these improper expenses.

(t) I furthermore find that from the Company account, Vereen paid for the labor and materials for the construction of his and Wife's house. These expenses are detailed in a Company job ledger. Vereen did not notify Smith of this important matter. I find that these payments were improper advances to Vereen and Wife that were never billed to or paid by the Company. I find that the amount of such expenses is detailed in the Brady Report.

(u) I find that Vereen paid for a $9,045 City of North Myrtle Beach construction permit for the Park Place job from the Company account. This expenditure was not included in the Park Place job ledger maintained by the Company and was never charged to the Park Place account on the Company's job ledger. This unauthorized payment is correctly detailed in the Brady Report.

(v) I find that Vereen used the Company's lull and skid for several years while the Company was constructing 23 homes for Park Place. At the same time, the Company had to rent a comparable lull and skid to use on its multi-family jobs. I find that Vereen did not list this expense on the Park Place job ledger maintained by the Company. I find that the Company established the costs that the Company paid for rental of a similar lull and skid, which were calculated and shown as the Defendants' account receivable on the Brady Report. I find Vereen and Park Place utilized the Company's equipment with full knowledge that the Company had to rent comparable equipment for its other jobs.

(w) In 2006, Vereen paid a $5,000 "commission" to his daughter, Elizabeth Vereen Sisson, from the Company checking account. Smith did not authorize this payment as this was a conflict of interest transaction. This payment was to an employee, not a shareholder, and was not reported as W-2 income to Sisson on the Company's income tax return. The amount is shown as an account receivable from Vereen on the Brady report.

(x) I further find that Vereen paid from the Company account the sum of $22,049.48 to Stock Builders for an invoice for materials delivered to the Park Place construction site, which was not charged to that job on the Company job ledger. Vereen reluctantly admitted that it was an expense that he and Park Place owed. The amount is shown on the Brady report as the Defendants' expense.

(y) I find that Vereen paid from the Company account multiple checks to Hartford Insurance and Companion Property & Casualty for insurance for property not owned by the Company. Such improper expenses are delineated on the Brady report.

(z) I find that Vereen improperly paid the expenses for his and Wife's vehicles by Company check. The Company did not own these vehicles, and it was improper for the Company to pay for their expenses. These expenses are shown on the Brady Report.

(aa) I find that Vereen claimed $208,577.66 in "construction in progress" expenses that he alleged were advances by AVCC to the Company in 2006, but for which he produced no backup as is required by the Court's Pre-trial Order and the Internal Revenue Service regulations. Vereen's daughter, Sisson, gave the list of these expenses to the Company's accountant with no documentation to support the claimed expense. I find that the Defendants failed to submit proper documentation to support these claims for reimbursement or offset, as required by the Order, and

I have disallowed these expenses as credits or offsets against the balances due by the Defendants. The amounts disallowed are shown as an accounts receivable on the Brady Report.

(bb) I find that Vereen improperly advanced Company funds to pay for his family members' construction expenses, which were not invoiced by the Company to such persons and were not paid. These expenses are shown on the Brady Report as unauthorized advances made by Vereen to third parties related to Vereen and Wife.

(cc) I find that all construction work performed for the Defendants Park Place, AVCC, Parkway Offices, Vereen, Wife and other "family" members, were, unlike other jobs, not based upon written construction contracts that obligated the owner to pay the Company for the services rendered. I find that although Vereen had a job ledger created at the Company for these jobs, Vereen paid the expenses of these jobs from the Company account but never billed for the labor and materials paid for and provided, the additional payroll expense, the cost of labor provided by salaried employees, the cost of liability insurance and the expected overhead and profit of 15%. Although Vereen initially claimed that these jobs were for "cost" only, on many occasions no payment was received at all. I find that Vereen conceded at trial that these entities should have paid the payroll expenses, liability insurance and expected overhead and profit of 15%. I find that Brady properly calculated the actual payroll costs by multiplying the actual payroll by 140% to determine the actual payroll costs to the Company, which included worker's compensation, FICA and Medicare match, and state and federal unemployment. I find that Brady properly calculated the cost of liability insurance ~~cost~~ at 2% of the costs of construction, and that overhead and profit were properly calculated at 15% of the cost of construction, which was used to determine the amount that should have been paid by the Defendants on each job. I find as a matter of fact that the calculations performed by Brady are reasonably calculated to provide what the Company

should have charged and collected for each and every job performed for the Defendants or their family members, with the exception of the Vereen personal home. The amounts and the method of calculation are contained in the Brady Report.

(dd) I find that an audit was completed of the Company's 2007 worker's compensation policy, which resulted in a refund check payable to the Company of approximately $49,000.00. I find that Vereen endorsed the check and deposited the check into the Park Place checking account, rather than the Company account. The amount of the check is included in the Brady Report.

6. Vereen, as the controlling Member, Managing Member, or President of each of the Defendant entities, treated the Defendants and the Company as if they were one large one entity, ignoring the corporate formalities required by law, and ignoring the requirements of the Internal Revenue Service concerning reporting of income and benefits paid by the Company to these Defendants. I find that checks payable to the Company were endorsed and paid by Vereen into Park Place, AVCC, Parkway and the Vereens' personal accounts. The Company, via Vereen, advanced funds from its account for construction expenses for Parkway, Park Place, AVCC, Vereen's family members and for Vereen and Wife without invoice or repayment. The Company paid for expenses of Park Place, Parkway, AVCC, Wife and Vereen unrelated to construction. Vereen took Company deposits and placed them into banking accounts of Park Place, Parkway, AVCC and Vereen. Vereen billed for services rendered by the Company in the name of AVCC and deposited the monies in other accounts which he controlled. The Company paid for the costs of constructing a two car garage in the Bahamas on a home partially owned by the Defendants Vereen and for repairs on a University of South Carolina "cockaboose" at the football stadium. Vereen received construction loan disbursements for the Company's construction expenses; he deposited the money into the Defendants' accounts rather than into the Company account. The

common denominator in each transaction is that Vereen personally controlled the financial and legal affairs of each entity and solely made all its decisions. Wife authorized Vereen to act for the entities she owned. When asked about her involvement in Park Place's transactions, Wife stated she had not read the Complaint and didn't know why she was sued. Her professions of ignorance are unconvincing. She either knew or should have known of her husband's misappropriations. In any event, Wife has clearly received the benefit of her husband's actions and has testified that they were authorized.

7. I find, for all accounting purposes in this case, that the Company ceased to perform business on December 31, 2007, and that expert Brady properly disregarded all financial transactions after that date, with the exception of accounts receivable and payments made for warranty work. According to the testimony presented, I find that the only job remaining at the Company after December 2007 was the Elizabeth Vereen Sisson job. According to Bookkeeper Drewitt, the Company had no jobs after 2007.

I find that the Defendants shall not be allowed any credit or offsets for checks of Park Place deposited into the Company account after 2007. From these deposits, Vereen issued checks from the Company account to pay himself, Sisson, and Drewitt, who were then employed by Grand Strand Builders, LLC. Grand Strand Builders, LLC is a licensed construction company owned by Vereen's daughter and son in law. I find that all expenses paid from the Company account after December 31, 2007 were expenses of Grand Strand Builders, LLC, where Vereen is the licensed builder. Beginning in 2008, Vereen and Sisson permitted new jobs in the name of Grand Strand Builders, and the telephone was answered as Grand Strand Builders. I find that the Defendants submitted fraudulent claims for reimbursement to the Court for these expenses advanced by Park Place to the Company. I have examined the checking account records of Grand Strand and Park

Place. I find that construction disbursements and payments for Grand Strand Builders permitted jobs after February 2008 were deposited by Vereen into the Park Place checking account rather than the Grand Strand Builder's account or the account of the Company; however, Park Place was not the developer or owner of these properties. Sisson testified she spent 80% of her time defending this civil action while she worked for, and acted as President of, Grand Strand Builders. Had the records of the Company been kept as they should have instead of being commingled with the Defendants' records, they would not have taken numerous hours to untangle. That is no one's fault but Vereen's fault. I find that the Brady Report properly disregarded advances by Park Place to the Company.

8. Based upon the evidence presented, I find, by clear and convincing evidence, that Park Place, Parkway Offices, AVCC, Arthur Wayne Vereen and Linda C. Vereen, individually and as Trustees, conspired together to convert the assets of the Company to their own benefit. The act of one was the act of the other, and each Defendant shared in the ill-gotten gains. The Defendants together conspired to commit accounting fraud upon the Plaintiff, and commingled funds without regard to ownership or the taxation of such funds to the recipient. I find that most of the ill-gotten gains went to Defendant Park Place, which is owned 95% by Wife. The funds were used to pay Wife a large weekly salary, even though she admitted she did not work for that Company; to construct the Vereen and Wife's personal house; and to pay Wife and Vereen's other personal expenses. Wife worked several years for the Defendants' accountants in Myrtle Beach and taught business courses at Coastal Carolina University for many years. I find that Wife is well educated in business affairs and should have been cognizant of her husband's (mis)management of the companies she owned. I find that according to the Park Place accounting records, Park Place earned over $6,000,000.00 in profits after allowing for payment of construction costs for the 23

Park Place houses the Company constructed. The Defendants had the capacity to make full payment for these construction costs, but instead, sold each of these houses at a substantial profit without paying for the costs of construction.

9. I find that the Company incurred accounting expenses in the amount of $142,268.00 from expert witness Susan Brady, CPA, to uncover and detail the Defendants' improper actions. I find that the Plaintiff shall be entitled to recover, as part of his damages, the Company's expenses incurred for the employment of Susan Brady. I furthermore find that the Defendants shall be responsible for the payment of any and all fines and penalties incurred by the Company in correcting and preparing state and federal income tax returns for the Company.

10. The Plaintiff has requested that the Court disregard the corporate formalities and differences between the defendants and award its judgment against the Defendants jointly and severally, as each Defendant is the alter ego of the others. Such "piercing of the corporate veil" is allowed when the Defendants do not separate their business, personal and corporate identities and act without regard to their separate identities. Mid-South Mgt. Co. v. Sherwood Development Corp., 374 S.C. 588, 597; 649 S.E.2d 135, 140. (S.C. App. 2007). The "alter ego" theory examines the relationship between the Defendant entities and their owners. An alter ego theory requires a showing of total domination and control of one entity by another and inequitable consequences caused thereby. Id. at 603. In this case, Vereen managed and controlled AVCC, Park Place, and Parkway and expended corporate assets for each without regard for the legal rights of the Company and its other owner, Smith. Wife authorized the actions of Vereen. The corporate theft benefited Wife because the majority of the misappropriated assets and monies went to Park Place and Parkway, which she owned. Vereen controlled all of the improper actions and Wife benefited from each and every improper transaction. The Company paid for construction loan interest incurred by

Park Place and for construction expenses at Pointe Marsh and at the putt-putt, which are owned by Park Place. The Company paid for the renovation of Wife's and Parkway's buildings and for home construction costs. I find that from the improper gains, Vereen and Wife built their home in Murrells Inlet. The Defendants referred to themselves as the "Vereen Entities" in the presentation of their defense and in their claims for reimbursement from the Company, lending credence to the amalgamation of identities theory. I find that each Defendant was the alter ego of the other. I find that for all practical purposes, Vereen controlled AVCC, Park Place, Parkway and Wife, with the express permission of Wife.

The first part of the two prong test for piercing the veil involves an eight factor analysis of the shareholder's relationship to the corporate entities, or here, the corporation AVCC, and the limited liability companies Park Place and Parkway, as discussed in Sturkie v. Sifly, 280 S.C. 453, 313 S.E.2d 316 (Ct. App. 1984). These eight factors look to: (1) observance of the corporate formalities by the dominant shareholders; (2) the capitalization of the companies; (3) the failure to observe corporate formalities; (4) the non-payment of dividends; (5) the siphoning of funds of the corporation(s) by the dominant shareholder; (6) the non-functioning of other officers or directors; (7) absence of corporate records; and (8) whether the corporation(s) were merely a façade for the operations of the dominant shareholder; Multimedia Publishing of S.C., Inc. v. Mullins, 314 S.C. 551, 431 S.E.2d 569 (1993); University Medical Associates of S.C. v. UnumProvident Corp., 335 F. Supp. 2d 702, 707 (D.S.C. 2004).

The conclusion to disregard the corporate entity must involve a number of the eight factors, but need not involve them all. Dumas v. InfoSafe Corporation, 320 S.C. 188, 192, 463 S.E.2d 641, 644 (Ct.App. 1995). In the case at hand, the Defendants failed to follow corporate formalities; there was a non-functioning of other officers or other directors in the Defendant entities; there was

siphoning of funds from the Plaintiff to the Defendant entities by the dominant shareholder; there were no payment of dividends to shareholder Smith, when there were clearly funds available to pay dividends; the Defendant corporate entities were merely a façade for the operations of the dominant shareholder Vereen; a dominant officer, manager or family member (Vereen) controlled the Plaintiff and Defendant entities; there is an absence of corporate records supporting the improper actions of the Defendants; and the acts of the Defendants' entities were merely a façade for the operations of Vereen in his multiple capacities. Vereen's acts were the acts of each of the Defendants. Dewitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co., 540 F.2d 682 (4th Cir. 1976). Once it is established that the requirements of the first prong are met, the second prong of the test requires that "there be an element of injustice or fundamental unfairness if the acts of the corporation be not regarded as the acts of other parties." See Sturkie, 280 S.C. at 458. When the notion of legal entity is used to protect fraud, justify wrong, or defeat public policy, the law will regard the corporation as an association of persons. Here, the Defendant Vereen siphoned all of the assets of the Plaintiff to the Defendant entities that he solely controlled, making the Plaintiff insolvent. When Vereen siphoned all of the assets of the Plaintiff, he prevented the Plaintiff from paying or being able to pay dividends, meeting the requirements of both prongs of the test. When the unfairness consists of misappropriation of assets, the second prong of the test is almost always met, and may be proved or established by showing the Defendants' reckless disregard for the rights of the Plaintiff. See Multimedia, 314 S.C. at 555, 431 S.E.2d at 572. Vereen's siphoning of over $2,000,000.00 of the Plaintiff's earnings to the Defendants is the major factor in meeting both the first and second prongs of the test. Hunting v. Elders, 359 S.C. 217, 597 S.E.2d. 803 (Ct.App. 2004). I am confident that Vereen and Wife were aware of the actions taken against the Company, their responsibility for such actions, and the self-serving actions of the Defendants in regards to

PAGE 37 OMITTED

sum of $ 138,396.78. The interest is based upon the amount of misappropriated assets as determined by Brady in the final Brady Report minus the total due from Ellis E. Smith as contained in the final Brady Report. See QHG of Lake City, Inc. v. McCutcheon, 360 S.C. 196, 600 S.E.2d 105 (Ct. App. 2004) and S. C. Code Ann. §34-31-20(A). The law allows prejudgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable and the sum is certain or cable of being reduced to certainty. Babb v. Rothrock, 310 S.C. 350, 353, 426 S.E.2d 789, 791 (1993). The fact that the sum due is disputed does not render the claim unliquidated for purposes of an award of prejudgment interest. Id. The Court has the discretion to award prejudgment interest in an action to recover under the theory of quantum merit, to make the Plaintiff whole. Id.; Boykin Contracting, Inc. v. Kirby, (Opinion No. 5133, Ct. App. 5/15/13). I have awarded prejudgment interest from the date the Plaintiff complaint in this matter, the date payment was demanded. Prejudgment interest was demanded in Paragraph 18 of the Complaint and has been awarded in conversion cases. Dixie Bell v. Redd, 656 S.C. 765, 768, 376 S.C. 361, 363 (Ct. App. 2007). As a general rule, the measure of damages in a case for conversion of property is the value of the property taken with interest thereon. Industrial Welding Supplies, Inc. v. Atlas Vending Co., Inc., 276 S.C. 196, 277 S.E.2d 196. (S.C.1981); Mack v. Riley, 282 S.C. 100, 316 S.E.2d 731 (S.C.App. 1984). Otherwise, the Defendants would be rewarded with free use of the Plaintiff's funds.

(b) It is therefore Ordered, Adjudged and Decreed that the Plaintiff A & E Constructors and Consultants, Inc. shall have judgment for actual damages against the Defendants Arthur Wayne Vereen, individually and as Trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, individually, and as Trustee of the Linda C. Vereen Residence Trust, Arthur Vereen Construction Company, Inc., Park Place Properties of Myrtle Beach, LLC and Parkway Offices,

LLC, jointly and severally, in the amount of Two Million Five Hundred Eight Thousand One Hundred Twenty Five and 90/100 ($2,588,125.90) in actual damages; for prejudgment interest at the annual rate of 8.75% from January 23, 2009 to March 23, 2015 in the amount of $ 138,396.78, as outlined in (a) above; for the additional sums of $142,268.00 in accounting expenses; together with punitive damages, as described below, together with the costs of this action, including the Court Reporter fees incurred. This amount reflects the balance due from the Defendants on the September 4, 2012 Brady Final Report, minus a credit in the amount of $124,377.41 for benefits received by shareholder Ellis E. Smith. I hereby adopt the findings of the Final Brady Report as the findings of the Court concerning the monies Defendants misappropriated from the Plaintiff herein.

PUNITIVE DAMAGES

The Plaintiffs have requested punitive damages from the Defendants. "Punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future." Mellen v. Lane, 377 S.C. 261, 290; 659 S.E.2d 236, 251 (Ct. App. 2008) (citing Clark v. Cantrell, 339 S.C. 369, 378-379, 529 S.E.2d 528, 533 (2000)). "They serve to vindicate a private right by requiring the wrongdoers to pay money to the injured party." Id. Punitive damages are recoverable in conversion cases if the defendant's acts are "willful, reckless, and/or committed with conscious indifference to the rights of others." Oxford Finance Companies, Inc. v. Burgess, 303 S.C. 534, 402 S.E.2d 480 (1991) (citing Hunt v. Jordan, 286 S.C. 340, 333 S.E.2d 569 (Ct.App.1985)). "In any civil action where punitive damages are claimed, the plaintiff has the burden of proving such damages by clear and convincing evidence." Mellen, supra, (quoting S.C. Code Ann. §15-33-135 (Supp. 2003)).

The following factors are relevant when considering punitive damages: "(1) the defendants degree of culpability; (2) duration of the conduct; (3) defendants awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonable related to the harm likely to result from such conduct; (7) defendants ability to pay; and finally (8) other factors as noted in Haslip, and other factors 'deemed appropriate." Gamble vs. Stevenson, 305 S.C. 104, 111-112, 406 S.E.2d 350, 354 (1991); Pacific Mutual Life Insurance Co. v. Haslip, 499 U.S. 1, 111 S. Ct. 1032 (1991). The trial court is not required to make findings of fact for each factor to uphold a punitive damage award. Welch v. Epstein, 342 S.C. 279, 306, 536 S.E.2d 408, 422 (Ct. App. 2000).

Here, I find that punitive damages are warranted because of the deliberate, willful misconduct of the Defendants. Vereen owed a fiduciary duty to the Company as its treasurer, board member and exclusive manager of its checking account. Vereen repeatedly converted assets of the Company to his own personal use and to the use of the named Defendants which he exclusively controlled. The Defendants failed to report any of the converted income on tax filings. What is most disturbing is that when confronted with proof of the misconduct, the Defendants refused to accept the responsibility for their collective misconduct and engaged in a four week trial where the proof of misconduct was all but absolute.

It is therefore ordered that Plaintiffs shall be granted punitive damages against the Defendants Arthur Wayne Vereen, Linda C. Vereen, individually and as Trustees, Arthur Vereen Construction Company, Inc., Parkway Offices, LLC and Park Place Properties in the amount of $100,000.00.

The parties both pled that the Company should be dissolved, and I have no dispute with that. However, there was no proof or argument presented concerning how that should be accomplished. Accordingly, I leave that for another day.

CONCLUSION

It is therefore **Ordered, Adjudged and Decreed** that the Plaintiff A & E Constructors and Consultants, Inc. be granted:

(1) Judgment against the Defendants Arthur Wayne Vereen, individually and as Trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, individually and as Trustee of the Linda C. Vereen Residence Trust, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC and Arthur Vereen Construction Company, Inc., jointly and severally, as follows:

Amount of monies misappropriated	$ 2,588,125.90
Prejudgment interest from 1/23/2009 until 3/23/2015	138,396.78[4]
Accounting fees due Susan Brady	142,268.00
Punitive Damages	100,000.00
	$ 2,968,790.68

or the sum of $2,968,790.68 in actual and punitive damages, inclusive of pre-judgment interest at 8 ¾% from January 23, 2009 through March 23, 2015.

(2) Frank H. DuRant, PA's contingency fee agreement is expressly approved and shall constitute a first lien upon any recovery in this action and shall be paid by the Company as Ordered when income is received from the Defendants or any other source.

(3) The bill of Susan Brady, CPA, of $142,268.00 for her investigative and accounting work in this case is expressly approved and shall constitute a second lien upon any recovery in this action and shall be paid by the Company as Ordered, when income is received from the Defendants or any other source.

[44] Per diem interest is 61.537.

(4) The taxable costs and expenses of this action, including any Court Reporter fees for the trial, shall be added to the judgment amount against the Defendants. In the event that the Plaintiff incurs late fees and penalties as a result of amending and filing late federal and state tax returns, the amount of such penalties and late fees shall be paid by the Defendants or added to the judgment amount rendered.

(5) The Counterclaims of the Defendants and Third Party Complaints of the Third Party Plaintiff(s) are hereby dismissed with prejudice.

AND IT IS SO ORDERED!

CYNTHIA GRAHAM HOWE
Master In Equity

Conway, South Carolina
March 23, 2015

COPY OF OMITTED PAGE ADDED

the property and assets misappropriated to their benefit. Vereen is the sole owner of AVCC ; his knowledge is imputed to AVCC. Vereen is the manager of Parkway and Park Place; his knowledge is imputed to Park Place and Parkway.

I find that Wife had actual knowledge of her husband's actions and benefited by the improper gains which she and her companies, Park Place and Parkway, received. Vereen, with the assistance of the Defendants, siphoned all of the assets of the Company through the schemes discussed earlier, which benefited the Defendants. I find by clear and convincing evidence that each of the Defendants is the alter ego of the other, that the corporate identities of the Defendants should be pierced, and that judgment should be rendered against the Defendants jointly and severally for the damages sustained by the Plaintiff.

11. I have examined the fee agreement of the Company with Frank H. DuRant, Attorney for the Plaintiff. I find that without the services of Mr. DuRant on a contingency basis, the Company would not have been able to proceed with this action. I am convinced that without the diligent, time consuming and costly discovery, the Plaintiff would have been unable to establish proof of the Defendants' improper actions and the amount of damages incurred. I therefore approve the contingency fee agreement as reasonable, fair and necessary to protect the Company's interests. I find that Plaintiff shall be entitled to an award of attorney's fees as a part of the Company's damages.

ACTUAL DAMAGES

(a) Prejudgment interest: The Plaintiff requested prejudgment interest in the Complaint and shall be entitled to pre-judgment interest on the misappropriated balance due of $2,588,125.90 commencing January 23, 2009 and ending March 23, 2015 at the rate of 8.75% per annum or the

EXHIBIT 2

Lauren Massimino

Subject: FW: Nunc Pro Tunc Order in Smith v. Vereen
Attachments: Smith v. Vereen Nunc Pro Tunc Order.jpg

Forwarded Message -----
From: "Miller, Richard" <millerr@HorryCounty.org>
To: frank durant <fdurant@yahoo.com>; Jack Thomas <JThomas@myrlaw.com>; "kifcook55@gmail.com" <kifcook55@gmail.com>
Sent: Wednesday, March 25, 2015 12:36 PM
Subject: Nunc Pro Tunc Order in Smith v. Vereen

Good afternoon:

I am terribly sorry about the multiple emails and for the file format I have to send this in. Susan has our one computer that can scan to PDF, and she is in training with the County today. However, I wanted to make sure everyone received a copy of the Order that went downstairs today, so this will have to do for the time being. Obviously the original is with the COC's office, but I have a clocked copy up here that I can resend as a PDF tomorrow once Susan is back if necessary.

Anyway, two mistakes were caught in the Order that needed to be fixed. First, I left off Parkway Offices, LLC off the Form 4 and had to add them in there for the Clerk of Court to properly enter the judgment. Secondly, my interest computation was wrong. Seeing as it was my screw up, I drafted a nunc pro tunc order this morning and had Judge Howe sign off on it. The correct judgment total and parties are now reflected in the Index to the new Form 4.

If any of you have questions, comments, or concerns please don't hesitate to contact me. Again, I am very sorry for not catching it the first time. Thank you all for your cooperation in the matter.

Respectfully,
Stewart

R. Stewart Miller, Jr. | Law Clerk
Horry County Government
Office of the Master in Equity
P.O. Box 1236, Conway, South Carolina 29526
Tel 843.915.7853 | Fax 843.915.6310
millerr@horrycounty.org | www.horrycounty.org

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FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-26-620

Ellis E. Smith, Individually, and on behalf of A & E Constructors and Consultants, Inc.,
PLAINTIFF(S)

Arthur Wayne Vereen, et al.
DEFENDANT(S)

Submitted by: The Honorable Cynthia Graham Howe	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **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.

2015 MAR 25 AM 11:22 HORRY COUNTY CLERK OF COURT

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk : Amended Form 4 following Nunc Pro Tunc Order

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
A & E Constructors and Consultants, Inc.	Arthur Wayne Vereen, Individually, and as Trustee of the Arthur W. Vereen Residence Trust	$4,226,383.90
	Linda C. Vereen, Individually, and as Trustee of the Linda C. Vereen Residence Trust	$4,226,383.90
	Park Place Properties of Myrtle Beach, LLC	$4,226,383.90
	Parkway Offices, LLC	$4,226,383.90
	Arthur Vereen Construction Company, Inc.	$4,226,383.90

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

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

Master in Equity

3073
Judge Code

3/25/15
Date

For Clerk of Court Office Use Only

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

Frank H. Durant
J. Jackson Thomas

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kathryn M. Cook

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ELLIS E. SMITH, Individually, and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., a South Carolina Corporation.

Plaintiff,

vs.

ARTHUR WAYNE VEREEN, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, ARTHUR VEREEN CONSTRUCTINO COMPANY, INC., LINDA C. VEREEN, ARTHUR W. VEREEN, AS TRUSTEE OF THE ARTHUR W. VEREEN RESIDENCE TRUST, and LINDDA C. VEREEN, AS TRUSTEE OF THE LINDA C. VEREEN RESIDENCE TRUST,

Defendants,

and

ARTHUR WAYNE VEREEN, individually and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., and 29th PLACE DEVELOPERS, INC.,

Third Party Plaintiffs,

vs.

E. SMITH AND SONS CONSTRUCTION, LLC, and EES CONSTURCTION AND CONSULTING, INC., and ELLIS E. SMITH, individually,

Third Party Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-26-620

NUNC PRO TUNC ORDER AMENDING JUDGMENT TOTAL AND FORM 4

HORRY COUNTY
2015 MAR 25 AM 11:22
CLERK OF COURT

IT APPEARING to the Court that a mathematical error occurred in the computation of prejudgment interest in the Order signed March 23, 2015 and clocked with the Horry County Clerk of Court on March 24, 2015, and that certain parties were left off the Judgment Index on the Form 4 signed and clocked on the same respective days. The per diem rate of prejudgment interest of 8.75% would be six hundred twenty dollars and forty four cents and not 61.537 as indicated by Footnote 4 on Page 41 of that Order. Therefore, total interest between the dates of January 23, 2009 and March 23, 2009 would be $1,395,990.00. The total judgment amount should therefore be amended to reflect the amount shown below:

Amount of monies misappropriated	$2,588,125.90
Prejudgment Interest from 1/23/2990 until 3/23/2015	$1,395,990.00
Accounting fees due Susan Brady	$142,268.00
Punitive Damages	$100,000.00
TOTAL:	**$4,226,383.90**

Defendant Parkway Offices, LLC should also be added to the Judgment Index on the Form 4 as indicated by paragraph (1) on Page 41 of the Order.

IT IS SO ORDERED.

The Honorable Cynthia Graham Howe
Master in Equity for Horry County

Conway, South Carolina
24th day of March, 2015

EXHIBIT 3

DuRant & Martin
ATTORNEYS AND COUNSELORS AT LAW
2107 Farlow Street
Post Office Box 960
Myrtle Beach, South Carolina 29578-0960

Frank H DuRant, P.A.
David E. Martin, P.A.

Telephone: (843) 448-1541
Telecopier: (843) 626-7431

March 25, 2015

J. Jackson Thomas, Esq.
Thompson & Henry, PA
1314 Professional Dr,
Myrtle Beach, SC 29577

Kathryn M. Cook
Cook & Roy, LLC
PO Box 4086
N. Myrtle Beach, SC 29597

Kathryn M. Cook
306 Calhoun Road
Myrtle Beach, SC 29577

Re: Ellis E. Smith and A&E vs. Vereen, et al
Civil Action No.: 2009-CP-26-0620
2010-LP-26-00467

Dear Jack & Kiff:

Enclosed please find a copy of the Judgement Against Defendants signed by Judge Cynthia Graham Howe in regards to the above matter, which is hereby served upon you by mail.

Should you have any questions or concerns regarding this matter, please feel free to contact me.

Sincerely,

Frank H. DuRant
Attorney for the Plaintiff

FHD/lm
Encl. as stated

STATE OF SOUTH CAROLINA COUNTY OF HORRY	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CASE NO. 2009-CP-26-00620
ELLIS E. SMITH, individually and on behalf A & E CONSTRUCTORS AND CONSULTANTS, Plaintiffs, v. ARTHUR WAYNE VEREEN, INDIVIDUALLY AND AS TRUSTEE OF THE ARTHUR W. VEREEN RESIDENCE TRUST, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, ARTHUR VEREEN CONSTRUCTION, INC. and LINDA C. VEREEN, INDIVIDUALLY AND AS TRUSTEE OF THE LINDA C. VEREEN RESIDENCE TRUST, Defendants AND ARTHUR WAYNE VEREEN, Individually and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., and 29th PLACE DEVELOPERS, INC., Third Party Plaintiffs, E. SMITH AND SONS CONSTRUCTION, LLC, EES CONSTRUCTION AND CONSULTING, INC., and ELLIS E. SMITH, Individually, Third Party Defendants.	AMENDED CERTIFICATE OF SERVICE

FILED
HORRY COUNTY
2015 APR 27 PM 3:56
ELAINE HUGGINS-WARD
CLERK OF COURT

Lauren Massimino certifies that she is an employee of the law firm of DuRant & Martin, attorney for the Plaintiff, and that she mailed the document(s) listed below in the above entitled action to the addressee(s) below on March 25, 2015 and proper postage was attached thereto.

DOCUMENT(S): Judgement Against Defendants

ADDRESSEE(S): J. Jackson Thomas, Esq.
Thompson & Henry, PA
1314 Professional Dr,
Myrtle Beach, SC 29577
Attorney for 3rd Party Defendants E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc. and Ellis E. Smith, Individually

Kathryn M. Cook, Esq.
Cook & Roy, LLC
PO Box 4086
N. Myrtle Beach, SC 29597

Kathryn M. Cook, Esq.
306 Calhoun Road
Myrtle Beach, SC 29577

Attorney for Defendants Arthur Wayne Vereen, Individually and as Trustee of the Arthur W. Vereen Residence Trust, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc., and Linda C. Vereen, Individually and as Trustee of the Linda C. Vereen Residence Trust

Lauren Massimino

SWORN to before me this 24th
day of April, 2015.

Lisa C. Donato
Notary Public for South Carolina
My Commission Expires: 2-18-20

FORM 4

STATE OF SOUTH CAROLINA **COUNTY OF** **IN THE COURT OF COMMON PLEAS**	**JUDGMENT IN A CIVIL CASE** **CASE NO. 2009-CP-26-620**
Ellis E. Smith, Individually, and on behalf of A & E Constructors and Consultants, Inc. PLAINTIFF(S)	Arthur Wayne Vereen, et al. DEFENDANT(S)
Submitted by:	**Attorney for :** ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
A & E Constructors and Consultants, Inc.	Arthur Wayne Vereen, Individually and as Trustee of the Arthur W. Vereen Residence Trust	$2,968,790.68
	Linda C. Vereen, Individually and as Trustee of the Linda C. Vereen Residence Trust,	$2,968,790.68
	Park Place Properties of Myrtle Beach, LLC	$2,968,790.68
	Arthur Vereen Construction Company, Inc.	$2,968,790.68

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

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

000270

Clifford Richard Hawk
Master in Equity

3073
Judge Code

3/23/15
Date

For Clerk of Court Office Use Only

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

Frank H. Durant
J. Jackson Thomas

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kathryn M. Cook

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-26-620
ELLIS E. SMITH, Individually, and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., a South Carolina Corporation,

Plaintiff,

vs.

ARTHUR WAYNE VEREEN, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, ARTHUR VEREEN CONSTRUCTION COMPANY, INC., LINDA C. VEREEN, ARTHUR W. VEREEN, AS TRUSTEE OF THE ARTHUR W. VEREEN RESIDENCE TRUST, and LINDA C. VEREEN, AS TRUSTEE OF THE LINDA C. VEREEN RESIDENCE TRUST,

Defendants.

and

ARTHUR WAYNE VEREEN, individually and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., and 29th PLACE DEVELOPERS, INC.,

Third Party Plaintiffs,

vs.

E. SMITH AND SONS CONSTRUCTION, LLC, AND EES CONSTRUCTION AND CONSULTING, INC., and ELLIS E. SMITH, individually,

Third Party Defendants.

JUDGMENT AGAINST THE DEFENDANTS ARTHUR W. VEREEN, INDIVIDUALLY AND AS TRUSTEE OF THE ARTHUR W. VEREEN RESIDENCE TRUST, LINDA C. VEREEN, INDIVIDUALLY, AND AS TRUSTEE OF THE LINDA C. VEREEN RESIDENCE TRUST, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, AND ARTHUR VEREEN CONSTRUCTION COMPANY, INC., JOINTLY AND SEVERALLY

HORRY COUNTY
2012 MAR 24 PM 1:08
CLERK OF COURT

Appearances:
Attorney for A & E, Smith: Frank H. DuRant
Attorney for Smith, EES and E. Smith & Sons: J. Jackson Thomas
Attorney for the Defendants
and Third Party Plaintiffs: Kathryn M. Cook

PROCEDURAL HISTORY

This matter was referred to me for hearing pursuant to an Order of Reference of the Honorable Larry B. Hyman, Jr., dated July 23, 2009, with authority to issue a final Order in this matter. The parties presented testimony and hundreds of accounting records over four separate weeks. The case took more than a year to try because of various circumstances.

This is a shareholder's derivative action brought by Ellis E. Smith ("Smith"), individually and on behalf of A & E Constructors and Consultants, Inc. ("the Company") against Arthur Wayne Vereen ("Vereen"), the treasurer and remaining shareholder, and Vereen's wife, as well as some companies which Vereen controlled. Smith and the Company have sued for an accounting as well as for a dissolution of the Company, asserting that Vereen converted corporate assets.

Vereen and the Defendant entities generally denied the allegations, agreed to an orderly dissolution of the Company, and asserted counterclaims for an accounting, indemnification, and misappropriation of the Company's opportunities. Vereen, individually and on behalf of A&E, brought in an additional party, 29th Place Developers, Inc. (29th Place), without court approval, but without objection, and sued E. Smith and Sons Construction, LLC (E. Smith) and EES Construction and Consulting, Inc. (EES) and Smith, individually (Smith) as third party defendants.

I have reviewed the entire Court file, weighed the testimony and evidence presented, and find damages for the Plaintiff Company and against the Defendants Vereen individually and as trustee of the Arthur Wayne Vereen Residence Trust and Linda C. Vereen individually and as trustee of the Linda C. Vereen Residence Trust, Park Place Properties of Myrtle Beach, LLC,

Parkway Offices, LLC, and Arthur Vereen Construction Company, Inc. as discussed below. I find that each of these named Defendants conspired together to misappropriate and convert the assets of the Plaintiff Company and its other shareholder Smith.

DISCUSSION

The Plaintiff Smith and Defendant Vereen are the sole shareholders, officers, and directors of the Company, which was incorporated on October 28, 2003, as a construction company. The Company made a timely subchapter "S" taxation election under the Internal Revenue Code, and Vereen was elected treasurer. At all times, Vereen exclusively handled the Company's finances including managing and controlling the Company's checkbook. Smith and Vereen had equal ownership of the Company's shares of stock and served as its board of director members. When they began the Company, Smith and Vereen agreed that each would finish any pre-existing jobs under the names of their own separate companies and at their own separate expense.

Defendant Arthur Vereen Construction Company, Inc. ("AVCC") is a South Carolina Corporation owned by Vereen. Vereen operated his construction business out of AVCC for many years, but AVCC and Vereen's commercial building licenses expired in October 2003, about the time the Company began. Third Party Defendant EES Construction and Consulting, Inc. ("EES") is a South Carolina Corporation owned by Smith. The Defendant Park Place Properties of Myrtle Beach, LLC ("Park Place") is a South Carolina Limited Liability Company, which is owned 5% by Vereen and 95% by Defendant Linda C. Vereen, Vereen's wife ("Wife"), but managed and controlled by Vereen. The Defendant Parkway Offices, LLC ("Parkway") is a South Carolina Limited Liability Company owned by Wife, but also managed and controlled by Vereen. Parkway and Wife owned several buildings, including one space shared as offices with the other Defendants on Grissom Parkway in Myrtle Beach. E. Smith and Sons Construction, LLC ("E. Smith"), a South

Carolina Limited Liability Company created in April 2007, is owned solely by Smith. 29th Place Developers, Inc. (29th Place) is a corporation owned by Vereen.

The Company became a licensed commercial contractor in January 2004. The Company paid no salaries until June 2004, but beginning in January 2004, Smith and Vereen met each morning at the Company's office on Grissom Parkway. That office also served as an office for AVCC, Vereen's company, Parkway, Wife's company that Vereen managed and controlled, and Vereen's daughter's law practice.

Vereen began receiving a salary of $1,000.00 per week in June 2004. Smith was still finishing prior jobs at EES, and instead of receiving a salary, Smith invoiced the Company, through EES, for his time at $25.00 per hour and for EES's pro-rata expenses spent on Company business. Vereen approved and paid these EES invoices from the Company account at Carolina First Bank; Vereen charged the expenses to jobs performed by the Company on its job ledgers.

In early 2004, the Company began construction of a speculative residential home for Vereen in the Plantation Lakes subdivision near Myrtle Beach and also began several new, large, multi-family jobs. The Company was extremely busy and profitable during its first three years of operation. These years, 2004-2007, coincided with the three peak years of the real estate boom in the Grand Strand area. Opportunities for construction companies were numerous; construction companies were profitable. The Company permitted and performed several large jobs for Defendants Park Place, Parkway, and Wife; these included several jobs for Vereen's family members. Vereen told Smith that the Company would treat the family jobs just like any other job, and the Company would be paid overhead and profit.

A South Carolina corporation is required to maintain "appropriate accounting records" and is required to furnish its shareholders with annual financial statements that include the

corporation's year-end balance sheet, income statement, and statement of changes in shareholder's equity. See SC Code Ann. §33-16-101, et seq. (1976). If the financial statements are reported on by a public accountant, the accountant's report must accompany the financial statement. See SC Code Ann. §33-16-200 (1976). Smith never received an annual statement from Vereen, the Company's treasurer, or the Company's accountant, Richard Crumpler, CPA. Gains or losses from this subchapter "S" corporation were passed through and allocated to the two shareholders, Vereen and Smith, on an equal basis, which were included in the shareholders' taxable income and gains for each tax year.

The Company's CPA, Crumpler, informed Smith in 2007 that the Company had a large profit. When Smith asked Vereen about these profits, Vereen denied that the Company had any profits in 2007, instead asserting that the Company's large expenses offset its profits, leaving no net profits. At that time, the Company had completed construction of 23 resort homes[1] in a subdivision known as "Pointe Marsh" in the Cherry Grove Section in North Myrtle Beach for Park Place, had performed extensive construction on a putt-putt golf course owned by Park Place in North Myrtle Beach, and had performed extensive renovations on office buildings owned by Parkway and Wife on Grissom Parkway in Myrtle Beach. Smith began investigating the office records in early 2007, and he concluded that Vereen, in conspiracy with the remaining Defendants, had engaged in fraudulent practices with the Company. Smith made demand upon Vereen to rectify the wrongdoings. Vereen, however, denied any wrongdoing and refused to account for his actions. Smith suspected Vereen and Park Place were engaging in improper sales practices in selling the 23 homes at Pointe Marsh owned by Park Place.

[1] The Pointe Marsh homes were sold for prices ranging from $500,000.00 to $750,000.00.

Smith thereafter initiated the present shareholder's derivative action on behalf of the Company against Vereen, Wife, Park Place, Parkway and the Vereen's in their capacities as trustees, who owned the Vereen personal residence in Murrells Inlet, SC. The residence[2] was transferred into their names as Trustees of two separate Trusts in 2007 by Vereen and Wife. Smith alleged that the Defendants conspired together to wrongfully convert the Company assets to their own use; he requested an accounting of the Company's books, records, and other items, which are contained in the pleadings. Smith served detailed discovery requests upon the Defendants, and the Defendants served joint discovery responses. The Defendants filed an Answer and Counterclaim and a Third Party Complaint against E. Smith, EES and Smith.

In the Defendants' responsive pleadings, they denied that Vereen controlled the Company's finances or that the disbursements made by Vereen were not for the complete benefit of the Company. Vereen, individually and on behalf of A&E and 29th Place, alleged that he loaned monies from his companies to Smith in the 1990's for which he was to be reimbursed by Smith. He also asserted that EES improperly billed the Company for work allegedly performed for it. Vereen also demanded an accounting. Vereen's corporation, 29th Place, filed a third-party claim against Smith based upon an old promissory note. This Court granted Smith's motion for a directed verdict as to that claim.

AVCC counterclaimed against Smith for refusing to pay Vereen and AVCC for the use of AVCC contractor's license in a condo project 10 years earlier based upon an oral agreement for a 10% commission of the price of construction. This Court dismissed this claim on Smith's motion for a directed verdict.

[2] The Vereen residence is a large house located in an exclusive neighborhood in Murrells Inlet, South Carolina.

As to the Counterclaim for Breach of Contract concerning the alleged improper use of the AVCC license by EES at Carolina Keys, I find that AVCC and Vereen failed to prove their claim by a preponderance of the evidence. Specifically, I find that Vereen and AVCC orally agreed to allow Smith and EES to use the license in return for 10% of the profits earned by Smith and EES, not the cost, and that Smith and EES lost money, and thus owed no money to Vereen and AVCC. Furthermore, I find that the oral contract is illegal and cannot be enforced in South Carolina, as a contractor is prohibited from allowing a non-licensed entity to borrow a commercial license to perform construction. See SC Code Ann. §40-11-200 (1976). Finally, I find the claim, if proper, would be barred by the three year statute of limitations, as I specifically find that Vereen authorized the use of the license and was aware of its use for over nine years prior to the institution of this action. See SC Code Ann. §15-3-530.

Throughout this trial, the Defendants AVCC, Park Place, Parkway, Wife and Vereen referred to themselves as the "Vereen Entities." The Vereen Entities denied the specific allegations of wrongdoing in responding to the Company's discovery requests. The Plaintiff employed Susan Brady, an experienced, local Certified Public Accountant, as an expert witness to determine the nature and extent of the Company's damages. The Court found her testimony most insightful.

Even though not required, the Vereen Entities did not submit any accounting testimony, not even the Company's own accountant, Richard Crumpler. Mr. Crumpler is a well-respected certified public accountant who is the senior partner at a local CPA firm. The very fact that he was not called to testify was telling, especially when he presumably prepared the Company's tax returns based upon information provided by the Company's treasurer.

Ms. Brady conducted a lengthy investigation, testified, and submitted to the Court a detailed written report (the "Brady Report") of the fraudulent or "non-corporate" actions of the

Defendants, which were documented by written evidence. For the calendar years 2004 through 2007, Brady detailed an "Analysis of Non Corporate Activity" for each year, listing each and every improper act by the Defendants that caused the Company financial harm. The evidence of each improper act was contained in numbered tabs along with supporting documentation. As the trial progressed, the Brady Reports were amended to correct any errors, concessions and additions found during late produced discovery and during the trial. Ms. Brady's accounting task was complicated by Vereen's almost complete failure to maintain separate accounting records for the Company and the various Vereen Entities and his consistent commingling of the entities' income and expenses without documentation.

At the trial's end, Ms. Brady submitted her "Amended Summary Analysis of Non-Corporate Activity of A & E Constructors and Consultants," simply referred to as the final "Brady Report." In it, Ms. Brady documented damages sustained by the Company in the amount of $2,712,503.31, directly caused by Defendants' wrongful actions. These findings were fully supported by the evidence. The Company's accounting records, consisting of the Peachtree accounting system ledger, the checking accounts and tax returns, were submitted into evidence, without objection. The Defendants' checking account records and depositions from the Vereen Entities' bookkeeper Drewett and Defendant Linda Vereen were introduced into evidence. The Plaintiff introduced copies of checks for payment for services it rendered; Vereen then deposited the checks into Defendants' accounts. By clear and convincing evidence, the Plaintiff established that the Defendants conspired to convert the Company's assets to their own use with the intent to defraud the Plaintiff as detailed in the final Brady Report. I find the final Brady Report to be credible, accurate and complete. I hereby adopt the findings of the final Brady Report as conclusive evidence of the actual damages sustained by the Plaintiff as a result of the Defendants' actions.

LEGAL ISSUES

The Plaintiff brought this derivative action pursuant to Rule 34, SCRCP, and detailed the efforts he made to resolve these issues with shareholder Vereen prior to instituting this action. I am confident that this litigation was the only avenue available in this matter. Smith was the only party that could represent the Company's interests against the alleged wrongdoers, the Defendants.

Title 33 of the SC Code of Laws defines the duties and obligations of a corporation's officers and directors. It requires a corporation's director and officer to act in good faith, with the care an ordinarily prudent person would exercise under similar circumstances, and in a manner he reasonably believes to be in the best interest of the corporation and its shareholders. See, SC Code Ann. §33-8-300 (1976). In this matter, Vereen had a conflict of interest because of the construction performed by the Company for the Vereen Entities due to the ownership interests of Vereen and Wife in the transactions. See SC Code Ann. §33-8-310 (1976).

The conflict of interest stated in 33-8-310 could be overcome only if Vereen disclosed the material facts of each construction job to Smith, who had to officially authorize, approve or ratify the transaction. See SC Code Ann. §33-8-310(a)(1). If the test's first two prongs are established ([a]disclosure of material facts and [b] authorization, approval or ratification of transaction), the transaction must still be fair to the Company. See, SC Code Ann. §33-8-310(a)(3). Vereen allowed the Company to perform substantial construction for the Defendants even where there was no written construction contract. Vereen also allowed the Company to pay the Defendants' costs and expenses without billing them. Moreover, Vereen paid the Defendants' expenses from the Company's checking account without seeking reimbursement. Since Vereen acknowledged that he did not disclose the secret nature of these wrongdoings to Smith, I did not need to determine

the fairness to Smith of these transactions. The misappropriation of a Company asset can never be fair to an unknowing shareholder.

S. C. Code Ann. §33-8-320 prohibits the Company from loaning money to a director unless strict approval requirements are met. At trial Vereen admitted that he did not disclose these wrongdoings to Smith. Of course, Smith could not approve of any of Vereen's actions of which he was unaware. A director who assents to an unlawful distribution of company funds has a duty to repay the funds under SC Code Ann. §33-8-320. As to any funds converted by or diverted to the Defendants or for their use from the Company account, I find that Vereen failed to establish that Smith approved of the unlawful transactions. Vereen directed the unlawful distributions of the Company's funds; he has a duty to repay the funds.

An officer's duty to a corporation is defined in SC Code Ann. §33-8-410, et seq. He must act in good faith and only in a manner that he reasonably believes to be in the best interest of the Corporation and its shareholders. See SC Code Ann. §33-8-420. These statutory provisions define what has always been the law in this State; the Corporation, through its officers and directors, must always act in the best interest of the Corporation. A breach of these fiduciary duties or responsibilities, whether as officer or director, imposes liability upon the breaching party for any damages sustained by the Corporation and clearly places upon the wrongdoer the burden of proof to establish consent, approval and fairness. Id.

In each contract that the Company had with the Defendants, Vereen, as the Company's treasurer and the financial manager, failed to get a written contract for the construction. He also advanced payment from the Company's account to the Defendants without authorization for construction expenses, and further, he failed to invoice or collect payments and costs from the

Defendants. When payments were made, Vereen on occasion did not deposit the collected payments in the Company account but instead placed them in accounts belonging to one of the other Defendants.

The Defendant Vereen, in conspiracy with the Defendant Vereen Entities, breached his statutory duties to the Company in the following transactions where he had a material conflict of interest:

1. The construction of 23 homes and the renovation of a putt-putt golf course and arcade on Sea Mountain Highway for the related party, Defendant Park Place: Wife gave Vereen exclusive management and control of Park Place. The Company advanced payment for over $900,000.00 in construction expenses for these 23 homes; however, it did not have a construction contract obligating Park Place to pay the Company for the construction, and the Company did not invoice or collect payment for the expenses it advanced. Wife gave Vereen control of the banking accounts of Park Place. The balances in the Park Place banking account were sufficient to pay the Company for the expenses advanced and the costs of construction, but payment to the Company was not made.

2. The construction of a home in Plantation Lakes for the Defendant Vereen in 2004: Vereen owned a lot in the Plantation Lakes subdivision. The Company paid for the construction expenses for Vereen's new home built beginning in early 2004. Vereen did not prepare a construction contract requiring payment for the construction, and Vereen, the Company's treasurer, did not invoice or collect payment for the Company's expenses. I find that the Defendant Vereen obtained a construction loan to pay for the cost of construction but did not use the loan proceeds for that purpose.

3. The construction of improvements made on office buildings owned by the Defendants Parkway and Wife located on Robert Grissom Parkway: The Company advanced payment for construction expenses for buildings owned by Wife and Parkway but did not have a written construction contract obligating the Wife and Parkway to pay the Company for the cost of construction. Vereen, the Company's treasurer, did not invoice or collect payment for the expenses advanced by the Company.

4. The payment of construction expenses for Defendant AVCC: Vereen, as the Company's treasurer, paid construction costs and expenses for AVCC jobs from the Company account without Smith's knowledge and did not invoice or collect for the expenses advanced. Vereen billed and collected from the third parties for the AVCC charges and placed the funds in to the AVCC account or other accounts of the Defendants.

5. The payment of construction expenses for Vereen and Wife: Vereen, as the Company's treasurer, paid for construction expenses out of the Company account for his and Wife's personal home, now owned by the Trustees named as defendants. Vereen, on behalf of the Company, did not require that Vereen and Wife sign a construction contract with the Company obligating Vereen and Wife to pay for construction costs and did not invoice or collect payment for the expenses advanced by the Company. Further, Vereen did not tell Smith that the Company was paying for construction costs of the Vereens' personal home from the Company account. The Vereens received a newly-constructed house at the Company's expense without Smith's knowledge.

6. Vereen had multiple unwritten construction contracts with members of Vereen's and Wife's family, and Vereen paid for construction expenses from the Company account: The Company advanced funds to pay for construction on multiple jobs for members of Vereen and

Wife's family members. There were no written construction contracts obligating the owner to pay for the cost of construction and, on many occasions, Vereen and the Company did not invoice or collect payment for the expenses advanced by the Company.

7. Vereen entered multiple construction contracts through AVCC, which contracts were performed by the Company: AVCC entered into multiple written construction contacts when it was not licensed to perform construction in South Carolina and when the Company obtained all permits and paid for the construction costs of such projects from the Company account. Vereen did not tell Smith that he entered into the secret contracts with the customers of the Company or that he invoiced the owners in the name of AVCC. On multiple occasions, even though the payments for such construction belonged to the Company, Vereen deposited the payments into the Defendants' accounts.

8. Vereen paid for construction expenses from the Company account for improvements made to the home of Elizabeth Vereen Sisson, daughter of Vereen and Wife, who also is a Company employee: Vereen did not require the Company to have a written construction contract obligating his daughter Sisson, a South Carolina lawyer, to pay the Company for the construction on her home. The Company paid over $150,000.00 in construction expenses on her home, and Vereen, as the Company's treasurer, never invoiced Sisson for the expenses. The Plaintiff received a partial payment for the expenses on this job. A large payment from Sisson erroneously was made to Park Place rather than the Company. Vereen admitted, at trial, that over $15,000.00 in labor charges which should have been repaid to the Company for the Sisson job never were made.

9. Vereen, with the tacit assistance of the other Vereen Entities which he controlled, billed third parties for services performed by the Company; Vereen thereafter deposited the

payments from the responsible parties into various accounts of the Defendants, not the Company's account. Smith was unaware of Vereen's improper actions in these matters.

THE ACCOUNTING TRIAL

Vereen admitted at trial that he signed construction contracts in the name of AVCC in 2004, when AVCC was unlicensed, and when the Company had obtained the building permits and paid for the costs of the construction. Vereen further admitted that AVCC billed the Company's customers for these expenses, even though AVCC did not pay for the cost of construction. Moreover, Vereen admitted he did not tell Smith of these practices. Vereen's testimony was contrary to the Defendants' interrogatory responses. The Defendants' united response at trial was that the "Vereen Entities put in more money than they took out." Expert witness Brady accounted for all money the Vereen Entities deposited into the Company checking account, properly giving appropriate credit for each deposit. Brady compiled notebooks for the 2004 – 2007 calendar years, which detailed the ultra vires and improper actions of the Vereen Entities against the Company.

Pursuant to the Court's October 15, 2010 Pretrial Order, the Company's and the Defendants' business records, accounting records, tax records, checks and deposits, banking records, accounting and tax records were admitted into evidence without authentication. In the Pretrial Order, this Court required that the Defendants deliver all accounting information to the Plaintiff's attorneys to support the Defendants' claims for set-off or reimbursement by December 1, 2010. Defendants' claims allegedly occurred from 2004 to 2007. The Court's Order required that the Defendants "shall present evidence of the actual **invoice or bill** for services rendered or labor rendered and the **cancelled check** for payment made pursuant to such invoice (emphasis added)." If the Defendants did not comply by the deadline, the Order provided that "such

accounting records and information shall not be presented in the trial of the case by the Defendants."

During trial, the Court repeatedly sustained the Plaintiff's objections to the Defendants' attempts to introduce records into evidence that did not meet these requirements because they were either not produced by the deadline, or were not original invoices for goods or labor accompanied by the cancelled check of the Defendants for payment. Defendants proffered these records. From this Court's examination of the Company records, Vereen regularly sought reimbursement for expenses he paid on the Company's behalf, which were documented, charged to a job ledger on the Company's accounting system, and were immediately reimbursed to Vereen by a Company check he signed. The Company would then bill the customer for the expense incurred or add it to general overhead. The Defendants submitted invoices paid by the Defendants for improvements made on the Defendants' properties. These invoices were not proper for reimbursement, because the Company had no obligation to pay any of the Defendants' expenses on their own properties. The Defendants submitted claims for reimbursement for Company jobs performed from 2004 until 2007. The Company would not have the ability to invoice the customer or deduct the expense on its tax returns, as the request was submitted over three years after the Company had completed the last job and after the tax returns had or should have been prepared. Finally, if the Defendants did not provide the cancelled check and the invoice for the expense, the Company could not document the expense as a Company's expense or as an expense paid by the Defendant claiming the reimbursement. The Defendants attempted to mass produce claims for reimbursement or offset that were not documented appropriately and as required in the Court's Pretrial Order. As to claimed deductions for 2004 and 2005, the Company's tax returns already had been filed and could not be

amended. The Company accepted approximately $80,000.00 in credits, which are outlined in the Brady Report, which were credited against the Defendants' accounts receivable.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the testimony and other evidence presented, I make the following findings of fact and conclusions of law:

1. I find that the Plaintiff complied with the requirements of the South Carolina Rules of Civil Procedure and properly brought a derivative action against the Defendants in this action.

2. I find that the Plaintiff alleged in the verified Complaint that the Defendants conspired together to wrongfully convert Plaintiff's assets and to injure Plaintiff. The Defendants generally denied the allegations and counterclaimed against the Plaintiff Smith and his entities, EES and E. Smith.

3. The Counterclaims and Third Party Complaints: After reviewing the credibility of the testimony and evidence presented, I find that the Defendants and Third Party Plaintiffs did not meet their burden of proof by a preponderance of the evidence in establishing that Smith, EES or E. Smith owed any monies to the Defendants or to the Company that was not otherwise accounted for by Brady in her Final Report. To that extent, I find that the Defendants failed to meet their burden of proof that Smith owed Vereen or AVCC for any monies related to the construction of Smith's home in the 1990's, or that Smith owed any sums for the use of the AVCC license in the construction of the condominiums in North Myrtle Beach. Closing documents from the Smith home clearly establish payment in full at closing. As to the Counterclaim by AVCC against Smith, I specifically find that the oral agreement was for Smith and EES to pay Vereen and AVCC 10% of the profits they earned on the Carolina Keys project; Smith and EES did not earn any profits. Accordingly, Smith and EES owed nothing to Vereen and AVCC for the Carolina Keys project.

Moreover, even if there had been profits, I find that an agreement to use the AVCC license is an illegal contract that is unenforceable in Court. See SC Code Ann. §40-11-200 (1976).

As to 1990 debts allegedly due from Smith to the Vereen entities, I find that these debts were either discharged in Bankruptcy or are time barred under the Statute of Limitations. See SC Code Ann. §15-3-530(1). Furthermore, I find as a matter of fact that there was no agreement or discussion at the time this Company was formed for Smith to pay Vereen or the Defendants monies due from the past.

Further, I find that the Defendants failed to meet their burden of proof that Smith, EES or E. Smith misappropriated any corporate assets of the Company that was not accounted for by Brady in her Report. Specifically, I find that the Defendants and Third Party Plaintiffs failed to prove, by a preponderance of the evidence, that Smith or EES submitted any invoice for payment to the Company that was not properly reviewed and paid by Vereen, who approved and signed all Company checks. I find that the Defendants and Third Party Plaintiffs failed to establish that Smith, EES, or E. Smith used corporate assets for their own personal benefit, such as flooring and tile, other than the floor covering that was accounted for, admitted, and contained in the Report of Brady.

As to the claims contained in Paragraph 32 of the Counterclaim, the Court dismissed items 32 (a)(b)(c)(d)(l)(m)(o) and (p) on motion for directed verdict. I specifically find that Smith informed Vereen of the use of the Company license for items (a) through (k), which were instances where the Company license was used with permission of Smith and Vereen, and no monies were paid to the parties and no expense paid by the Company. Vereen produced no evidence of damages sustained by the Company for these actions. As to (l) to (p), I find that the Company's license was

not used and no Company funds were advanced for construction. The Counterclaims are thus dismissed.

I find that the Defendant E. Smith did enter into a construction contract with Martin Brown for the construction of the Condolux Office building in late 2007, after Smith left the Company. However, I find that Vereen had previously rejected the construction proposal as not being profitable. I find that E. Smith did in fact use the Company's construction license to perform the work; however, E. Smith obtained liability insurance for the job and paid each and every expense from its separate funds. I find that the Company has not suffered any damages as the result of Smith's actions and that Smith was the qualifying party with the Contractors Licensing Board for the Company. Smith had already left the Company at the time construction began, when he was receiving 14 weeks of paid leave for unused vacation time. I find that Vereen was aware of Smith's actions and made no complaint against him until this lawsuit was initiated.

4. I find that Vereen and Smith agreed that each could engage in outside construction activities to earn additional income, but any such activities would be at their own expense and in their separate time. Smith engaged in outside activities that did not involve Vereen or the Company, which were done on his own free time and expense. Smith's complaints against the Defendants involved transactions where the Company was performing and paying for construction services and yet, payment from third parties for its services was being made, via Vereen, to Vereen's companies. Smith's activities in performing labor on an hourly basis on his free time caused no legal or financial harm to the Company.

5. I expressly adopt the findings and conclusions contained in the Brady Report, which reflect the actual losses sustained by the Company in transactions between the Company and the Vereen Entities and for other non-corporate actions by Vereen. The Brady Report is detailed and

is supported by clear and convincing evidence. Due to the complexity and the material wrongdoings in several transactions, I make the following additional factual findings of the Defendants' misconduct, resulting in the Company's material damages:

(a) The Plantation Lakes home: In early 2004, Vereen employed the Company to build a residential home on his property in Plantation Lakes near Myrtle Beach. Vereen paid, by Company check, Plantation Lakes construction job expenses in the amount of $132,574.94, which are detailed in the Company job ledger and in the Brady Report. However, Vereen simultaneously had obtained a construction loan from Horry County State Bank to pay for the construction costs which was secured by a first mortgage loan upon the property. In addition to the basic construction job expenses, the Company incurred payroll costs for workers compensation, social security and payroll expense, liability insurance, office overhead, and salaried employees on the Plantation Lakes residence. Smith knew the Company was performing the job, but he was unaware that Vereen was not paying the Company for the construction costs from the Horry County State Bank construction loan.

Vereen sold the house to the Whitleys for an amount that exceeded the balance of the construction mortgage by $102,000.00. On the date of the 2005 real estate closing, Vereen executed a deed into the Company for a stated consideration of "$5.00 and assumption of mortgage" without Smith's knowledge or consent. The Company, by Vereen's signature, then transferred the property on that same day to the Whitleys for the stated purchase price. The HUD closing statement, signed by Vereen for the Company, reflected that Vereen's personal construction mortgage in the amount of $281,000.00 was paid by the closing agent, and the Company received the net proceeds from the sale of $102,480.96. When the Company's 2005 state and federal tax returns were prepared and filed by Vereen's CPA, the $102,480.96 check to the

Company was classified on the Company's books and tax returns as a "loan" from Vereen to the Company. Vereen did not report the income received on his and Wife's tax returns. As a result of these actions, the Company was not repaid the $132,574.94 it had advanced in construction costs, nor the payroll, overhead and profit expected for the construction of the house. Vereen admitted that he did not tell Smith of the same-day transfers, the advances made by the Company for construction expenses, the lack of billing or payment, and the tax treatment given to the transaction on the 2005 tax returns. Vereen offered no explanation for his actions.

Vereen testified that he may have done some "quirky things", but in the end, the Vereen Entities "put more money in than they collectively took out." Smith learned about the transaction when his attorney searched the public records of Horry County. As a result, the Company was defrauded of all the paid construction expenses, plus the indirect costs and expenses, including profit. When the Company later billed the Whitleys for additions they requested after purchase, Vereen deposited their check for payment made to the Company into the account of Defendant Park Place, instead of depositing it into the Company's account. The Brady Report details the losses sustained by the Company, including overhead, profit and expense. Vereen explained that he transferred the home to the Company because it was a "Company" venture, yet he failed to explain why his business partner had no knowledge of the transaction, and why the only revenues received from the sale were treated as a loan from Vereen to the Company.

(b) Willoughby Place: I find that Vereen had a conflict of interest with the Willoughby Place construction job, which was a $4,000,000.00 multi-family construction job performed by the Company from 2004 through 2006. The Company obtained all construction permits from the City of Myrtle Beach, and a construction loan was obtained by the Developer, Willoughby Family Investments, LLC, to pay the costs of construction. The Defendants never produced a copy of the

written construction contract between the Company and the Developer Willoughby Family Investments, LLC, but Defendants' Interrogatory responses stated that this was a job performed by the Company for Defendant AVCC. I find that such an agreement is improper in South Carolina, as AVCC had no construction license at that time and thus could not subcontract the job to a licensed entity. See SC Code Ann. §40-11-200 and §40-11-330 (1976). AVCC submitted multiple construction draw requests from AVCC, from AVCC d/b/a A & E, and from the Company. Vereen then deposited the construction draw payments into the Defendants' accounts.

I find that Willoughby checks totaling $113,480.00 were deposited into the AVCC account. Although the Defendants denied these actions in their pleadings and discovery responses, Vereen admitted at trial that the invoices came from the Defendant AVCC and that he deposited the payments into accounts other than the Company's account. I find that bills for "extras" to Willoughby were billed in the Company's name, and Vereen deposited the payments into Park Place's account. When the Company was sued for copyright infringement over the plans for this project, the Company paid for a portion of the defense and settlement expenses, but mysteriously the Company's "construction contract" could not be located. I find that the Defendants failed to produce a full accounting of these expenses, payments and reimbursements from the insurance carrier and the project's owner. The Brady Report details each misappropriated deposit and the invoices, third party checks and the deposit tickets to the Defendants, which were admitted into evidence. I find that the Defendant Vereen, AVCC, Park Place, and Parkway conspired together to defraud the Plaintiff by billing these charges improperly and in depositing the payment into their accounts.

(c) Dr. Lale job: I find that Vereen had a conflict of interest in the Dr. Lale remodel job. The job was contracted and permitted in the name of the Company on January 30, 2004. The

Company paid the costs and expenses of the job. According to the Defendants' discovery responses, this job was "performed by the Company for AVCC," but AVCC billed Dr. Lale rather than the Company. Vereen then deposited the Lale payments into accounts other than the Company's account. It is illegal in South Carolina for an unlicensed contractor to subcontract with a licensed contractor to perform construction services. See SC Code Ann. §40-11-200 and §40-11-330 (1976). The misappropriations are documented in the Brady Report, as part of the Company's actual damages. I find that Vereen and AVCC conspired to defraud Smith and the Company by billing charges improperly and by then failing to deposit payments received into the Company account. I find that AVCC was not licensed to perform this work, could not subcontract the job to the Plaintiff because it was not licensed, and did not pay for the construction costs. I furthermore find that Vereen failed to disclose these matters to Smith.

(d) Parkway Offices and Wife: I find that Vereen had a conflict of interest in the Company's job performed on Grissom Boulevard for Wife and Parkway Offices. Wife requested that the Company perform the construction contract on a "cost only" basis. I find that Wife and Parkway did not execute a written contract with the Company for the construction. Moreover, the Company did not bill for the services rendered, and Wife and Parkway did not pay for any of the construction at the office location. I find that Vereen wrote checks from the Company's account totaling $107,000.00 for construction costs but never billed Wife and Parkway for such expenses. I find that Vereen admitted he had no discussion with Smith about the job being a "cost only" job or that the Company had not been paid for the construction expenses. Again, the Defendants' explanation was that "the Vereen Entities put more money in than they took out." Each expense listed on the job ledger was paid by a Company check signed by Vereen and assigned to the Parkway Offices job ledger. I find that the Brady Report correctly detailed the Company's losses,

including overhead and profit, due to Wife and Parkway's failure to pay for any of the construction. I find that Vereen, Wife, and Parkway conspired together to defraud the Company..

(e) The Park Place Putt-Putt job: I find that Vereen had a conflict of interest in the Company's construction job performed at the Black Pearl Putt-Putt Golf Course, owned by the Defendant Park Place. Wife owns a 95% interest in Park Place and Vereen the other 5% interest. Vereen managed Park Place, making all decisions for the Company. I find that the Plaintiff established that it paid over $114,290.72 in actual labor and expenses for this job from the Company account, but there was no written construction contract, no invoicing, and no payment for the costs of construction. Defendants asserted that this was a "cost only" job. The expenses were established from the Company job ledger, and Vereen wrote each check from the Company account reflected on the ledger. I find that the Brady Report outlines the losses sustained by the Company caused by the Defendant's failure to pay for this construction, including overhead and profit. I find that although the Defendants challenged the charges maintained on the Plaintiff's accounting records attributed to "shop," the items paid and attributed to the "shop" were not included in this job ledger and were not expensed to the Defendants. I find the Defendants' explanations to be unbelievable and contrary to the documented written evidence. I find that Vereen admitted that he did not tell Smith that there was no written contract for construction, that the Company had not paid for the construction costs, and that the Defendants were not invoiced and did not pay for the construction. I find as a matter of fact that Wife authorized the actions of her husband. Moreover, she and Park Place received the benefit of substantial improvements without payment.

(f) The 23 homes constructed for Park Place: I find that the Defendants had a conflict of interest in the 23 homes that the Company constructed for Park Place at Pointe Marsh, located

on Sea Mountain Highway in North Myrtle Beach. The Company performed these construction jobs, permitted in their name, over a two year period without any written construction contracts on a "cost only" basis." I find that Vereen signed $973,875.47 in Company checks for labor and materials for the 23 homes, and yet, the Company never billed Park Place for any services rendered or materials used. I find that Vereen, on behalf of Park Place, deposited checks he had signed in to the Company account, which were accounted for by the Company in the Brady Report. I find that when the Park Place project was completed, Park Place owed the Company $496,039.57 for the Company's construction costs (with no overhead or profit charged or paid). The Defendant Park Place procured 15 construction loans, which could have provided funds to pay the intended purpose of the loan, construction costs of the houses. Instead, Park Place neglected to use the loan funds for their intended purpose. I find that the Brady Report details the amounts due for labor and materials paid for by the Company, with added costs for payroll, overhead, insurance and expected profit. I find that the Defendants Vereen and Wife, the owners of Park Place, offered no excuse or logical explanation for their actions. I find that the accounting records of Park Place reflected a profit exceeding $6,000,000.00 on the sale of the homes, after payment of construction costs. I find that Vereen admitted that he did not tell Smith that he was paying the construction expenses from the Company account, that he was not invoicing for such charges, and that the defendants did not pay the Company for the construction. I find that in her report, Brady properly computed the payroll, insurance, overhead and expected profit for these jobs, which I expressly adopt as being calculated based upon established standards in the industry. I find that Wife authorized the actions of Park Place and Vereen. I furthermore find that the Brady Report also correctly charged the Defendants with specific checks written out of the Company account to pay interest on the Park Place Development loan.

(g) The Sisson Remodel: I find that Defendant Vereen had a conflict of interest in the Elizabeth Vereen Sisson construction job performed by the Company. Sisson is the daughter of the Wife and Vereen. Sisson, a licensed attorney, was employed by the Company. I find that Vereen signed over $150,000.00 in Company checks to pay for labor and material on the Sisson residence. I also find that that there was no written construction contract or evidence of billing on the Sisson job. According to the Defendants, the Company permitted the Sisson job in 2007 and finished it in early 2008. The Sisson job was "cost only", with no construction contract and no billings. I find that the Defendants failed to explain why the Company advanced any money to pay Sisson's construction expenses. I find that Sisson paid the last payment of $35,803.10 (of the advanced expenses) by a check written to Park Place rather than the Company, which paid for the expenses. I find that the Company did not receive any payment for payroll expenses, insurance, overhead or profit. I find that Vereen admitted that the Company paid an additional $15,000.00 in labor expense to its master carpenter for his work at the Sisson house, which was not charged to the Sisson job ledger in the Company records. I find that the Brady Report outlines the Company's losses sustained because of these unauthorized expenditures from the Company account, together with the overhead and expected profit on this job. The Brady Report gives credit for all of Sisson's payments finally that were deposited in the Company account. Neither the Defendants nor Sisson gave any explanation for their actions.

(h) The Kemp Job: I find that the Defendant Vereen had a conflict of interest in the Company's job performed for Mr. Kemp, a job the Company permitted in 2004. The construction contract was signed in the name of AVCC on January 31, 2004, when AVCC did not have a contractor's license. I find that the Company paid for the Kemp expenses from the Company

account. I find that the Brady Report correctly reports the Company's losses because of its expenditures, and Kemp's payments made which were not deposited in the Company account.

(i) I find that the Defendant Vereen had a conflict of interest when he paid himself "supervisor fees" of $103,760.68 in 2004 and $27,121.62 in 2005 from the Company checking account. I find that these payments were unauthorized payments to Vereen, and that these payments were not reported as W-2 income to Vereen on the Company's 2004 and 2005 state and federal tax returns. Vereen made sure that Smith was not notified of these payments.

(j) I find that in 2004, Vereen took $21,320.15 from the Company account at Carolina First Bank to purchase a cashier's check payable to the Horry County Treasurer to pay his and Wife's real property taxes. This payment is correctly reflected on the Brady report. I find that Vereen and Wife offered no explanation for this payment.

(k) I find that Vereen paid $17,385.27 in expenses related to AVCC's Seven Oaks construction project from the Company checking account. This job was not a job of the Company, and Vereen and AVCC never repaid the funds. I find that these expenses are correctly reflected in the Brady report.

(l) I find that Vereen paid monthly rent from the Company checking account for a storage unit from Paul Thomas, where Vereen stored his personal vehicle and other personal items for many years. Vereen previously paid this expense from the AVCC account. I find that the use of the rental was personal to Vereen and was unauthorized. The amount of such expense is detailed in the Brady Report.

(m) I find that Vereen paid for the construction costs on a two car garage on a house partially owned by Vereen and Wife in the Bahamas and for repairs on their Gamecock football stadium "caboose" from the Company account. Although Vereen initially rationalized that the

Bahamas expenses were for a Company "sponsored" vacation, he subsequently conceded that the expenses were personal. The amount of such expenses is correctly detailed in the Brady report.

(n) I find that Vereen paid for personal insurance by check or pre-authorized draft from the Company account each month. Vereen admitted that these expenses were personal and improper. The amount of such expenses is detailed in the Brady Report. [3]

(o) I find that Vereen incurred monthly charges on multiple credit cards and paid for such expenses from the Company checking account. I find that the Company does not have any credit cards of its own, and these expenses were not Company expenses. For example, Vereen paid his daughter's gasoline charges on a Shell credit card from the Company account. The amount of such expenses is detailed in the Brady Report.

(p) I find that Vereen paid monthly dry cleaning bills for four years from the Company account for his family's personal dry cleaning. When confronted with this issue, Vereen admitted these expenses were personal. The amount of such expenses, annually, is detailed in the Brady Report.

(q) I find that Vereen deposited a $15,000 check from the Tahitian Princess job, a Company job, not into the Company account, but instead, into AVCC's account. This $15,000 deposit is included in the Brady report.

(r) I find that Vereen paid his personal monthly 29th Place HOA dues from the Company checking account. The Company does not own any real property at 29th Place. Vereen admitted that this was a personal expense. The amount of such expenses is detailed in the Brady Report.

[3] In her Final Report, Brady corrected an error in the amount of the charges.

(s) I find that Vereen paid the monthly cell phone bill for a third party from the Company account. The account was for one of Vereen's friends, not a Company employee. Vereen alleged that the Company paid the phone expense of Seth Smith, as a defense. However, the Company paid Seth Smith's cell phone charges while he was employed there. The Company's payment of Vereen's friend's cell phone charges was improper. I find that the Brady report correctly details these improper expenses.

(t) I furthermore find that from the Company account, Vereen paid for the labor and materials for the construction of his and Wife's house. These expenses are detailed in a Company job ledger. Vereen did not notify Smith of this important matter. I find that these payments were improper advances to Vereen and Wife that were never billed to or paid by the Company. I find that the amount of such expenses is detailed in the Brady Report.



(u) I find that Vereen paid for a $9,045 City of North Myrtle Beach construction permit for the Park Place job from the Company account. This expenditure was not included in the Park Place job ledger maintained by the Company and was never charged to the Park Place account on the Company's job ledger. This unauthorized payment is correctly detailed in the Brady Report.

(v) I find that Vereen used the Company's lull and skid for several years while the Company was constructing 23 homes for Park Place. At the same time, the Company had to rent a comparable lull and skid to use on its multi-family jobs. I find that Vereen did not list this expense on the Park Place job ledger maintained by the Company. I find that the Company established the costs that the Company paid for rental of a similar lull and skid, which were calculated and shown as the Defendants' account receivable on the Brady Report. I find Vereen and Park Place utilized the Company's equipment with full knowledge that the Company had to rent comparable equipment for its other jobs.

(w) In 2006, Vereen paid a $5,000 "commission" to his daughter, Elizabeth Vereen Sisson, from the Company checking account. Smith did not authorize this payment as this was a conflict of interest transaction. This payment was to an employee, not a shareholder, and was not reported as W-2 income to Sisson on the Company's income tax return. The amount is shown as an account receivable from Vereen on the Brady report.

(x) I further find that Vereen paid from the Company account the sum of $22,049.48 to Stock Builders for an invoice for materials delivered to the Park Place construction site, which was not charged to that job on the Company job ledger. Vereen reluctantly admitted that it was an expense that he and Park Place owed. The amount is shown on the Brady report as the Defendants' expense.

(y) I find that Vereen paid from the Company account multiple checks to Hartford Insurance and Companion Property & Casualty for insurance for property not owned by the Company. Such improper expenses are delineated on the Brady report.

(z) I find that Vereen improperly paid the expenses for his and Wife's vehicles by Company check. The Company did not own these vehicles, and it was improper for the Company to pay for their expenses. These expenses are shown on the Brady Report.

(aa) I find that Vereen claimed $208,577.66 in "construction in progress" expenses that he alleged were advances by AVCC to the Company in 2006, but for which he produced no backup as is required by the Court's Pre-trial Order and the Internal Revenue Service regulations. Vereen's daughter, Sisson, gave the list of these expenses to the Company's accountant with no documentation to support the claimed expense. I find that the Defendants failed to submit proper documentation to support these claims for reimbursement or offset, as required by the Order, and

I have disallowed these expenses as credits or offsets against the balances due by the Defendants. The amounts disallowed are shown as an accounts receivable on the Brady Report.

(bb) I find that Vereen improperly advanced Company funds to pay for his family members' construction expenses, which were not invoiced by the Company to such persons and were not paid. These expenses are shown on the Brady Report as unauthorized advances made by Vereen to third parties related to Vereen and Wife.

(cc) I find that all construction work performed for the Defendants Park Place, AVCC, Parkway Offices, Vereen, Wife and other "family" members, were, unlike other jobs, not based upon written construction contracts that obligated the owner to pay the Company for the services rendered. I find that although Vereen had a job ledger created at the Company for these jobs, Vereen paid the expenses of these jobs from the Company account but never billed for the labor and materials paid for and provided, the additional payroll expense, the cost of labor provided by salaried employees, the cost of liability insurance and the expected overhead and profit of 15%. Although Vereen initially claimed that these jobs were for "cost" only, on many occasions no payment was received at all. I find that Vereen conceded at trial that these entities should have paid the payroll expenses, liability insurance and expected overhead and profit of 15%. I find that Brady properly calculated the actual payroll costs by multiplying the actual payroll by 140% to determine the actual payroll costs to the Company, which included worker's compensation, FICA and Medicare match, and state and federal unemployment. I find that Brady properly calculated the cost of liability insurance ~~cost~~ at 2% of the costs of construction, and that overhead and profit were properly calculated at 15% of the cost of construction, which was used to determine the amount that should have been paid by the Defendants on each job. I find as a matter of fact that the calculations performed by Brady are reasonably calculated to provide what the Company

should have charged and collected for each and every job performed for the Defendants or their family members, with the exception of the Vereen personal home. The amounts and the method of calculation are contained in the Brady Report.

(dd) I find that an audit was completed of the Company's 2007 worker's compensation policy, which resulted in a refund check payable to the Company of approximately $49,000.00. I find that Vereen endorsed the check and deposited the check into the Park Place checking account, rather than the Company account. The amount of the check is included in the Brady Report.

6. Vereen, as the controlling Member, Managing Member, or President of each of the Defendant entities, treated the Defendants and the Company as if they were one large one entity, ignoring the corporate formalities required by law, and ignoring the requirements of the Internal Revenue Service concerning reporting of income and benefits paid by the Company to these Defendants. I find that checks payable to the Company were endorsed and paid by Vereen into Park Place, AVCC, Parkway and the Vereens' personal accounts. The Company, via Vereen, advanced funds from its account for construction expenses for Parkway, Park Place, AVCC, Vereen's family members and for Vereen and Wife without invoice or repayment. The Company paid for expenses of Park Place, Parkway, AVCC, Wife and Vereen unrelated to construction. Vereen took Company deposits and placed them into banking accounts of Park Place, Parkway, AVCC and Vereen. Vereen billed for services rendered by the Company in the name of AVCC and deposited the monies in other accounts which he controlled. The Company paid for the costs of constructing a two car garage in the Bahamas on a home partially owned by the Defendants Vereen and for repairs on a University of South Carolina "cockaboose" at the football stadium. Vereen received construction loan disbursements for the Company's construction expenses; he deposited the money into the Defendants' accounts rather than into the Company account. The

common denominator in each transaction is that Vereen personally controlled the financial and legal affairs of each entity and solely made all its decisions. Wife authorized Vereen to act for the entities she owned. When asked about her involvement in Park Place's transactions, Wife stated she had not read the Complaint and didn't know why she was sued. Her professions of ignorance are unconvincing. She either knew or should have known of her husband's misappropriations. In any event, Wife has clearly received the benefit of her husband's actions and has testified that they were authorized.

7. I find, for all accounting purposes in this case, that the Company ceased to perform business on December 31, 2007, and that expert Brady properly disregarded all financial transactions after that date, with the exception of accounts receivable and payments made for warranty work. According to the testimony presented, I find that the only job remaining at the Company after December 2007 was the Elizabeth Vereen Sisson job. According to Bookkeeper Drewitt, the Company had no jobs after 2007.

I find that the Defendants shall not be allowed any credit or offsets for checks of Park Place deposited into the Company account after 2007. From these deposits, Vereen issued checks from the Company account to pay himself, Sisson, and Drewitt, who were then employed by Grand Strand Builders, LLC. Grand Strand Builders, LLC is a licensed construction company owned by Vereen's daughter and son in law. I find that all expenses paid from the Company account after December 31, 2007 were expenses of Grand Strand Builders, LLC, where Vereen is the licensed builder. Beginning in 2008, Vereen and Sisson permitted new jobs in the name of Grand Strand Builders, and the telephone was answered as Grand Strand Builders. I find that the Defendants submitted fraudulent claims for reimbursement to the Court for these expenses advanced by Park Place to the Company. I have examined the checking account records of Grand Strand and Park

Place. I find that construction disbursements and payments for Grand Strand Builders permitted jobs after February 2008 were deposited by Vereen into the Park Place checking account rather than the Grand Strand Builder's account or the account of the Company; however, Park Place was not the developer or owner of these properties. Sisson testified she spent 80% of her time defending this civil action while she worked for, and acted as President of, Grand Strand Builders. Had the records of the Company been kept as they should have instead of being commingled with the Defendants' records, they would not have taken numerous hours to untangle. That is no one's fault but Vereen's fault. I find that the Brady Report properly disregarded advances by Park Place to the Company.

8. Based upon the evidence presented, I find, by clear and convincing evidence, that Park Place, Parkway Offices, AVCC, Arthur Wayne Vereen and Linda C. Vereen, individually and as Trustees, conspired together to convert the assets of the Company to their own benefit. The act of one was the act of the other, and each Defendant shared in the ill-gotten gains. The Defendants together conspired to commit accounting fraud upon the Plaintiff, and commingled funds without regard to ownership or the taxation of such funds to the recipient. I find that most of the ill-gotten gains went to Defendant Park Place, which is owned 95% by Wife. The funds were used to pay Wife a large weekly salary, even though she admitted she did not work for that Company; to construct the Vereen and Wife's personal house; and to pay Wife and Vereen's other personal expenses. Wife worked several years for the Defendants' accountants in Myrtle Beach and taught business courses at Coastal Carolina University for many years. I find that Wife is well educated in business affairs and should have been cognizant of her husband's (mis)management of the companies she owned. I find that according to the Park Place accounting records, Park Place earned over $6,000,000.00 in profits after allowing for payment of construction costs for the 23

Park Place houses the Company constructed. The Defendants had the capacity to make full payment for these construction costs, but instead, sold each of these houses at a substantial profit without paying for the costs of construction.

9. I find that the Company incurred accounting expenses in the amount of $142,268.00 from expert witness Susan Brady, CPA, to uncover and detail the Defendants' improper actions. I find that the Plaintiff shall be entitled to recover, as part of his damages, the Company's expenses incurred for the employment of Susan Brady. I furthermore find that the Defendants shall be responsible for the payment of any and all fines and penalties incurred by the Company in correcting and preparing state and federal income tax returns for the Company.

10. The Plaintiff has requested that the Court disregard the corporate formalities and differences between the defendants and award its judgment against the Defendants jointly and severally, as each Defendant is the alter ego of the others. Such "piercing of the corporate veil" is allowed when the Defendants do not separate their business, personal and corporate identities and act without regard to their separate identities. Mid-South Mgt. Co. v. Sherwood Development Corp., 374 S.C. 588, 597; 649 S.E.2d 135, 140. (S.C. App. 2007). The "alter ego" theory examines the relationship between the Defendant entities and their owners. An alter ego theory requires a showing of total domination and control of one entity by another and inequitable consequences caused thereby. Id. at 603. In this case, Vereen managed and controlled AVCC, Park Place, and Parkway and expended corporate assets for each without regard for the legal rights of the Company and its other owner, Smith. Wife authorized the actions of Vereen. The corporate theft benefited Wife because the majority of the misappropriated assets and monies went to Park Place and Parkway, which she owned. Vereen controlled all of the improper actions and Wife benefited from each and every improper transaction. The Company paid for construction loan interest incurred by

Park Place and for construction expenses at Pointe Marsh and at the putt-putt, which are owned by Park Place. The Company paid for the renovation of Wife's and Parkway's buildings and for home construction costs. I find that from the improper gains, Vereen and Wife built their home in Murrells Inlet. The Defendants referred to themselves as the "Vereen Entities" in the presentation of their defense and in their claims for reimbursement from the Company, lending credence to the amalgamation of identities theory. I find that each Defendant was the alter ego of the other. I find that for all practical purposes, Vereen controlled AVCC, Park Place, Parkway and Wife, with the express permission of Wife.

The first part of the two prong test for piercing the veil involves an eight factor analysis of the shareholder's relationship to the corporate entities, or here, the corporation AVCC, and the limited liability companies Park Place and Parkway, as discussed in Sturkie v. Sifly, 280 S.C. 453, 313 S.E.2d 316 (Ct. App. 1984). These eight factors look to: (1) observance of the corporate formalities by the dominant shareholders; (2) the capitalization of the companies; (3) the failure to observe corporate formalities; (4) the non-payment of dividends; (5) the siphoning of funds of the corporation(s) by the dominant shareholder; (6) the non-functioning of other officers or directors; (7) absence of corporate records; and (8) whether the corporation(s) were merely a façade for the operations of the dominant shareholder; Multimedia Publishing of S.C., Inc. v. Mullins, 314 S.C. 551, 431 S.E.2d 569 (1993); University Medical Associates of S.C. v. UnumProvident Corp., 335 F. Supp. 2d 702, 707 (D.S.C. 2004).

The conclusion to disregard the corporate entity must involve a number of the eight factors, but need not involve them all. Dumas v. InfoSafe Corporation, 320 S.C. 188, 192, 463 S.E.2d 641, 644 (Ct.App. 1995). In the case at hand, the Defendants failed to follow corporate formalities; there was a non-functioning of other officers or other directors in the Defendant entities; there was

siphoning of funds from the Plaintiff to the Defendant entities by the dominant shareholder; there were no payment of dividends to shareholder Smith, when there were clearly funds available to pay dividends; the Defendant corporate entities were merely a façade for the operations of the dominant shareholder Vereen; a dominant officer, manager or family member (Vereen) controlled the Plaintiff and Defendant entities; there is an absence of corporate records supporting the improper actions of the Defendants; and the acts of the Defendants' entities were merely a façade for the operations of Vereen in his multiple capacities. Vereen's acts were the acts of each of the Defendants. Dewitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co., 540 F.2d 682 (4th Cir. 1976). Once it is established that the requirements of the first prong are met, the second prong of the test requires that "there be an element of injustice or fundamental unfairness if the acts of the corporation be not regarded as the acts of other parties." See Sturkie, 280 S.C. at 458. When the notion of legal entity is used to protect fraud, justify wrong, or defeat public policy, the law will regard the corporation as an association of persons. Here, the Defendant Vereen siphoned all of the assets of the Plaintiff to the Defendant entities that he solely controlled, making the Plaintiff insolvent. When Vereen siphoned all of the assets of the Plaintiff, he prevented the Plaintiff from paying or being able to pay dividends, meeting the requirements of both prongs of the test. When the unfairness consists of misappropriation of assets, the second prong of the test is almost always met, and may be proved or established by showing the Defendants' reckless disregard for the rights of the Plaintiff. See Multimedia, 314 S.C. at 555, 431 S.E.2d at 572. Vereen's siphoning of over $2,000,000.00 of the Plaintiff's earnings to the Defendants is the major factor in meeting both the first and second prongs of the test. Hunting v. Elders, 359 S.C. 217, 597 S.E.2d. 803 (Ct.App. 2004). I am confident that Vereen and Wife were aware of the actions taken against the Company, their responsibility for such actions, and the self-serving actions of the Defendants in regards to

PAGE 37 OMITTED

sum of $ 138,396.78. The interest is based upon the amount of misappropriated assets as determined by Brady in the final Brady Report minus the total due from Ellis E. Smith as contained in the final Brady Report. See QHG of Lake City, Inc. v. McCutcheon, 360 S.C. 196, 600 S.E.2d 105 (Ct. App. 2004) and S. C. Code Ann. §34-31-20(A). The law allows prejudgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable and the sum is certain or cable of being reduced to certainty. Babb v. Rothrock, 310 S.C. 350, 353, 426 S.E.2d 789, 791 (1993). The fact that the sum due is disputed does not render the claim unliquidated for purposes of an award of prejudgment interest. Id. The Court has the discretion to award prejudgment interest in an action to recover under the theory of quantum merit, to make the Plaintiff whole. Id.; Boykin Contracting, Inc. v. Kirby, (Opinion No. 5133, Ct. App. 5/15/13). I have awarded prejudgment interest from the date the Plaintiff complaint in this matter, the date payment was demanded. Prejudgment interest was demanded in Paragraph 18 of the Complaint and has been awarded in conversion cases. Dixie Bell v. Redd, 656 S.C. 765, 768, 376 S.C. 361, 363 (Ct. App. 2007). As a general rule, the measure of damages in a case for conversion of property is the value of the property taken with interest thereon. Industrial Welding Supplies, Inc. v. Atlas Vending Co., Inc., 276 S.C. 196, 277 S.E.2d 196. (S.C.1981); Mack v. Riley, 282 S.C. 100, 316 S.E.2d 731 (S.C.App. 1984). Otherwise, the Defendants would be rewarded with free use of the Plaintiff's funds.

(b) It is therefore Ordered, Adjudged and Decreed that the Plaintiff A & E Constructors and Consultants, Inc. shall have judgment for actual damages against the Defendants Arthur Wayne Vereen, individually and as Trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, individually, and as Trustee of the Linda C. Vereen Residence Trust, Arthur Vereen Construction Company, Inc., Park Place Properties of Myrtle Beach, LLC and Parkway Offices,

LLC, jointly and severally, in the amount of Two Million Five Hundred Eight Thousand One Hundred Twenty Five and 90/100 ($2,588,125.90) in actual damages; for prejudgment interest at the annual rate of 8.75% from January 23, 2009 to March 23, 2015 in the amount of $ 138,396.78, as outlined in (a) above; for the additional sums of $142,268.00 in accounting expenses; together with punitive damages, as described below, together with the costs of this action, including the Court Reporter fees incurred. This amount reflects the balance due from the Defendants on the September 4, 2012 Brady Final Report, minus a credit in the amount of $124,377.41 for benefits received by shareholder Ellis E. Smith. I hereby adopt the findings of the Final Brady Report as the findings of the Court concerning the monies Defendants misappropriated from the Plaintiff herein.

PUNITIVE DAMAGES

The Plaintiffs have requested punitive damages from the Defendants. "Punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future." Mellen v. Lane, 377 S.C. 261, 290; 659 S.E.2d 236, 251 (Ct. App. 2008) (citing Clark v. Cantrell, 339 S.C. 369, 378-379, 529 S.E.2d 528, 533 (2000)). "They serve to vindicate a private right by requiring the wrongdoers to pay money to the injured party." Id. Punitive damages are recoverable in conversion cases if the defendant's acts are "willful, reckless, and/or committed with conscious indifference to the rights of others." Oxford Finance Companies, Inc. v. Burgess, 303 S.C. 534, 402 S.E.2d 480 (1991) (citing Hunt v. Jordan, 286 S.C. 340, 333 S.E.2d 569 (Ct.App.1985)). "In any civil action where punitive damages are claimed, the plaintiff has the burden of proving such damages by clear and convincing evidence." Mellen, supra, (quoting S.C. Code Ann. §15-33-135 (Supp. 2003)).

The following factors are relevant when considering punitive damages: "(1) the defendants degree of culpability; (2) duration of the conduct; (3) defendants awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonable related to the harm likely to result from such conduct; (7) defendants ability to pay; and finally (8) other factors as noted in Haslip, and other factors 'deemed appropriate." Gamble vs. Stevenson, 305 S.C. 104, 111-112, 406 S.E.2d 350, 354 (1991); Pacific Mutual Life Insurance Co. v. Haslip, 499 U.S. 1, 111 S. Ct. 1032 (1991). The trial court is not required to make findings of fact for each factor to uphold a punitive damage award. Welch v. Epstein, 342 S.C. 279, 306, 536 S.E.2d 408, 422 (Ct. App. 2000).

Here, I find that punitive damages are warranted because of the deliberate, willful misconduct of the Defendants. Vereen owed a fiduciary duty to the Company as its treasurer, board member and exclusive manager of its checking account. Vereen repeatedly converted assets of the Company to his own personal use and to the use of the named Defendants which he exclusively controlled. The Defendants failed to report any of the converted income on tax filings. What is most disturbing is that when confronted with proof of the misconduct, the Defendants refused to accept the responsibility for their collective misconduct and engaged in a four week trial where the proof of misconduct was all but absolute.

It is therefore ordered that Plaintiffs shall be granted punitive damages against the Defendants Arthur Wayne Vereen, Linda C. Vereen, individually and as Trustees, Arthur Vereen Construction Company, Inc., Parkway Offices, LLC and Park Place Properties in the amount of $100,000.00.

The parties both pled that the Company should be dissolved, and I have no dispute with that. However, there was no proof or argument presented concerning how that should be accomplished. Accordingly, I leave that for another day.

CONCLUSION

It is therefore **Ordered, Adjudged and Decreed** that the Plaintiff A & E Constructors and Consultants, Inc. be granted:

(1) Judgment against the Defendants Arthur Wayne Vereen, individually and as Trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, individually and as Trustee of the Linda C. Vereen Residence Trust, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC and Arthur Vereen Construction Company, Inc., jointly and severally, as follows:

Amount of monies misappropriated	$ 2,588,125.90
Prejudgment interest from 1/23/2009 until 3/23/2015	138,396.78[44]
Accounting fees due Susan Brady	142,268.00
Punitive Damages	100,000.00
	$ 2,968,790.68

or the sum of $2,968,790.68 in actual and punitive damages, inclusive of pre-judgment interest at 8 ¾% from January 23, 2009 through March 23, 2015.

(2) Frank H. DuRant, PA's contingency fee agreement is expressly approved and shall constitute a first lien upon any recovery in this action and shall be paid by the Company as Ordered when income is received from the Defendants or any other source.

(3) The bill of Susan Brady, CPA, of $142,268.00 for her investigative and accounting work in this case is expressly approved and shall constitute a second lien upon any recovery in this action and shall be paid by the Company as Ordered, when income is received from the Defendants or any other source.

[44] Per diem interest is 61.537.

(4) The taxable costs and expenses of this action, including any Court Reporter fees for the trial, shall be added to the judgment amount against the Defendants. In the event that the Plaintiff incurs late fees and penalties as a result of amending and filing late federal and state tax returns, the amount of such penalties and late fees shall be paid by the Defendants or added to the judgment amount rendered.

(5) The Counterclaims of the Defendants and Third Party Complaints of the Third Party Plaintiff(s) are hereby dismissed with prejudice.

AND IT IS SO ORDERED!

CYNTHIA GRAHAM HOWE
Master In Equity

Conway, South Carolina
March 23, 2015

COPY OF OMITTED PAGE ADDED

the property and assets misappropriated to their benefit. Vereen is the sole owner of AVCC ; his knowledge is imputed to AVCC. Vereen is the manager of Parkway and Park Place; his knowledge is imputed to Park Place and Parkway.

I find that Wife had actual knowledge of her husband's actions and benefited by the improper gains which she and her companies, Park Place and Parkway, received. Vereen, with the assistance of the Defendants, siphoned all of the assets of the Company through the schemes discussed earlier, which benefited the Defendants. I find by clear and convincing evidence that each of the Defendants is the alter ego of the other, that the corporate identities of the Defendants should be pierced, and that judgment should be rendered against the Defendants jointly and severally for the damages sustained by the Plaintiff.

11. I have examined the fee agreement of the Company with Frank H. DuRant, Attorney for the Plaintiff. I find that without the services of Mr. DuRant on a contingency basis, the Company would not have been able to proceed with this action. I am convinced that without the diligent, time consuming and costly discovery, the Plaintiff would have been unable to establish proof of the Defendants' improper actions and the amount of damages incurred. I therefore approve the contingency fee agreement as reasonable, fair and necessary to protect the Company's interests. I find that Plaintiff shall be entitled to an award of attorney's fees as a part of the Company's damages.

ACTUAL DAMAGES

(a) Prejudgment interest: The Plaintiff requested prejudgment interest in the Complaint and shall be entitled to pre-judgment interest on the misappropriated balance due of $2,588,125.90 commencing January 23, 2009 and ending March 23, 2015 at the rate of 8.75% per annum or the

EXHIBIT 4

DuRant & Martin
ATTORNEYS AND COUNSELORS AT LAW
2107 Farlow Street
Post Office Box 960
Myrtle Beach, South Carolina 29578-0960

Frank H DuRant, P.A.
David E. Martin, P.A.

Telephone: (843) 448-1541
Telecopier: (843) 626-7431

March 27, 2015

J. Jackson Thomas, Esq.
Thompson & Henry, PA
1314 Professional Drive
Myrtle Beach, SC 29577

Kathryn M. Cook
Cook & Roy, LLC
PO Box 4086
N. Myrtle Beach, SC 29597

Kathryn M. Cook
306 Calhoun Road
Myrtle Beach, SC 29577

Re: Ellis E. Smith and A&E vs. Vereen, et al
Civil Action No.: 2009-CP-26-0620
2010-LP-26-00467

Dear Mr. Thomas & Ms. Cook:

Enclosed please find a copy of the Nunc Pro Tunc Order Amending Judgment Total and Form 4 signed by Judge Cynthia Graham Howe in regards to the above matter, which is hereby served upon you by mail.

Should you have any questions or concerns regarding this matter, please feel free to contact me.

Sincerely,

COPY

Lauren Massimino
Paralegal to Frank H. DuRant
Attorney for the Plaintiff

/lm
Encl. as stated

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CASE NO. 2009-CP-26-00620
ELLIS E. SMITH, individually and on behalf A & E CONSTRUCTORS AND CONSULTANTS, Plaintiffs, v. ARTHUR WAYNE VEREEN, INDIVIDUALLY AND AS TRUSTEE OF THE ARTHUR W. VEREEN RESIDENCE TRUST, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, ARTHUR VEREEN CONSTRUCTION, INC. and LINDA C. VEREEN, INDIVIDUALLY AND AS TRUSTEE OF THE LINDA C. VEREEN RESIDENCE TRUST, Defendants AND ARTHUR WAYNE VEREEN, Individually and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., and 29th PLACE DEVELOPERS, INC., Third Party Plaintiffs, E. SMITH AND SONS CONSTRUCTION, LLC, EES CONSTRUCTION AND CONSULTING, INC., and ELLIS E. SMITH, Individually, Third Party Defendants.	)	AMENDED CERTIFICATE OF SERVICE

FILED
HORRY COUNTY
2015 APR 27 PM 3:56
MELANIE HUGGINS-WARD
CLERK OF COURT

Lauren Massimino certifies that she is an employee of the law firm of DuRant & Martin, attorney for the Plaintiff, and that she mailed the document(s) listed below in the above entitled action to the addressee(s) below on March 27, 2015 and proper postage was attached thereto.

DOCUMENT(S): Nunc Pro Tunc Order Amending Judgment Total and Form 4

ADDRESSEE(S): J. Jackson Thomas, Esq.
Thompson & Henry, PA
1314 Professional Dr,
Myrtle Beach, SC 29577
Attorney for 3rd Party Defendants E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc. and Ellis E. Smith, Individually

Kathryn M. Cook, Esq.
Cook & Roy, LLC
PO Box 4086
N. Myrtle Beach, SC 29597

Kathryn M. Cook, Esq.
306 Calhoun Road
Myrtle Beach, SC 29577

Attorney for Defendants Arthur Wayne Vereen, Individually and as Trustee of the Arthur W. Vereen Residence Trust, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc., and Linda C. Vereen, Individually and as Trustee of the Linda C. Vereen Residence Trust

Lauren Massimino

SWORN to before me this 24th
day of April, 2015.

Lisa Ch. Donato
Notary Public for South Carolina
My Commission Expires: 2-18-20

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-26-620

Ellis E. Smith, Individually, and on behalf of A & E Constructors and Consultants, Inc.,
PLAINTIFF(S)

Arthur Wayne Vereen, et al.
DEFENDANT(S)

Submitted by: The Honorable Cynthia Graham Howe	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **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.

2015 MAR 25 AM 11:22
CLERK OF COURT
HORRY COUNTY

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk : Amended Form 4 following Nunc Pro Tunc Order

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
A & E Constructors and Consultants, Inc.	Arthur Wayne Vereen, Individually, and as Trustee of the Arthur W. Vereen Residence Trust	$4,226,383.90
	Linda C. Vereen, Individually, and as Trustee of the Linda C. Vereen Residence Trust	$4,226,383.90
	Park Place Properties of Myrtle Beach, LLC	$4,226,383.90
	Parkway Offices, LLC	$4,226,383.90
	Arthur Vereen Construction Company, Inc.	$4,226,383.90

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

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

Master in Equity

3073
Judge Code

3/25/15
Date

For Clerk of Court Office Use Only

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

Frank H. Durant
J. Jackson Thomas

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kathryn M. Cook

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ELLIS E. SMITH, Individually, and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., a South Carolina Corporation.

Plaintiff,

vs.

ARTHUR WAYNE VEREEN, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, ARTHUR VEREEN CONSTRUCTINO COMPANY, INC., LINDA C. VEREEN, ARTHUR W. VEREEN, AS TRUSTEE OF THE ARTHUR W. VEREEN RESIDENCE TRUST, and LINDDA C. VEREEN, AS TRUSTEE OF THE LINDA C. VEREEN RESIDENCE TRUST,

Defendants,

and

ARTHUR WAYNE VEREEN, individually and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., and 29th PLACE DEVELOPERS, INC.,

Third Party Plaintiffs,

vs.

E. SMITH AND SONS CONSTRUCTION, LLC, and EES CONSTURCTION AND CONSULTING, INC., and ELLIS E. SMITH, individually,

Third Party Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-26-620

NUNC PRO TUNC ORDER AMENDING JUDGMENT TOTAL AND FORM 4

HORRY COUNTY
2015 MAR 25 AM 11:22
CLERK OF COURT

IT APPEARING to the Court that a mathematical error occurred in the computation of prejudgment interest in the Order signed March 23, 2015 and clocked with the Horry County Clerk of Court on March 24, 2015, and that certain parties were left off the Judgment Index on the Form 4 signed and clocked on the same respective days. The per diem rate of prejudgment interest of 8.75% would be six hundred twenty dollars and forty four cents and not 61.537 as indicated by Footnote 4 on Page 41 of that Order. Therefore, total interest between the dates of January 23, 2009 and March 23, 2009 would be $1,395,990.00. The total judgment amount should therefore be amended to reflect the amount shown below:

Amount of monies misappropriated	$2,588,125.90
Prejudgment Interest from 1/23/2990 until 3/23/2015	$1,395,990.00
Accounting fees due Susan Brady	$142,268.00
Punitive Damages	$100,000.00
TOTAL:	**$4,226,383.90**

Defendant Parkway Offices, LLC should also be added to the Judgment Index on the Form 4 as indicated by paragraph (1) on Page 41 of the Order.

IT IS SO ORDERED.

The Honorable Cynthia Graham Howe
Master in Equity for Horry County

Conway, South Carolina
24th day of March, 2015

EXHIBIT 5

KATHRYN M. COOK, P.A.

306 Calhoun Road
Myrtle beach, South Carolina 29577

Phone: (843) 449-1396 kifcook55@gmail.com

April 20, 2015

Frank H. DuRant
DuRant & Martin
P.O. Box 960
M.B., S.C. 29578

J. Jackson Thomas
Thomas & Brittain
P.O. Box 1220
M.B., S.C. 29578

Re: Smith v. Vereen
2009-CP-26-620

Dear Frank and Jack:

I am hand-delivering today to each of you a copy of the Defendants' Motion to Reconsider the two Orders of the Master in the above captioned case. I have sent the original Motion over to the Courthouse to be filed and a copy to be hand-delivered to Judge Howe. Please let me know if you would like me to furnish each of you with a filed copy of the Motion. I hate to kill any more trees than we have to in this matter.

Sincerely,

Kathryn M. Cook

STATE OF SOUTH CAROLINA)
)
COUNTY OF Horry)
Ellis E. Smith)
☐ Plaintiff)
)
v.)
Arthur Wayne Vereen)
☒ Defendant.)

IN THE COURT OF COMMON PLEAS

CASE NO.
2009-CP-26-620

MOTION AND ORDER INFORMATION FORM AND COVER SHEET

Plaintiff's Attorney: Frank DeFrank , Bar No. Address: + Jack Thomas phone: fax: e-mail: other:	Defendant's Attorney: Kathryn M. Cook , Bar No. 1371 Address: 306 Calhoun Road Myrtle Beach, SC phone: 843-232-2116 fax: e-mail: other: kmcook55@gmail.com

☒ **MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)**
☐ **FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)**
☐ **PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)**

SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider
Estimated Time Needed: 1 hr. Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

☒ Written motion attached
☐ Form Motion/Order

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

Kathryn M. Cook — 4/20/15
Signature of Attorney for ☐ Plaintiff / ☒ Defendant — Date submitted

SECTION III: Motion Fee

☒ PAID – AMOUNT:
☐ EXEMPT: (check reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	_____ JUDGE CODE: _____ Date: _____

CLERK'S VERIFICATION

Date Filed:
Collected by: _____

☐ MOTION FEE COLLECTED: _____
☐ CONTESTED – AMOUNT DUE: _____

SCCA/233 (11-03)

STATE OF SOUTH CAROLINA)) COUNTY OF HORRY)	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2009-CP-26-620
Ellis E. Smith, individually and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation, Plaintiffs v. Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc. and Linda C. Vereen, Defendants AND Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc. and 29th Place Developers, Inc., Third-Party Plaintiffs v. E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, individually, Third-Party Defendants	**DEFENDANTS' and THIRD- PARTY PLAINTIFFS' MOTION to RECONSIDER ORDER**

TO: ELLIS E. SMITH, individually and on behalf of A & E CONSTRUCTORS and CONSULTANTS, INC. and their attorneys, Frank H. DuRant and J. Jackson Thomas

YOU WILL PLEASE TAKE NOTICE that the undersigned will move before the Honorable Cynthia Graham Howe, Master in Equity, at the Horry County Courthouse in Conway, South Carolina within 10 days or as soon thereafter as counsel may be heard for reconsideration of her Order filed March 24, 2015, a complete copy of which was received by Defendants' counsel on April 15, 2015 and her Nunc Pro Tunc Order filed March 25, 2015 received by Defendants' counsel on March 30, 2015. A copy of the Orders are attached hereto. This motion to reconsider is made pursuant to Rule 52(b) and Rule 59(e) of the South Carolina Rules of Civil Procedure. Defendants request that the Court reconsider and amend the Orders and find that a full and complete judicial accounting by an independent forensic accountant is required and order the same. The grounds for this motion include, but are not limited to, that the Court erred as follows:

1. In making a final ruling in this case before ruling on the pending motion to reopen this matter due to post-trial/pre-ruling events involving and effecting the Plaintiff A & E, its liabilities and the accounting sought by the parties. The post-trial motion to reopen the hearing was filed on August 21, 2014 and heard by the Court on November 17, 2014. No ruling has been issued in that matter.

2. In accepting the report of Susan Brady, Plaintiff Smith's personal accountant, as constituting a full and complete judicial accounting of Plaintiff A & E when Ms. Brady unequivocally testified she **did not undertake to perform an accounting,** but had only reviewed certain transactions as pointed out to her by Plaintiff Smith and had not attempted to do a complete review or audit of the accounts of A &E as is required.

3. In not ordering a full and complete judicial accounting which requires the review and adjustment to all the accounts of the parties and the ascertaining of the balance owed by each party, if any, to the corporation as requested by all parties to this litigation. *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 673 S.E.2d 448 (2009); *Historic Charleston Holdings, LLC v. Mallon*, 365 S.C. 524, 617 S.E.2d 388 (Ct. App. 2005); 1 Am. Jur.2d *Accounts and Accounting* §§ 52 & 56 (2005).

4. In not requiring the performance of a full accounting to determine the assets, liabilities, discharge of the obligations to creditors of the corporation and distribution of any surplus to the shareholders if applicable. A full accounting of all accounts, not just selected transactions of certain accounts is required under the request of all parties and is required under the S.C Corporate Code as part of the judicial dissolution and winding up process which was requested by Plaintiff.

5. In finding the Defendants jointly and severally liable for the damages awarded and piercing the corporate veils of the Defendants when the same was not requested in the pleadings.

6. In finding any liability on the part of Arthur Wayne Vereen and Linda C. Vereen as trustees of the Arthur W. Vereen Residence Trust and Linda C. Vereen Residence Trust., respectively, in this accounting matter.

7. In making an award of damages against the trustees above referenced and/or the Trusts above mentioned.

8. In awarding punitive damages against Defendant Vereen without undertaking the legal requirements and analysis for such an award required under the United States and South Carolina case law.

9. In making an award of attorney fees without making findings as required under South Carolina law and without proper evidentiary support as to each factor or requirement in that mandate.

10. In making an award of prejudgment interest when the sum was not liquidated in this matter. *See Historic Charleston Holdings, LLC, Id.* at 673 S.E.2d 448, 458.

11. In making an award of prejudgment interest at 8.75% for the more than three years the Court has had this case under consideration.

12. In wrongfully excluding evidence proffered by Defendants which did not violate the Court's Pre-Trial Order and which documents and evidence had all been provided to Plaintiff's counsel and expert in advance of the Court's deadline.

13. In failing to find that Ellis Smith was President and Secretary of A&E and owed the same duties and obligations to the corporation as did Vereen.

14. In failing to find that Smith , from the inception of the corporation until he abandoned the business in early 2007, had the same and unfettered access to all books, records, files and accounting information and financial records as did Vereen and in fact hired his own personal accountant, Susan Brady, to serve as the accountant for A&E.

15. In failing to find and consider that it was Smith himself that directed Vereen that Smith was not to be a signatory on the A&E bank account, but none the less had access to the records of that account and the Peachtree accounting system.

16. In failing to find that Susan Brady was the accountant for A&E from 2003 through 2005 or early 2006 and it was she who failed to file the 2003, 2004 and 2005 tax returns such that the records she had were ultimately turned over to Richard Crumpler.

17. In finding any significance as to Richard Crumpler not being called as a witness by any party in this litigation and in making a ruling based on blatant hearsay evidence of a statement attributed to Mr. Crumpler stated by Smith at trial.

The Defendants believe that the Court misunderstood the following evidence presented at the trial in this case and should reconsider and examine the same:

1. The Court Order states that "Smith invoiced the Company through EES, for his time at $25.00 per hour and for EES's pro-rata expenses spent on Company business." Smith testified that each member was to receive $1,000.00/week in salary, and that he charged the Company $25.00/hour, which included all of his overhead and everything to be charged to the Company. However, the evidence presented shows that the Company paid Smith $82,002 in supervisory fees from June 2004 until April 2005, which amounts to $50.00/hour, or $2,000/week. The Brady Report does not address the supervisory fees received by Smith over and above the $1,000.00/week agreed by the members.
2. The Court Order states that "[i]n early 2004, the Company began construction of a

speculative residential home for Vereen in the Plantation Lakes subdivision." Vereen testified that the Plantation Lakes job was a speculative job for the Company, and Smith stated that he believed the same to be true, until the lawsuit was filed. The land was titled in Vereen's name, but the building permit, the HOA application, and the sales contract were all in the name of the Company. The settlement statement listed the Company as the seller, and the proceeds of the sale were deposited into the Company's checking account. A mistake by the Company's bookkeeper coding the proceeds as a loan to the Company is not instructive on this issue.

3. The Court Order states that the "Vereen residence is a large house located in an exclusive neighborhood in Murrells Inlet, South Carolina." There is no testimony in the record to support the Court's statement, which is not true. The Vereen residence is located on Highway 17 Business in Murrells Inlet, which is not exclusive or in a neighborhood. Approximately $26,800.00 of the construction costs on the Vereen residence was paid for with Company checks. Smith testified in Court that profit and overhead is not due to the Company for those amounts related to the Company's job ledger for Vereen's personal home.

4. The Court Order states that "Vereen authorized the use of [AVCC's] license and was aware of its use [by Smith in North Myrtle Beach] for over nine years prior to the institution of this action." Vereen presented evidence that after this lawsuit was filed, the Company received a phone call from the new owner of the Cari Davis home, one of the many construction projects licensed by Smith, without Vereen's knowledge, using the Company's license. In response to this call, Vereen obtained copies of permitting files from the various local building departments, and thereafter was able to identify numerous jobs permitted under the Company's name which were unknown to him. This fact triggered Vereen's request for a

search of permits issued under his former company, which revealed Smith's activities on the North Myrtle Beach project.

5. The Court Order states that Vereen "did not submit any accounting testimony," and that Vereen's failure to call the Company's accountant, Richard Crumpler, to testify "was telling." Vereen conducted a thorough investigation of the Company's documents and records, and identified expenses and costs due from Smith and Vereen. For example, during the course of such thorough investigation, Vereen identified several deposits intended for the Company, but received by Vereen, which were unknown to the Plaintiff, and alerted them to the same. On the other hand, the Brady Report is not based on a review of the Company's business records at all, buts relies solely on the information electronically stored in the Company's accounting software, and instructions from Smith that certain amounts were not Company expenses, but rather Vereen's personal expenses. When presented with Company records and invoices in support of the checks written by the Company, Smith and Brady refused to consider over 80% of the Company records. Vereen could have employed Crumpler to present similar one-sided biased testimony based on a limited set of facts. Vereen instead chose to present a complete and full accounting of all of the parties, complete with documentation to both contradict the Brady Report and support Vereen's claims for reimbursement/offset.

6. The Court Order states that the Brady Report was "documented by written evidence." The Brady Report did not include supporting backup documentation; the only information included behind the tabs of the Brady Report are print outs from the Company's accounting software. The Brady Report is merely a compilation of those items identified by Smith as improper expenses paid by the Company from a review of the Company's general ledger.

Neither Brady nor Smith reviewed or research any of the Company's business records to determine whether there was support for such expenses. Simply, the Brady Report is nothing more than a summarization of Smith's instructions. In stark contrast, Vereen researched each entry in the Brady Report, provided Smith and Brady with copies of such support, and identified those that are legitimate business expenses, and those which are not.

7. The Court Order states that the final Brady Report is "conclusive evidence of the actual damages sustained by the Plaintiff." However, Brady testified that she did not perform and audit of the Company's records, and that she only performed a compilation. She further testified that a compilation is based on receipts, if they are available, and those expenses that are reasonably believed to be legitimate business expenses, but does not involve pulling invoices, and does not hold her to be financially responsible for her results. The Brady Report is not an audit, and does not follow the guidelines, established by Brady herself.

8. The Court Order states that South Carolina law "requires a corporation's director and officer to act in good faith, with the care an ordinarily prudent person would exercise under similar circumstances, and in a manner he reasonably believes to be in the best interest of the corporation and its shareholders." Smith was the President of the Company, and is equally responsible to the Company, but the Brady Report and the Court held the two members of the Company to different standards.

9. The Court Order states that "Vereen, as the Company's treasurer, paid construction costs and expenses for AVCC jobs from the Company." Smith and Vereen agreed that old jobs of Smith and Vereen and their former companies, in existence as of October 2003, were to be completed in a timely fashion, and that new jobs were to be rolled into the Company. Smith did not roll any jobs into the Company. Vereen rolled the following new AVCC jobs into the

Company: Tahitian Princess, Beach Dunes, Willoughby Place, Kempe, and Lale; these jobs became Company jobs, and were completed by the Company. The AVCC jobs were negotiated and contracted by Vereen, prior to the Company's inception; therefore, AVCC performed work on these jobs, and costs were incurred on these jobs, prior to January 30, 2004. The benefit of work performed by AVCC was realized by the Company; Vereen treated AVCC as nothing more than a subcontractor for the Company, similar to Smith's treatment of EES as a subcontractor for the Company. Vereen should be credited for work performed and expenses paid by AVCC.

10. The Court Order states that "AVCC entered into multiple written construction contracts when it was not licensed to perform construction in South Carolina and when the Company obtained all permits and paid for the construction costs of such projects from the Company account." AVCC was a licensed unlimited general contractor for over ten years prior to October 2003, when Vereen and Smith agreed to start the new Company. The undisputed testimony and evidence at trial showed that in October 2003, it was time for Vereen to pay the annual $350 renewal fee and renew the AVCC license, but because of his agreement with Smith to start the Company, Vereen did not pay the renewal fee. Vereen intended to move his license into the newly formed Company. The Company was formed on October 28, 2003, and Smith insisted on using his license as the qualifying party for the Company. Thereafter, the Company was licensed on January 30, 2004. On the other hand, Smith's situation is much different and much more egregious. Smith performed work for the Company, and others, under his former company, EES Construction and Consulting for over ten years without ever being licensed, even after the Company was formed and his license was used as the qualifier for the Company.

11. The Court Order states that "On multiple occasions, even though the payments for such construction belonged to the Company, Vereen deposited the payments into the Defendants' accounts." Vereen has admitted that payments in the Company name were deposited into the Defendants' accounts, and Vereen has presented evidence to account for each occurrence, and evidence to show that those amounts were due to the Defendants for payment of Company expenses. Smith, on the other hand, deposited payments in the Company's name into his personal and/or business accounts, and has no evidence that those amounts were due to him either as a distribution from the Company, or as reimbursement for expenses paid by him. Smith's only defense is that he forgot that he had done so.

12. The Court Order states that "AVCC billed the Company's customers for these expenses, even though AVCC did not pay for the cost of construction." Vereen presented evidence that AVCC paid $149,067 in direct costs of labor and materials on Company jobs between 2003 and 2006. Vereen presented evidence that AVCC received payment from the Company and Company clients over and above the amount of direct costs, but the Brady Report does not give Vereen credit for any costs or expenses paid by AVCC on behalf of Company jobs. If it is the Court's intent to disallow these expenses as an offset to amounts which are owed by Vereen simply because AVCC was an unlicensed contractor, then it would follow that Smith would, likewise, be responsible to the Company for the $349,448 paid to EES for work performed on behalf of Company jobs without a license.

13. The Court Order states that "Brady accounted for all money the Vereen Entities deposited into the Company checking account, properly giving appropriate credit for each deposit." The Brady Report failed to give Vereen credit for a 2004 $40,000 deposit made by Parkway Offices, and also failed to give Vereen credit for his $50,000 initial capital contribution.

14. The Court Order states that "[p]ursuant to the Court's October 15, 2010 Pretrial Order, the Company's and the Defendants' business records, accounting records, tax records, checks and deposits, banking records, accounting and tax records were admitted into evidence without authentication. In the Pretrial Order, this Court required that the Defendants deliver all accounting information to the Plaintiff's attorney to support the Defendants' claims for set-off or reimbursement by December 1, 2010." Vereen presented evidence that the Defendants compiled several notebooks containing checking account records and corresponding invoices from the Defendants' business records, if available, and provided the same to the Plaintiff. The Defendants production was organized monthly, and invoices supporting payments from the checking account were grouped accordingly. The Plaintiffs complained about the method of production. Thereafter, the Defendants re-organized the production, and reproduced the same information. The Defendants supplemented its original production with those documents – documents maintained by the Company in its business records. All of the Company's business records, including the checking account statements, accounts payable files, and job files, had been produced, in total, earlier in 2010, on two separate occasions at the former offices of the Company. Therefore, the Defendants argued that the Plaintiffs were not burdened by this supplementation. Vereen presented further evidence that even if a receipt or invoice did not exist, in 2010, several years after the checks were written, his request for reimbursement is no different than those of Smith that were submitted without a receipt or invoice, totaling $184,035, and for which payment was nonetheless given by the Company.

15. The Court Order states that "[t]he Defendants submitted invoices paid by the Defendants for improvements made on the Defendants' properties. These invoices were not proper for

reimbursement, because the Company had no obligation to pay for any of the Defendants' expenses on their own properties. The Defendants submitted claims for reimbursement for Company jobs performed from 2004 until 2007. The Company would not have the ability to invoice the customer or deduct the expense on its tax returns, as the request was submitted over three years after the Company had completed the last job and after the tax returns had or should have been prepared." The Defendants submitted invoices for reimbursement/offset pertaining to the following Company jobs: Willoughby Place, Tahitian Princess, Dr. Lale, the Fountains, Ocean Blue, Tahitian Pearl, Mathi, Jack Frost, Prospective Jobs, Greg Sisson, Britt, Ron Kim, Charlie Russell, and O'Laughlin. Smith does not deny that these were Company jobs. The Defendants also submitted invoices for reimbursement/offset as they pertained to the overhead expenses of the Company, i.e., warehouse rental, utilities, insurance, maintenance, etc. Smith denies that any amounts for Company overhead are due to Vereen for the use of his offices, warehouses, trucks, and equipment. The invoices submitted by the Defendants for Company jobs and Company expenses are proper and should have been included as an offset in the Brady Report.

16. The Court Order states that "as to claimed deductions [by Vereen] for 2004 and 2005, the Company's tax returns already had been filed and could not be amended." Vereen presented evidence of direct expenses paid on behalf of the Company and checks received by him from the Company and Company clients, all of which are accounted for in the tax returns. Vereen also presented evidence that as of December 31, 2005, the Company still owed Vereen $160,066 for his direct contributions, in excess of payments received by him. The 2007 Accounts Receivable for Vereen included in the Brady Report shows that as of December 31, 2005, the tax return for the Company shows an amount owed to Vereen of $48,760. Vereen

also presented evidence that the Company has not reimbursed him for his 2004 $50,000 capital contribution and a $40,000 loan from Parkway Offices. Therefore, as on December 31, 2005, the only claimed deductions which have not been addressed amount to $21,306.

17. The Court Order states that there was no "proof that Smith, EES or E. Smith misappropriated any corporate assets of the Company that was not accounted for by Brady in her Report." However, Vereen presented evidence that the Company paid $26,292 in direct expenses for side jobs performed by Smith and EES. Smith testified that if he changed the name of job on an Invoice, it was by mistake, and if the Company paid expenses on his side jobs, then those were amounts that were due to the Company. The Brady Report does not reflect those amounts on Smith's Accounts Receivable.

18. The Court Order states that "the Company has not suffered any damages as the result of Smith's actions [in licensing the Condolux job under the Company's license]. However, the Court is aware that the Company has been sued on this job, and in incurring attorneys' fees in order to defend this litigation. In addition, the Court is aware that Smith's company E. Smith was not licensed at the time the job was performed under the Company's license; thereby, exposing the Company to unlimited liability for such construction, and any defects associated therewith.

19. The Court Order states that "the Company incurred payroll costs for workers compensation, social security, and payroll expense, liability insurance, office overhead, and salaried employees on the Plantation Lakes residence." However, the Court ignores the fact that the Brady Report refuses to give Vereen credit for payment of the office overhead, or payment of salaried Company employees, during this period of construction; thereby creating the situation where the Company did not pay for either, and is not due to be reimbursed. In fact,

with respect to all jobs that the Brady Report identifies as personal or family jobs of Vereen, office overhead is included in the profit and overhead calculations as an amount due from Vereen to reimburse the Company. However, the Company paid no office expenses; therefore, this should not be included in the profit and overhead calculations.

20. The Court Order states that, with respect to the Willoughby Place litigation, "the Defendants failed to produce a full accounting of these expenses, payments and reimbursements from the insurance carrier and the project's owner." On behalf of the Company, Vereen paid $112,749 towards attorneys' fees, expenses, and settlement of litigation where the Company was a named party. Smith participated in meetings with the Company's attorneys, discovery, and depositions, but Smith refused, at the last minute, to attend the settlement conference. Vereen presented evidence of the payments made, but the Brady Report credits Vereen for only $19,000.00 of those amounts. There is an additional $93,749 that should be credited to Vereen. Smith has presented no evidence that shows that Vereen has already been reimbursed for these amounts. The Defendants have produced each and every checking account record for 2003 through 2009; any purported amounts for reimbursement are not shown on those records.

21. With respect to the Dr. Lale job, the Court Order states that "[t]he Company paid the costs and expenses of the job." Vereen presented evidence that Parkway Offices and AVCC also paid for some of the costs and expenses of that job.

22. The Court Order states that "the Defendants challenged the charges maintained on the Plaintiff's accounting records attributed to "shop," the items paid and attributed to "shop" were not included in the [Park Place Putt-Putt] job ledger and were not expensed to the Defendants." However, the Defendants challenged the charges maintained on the Plaintiff's

accounting records attributed to "shop" charges on the Parkway Offices job ledger. Vereen provided evidence that Company employees, working on Company jobs at the Company's offices, would write "shop" on their timecard, and those expenses would be entered on the Parkway Offices job ledger. Vereen presented evidence that Drewett improperly included such entries totaling $58,373.00 on the Parkway Offices job ledger. However, the Brady Report does not provide any consideration for this erroneous practice.

23. The Court Order states that, with respect to the 23 homes constructed for Park Place, "the Brady Report details the amounts due for labor and materials paid for by the Company, with added costs for payroll, overhead, insurance and expected profit." The Brady Report charges $228,464 in profit and overhead on expenses paid by the Company on the Pointe Marsh job. The Brady Report then charges over $565,075.00 to Vereen for lost profit and overhead on those expenses paid by Vereen on the Pointe Marsh job. Although Vereen continues to dispute that any profit and overhead is due to the Company on the $959,287 paid by the Company on behalf of the Pointe Marsh job, the Court cannot have intended to allow the Company to recoup profit and overhead on work performed and expenses paid by a third party, i.e., the $3,767,172 in estimated construction costs included in the Brady Report, paid out of the construction loans secured by Vereen with First Palmetto Bank. If this was the Court's intent, then Smith's 2007 licensure of almost $1.4 million in construction, using the Company's license, and Smith's licensure of his side jobs, under the Company's license, are also subject to the same profit and overhead calculation. In addition, it is telling that the Brady Report distinguishes between the two different profit and loss calculations on this job – one is based on direct expenses paid by the Company, and the other is based on the estimated construction cost paid by others. The Brady Report further fails to include any

similar profit and overhead calculations for those expenses paid by the Company on behalf of Smith personally or Smith's side jobs.

24. The Court Order states that, with respect to the 23 homes constructed for Park Place, "[t]he Company advanced payment for over $900,000 in construction expenses . . . . and the Company did not invoice or collect payment for the expenses it advanced." The Brady Report includes copies of the job ledgers for the Pointe Marsh job which shows that the Company collected payment in an amount of $611,000 for this job. Vereen presented evidence that Park Place made an additional $43,720 in deposits to the Company, and made payments on behalf of the Company for expenses on Company jobs in an amount of $346,432 between 2004 and 2007. Therefore, the evidence presented to the Court is proof that Park Place reimbursed the Company for the $959,287 paid for construction expenses on the Pointe Marsh job.

25. The Court Order states that, with respect to the Sisson Remodel, "Vereen admitted that the Company paid an additional $15,000.00 in labor expense to its master carpenter for his work at the Sisson house, which was not charged to the Sisson job ledger in the Company records." Vereen would argue that his testimony was that Sisson was not charged for additional labor expenses, in the form of payroll costs. There is no testimony that any Company employee received additional payroll for work performed on the Sisson job.

26. The Court Order states, with respect to the Kempe job, "the Company paid for the Kemp[e] expenses from the Company account." Vereen presented evidence that AVCC also paid for some of the costs and expenses of that job.

27. The Court Order states that "Vereen had a conflict of interest when he paid himself "supervisor fees" of $103,760.68 in 2004 and $27,121.62 in 2005 from the Company's

checking account." However, the Court ignores testimony from Smith that the members were to receive $1,000/week in the formal of salary. In addition, the Court ignores the evidence presented that Smith invoiced the Company through EES $2,000/week in supervisory fees during 2004 and 2005.

28. The Court Order states that "Vereen took $21,320.15 from the Company account at Carolina First Bank to purchase a cashier's check payable to the Horry County Treasurer to pay his Wife's real property taxes." Vereen presented evidence that the $21,320.15 withdrawal from the Company's account represents two checks written out of the Company's account – one check was payable to Rockford Manufacturing for Company expenses in an amount of $17,426.80, and the second check was payable to the Horry County Treasurer in an amount of $3,893.35, which Vereen admits was for a personal expense. This correction has been included in the final Brady Report.

29. The Court Order states that "Vereen incurred monthly charges on multiple credit cards and paid for such expenses from the Company checking account. I find that the Company does not have any credit cards of its own, and these expenses were not Company expenses." Vereen presented evidence that the Company did not own any credit cards, and that Vereen and Smith used their personal credit cards to charge materials for Company jobs. Smith and Vereen were reimbursed by the Company for these charges; however, the Brady Report and the Court have disallowed Vereen's reimbursements, but have ignored reimbursement by the Company for charges made to Smith's personal credit cards.

30. The Court Order states that "Vereen paid for a $9,045 City of North Myrtle Beach construction permit for the Park Place job from the Company account. This expenditure was not included in the Park Place job ledger maintained by the Company and was never charged

to the Park Place account on the Company's job ledger." The Brady Report includes a copy of the Company's job ledger for the Pointe Marsh job. The $9,045 payment for the permit is included on page 31 of that job ledger. The Brady Report does not make a correction for this duplicate charge to Vereen.

31. The Court Order states that "Vereen used the Company's lull and skid for several years while the Company was constructing 23 homes for Park Place. At the same time, the Company had to rent a comparable lull and skid to use on its multi-family jobs." Vereen presented evidence that Vereen paid for rental equipment to be used at the Pointe Marsh job. The Brady Report charges Vereen $75,650.00 in equipment rental, without any proof or substantiation of such charges, and despite evidence that Vereen paid a third party for rental of such equipment.

32. The Court Order states that "Vereen paid from the Company account multiple checks to Hartford Insurance and Companion Property & Casualty for insurance for property not owned by the Company." The Brady Report fails to take into consideration the coverage of those insurance policies. Vereen presented evidence that the Hartford Insurance policies provided auto, equipment, premises, and other insurance coverage for the benefit of the Company, and that the Companion insurance policies provided coverage for an automobile owned by Smith and EES. Therefore, those expenses are improper included on Vereen's Accounts Receivables in the Brady report.

33. The Court Order states that "Vereen claimed $208,577.66 in "construction in progress" expenses ... were advances by AVCC to the Company in 2006, but for which he produced no backup as is required by the Court's Pre-trial Order and the Internal Revenue Service regulations." Vereen produced evidence that AVCC made $149,067 in direct contributions

on behalf of Company jobs between 2003 and 2006.

34. The Court Order states that "Vereen's daughter, Sisson, gave the list of [AVCC] expenses to the Company's accountant with no documentation to support the claimed expense." Sisson testified that the Company's accountant requested that the Company identify significant amounts of expenses reported on the Company's jobs in progress report, but not coded to a particular job. This request had nothing to do with AVCC and was well before the filing of the lawsuit. Sisson further testified that she and Drewett, the Company's office manager and bookkeeper, identified the majority of those uncoded expenses, pull the corresponding invoices, and provided that information to the Company's accountant. These are reasonable actions in response to a request from the Company's accountant.

35. The Court Order states that, during the Condolux construction, "Smith had already left the company . . . when he was receiving 14 weeks of paid leave for unused vacation time." Vereen presented evidence that paid vacation was not contemplated as a term of employment with the Company. Smith did not present evidence of a written agreement authorizing paid vacation for either Vereen or Smith, or any other employees. Therefore, Smith was not entitled to paid vacation. Likewise, Smith was not entitled to receive salary after unilaterally terminating his employment in 2007. The Brady Report does not address paid vacation benefits received by Smith; or the $35,000 that Smith received in income after his termination. These are amounts which are due from Smith to the Company.

36. The Court Order states that "Brady properly calculated overhead and profit at 15% of the cost of construction." However, the Court ignores the fact that such profit and overhead contemplates a breakdown of 10% profit and 5% overhead and that such overhead includes office, warehouse, trucks, and equipment overhead. The Company paid for no offices,

warehouses, trucks, or equipment, but utilized those assets of Vereen; therefore, if 5% overhead is reasonable and expected, then the Company owes Vereen 5% of $20,000,000, or $1,000,000, for the use of Vereen's offices, warehouses, trucks, and equipment.

37. The Court Order states that "Vereen did not tell Smith that he entered into secret contracts with the customers of the Company." Smith admitted that he and Vereen met each morning to discuss Company jobs and where the Company's employees would be working for that day. Smith was aware of all jobs performed by the Company, all jobs performed for Vereen or any of Vereen's family members, and all jobs where Company resources were being used. Until Smith and Vereen's disagreement over the Condolux job, and Smith's decision to leave the company, Smith stated no objection to those jobs, no objection to employees or materials being sent to those jobs, and no objection to those customers. On the other hand, Smith admitted that he performed numerous side jobs, while employed by the Company, without telling Vereen about them. Jobs performed by Vereen were not secret; they were known to Smith, the Company, and the Company's employees. Jobs performed by Smith were secret, and were not discovered until after Smith left the Company.

38. The Court Order states that "all accounting purposes in this case ... the Company ceased to perform business on December 31, 2007, and that expert Brady properly disregarded all financial transactions after that date, with the exception of accounts receivable and payments made for warranty work." However, the Brady Report provides no credit for warranty items performed on Company jobs. Evidence was presented at trial that Vereen undertook at address the issues of the Company's clients, after Smith failed to respond to those requests.

39. The Court Order states that "the Company incurred accounting expenses in the amount of $142,268.00 from the expert witness Susan Brady, CPA, to uncover and detail the

Defendants' improper actions." The Brady Report, according to Brady's own testimony, was nothing more than a screen shot of expenses contested by Smith, and cannot be believed to be supported by hundreds of hours of work. Brady did not pull copies of the checks or invoices supporting those expenses, and in some cases, did not even make sure that the checks had been cashed. Similarly, Brady did not follow her own established guidelines – to treat the members equally, to "take receipts, if you have them," to look and see what was reasonable. Brady did not take into consideration the Company providing Smith with a vehicle, and not Vereen; Brady did not look to see if Smith had provided receipts for his reimbursements, and wholly ignored Vereen's receipts; and Brady did not take into consideration that the Company did not pay for office space, warehouse space, trucks, and equipment usage, despite insisting that Vereen reimburse the Company for the same.

40. The Court Order states that "the Defendants shall be responsible for the payment of any and all fines and penalties incurred by the Company in correcting and preparing state and federal income tax returns for the Company." The Company's delay and failure to file tax returns for 2006 through 2009 are, in part, due to Smith's failure, as President of the Company, to raise concerns regarding the Company's accounting practices, in 2005, when he first became aware of such practices. Had Smith insisted on a corporate accounting and financial statement, and a change in the bookkeeping methods, at that time, it is likely this litigation would have never been filed.

41. The Court Order states that "Wife authorized the actions of Vereen," that "Wife is well-educated in business affairs," and that Wife "should have been cognizant" and "benefitted" from Vereen's actions. The same can be said for Smith. Smith testified that he has built thousands of condos, and has worked with Vereen for many years. Smith also testified that

he was the President of the Company and allowed Vereen to be the Vice-President and Treasurer. Smith further testified that he had no money or capital to put into the Company, and looked to Vereen to do that. Finally, Smith testified that in 2005 when he presented Vereen with a list of concerns about the Company's accounting and Vereen answered those questions. Smith authorized the actions of Vereen; Smith is well-educated in the construction industry; Smith benefitted from Vereen's assets and capital which were invested into the Company, and as President of the Company, Smith should have been cognizant of Vereen's actions, especially after his personal CPA and long-time friend Brady made him aware of them. Vereen's Wife cannot be believed to have had any role in the operations of the Company, and how the Company's construction expenses were being funded or paid. In fact, Smith failed to present any testimony or evidence at the trial which can be used to argue that Wife took any actions against the Company. Therefore, if Wife's actions are deemed to be joint and several with those of Vereen, by virtue of her ownership in Park Place and of the office buildings, then surely Smith's actions and inactions, as a 50% member and President of the Company itself, can bind him to the actions of Vereen as well.

The Defendants believe that the Court failed to issue a ruling on the following evidence presented at the trial in this case:

1. Liabilities for the Company will exist until all pending litigation is completed and/or until eight years has expired from the date of the Certificate of Occupancy for the last job completed by the Company, or until the end of 2015. However, Smith's use of the Company's license on the Condolux building and the Martin Brown projects will extend those potential liabilities.
2. The employees of the Company were employees of both Smith and Vereen, and all corporate

documents and records were documents and records of both Smith and Vereen; both members had equal access to all of the Company's employees, and the Company's documents and records.

3. In early 2005, Smith took information compiled by Drewett, for the 2004 calendar year, to his personal CPA, Susan Brady, to prepare the Company's corporate returns. Smith selected Brady for such work, because Brady and Smith had a long term business relationship. Brady identified several concerns regarding deposits into, and payments made out of, the Company's checking account, and this information was shared with Smith and Vereen, at that time. Vereen testified that he told Brady that he was due credits for rent on the offices, warehouses, trucks, and equipment to offset some of the expenses paid on his behalf by the Company. Smith testimony was consistent with this, and he stated that Vereen answered all of Brady's questions. Nevertheless, Brady did not prepare the returns, and the documents compiled by Drewett were taken to Richard Crumpler at Smith Sapp, who filed the Company's 2004 returns. Smith failed to demand, as early as 2005, that Drewett and/or Vereen maintain the Company's records and accounting in a different manner. Thereafter, Crumpler also filed the Company's 2005 returns. Smith received a K-1 for both years – 2004 and 2005. Smith did not raise his concerns about the Company's accounting again until 2007, when he left the Company.

4. Smith cannot be believed to have been shocked and surprised by payments made and expenses paid by the Company either before 2005 or after. Smith routinely reviewed corporate billing and payments, and requested job ledgers and general ledgers from Drewett throughout his employment with the Company.

5. Vereen made an initial $50,000 capital contribution to the Company, and transferred personal

assets into the Company's name as basis for the Company's license; Smith did not, at any time, make any cash or other capital contributions to the Company. Brady testified that she performed the initial audit of the Company and identified the assets and capital contribution of Vereen. However, the Brady Report failed to give credit to Vereen for the initial capital contribution of $50,000. The Brady Report also fails to give Vereen any credit for other personal assets (offices, warehouses, trucks, and equipment) used by the Company.

6. Vereen allowed the Company to use Vereen's offices, warehouses, trucks, and equipment. Vereen never intended for the Company to use these resources for free, and discussed the same with Smith. There was no written agreement, but Vereen is due to be compensated for those contributions. Vereen presented evidence of those amounts at trial. Smith testified to varying amounts that were agreed upon for rent to be paid by the Company, from $600.00 to $1,200.00.

7. The Brady Report charges Vereen for expenses, totaling $11,327.20, paid by the Company on behalf of a van titled in Smith's former company's name. There was no written agreement between the members that this was to be a Company expense, or that this was to be an expense paid by Vereen. As these expenses were paid on behalf of Smith's former company, Smith should be responsible to pay these costs back to the Company.

8. Salaries for Company employees, including Vereen, Carrie Drewett, and Elizabeth Sisson, were paid by AVCC prior to June 2004. Drewett was the Company's Office Manager and Bookkeeper, and Sisson was a project manager for the Company. The Brady Report did not give Vereen credit for such payments. Vereen is due to be reimbursed for these amounts.

9. Expenses and costs paid for Vereen to respond to warranty items after 2007 on Company jobs are the expense of the Company. The Brady Report did not give Vereen credit for such

expenses.

10. The Company provided Smith with a corporate vehicle, paid for all fuel, insurance, and property tax expenses associated with that vehicle. Vereen was due the same consideration. Vereen presented evidence that he is due a credit for truck expenses, including the cost of the truck, fuel expenses, insurance premiums, and property taxes, totaling $57,498.00, all of which were similarly paid for Smith, through 2009, when the corporate vehicle was ultimately titled in Smith's name. The Brady Report does not address this issue.

11. Vereen did not dispute or refuse payment of any requests for reimbursement made by Smith; Vereen expected to be given the same consideration by Smith and Brady, Smith's expert. Brady testified that both members should be treated the same.

12. Prospective activities are routinely conducted in the performance of corporate business development; this Company is no different. Vereen presented evidence that the Company engaged in such prospective activities in an attempt to secure speculative opportunities, with the full knowledge of and participation by Smith. However, the Brady Report charges Vereen for the full cost of those such activities. These amounts should not be included as a charge back to Vereen in the Brady Report.

13. The Brady Report also refuses to give Vereen credit for expenses paid on behalf of the Company if there is no readily available receipt to support such expense; however, she did not apply the same standard to Smith. Vereen presented evidence that Smith requested over $203,041 from the Company in the form of reimbursement without being held to the same standard.

14. All parties agree that the Company paid Smith large sums of money, in the form of advances and commissions, totaling $85,842, and that those sums have not been reimbursed by Smith.

All parties also agree that the Company paid for materials for Smith's personal residence, totaling $3,471, and that those sums have not been reimbursed by Smith. [NOTE: Brady records this amount as $3,420]. All parties further agree that Smith deposited a payment totaling $19,280, intended for the Company, into Smith's personal account. Vereen also presented evidence that Smith received $2,317 from the Tahitian Princess job, that Smith received $41,619 from the Ocean Blue job, and that the Company paid for construction costs of some of Smith's side jobs, totaling $24,038, none of which was reimbursed by Smith. Despite testimony by the owner of the Tahitian Princess building, and an Invoice created by Smith himself for the Ocean Blue job [NOTE: Smith whited out the mailing address on this Invoice], and Company records presented to Smith during trial, the Brady Report fails to include amounts in Smith's Accounts Receivables for the Company.

15. Vereen routinely infused the Company with personal funds; Smith never made any cash or other financial contributions to the Company.

16. Company jobs total more than $20 million between 2003 and 2007. In 2003, Vereen rolled over $7 million in new jobs into the new Company, and secured over $8 million in new jobs for the Company over the next four years. The remaining $5 million in construction jobs were from repeat clients of the Company.

17. Vereen offered his personal jobs at Pointe Marsh and the Putt Putt to the Company, but Smith refused them. Thereafter, Vereen hired a superintendent to oversee and perform those jobs not out of revenue or money of Company.

18. After Smith left the Company in 2007, Vereen continued to fund and pay all of the Company's financial responsibilities, including financing agreements for equipment owned

by the Company, and the vehicle titled in the Company's name which was driven by Smith and retained by him after he left the Company.

The Defendants believe that the Court's Order should be changed based on the following evidence discovered after the trial in this case:

1. Coinciding with his departure from the Company, Smith permitted a $1,400,000 commercial building under the Company's license. Smith did not disclose this information to Vereen, but rather stated that the building was permitted under Smith's newly formed and separate company. Vereen had no reason, at that time, to believe this was a lie. Smith's separate company paid for the construction costs and expenses for this job. At trial, Smith and Smith's attorneys, DuRant and Thomas, emphatically denied that the construction of the building was a Company job, and that Smith's separate company was wholly responsible for the construction and solely entitled to receipts, including profit and overhead for this job. In 2009. a guest at the building fell, and the Company was sued. When served a copy of the Complaint, Smith filed a claim under the Company's insurance policy, but did not notify Vereen of the lawsuit. Thereafter, Smith engaged DuRant to represent the Company and file an Answer on the Company's behalf. When Vereen discovered the lawsuit, Smith assured him that DuRant would straighten out the facts, make sure all parties knew that Smith separate company was responsible for the construction, and that the Company would be dismissed from the lawsuit. Vereen requested an opportunity to review the Answer being prepared by DuRant, prior to its filing. DuRant ignored Vereen's request, and filed an Answer, as the Company's attorney, stating the Company was the Contractor for the building, and that Smith's separate company served as a subcontractor of the Company. DuRant failed to file an indemnity claim against Smith's separate company, on behalf of and

protecting the Company from Smith's actions. Furthermore, DuRant represented Smith's separate company in an action brought by the insurance company for a declaratory judgment on insurance coverage. Based on this newly discovered information, Vereen argues that Smith owes the Company lost profit and overhead consistent with the award of profits and overhead on Vereen's Pointe Marsh job.

Vereen admits that the corporate records were not properly maintained and that based on a review of the accounting performed by all of the parties, there are costs and expenses which Vereen owes to the corporation. Vereen alleges that those expenses, totaling $652,048.54, which are owed by him, are an offset to the amounts which the corporation owes Vereen for his direct and indirect contributions to the corporation, which have not been reimbursed. Vereen alleges that the corporation owes him approximately $482,560.00 for direct contributions made by him in the form of payments to the corporation, or payments to others on behalf of the corporation, through 2007, and that the corporation also owes him for indirect contributions, including, at the very minimum, rent on the office space, through 2007, as agreed by Smith, in an amount of $76,800.00, and vehicle expenses, in an amount of $57,498.00, which represents similar expenses paid on behalf of Smith, through 2009. Vereen alleges this brings the total due from him to the corporation to $35,190.00, for these relevant time periods. Vereen alleges that he continued to incur expenses on behalf of the corporation in 2008 and 2009, and continues to incur expenses to date, for which he has not been reimbursed. Vereen presented this information in his accounting summary for the Court's review.

Vereen further alleges that a detailed analysis of Brady's accounting arrives at the same conclusion. Brady alleges that Vereen owes the corporation $2,712,503.31. However, after the corrections or adjustments which Vereen alleges are required by the facts of the case, are made, that total is reduced to $32,707.25. Specifically, Vereen alleges the following corrections are necessary: (1) a deduction of $836,568.34 in legitimate business expenses paid by the corporation and supported by the Company's business records; (2) a deduction of $925,394.33 in profit and overhead calculations Brady, which were improperly calculated; (3) a deduction of $63,535.62 in corporate

payments received by Vereen after December 31, 2007, when Brady did not consider any corporate expenses after that date; (4) a credit of $23,306.64 which Brady applied to Vereen for receipts on the Perry and Abston jobs, which were Company jobs; (5) a deduction of $653,306.41 in reimbursements requested by Vereen, for Company expenses; (6) a deduction of $90,000, for the 2003 $50,000 capital contribution paid by Vereen, and the 2004 $40,000 loan from Parkway Offices, which are not reflected by Brady on Vereen's Accounts Receivable; (7) a deduction of $76,800.00 in rent due as a credit to Vereen, per Smith; and (8) a deduction of $57,498.00 for truck expenses paid by Vereen. Vereen alleges that when you consider both parties equal, under both accountings, the conclusion is that Vereen owes the corporation approximately $35,000.00. Vereen further alleges that the amount owed by Smith to the corporation far exceeds $35,000.00, and at a minimum, is $124,377.41, as calculated by Brady.

Based on the foregoing, Defendants request the Court reconsider its Order and find that a full and complete accounting of the Company must be done as requested by the parties and as required under S.C. statutory law for the winding up and dissolution of the corporation by an independent forensic accountant rather than relying and adopting the report of Smith's personal accountant who candidly admitted she did not do a full accounting in this matter, but only look at specific accounts and specific transactions as instructed by Ellis Smith.

This motion will be further supplemented by way of oral argument before the Court.

Respectfully Submitted,

Kathryn M. Cook, Esquire

SC Bar No.: 1371
Myrtle Beach, SC 29577
Email: kifcook55@gmail.com
Attorney for Defendants

Myrtle Beach, South Carolina

Date: 4/20/15

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-26-620

Ellis E. Smith, Individually, and on behalf of A & E Constructors and Consultants, Inc.
PLAINTIFF(S)

Arthur Wayne Vereen, et al.
DEFENDANT(S)

Submitted by:	Attorney for : ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

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

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
A & E Constructors and Consultants, Inc.	Arthur Wayne Vereen, individually and as Trustee of the Arthur W. Vereen Residence Trust	$2,968,790.68
	Linda C. Vereen, Individually and as Trustee of the Linda C. Vereen Residence Trust,	$2,968,790.68
	Park Place Properties of Myrtle Beach, LLC	$2,968,790.68
	~~Arthur Vereen Construction Company, Inc.~~	~~$2,968,790.68~~

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

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

Clifford Richard Hall
Master in Equity

3073
Judge Code

3/23/15
Date

For Clerk of Court Office Use Only

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

Frank H. Durant
J. Jackson Thomas

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kathryn M. Cook

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	CASE NO.: 2009-CP-26-620
ELLIS E. SMITH, Individually, and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., a South Carolina Corporation, Plaintiff, vs. ARTHUR WAYNE VEREEN, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, ARTHUR VEREEN CONSTRUCTION COMPANY, INC., LINDA C. VEREEN, ARTHUR W. VEREEN, AS TRUSTEE OF THE ARTHUR W. VEREEN RESIDENCE TRUST, and LINDA C. VEREEN, AS TRUSTEE OF THE LINDA C. VEREEN RESIDENCE TRUST, Defendants. and ARTHUR WAYNE VEREEN, individually and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., and 29th PLACE DEVELOPERS, INC., Third Party Plaintiffs, vs. E. SMITH AND SONS CONSTRUCTION, LLC, AND EES CONSTRUCTION AND CONSULTING, INC., and ELLIS E. SMITH, individually, Third Party Defendants.	JUDGMENT AGAINST THE DEFENDANTS ARTHUR W. VEREEN, INDIVIDUALLY AND AS TRUSTEE OF THE ARTHUR W. VEREEN RESIDENCE TRUST, LINDA C. VEREEN, INDIVIDUALLY, AND AS TRUSTEE OF THE LINDA C. VEREEN RESIDENCE TRUST, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, AND ARTHUR VEREEN CONSTRUCTION COMPANY, INC., JOINTLY AND SEVERALLY

HORRY COUNTY
2011 MAR 24 PM 1:08

Appearances:
Attorney for A & E, Smith: Frank H. DuRant
Attorney for Smith, EES and E. Smith & Sons: J. Jackson Thomas
Attorney for the Defendants
and Third Party Plaintiffs: Kathryn M. Cook

PROCEDURAL HISTORY

This matter was referred to me for hearing pursuant to an Order of Reference of the Honorable Larry B. Hyman, Jr., dated July 23, 2009, with authority to issue a final Order in this matter. The parties presented testimony and hundreds of accounting records over four separate weeks. The case took more than a year to try because of various circumstances.

This is a shareholder's derivative action brought by Ellis E. Smith ("Smith"), individually and on behalf of A & E Constructors and Consultants, Inc. ("the Company") against Arthur Wayne Vereen ("Vereen"), the treasurer and remaining shareholder, and Vereen's wife, as well as some companies which Vereen controlled. Smith and the Company have sued for an accounting as well as for a dissolution of the Company, asserting that Vereen converted corporate assets.

Vereen and the Defendant entities generally denied the allegations, agreed to an orderly dissolution of the Company, and asserted counterclaims for an accounting, indemnification, and misappropriation of the Company's opportunities. Vereen, individually and on behalf of A&E, brought in an additional party, 29th Place Developers, Inc. (29th Place), without court approval, but without objection, and sued E. Smith and Sons Construction, LLC (E. Smith) and EES Construction and Consulting, Inc. (EES) and Smith, individually (Smith) as third party defendants.

I have reviewed the entire Court file, weighed the testimony and evidence presented, and find damages for the Plaintiff Company and against the Defendants Vereen individually and as trustee of the Arthur Wayne Vereen Residence Trust and Linda C. Vereen individually and as trustee of the Linda C. Vereen Residence Trust, Park Place Properties of Myrtle Beach, LLC,

Parkway Offices, LLC, and Arthur Vereen Construction Company, Inc. as discussed below. I find that each of these named Defendants conspired together to misappropriate and convert the assets of the Plaintiff Company and its other shareholder Smith.

DISCUSSION

The Plaintiff Smith and Defendant Vereen are the sole shareholders, officers, and directors of the Company, which was incorporated on October 28, 2003, as a construction company. The Company made a timely subchapter "S" taxation election under the Internal Revenue Code, and Vereen was elected treasurer. At all times, Vereen exclusively handled the Company's finances including managing and controlling the Company's checkbook. Smith and Vereen had equal ownership of the Company's shares of stock and served as its board of director members. When they began the Company, Smith and Vereen agreed that each would finish any pre-existing jobs under the names of their own separate companies and at their own separate expense.

Defendant Arthur Vereen Construction Company, Inc. ("AVCC") is a South Carolina Corporation owned by Vereen. Vereen operated his construction business out of AVCC for many years, but AVCC and Vereen's commercial building licenses expired in October 2003, about the time the Company began. Third Party Defendant EES Construction and Consulting, Inc. ("EES") is a South Carolina Corporation owned by Smith. The Defendant Park Place Properties of Myrtle Beach, LLC ("Park Place") is a South Carolina Limited Liability Company, which is owned 5% by Vereen and 95% by Defendant Linda C. Vereen, Vereen's wife ("Wife"), but managed and controlled by Vereen. The Defendant Parkway Offices, LLC ("Parkway") is a South Carolina Limited Liability Company owned by Wife, but also managed and controlled by Vereen. Parkway and Wife owned several buildings, including one space shared as offices with the other Defendants on Grissom Parkway in Myrtle Beach. E. Smith and Sons Construction, LLC ("E. Smith"), a South

Carolina Limited Liability Company created in April 2007, is owned solely by Smith. 29th Place Developers, Inc. (29th Place) is a corporation owned by Vereen.

The Company became a licensed commercial contractor in January 2004. The Company paid no salaries until June 2004, but beginning in January 2004, Smith and Vereen met each morning at the Company's office on Grissom Parkway. That office also served as an office for AVCC, Vereen's company, Parkway, Wife's company that Vereen managed and controlled, and Vereen's daughter's law practice.

Vereen began receiving a salary of $1,000.00 per week in June 2004. Smith was still finishing prior jobs at EES, and instead of receiving a salary, Smith invoiced the Company, through EES, for his time at $25.00 per hour and for EES's pro-rata expenses spent on Company business. Vereen approved and paid these EES invoices from the Company account at Carolina First Bank; Vereen charged the expenses to jobs performed by the Company on its job ledgers.

In early 2004, the Company began construction of a speculative residential home for Vereen in the Plantation Lakes subdivision near Myrtle Beach and also began several new, large, multi-family jobs. The Company was extremely busy and profitable during its first three years of operation. These years, 2004-2007, coincided with the three peak years of the real estate boom in the Grand Strand area. Opportunities for construction companies were numerous; construction companies were profitable. The Company permitted and performed several large jobs for Defendants Park Place, Parkway, and Wife; these included several jobs for Vereen's family members. Vereen told Smith that the Company would treat the family jobs just like any other job, and the Company would be paid overhead and profit.

A South Carolina corporation is required to maintain "appropriate accounting records" and is required to furnish its shareholders with annual financial statements that include the

corporation's year-end balance sheet, income statement, and statement of changes in shareholder's equity. See SC Code Ann. §33-16-101, et seq. (1976). If the financial statements are reported on by a public accountant, the accountant's report must accompany the financial statement. See SC Code Ann. §33-16-200 (1976). Smith never received an annual statement from Vereen, the Company's treasurer, or the Company's accountant, Richard Crumpler, CPA. Gains or losses from this subchapter "S" corporation were passed through and allocated to the two shareholders, Vereen and Smith, on an equal basis, which were included in the shareholders' taxable income and gains for each tax year.

The Company's CPA, Crumpler, informed Smith in 2007 that the Company had a large profit. When Smith asked Vereen about these profits, Vereen denied that the Company had any profits in 2007, instead asserting that the Company's large expenses offset its profits, leaving no net profits. At that time, the Company had completed construction of 23 resort homes[1] in a subdivision known as "Pointe Marsh" in the Cherry Grove Section in North Myrtle Beach for Park Place, had performed extensive construction on a putt-putt golf course owned by Park Place in North Myrtle Beach, and had performed extensive renovations on office buildings owned by Parkway and Wife on Grissom Parkway in Myrtle Beach. Smith began investigating the office records in early 2007, and he concluded that Vereen, in conspiracy with the remaining Defendants, had engaged in fraudulent practices with the Company. Smith made demand upon Vereen to rectify the wrongdoings. Vereen, however, denied any wrongdoing and refused to account for his actions. Smith suspected Vereen and Park Place were engaging in improper sales practices in selling the 23 homes at Pointe Marsh owned by Park Place.

[1] The Pointe Marsh homes were sold for prices ranging from $500,000.00 to $750,000.00.

Smith thereafter initiated the present shareholder's derivative action on behalf of the Company against Vereen, Wife, Park Place, Parkway and the Vereen's in their capacities as trustees, who owned the Vereen personal residence in Murrells Inlet, SC. The residence[2] was transferred into their names as Trustees of two separate Trusts in 2007 by Vereen and Wife. Smith alleged that the Defendants conspired together to wrongfully convert the Company assets to their own use; he requested an accounting of the Company's books, records, and other items, which are contained in the pleadings. Smith served detailed discovery requests upon the Defendants, and the Defendants served joint discovery responses. The Defendants filed an Answer and Counterclaim and a Third Party Complaint against E. Smith, EES and Smith.

In the Defendants' responsive pleadings, they denied that Vereen controlled the Company's finances or that the disbursements made by Vereen were not for the complete benefit of the Company. Vereen, individually and on behalf of A&E and 29th Place, alleged that he loaned monies from his companies to Smith in the 1990's for which he was to be reimbursed by Smith. He also asserted that EES improperly billed the Company for work allegedly performed for it. Vereen also demanded an accounting. Vereen's corporation, 29th Place, filed a third-party claim against Smith based upon an old promissory note. This Court granted Smith's motion for a directed verdict as to that claim.

AVCC counterclaimed against Smith for refusing to pay Vereen and AVCC for the use of AVCC contractor's license in a condo project 10 years earlier based upon an oral agreement for a 10% commission of the price of construction. This Court dismissed this claim on Smith's motion for a directed verdict.

[2] The Vereen residence is a large house located in an exclusive neighborhood in Murrells Inlet, South Carolina.

As to the Counterclaim for Breach of Contract concerning the alleged improper use of the AVCC license by EES at Carolina Keys, I find that AVCC and Vereen failed to prove their claim by a preponderance of the evidence. Specifically, I find that Vereen and AVCC orally agreed to allow Smith and EES to use the license in return for 10% of the profits earned by Smith and EES, not the cost, and that Smith and EES lost money, and thus owed no money to Vereen and AVCC. Furthermore, I find that the oral contract is illegal and cannot be enforced in South Carolina, as a contractor is prohibited from allowing a non-licensed entity to borrow a commercial license to perform construction. See SC Code Ann. §40-11-200 (1976). Finally, I find the claim, if proper, would be barred by the three year statute of limitations, as I specifically find that Vereen authorized the use of the license and was aware of its use for over nine years prior to the institution of this action. See SC Code Ann. §15-3-530.

Throughout this trial, the Defendants AVCC, Park Place, Parkway, Wife and Vereen referred to themselves as the "Vereen Entities." The Vereen Entities denied the specific allegations of wrongdoing in responding to the Company's discovery requests. The Plaintiff employed Susan Brady, an experienced, local Certified Public Accountant, as an expert witness to determine the nature and extent of the Company's damages. The Court found her testimony most insightful.

Even though not required, the Vereen Entities did not submit any accounting testimony, not even the Company's own accountant, Richard Crumpler. Mr. Crumpler is a well-respected certified public accountant who is the senior partner at a local CPA firm. The very fact that he was not called to testify was telling, especially when he presumably prepared the Company's tax returns based upon information provided by the Company's treasurer.

Ms. Brady conducted a lengthy investigation, testified, and submitted to the Court a detailed written report (the "Brady Report") of the fraudulent or "non-corporate" actions of the

Defendants, which were documented by written evidence. For the calendar years 2004 through 2007, Brady detailed an "Analysis of Non Corporate Activity" for each year, listing each and every improper act by the Defendants that caused the Company financial harm. The evidence of each improper act was contained in numbered tabs along with supporting documentation. As the trial progressed, the Brady Reports were amended to correct any errors, concessions and additions found during late produced discovery and during the trial. Ms. Brady's accounting task was complicated by Vereen's almost complete failure to maintain separate accounting records for the Company and the various Vereen Entities and his consistent commingling of the entities' income and expenses without documentation.

At the trial's end, Ms. Brady submitted her "Amended Summary Analysis of Non-Corporate Activity of A & E Constructors and Consultants," simply referred to as the final "Brady Report." In it, Ms. Brady documented damages sustained by the Company in the amount of $2,712,503.31, directly caused by Defendants' wrongful actions. These findings were fully supported by the evidence. The Company's accounting records, consisting of the Peachtree accounting system ledger, the checking accounts and tax returns, were submitted into evidence, without objection. The Defendants' checking account records and depositions from the Vereen Entities' bookkeeper Drewett and Defendant Linda Vereen were introduced into evidence. The Plaintiff introduced copies of checks for payment for services it rendered; Vereen then deposited the checks into Defendants' accounts. By clear and convincing evidence, the Plaintiff established that the Defendants conspired to convert the Company's assets to their own use with the intent to defraud the Plaintiff as detailed in the final Brady Report. I find the final Brady Report to be credible, accurate and complete. I hereby adopt the findings of the final Brady Report as conclusive evidence of the actual damages sustained by the Plaintiff as a result of the Defendants' actions.

LEGAL ISSUES

The Plaintiff brought this derivative action pursuant to Rule 34, SCRCP, and detailed the efforts he made to resolve these issues with shareholder Vereen prior to instituting this action. I am confident that this litigation was the only avenue available in this matter. Smith was the only party that could represent the Company's interests against the alleged wrongdoers, the Defendants.

Title 33 of the SC Code of Laws defines the duties and obligations of a corporation's officers and directors. It requires a corporation's director and officer to act in good faith, with the care an ordinarily prudent person would exercise under similar circumstances, and in a manner he reasonably believes to be in the best interest of the corporation and its shareholders. See, SC Code Ann. §33-8-300 (1976). In this matter, Vereen had a conflict of interest because of the construction performed by the Company for the Vereen Entities due to the ownership interests of Vereen and Wife in the transactions. See SC Code Ann. §33-8-310 (1976).

The conflict of interest stated in 33-8-310 could be overcome only if Vereen disclosed the material facts of each construction job to Smith, who had to officially authorize, approve or ratify the transaction. See SC Code Ann. §33-8-310(a)(1). If the test's first two prongs are established ([a]disclosure of material facts and [b] authorization, approval or ratification of transaction), the transaction must still be fair to the Company. See, SC Code Ann. §33-8-310(a)(3). Vereen allowed the Company to perform substantial construction for the Defendants even where there was no written construction contract. Vereen also allowed the Company to pay the Defendants' costs and expenses without billing them. Moreover, Vereen paid the Defendants' expenses from the Company's checking account without seeking reimbursement. Since Vereen acknowledged that he did not disclose the secret nature of these wrongdoings to Smith, I did not need to determine

the fairness to Smith of these transactions. The misappropriation of a Company asset can never be fair to an unknowing shareholder.

S. C. Code Ann. §33-8-320 prohibits the Company from loaning money to a director unless strict approval requirements are met. At trial Vereen admitted that he did not disclose these wrongdoings to Smith. Of course, Smith could not approve of any of Vereen's actions of which he was unaware. A director who assents to an unlawful distribution of company funds has a duty to repay the funds under SC Code Ann. §33-8-320. As to any funds converted by or diverted to the Defendants or for their use from the Company account, I find that Vereen failed to establish that Smith approved of the unlawful transactions. Vereen directed the unlawful distributions of the Company's funds; he has a duty to repay the funds.

An officer's duty to a corporation is defined in SC Code Ann. §33-8-410, et seq. He must act in good faith and only in a manner that he reasonably believes to be in the best interest of the Corporation and its shareholders. See SC Code Ann. §33-8-420. These statutory provisions define what has always been the law in this State; the Corporation, through its officers and directors, must always act in the best interest of the Corporation. A breach of these fiduciary duties or responsibilities, whether as officer or director, imposes liability upon the breaching party for any damages sustained by the Corporation and clearly places upon the wrongdoer the burden of proof to establish consent, approval and fairness. Id.

In each contract that the Company had with the Defendants, Vereen, as the Company's treasurer and the financial manager, failed to get a written contract for the construction. He also advanced payment from the Company's account to the Defendants without authorization for construction expenses, and further, he failed to invoice or collect payments and costs from the

Defendants. When payments were made, Vereen on occasion did not deposit the collected payments in the Company account but instead placed them in accounts belonging to one of the other Defendants.

The Defendant Vereen, in conspiracy with the Defendant Vereen Entities, breached his statutory duties to the Company in the following transactions where he had a material conflict of interest:

1. The construction of 23 homes and the renovation of a putt-putt golf course and arcade on Sea Mountain Highway for the related party, Defendant Park Place: Wife gave Vereen exclusive management and control of Park Place. The Company advanced payment for over $900,000.00 in construction expenses for these 23 homes; however, it did not have a construction contract obligating Park Place to pay the Company for the construction, and the Company did not invoice or collect payment for the expenses it advanced. Wife gave Vereen control of the banking accounts of Park Place. The balances in the Park Place banking account were sufficient to pay the Company for the expenses advanced and the costs of construction, but payment to the Company was not made.

2. The construction of a home in Plantation Lakes for the Defendant Vereen in 2004: Vereen owned a lot in the Plantation Lakes subdivision. The Company paid for the construction expenses for Vereen's new home built beginning in early 2004. Vereen did not prepare a construction contract requiring payment for the construction, and Vereen, the Company's treasurer, did not invoice or collect payment for the Company's expenses. I find that the Defendant Vereen obtained a construction loan to pay for the cost of construction but did not use the loan proceeds for that purpose.

3. The construction of improvements made on office buildings owned by the Defendants Parkway and Wife located on Robert Grissom Parkway: The Company advanced payment for construction expenses for buildings owned by Wife and Parkway but did not have a written construction contract obligating the Wife and Parkway to pay the Company for the cost of construction. Vereen, the Company's treasurer, did not invoice or collect payment for the expenses advanced by the Company.

4. The payment of construction expenses for Defendant AVCC: Vereen, as the Company's treasurer, paid construction costs and expenses for AVCC jobs from the Company account without Smith's knowledge and did not invoice or collect for the expenses advanced. Vereen billed and collected from the third parties for the AVCC charges and placed the funds in to the AVCC account or other accounts of the Defendants.

5. The payment of construction expenses for Vereen and Wife: Vereen, as the Company's treasurer, paid for construction expenses out of the Company account for his and Wife's personal home, now owned by the Trustees named as defendants. Vereen, on behalf of the Company, did not require that Vereen and Wife sign a construction contract with the Company obligating Vereen and Wife to pay for construction costs and did not invoice or collect payment for the expenses advanced by the Company. Further, Vereen did not tell Smith that the Company was paying for construction costs of the Vereens' personal home from the Company account. The Vereens received a newly-constructed house at the Company's expense without Smith's knowledge.

6. Vereen had multiple unwritten construction contracts with members of Vereen's and Wife's family, and Vereen paid for construction expenses from the Company account: The Company advanced funds to pay for construction on multiple jobs for members of Vereen and

Wife's family members. There were no written construction contracts obligating the owner to pay for the cost of construction and, on many occasions, Vereen and the Company did not invoice or collect payment for the expenses advanced by the Company.

7. Vereen entered multiple construction contracts through AVCC, which contracts were performed by the Company: AVCC entered into multiple written construction contacts when it was not licensed to perform construction in South Carolina and when the Company obtained all permits and paid for the construction costs of such projects from the Company account. Vereen did not tell Smith that he entered into the secret contracts with the customers of the Company or that he invoiced the owners in the name of AVCC. On multiple occasions, even though the payments for such construction belonged to the Company, Vereen deposited the payments into the Defendants' accounts.

8. Vereen paid for construction expenses from the Company account for improvements made to the home of Elizabeth Vereen Sisson, daughter of Vereen and Wife, who also is a Company employee: Vereen did not require the Company to have a written construction contract obligating his daughter Sisson, a South Carolina lawyer, to pay the Company for the construction on her home. The Company paid over $150,000.00 in construction expenses on her home, and Vereen, as the Company's treasurer, never invoiced Sisson for the expenses. The Plaintiff received a partial payment for the expenses on this job. A large payment from Sisson erroneously was made to Park Place rather than the Company. Vereen admitted, at trial, that over $15,000.00 in labor charges which should have been repaid to the Company for the Sisson job never were made.

9. Vereen, with the tacit assistance of the other Vereen Entities which he controlled, billed third parties for services performed by the Company; Vereen thereafter deposited the

payments from the responsible parties into various accounts of the Defendants, not the Company's account. Smith was unaware of Vereen's improper actions in these matters.

THE ACCOUNTING TRIAL

Vereen admitted at trial that he signed construction contracts in the name of AVCC in 2004, when AVCC was unlicensed, and when the Company had obtained the building permits and paid for the costs of the construction. Vereen further admitted that AVCC billed the Company's customers for these expenses, even though AVCC did not pay for the cost of construction. Moreover, Vereen admitted he did not tell Smith of these practices. Vereen's testimony was contrary to the Defendants' interrogatory responses. The Defendants' united response at trial was that the "Vereen Entities put in more money than they took out." Expert witness Brady accounted for all money the Vereen Entities deposited into the Company checking account, properly giving appropriate credit for each deposit. Brady compiled notebooks for the 2004 – 2007 calendar years, which detailed the ultra vires and improper actions of the Vereen Entities against the Company.

Pursuant to the Court's October 15, 2010 Pretrial Order, the Company's and the Defendants' business records, accounting records, tax records, checks and deposits, banking records, accounting and tax records were admitted into evidence without authentication. In the Pretrial Order, this Court required that the Defendants deliver all accounting information to the Plaintiff's attorneys to support the Defendants' claims for set-off or reimbursement by December 1, 2010. Defendants' claims allegedly occurred from 2004 to 2007. The Court's Order required that the Defendants "shall present evidence of the actual **invoice or bill** for services rendered or labor rendered and the **cancelled check** for payment made pursuant to such invoice (emphasis added)." If the Defendants did not comply by the deadline, the Order provided that "such

accounting records and information shall not be presented in the trial of the case by the Defendants."

During trial, the Court repeatedly sustained the Plaintiff's objections to the Defendants' attempts to introduce records into evidence that did not meet these requirements because they were either not produced by the deadline, or were not original invoices for goods or labor accompanied by the cancelled check of the Defendants for payment. Defendants proffered these records. From this Court's examination of the Company records, Vereen regularly sought reimbursement for expenses he paid on the Company's behalf, which were documented, charged to a job ledger on the Company's accounting system, and were immediately reimbursed to Vereen by a Company check he signed. The Company would then bill the customer for the expense incurred or add it to general overhead. The Defendants submitted invoices paid by the Defendants for improvements made on the Defendants' properties. These invoices were not proper for reimbursement, because the Company had no obligation to pay any of the Defendants' expenses on their own properties. The Defendants submitted claims for reimbursement for Company jobs performed from 2004 until 2007. The Company would not have the ability to invoice the customer or deduct the expense on its tax returns, as the request was submitted over three years after the Company had completed the last job and after the tax returns had or should have been prepared. Finally, if the Defendants did not provide the cancelled check and the invoice for the expense, the Company could not document the expense as a Company's expense or as an expense paid by the Defendant claiming the reimbursement. The Defendants attempted to mass produce claims for reimbursement or offset that were not documented appropriately and as required in the Court's Pretrial Order. As to claimed deductions for 2004 and 2005, the Company's tax returns already had been filed and could not be

amended. The Company accepted approximately $80,000.00 in credits, which are outlined in the Brady Report, which were credited against the Defendants' accounts receivable.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the testimony and other evidence presented, I make the following findings of fact and conclusions of law:

1. I find that the Plaintiff complied with the requirements of the South Carolina Rules of Civil Procedure and properly brought a derivative action against the Defendants in this action.

2. I find that the Plaintiff alleged in the verified Complaint that the Defendants conspired together to wrongfully convert Plaintiff's assets and to injure Plaintiff. The Defendants generally denied the allegations and counterclaimed against the Plaintiff Smith and his entities, EES and E. Smith.

3. The Counterclaims and Third Party Complaints: After reviewing the credibility of the testimony and evidence presented, I find that the Defendants and Third Party Plaintiffs did not meet their burden of proof by a preponderance of the evidence in establishing that Smith, EES or E. Smith owed any monies to the Defendants or to the Company that was not otherwise accounted for by Brady in her Final Report. To that extent, I find that the Defendants failed to meet their burden of proof that Smith owed Vereen or AVCC for any monies related to the construction of Smith's home in the 1990's, or that Smith owed any sums for the use of the AVCC license in the construction of the condominiums in North Myrtle Beach. Closing documents from the Smith home clearly establish payment in full at closing. As to the Counterclaim by AVCC against Smith, I specifically find that the oral agreement was for Smith and EES to pay Vereen and AVCC 10% of the profits they earned on the Carolina Keys project; Smith and EES did not earn any profits. Accordingly, Smith and EES owed nothing to Vereen and AVCC for the Carolina Keys project.

Moreover, even if there had been profits, I find that an agreement to use the AVCC license is an illegal contract that is unenforceable in Court. See SC Code Ann. §40-11-200 (1976).

As to 1990 debts allegedly due from Smith to the Vereen entities, I find that these debts were either discharged in Bankruptcy or are time barred under the Statute of Limitations. See SC Code Ann. §15-3-530(1). Furthermore, I find as a matter of fact that there was no agreement or discussion at the time this Company was formed for Smith to pay Vereen or the Defendants monies due from the past.

Further, I find that the Defendants failed to meet their burden of proof that Smith, EES or E. Smith misappropriated any corporate assets of the Company that was not accounted for by Brady in her Report. Specifically, I find that the Defendants and Third Party Plaintiffs failed to prove, by a preponderance of the evidence, that Smith or EES submitted any invoice for payment to the Company that was not properly reviewed and paid by Vereen, who approved and signed all Company checks. I find that the Defendants and Third Party Plaintiffs failed to establish that Smith, EES, or E. Smith used corporate assets for their own personal benefit, such as flooring and tile, other than the floor covering that was accounted for, admitted, and contained in the Report of Brady.

As to the claims contained in Paragraph 32 of the Counterclaim, the Court dismissed items 32 (a)(b)(c)(d)(l)(m)(o) and (p) on motion for directed verdict. I specifically find that Smith informed Vereen of the use of the Company license for items (a) through (k), which were instances where the Company license was used with permission of Smith and Vereen, and no monies were paid to the parties and no expense paid by the Company. Vereen produced no evidence of damages sustained by the Company for these actions. As to (l) to (p), I find that the Company's license was

not used and no Company funds were advanced for construction. The Counterclaims are thus dismissed.

I find that the Defendant E. Smith did enter into a construction contract with Martin Brown for the construction of the Condolux Office building in late 2007, after Smith left the Company. However, I find that Vereen had previously rejected the construction proposal as not being profitable. I find that E. Smith did in fact use the Company's construction license to perform the work; however, E. Smith obtained liability insurance for the job and paid each and every expense from its separate funds. I find that the Company has not suffered any damages as the result of Smith's actions and that Smith was the qualifying party with the Contractors Licensing Board for the Company. Smith had already left the Company at the time construction began, when he was receiving 14 weeks of paid leave for unused vacation time. I find that Vereen was aware of Smith's actions and made no complaint against him until this lawsuit was initiated.

4. I find that Vereen and Smith agreed that each could engage in outside construction activities to earn additional income, but any such activities would be at their own expense and in their separate time. Smith engaged in outside activities that did not involve Vereen or the Company, which were done on his own free time and expense. Smith's complaints against the Defendants involved transactions where the Company was performing and paying for construction services and yet, payment from third parties for its services was being made, via Vereen, to Vereen's companies. Smith's activities in performing labor on an hourly basis on his free time caused no legal or financial harm to the Company.

5. I expressly adopt the findings and conclusions contained in the Brady Report, which reflect the actual losses sustained by the Company in transactions between the Company and the Vereen Entities and for other non-corporate actions by Vereen. The Brady Report is detailed and

is supported by clear and convincing evidence. Due to the complexity and the material wrongdoings in several transactions, I make the following additional factual findings of the Defendants' misconduct, resulting in the Company's material damages:

(a) The Plantation Lakes home: In early 2004, Vereen employed the Company to build a residential home on his property in Plantation Lakes near Myrtle Beach. Vereen paid, by Company check, Plantation Lakes construction job expenses in the amount of $132,574.94, which are detailed in the Company job ledger and in the Brady Report. However, Vereen simultaneously had obtained a construction loan from Horry County State Bank to pay for the construction costs which was secured by a first mortgage loan upon the property. In addition to the basic construction job expenses, the Company incurred payroll costs for workers compensation, social security and payroll expense, liability insurance, office overhead, and salaried employees on the Plantation Lakes residence. Smith knew the Company was performing the job, but he was unaware that Vereen was not paying the Company for the construction costs from the Horry County State Bank construction loan.

Vereen sold the house to the Whitleys for an amount that exceeded the balance of the construction mortgage by $102,000.00. On the date of the 2005 real estate closing, Vereen executed a deed into the Company for a stated consideration of "$5.00 and assumption of mortgage" without Smith's knowledge or consent. The Company, by Vereen's signature, then transferred the property on that same day to the Whitleys for the stated purchase price. The HUD closing statement, signed by Vereen for the Company, reflected that Vereen's personal construction mortgage in the amount of $281,000.00 was paid by the closing agent, and the Company received the net proceeds from the sale of $102,480.96. When the Company's 2005 state and federal tax returns were prepared and filed by Vereen's CPA, the $102,480.96 check to the

Company was classified on the Company's books and tax returns as a "loan" from Vereen to the Company. Vereen did not report the income received on his and Wife's tax returns. As a result of these actions, the Company was not repaid the $132,574.94 it had advanced in construction costs, nor the payroll, overhead and profit expected for the construction of the house. Vereen admitted that he did not tell Smith of the same-day transfers, the advances made by the Company for construction expenses, the lack of billing or payment, and the tax treatment given to the transaction on the 2005 tax returns. Vereen offered no explanation for his actions.

Vereen testified that he may have done some "quirky things", but in the end, the Vereen Entities "put more money in than they collectively took out." Smith learned about the transaction when his attorney searched the public records of Horry County. As a result, the Company was defrauded of all the paid construction expenses, plus the indirect costs and expenses, including profit. When the Company later billed the Whitleys for additions they requested after purchase, Vereen deposited their check for payment made to the Company into the account of Defendant Park Place, instead of depositing it into the Company's account. The Brady Report details the losses sustained by the Company, including overhead, profit and expense. Vereen explained that he transferred the home to the Company because it was a "Company" venture, yet he failed to explain why his business partner had no knowledge of the transaction, and why the only revenues received from the sale were treated as a loan from Vereen to the Company.

(b) Willoughby Place: I find that Vereen had a conflict of interest with the Willoughby Place construction job, which was a $4,000,000.00 multi-family construction job performed by the Company from 2004 through 2006. The Company obtained all construction permits from the City of Myrtle Beach, and a construction loan was obtained by the Developer, Willoughby Family Investments, LLC, to pay the costs of construction. The Defendants never produced a copy of the

written construction contract between the Company and the Developer Willoughby Family Investments, LLC, but Defendants' Interrogatory responses stated that this was a job performed by the Company for Defendant AVCC. I find that such an agreement is improper in South Carolina, as AVCC had no construction license at that time and thus could not subcontract the job to a licensed entity. See SC Code Ann. §40-11-200 and §40-11-330 (1976). AVCC submitted multiple construction draw requests from AVCC, from AVCC d/b/a A & E, and from the Company. Vereen then deposited the construction draw payments into the Defendants' accounts.

I find that Willoughby checks totaling $113,480.00 were deposited into the AVCC account. Although the Defendants denied these actions in their pleadings and discovery responses, Vereen admitted at trial that the invoices came from the Defendant AVCC and that he deposited the payments into accounts other than the Company's account. I find that bills for "extras" to Willoughby were billed in the Company's name, and Vereen deposited the payments into Park Place's account. When the Company was sued for copyright infringement over the plans for this project, the Company paid for a portion of the defense and settlement expenses, but mysteriously the Company's "construction contract" could not be located. I find that the Defendants failed to produce a full accounting of these expenses, payments and reimbursements from the insurance carrier and the project's owner. The Brady Report details each misappropriated deposit and the invoices, third party checks and the deposit tickets to the Defendants, which were admitted into evidence. I find that the Defendant Vereen, AVCC, Park Place, and Parkway conspired together to defraud the Plaintiff by billing these charges improperly and in depositing the payment into their accounts.

(c) Dr. Lale job: I find that Vereen had a conflict of interest in the Dr. Lale remodel job. The job was contracted and permitted in the name of the Company on January 30, 2004. The

Company paid the costs and expenses of the job. According to the Defendants' discovery responses, this job was "performed by the Company for AVCC," but AVCC billed Dr. Lale rather than the Company. Vereen then deposited the Lale payments into accounts other than the Company's account. It is illegal in South Carolina for an unlicensed contractor to subcontract with a licensed contractor to perform construction services. See SC Code Ann. §40-11-200 and §40-11-330 (1976). The misappropriations are documented in the Brady Report, as part of the Company's actual damages. I find that Vereen and AVCC conspired to defraud Smith and the Company by billing charges improperly and by then failing to deposit payments received into the Company account. I find that AVCC was not licensed to perform this work, could not subcontract the job to the Plaintiff because it was not licensed, and did not pay for the construction costs. I furthermore find that Vereen failed to disclose these matters to Smith.

(d) Parkway Offices and Wife: I find that Vereen had a conflict of interest in the Company's job performed on Grissom Boulevard for Wife and Parkway Offices. Wife requested that the Company perform the construction contract on a "cost only" basis. I find that Wife and Parkway did not execute a written contract with the Company for the construction. Moreover, the Company did not bill for the services rendered, and Wife and Parkway did not pay for any of the construction at the office location. I find that Vereen wrote checks from the Company's account totaling $107,000.00 for construction costs but never billed Wife and Parkway for such expenses. I find that Vereen admitted he had no discussion with Smith about the job being a "cost only" job or that the Company had not been paid for the construction expenses. Again, the Defendants' explanation was that "the Vereen Entities put more money in than they took out." Each expense listed on the job ledger was paid by a Company check signed by Vereen and assigned to the Parkway Offices job ledger. I find that the Brady Report correctly detailed the Company's losses,

including overhead and profit, due to Wife and Parkway's failure to pay for any of the construction. I find that Vereen, Wife, and Parkway conspired together to defraud the Company..

(e) The Park Place Putt-Putt job: I find that Vereen had a conflict of interest in the Company's construction job performed at the Black Pearl Putt-Putt Golf Course, owned by the Defendant Park Place. Wife owns a 95% interest in Park Place and Vereen the other 5% interest. Vereen managed Park Place, making all decisions for the Company. I find that the Plaintiff established that it paid over $114,290.72 in actual labor and expenses for this job from the Company account, but there was no written construction contract, no invoicing, and no payment for the costs of construction. Defendants asserted that this was a "cost only" job. The expenses were established from the Company job ledger, and Vereen wrote each check from the Company account reflected on the ledger. I find that the Brady Report outlines the losses sustained by the Company caused by the Defendant's failure to pay for this construction, including overhead and profit. I find that although the Defendants challenged the charges maintained on the Plaintiff's accounting records attributed to "shop," the items paid and attributed to the "shop" were not included in this job ledger and were not expensed to the Defendants. I find the Defendants' explanations to be unbelievable and contrary to the documented written evidence. I find that Vereen admitted that he did not tell Smith that there was no written contract for construction, that the Company had not paid for the construction costs, and that the Defendants were not invoiced and did not pay for the construction. I find as a matter of fact that Wife authorized the actions of her husband. Moreover, she and Park Place received the benefit of substantial improvements without payment.

(f) The 23 homes constructed for Park Place: I find that the Defendants had a conflict of interest in the 23 homes that the Company constructed for Park Place at Pointe Marsh, located

on Sea Mountain Highway in North Myrtle Beach. The Company performed these construction jobs, permitted in their name, over a two year period without any written construction contracts on a "cost only" basis." I find that Vereen signed $973,875.47 in Company checks for labor and materials for the 23 homes, and yet, the Company never billed Park Place for any services rendered or materials used. I find that Vereen, on behalf of Park Place, deposited checks he had signed in to the Company account, which were accounted for by the Company in the Brady Report. I find that when the Park Place project was completed, Park Place owed the Company $496,039.57 for the Company's construction costs (with no overhead or profit charged or paid). The Defendant Park Place procured 15 construction loans, which could have provided funds to pay the intended purpose of the loan, construction costs of the houses. Instead, Park Place neglected to use the loan funds for their intended purpose. I find that the Brady Report details the amounts due for labor and materials paid for by the Company, with added costs for payroll, overhead, insurance and expected profit. I find that the Defendants Vereen and Wife, the owners of Park Place, offered no excuse or logical explanation for their actions. I find that the accounting records of Park Place reflected a profit exceeding $6,000,000.00 on the sale of the homes, after payment of construction costs. I find that Vereen admitted that he did not tell Smith that he was paying the construction expenses from the Company account, that he was not invoicing for such charges, and that the defendants did not pay the Company for the construction. I find that in her report, Brady properly computed the payroll, insurance, overhead and expected profit for these jobs, which I expressly adopt as being calculated based upon established standards in the industry. I find that Wife authorized the actions of Park Place and Vereen. I furthermore find that the Brady Report also correctly charged the Defendants with specific checks written out of the Company account to pay interest on the Park Place Development loan.

(g) The Sisson Remodel: I find that Defendant Vereen had a conflict of interest in the Elizabeth Vereen Sisson construction job performed by the Company. Sisson is the daughter of the Wife and Vereen. Sisson, a licensed attorney, was employed by the Company. I find that Vereen signed over $150,000.00 in Company checks to pay for labor and material on the Sisson residence. I also find that that there was no written construction contract or evidence of billing on the Sisson job. According to the Defendants, the Company permitted the Sisson job in 2007 and finished it in early 2008. The Sisson job was "cost only", with no construction contract and no billings. I find that the Defendants failed to explain why the Company advanced any money to pay Sisson's construction expenses. I find that Sisson paid the last payment of $35,803.10 (of the advanced expenses) by a check written to Park Place rather than the Company, which paid for the expenses. I find that the Company did not receive any payment for payroll expenses, insurance, overhead or profit. I find that Vereen admitted that the Company paid an additional $15,000.00 in labor expense to its master carpenter for his work at the Sisson house, which was not charged to the Sisson job ledger in the Company records. I find that the Brady Report outlines the Company's losses sustained because of these unauthorized expenditures from the Company account, together with the overhead and expected profit on this job. The Brady Report gives credit for all of Sisson's payments finally that were deposited in the Company account. Neither the Defendants nor Sisson gave any explanation for their actions.

(h) The Kemp Job: I find that the Defendant Vereen had a conflict of interest in the Company's job performed for Mr. Kemp, a job the Company permitted in 2004. The construction contract was signed in the name of AVCC on January 31, 2004, when AVCC did not have a contractor's license. I find that the Company paid for the Kemp expenses from the Company

account. I find that the Brady Report correctly reports the Company's losses because of its expenditures, and Kemp's payments made which were not deposited in the Company account.

(i) I find that the Defendant Vereen had a conflict of interest when he paid himself "supervisor fees" of $103,760.68 in 2004 and $27,121.62 in 2005 from the Company checking account. I find that these payments were unauthorized payments to Vereen, and that these payments were not reported as W-2 income to Vereen on the Company's 2004 and 2005 state and federal tax returns. Vereen made sure that Smith was not notified of these payments.

(j) I find that in 2004, Vereen took $21,320.15 from the Company account at Carolina First Bank to purchase a cashier's check payable to the Horry County Treasurer to pay his and Wife's real property taxes. This payment is correctly reflected on the Brady report. I find that Vereen and Wife offered no explanation for this payment.

(k) I find that Vereen paid $17,385.27 in expenses related to AVCC's Seven Oaks construction project from the Company checking account. This job was not a job of the Company, and Vereen and AVCC never repaid the funds. I find that these expenses are correctly reflected in the Brady report.

(l) I find that Vereen paid monthly rent from the Company checking account for a storage unit from Paul Thomas, where Vereen stored his personal vehicle and other personal items for many years. Vereen previously paid this expense from the AVCC account. I find that the use of the rental was personal to Vereen and was unauthorized. The amount of such expense is detailed in the Brady Report.

(m) I find that Vereen paid for the construction costs on a two car garage on a house partially owned by Vereen and Wife in the Bahamas and for repairs on their Gamecock football stadium "caboose" from the Company account. Although Vereen initially rationalized that the

Bahamas expenses were for a Company "sponsored" vacation, he subsequently conceded that the expenses were personal. The amount of such expenses is correctly detailed in the Brady report.

(n) I find that Vereen paid for personal insurance by check or pre-authorized draft from the Company account each month. Vereen admitted that these expenses were personal and improper. The amount of such expenses is detailed in the Brady Report. [3]

(o) I find that Vereen incurred monthly charges on multiple credit cards and paid for such expenses from the Company checking account. I find that the Company does not have any credit cards of its own, and these expenses were not Company expenses. For example, Vereen paid his daughter's gasoline charges on a Shell credit card from the Company account. The amount of such expenses is detailed in the Brady Report.

(p) I find that Vereen paid monthly dry cleaning bills for four years from the Company account for his family's personal dry cleaning. When confronted with this issue, Vereen admitted these expenses were personal. The amount of such expenses, annually, is detailed in the Brady Report.

(q) I find that Vereen deposited a $15,000 check from the Tahitian Princess job, a Company job, not into the Company account, but instead, into AVCC's account. This $15,000 deposit is included in the Brady report.

(r) I find that Vereen paid his personal monthly 29th Place HOA dues from the Company checking account. The Company does not own any real property at 29th Place. Vereen admitted that this was a personal expense. The amount of such expenses is detailed in the Brady Report.

[3] In her Final Report, Brady corrected an error in the amount of the charges.

(s) I find that Vereen paid the monthly cell phone bill for a third party from the Company account. The account was for one of Vereen's friends, not a Company employee. Vereen alleged that the Company paid the phone expense of Seth Smith, as a defense. However, the Company paid Seth Smith's cell phone charges while he was employed there. The Company's payment of Vereen's friend's cell phone charges was improper. I find that the Brady report correctly details these improper expenses.

(t) I furthermore find that from the Company account, Vereen paid for the labor and materials for the construction of his and Wife's house. These expenses are detailed in a Company job ledger. Vereen did not notify Smith of this important matter. I find that these payments were improper advances to Vereen and Wife that were never billed to or paid by the Company. I find that the amount of such expenses is detailed in the Brady Report.

(u) I find that Vereen paid for a $9,045 City of North Myrtle Beach construction permit for the Park Place job from the Company account. This expenditure was not included in the Park Place job ledger maintained by the Company and was never charged to the Park Place account on the Company's job ledger. This unauthorized payment is correctly detailed in the Brady Report.

(v) I find that Vereen used the Company's lull and skid for several years while the Company was constructing 23 homes for Park Place. At the same time, the Company had to rent a comparable lull and skid to use on its multi-family jobs. I find that Vereen did not list this expense on the Park Place job ledger maintained by the Company. I find that the Company established the costs that the Company paid for rental of a similar lull and skid, which were calculated and shown as the Defendants' account receivable on the Brady Report. I find Vereen and Park Place utilized the Company's equipment with full knowledge that the Company had to rent comparable equipment for its other jobs.

(w) In 2006, Vereen paid a $5,000 "commission" to his daughter, Elizabeth Vereen Sisson, from the Company checking account. Smith did not authorize this payment as this was a conflict of interest transaction. This payment was to an employee, not a shareholder, and was not reported as W-2 income to Sisson on the Company's income tax return. The amount is shown as an account receivable from Vereen on the Brady report.

(x) I further find that Vereen paid from the Company account the sum of $22,049.48 to Stock Builders for an invoice for materials delivered to the Park Place construction site, which was not charged to that job on the Company job ledger. Vereen reluctantly admitted that it was an expense that he and Park Place owed. The amount is shown on the Brady report as the Defendants' expense.

(y) I find that Vereen paid from the Company account multiple checks to Hartford Insurance and Companion Property & Casualty for insurance for property not owned by the Company. Such improper expenses are delineated on the Brady report.

(z) I find that Vereen improperly paid the expenses for his and Wife's vehicles by Company check. The Company did not own these vehicles, and it was improper for the Company to pay for their expenses. These expenses are shown on the Brady Report.

(aa) I find that Vereen claimed $208,577.66 in "construction in progress" expenses that he alleged were advances by AVCC to the Company in 2006, but for which he produced no backup as is required by the Court's Pre-trial Order and the Internal Revenue Service regulations. Vereen's daughter, Sisson, gave the list of these expenses to the Company's accountant with no documentation to support the claimed expense. I find that the Defendants failed to submit proper documentation to support these claims for reimbursement or offset, as required by the Order, and

I have disallowed these expenses as credits or offsets against the balances due by the Defendants. The amounts disallowed are shown as an accounts receivable on the Brady Report.

(bb) I find that Vereen improperly advanced Company funds to pay for his family members' construction expenses, which were not invoiced by the Company to such persons and were not paid. These expenses are shown on the Brady Report as unauthorized advances made by Vereen to third parties related to Vereen and Wife.

(cc) I find that all construction work performed for the Defendants Park Place, AVCC, Parkway Offices, Vereen, Wife and other "family" members, were, unlike other jobs, not based upon written construction contracts that obligated the owner to pay the Company for the services rendered. I find that although Vereen had a job ledger created at the Company for these jobs, Vereen paid the expenses of these jobs from the Company account but never billed for the labor and materials paid for and provided, the additional payroll expense, the cost of labor provided by salaried employees, the cost of liability insurance and the expected overhead and profit of 15%. Although Vereen initially claimed that these jobs were for "cost" only, on many occasions no payment was received at all. I find that Vereen conceded at trial that these entities should have paid the payroll expenses, liability insurance and expected overhead and profit of 15%. I find that Brady properly calculated the actual payroll costs by multiplying the actual payroll by 140% to determine the actual payroll costs to the Company, which included worker's compensation, FICA and Medicare match, and state and federal unemployment. I find that Brady properly calculated the cost of liability insurance cost at 2% of the costs of construction, and that overhead and profit were properly calculated at 15% of the cost of construction, which was used to determine the amount that should have been paid by the Defendants on each job. I find as a matter of fact that the calculations performed by Brady are reasonably calculated to provide what the Company

should have charged and collected for each and every job performed for the Defendants or their family members, with the exception of the Vereen personal home. The amounts and the method of calculation are contained in the Brady Report.

(dd) I find that an audit was completed of the Company's 2007 worker's compensation policy, which resulted in a refund check payable to the Company of approximately $49,000.00. I find that Vereen endorsed the check and deposited the check into the Park Place checking account, rather than the Company account. The amount of the check is included in the Brady Report.

6. Vereen, as the controlling Member, Managing Member, or President of each of the Defendant entities, treated the Defendants and the Company as if they were one large one entity, ignoring the corporate formalities required by law, and ignoring the requirements of the Internal Revenue Service concerning reporting of income and benefits paid by the Company to these Defendants. I find that checks payable to the Company were endorsed and paid by Vereen into Park Place, AVCC, Parkway and the Vereens' personal accounts. The Company, via Vereen, advanced funds from its account for construction expenses for Parkway, Park Place, AVCC, Vereen's family members and for Vereen and Wife without invoice or repayment. The Company paid for expenses of Park Place, Parkway, AVCC, Wife and Vereen unrelated to construction. Vereen took Company deposits and placed them into banking accounts of Park Place, Parkway, AVCC and Vereen. Vereen billed for services rendered by the Company in the name of AVCC and deposited the monies in other accounts which he controlled. The Company paid for the costs of constructing a two car garage in the Bahamas on a home partially owned by the Defendants Vereen and for repairs on a University of South Carolina "cockaboose" at the football stadium. Vereen received construction loan disbursements for the Company's construction expenses; he deposited the money into the Defendants' accounts rather than into the Company account. The

common denominator in each transaction is that Vereen personally controlled the financial and legal affairs of each entity and solely made all its decisions. Wife authorized Vereen to act for the entities she owned. When asked about her involvement in Park Place's transactions, Wife stated she had not read the Complaint and didn't know why she was sued. Her professions of ignorance are unconvincing. She either knew or should have known of her husband's misappropriations. In any event, Wife has clearly received the benefit of her husband's actions and has testified that they were authorized.

7. I find, for all accounting purposes in this case, that the Company ceased to perform business on December 31, 2007, and that expert Brady properly disregarded all financial transactions after that date, with the exception of accounts receivable and payments made for warranty work. According to the testimony presented, I find that the only job remaining at the Company after December 2007 was the Elizabeth Vereen Sisson job. According to Bookkeeper Drewitt, the Company had no jobs after 2007.

32

I find that the Defendants shall not be allowed any credit or offsets for checks of Park Place deposited into the Company account after 2007. From these deposits, Vereen issued checks from the Company account to pay himself, Sisson, and Drewitt, who were then employed by Grand Strand Builders, LLC. Grand Strand Builders, LLC is a licensed construction company owned by Vereen's daughter and son in law. I find that all expenses paid from the Company account after December 31, 2007 were expenses of Grand Strand Builders, LLC, where Vereen is the licensed builder. Beginning in 2008, Vereen and Sisson permitted new jobs in the name of Grand Strand Builders, and the telephone was answered as Grand Strand Builders. I find that the Defendants submitted fraudulent claims for reimbursement to the Court for these expenses advanced by Park Place to the Company. I have examined the checking account records of Grand Strand and Park

Place. I find that construction disbursements and payments for Grand Strand Builders permitted jobs after February 2008 were deposited by Vereen into the Park Place checking account rather than the Grand Strand Builder's account or the account of the Company; however, Park Place was not the developer or owner of these properties. Sisson testified she spent 80% of her time defending this civil action while she worked for, and acted as President of, Grand Strand Builders. Had the records of the Company been kept as they should have instead of being commingled with the Defendants' records, they would not have taken numerous hours to untangle. That is no one's fault but Vereen's fault. I find that the Brady Report properly disregarded advances by Park Place to the Company.

8. Based upon the evidence presented, I find, by clear and convincing evidence, that Park Place, Parkway Offices, AVCC, Arthur Wayne Vereen and Linda C. Vereen, individually and as Trustees, conspired together to convert the assets of the Company to their own benefit. The act of one was the act of the other, and each Defendant shared in the ill-gotten gains. The Defendants together conspired to commit accounting fraud upon the Plaintiff, and commingled funds without regard to ownership or the taxation of such funds to the recipient. I find that most of the ill-gotten gains went to Defendant Park Place, which is owned 95% by Wife. The funds were used to pay Wife a large weekly salary, even though she admitted she did not work for that Company; to construct the Vereen and Wife's personal house; and to pay Wife and Vereen's other personal expenses. Wife worked several years for the Defendants' accountants in Myrtle Beach and taught business courses at Coastal Carolina University for many years. I find that Wife is well educated in business affairs and should have been cognizant of her husband's (mis)management of the companies she owned. I find that according to the Park Place accounting records, Park Place earned over $6,000,000.00 in profits after allowing for payment of construction costs for the 23

Park Place houses the Company constructed. The Defendants had the capacity to make full payment for these construction costs, but instead, sold each of these houses at a substantial profit without paying for the costs of construction.

9. I find that the Company incurred accounting expenses in the amount of $142,268.00 from expert witness Susan Brady, CPA, to uncover and detail the Defendants' improper actions. I find that the Plaintiff shall be entitled to recover, as part of his damages, the Company's expenses incurred for the employment of Susan Brady. I furthermore find that the Defendants shall be responsible for the payment of any and all fines and penalties incurred by the Company in correcting and preparing state and federal income tax returns for the Company.

10. The Plaintiff has requested that the Court disregard the corporate formalities and differences between the defendants and award its judgment against the Defendants jointly and severally, as each Defendant is the alter ego of the others. Such "piercing of the corporate veil" is allowed when the Defendants do not separate their business, personal and corporate identities and act without regard to their separate identities. Mid-South Mgt. Co. v. Sherwood Development Corp., 374 S.C. 588, 597; 649 S.E.2d 135, 140. (S.C. App. 2007). The "alter ego" theory examines the relationship between the Defendant entities and their owners. An alter ego theory requires a showing of total domination and control of one entity by another and inequitable consequences caused thereby. Id. at 603. In this case, Vereen managed and controlled AVCC, Park Place, and Parkway and expended corporate assets for each without regard for the legal rights of the Company and its other owner, Smith. Wife authorized the actions of Vereen. The corporate theft benefited Wife because the majority of the misappropriated assets and monies went to Park Place and Parkway, which she owned. Vereen controlled all of the improper actions and Wife benefited from each and every improper transaction. The Company paid for construction loan interest incurred by

Park Place and for construction expenses at Pointe Marsh and at the putt-putt, which are owned by Park Place. The Company paid for the renovation of Wife's and Parkway's buildings and for home construction costs. I find that from the improper gains, Vereen and Wife built their home in Murrells Inlet. The Defendants referred to themselves as the "Vereen Entities" in the presentation of their defense and in their claims for reimbursement from the Company, lending credence to the amalgamation of identities theory. I find that each Defendant was the alter ego of the other. I find that for all practical purposes, Vereen controlled AVCC, Park Place, Parkway and Wife, with the express permission of Wife.

The first part of the two prong test for piercing the veil involves an eight factor analysis of the shareholder's relationship to the corporate entities, or here, the corporation AVCC, and the limited liability companies Park Place and Parkway, as discussed in Sturkie v. Sifly, 280 S.C. 453, 313 S.E.2d 316 (Ct. App. 1984). These eight factors look to: (1) observance of the corporate formalities by the dominant shareholders; (2) the capitalization of the companies; (3) the failure to observe corporate formalities; (4) the non-payment of dividends; (5) the siphoning of funds of the corporation(s) by the dominant shareholder; (6) the non-functioning of other officers or directors; (7) absence of corporate records; and (8) whether the corporation(s) were merely a façade for the operations of the dominant shareholder; Multimedia Publishing of S.C., Inc. v. Mullins, 314 S.C. 551, 431 S.E.2d 569 (1993); University Medical Associates of S.C. v. UnumProvident Corp., 335 F. Supp. 2d 702, 707 (D.S.C. 2004).

The conclusion to disregard the corporate entity must involve a number of the eight factors, but need not involve them all. Dumas v. InfoSafe Corporation, 320 S.C. 188, 192, 463 S.E.2d 641, 644 (Ct.App. 1995). In the case at hand, the Defendants failed to follow corporate formalities; there was a non-functioning of other officers or other directors in the Defendant entities; there was

siphoning of funds from the Plaintiff to the Defendant entities by the dominant shareholder; there were no payment of dividends to shareholder Smith, when there were clearly funds available to pay dividends; the Defendant corporate entities were merely a façade for the operations of the dominant shareholder Vereen; a dominant officer, manager or family member (Vereen) controlled the Plaintiff and Defendant entities; there is an absence of corporate records supporting the improper actions of the Defendants; and the acts of the Defendants' entities were merely a façade for the operations of Vereen in his multiple capacities. Vereen's acts were the acts of each of the Defendants. Dewitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co., 540 F.2d 682 (4th Cir. 1976). Once it is established that the requirements of the first prong are met, the second prong of the test requires that "there be an element of injustice or fundamental unfairness if the acts of the corporation be not regarded as the acts of other parties." See Sturkie, 280 S.C. at 458. When the notion of legal entity is used to protect fraud, justify wrong, or defeat public policy, the law will regard the corporation as an association of persons. Here, the Defendant Vereen siphoned all of the assets of the Plaintiff to the Defendant entities that he solely controlled, making the Plaintiff insolvent. When Vereen siphoned all of the assets of the Plaintiff, he prevented the Plaintiff from paying or being able to pay dividends, meeting the requirements of both prongs of the test. When the unfairness consists of misappropriation of assets, the second prong of the test is almost always met, and may be proved or established by showing the Defendants' reckless disregard for the rights of the Plaintiff. See Multimedia, 314 S.C. at 555, 431 S.E.2d at 572. Vereen's siphoning of over $2,000,000.00 of the Plaintiff's earnings to the Defendants is the major factor in meeting both the first and second prongs of the test. Hunting v. Elders, 359 S.C. 217, 597 S.E.2d. 803 (Ct.App. 2004). I am confident that Vereen and Wife were aware of the actions taken against the Company, their responsibility for such actions, and the self-serving actions of the Defendants in regards to

the property and assets misappropriated to their benefit. Vereen is the sole owner of AVCC ; his knowledge is imputed to AVCC. Vereen is the manager of Parkway and Park Place; his knowledge is imputed to Park Place and Parkway.

I find that Wife had actual knowledge of her husband's actions and benefited by the improper gains which she and her companies, Park Place and Parkway, received. Vereen, with the assistance of the Defendants, siphoned all of the assets of the Company through the schemes discussed earlier, which benefited the Defendants. I find by clear and convincing evidence that each of the Defendants is the alter ego of the other, that the corporate identities of the Defendants should be pierced, and that judgment should be rendered against the Defendants jointly and severally for the damages sustained by the Plaintiff.

11. I have examined the fee agreement of the Company with Frank H. DuRant, Attorney for the Plaintiff. I find that without the services of Mr. DuRant on a contingency basis, the Company would not have been able to proceed with this action. I am convinced that without the diligent, time consuming and costly discovery, the Plaintiff would have been unable to establish proof of the Defendants' improper actions and the amount of damages incurred. I therefore approve the contingency fee agreement as reasonable, fair and necessary to protect the Company's interests. I find that Plaintiff shall be entitled to an award of attorney's fees as a part of the Company's damages.

ACTUAL DAMAGES

(a) Prejudgment interest: The Plaintiff requested prejudgment interest in the Complaint and shall be entitled to pre-judgment interest on the misappropriated balance due of $2,588,125.90 commencing January 23, 2009 and ending March 23, 2015 at the rate of 8.75% per annum or the

sum of $ 138,396.78. The interest is based upon the amount of misappropriated assets as determined by Brady in the final Brady Report minus the total due from Ellis E. Smith as contained in the final Brady Report. See QHG of Lake City, Inc. v. McCutcheon, 360 S.C. 196, 600 S.E.2d 105 (Ct. App. 2004) and S. C. Code Ann. §34-31-20(A). The law allows prejudgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable and the sum is certain or cable of being reduced to certainty. Babb v. Rothrock, 310 S.C. 350, 353, 426 S.E.2d 789, 791 (1993). The fact that the sum due is disputed does not render the claim unliquidated for purposes of an award of prejudgment interest. Id. The Court has the discretion to award prejudgment interest in an action to recover under the theory of quantum merit, to make the Plaintiff whole. Id.; Boykin Contracting, Inc. v. Kirby, (Opinion No. 5133, Ct. App. 5/15/13). I have awarded prejudgment interest from the date the Plaintiff complaint in this matter, the date payment was demanded. Prejudgment interest was demanded in Paragraph 18 of the Complaint and has been awarded in conversion cases. Dixie Bell v. Redd, 656 S.C. 765, 768, 376 S.C. 361, 363 (Ct. App. 2007). As a general rule, the measure of damages in a case for conversion of property is the value of the property taken with interest thereon. Industrial Welding Supplies, Inc. v. Atlas Vending Co., Inc., 276 S.C. 196, 277 S.E.2d 196. (S.C.1981); Mack v. Riley, 282 S.C. 100, 316 S.E.2d 731 (S.C.App. 1984). Otherwise, the Defendants would be rewarded with free use of the Plaintiff's funds.

(b) It is therefore Ordered, Adjudged and Decreed that the Plaintiff A & E Constructors and Consultants, Inc. shall have judgment for actual damages against the Defendants Arthur Wayne Vereen, individually and as Trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, individually, and as Trustee of the Linda C. Vereen Residence Trust, Arthur Vereen Construction Company, Inc., Park Place Properties of Myrtle Beach, LLC and Parkway Offices,

LLC, jointly and severally, in the amount of Two Million Five Hundred Eight Thousand One Hundred Twenty Five and 90/100 ($2,588,125.90) in actual damages; for prejudgment interest at the annual rate of 8.75% from January 23, 2009 to March 23, 2015 in the amount of $ 138,396.78, as outlined in (a) above; for the additional sums of $142,268.00 in accounting expenses; together with punitive damages, as described below, together with the costs of this action, including the Court Reporter fees incurred. This amount reflects the balance due from the Defendants on the September 4, 2012 Brady Final Report, minus a credit in the amount of $124,377.41 for benefits received by shareholder Ellis E. Smith. I hereby adopt the findings of the Final Brady Report as the findings of the Court concerning the monies Defendants misappropriated from the Plaintiff herein.

PUNITIVE DAMAGES

The Plaintiffs have requested punitive damages from the Defendants. "Punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future." Mellen v. Lane, 377 S.C. 261, 290; 659 S.E.2d 236, 251 (Ct. App. 2008) (citing Clark v. Cantrell, 339 S.C. 369, 378-379, 529 S.E.2d 528, 533 (2000)). "They serve to vindicate a private right by requiring the wrongdoers to pay money to the injured party." Id. Punitive damages are recoverable in conversion cases if the defendant's acts are "willful, reckless, and/or committed with conscious indifference to the rights of others." Oxford Finance Companies, Inc. v. Burgess, 303 S.C. 534, 402 S.E.2d 480 (1991) (citing Hunt v. Jordan, 286 S.C. 340, 333 S.E.2d 569 (Ct.App.1985)). "In any civil action where punitive damages are claimed, the plaintiff has the burden of proving such damages by clear and convincing evidence." Mellen, supra, (quoting S.C. Code Ann. §15-33-135 (Supp. 2003)).

The following factors are relevant when considering punitive damages: "(1) the defendants degree of culpability; (2) duration of the conduct; (3) defendants awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonable related to the harm likely to result from such conduct; (7) defendants ability to pay; and finally (8) other factors as noted in Haslip, and other factors 'deemed appropriate." Gamble vs. Stevenson, 305 S.C. 104, 111-112, 406 S.E.2d 350, 354 (1991); Pacific Mutual Life Insurance Co. v. Haslip, 499 U.S. 1, 111 S. Ct. 1032 (1991). The trial court is not required to make findings of fact for each factor to uphold a punitive damage award. Welch v. Epstein, 342 S.C. 279, 306, 536 S.E.2d 408, 422 (Ct. App. 2000).

Here, I find that punitive damages are warranted because of the deliberate, willful misconduct of the Defendants. Vereen owed a fiduciary duty to the Company as its treasurer, board member and exclusive manager of its checking account. Vereen repeatedly converted assets of the Company to his own personal use and to the use of the named Defendants which he exclusively controlled. The Defendants failed to report any of the converted income on tax filings. What is most disturbing is that when confronted with proof of the misconduct, the Defendants refused to accept the responsibility for their collective misconduct and engaged in a four week trial where the proof of misconduct was all but absolute.

It is therefore ordered that Plaintiffs shall be granted punitive damages against the Defendants Arthur Wayne Vereen, Linda C. Vereen, individually and as Trustees, Arthur Vereen Construction Company, Inc., Parkway Offices, LLC and Park Place Properties in the amount of $100,000.00.

The parties both pled that the Company should be dissolved, and I have no dispute with that. However, there was no proof or argument presented concerning how that should be accomplished. Accordingly, I leave that for another day.

CONCLUSION

It is therefore **Ordered, Adjudged and Decreed** that the Plaintiff A & E Constructors and Consultants, Inc. be granted:

(1) Judgment against the Defendants Arthur Wayne Vereen, individually and as Trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, individually and as Trustee of the Linda C. Vereen Residence Trust, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC and Arthur Vereen Construction Company, Inc., jointly and severally, as follows:

Amount of monies misappropriated	$ 2,588,125.90
Prejudgment interest from 1/23/2009 until 3/23/2015	138,396.78[44]
Accounting fees due Susan Brady	142,268.00
Punitive Damages	100,000.00
	$ 2,968,790.68

or the sum of $2,968,790.68 in actual and punitive damages, inclusive of pre-judgment interest at 8 ¾% from January 23, 2009 through March 23, 2015.

(2) Frank H. DuRant, PA's contingency fee agreement is expressly approved and shall constitute a first lien upon any recovery in this action and shall be paid by the Company as Ordered when income is received from the Defendants or any other source.

(3) The bill of Susan Brady, CPA, of $142,268.00 for her investigative and accounting work in this case is expressly approved and shall constitute a second lien upon any recovery in this action and shall be paid by the Company as Ordered, when income is received from the Defendants or any other source.

[44] Per diem interest is 61.537.

(4) The taxable costs and expenses of this action, including any Court Reporter fees for the trial, shall be added to the judgment amount against the Defendants. In the event that the Plaintiff incurs late fees and penalties as a result of amending and filing late federal and state tax returns, the amount of such penalties and late fees shall be paid by the Defendants or added to the judgment amount rendered.

(5) The Counterclaims of the Defendants and Third Party Complaints of the Third Party Plaintiff(s) are hereby dismissed with prejudice.

AND IT IS SO ORDERED!

CYNTHIA GRAHAM HOWE
Master In Equity

Conway, South Carolina
March 23, 2015

42

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-26-620

Ellis E. Smith, Individually, and on behalf of A & E Constructors and Consultants, Inc.,
PLAINTIFF(S)

Arthur Wayne Vereen, et al.
DEFENDANT(S)

Submitted by: The Honorable Cynthia Graham Howe	Attorney for : ☐ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **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.

2015 MAR 25 AM 11:22 HORRY COUNTY CLERK OF COURT

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk : Amended Form 4 following Nunc Pro Tunc Order

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
A & E Constructors and Consultants, Inc.	Arthur Wayne Vereen, Individually, and as Trustee of the Arthur W. Vereen Residence Trust	$4,226,383.90
	Linda C. Vereen, Individually, and as Trustee of the Linda C. Vereen Residence Trust	$4,226,383.90
	Park Place Properties of Myrtle Beach, LLC	$4,226,383.90
	Parkway Offices, LLC	$4,226,383.90
	Arthur Vereen Construction Company, Inc.	$4,226,383.90

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

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

Master in Equity

3073
Judge Code

3/25/15
Date

For Clerk of Court Office Use Only

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

Frank H. Durant
J. Jackson Thomas

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kathryn M. Cook

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ELLIS E. SMITH, Individually, and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., a South Carolina Corporation,

Plaintiff,

vs.

ARTHUR WAYNE VEREEN, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, ARTHUR VEREEN CONSTRUCTINO COMPANY, INC., LINDA C. VEREEN, ARTHUR W. VEREEN, AS TRUSTEE OF THE ARTHUR W. VEREEN RESIDENCE TRUST, and LINDDA C. VEREEN, AS TRUSTEE OF THE LINDA C. VEREEN RESIDENCE TRUST,

Defendants,

and

ARTHUR WAYNE VEREEN, individually and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., and 29th PLACE DEVELOPERS, INC.,

Third Party Plaintiffs,

vs.

E. SMITH AND SONS CONSTRUCTION, LLC, and EES CONSTURCTION AND CONSULTING, INC., and ELLIS E. SMITH, individually,

Third Party Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-26-620

NUNC PRO TUNC ORDER AMENDING JUDGMENT TOTAL AND FORM 4

HORRY COUNTY
2015 MAR 25 AM 11:22
CLERK OF COURT

IT APPEARING to the Court that a mathematical error occurred in the computation of prejudgment interest in the Order signed March 23, 2015 and clocked with the Horry County Clerk of Court on March 24, 2015, and that certain parties were left off the Judgment Index on the Form 4 signed and clocked on the same respective days. The per diem rate of prejudgment interest of 8.75% would be six hundred twenty dollars and forty four cents and not 61.537 as indicated by Footnote 4 on Page 41 of that Order. Therefore, total interest between the dates of January 23, 2009 and March 23, 2009 would be $1,395,990.00. The total judgment amount should therefore be amended to reflect the amount shown below:

Amount of monies misappropriated	$2,588,125.90
Prejudgment Interest from 1/23/2990 until 3/23/2015	$1,395,990.00
Accounting fees due Susan Brady	$142,268.00
Punitive Damages	$100,000.00
TOTAL:	**$4,226,383.90**

Defendant Parkway Offices, LLC should also be added to the Judgment Index on the Form 4 as indicated by paragraph (i) on Page 41 of the Order.

IT IS SO ORDERED.

The Honorable Cynthia Graham Howe
Master in Equity for Horry County

Conway, South Carolina
24th day of March, 2015

STATE OF SOUTH CAROLINA)) COUNTY OF HORRY)	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2009-CP-26-620
Ellis E. Smith, individually and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation, Plaintiffs v. Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc. and Linda C. Vereen, Defendants AND Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc. and 29th Place Developers, Inc., Third-Party Plaintiffs v. E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, individually, Third-Party Defendants	**DEFENDANTS' and THIRD- PARTY PLAINTIFFS' CERTIFICATE OF SERVICE**

I certify that I have on April 20, 2015 hand delivered a copy of the Defendants' Motion to Reconsider the Orders of the Horry County Master in Equity to the Office of the Master in Equity and filed the original of the same with the Horry County Clerk of Court.

I also certify that a copy of this Motion to Reconsider is also being hand-delivered to counsel for Plaintiffs and Third –Party Defendants by Kathryn M. Cook, Counsel for Defendants this same day.

SWORN to before me this 20th

day of April, 2015

Notary Public for South Carolina

My Commission Expires: 1/13/2023

EXHIBIT 6

KATHRYN M. COOK, P.A.

306 Calhoun Road
Myrtle beach, South Carolina 29577

Phone: (843) 449-1396 kifcook55@gmail.com

April 6, 2015

The Honorable Cynthia Graham Howe
Horry County Master-In-Equity
PO Office Box 1236
Conway, SC 29528

Re: Ellis E. Smith and A & E v. Vereen, et al.
Civil Action No.: 2009-CP-26-0620

Dear Judge Howe:

In reviewing your Orders in the above captioned case for purposes of filing a motion to reconsider, I find that I have not been served a complete copy of the Order signed by you on 3/23/2015 and filed with the Horry County Clerk of Court on 3/24/2015. Page 37 of the Order is missing from the filed copy served on me by Frank DuRant. Likewise, the copy that was sent as an email attachment to me by your law clerk, Stuart Miller, was also missing page 37. I assume that is the source from which Frank copied the order he sent to me and he did not realize it was missing a page.

I am unable to take the next steps in this matter until I receive a complete copy of the filed Order. I request that you send to me page 37 or a complete copy of the Order at your convenience so I can take steps to file a motion to reconsider in this case.

If you have any questions, please do not hesitate to contact me. Thank you for your consideration.

Sincerely,

Kathryn M. Cook

CC: Frank H. DuRant, Esq.
J. Jackson Thomas, Esq.

EXHIBIT 7

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY) CASE NO.: 2009-CP-26-00620
)
ELLIS E. SMITH, Individually, and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., a South Carolina Corporation,

Plaintiff,

vs.

ARTHUR WAYNE VEREEN, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, ARTHUR VEREEN CONSTRUCTION COMPANY, INC., LINDA C. VEREEN, ARTHUR W. VEREEN, AS TRUSTEE OF THE ARTHUR W. VEREEN RESIDENCE TRUST, and LINDA C. VEREEN, AS TRUSTEE OF THE LINDA C. VEREEN RESIDENCE TRUST,

Defendants.

and

ARTHUR WAYNE VEREEN, individually and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., and 29th PLACE DEVELOPERS, INC.,

Third Party Plaintiffs,

vs.

E. SMITH AND SONS CONSTRUCTION, LLC, AND EES CONSTRUCTION AND CONSULTING, INC., and ELLIS E. SMITH, individually,

Third Party Defendants.

ORDER
DISPOSING OF POST TRIAL MOTIONS

FILED
HORRY COUNTY
2016 APR 25 PM 4:10
MELANIE HUGGINS-WARD
CLERK OF COURT

copy

Attorney for A & E, Smith:	Frank H. DuRant
Attorney for Smith, EES and E. Smith & Sons:	J. Jackson Thomas
Attorney for the Defendants and Third Party Plaintiffs:	Kathryn M. Cook
Court Reporter:	Melissa M. Decker

Defendants move to reopen the hearing in this matter for the taking of testimony and presentation of evidence as to events effecting (sic) the subject matter of this accounting action and the relief sought relating to A&E Constructors and Consultants, Inc. (the Company). Specifically, two independent civil actions after the final hearing in this action have been filed against the Company and are presently pending. Defendants wish to reopen the hearing to take testimony concerning those two cases. Additionally, Defendants move for reconsideration of the final judgment. They now request that an independent forensic accountant be appointed and assert that one is required before a full and complete judicial accounting can be completed. However, Defendants never requested that an independent forensic accountant be appointed in this action until they filed their motion for reconsideration.

Except as stated below, Defendants' motions are denied.

This case has been quite frustrating, not only for the parties and the attorneys, but for the Court, as well. It is, at heart, an accounting action, involving a closely held construction corporation between two former close friends operating in a small community. The lawsuit was filed in 2009, when the foreclosure crisis was beginning to hit South Carolina, and particularly, Horry County, hard. The case was referred to this Court on July 23, 2009.

There were discovery issues between the parties almost immediately, and in October 2010, this Court held a pretrial hearing. All attorneys were present, and additionally, five certified public accountants who were involved in some matter also attended: Susan Brady, Bartlett Buie, Richard

Crumpler, Elizabeth Montgomery, and Bert Huggins.[1] Ms. Brady was presented as the Plaintiff's accounting expert witness. Defendants informed the Court that they intended to proceed to trial without an accounting expert. In fact, Defendants' attorney stated emphatically that no accountant was needed because the evidence was simply a matter of adding and subtracting, and certainly, "rocket science" was not involved. Even though five well-qualified certified accountants were present at the pre-trial conference, no attorney there requested that the Court appoint any of them, or, for that matter, any other accountant as an independent forensic accountant so that the Court could complete a full judicial accounting.

When the October 2010 pretrial conference occurred, Defendants had taken no depositions. The Court ordered that Defendants complete discovery by the end of January 2011 so that trial could begin in February 2011.

In this Court, the parties schedule their own hearings. By February 2011, this Court's trial schedule was overly burdened with foreclosure hearings, so it was almost impossible to schedule several consecutive, full days for trial. Two days of trial in this matter were held on February 15–16, 2011. In June, two and a half more days of trial, June 13–15, 2011, were held. Before several more consecutive full days were available, four months had passed. The trial resumed on October 11, 2011, and ran through October 13, 2011. The trial finished on August 27, 2012, through August 30, 2012. At some point during the trial, one of the attorneys became quite ill, and the trial had to be delayed.

At the end of the trial on August 30, 2012, because of the length of trial, and more specifically, because of the disjointed way the case was tried, this Court requested a Memoranda

[1] Three of the accountants had been called to the conference because they had worked for the firm that had prepared the Company's tax returns. Defendants' attorney had advised those accountants not to communicate with Plaintiff's attorneys concerning this matter, except through her office. That obviously put the Plaintiff's attorneys at a disadvantage. That issue was addressed by this Court's Pretrial Order.

of Law from the parties summarizing their positions. This Court received a Memoranda from the Plaintiff in September. By February of 2013, six months after the trial ended, Defendants had not sent a memorandum. (To date, Defendants have never sent one.) On March 23, 2015, this Court issued its final order.

The 42-page Order was filed on March 24, 2015. On March 25, 2015, the Court's law clerk scanned and emailed the Order to all counsel of record. Plaintiff's counsel also mailed a copy of the Order to Defendants on March 25, 2015. On that same date, the Court issued a *nunc pro tunc* order, correcting the amount of prejudgment interest and adding a defendant's name to the Form 4 only (it already was in the final order). On March 27, 2015, the Plaintiff's attorney mailed the *nunc pro tunc* order and the Form 4 to all attorneys of record.

Subsequently, Defendants' counsel realized that she had not received Page 37 of the Order. Instead of obtaining the missing page from the clerk's file, she requested it from the trial judge. The judge's office thereafter emailed the missing page to all attorneys. Defendants' attorney then moved for reconsideration, serving and filing the motion on April 20, 2015. Plaintiff contends the motion comes too late. I agree.

Both Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure (SCRCP) require that any motions thereunder be made no later than ten days after "receipt of written notice of the entry of the order." *See also, Diamond Jewelers of Spartanburg, Inc. v. Naegele*, 290 S.C. 260, 260-62, 349 S.E.2d 888, 888 (1985). Essentially, there are two ways notice of entry of the order can be given under Rule 77(d) of the SCRCP. Clerks of court can serve notice of the entry, or a party may serve notice in any fashion authorized by Rule 5 of the SCRCP. In this case, Plaintiff's attorney served notice of entry of the order on March 27, 2015, at the latest, when he served a copy of the *nunc pro tunc* order and the Form 4. Computing ten days from March 27,

2015, and adding five days for mailing [Rule 6(e), SCRCP], and then allowing the period to run until Monday because the last day fell on a Saturday, the last day for Defendants to file their Motion for Reconsideration pursuant to Rules 52(b) and 59(e) was Monday, April 13, 2015. Defendants failed to file their post-trial motion until April 20, 2015, a week too late. Their only excuse was that they were waiting on the **Court** to send them Page 37 of the Order before their ten days began to run.

Even though I have determined that the motion for reconsideration was too late, I conclude that the issue is best left for our appellate courts because of the Order's missing page, Page 37, and its effect on the finality of the Order. Accordingly, I will address the motion as if it were timely and leave for the appellate court to determine the timeliness of the motion. As previously stated, I deny the motion, except as stated below.

1. I grant Defendants' motion in regard to the grounds of piercing the corporate veil. Instead, I find that the Defendants should be held liable under an amalgamation of interest or blurred identity theory. The test to determine whether a corporate veil should be pierced is applied rather strictly. *See Sturkie v. Sifly*, 280 S.C. 453, 313 S.E.2d 316 (Ct. App. 1984). It consists of two prongs, with the first prong requiring eight factors. The second part requires that there be an element of injustice or fundamental unfairness if the veil not be pierced.

Arthur Vereen blurred the identity of his various entities. They shared the same office, employees, construction jobs, and shareholders. Mr. Vereen paid debts for one entity out of another entity's checking account. Mr. Vereen also deposited into one entity's checking account funds belonging to another entity. This created an accounting nightmare. It also was the basis for this lawsuit: Ellis Smith was a shareholder only in A&E Constructors and Consultants, Inc. and

not in any of the Defendant corporations. I conclude that Mr. Vereen used the various entities as an extension of himself to pay whatever debts he needed to pay, whether they were personal, family, or any of his corporations' debts. This was a classic amalgamation theory case. *See Kincaid v. Landing Dev. Corp.*, 289 S.C. 89, 344 S.E.23 869 (Ct. App. 1986).

2. I grant Defendants' motion as to judicial dissolution. Both the Plaintiff and the Defendants demanded judicial dissolution. I previously did not grant judicial dissolution because neither side addressed that during the trial. They did not suggest how winding up should occur or whether a receiver should be appointed, or, for that matter, whether an accountant should be appointed to review the corporate records. Nevertheless, I conclude that the parties should follow S.C. Code Ann. §§ 33-14-106 through 107 as to how to deal with claimants of a dissolved corporation. If any other issues arise, the parties may request an additional hearing.

AND IT IS SO ORDERED!

CYNTHIA GRAHAM HOWE
Master In Equity for Horry County

Conway, South Carolina
April 25 2016

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF HORRY)

ELLIS E. SMITH, IND. AND ON BEHALF OF A&E CONSTRUCTORS AND CONSULTANTS
Plaintiff(s)

vs.

ARTHUR WAYNE VEREEN, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, ARTHUR VEREEN CONSTRUCTION, INC., AND LINDA C. VEREEN
Defendant(s)

CIVIL ACTION COVERSHEET

2009 CP 26 620

FILED
HORRY COUNTY
2009 JAN 23 AM 11:23
MELANIE HUGGINS
CLERK OF COURT

(Please Print)
Submitted By: FRANK H DURANT
Address: PO BOX 960, MYRTLE BEACH, SC 29578

SC Bar #: 1802
Telephone #: 843.448.1541
Fax #: 843.626.7431
Other:
E-mail: fdurant@yahoo.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (*Check all that apply*)

***If Action is Judgment/Settlement do not complete*

☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☒ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (*Check One Box Below*)

Contracts
- ☐ Constructions (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- ☐ Notice/ File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☒ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☒ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☐ Other (499)

Inmate Petitions
- ☐ PCR (500)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture-Petition (840)
- ☐ Forfeiture—Consent Order (850)
- ☐ Other (899)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Administrative Law Judge (980)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex /Other
- ☐ Environmental (600)
- ☐ Automobile Arb. (610)
- ☐ Medical (620)
- ☒ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out-of State Depositions (650)
- ☐ Sexual Predator (510)

accounting and dissolution of corporation

Submitting Party Signature: [redacted] **Date:** January 22, 2009

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Cases are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA COUNTY OF HORRY	)))	IN THE COURT OF COMMON PLEAS CIVIL ACTION NO.: 2009-CP-26-_____
Ellis E. Smith, individually, and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation, Plaintiff, vs. Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc., and Linda C. Vereen, Defendants.	)	SUMMONS

FILED
HORRY COUNTY
2009 JAN 23 AM 11:21
MELANIE HUGGINS
CLERK OF COURT

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at his office at 2107 Farlow Street, Post Office Box 960, Myrtle Beach, South Carolina 29578, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, a Judgment by default will be rendered against you for the relief demanded in the Complaint.

DuRANT & MARTIN

Frank H. DuRant
DuRANT & MARTIN
Post Office Box 960
2107 Farlow Street
Myrtle Beach, SC 29578

January 21, 2008

t. 843.448.1541
f 843.626.7431
fdurant@yahoo.com
SC Bar No.: 1802

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2009-CP-26-0620

Ellis E. Smith, individually, and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation,

Plaintiff,

vs.

Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc., and Linda C. Vereen,

Defendants.

COMPLAINT

FILED
HORRY COUNTY
2009 JAN 23 AM 10:21
MELANIE HUGGINS
CLERK OF COURT

The Plaintiff, complaining of the above Defendants, would respectfully show unto this Honorable Court as follows:

1. That the Plaintiff Ellis E. Smith (hereinafter "Smith") is a citizen and resident of Horry County, South Carolina. Smith is the owner of 50% of the outstanding shares of A & E Constructors and Consultants, Inc. (hereinafter "A&E"), a South Carolina Corporation doing business in Horry County, and is furthermore it's President, Chairman and one of two members of it's Board of Directors.

2. That the Defendant Arthur Wayne. Vereen (hereinafter "Vereen") is, upon information and belief, a citizen and resident of Georgetown County, South Carolina and is the owner of 50% of the outstanding shares in A&E and serves as its Secretary, Treasurer and other remaining Board Member. That during all times mentioned in this action, Vereen controlled the receipts and disbursements of A&E, which included

disbursements made by Vereen that were not for the benefit of A&E, as hereinafter alleged.

3. That the Defendant Park Place Properties of Myrtle Beach, LLC and Parkway Offices, LLC are, upon information and belief, South Carolina Limited Liability Companies, actually doing business in Horry County, South Carolina that are owned and/or controlled by Vereen and/or his wife, the Defendant Linda C. Vereen. That upon information and belief, the Defendants named in this paragraph wrongfully received funds, labor or materials from A&E at the instigation of Vereen, as hereinafter alleged.

4. That the Defendant Arthur Vereen Construction, Inc. is a South Carolina Corporation, actually doing business in Horry County, South Carolina, which is, upon information and belief, wholly owned and/or controlled by Vereen and/or his wife, Linda C. Vereen. That Linda C. Vereen is, upon information and belief, a citizen and resident of Georgetown County, South Carolina and is an owner, shareholder or controlling person in the named defendants as hereinafter alleged.

5. That prior to October 28, 2003, Vereen and Smith, licensed general contractors, met and incorporated A&E, for the purposes of consolidating their general contracting businesses. That as a result, A&E was incorporated with Vereen and Smith each owning 50% of the stock in the company, with Smith serving as President and Vereen as treasurer and each becoming members of the Board of Directors of the corporation. That each agreed to finish up their existing jobs with their respective companies and that any new jobs would vest in the new company, A&E. That as a result, Smith began receiving a weekly payroll check as an employee or as an employee of his

prior company reimbursed completely by A&E with a check signed by Vereen and Vereen began receiving a weekly payroll check signed by Vereen from A&E.

6. That until late 2007 Smith and Vereen remained as employees of A&E. That Smith resigned as an employee in August, 2007 and was paid by A&E through December, because of unpaid vacation time, by a check signed by Vereen.

7. That during this time period from incorporation through the present, Vereen has been in sole control of the receipts and payables of A&E and was in charge of filing appropriate tax returns in his capacity as Treasurer of A&E. In this capacity, Vereen never accounted to Smith or A&E for the receipts and disbursements of the Company and Vereen never provided the records to A&E's accountant so the 2007 state and federal tax returns could be prepared and the books reconciled. That 2005 and 2006 tax returns were not timely filed by A&E, and Smith was unaware of the accounting practices of Vereen until these records were received. That Vereen had a fiduciary duty to A&E and its shareholders not to use the corporate assets to further his own personal interests or for his own personal benefit and was prohibited for using assets belonging to A&E for his own personal benefit or for the benefit of a company he owned or controlled.

8. That the Plaintiff made demand upon Vereen and A&E to account for large amounts of assets of A&E that were, upon information and belief, diverted from A&E from 2003 until the present, so the Company's books could be reconciled, the taxes paid and the assets of the Company be paid to its shareholders after all due and just bills of the Company were paid, as is prescribed by law for liquidation or dissolution of A&E. That despite such lawful demand, the Defendant Vereen has refused to complete such

accounting or to otherwise account for expenditures not related to the business of the Company or to otherwise provide such complete records to the accountant for A&E.

9. That as a result, the Plaintiff brings this action, individually and in his capacity as a shareholder, officer and director and on behalf of A&E in a derivative capacity, as the only other shareholder, officer, director and treasurer has refused to account properly for such assets. That upon information and belief, Vereen has diverted assets belonging to the Company for his or his family's own personal use, as hereinafter alleged.

FOR A FIRST CAUSE OF ACTION

.10. That each and every allegation of the Complaint is repeated as if restated verbatim.

11. That the Defendant Vereen, in his capacity as director, shareholder and Treasurer of A&E, has diverted and/or wrongfully paid the assets of the Company to himself and third parties or entities related to Vereen as follows:

a. By paying for laborers, invoices and supplies for the Park Place "Putt Putt", a company owned and controlled, upon information and belief, by Park Place Properties of Myrtle Beach, LLC (hereinafter "Park Place"), which is owned by the Defendant Vereen and his wife, Linda C. Vereen, its members and officers, in an amount that exceeds $108,872.00, according to the records available to the Plaintiff, which sum has not been accounted for by Vereen or Park Place to A&E.

b. By making payment to Park Place in the amount of $281,792.00, which were not proper expenditures of the funds belonging to A&E, and which have not been accounted for by Vereen, Park Place to A&E.

c. By making payment on behalf of the Pointe Marsh condo development, which was owned by Vereen and his wife, Linda C. Vereen, in the amount of $971,488.00, which were not proper expenses of the Company and which have not be accounted for by Vereen and his wife, Linda C. Vereen to A&E.

d. By making payment on behalf of Parkway Offices, LLC, a company solely owned by Vereen and/or his wife, Linda C. Vereen, in the amount of 93,900.00 which were not proper expenses of the Company and which have not been accounted for by Vereen and his wife, Linda C. Vereen to A&E.

e. By making payment on behalf of Park Place for Plantation Lakes in the amount of $137,654.31 which were not proper expenses of the Company and which have not been accounted for by the Defendants who received such expenditures.

f. By making payments on behalf of Vereen and his wife, Linda C. Vereen in the amount of $26,965.51 for the Defendants' personal home in Murrells Inlet, which have not been accounted for by the Defendants who received such expenditures or the benefit of such expenditures.

g. By making payments to Wayne Vereen in the amount of $235,568.64, which were not proper expenditures of the Company which have not been accounted for by the Defendant Vereen.

h. By making payments to Arthur Vereen Construction in the amount of $113,724.00, which were not proper expenditures of the Company, which have not been accounted for by the Defendants.

i. By making payments to Carolina First Bank in the amount of $42,500.74, which were not proper expenditures of the Company, which have not been accounted for by the Defendants.

j. By making payments for the Green Turtle job, in the amount of $9,918.50 which were not proper expenditures of the Company, which has not been accounted for by the Defendants.

k. By making payments to Prudential Insurance in the amount of $17,778.65 for insurance premiums which were not proper expenditures of the Company, which have not been accounted for by the Defendants.

l. By making payments to John Hancock Insurance in the amount of $20,171.86 for insurance premiums which were not proper expenditures of the Company, which have not been accounted for by the Defendants.

m. By making payments to Acorn Cabinets and Paul Thomas Rentals in the amount of $13,100.00, which were not proper expenses of the Company, which have not been accounted for by the Defendants.

n. By making payments to Sam's Club in the amount of $21,818.64 which were not proper expenses of the Company, which have not been accounted for by the Defendants.

o. By making payment to Dodson Pest in the amount of $1,600.00 which was not proper expenses of the Company, which have not been accounted for by the Defendants.

p. By making payments in the amount of $5,470.62 to Shell which were not proper expenses of the Company, which have not been accounted for by the Defendants.

q. By making payment to 29th Place at Carriage Row, in the amount of $3,915.00 which was not proper expenses of the Company, which have not been accounted for by the Defendants.

s. By making payments to Surfside Cleaners in the amount of $12,703.69 for dry cleaning which were not proper expenses of the Company, which has not been accounted for by the Defendants.

t. By making payments to First Palmetto Savings Bank in the amount of $100,426.76 which were not proper expenses of the Company, which have not been accounted for by the Defendants.

u. By making payments to Flying Cloud for airplane expenses in the amount of $22,941.00 which were not proper expenses of the Company, which have not been accounted for by the Defendants.

v. By making payments to Provident Life and Accident in the amount of $5,616.90 which were not proper expenses of the Company, which has not been accounted for by the Defendants.

w. By making payment to Bankers Insurance/29th Place in the amount of $924.39 which was not proper expenses of the Company, which have not been accounted for by the Defendants.

x. By making payment to MBNA in the amount of $11,953.32 for credit card purchases which were not proper expenses of the Company, which have not been accounted for by the Defendants.

y. By making payments to Sign Works in the amount of $10,277.50 which were not proper expenses of the Company, which have not been accounted for by the Defendants.

z. By making payment to Dolphin in the amount of $6,209.86 which was not proper expenses of the Company, which have not been accounted for by the Defendants.

aa. By making payment to Stock Builders for materials and supplies in the amount of $159,682.30 which were not proper expenses of the Company, which have not been accounted for by the Defendants.

bb. By making payment to Coastal Paving in the amount of $7,000.00 which were not proper expenses of the Company, which have not been accounted for by the Defendants.

cc. By the payments identified in Exhibit A to this Complaint in the total amount of $755,721.66 which were not proper expenses of the Company, which have not been accounted for by the Defendants.

That, upon information and belief, the Defendants have failed to collectively account for over $2,272,943.06 in expenditures or payments from the accounts of A&E signed by Vereen which, upon information and belief, were payments for bills which were not incurred on behalf of A&E in the operation of its business, after giving credit to the defendants for $926,769.16 in payments, according to the records available to the Plaintiff herein.

12. That the actions of the Defendants were unknown to the Plaintiff and were done without the permission or authorization of the Plaintiff. That Plaintiff, as shareholder, director and officer of the Company, has made demand upon Vereen to

account for the heretofore mentioned funds and expenditures, disbursements, credits and debits and the Defendant Vereen has refused to account for such expenditures and has offered no explanation for his self dealing and breach of fiduciary duties due to Plaintiffs.. That as a result, the Plaintiff has been forced to employ the undersigned attorneys and a certified public accountant to examine the books and records of the Company to determine what assets, if any, belong to the Company and to determine what amounts are due from third parties and the Plaintiff herein as the result of the Defendants actions.

13. That the other Defendants are named because, upon information and belief, they are family members of the Defendant Vereen or companies controlled by the Defendants Vereen, who have conspired with and received benefits from the disbursements or wrongful expenditures made by the Defendant Vereen as heretofore stated.

14. That the Plaintiff is informed and believes he, in his individual capacity and as a shareholder, officer and director and on behalf of the Company, is entitled to an accounting from the Defendants for all disbursements made by Vereen at the Company, especially in reference to the above disbursements and that any Defendant who has wrongfully disbursed or received funds and assets from the Company be required to repay such wrongfully diverted funds to the Plaintiff herein or that the Plaintiff be granted a judgment against any such defendants for the such amounts, including prejudgment interest, attorneys fees, accounting fees and the costs of this action. .

FOR A SECOND CAUSE OF ACTION

15. That each and every allegation of the Complaint is restated as if repeated verbatim.

16. That the Plaintiff is informed and believes that the Defendant Vereen has committed ultra vires acts, illegal, fraudulent, oppressive and/or unfairly prejudicial acts toward the individual Plaintiff and the Company and its other shareholder (the Plaintiff) and that the Plaintiff is entitled to a judicial Order of Dissolution based upon such actions by the Defendant Vereen pursuant to Section 33-14-300, et.seq. of the Code of Laws of the State of South Carolina, as amended. That upon information and belief, the Defendant Vereen has "frozen out" the Plaintiff and has seized control of all of the assets of the Company, without due regard for the rights of the other shareholder and director, the Plaintiff, and that the Plaintiff will not receive the benefit of the true value of his shares or the Corporation, its assets, without the assistance of this Court in winding down the affairs of this Company.

17. That the Plaintiff is informed and believes that the Court should issue its orders requiring the Defendants to account for the funds received from A&E and make its determination as to whether such disbursements were reasonably related to the business of A&E, and if not, issue such order as may be just including granting the Plaintiff a judgment against the Defendant Vereen and the other named Defendants, which are entities and persons receiving such benefits for the full amount or reasonable value of such wrongfully received funds or assets, including pre-judgment interest, attorneys fees and accounting incurred by the Plaintiff and A&E herein.

18. That upon information and belief, the named Defendants did intentionally and negligently conspire with the Defendant Vereen to wrongfully divert and receive the assets of A&E, when they knew or should have known such payments and benefits were not owned by the Defendant Vereen, but by the corporate Plaintiff.

19. That because of the Defendants acts, as heretofore alleged, the Plaintiff is informed and believes the Plaintiff is entitled to a judgment against such Defendants for the entire amount of any wrongfully received benefits or funds, for punitive damages for the wrongful taking, including but not limited to prejudgment interest, attorneys fees and accounting fees and the costs incurred by Plaintiff.

20. That because of the Defendant Vereen's wrongful conduct in diverting the company's assets for his own personal gain, the Plaintiffs are informed and believes that he should be required to forfeit all rights to retain any compensation paid for his services to the corporate Plaintiff during the period that he diverted funds from the corporation, as is provided by law. .

Wherefore, the Plaintiff prays that this Honorable Court inquire into the matters alleged herein and issues its Orders as follows:

a. Granting the Plaintiff and A&E judgment against the Defendants, jointly and severally, for the amount found to have been diverted, misappropriated or otherwise wrongfully disbursed by the Defendant Vereen to the named Defendants or to entities owned or controlled by the Defendants, or to any other inappropriate entities or for unlawful purposes, including pre-judgment interest and the costs of this action.

b. For an award of reasonable attorneys fees and costs incurred by the Plaintiff A&E to recover the value of the assets wrongfully diverted from A&E by the Defendants, including accounting fees.

c. Referring this matter to the Master in Equity for Horry County or a Special Referee appointed by the Court for the purposes of a full accounting from the Defendants herein, with authority to issue a final order in this matter.

d. Dissolving and winding down the affairs of A&E, after full accounting, including supervising any further disbursements to be made by the Company.

e. Granting the Plaintiff an award of punitive damages against the Defendants for the conversion of the assets by the actions of such defendants.

f. Such other and further relief as this Honorable Court may deem just and proper.

Frank H. DuRant, Esq.
DuRant & Martin
P. O. Box 960
Myrtle Beach, SC 29578
SC Bar No.: 1802
fdurant@yahoo.com
T: 843.448.1541
F: 843.626.7431

January 20, 2009

"A"

Misc. Checks and Payments (not related)

Description		Amount
Ck -Southern Land & Piling - PM	$	6,212.00
Randy's Truck Cost		6,227.72
CES - not A&E Jobs		11,152.00
Willoughby ck to A&E deposited into AVC		113,480.00
Lull Rental - 24 months @ 1900.00 PP		45,600.00
Skid Header - 18 months @ 1250.00 PP		22,500.00
Carrie's time for Park Place		27,691.20
Litchfield Medical - ??		4,348.62
W/C Liability & PR Taxes		94,237.40
Wayne's time for PP		84,000.00
Beth's time for PP		31,200.00
City of NMB -License fo PM		14,731.00
SS Cardiology		50,000.00
Leaf - PM		2,041.64
Palmetto Designs - Beth personal home		1,523.27
Pyramid Engineering -Beth personal home		1,375.00
City of MB - Beth personal home		7,489.65
Ck to A&E deposited into AVC account-TP		15,000.00
November checks written		92,571.02
December checks written		77,207.43
Balance in account @ 12/31		47,133.71
Total	$	755,721.66

STATE OF SOUTH CAROLINA)
) VERIFICATION
COUNTY OF HORRY)

Personally appeared before me Ellis Smith, who being duly sworn, deposes and says:

That he is one of the Plaintiffs in this action and that he is a 50% shareholder in A&E, a South Carolina corporation. That he has read the contents of the Complaint. That the statements made in the complaint are true, except as to those matters alleged upon information and belief, and as to those statements, he believes them to be true. That he has had the available books and records of the corporation examined by a certified public accountant, who has determined that substantial assets of the Company have been paid to or for the benefit of the Defendants without corporate authorization or benefit. That he has made demand upon the defendant Vereen to properly account for the expenditures of the corporation and the Defendant refuses to properly account for such expenditures. That the Defendant Vereen never sought permission from the Plaintiff as the only other officer, director and shareholder to self deal or expend the revenues and resources of A&E for his own benefit. That he is entitled to an accounting from the Defendants for the disbursements made by the Defendants to the Defendants known and for full discovery of any further misappropriations of corporate funds or assets.

Ellis Smith

Sworn to and subscribed before me
this 21st day of January, 2009.

Notary Public for South Carolina
My Commission expires: 11/7/2016

FILED
HORRY COUNTY
2009 JAN 23 AM 10:21
MELANIE HUGGINS
CLERK OF COURT

STATE OF SOUTH CAROLINA COUNTY OF HORRY ELLIS E. SMITH, Individually, and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., a South Carolina Corporation, Plaintiff, v. ARTHUR WAYNE VEREEN, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, ARTHUR VEREEN CONSTRUCTION, INC. and LINDA C. VEREEN, Defendants AND ARTHUR WAYNE VEREEN, Individually and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., and 29th PLACE DEVELOPERS, INC., Third Party Plaintiffs, v. E. SMITH AND SONS CONSTRUCTION, LLC, EES CONSTRUCTION AND CONSULTING, INC., and ELLIS E. SMITH, Individually, Third Party Defendants	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CASE NO. 2009-CP-26-620



SUMMONS FOR COUNTERCLAIMS AND THIRD PARTY COMPLAINT

TO: THE PLAINTIFFS AND THIRD PARTY DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Counterclaims and

the Third Party Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Counterclaims and Third Party Complaint on the subscriber or subscribers at his or their office at 950-48th Avenue North, Suite 200, Myrtle Beach, South Carolina 29577, and to file your answer with the Clerk of Court for Horry County, all within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Counterclaims and Third Party Complaint within the time aforesaid; the Defendants and Third Party Plaintiffs in this action will apply to the Court for the relief demanded in the Counterclaims and Third Party Complaint and judgment by default will be rendered against you for the relief demanded in the Counterclaims and Third Party Complaint.

RICE, MacDONALD, BREEDEN & HICKS, P.A.
950 48th Avenue N., Suite 200
Myrtle Beach, SC 29577
(843) 449-4493
Attorneys for the Defendants and Third Party Plaintiffs

Daniel J. MacDonald

Myrtle Beach, South Carolina

March 12, 2009

STATE OF SOUTH CAROLINA COUNTY OF HORRY ELLIS E. SMITH, Individually, and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., a South Carolina Corporation, Plaintiff, v. ARTHUR WAYNE VEREEN, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, ARTHUR VEREEN CONSTRUCTION, INC. and LINDA C. VEREEN, Defendants AND ARTHUR WAYNE VEREEN, Individually and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., and 29th PLACE DEVELOPERS, INC., Third Party Plaintiffs, v. E. SMITH AND SONS CONSTRUCTION, LLC, EES CONSTRUCTION AND CONSULTING, INC., and ELLIS E. SMITH, Individually, Third Party Defendants	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CASE NO. 2009-CP-26-620

ANSWER AND COUNTERCLAIM OF DEFENDANTS, ARTHUR WAYNE VEREEN, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, ARTHUR VEREEN CONSTRUCTION, INC., AND LINDA C. VEREEN

AND

THIRD PARTY COMPLAINT OF ARTHUR WAYNE VEREEN, INDIVIDUALLY AND ON BEHALF OF A & E CONSTRUCTORS AND CONSULTANTS, INC. AND 29TH PLACE DEVELOPERS INC.

The Defendants, Arthur Wayne Vereen (hereinafter "Vereen"), Park Place Properties of Myrtle Beach, LLC (hereinafter "Park Place"), Parkway Offices, LLC, Arthur Vereen Construction, Inc. (hereinafter "AVC, Inc.") and Linda C. Vereen (hereinafter "Linda Vereen") answering the Complaint of the Plaintiff, Ellis E. Smith (hereinafter "Smith"), individually, and on behalf of A & E Constructors and Consultants, Inc. (hereinafter "A & E"), a South Carolina Corporation, and Arthur Wayne Vereen, individually and on behalf of A & E, and 29th Place Developers, Inc., Third Party Plaintiffs, complaining against E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, Individually, would show and allege unto this Honorable Court as follows:

1. That each and every allegation not herein specifically admitted, qualified or explained, is denied, and strict proof is demanded thereof.
2. That as to paragraph 1 of the Complaint, the Defendants admit that the Plaintiff Smith is a citizen and resident of Horry County, South Carolina, is or was the owner of fifty (50%) percent of the outstanding shares of A & E, and is or was the President or Chairman of the Board of Directors, and is one of two members of its Board of Directors. That the remaining allegations inconsistent with this response are denied, and strict proof is demanded thereof. It is also specifically denied that Smith or its attorney represents A & E.
3. That the allegations contained in paragraph 2 of the Complaint are admitted to the extent that Vereen is a citizen and resident of Georgetown County, is the owner of fifty (50%) percent of the outstanding shares of A & E, serves as Secretary/Treasurer and member of the Board of Directors and may also be the defacto President and Chairman of the Board of Directors of A & E. It is denied that Vereen controlled the receipts and disbursements for A & E or that disbursements made by

Vereen were not for the benefit of A & E. That the remaining allegations are denied, and strict proof is demanded thereof.

4. That the allegations contained in paragraph 3 of the Complaint are admitted to the extent that Park Place Properties of Myrtle Beach, LLC and Parkway Offices, LLC are South Carolina limited liability companies doing business in Horry County. It is specifically denied that said Defendants wrongfully received funds, labor or materials from A & E. That the remaining allegations are denied, and strict proof is demanded thereof.

5. That the allegations contained in paragraph 4 of the Complaint are admitted to the extent that Arthur Vereen Construction Company, Inc., is a South Carolina corporation doing business in Horry County, South Carolina and is owned by Arthur Wayne Vereen. It is further admitted that the Defendant, Linda C. Vereen, is a citizen and resident of Georgetown County and may be a shareholder or member of one of the various companies named in the Complaint. The remaining allegations are denied, and strict proof is demanded thereof.

6. That as to the allegations contained in paragraph 5 of the Complaint, it is admitted that Vereen and Smith met and incorporated A & E with Vereen and Smith each owning fifty (50%) percent of the stock in the company, and that between them, the parties served as various officers and directors of the corporation. It is further admitted that Smith received a weekly payroll check as an employee of prior companies. The remaining allegations are denied, and strict proof is demanded thereof. The Defendant also craves reference to the books and records of the various entities and companies, including A & E, for the appropriate determination of payments.

7. That as to allegations contained in paragraph 6 of the Complaint, it is admitted that Smith stopped coming to work at A & E in 2007. As to the remaining allegations, reference to the books and records of A & E is

craved and to the extent the allegations are inconsistent, they are denied and strict proof is demanded thereof.

8. That as to the allegations contained in paragraph 7 of the Complaint, they are denied, and strict proof is demanded thereof.

9. That as to the allegations contained in paragraph 8 of the Complaint, they are denied, and strict proof is demanded thereof.

10. That as to the allegations contained in paragraph 9 of the Complaint, the Defendants lack sufficient knowledge to admit or deny the allegations and therefore, deny same and demand strict proof thereof.

11. That as to the allegations contained in paragraphs 10 and 15 of the Complaint, they do not require a responsive pleading, but to the extent they do, they are denied, and strict proof is demanded thereof.

12. That the allegations contained in paragraphs 11 and 11(a) through 11(cc), inclusive, are denied, and strict proof is demanded thereof.

13. That the allegations contained in paragraph 12 are denied, and strict proof is demanded thereof.

14. That the allegations contained in paragraph 13 are denied, and strict proof is demanded thereof.

15. That the allegations contained in paragraph 14 are denied, and strict proof is demanded thereof.

16. That the allegations contained in paragraph 16 are denied, and strict proof is demanded thereof.

17. That the allegations contained in paragraph 17 are denied, and strict proof is demanded thereof.

18. That the allegations contained in paragraph 18 are denied, and strict proof is demanded thereof.

19. That the allegations contained in paragraph 19 are denied, and strict proof is demanded thereof.

20. That the allegations contained in paragraph 20 are denied, and strict proof is demanded thereof.

FOR A SECOND DEFENSE, FIRST COUNTERCLAIM AND FIRST CAUSE OF ACTION

(Accounting/Indemnity/Misappropriation)

21. That the allegations contained in the First Defense are incorporated herein and made a part and parcel of this Second Defense, First Counterclaim and First Cause of Action.
22. That Vereen is a member and shareholder of the Defendants, Park Place, Parkway Offices, LLC, and AVC, Inc.
23. That Vereen is also a member and shareholder in an entity known as 29th Place Developers, Inc.
24. That the Third Party Defendant, E. Smith and Sons Construction, LLC, is a limited liability company organized and existing pursuant to the laws of the state of South Carolina, with its principal place of business in Horry County, South Carolina.
25. That the Third Party Defendant, EES Construction and Consulting, Inc., is a South Carolina corporation doing business in Horry County, South Carolina.
26. That prior to the formation of A & E, Vereen or his companies had dealings with Ellis E. Smith, loaned money to Ellis E. Smith, or entered into certain contracts, the result of which was that Ellis E. Smith owed money to Vereen, 29th Place Developers, Inc., or AVC, Inc.
27. That in forming the entity known as A & E Constructors and Consultants, Inc., Smith and Vereen agreed and contemplated that out of the funds generated by A & E, Smith would repay monies due and outstanding to Vereen or his companies.
28. That other than repayment of funds due to Vereen, Smith and Vereen agreed to generally make equal contributions and receive equal disbursements from A & E.
29. That Smith failed to make contributions to the company and received improper or inequitable disbursements from A & E.
30. That while still alleged to be a member of A & E, Smith performed work as

E. Smith and Sons Construction, LLC (hereinafter referred to as "E. Smith and Sons") and EES Construction and Consulting, Inc. (hereinafter referred to as "EES").

31. That upon information and belief, E. Smith and Sons and EES are not licensed general contractors in the State of South Carolina.

32. That while a member of A & E, Smith performed and completed the following jobs in the name of A & E, E. Smith and Sons, or EES, without the knowledge and consent of A & E or Vereen, which jobs were corporate opportunities of A & E:

    a. Horry County Permit, Cari Ann Davis, New Home
    b. Horry County Permit, Robert Sealey, Home addition
    c. Myrtle Beach Permit, Ellis Smith, Jasmine Avenue, Home Addition
    d. NMB Permit, Martin Brown, Office
    e. NMB Permit, Martin Brown, Fence
    f. NMB Permit, Martin Brown, Repairs
    g. NMB Permit, Martin Brown, Pool and Enclosure
    h. NMB Permit, Martin Brown, Demolition
    i. NMB Permit, Martin Brown, Remodel
    j. NMB Permit, Martin Brown, Office Remodel
    k. Daughter of Robert Sealey, New Home, MB
    l. Lee McMillan, New Home, MB
    m. Ewell Smith, Home Addition, MB
    n. Burroughs and Chapin, New Fence, MB
    o. Ellis Smith, Repairs, Personal Home, 29th Place
    p. Other jobs as determined by discovery.

33. That in addition to the above, while a paid employee and shareholder of A & E, Smith and/or E. Smith and Sons and/or EES, improperly billed to and received payment from A & E, charges for jobs performed by A & E, including charges for supervision of projects.

34. That Smith, E. Smith and Sons or EES removed a significant amount of material and equipment, which were paid for by A & E, without

reimbursement and authorization of A & E, retaining same for his or their own benefit. These items include stacks of plywood, windows, concrete saws, hammer drills, parts washers, and other equipment. That the removal of these items constitutes misappropriation of corporate assets.

35. That Smith, while still an employee, officer and or director of A & E, did perform work, under the name and licensure and/or on behalf of A & E, without remitting to A & E payments made to him for said work.

36. That Smith, during and after his employment, and while still an officer and or director of A & E, did perform work under the names of separate entities, thereby misappropriating a corporate opportunity of A & E for himself or his alternate companies.

37. That Smith, during and after his employment, and while an officer and/or director of A & E, did permit jobs using A & E's license, received compensation for his sole benefit, without notice to A & E or A & E's liability insurance carriers, thereby exposing A & E to possible uninsured and uncompensated liability.

38. That A & E has been notified of possible liability exposure for alleged defective work by an alleged customer of A & E, for which coverage may not exist and compensation was not received. Should A & E be determined to be responsible for the alleged defective work, then Smith should be responsible to account and indemnify to A & E and/or Vereen for all costs and fees associated with this claim.

39. That the above-referenced funds have not been paid and should be accounted for by Smith, E. Smith and Sons or EES in an accounting.

40. That Smith also drew a salary from A & E for a period during which he performed work not for A & E's benefit, was a disloyal employee of A & E, or was misappropriating corporate assets or opportunities.

41. That Vereen, as a 50% shareholder of A & E, concurs that an orderly dissolution of the corporation should be had.

42. That Vereen believes that Smith, E. Smith and Sons and EES should be required to account for outstanding amounts due to Vereen, individually,

his companies, and A & E.

43. That Vereen, individually and/or on behalf of A & E and 29th Place Developers Inc., believes that A & E or Smith should account to him or them for all outstanding funds, liabilities, misappropriated opportunities or assets, materials or equipment, or monies inequitably retained by Smith or E. Smith and Sons, or EES.

FOR A SECOND CAUSE OF ACTION

(Breach of Contract - 29th Place Developers, Inc.)

44. That the allegations contained in the First and Second Defenses, First Counterclaim and First Cause of Action are incorporated herein and made a part and parcel of this Second Cause of Action.

45. That the Third Party Plaintiff, 29th Place Developers, Inc., entered into a Land Sales Contract with Smith, wherein Smith agreed to pay to 29th Place Developers, Inc., the sum of Thirty Eight Thousand Seven Hundred Fifty and No/100 ($ 38,750.00) Dollars, plus interest at ten (10%) per cent per annum, with interest only installments of Three Hundred Twenty Two and 92/100 ($322.92) Dollars per month, and a balloon payment of Thirty Eight Thousand Seven Hundred Fifty and No/100 ($ 38,750.00) Dollars.

46. That Smith failed to pay all sums as due.

47. That the Third Party Plaintiff, 29th Place Developers, Inc. believes it is entitled to a judgment for all unpaid balances, plus interest at ten (10%) percent per annum, plus costs and fees associated with this action.

FOR A SECOND COUNTERCLAIM AND THIRD CAUSE OF ACTION

(Breach of Contract - AVC, Inc.)

48. That the allegations contained in the First, Second, and Third Defenses, First Counterclaim and First and Second Causes of Action are incorporated herein and made a part and parcel of this Second Counterclaim and Third Cause of Action.

49. That Smith, Vereen and AVC, Inc. entered into an agreement wherein Smith agreed to pay Vereen and AVC, Inc. ten (10%) percent of the value of construction on a condo project in North Myrtle Beach, known as

Carolina Keyes in exchange for use of Vereen's or AVC, Inc.'s license.

50. That upon information and belief, Smith has used Vereen's or AVC, Inc.'s license for approximately Five Million Eight Hundred Thousand and no/100 ($5,800,000.00) Dollars worth of work and therefore owes to Vereen and AVC, Inc. approximately Five Hundred Eighty Thousand and No/100 ($580,000.00) Dollars in compensation.

51. That Vereen and AVC, Inc., believe they are entitled to judgment against Smith in the amount of ten (10%) percent of the value of construction on a condo project in North Myrtle Beach, known as Carolina Keyes in exchange for use of Vereen's or AVC, Inc.'s license, plus the cost of this action and such other and further relief as this court deems just and proper.

WHEREFORE, the Defendants, Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc. and Linda C. Vereen, answering the Complaint and counterclaiming against the Plaintiff, Ellis E. Smith, Individually and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation, and the Third Party Plaintiffs, Arthur Wayne Vereen, Individually and on behalf of A & E Constructors and Consultants, Inc., and 29th Place Developers, Inc., complaining against the Third Party Defendants, E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, Individually, would pray unto this Honorable Court as follows:

1. As to the First Defense, that the Plaintiff's Complaint be dismissed with prejudice;
2. As to the Second Defense, First Counterclaim and First Cause of Action, that an accounting of amounts due to and from the various entities and individuals be had, that judgment be rendered in accordance with that accounting, and that the court order judicial dissolution of A & E Constructors and Consultants, Inc., or such other legal and equitable relief the Court deems just and proper;
3. As to the Second Cause of Action, for judgment against the Plaintiff/Third Party Defendant, Ellis E. Smith, for all unpaid balances owed to Third

Party Plaintiff, 29th Place Developers, Inc., plus interest at ten (10%) percent per annum, plus costs and attorney's fees associated with this action; and

4. As to the Second Counterclaim and Third Cause of Action, for judgment against the Plaintiff/Third Party Defendant, Ellis E. Smith, in the amount of ten (10%) percent of the value of construction on a condo project in North Myrtle Beach, known as Carolina Keyes in exchange for use of Vereen's or AVC, Inc.'s license, plus costs and attorney's fees associated with this action; and

5. For such other and further relief as this Court deems just and proper.

RICE, MACDONALD, BREEDEN & HICKS, P.A.
950 - 48th Avenue North, Suite 200
Myrtle Beach, SC 29577
(843) 449-4493
Attorneys for the Defendants and
Third Party Plaintiffs

Daniel J. MacDonald

Myrtle Beach, South Carolina

March 12, 2009

(A)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO.: 2009-CP-26-620

Ellis E. Smith, individually, and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation,	)	
Plaintiff,	)	REPLY OF THIRD-PARTY DEFENDANTS E. SMITH AND SONS CONSTRUCTION, LLC, EES CONSTRUCTION AND CONSULTING, INC. AND ELLIS E. SMITH, INDIVIDUALLY TO THIRD-PARTY COMPLAINT AND COUNTERCLAIMS
vs.	)	
Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc., and Linda C. Vereen,	)	
Defendants.	)	
AND	)	
Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc., and 29th Avenue Developers, Inc.,	)	
Third Party Plaintiffs,	)	
vs.	)	
E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, Individually,	)	
Third Party Defendants.	)	

FILED
IN THE COURT
2009 NOV 25 AM 11:29
MELANIE HUGGINS
CLERK OF COURT

Third-Party Defendants E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc. and Ellis E. Smith, Individually would respond to the Counterclaims and Third-Party Complaint of the Plaintiffs as follows:

AS AND FOR A FIRST DEFENSE

1. The allegations contained in the Counterclaims and Third-Party Complaint fail to state a claim for which relief may be granted as to these Third-Party Defendants, and they accordingly move its dismissal pursuant to Rule 12(b)(6), S.C.R.C.P.

AS AND FOR A SECOND DEFENSE

2. All allegations contained in the Complaint not hereinafter admitted, qualified or explained are expressly denied and strict proof thereof demanded.

3. Each and every allegation of the Complaint of the Plaintiffs is repeated as if restated verbatim.

4. Paragraphs 22, 23, 24 and 25 of the Counterclaim are admitted.

5. That so much of Paragraph 26 is admitted that may be construed to allege that prior to the formation of A&E, 29th Avenue Developers, Inc. made a loan to Ellis E. Smith however such loan was paid in full; further, so much of paragraph 26 is admitted as may be construed to allege that Arthur Vereen Construction, Inc. once permitted it's building license to be used by EES Construction and Consulting, Inc. in the construction of a commercial building(s), but the Third Party Defendants deny that any monies are lawfully due the Third Party Plaintiffs. The Third Party Defendants would allege that (1) pursuant to the specific agreement, no obligation to make payment ever arose; (2) such agreements are unlawful and illegal; and (3) such occurred over 10 years ago and are barred by the statute of limitations and by the doctrine of laches.

6. That the allegations of Paragraph 27 are denied as there was no discussion or agreement concerning monies due Vereen as no monies were due Vereen at such time.

7. Paragraph 28 is denied, except so much thereof as may be construed to allege that Smith and Vereen were equal shareholders and were to receive equal disbursements from A&E as such.

8. Paragraph 29 is denied; the Defendant Smith would aver that all disbursements from the company account were controlled and made by Vereen as Smith did not have signatory authority over the checking accounts of A&E; Smith denies that he was ever required to a contribution to A&E other than his time and labor, which he did.

9. That as to the allegations of Paragraph 30, Smith denies he was a "member" of A&E, as A&E is a corporation. Smith admits he was a shareholder and paid employee of such corporation. Smith admits that he preformed work as an employee of E. Smith and Sons Construction and EES Construction, however, he denies that such was unauthorized, illegal or otherwise caused any losses to A&E.

10. That as to the allegations of Paragraph 31, EES and E. Smith admit so much of such allegations that may be construed to allege that Smith, a licensed general contractor, owned or controlled such entities and, for a period of time, the license of Smith was placed with A&E and not such companies.

11. That so much of the allegations of Paragraph 32 are admitted that may be construed to allege that certain of the specified jobs listed on Paragraph 32 had work preformed by Smith and EES and E. Smith and Sons, but the Third Party Defendants deny that such was done without the knowledge and approval of A&E and that such work was done outside the scope of Smith's employment with A&E and without the use of A&E laborers or materials and without expense to A&E. The Third Party defendants deny that such work preformed caused any losses to A&E as alleged by the Third Party Plaintiff. Furthermore, the Third Party Defendants deny that the Third Party Plaintiffs (other than A&E) have a cause of action against the Third Party Defendants for which relief can be granted.

12. That as to the allegations of Paragraph 33, the Third Party Defendant EES admits that it billed for services to A&E in 2003 and 2004 based upon an agreement with A&E and Vereen, and that such charges were itemized, approved and paid by Vereen, as treasurer of A&E. Such charges equaled the actual costs of such labor, materials and costs, as approved and directed by Vereen.

13. That as to the allegations of Paragraph 34, the Third Party Defendants deny such claims and demand strict proof thereof.

14. That as to the allegations of Paragraph 35, the Defendant Smith admits that he performed certain work under the entities EES and Smith and Sons, during and after his period of employment with A&E, but denies that such employment with A&E prevented such outside employment outside of the normal working hours at A&E. Furthermore, Smith would aver that such labor was done on his own time and at his own expense, with the knowledge and consent of A&E and Vereen. Furthermore, any work performed after August 2007, was done while Smith was not employed by A&E. Smith admits that he did not pay any funds to A&E for such work as no funds were due A&E for such work preformed. Smith admits that on several occasions he did use the license of Smith for his separate jobs, but denies that he owes any monies to A&E for such purposes, as the license belonged to Smith or was otherwise used with the permission of A&E.

15. That as to the allegations of Paragraph 36, 37 and 38, the Third Party Defendants admit so much of such allegations that may be construed to allege that Smith and his companies did perform certain labor during and after his employment with A&E and that he did not pay A&E for such because the labor and materials were not paid for or charged to A&E and were done outside the scope of Smith's employment with A&E. That such jobs were not "corporate" opportunities as most were small jobs performed on weekends and Smith's entities had liability insurance for all services rendered. The Third

Party Defendants are unaware of any "notification" of claims and would be responsive to any claim made by any third party that was the responsibility of the Third Party Defendants.

16. That as to the allegations of Paragraph 39, the Third Party Defendants deny that A&E is entitled to any accounting, but if it is determined that such is due, the Third Party Defendants will provide an accounting for their income and receipts from 2003 until August 2007, when Smith left the employment of the Company.

17. Paragraph 40 of the Third Party Complaint is denied.

18. Pararaph 41 is admitted.

19. That as to the allegations of Paragraph 42, the Third Party Plaintiff has not stated any facts or allegations to support the "outstanding amounts due Vereen, individually, his companies" as alleged in the Third Party Compliant and they are therefore denied and strict proof demanded thereof. That as to the allegations of A&E, the Defendant Smith denies he ever agreed or was requested to advance any funds to A&E or that he misappropriated any corporate assets of A&E.

20. That as to the allegations of Paragraph 43 of the Third Party Complaint, the Defendants deny there is any duty to account to 29th Place as there is no allegation in the Complaint concerning any fiduciary relationship with 29th Place Developers, Inc., and any such complaint is denied. As to the allegations as they concern A&E, they are denied.

21. Paragraph 44 is denied.

22. Paragraph 45 is admitted.

23. Paragraphs 46, 47 and 48 are denied.

24. Paragraph 49 is denied; further answering said paragraph 49 it is admitted that the Third-Party Defendant EES verbally agreed in 1998 to pay Arthur Vereen Construction Company, Inc. a fee

for the use of its license would be paid if, and only if, the use of the license resulted in a profit to EES; such did not occur.

25. Paragraphs 50 and 51 are denied.

AS AND FOR A THIRD DEFENSE

26. The allegations contained in the previous defenses are realleged the same as though set out verbatim herein.

27. The Defendants plead the applicable statute of limitations as a complete bar to all claims.

AS AND FOR A FOURTH DEFENSE

28. The allegations contained in the previous defenses are realleged the same as though set out verbatim herein.

29. These Defendants plead the doctrine of laches as a complete bar and defense to all claims.

AS AND FOR A FIFTH DEFENSE

30. The allegations contained in the previous defenses are realleged the same as though set out verbatim herein.

31. These Defendants plead the equitable doctrine of unclean hands as a complete bar and defense to all claims.

AS AND FOR A FURTHER DEFENSE TO ANY CLAIMS MADE IN A REPRESENTATIVE CAPACITY

32. The allegations contained in the previous defenses are realleged the same as though set out verbatim herein.

33. The counterclaiming Defendants and Third-Party Plaintiffs have completely failed to comply with Rule 23, S.C.R.C.P. in their assertion of representative claims, and these Defendants accordingly plead Plaintiffs' failure to comply with Rule 23, S.C.R.C.P. as a complete bar and defense to any claims made in a representative capacity.

AS AND FOR A FURTHER DEFENSE TO THE CLAIM BY 29TH PLACE

34. The allegations contained in the previous defenses are realleged the same as though set out verbatim herein.

35. Defendant Ellis Smith pleads payment in full as a complete bar and defense to the claim.

AS AND FOR A FURTHER DEFENSE TO THE CLAIMS BY 29TH PLACE DEVELOPERS, LLC AND ARTHUR VEREEN CONSTRUCTION COMPANY

36. The allegations contained in the previous defenses are realleged the same as though set out verbatim herein.

37. These Defendants plead improper joinder as to these claims as a complete bar and defense.

AS AND FOR A FURTHER DEFENSE AS TO THE PLAINTIFFS THIRD CAUSE OF ACTION

38. The allegations contained in the previous defenses are realleged the same as though set out verbatim herein.

39. These Defendants plead illegality of any such agreement as alleged as a complete bar and defense to the action.

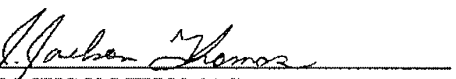
WHEREFORE, having made answer to the Counterclaims and Third-Party Complaint filed by the Defendants and Third-Party Plaintiffs, these Defendants pray as follows:

1. That the Complaint be dismissed;

2. That they have the costs and disbursements of the action;

3. For such other and further relief as to the court may seem just and proper.

THOMPSON & HENRY, P.A.



J. JACKSON THOMAS
SC Bar #5527
1314 Professional Drive
P.O. Box 1290
Myrtle Beach, SC 29578
Phone: 843-692-2628
Fax: 843-692-0928

Attorneys for Third-Party Defendants

August 24, 2009
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO.: 2009-CP-26-620

Ellis E. Smith, individually, and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation,

Plaintiff,

vs.

Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc., and Linda C. Vereen,

Defendants.

AND

Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc., and 29th Avenue Developers, Inc.,

Third Party Plaintiffs,

vs.

E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, Individually,

Third Party Defendants.

CERTIFICATE OF SERVICE

2009 AUG 26 AM 11:30
MELANIE J. HUGGINS
CLERK OF COURT
BY CLERK

I, Tammy M. Thompson, an employee of THOMPSON & HENRY, P.A. attorneys for Third-Party Defendants in the above-captioned matter, certify that I have this 24 day of August, 2009, mailed the following documents to all counsel of record at their addresses of record with sufficient postage attached thereto as follows:

Documents Mailed:

1. Reply of Third-Party Defendants E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc. and Ellis E. Smith, Individually to Third-Party Complaint.

Mailed To:

Daniel J. MacDonald, Esquire
Rice, MacDonald, Breeden & Hicks, P.A.
950 48th Avenue N., Suite 200
Myrtle Beach, SC 29577

Frank H. DuRant, Esquire
DuRant & Martin
P.O. Box 960
Myrtle Beach, SC 29578

Tammy M. Thompson
Tammy M. Thompson

SWORN TO BEFORE me this
24 day of August, 2009.

Kaye O. Champion (L.S.)
Notary Public for South Carolina
My Commission Expires: 5/5/14

STATE OF SOUTH CAROLINA COUNTY OF HORRY ELLIS E. SMITH, Individually, and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., a South Carolina Corporation, Plaintiff, v. ARTHUR WAYNE VEREEN, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, ARTHUR VEREEN CONSTRUCTION, INC. and LINDA C. VEREEN, Defendants AND ARTHUR WAYNE VEREEN, Individually and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., and 29th PLACE DEVELOPERS, INC., Third Party Plaintiffs, v. E. SMITH AND SONS CONSTRUCTION, LLC, EES CONSTRUCTION AND CONSULTING, INC., and ELLIS E. SMITH, Individually, Third Party Defendants	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT CASE NO. 2009-CP-26-620

SUMMONS FOR COUNTERCLAIMS AND THIRD PARTY COMPLAINT

TO: THE PLAINTIFFS AND THIRD PARTY DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Counterclaims and

the Third Party Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Counterclaims and Third Party Complaint on the subscriber or subscribers at his or their office at 950-48th Avenue North, Suite 200, Myrtle Beach, South Carolina 29577, and to file your answer with the Clerk of Court for Horry County, all within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Counterclaims and Third Party Complaint within the time aforesaid; the Defendants and Third Party Plaintiffs in this action will apply to the Court for the relief demanded in the Counterclaims and Third Party Complaint and judgment by default will be rendered against you for the relief demanded in the Counterclaims and Third Party Complaint.

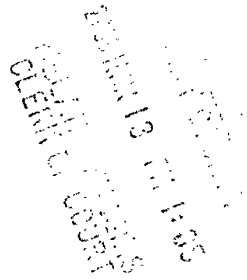
RICE, MacDONALD, BREEDEN & HICKS, P.A.
950 48th Avenue N., Suite 200
Myrtle Beach, SC 29577
(843) 449-4493
Attorneys for the Defendants and Third Party Plaintiffs

Daniel J. MacDonald

Myrtle Beach, South Carolina

March 12, 2009

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	CASE NO. 2009-CP-26-620
ELLIS E. SMITH, Individually, and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., a South Carolina Corporation,	
Plaintiff,	
v.	
ARTHUR WAYNE VEREEN, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, ARTHUR VEREEN CONSTRUCTION, INC. and LINDA C. VEREEN,	
Defendants	
AND	
ARTHUR WAYNE VEREEN, Individually and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., and 29th PLACE DEVELOPERS, INC.,	
Third Party Plaintiffs,	
v.	
E. SMITH AND SONS CONSTRUCTION, LLC, EES CONSTRUCTION AND CONSULTING, INC., and ELLIS E. SMITH, Individually,	
Third Party Defendants	



ANSWER AND COUNTERCLAIM OF DEFENDANTS, ARTHUR WAYNE VEREEN, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, ARTHUR VEREEN CONSTRUCTION, INC., AND LINDA C. VEREEN

AND

THIRD PARTY COMPLAINT OF ARTHUR WAYNE VEREEN, INDIVIDUALLY AND ON BEHALF OF A & E CONSTRUCTORS AND CONSULTANTS, INC. AND 29TH PLACE DEVELOPERS INC.

The Defendants, Arthur Wayne Vereen (hereinafter "Vereen"), Park Place Properties of Myrtle Beach, LLC (hereinafter "Park Place"), Parkway Offices, LLC, Arthur Vereen Construction, Inc. (hereinafter "AVC, Inc.") and Linda C. Vereen (hereinafter "Linda Vereen") answering the Complaint of the Plaintiff, Ellis E. Smith (hereinafter "Smith"), individually, and on behalf of A & E Constructors and Consultants, Inc. (hereinafter "A & E"), a South Carolina Corporation, and Arthur Wayne Vereen, individually and on behalf of A & E, and 29th Place Developers, Inc., Third Party Plaintiffs, complaining against E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, Individually, would show and allege unto this Honorable Court as follows:

1. That each and every allegation not herein specifically admitted, qualified or explained, is denied, and strict proof is demanded thereof.
2. That as to paragraph 1 of the Complaint, the Defendants admit that the Plaintiff Smith is a citizen and resident of Horry County, South Carolina, is or was the owner of fifty (50%) percent of the outstanding shares of A & E, and is or was the President or Chairman of the Board of Directors, and is one of two members of its Board of Directors. That the remaining allegations inconsistent with this response are denied, and strict proof is demanded thereof. It is also specifically denied that Smith or its attorney represents A & E.
3. That the allegations contained in paragraph 2 of the Complaint are admitted to the extent that Vereen is a citizen and resident of Georgetown County, is the owner of fifty (50%) percent of the outstanding shares of A & E, serves as Secretary/Treasurer and member of the Board of Directors and may also be the defacto President and Chairman of the Board of Directors of A & E. It is denied that Vereen controlled the receipts and disbursements for A & E or that disbursements made by

Vereen were not for the benefit of A & E. That the remaining allegations are denied, and strict proof is demanded thereof.

4. That the allegations contained in paragraph 3 of the Complaint are admitted to the extent that Park Place Properties of Myrtle Beach, LLC and Parkway Offices, LLC are South Carolina limited liability companies doing business in Horry County. It is specifically denied that said Defendants wrongfully received funds, labor or materials from A & E. That the remaining allegations are denied, and strict proof is demanded thereof.

5. That the allegations contained in paragraph 4 of the Complaint are admitted to the extent that Arthur Vereen Construction Company, Inc., is a South Carolina corporation doing business in Horry County, South Carolina and is owned by Arthur Wayne Vereen. It is further admitted that the Defendant, Linda C. Vereen, is a citizen and resident of Georgetown County and may be a shareholder or member of one of the various companies named in the Complaint. The remaining allegations are denied, and strict proof is demanded thereof.

6. That as to the allegations contained in paragraph 5 of the Complaint, it is admitted that Vereen and Smith met and incorporated A & E with Vereen and Smith each owning fifty (50%) percent of the stock in the company, and that between them, the parties served as various officers and directors of the corporation. It is further admitted that Smith received a weekly payroll check as an employee of prior companies. The remaining allegations are denied, and strict proof is demanded thereof. The Defendant also craves reference to the books and records of the various entities and companies, including A & E, for the appropriate determination of payments.

7. That as to allegations contained in paragraph 6 of the Complaint, it is admitted that Smith stopped coming to work at A & E in 2007. As to the remaining allegations, reference to the books and records of A & E is

craved and to the extent the allegations are inconsistent, they are denied and strict proof is demanded thereof.

8. That as to the allegations contained in paragraph 7 of the Complaint, they are denied, and strict proof is demanded thereof.

9. That as to the allegations contained in paragraph 8 of the Complaint, they are denied, and strict proof is demanded thereof.

10. That as to the allegations contained in paragraph 9 of the Complaint, the Defendants lack sufficient knowledge to admit or deny the allegations and therefore, deny same and demand strict proof thereof.

11. That as to the allegations contained in paragraphs 10 and 15 of the Complaint, they do not require a responsive pleading, but to the extent they do, they are denied, and strict proof is demanded thereof.

12. That the allegations contained in paragraphs 11 and 11(a) through 11(cc), inclusive, are denied, and strict proof is demanded thereof.

13. That the allegations contained in paragraph 12 are denied, and strict proof is demanded thereof.

14. That the allegations contained in paragraph 13 are denied, and strict proof is demanded thereof.

15. That the allegations contained in paragraph 14 are denied, and strict proof is demanded thereof.

16. That the allegations contained in paragraph 16 are denied, and strict proof is demanded thereof.

17. That the allegations contained in paragraph 17 are denied, and strict proof is demanded thereof.

18. That the allegations contained in paragraph 18 are denied, and strict proof is demanded thereof.

19. That the allegations contained in paragraph 19 are denied, and strict proof is demanded thereof.

20. That the allegations contained in paragraph 20 are denied, and strict proof is demanded thereof.

FOR A SECOND DEFENSE, FIRST COUNTERCLAIM AND FIRST CAUSE OF ACTION

(Accounting/Indemnity/Misappropriation)

21. That the allegations contained in the First Defense are incorporated herein and made a part and parcel of this Second Defense, First Counterclaim and First Cause of Action.
22. That Vereen is a member and shareholder of the Defendants, Park Place, Parkway Offices, LLC, and AVC, Inc.
23. That Vereen is also a member and shareholder in an entity known as 29th Place Developers, Inc.
24. That the Third Party Defendant, E. Smith and Sons Construction, LLC, is a limited liability company organized and existing pursuant to the laws of the state of South Carolina, with its principal place of business in Horry County, South Carolina.
25. That the Third Party Defendant, EES Construction and Consulting, Inc., is a South Carolina corporation doing business in Horry County, South Carolina.
26. That prior to the formation of A & E, Vereen or his companies had dealings with Ellis E. Smith, loaned money to Ellis E. Smith, or entered into certain contracts, the result of which was that Ellis E. Smith owed money to Vereen, 29th Place Developers, Inc., or AVC, Inc.
27. That in forming the entity known as A & E Constructors and Consultants, Inc., Smith and Vereen agreed and contemplated that out of the funds generated by A & E, Smith would repay monies due and outstanding to Vereen or his companies.
28. That other than repayment of funds due to Vereen, Smith and Vereen agreed to generally make equal contributions and receive equal disbursements from A & E.
29. That Smith failed to make contributions to the company and received improper or inequitable disbursements from A & E.
30. That while still alleged to be a member of A & E, Smith performed work as

E. Smith and Sons Construction, LLC (hereinafter referred to as "E. Smith and Sons") and EES Construction and Consulting, Inc. (hereinafter referred to as "EES").

31. That upon information and belief, E. Smith and Sons and EES are not licensed general contractors in the State of South Carolina.

32. That while a member of A & E, Smith performed and completed the following jobs in the name of A & E, E. Smith and Sons, or EES, without the knowledge and consent of A & E or Vereen, which jobs were corporate opportunities of A & E:

a. Horry County Permit, Cari Ann Davis, New Home
b. Horry County Permit, Robert Sealey, Home addition
c. Myrtle Beach Permit, Ellis Smith, Jasmine Avenue, Home Addition
d. NMB Permit, Martin Brown, Office
e. NMB Permit, Martin Brown, Fence
f. NMB Permit, Martin Brown, Repairs
g. NMB Permit, Martin Brown, Pool and Enclosure
h. NMB Permit, Martin Brown, Demolition
i. NMB Permit, Martin Brown, Remodel
j. NMB Permit, Martin Brown, Office Remodel
k. Daughter of Robert Sealey, New Home, MB
l. Lee McMillan, New Home, MB
m. Ewell Smith, Home Addition, MB
n. Burroughs and Chapin, New Fence, MB
o. Ellis Smith, Repairs, Personal Home, 29th Place
p. Other jobs as determined by discovery.

33. That in addition to the above, while a paid employee and shareholder of A & E, Smith and/or E. Smith and Sons and/or EES, improperly billed to and received payment from A & E, charges for jobs performed by A & E, including charges for supervision of projects.

34. That Smith, E. Smith and Sons or EES removed a significant amount of material and equipment, which were paid for by A & E, without

reimbursement and authorization of A & E, retaining same for his or their own benefit. These items include stacks of plywood, windows, concrete saws, hammer drills, parts washers, and other equipment. That the removal of these items constitutes misappropriation of corporate assets.

35. That Smith, while still an employee, officer and or director of A & E, did perform work, under the name and licensure and/or on behalf of A & E, without remitting to A & E payments made to him for said work.

36. That Smith, during and after his employment, and while still an officer and or director of A & E, did perform work under the names of separate entities, thereby misappropriating a corporate opportunity of A & E for himself or his alternate companies.

37. That Smith, during and after his employment, and while an officer and/or director of A & E, did permit jobs using A & E's license, received compensation for his sole benefit, without notice to A & E or A & E's liability insurance carriers, thereby exposing A & E to possible uninsured and uncompensated liability.

38. That A & E has been notified of possible liability exposure for alleged defective work by an alleged customer of A & E, for which coverage may not exist and compensation was not received. Should A & E be determined to be responsible for the alleged defective work, then Smith should be responsible to account and indemnify to A & E and/or Vereen for all costs and fees associated with this claim.

39. That the above-referenced funds have not been paid and should be accounted for by Smith, E. Smith and Sons or EES in an accounting.

40. That Smith also drew a salary from A & E for a period during which he performed work not for A & E's benefit, was a disloyal employee of A & E, or was misappropriating corporate assets or opportunities.

41. That Vereen, as a 50% shareholder of A & E, concurs that an orderly dissolution of the corporation should be had.

42. That Vereen believes that Smith, E. Smith and Sons and EES should be required to account for outstanding amounts due to Vereen, individually,

his companies, and A & E.

43. That Vereen, individually and/or on behalf of A & E and 29th Place Developers Inc., believes that A & E or Smith should account to him or them for all outstanding funds, liabilities, misappropriated opportunities or assets, materials or equipment, or monies inequitably retained by Smith or E. Smith and Sons, or EES.

FOR A SECOND CAUSE OF ACTION

(Breach of Contract - 29th Place Developers, Inc.)

44. That the allegations contained in the First and Second Defenses, First Counterclaim and First Cause of Action are incorporated herein and made a part and parcel of this Second Cause of Action.

45. That the Third Party Plaintiff, 29th Place Developers, Inc., entered into a Land Sales Contract with Smith, wherein Smith agreed to pay to 29th Place Developers, Inc., the sum of Thirty Eight Thousand Seven Hundred Fifty and No/100 ($ 38,750.00) Dollars, plus interest at ten (10%) per cent per annum, with interest only installments of Three Hundred Twenty Two and 92/100 ($322.92) Dollars per month, and a balloon payment of Thirty Eight Thousand Seven Hundred Fifty and No/100 ($ 38,750.00) Dollars.

46. That Smith failed to pay all sums as due.

47. That the Third Party Plaintiff, 29th Place Developers, Inc. believes it is entitled to a judgment for all unpaid balances, plus interest at ten (10%) percent per annum, plus costs and fees associated with this action.

FOR A SECOND COUNTERCLAIM AND THIRD CAUSE OF ACTION

(Breach of Contract - AVC, Inc.)

48. That the allegations contained in the First, Second, and Third Defenses, First Counterclaim and First and Second Causes of Action are incorporated herein and made a part and parcel of this Second Counterclaim and Third Cause of Action.

49. That Smith, Vereen and AVC, Inc. entered into an agreement wherein Smith agreed to pay Vereen and AVC, Inc. ten (10%) percent of the value of construction on a condo project in North Myrtle Beach, known as

Carolina Keyes in exchange for use of Vereen's or AVC, Inc.'s license.

50. That upon information and belief, Smith has used Vereen's or AVC, Inc.'s license for approximately Five Million Eight Hundred Thousand and no/100 ($5,800,000.00) Dollars worth of work and therefore owes to Vereen and AVC, Inc. approximately Five Hundred Eighty Thousand and No/100 ($580,000.00) Dollars in compensation.

51. That Vereen and AVC, Inc., believe they are entitled to judgment against Smith in the amount of ten (10%) percent of the value of construction on a condo project in North Myrtle Beach, known as Carolina Keyes in exchange for use of Vereen's or AVC, Inc.'s license, plus the cost of this action and such other and further relief as this court deems just and proper.

WHEREFORE, the Defendants, Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc. and Linda C. Vereen, answering the Complaint and counterclaiming against the Plaintiff, Ellis E. Smith, Individually and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation, and the Third Party Plaintiffs, Arthur Wayne Vereen, Individually and on behalf of A & E Constructors and Consultants, Inc., and 29th Place Developers, Inc., complaining against the Third Party Defendants, E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, Individually, would pray unto this Honorable Court as follows:

1. As to the First Defense, that the Plaintiff's Complaint be dismissed with prejudice;
2. As to the Second Defense, First Counterclaim and First Cause of Action, that an accounting of amounts due to and from the various entities and individuals be had, that judgment be rendered in accordance with that accounting, and that the court order judicial dissolution of A & E Constructors and Consultants, Inc., or such other legal and equitable relief the Court deems just and proper;
3. As to the Second Cause of Action, for judgment against the Plaintiff/Third Party Defendant, Ellis E. Smith, for all unpaid balances owed to Third

Party Plaintiff, 29th Place Developers, Inc., plus interest at ten (10%) percent per annum, plus costs and attorney's fees associated with this action; and

4. As to the Second Counterclaim and Third Cause of Action, for judgment against the Plaintiff/Third Party Defendant, Ellis E. Smith, in the amount of ten (10%) percent of the value of construction on a condo project in North Myrtle Beach, known as Carolina Keyes in exchange for use of Vereen's or AVC, Inc.'s license, plus costs and attorney's fees associated with this action; and

5. For such other and further relief as this Court deems just and proper.

RICE, MACDONALD, BREEDEN & HICKS, P.A.
950 - 48th Avenue North, Suite 200
Myrtle Beach, SC 29577
(843) 449-4493
Attorneys for the Defendants and
Third Party Plaintiffs

Daniel J. MacDonald

Myrtle Beach, South Carolina

March 12, 2009

(4)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO.: 2009-CP-26-620

Ellis E. Smith, individually, and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation, Plaintiff, vs. Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc., and Linda C. Vereen, Defendants. AND Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc., and 29th Avenue Developers, Inc., Third Party Plaintiffs, vs. E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, Individually, Third Party Defendants.	)	REPLY OF THIRD-PARTY DEFENDANTS E. SMITH AND SONS CONSTRUCTION, LLC, EES CONSTRUCTION AND CONSULTING, INC. AND ELLIS E. SMITH, INDIVIDUALLY TO THIRD-PARTY COMPLAINT AND COUNTERCLAIMS

FILED
2011 SEP 26 AM 11:29
HELEN WATKINS
CLERK OF COURT
HORRY COUNTY

Third-Party Defendants E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc. and Ellis E. Smith, Individually would respond to the Counterclaims and Third-Party Complaint of the Plaintiffs as follows:

AS AND FOR A FIRST DEFENSE

1. The allegations contained in the Counterclaims and Third-Party Complaint fail to state a claim for which relief may be granted as to these Third-Party Defendants, and they accordingly move its dismissal pursuant to Rule 12(b)(6), S.C.R.C.P.

AS AND FOR A SECOND DEFENSE

2. All allegations contained in the Complaint not hereinafter admitted, qualified or explained are expressly denied and strict proof thereof demanded.

3. Each and every allegation of the Complaint of the Plaintiffs is repeated as if restated verbatim.

4. Paragraphs 22, 23, 24 and 25 of the Counterclaim are admitted.

5. That so much of Paragraph 26 is admitted that may be construed to allege that prior to the formation of A&E, 29th Avenue Developers, Inc. made a loan to Ellis E. Smith however such loan was paid in full; further, so much of paragraph 26 is admitted as may be construed to allege that Arthur Vereen Construction, Inc. once permitted it's building license to be used by EES Construction and Consulting, Inc. in the construction of a commercial building(s), but the Third Party Defendants deny that any monies are lawfully due the Third Party Plaintiffs. The Third Party Defendants would allege that (1) pursuant to the specific agreement, no obligation to make payment ever arose; (2) such agreements are unlawful and illegal; and (3) such occurred over 10 years ago and are barred by the statute of limitations and by the doctrine of laches.

6. That the allegations of Paragraph 27 are denied as there was no discussion or agreement concerning monies due Vereen as no monies were due Vereen at such time.

7. Paragraph 28 is denied, except so much thereof as may be construed to allege that Smith and Vereen were equal shareholders and were to receive equal disbursements from A&E as such.

8. Paragraph 29 is denied; the Defendant Smith would aver that all disbursements from the company account were controlled and made by Vereen as Smith did not have signatory authority over the checking accounts of A&E; Smith denies that he was ever required to a contribution to A&E other than his time and labor, which he did.

9. That as to the allegations of Paragraph 30, Smith denies he was a "member" of A&E, as A&E is a corporation. Smith admits he was a shareholder and paid employee of such corporation. Smith admits that he preformed work as an employee of E. Smith and Sons Construction and EES Construction, however, he denies that such was unauthorized, illegal or otherwise caused any losses to A&E.

10. That as to the allegations of Paragraph 31, EES and E. Smith admit so much of such allegations that may be construed to allege that Smith, a licensed general contractor, owned or controlled such entities and, for a period of time, the license of Smith was placed with A&E and not such companies.

11. That so much of the allegations of Paragraph 32 are admitted that may be construed to allege that certain of the specified jobs listed on Paragraph 32 had work preformed by Smith and EES and E. Smith and Sons, but the Third Party Defendants deny that such was done without the knowledge and approval of A&E and that such work was done outside the scope of Smith's employment with A&E and without the use of A&E laborers or materials and without expense to A&E. The Third Party defendants deny that such work preformed caused any losses to A&E as alleged by the Third Party Plaintiff. Furthermore, the Third Party Defendants deny that the Third Party Plaintiffs (other than A&E) have a cause of action against the Third Party Defendants for which relief can be granted.

12. That as to the allegations of Paragraph 33, the Third Party Defendant EES admits that it billed for services to A&E in 2003 and 2004 based upon an agreement with A&E and Vereen, and that such charges were itemized, approved and paid by Vereen, as treasurer of A&E. Such charges equaled the actual costs of such labor, materials and costs, as approved and directed by Vereen.

13. That as to the allegations of Paragraph 34, the Third Party Defendants deny such claims and demand strict proof thereof.

14. That as to the allegations of Paragraph 35, the Defendant Smith admits that he performed certain work under the entities EES and Smith and Sons, during and after his period of employment with A&E, but denies that such employment with A&E prevented such outside employment outside of the normal working hours at A&E. Furthermore, Smith would aver that such labor was done on his own time and at his own expense, with the knowledge and consent of A&E and Vereen. Furthermore, any work performed after August 2007, was done while Smith was not employed by A&E. Smith admits that he did not pay any funds to A&E for such work as no funds were due A&E for such work preformed. Smith admits that on several occasions he did use the license of Smith for his separate jobs, but denies that he owes any monies to A&E for such purposes, as the license belonged to Smith or was otherwise used with the permission of A&E.

15. That as to the allegations of Paragraph 36, 37 and 38, the Third Party Defendants admit so much of such allegations that may be construed to allege that Smith and his companies did perform certain labor during and after his employment with A&E and that he did not pay A&E for such because the labor and materials were not paid for or charged to A&E and were done outside the scope of Smith's employment with A&E. That such jobs were not "corporate" opportunities as most were small jobs performed on weekends and Smith's entities had liability insurance for all services rendered. The Third

Party Defendants are unaware of any "notification" of claims and would be responsive to any claim made by any third party that was the responsibility of the Third Party Defendants.

16. That as to the allegations of Paragraph 39, the Third Party Defendants deny that A&E is entitled to any accounting, but if it is determined that such is due, the Third Party Defendants will provide an accounting for their income and receipts from 2003 until August 2007, when Smith left the employment of the Company.

17. Paragraph 40 of the Third Party Complaint is denied.

18. Pararaph 41 is admitted.

19. That as to the allegations of Paragraph 42, the Third Party Plaintiff has not stated any facts or allegations to support the "outstanding amounts due Vereen, individually, his companies" as alleged in the Third Party Compliant and they are therefore denied and strict proof demanded thereof. That as to the allegations of A&E, the Defendant Smith denies he ever agreed or was requested to advance any funds to A&E or that he misappropriated any corporate assets of A&E.

20. That as to the allegations of Paragraph 43 of the Third Party Complaint, the Defendants deny there is any duty to account to 29th Place as there is no allegation in the Complaint concerning any fiduciary relationship with 29th Place Developers, Inc., and any such complaint is denied. As to the allegations as they concern A&E, they are denied.

21. Paragraph 44 is denied.

22. Paragraph 45 is admitted.

23. Paragraphs 46, 47 and 48 are denied.

24. Paragraph 49 is denied; further answering said paragraph 49 it is admitted that the Third-Party Defendant EES verbally agreed in 1998 to pay Arthur Vereen Construction Company, Inc. a fee

for the use of its license would be paid if, and only if, the use of the license resulted in a profit to EES; such did not occur.

25. Paragraphs 50 and 51 are denied.

AS AND FOR A THIRD DEFENSE

26. The allegations contained in the previous defenses are realleged the same as though set out verbatim herein.

27. The Defendants plead the applicable statute of limitations as a complete bar to all claims.

AS AND FOR A FOURTH DEFENSE

28. The allegations contained in the previous defenses are realleged the same as though set out verbatim herein.

29. These Defendants plead the doctrine of laches as a complete bar and defense to all claims.

AS AND FOR A FIFTH DEFENSE

30. The allegations contained in the previous defenses are realleged the same as though set out verbatim herein.

31. These Defendants plead the equitable doctrine of unclean hands as a complete bar and defense to all claims.

AS AND FOR A FURTHER DEFENSE TO ANY CLAIMS MADE IN A REPRESENTATIVE CAPACITY

32. The allegations contained in the previous defenses are realleged the same as though set out verbatim herein.

33. The counterclaiming Defendants and Third-Party Plaintiffs have completely failed to comply with Rule 23, S.C.R.C.P. in their assertion of representative claims, and these Defendants accordingly plead Plaintiffs' failure to comply with Rule 23, S.C.R.C.P. as a complete bar and defense to any claims made in a representative capacity.

AS AND FOR A FURTHER DEFENSE TO THE CLAIM BY 29TH PLACE

34. The allegations contained in the previous defenses are realleged the same as though set out verbatim herein.

35. Defendant Ellis Smith pleads payment in full as a complete bar and defense to the claim.

AS AND FOR A FURTHER DEFENSE TO THE CLAIMS BY 29TH PLACE DEVELOPERS, LLC AND ARTHUR VEREEN CONSTRUCTION COMPANY

36. The allegations contained in the previous defenses are realleged the same as though set out verbatim herein.

37. These Defendants plead improper joinder as to these claims as a complete bar and defense.

AS AND FOR A FURTHER DEFENSE AS TO THE PLAINTIFFS THIRD CAUSE OF ACTION

38. The allegations contained in the previous defenses are realleged the same as though set out verbatim herein.

39. These Defendants plead illegality of any such agreement as alleged as a complete bar and defense to the action.

WHEREFORE, having made answer to the Counterclaims and Third-Party Complaint filed by the Defendants and Third-Party Plaintiffs, these Defendants pray as follows:

1. That the Complaint be dismissed;

2. That they have the costs and disbursements of the action;

3. For such other and further relief as to the court may seem just and proper.

THOMPSON & HENRY, P.A.

J. JACKSON THOMAS
SC Bar #5527
1314 Professional Drive
P.O. Box 1290
Myrtle Beach, SC 29578
Phone: 843-692-2628
Fax: 843-692-0928

Attorneys for Third-Party Defendants

August 24, 2009
Myrtle Beach, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	)	CIVIL ACTION NO.: 2009-CP-26-620

Ellis E. Smith, individually, and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation,

Plaintiff,

vs.

Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc., and Linda C. Vereen,

Defendants.

AND

Arthur Wayne Vereen, individually and on behalf of A & E Constructors and Consultants, Inc., and 29th Avenue Developers, Inc.,

Third Party Plaintiffs,

vs.

E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, Individually,

Third Party Defendants.

CERTIFICATE OF SERVICE

2009 AUG 26 AM 11:30
CLERK OF COURT

I, Tammy M. Thompson, an employee of THOMPSON & HENRY, P.A. attorneys for Third-Party Defendants in the above-captioned matter, certify that I have this 24 day of August, 2009, mailed the following documents to all counsel of record at their addresses of record with sufficient postage attached thereto as follows:

Documents Mailed:

1. Reply of Third-Party Defendants E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc. and Ellis E. Smith, Individually to Third-Party Complaint.

Mailed To:

Daniel J. MacDonald, Esquire
Rice, MacDonald, Breeden & Hicks, P.A.
950 48th Avenue N., Suite 200
Myrtle Beach, SC 29577

Frank H. DuRant, Esquire
DuRant & Martin
P.O. Box 960
Myrtle Beach, SC 29578

Tammy M. Thompson

SWORN TO BEFORE me this
24 day of August, 2009.

Kaye O. Champion (L.S.)
Notary Public for South Carolina
My Commission Expires: 5/5/14

STATE OF SOUTH CAROLINA
COUNTY OF HORRY

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT

CASE NUMBER 2009-CP-26-0620

ELLIS E. SMITH, INDIVIDUALLY, AND ON BEHALF OF A&E CONSTRUCTORS AND CONSULTANTS, INC., A SOUTH CAROLINA CORPORATION,

PLAINTIFFS,

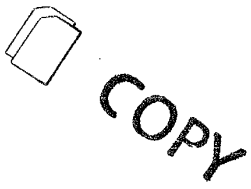
V.

ARTHUR WAYNE VEREEN, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, ARTHUR VEREEN CONSTRUCTION INC., AND LINDA VEREEN,

DEFENDANTS.

AND

ARTHUR WAYNE VEREEN,



MABRY COURT REPORTING
PEPPER M. MCCARTHY (843) 957-7653
PEPPERMCCARTHY@SC.RR.COM

INDIVIDUALLY AND ON BEHALF OF A&E CONSTRUCTORS AND CONSULTANTS, INC., AND 29TH PLACE DEVELOPERS, INC.,

THIRD-PARTY PLAINTIFFS,

V.

E. SMITH AND SONS CONSTRUCTION, LLC, EES CONSTRUCTION AND CONSULTING, INC., AND ELLIS E. SMITH, INDIVIDUALLY,

THIRD-PARTY DEFENDANTS.

HEARING

FROM (8:30 A.M.) UNTIL (7:00 P.M.)

FEBRUARY 15 AND 16, 2011

AS TAKEN AND TRANSCRIBED BY PEPPER M. MCCARTHY, NOTARY PUBLIC AND VERBATIM REPORTER, AT THE HORRY COUNTY COURTHOUSE, 1301 SECOND AVENUE, CONWAY, SOUTH CAROLINA.

MABRY COURT REPORTING
PEPPER M. MCCARTHY (843) 957-7653
PEPPERMCCARTHY@SC.RR.COM

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APPEARANCES

FOR PLAINTIFF'S:

DURANT & MARTIN
FRANK H. DURANT, ESQ,
2107 FARLOW STREET
MYRTLE BEACH, SOUTH CAROLINA 29577

THOMPSON & HENRY LAW FIRM
J. JACKSON THOMAS, ESQ.
1314 PROFESSIONAL DRIVE
MYRTLE BEACH, SOUTH CAROLINA 29577

FOR DEFENDANT'S:

COOK & ROY
KATHRYN M. COOK, ESQ.
P.O. BOX 4086
MYRTLE BEACH, SOUTH CAROLINA 29572

INDEX TO EXAMINATION

ARTHUR W. VEREEN:

DIRECT EXAMINATION BY MR. DURANT..... PAGE 7

CROSS EXAMINATION BY MS. COOK..... PAGE 228

CROSS EXAMINATION BY MR. THOMAS..... PAGE 237

SUSAN E. BRADY:

DIRECT EXAMINATION BY MR. DURANT..... PAGE 238

CROSS EXAMINATION BY MS. COOK..... PAGE 242

RE-DIRECT EXAMINATION BY MR. DURANT.... PAGE 250

EXHIBITS

PLAINTIFF'S:

1. 2004 NOTEBOOK BY BRADY..... PAGE 238

2. 2005 NOTEBOOK BY BRADY..... PAGE 238

3. 2006 NOTEBOOK BY BRADY..... PAGE 239

4. 2007 NOTEBOOK BY BRADY..... PAGE 239

5. ADJUSTMENTS MADE BY BRADY 1-4.... PAGE 239

6. BUSINESS RECORDS OF A&E, JOB LEDGERS, INDEX OF JOB RECORDS..... PAGE 226

7. COMPLETE DEPOSITION OF CARRIE DREWETT AND WRITTEN GENERAL LEDGER OF A&E..... PAGE 226

8. INCORPORATED DOCUMENTS FOR A&E, ORGANIZATION OF MEETING, SUB S ELECTION, INITIAL DEPOSIT TICKETS;

ACCOUNT AGREEMENT WITH CAROLINA FIRST..... PAGE 10

9. DEMAND LETTER OF SMITH AND RESPONSES..... PAGE 156

10. LICENSING AND INCORPORATION DOCUMENTS OF ALL PARTIES..... PAGE 226

11. LIST OF PERMITS FROM THE CITY OF MYRTLE BEACH FOR A&E AND GRAND STRAND BUILDERS..... PAGE 227

12. THE WILLOUGHBY JOB DOCUMENTS..... PAGE 11

13. THE KEMPE JOB DOCUMENTS..... PAGE 19

14. DR. EROL LALE JOB DOCUMENTS (A.K.A. SOUTH STRAND CARDIOLOGY)..... PAGE 28

15. PARK PLACE PROPERTIES, LLC JOB, POINTE MARSH AND BLACK PEARL PUTT-PUTT..... PAGE 36

16. PARKWAY OFFICES, LLC JOB DOCUMENTS..... PAGE 51

17. INTERROGATORIES OF PLAINTIFF AND DEFENDANTS RESPONSES..... PAGE 59

18. FINANCIAL STATEMENT FOR MR. & MRS. VEREEN FROM NBSC..... PAGE 100

19. PARK PLACE PROPERTIES, LLC FROM SMITH SAPP, COPIED AND DELIVERED TO DURANT BY ATTORNEY COOK..... PAGE 101

19-A. TAX RECORDS FOR ALL DEFENDANTS... PAGE 227

20. ARTHUR VEREEN CONSTRUCTION AND A&E BUSINESS RECORD FROM SMITH SAPP..... PAGE 227

21. CHECKING ACCOUNT RECORD FOR A&E 12/31/07 TO 12/31/08..... PAGE 129

22. BANKING RECORDS FOR

PARK PLACE FROM 6/04 TO 12/09 PRODUCED BY DEFENDANTS..... PAGE 227

23. CONSENT ORDER REGARDING 2008-144 SCLLR DATED 12/2/09..... PAGE 144

24. HUD-1 STATEMENT FROM POINTE MARSH..... PAGE 227

25. CHECK 1505 FROM MRS. SISSON DATED 10/28/08..... PAGE 228

26. LETTERS REGARDING 2006 WORKERS' COMP AUDIT WITH DOCUMENTS..... PAGE 167

27. WAGES PAID TO VEREEN AS REPORTED ON PERSONAL TAXES..... PAGE 228

28. DEFENDANTS ANSWERS TO PLAINTIFF INTERROGATORIES..... PAGE 228

29. DEFENDANT RESPONSES TO PLAINTIFF REQUESTED FOR PRODUCTION 12/1/10..... PAGE 228

30. ORIGINAL DEPOSITION OF LINDA VEREEN..... PAGE 228

31. BUSINESS CHECKS..... PAGE 76

32. SINGLE CHECK FOR $11,533.00 FROM WHITLEY ..... PAGE 73

33. SETTLEMENT STATEMENT LOT 20..... PAGE 107

34. SETTLEMENT STATEMENT LOT 22..... PAGE 103

35. A&E ACCOUNTS RECEIVABLE AS OF DECEMBER 31, 2005..... PAGE 147

36. A&E ACCOUNTS RECEIVABLE AS OF DECEMBER 31, 2004..... PAGE 148

37. CHECK FROM FIRST PALMETTO FOR $79,855.06..... PAGE 144

38. A&E JOB OUTSTANDING AS OF 12/31/06..... PAGE 146

39. CHECK TO STOCK FROM A&E AND DOCUMENTS..... PAGE 159

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STIPULATIONS.

IT WAS STIPULATED BY AND BETWEEN COUNSELS FOR THE PARTIES THAT THE TRANSCRIPTION OF THIS HEARING; WAS ONLY TO BE THE QUESTIONS AND ANSWERS SECTIONS OF BOTH TESTIMONIES.

****

ARTHUR WAYNE VEREEN, FIRST BEING SWORN AND TESTIFIED AS FOLLOWS:

DIRECT EXAMINATION BY MR. DURANT:

Q WOULD YOU STATE YOUR NAME FOR THE RECORD?

A MY FULL NAME IS ARTHUR WAYNE VEREEN, V-E-R-E-E-N.

MR. DURANT: PERMISSION TO TREAT HIM AS A HOSTILE WITNESS?

JUDGE HOWE: YOU MAY.

Q MR. VEREEN, I THINK YOU KNOW ME. I'M FRANK DURANT AND I REPRESENT A&E IN THE ACTION AGAINST YOU. HOW LONG HAVE YOU HAD A GENERAL CONTRACTORS LICENSE?

A HONESTLY, DON'T KNOW, BUT I WOULD SAY BACK IN THE LATE 70'S.

Q AND YOU KNOW MR. SMITH, WHO IS IN HERE TODAY? HE HAS WORKED FOR YOU FOR YEARS ON AND OFF?

A YES, SIR, THAT IS CORRECT.

Q HE HAS ACTUALLY BEEN A SUB FOR YOU AS WELL AS A DIRECT EMPLOYEE OF YOURS?

A YES.

Q THE COMPANY EES HAS ACTUALLY DONE WORK FOR YOUR COMPANY, ARTHUR VEREEN CONSTRUCTION, IS THAT CORRECT?

A I'M NOT SURE ABOUT DOING WORK FOR ARTHUR VEREEN CONSTRUCTION, BUT, YES. HE HAS DONE WORK FOR, I KNOW A&E, BUT I'M NOT SURE ABOUT ARTHUR VEREEN CONSTRUCTION.

Q MR. VEREEN, YOU HAVE MET WITH MR. SMITH TO FORM THE COMPANY KNOWN AS A&E CONSTRUCTION, IS THAT CORRECT?

A THAT'S CORRECT.

Q THAT CULMINATED IN YOU GOING TO ATTORNEY SCOTT LONG'S OFFICE AND DOING THE CORPORATION PAPERS?

A NO, SIR. I DID NOT GO TO SCOTT LONG'S OFFICE. ELLIS SMITH WENT TO SCOTT LONG'S OFFICE.

Q YOU SIGNED THE CORPORATE DOCUMENTS?

A I SIGNED THE DOCUMENTS IN MY OFFICE, YES, SIR.

Q YOU WERE A 50 PERCENT OWNER IN THE COMPANY?
A THAT'S CORRECT.
Q AND MR. SMITH WAS A 50 PERCENT OWNER?
A THAT'S CORRECT.
Q SO, YOU AGREED TO SPLIT THE PROFITS OF THE COMPANY 50/50?
A THAT'S CORRECT.
Q AT THAT TIME, YOU AND MR. SMITH AGREED THAT ANY NEW WORK, AFTER OCTOBER, WOULD BE PERMITTED UNDER THE NEW COMPANY AND THE MONEY WOULD COME OUT OF THE NEW COMPANY?
A THAT'S CORRECT.
Q ARTHUR VEREEN CONSTRUCTION IS YOUR COMPANY ALSO, IS IT NOT?
A YES.
Q AND IT ORIGINALLY WAS YOUR DADDY'S COMPANY?
A YES.
Q IN OCTOBER OF 2003, ARTHUR VEREEN CONSTRUCTION CEASED DOING ANY CONSTRUCTION WORK OTHER THAN FINISHING UP JOBS?
A THAT'S CORRECT.
Q YOU DID NO NEW JOBS?
A THAT'S CORRECT.
Q YOU HAD NO LICENSE TO DO ANY NEW JOBS, DID YOU, SIR, AS ARTHUR VEREEN CONSTRUCTION?

A YOU SAID AFTER OCTOBER?
Q YES, SIR.
A MY LICENSE WAS NOT DONE UNTIL DECEMBER OF '03.
Q I'M HANDING THE WITNESS PLAINTIFF'S EXHIBIT NUMBER "8". IT'S A PORTION OF IT. IT'S FROM THE SOUTH CAROLINA LABOR AND LICENSING. WHAT DAY DOES IT SAY YOUR LICENSE EXPIRED?
A EXPIRATION DATE 10/31/2008.
Q EXCUSE ME. THAT'S A&E. I GAVE YOU THE WRONG ONE. ARTHUR VEREEN CONSTRUCTION COMPANY?
A 10/31/2003.

SOUTH CAROLINA LABOR AND LICENSE MARKED FOR IDEN-TIFICATION AND INTRODUCED INTO EVIDENCE AS PLAINTIFF'S EXHIBIT "8".

Q YOUR LICENSE EXPIRED OCTOBER 31ST, IS THAT RIGHT, SIR?
A THAT'S RIGHT.
Q SO, YOU WEREN'T LICENSED TO ENTER INTO ANY CONTRACT TO PERFORM NEW CONSTRUCTION AFTER THAT TIME, OCTOBER 31ST, 2003?
A THAT'S CORRECT.
Q AND YOU DIDN'T, DID YOU, SIR?
A NO, SIR.

Q SO, ALL THE CONSTRUCTION CONTRACTS THAT YOU ENTERED AFTER OCTOBER 31ST WERE IN THE NAME OF A&E CONSTRUCTION?

A NO, SIR.

Q I THOUGHT YOU JUST SAID YOU DIDN'T ENTER INTO ANY CONTRACTS AFTER OCTOBER ...

A I SAID I DIDN'T ENTER ANY. WE ALSO ENTERED -- WROTE A CONTRACT WITH, I THINK. WILLOUGHBY PLACE WAS IN ARTHUR VEREEN CONSTRUCTION COMPANY.

Q YOU HAVE NEVER PRODUCED ANY OF THE CONSTRUCTION CONTRACTS FOR WILLOUGHBY PLACE, HAVE YOU, SIR?

A I HAVE NOT.

Q WHERE IS IT, SIR?

A THAT I CAN'T ANSWER.

Q HOW BIG -- WAS THIS ABOUT A $4 MILLION JOB?

A SOMEWHERE IN THE NEIGHBORHOOD. YES, SIR.

Q COULD I HAVE PLAINTIFF'S EXHIBIT NUMBER "12"? NOW, THE WILLOUGHBY JOB, YOU DON'T HAVE A CONSTRUCTION CONTRACT WITH --- WILLOUGHBY DIDN'T START AS FAR AS CONSTRUCTION UNTIL THE MIDDLE PART OF 2004, IS THAT NOT CORRECT?

A IF YOU ARE ASKING ME IF THEY DIDN'T START CONSTRUCTION, VERTICAL CONSTRUCTION OF THE BUILDINGS UNTIL 2004, THAT WOULD BE CORRECT.

WILLOUGHBY JOB DOCUMENTS