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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Master-in-Equity

Case No. 2012-CP-23-02887

Appellate Case No. 2020-001587

DAVID WILSON, INDIVIDUALLY AND DERIVATIVELY ON BEHALF OF CAROLINA CUSTOM CONVERTING, LLC, ... Plaintiff,

vs.

JOHN GANDIS, ANDREA COMEAU-SHIRLEY, ZOI FILMS, LLC, AND CAROLINA CUSTOM CONVERTING, LLC, ... Defendants,

vs.

CAROLINA CUSTOM CONVERTING, LLC,.....Counterclaim Plaintiff,

vs.

DAVID WILSON, STEVE NORVELL, NEOLOGIC DISTRIBUTION, INC. AND FRESH WATER SYSTEMS, INC., ...Counterclaim Defendants

OF WHICH CAROLINA CUSTOM CONVERTING, LLC, JOHN GANDIS, AND ANDREA COMEAU-SHIRLEY are the ..... Appellants

and

DAVID WILSON is the.....Respondent.

.

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC, Plaintiff, -vs- John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC, Defendants, John Gandis and Andrea Comeau-Shirley, Third-Party Plaintiffs, -vs- Carolina Custom Converting, LLC, Third Party Defendant and Counterclaim Plaintiff, -vs- Dave Wilson, Steve Norvell, Neologic Distribution, Inc. and Fresh Water Systems, Inc.	IN THE COURT OF COMMON PLEAS C.A. NO.: 2012-CP-23-02887 **ORDER**

I. PROCEDURAL BACKGROUND

This case concerns the management travails of Carolina Custom Converting, LLC (CCC), a company engaged in the plastic film business and owned by Plaintiff David Wilson (Wilson), Defendant John Gandis (Gandis), and Defendant Andrea Comeau-Shirley (Shirley). Wilson alleges (1) he was subject to shareholder oppression by Gandis and Shirley; (2) Gandis breached his fiduciary duty to CCC and Wilson; (3) Gandis and Shirley converted company funds and property to their own

use; (4) he was entitled to dissolution of the company, or in the alternative, disassociation. Defendants Gandis and Shirley answered and counterclaimed that Wilson had breached his fiduciary duty. Wilson later sued as a derivative representative of CCC and brought in ZOi Films, LLC (ZOi) and Deco-Tex, LLC (Deco-Tex) as additional defendants.

On September 20, 2013, Wilson filed a Second Amended Complaint alleging the same causes of action in an individual capacity as well as derivatively, but added CCC as a party.[1] CCC then counterclaimed against Wilson, Steve Norvell, Fresh Water Systems, Inc., and Neologic Distribution, Inc. for breach of duty of loyalty, conspiracy, and violations of the S.C. Trade Secrets Act, among others, but this Answer was not served on Norvell, Neologic, and Fresh Water until March 24, 2014. Norvell, Neologic, and Fresh Water responded, asserting the S.C. Trade Secrets claim was made in bad faith.

The parties agreed to waive a jury trial and submit all claims to a bench trial, which was held September 29, 2014 through October 3, 2014.

I. FACTUAL FINDINGS

In November 2007, Wilson and Gandis formed CCC. At the time of formation, Wilson owned and operated Eastern Film Solutions (EFS), which bought and sold polyester, plastic, and metalized films.[2] Gandis owned and operated Decotex, which bought and sold decorative designs for vinyl film. The basic agreement was for CCC to perforate and "slit" (cut) film. Wilson agreed to run much of EFS' slitting business through CCC.

In 2008, Wilson and Gandis discussed expanding the scope of CCC and winding down their individual businesses. They discussed EFS buying film from CCC and selling it as an additional source of income to CCC. CCC began to purchase and sell film in addition to slitting, and EFS became

[1] CCC entered an appearance as a party in October 2012; however, Plaintiff did not seek any relief from CCC. The amendment followed a debate about CCC's status as a party, and Plaintiff agreed to add CCC as a first party Defendant.
[2] Wilson had been in the film business for nearly 20 years. His brother-in-law Steve Norvell occasionally financed Wilson's overseas film transactions.

a slitting customer as well as a purchaser of CCC inventory. In either May or June 2008, Wilson agreed to make CCC the buyer and seller of film on one of EFS's major accounts, Minova, resulting in significant additional revenues for CCC.

The Minova account fueled additional discussions about EFS winding down and conducting all new film business through CCC. However, Wilson indicated he wished to keep 3 import accounts separate from CCC. The three accounts to be excluded from the deal were Lamborn, Modular Metal, and West Carrolton (two of which, Lamborn and West Carrolton, were financed by Steve Norvell). The parties did not sign a formal operating agreement for CCC, but this court finds that certain oral agreements were reached whose terms never altered Wilson's understanding that these three accounts would remain separate from CCC.

The court finds the parties agreed that Gandis and Wilson founded the business as equal partners, that Wilson would wind down EFS and receive compensation in the amount of $8,000 per month, and Gandis would fund the business through two credit lines (the M-Tech line of credit and the Decotex line of credit). Wilson would lead CCC's sales efforts and Gandis would manage operations.[3] Gandis engaged Shirley, a Georgia-licensed Certified Public Accountant, for accounting and formation advice. CCC was organized as a manager-managed limited liability company, and Gandis was identified in the articles of organization as the manager. Beginning in or about July 2008 and consistent with his agreement with Gandis, Wilson began winding down EFS, which continued through July 2009.

While Shirley attempted to finalize an operating agreement for CCC, she also provided personal counsel to Gandis. However, no written operating agreement was ever completed. In 2009, Shirley agreed to accept a 10% interest in CCC in exchange for providing accounting services. Gandis and Wilson each transferred 5% of their interest in CCC to her, each retaining a 45% interest.

[3] CCC did not engage in the import film market until 2010.

Although Shirley did not have a formal voting interest, she took an active role in management, primarily through private communications between her and Gandis.

CCC's business grew, and with the help of a film shortage in 2010 it flourished, turning a profit of over a million dollars. However, since CCC was organized as a subchapter S entity, the members were responsible for taxes proportionate to their ownership interest. Also, because CCC filed taxes on an accrual basis, this tax liability was even greater. In the past, a tax distribution was made to the members, and funds had been set aside for a tax distribution for 2010. CCC's profits in 2010 created phantom income for the members, and the leaner revenue of 2011 produced a shortfall for the tax payment.

Shirley began to extensively advise Gandis as to the management of CCC and the treatment of Wilson, which ultimately led to his oppression and eventual ouster. She advised Gandis to pay off an equity line previously relied upon by CCC to help even out cash flow and purchase inventory so Gandis could pay his personal tax liability. Gandis used CCC funds set aside for the 2010 tax liability to pay off CCC's obligation of the line of credit, and then used the line of credit to pay his taxes. Wilson was then informed CCC would not make a tax distribution to cover his tax liability as previously agreed and as had been done in the past.

March 2011 emails between Shirley and Gandis revealed a plan to use CCC's employees to perform tasks for Gandis's other business interests, M-Tech, Inc. and Decotex, LLC. Testimony corroborated the emails. Also at this time, a secretive effort was initiated to monitor Wilson's emails. Shirley's emails to Gandis outlined a plan to flip Wilson from an owner to an employee. Contemporaneously, Shirley and Gandis began deferring their distributions and classifying the monthly income that Wilson had been paid pursuant to the July 2008 agreement as a "loan." By August 16, 2011, Shirley bluntly proposed that they develop an "Exit Strategy" for Wilson and identified who could take Wilson's place as head of the sales team.

In September 2011, Gandis intercepted an email from Wilson's wife and forwarded it to Shirley. Shirley responded that the email demonstrated marital discord arising from Gandis's opportunity to "restructure" Wilson. From this point forward, the emails between Gandis and Shirley evidence an effort to exclude Wilson from the benefits of ownership and to cease paying him his monthly income as part of an effort to "squeeze" him to relinquish his ownership interest. Under pressure, Wilson engaged in discussions with Gandis to become an employee. In her private coaching to Gandis, Shirley advocated high pressure tactics. Wilson was given the deadline of January 7, 2012 to either become an employee or cease receiving the monthly income that he relied upon. As this deadline approached, Shirley prepared a "Pro-Forma Balance Sheet" to accompany an offer to Wilson to buy his interest. However, the balance sheet contained questionable accruals and removed assets that had been listed on previous CCC balance sheets. Although Gandis and Shirley indicated they would also sell at a price based upon this balance sheet, their offer had materially different terms, including the requirement that Shirley be paid a $100,000 "preference on units" and that Wilson purchase M-Tech's building, which Shirley deemed a "burden." The balance sheet had the effect of devaluing Wilson's interest in CCC.

The parties could not reach an agreement. Wilson approached potential buyers of CCC, to whom he provided information about CCC's financial status, absent customer names, subject to a non-disclosure agreement. During this time, Shirley counseled Gandis to be patient and allow the pressure to build on Wilson. All the while, emails between Wilson and his lawyer, his accountant, and others were monitored, giving Shirley and Gandis access to Wilson's thought process. Wilson discussed potential employment with another company and indicated he did not have a non-compete or a non-solicitation agreement.

An early 2012 email between Gandis and Shirley reveals their decision to terminate Wilson but maintain that he resigned, and to physically lock him out of his office. On January 17, 2012, Gandis

arrived at CCC's Greenville office with law enforcement and a locksmith and advised Wilson his resignation was accepted. Wilson protested that he was not resigning, but eventually had no choice but to leave, although he left with two of his laptops and Blackberry in hand. Gandis then changed the locks.

After Wilson's ouster, Gandis and Shirley formed ZOi Films, LLC, which was intended to take CCC's better business opportunities. Representations to the bank and to the Internal Revenue Service demonstrate that ZOi Films was organized with two members: M-Tech, Inc. (owned by Gandis) and Creative Brain Storms, Inc., a Georgia corporation owned by Shirley. After Wilson discovered the ZOI Films scheme, Gandis and Shirley maintained ZOi was intended to be a wholly-owned subsidiary of CCC.

In sum, Gandis and Shirley's oppressive and unfairly prejudicial acts included:

- Initiating an "Exit Strategy" on August 16, 2011;
- Threatening to stop Wilson's guaranteed and agreed upon monthly payments unless he relinquished his equity interest and became an at-will employee with a non-compete agreement;
- Refusing to make tax distributions for Wilson while instead using money set aside for such to pay off the line of credit so Gandis could borrow to pay his own taxes;
- Monitoring all of Wilson's private emails, including those with his wife, his attorney, and his accountant;
- Making representations that he may not receive distributions for another two years;
- Managing the money supply to make it appear as if cash was more limited than it was in actuality;
- Continually making unilateral changes, including secretly back-paying rent at a higher rate than agreed upon and transferring assets (ex. air conditioner) to Gandis's entities through expensing such items as rent;
- Limiting Wilson's access to financial information of the company;
- Removing him from signatory authority on the operating account;

- Removing his ability to make wire transfers for the company;
- Excluding him from discussions about business operations;
- Stopping Wilson's guaranteed and agreed upon monthly distribution in January 2012;
- Manipulating the December 2012 pro-forma balance sheet to devalue Wilson's interest in CCC;
- Physically locking Wilson out of his business and refusing to allow him to return;
- Demanding possession of Wilson's computer and Blackberry;
- Terminating the cell phone plans for Wilson and his family while maintaining coverage for the other members;
- Terminating health insurance coverage for Wilson and his family;
- Forming ZOi to compete with CCC in order to siphon profits until Wilson caught Gandis and Shirley; and

After his ouster, Wilson began working and selling film for Neologic, Inc., owned by his sister-in-law and managed by Steve Norvell. Sales began slowly in 2012, mostly to former CCC customers with whom Wilson had long term relationships that predated CCC. Wilson continued to sell film for Neologic in 2013 and 2014, including to former CCC customers.

In 2013, CCC alleged that Wilson had usurped corporate opportunities in 2008 and 2009, including the three accounts excluded from the agreement between Wilson and Gandis. Norvell was alleged to have aided and abetted these alleged breaches of fiduciary duty and to have conspired with Wilson to dissolve CCC. In addition, CCC alleged that Wilson and Neologic/Freshwater had misappropriated trade secrets and converted company information for their own use.

However, Wilson presented testimony from others engaged in the film business demonstrating that polyester film was a commodity and that the alleged trade secrets were readily available from the internet, trade associations, trade shows and manufacturers' pricing information regularly furnished to potential film purchasers. Although industry and customer information was gathered by CCC, this

information was readily available from public sources. Moreover, CCC made little if any effort to protect the information; neither Wilson, Gandis, Shirley, Bill Shaw, Mike Myers, nor any other CCC employee or contractor was required to sign a non-disclosure agreement prior to Wilson's ouster.

Both parties presented expert testimony as to CCC's value both at the time of ouster and at the end of 2013. Wilson's expert Catherine Stoddard valued CCC at the time of ouster at $1,018,753 and Wilson's interest at $408,335.[4] However, there was testimony by both experts as well as the court-appointed experts as to possible adjustments to the value of the entity due to equipment moving costs, excess inventory, and advances.

III. LAW / ANALYSIS

A. Wilson's Claim for Shareholder Oppression.

Under S.C. Code Ann. § 33-44-410:

> [a] member or manager may maintain an action against a limited liability company or another member or manager for legal or equitable relief, with or without an accounting as to the company's business, to enforce:
>
> **(1)** the member's rights under the operating agreement;
>
> **(2)** the member's rights under this chapter; and
>
> **(3)** the rights that otherwise protect the interests of the member, including rights and interests arising independently of the member's relationship to the company.

The full range of equitable remedies are available to the court, although the South Carolina Code § 33-44-801(4) sets out specific provisions for dissolution, which shall occur:

> (4) on application by a member or a dissociated member, upon entry of a judicial decree that:
> ....
>
> (e) the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner.

[4] Defendant CCC's expert valued Wilson's interest at the time of ouster at $354,000.

The courts have used the terms "freeze out" or "squeeze out" interchangeably; the terms mean "the use by some of the owners or participants in a business enterprise of strategic position, inside information, or powers of control or utilization of some legal device or technique, to eliminate from the enterprise one or more owners or participants." *Kiriakides v. Atlas Food Sys. & Servs. Inc.* 343 S.C. 587, 604 n.26, 541 S.E.2d 257, 267 n.26. (2000) (citation omitted). "Common freeze out techniques include termination of a minority shareholder's employment, the refusal to declare dividends, the removal of the minority shareholder from a position of management, and the siphoning off of corporate earnings through high compensation. Often, these tactics are used in combination." *Id.* at 604-05, 541 S.E.2d at 267 (footnotes omitted). So it is in this case.

The South Carolina Supreme Court recently applied the oppression standard in *Ballard v. Roberson* when it stated the following:

> We acknowledge that the facts before us are not as egregious as those in *Kiriakides,* which included actual fraud by Alex upon the minority. However, illegal or fraudulent conduct is not required under section 33-14-300(2)(ii), and we agree with the circuit court that the evidence in the record shows oppression by the majority in this instance. The concern and focus in shareholder oppression cases is that the minority "faces a trapped investment and an indefinite exclusion [from] participation in business returns." Ballard here, like John and Louise in *Kiriakides,* similarly faces prospects of exclusion from the business, a slim chance of seeing a return any time soon, and no market in which to otherwise unload his investment.

399 S.C. 588, 595, 733 S.E.2d 107, 110 (2012) (citations omitted).

Interestingly, the Court in *Ballard* relied on emails to determine the motives behind the plaintiff's exclusion from the business.

> In particular, e-mail communications between the other shareholders clearly indicate their desire to oust Ballard. The individual Appellants wanted to convince Ballard to return his 20% interest in Warpath in the hopes that "he [would] take his [$1,000,000] and run [] after a little threatening, posturing and whining." Furthermore, when discussing what options to give Ballard, Thoennes, III posited, "Don't we want to get him out of the deal?"

Id. at 595, 733 S.E.2d at 110-111 ("Although at trial the individual Appellants sought to downplay the implications of these electronic exchanges, this enunciation of their intent to force out Ballard simply contextualizes their subsequent actions").

The emails proved an overt scheme to oust Wilson, and document the step by step efforts of the majority to "flip" Wilson from an owner to an employee. Moreover, the emails provide multiple examples of oppressive and prejudicial actions by Gandis, CCC's manager, and Shirley, who exercised control delegated to her by Gandis, including the management of CCC's financial affairs. In addition, Gandis and Shirley were surreptitiously reading Wilson's emails. The record—particularly the remarkable emails between Gandis and Shirley—abounds with evidence of calculated oppression. There is little left for the fact finder in this "freeze out" claim to do when Wilson's business partners declare "we will freeze his capital account" and gloat that their cabal will "mean that Dave sits with a frozen capital account until the LLC liquidates (and he will still have a 2010 tax bill that he has to pay)." Plaintiff Ex. 48 (October 24, 2011 email from Shirley to Gandis). The financial manipulation of the minority is the essence of oppression in a close corporation; what makes this instance so striking is the brazen but clumsy manner in which the plan was conceived and executed.

Wilson was also literally locked out of his business. He has not had access to financial information about CCC's finances except when this court has compelled Defendants to produce such information, and he has had none since August 2013. This is a classic squeeze-out, and Wilson established by clear and convincing evidence that "the managers [and] members in control of [CCC] have acted, are acting [and] will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner." S.C. Code Ann. § 33-44-801(4)(e).

The parties acknowledge this court has the authority to fashion an equitable remedy of a buy-out of Wilson's distributional interest as an alternative to dissolution.[5] S.C. Code Ann. § 33-44-410 permits broad discretion in fashioning an equitable remedy to enforce the rights of a member. See

[5] Based in part upon *Hendley v. Lee*, 676 F. Supp. 1317 (D.S.C. 1987), Defendants took the position in response to Plaintiff's motion for partial summary judgment and during the trial of this matter that a buy-out was an equitable remedy available to the court as an alternative to the harsh remedy of dissolution. Although Plaintiff pled a cause of action for dissolution, Plaintiff agreed with Defendants' position that under S.C. Code § 33-44-410, this court had the authority to fashion an equitable remedy. In addition, Plaintiff's actions for an accounting, dissolution, and derivative actions are all equitable in nature.

Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 428, 673 S.E.2d 448, 454 (2009) ("[W]e find that the LLC Act grants broad judicial discretion in fashioning remedies in actions by a member of an LLC against the LLC and/or other members"), *citing* S.C. Code Ann. §§ 33-44-410 cmt.,- 801 cmt. (2006). In addition, when considering remedies for shareholder oppression in the corporate context, the Supreme Court has stated:

> if it is established by a shareholder that "the directors or those in control of the corporation have acted, are acting, or will act in a manner that is illegal, fraudulent, oppressive, or unfairly prejudicial either to the corporation or to any shareholder (whether in his capacity as a shareholder, director, or officer of the corporation)" [citing S.C. Code § 33-14-300(2)(ii)], [then] Section § 33-14-310(d)(4) permits a court to make such order or grant such relief, other than dissolution, as in its discretion is appropriate, including providing for the purchase at their fair value of shares of any shareholder, either by the corporation or by other shareholders.

Kiriakides v. Atlas Food Sys. & Servs., Inc., 343 S.C. 587, 596 (2001).

To the extent applicable to a buy-out of a member's distributional interest as an equitable remedy for oppressive, fraudulent, or unfairly prejudicial conduct is proper, this court has valued Plaintiff's interest consistent with § 33-44-702. In determining the fair value of Wilson's distributional interest, the Court believes that the time of ouster is the most appropriate date for valuing Wilson's interest.[6] See *Hendley v. Lee*, 676 F. Supp. 1317 (D.S.C. 1987); *see also* Douglas K. Moll, *Shareholder Oppression and "Fair Value": Of Discounts, Dates, and Dastardly Deeds in the Close Corporation*, 54 DUKE L.J. 293 (2004). In this regard, this court adopts Ms. Stoddard's credible December 31, 2011 valuation with three adjustments. As of that date, Stoddard determined that CCC had a valuation of $1,018,753. The first adjustment is that the value should be adjusted downward by $50,625, to account for possible excess inventory. Second, the value of the equipment should be adjusted further downward by twenty five percent (25%) of fair market value of the equipment to account for moving costs. After these two adjustments, the value of CCC as of December 31, 2011 is

[6] In a case of dissociation, S.C. Code § 33-44-702 provides for valuation on the date of dissociation.

$884,140.50; the fair value of Wilson's forty-five percent (45% interest) is $397,863.23. Wilson's share is reduced by another $50,000.00 for previous advances he had received.

Moreover, there was no evidence presented by Defendants as to the current financial condition of CCC.[7] Unlike a dissociation provided for in §33-44-701 where the managing members have no fault, this case involves clear and convincing evidence of oppressive conduct by Gandis and Shirley and a forced lock out of Wilson. Therefore, this Court believes the most equitable remedy is that Gandis and Shirley be ordered to buy out Wilson's distributional interest.[8]

B. Defendants' Claims for Breach of Fiduciary Duty.

Defendants failed to prove their claim for breach of fiduciary duty. The evidence did not establish that Wilson had agreed to transfer the three import accounts (West Carrollton, Modular Metal and Lamborn) to CCC in 2008. First, Wilson testified that these three accounts were clearly excluded. Second, a document provided by Gandis to Shirley for the purpose of drafting an operating agreement specifically references Wilson's intent to exclude three import accounts; another email from Gandis to Shirley further corroborates Wilson's testimony. Finally, there was conflicting testimony from Shirley and Gandis as to their understanding of these accounts.

The court finds Defendants were aware EFS was conducting business with these accounts in 2008 and 2009. Even if Wilson had agreed to transfer them to CCC, these claims would be time barred. Gandis and Shirley knew that EFS continued to do business with West Carrolton in July 2009, and with Lamborn after July 2008. Even assuming the three accounts were intended to be part of the Wilson-Gandis agreement, Defendants failed to engage in a reasonable inquiry when they received notice in 2009 that Wilson had in fact conducted import business with these accounts. Defendants' failure to take action upon receipt of knowledge of EFS' continued business with West Carrolton

[7] At the time of trial, Wilson had a pending motion to compel for financial information for CCC. Bradshaw's report concluded with financials for the calendar year 2013.

[8] Plaintiff also brought claims for breaches of fiduciary duties both individually and derivatively. This Court concludes that ordering a buy-out of Wilson's interests at the time of ouster makes a ruling on this claim unnecessary.

suggests that the three accounts were not part of the deal. *See e.g., Rumpf v. Mass. Mut. Life Ins. Co.*, 357 S.C. 386, 394-395 (Ct. App. 2004). A reasonable inquiry in 2009 by Defendants would have established the full extent of EFS activities with these three import accounts, yet even with full knowledge of West Carrollton sales by EFS, Defendants did nothing.

Because Wilson did not breach any fiduciary duty to the Defendants, the claims that Norvell aided and abetted these breaches are likewise without merit. Moreover, there is no evidence that Norvell had any knowledge of Wilson's duties to the Defendants or the nature of his agreement with Gandis.[9] "The gravamen of the claim [of aiding and abetting] is the defendant's knowing participation in the fiduciary's breach." *Future Group, II v. NationsBank*, 324 S.C. 89, 99, 478 S.E.2d 45, 50 (1996) (rejecting a claim of aiding and abetting a breach of fiduciary duty because defendant's lack of actual knowledge prevented knowing participation in the breach). See also *Simmons v. Danhauer & Assocs.*, LLC, 2010 U.S. Dist. LEXIS 112483 (D.S.C. Oct. 21, 2010); *Vortex Sports & Entm't. v. Ware*, 378 S.C. 197, 205, 662 S.E.2d 444, 449 (Ct. App. 2008) (finding liability where the defendant had actual knowledge of a fiduciary duty and "knowingly encouraged" the fiduciary to breach that duty). CCC presented no evidence that Norvell had knowledge of a fiduciary duty Wilson owed to CCC or its members. Nor was there any evidence that Norvell's financing of Wilson's film purchases (as he had done before the formation of CCC) would relate to or encourage breach of any of duty. Defendants failed to prove any of the elements of this claim against either Wilson or Norvell.

C. CCC's Claims for Violation of the S.C. Trade Secrets Act.

CCC failed to prove that Wilson, Neologic, or Freshwater misappropriated CCC's trade secrets. Multiple witnesses who have extensive experience and knowledge of the film and packaging industry testified that much (if not all) of the information claimed as trade secrets is publicly accessible. Trade shows, trade journals, and online sources provide access to customer information, pricing information

[9] At trial, there was conflicting testimony by the Defendants about the precise terms of the Wilson-Gandis agreement, which further undermines any assertion that Norvell knew and understood the agreement between Wilson and Gandis.

as well as information about manufacturers and suppliers. *See e.g., Atwood Agency v. Black*, 374 S.C. 68, 72, 646 S.E.2d 882, 883 (2007) ("Because the information [a list of potential customers] Atwood seeks to protect is available through other proper means, it is not protected as a trade secret."). In addition, Wilson had been in the industry for 20 years and brought much information with him when he joined Gandis in forming CCC. *See Carolina Chem. Equip. Co. v. Muckenfuss*, 322 S.C. 289, 471 S.E.2d 721 (Ct. App. 1996).

Moreover, CCC did not sufficiently safeguard its information as required to warrant protection under the S.C. Trade Secrets Act. South Carolina law defines a trade secret to mean:

> information including, but not limited to, a formula, pattern, compilation, program, device, method, technique, product, system, or process, design, prototype, procedure, or code that (a) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain economic value from its disclosure or use, and (b) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

S.C. Code Ann. § 39-8-20(5)(a) (2012). In *Carolina Chem. Equip. Co. v. Muckenfuss*, 322 S.C. 289, 471 S.E.2d 721 (Ct. App. 1996), the court determined that "[t]he threshold issue in any trade secrets case is not whether there was a confidential relationship or a breach of contract or some other kind of misappropriation, but whether there was a trade secret to be misappropriated," and in order to decide "whether something is a trade secret, one must consider the extent to which the information is known outside of his business and the ease or difficulty with which the information could be properly acquired or duplicated by others." *Id.* at 295, 471 S.E.2d at 724.

A party claiming a trade secret violation must exercise "eternal vigilance," which "calls for constant warnings to all persons to whom the trade secret has become known and obtaining from each an agreement, preferably in writing, acknowledging its secrecy and promising to respect it." *Hill Holliday Connors Cosmopulos, Inc. v. Greenfield*, 433 Fed. Appx. 207, 214 (4th Cir. 2011). "Unlike other assets, the value of a trade secret hinges on its secrecy. As more people or organizations learn the secret, the value quickly diminishes." *Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 472, 674 S.E.2d 154,

161 (2009). Thus while some of Wilson's business practices may have been sharp and his conduct at times deceptive, there was insufficient evidence that his post-CCC activity was anything but legitimate competition by one who had superior knowledge of and wide contacts in the film industry.

Finally, CCC failed to prove its alleged damages were proximately caused by a misappropriation of the alleged trade secrets. The evidence merely demonstrated that Wilson was able to conduct business with some of CCC's former customers after his ouster from CCC. There was very little, if any, evidence that possession of CCC's customer information by Wilson was the proximate cause of any lost revenue experience by CCC.

D. CCC's Claims for Civil Conspiracy.

CCC failed to present sufficient evidence in support of its claims for civil conspiracy against Wilson, Neologic and Fresh Water. "[T]he tort of civil conspiracy contains three elements: (1) the combination of two or more people, (2) for the purpose of injuring the plaintiff, (3) which causes special damages." *City of Hartsville v. S.C. Mun. Ins. & Risk Fin. Fund*, 382 S.C. 535, 546 (2009). The damages element is also slightly different than other causes of action. *Pye v. Estate of Fox*, 369 S.C. 555, 568 (2006).

CCC maintained that Wilson's effort to obtain dissolution, which was funded by Norvell's companies, constituted a conspiracy to harm CCC. The evidence demonstrated that Wilson's efforts were in furtherance of his legal rights and not improper. Norvell's assistance was likewise not improper. Therefore, CCC's claim on this ground fails.

E. Both Parties' Claims for Conversion.

Both parties brought claims of conversion against the other. "Conversion is the unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the alteration of the condition or the exclusion of the owner's rights. . . . [P]laintiff [must] establish either title to or right to the possession of the personal property." *Regions Bank v. Schmauch*,

354 S.C. 648, 667, 582 S.E.2d 432, 442 (Ct. App. 2003). Neither party proved that their chattel or property was converted.

F. Prejudgment Interest.

This court has not found any authority allowing prejudgment interest in a shareholder oppression case, but there is a Court of Appeals decision that did not allow it. *Dibble v. Sumter Ice and Fuel Co.,* 283 S.C. 278, 322 S.E.2d 674 (Ct. App. 1984). Decisions from other jurisdictions have denied prejudgment interest in oppression cases. See *Tifft v. Stevens*, 987 P.2d 1 (Or. Ct. App. 1999); see also *Jahn v. Kinderman*, 814 N.E.2d 116 (Ill. App. Ct. 2004). Wilson points to S.C. Code § 33-44-702(e), which provides that "[i]nterest must be paid on the amount awarded from the date determined under Section 33-44-701(a) to the date of payment." Wilson argues it would be unjust for the court, in the exercise of its equitable powers, to deny a remedy for his unlawful ouster and oppression that would be available for his lawful dissociation. However, prejudgment interest may only be awarded if "the sum is certain or capable of being reduced to certainty based on a mathematical calculation previously agreed to by the parties," and it is plain that the sum was never certain and that the parties did not agree to a mathematical calculation in advance. *Butler Contracting, Inc. v. Court Street, LLC,* 369 S.C. 121, 133, 631 S.E.2d 252, 258 (2006). The record is replete with disagreement on a number of issues which precluded determination of a readily ascertainable value on December 30, 2011. *See Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 673 S.E.2d 448 (2009).

Wilson contends that denying prejudgment interest to a "squeezed out" shareholder but granting it to one merely disassociated creates an unwarranted disparity, and provides no deterrent to the majority's unfair treatment of the minority. The majority could therefore freeze out a minority shareholder, whose only recourse would be judicial dissolution, a remedy that has no prejudgment interest risk to the majority. Wilson's argument is properly addressed to the legislature rather than the courts.

G. **The Trade Secrets Statute.**

Under S.C. Code § 39-8-80, if "(1) a claim for misappropriation is made in bad faith,... the court may award reasonable attorney's fees to the prevailing party." Neologic/Freshwater cites the following alleged facts as supporting its claim of bad faith: (1) CCC never sought to protect trade secrets by way of a non-compete or confidentiality agreement; (2) CCC had no company policy or handbook evidencing the existence of, or attempt to, protect any trade secrets; (3) CCC took no steps to enjoin Wilson, Neologic/Freshwater from using alleged trade secrets; (4) CCC allowed its alleged trade secrets to be produced in response to a subpoena; (5) according to Mr. Campbell, CCC's trade secrets were publicly available on the Internet; and (6) CCC waited two years after Wilson left before it served Neologic and Freshwater. However, South Carolina law states that employees have a duty not to use or disclose trade secrets independent of and in addition to any written contract of employment or secrecy agreement. S.C. Code Ann. § 39-8-30. It is not required that a contract or secrecy agreement exist, and it is understandable that a very small company such as CCC did not have elaborate agreements in affect. Evidence shown at trial demonstrated that Neologic/Freshwater used CCC's confidential information and that CCC was justified in bringing the trade secrets claim. Finally, the convoluted history of the case and the actions of Wilson and Norvell delayed CCC from pressing the claims it decided to bring.

H. **Injunctive Relief.**

Wilson requests that the court grant injunctive relief requiring CCC to perform certain actions pending the buy-out of Wilson. The court declines to become a monitor for feared transgressions. Courts cannot be called upon to preemptively secure genies in bottles that may never be opened. It is precisely for this reason that a party seeking a preliminary injunction must show that "irreparable injury is likely in the absence of injunctive relief." *Winter v. Nat'l Resources Defense Council, Inc.*, 555 U.S. 7, 22 (2008). A party's fear of harm, however legitimate, is not enough if the object of the

harm, however damaging, is not likely to materialize. *See Holiday Inns of America, Inc. v. B & B Corp.*, 405 F.2d 614, 618 (3d Cir. 1969) ("The dramatic and drastic power of injunctive relief may be unleashed only against conditions generating a presently existing threat; it may not be used simply to eliminate the possibility of a remote future injury, or a future invasion of rights. ...") (Aldisert, J.); see also Wright & Miller, Federal Practice & Procedure, section 2948.1 (2013) ("Speculative injury is not sufficient, there must be more than an unfounded fear on the part of the applicant. ... A presently existing actual threat must be shown.").

IV. CONCLUSION

1. Plaintiff Wilson has proven by clear and convincing evidence his claim of minority shareholder oppression. Mr. Gandis and Ms. Comeau Shirley are ordered to purchase Wilson's 45% membership interest at fair value based on Catherine Stoddard's Adjusted December 30, 2011 valuation of CCC, less half of the excess of inventory (i.e., 1/2 of the $101,250.00 figure from Ex. 38 of Del Bradshaw's report), less 25% of the equipment's FMV due to moving costs, and less $50,000.00 for previous advances. In other words, the buyout amount for Wilson's distributional interest would be 45% of the adjusted December 30, 2011 value of CCC after these inventory and equipment adjustments are made, which totals $397,863.23, less $50,000.00 for previous advances, for a total buy-out figure of $347,863.23. The buy-out shall occur no later than March 1, 2015.

2. Plaintiff and the third party Defendants are entitled to judgment on Defendants' claims.

3. Wilson's claims for prejudgment interest and attorneys fees are denied.

IT IS SO ORDERED.

D. Garrison Hill
Circuit Judge

January 2, 2015
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2012CP2302887

David Wilson *vs.* **John Gandis**

CHECK ONE:

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

☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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

☐ **ACTION STRICKEN (*CHECK REASON*):** ☐ Rule 40(j) SCRCP; ☐ Bankruptcy:

☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other: _____

☐ **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; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

_____

PRESIDING JUDGE -

This judgment was entered on the 9th day of January, 2015, and a copy mailed first class this 9th day of January, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

W. Andrew Arnold 712 E. Washington St. Greenville, SC 29601

Mason A. Goldsmith PO Box 1887 Greenville, SC 29602
Daniel L. Draisen 207 E. Calhoun St. Anderson, SC

29621
Larry Lee Plumblee Eppes & Plumblee, P.A. P.O. Box 10066 Greenville, SC 29603
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Thomas L. Stephenson 207 Whitsett St Greenville, SC 29601
Burl F. Williams PO Drawer 10648 Greenville, SC 29603
Bruce Bellinger Campbell 307 Pettigru Street Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO: 2012CP2302887

David Wilson *vs.* **John Gandis**

CHECK ONE:

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☐ **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.

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☐ **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; ☐ Statement of Judgment by the Court:

Dated at Greenville, South Carolina, this .

Court Reporter:

_____

PRESIDING JUDGE -

This judgment was entered on the 24th day of July, 2015, and a copy mailed first class this 24th day of July, 2015, to attorneys of record or to parties (when appearing pro se) as follows:

W. Andrew Arnold Law Office Of W. Andrew Arnold, P.C. 712 E. Washington St. Greenville, SC 29601

ATTORNEY(S) FOR THE PLAINTIFF(S)

Mason A. Goldsmith Elmore Goldsmith, PA P.O. Box 1887 Greenville, SC 29602
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Bruce Bellinger Campbell Horton Drawdy Ward Mullinax & Farry, PA 307 Pettigru Street Greenville, SC 29601

ATTORNEY(S) FOR THE DEFENDANT(S)

Paul B. Wickensimer Greenville County Clerk Of Court - Clerk of Court

CPFORM4M
SCCA SCRCP Form 4 Revised 06/2008

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	C.A. NO.: 2012-CP-23-02887
David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC, Plaintiff, -vs- John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and DecoTex, LLC, Defendants, John Gandis and Andrea Comeau-Shirley, Third-Party Plaintiffs, -vs- Carolina Custom Converting, LLC, Third Party Defendant.	**ORDER**

Plaintiff David Wilson filed this Rule To Show Cause seeking a finding of contempt for Defendants John Gandis and Andrea Comeau-Shirley's failure to pay Wilson $347,863.23 for his membership interest in Carolina Custom Converting, LLC (CCC) as previously ordered. Defendants Gandis and Andrea Comeau-Shirely opposed the motion, arguing the order was stayed upon the filing of an appeal. Defendant CCC opposed being a party to any bond requirement because the money judgment was not against Defendant CCC, but only Gandis and Comeau-Shirley as individual members. The Court has considered the arguments of the parties, all of whom agree this court has jurisdiction to consider the issues at hand, and finds as follows:

MH

22

1. This Court's January 2, 2015 and January 9, 2015 orders constitute a money judgment as provided in S.C. Code §18-9-130, and therefore an exception to the automatic stay under South Carolina Appellate Rule 241(b). However, under §18-9-130, this Court may stay enforcement of the judgment upon posting of a bond, and this Court hereby grants a stay upon the Defendants' posting of a bond or other surety in the amount of $347,863.23 within 30 days of the issuance of this Order.

2. Defendant Gandis is the manager of Defendant CCC, of which Plaintiff remains a member of CCC until his interest is purchased. Gandis and Comeau-Shirley have appealed, and argue that any obligation to pay Plaintiff for his membership share properly belongs to Defendant CCC. Because Gandis continues to manage CCC without Plaintiff's involvement and in light of the findings in the orders under appeal regarding shareholder oppression, requiring a bond is necessary to protect Plaintiff's interest. In addition, considering the unique circumstances of this case, requiring CCC to post bond protects Plaintiff should an appellate court decide that the obligation to pay Plaintiff for his membership interest properly rests with CCC, and the company—of which he is still a member, yet from whose affairs he is excluded—becomes insolvent or otherwise unable to pay the judgment should it be affirmed.

3. Defendant Gandis and Comeau-Shirley argue that the judgment is automatically stayed by the appeal and no exception applies. Even if Defendants are correct, this Court would still order the stay lifted unless Defendants post a bond or other undertaking. See Rule 241(c)(3), SCAR.

THEREFORE, Defendants shall post bond or other surety in the amount of $347,863.23 within 30 days which shall provide for payment to Plaintiff in the event that one or more of the Defendants is required to pay Plaintiff for the value of his interest in CCC as ordered after the appeal is concluded.

IT IS SO ORDERD.

July 22, 2015
Greenville, South Carolina

D. Garrison Hill
Circuit Judge

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS Civil Action No. 2012-CP-23-02887
David Wilson, individually and on behalf of Carolina Custom Converting, LLC, Plaintiff, v. John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC, Defendants. v. Carolina Custom Converting, LLC, Counterclaim Plaintiff, v. David Wilson, Steve Norvell, Neologic Distribution, Inc., and Fresh Water Systems, Inc. Counterclaim Defendants.	**ORDER**

This matter comes before the Court on Defendant Carolina Custom Converting, LLC's (CCC) Motion for Remand Status Conference and Ruling regarding the Time to Complete Purchase of Distributional Interest and Plaintiff David Wilson's Motion to Lift Stay and to Execute Supersedeas Bond. CCC and Wilson submitted affidavits in support of their positions. Defendant CCC filed a memorandum. Counsel for Wilson, CCC and John Gandis and Andrea Comeau-Shirley were all present at the hearing of this matter, and each made arguments to the Court.

Based upon careful consideration of the argument and affidavits submitted by the parties and carefully construing the opinion of the Supreme Court affirming and modifying the judgment in favor of Plaintiff in this case, the Court denies Defendant CCC's requested terms of payment contained in its motion. The Court grants Wilson's Motion to Lift the Stay. Further, Defendant CCC is ordered to pay $250,000 immediately to Wilson. Wilson may pursue the payment of the remainder of the judgment through execution on the supersedeas bond. In addition, this case is hereby referred to the Master in Equity for supplemental proceedings so that the amount and payment of interest can be determined.

IT IS ORDERED.

Alex Kinlaw, Jr.
Presiding Judge, Thirteenth Judicial Circuit

Greenville Common Pleas

Case Caption: David Wilson , plaintiff, et al vs. John Gandis , defendant, et al

Case Number: 2012CP2302887

Type: Order/Amend

So Ordered

s/Alex Kinlaw, Jr., #2763

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS Civil Action No. 2012-CP-23-02887
David Wilson, individually and on behalf of Carolina Custom Converting, LLC, Plaintiff, v. John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC, Defendants. v. Carolina Custom Converting, LLC, Counterclaim Plaintiff, v. David Wilson, Steve Norvell, Neologic Distribution, Inc., and Fresh Water Systems, Inc. Counterclaim Defendants.	**CONSENT ORDER**

This matter comes before the Court after a hearing in the above-captioned matter before Judge Alex Kinlaw after which the Court on October 8, 2020 ordered that certain matters be referred to the Master in Equity. In addition, Defendant Carolina Custom Converting, LLC (hereinafter "CCC") and Plaintiff David Wilson now consent to the Master in Equity hearing and deciding all remaining issues as between Plaintiff David Wilson and Defendant CCC in the above-referenced matter, including those specifically referenced in this Consent Order.

In the first instance, the Master in Equity shall decide whether post-judgment interest accrued on the judgment and order entered on January 9, 2015 as affirmed and modified by the

Supreme Court's June 2, 2020 opinion. The Plaintiff submits that post-judgment interest has accrued, and Defendant Carolina Custom Converting, LLC's submits that post-judgment interest has not accrued. The issue of the amount and accrual of post-judgment interest was a matter referred by Judge Kinlaw's order dated October 8, 2020.

In the second instance, if the Master in Equity finds that post-judgment interest has accrued, then, if necessary, Plaintiff will seek the aid of the Master in Equity for collection of the post-judgment interest through supplemental proceedings against Defendant CCC.

Accordingly, the following process is established for an orderly determination of the remaining issues in this case:

1. Within 21 days of the entering of this Consent Order, Plaintiff will file a letter memorandum setting forth his position that post-judgment interest has accrued and the amount of the same;
2. Within 21 days of the filing of Plaintiff's memorandum, CCC shall file a memorandum setting forth its position that post-judgment interest has not accrued;
3. Within 7 days of the filing of Defendant's memorandum, Plaintiff shall submit a reply to CCC's memorandum.
4. The Court may in its discretion order counsel to appear for a hearing via video conference, or in-person, to present oral arguments; and
5. If the Court determines that post-judgment interest has accrued, then this Court shall preside over any requested supplemental proceedings in furtherance of Plaintiff's efforts to collect post-judgment interest.

IT IS ORDERED.

Perry H. Gravely
Chief Administrative Judge, Thirteenth Judicial Circuit

WE SO MOVE and CONSENT:

s/W. Andrew Arnold
W. Andrew Arnold
SC Bar Number: 65311
307 Pettigru Street
Greenville, South Carolina 29601
(864) 242-4800
FOR Plaintiff

s/Burl F. Williams
Burl F. Williams
SC Bar Number: 77901
201 Riverplace Suite 500
Greenville, South Carolina 29601
864.546.5035
FOR Carolina Custom Converting, LLC

s/ Randall Moody
Randall Moody
S.C. Bar Number 14135
Jackson Lewis, P.C.
15 S Main St #700
Greenville, SC 29601

Greenville Common Pleas

Case Caption: David Wilson , plaintiff, et al vs. John Gandis , defendant, et al

Case Number: 2012CP2302887

Type: Order/Consent Order

So Ordered

s/ Honorable Perry H. Gravely, #2755

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	)	IN THE COURT OF COMMON PLEAS Civil Action No. 2012-CP-23-02887
David Wilson, individually and on behalf of Carolina Custom Converting, LLC, Plaintiff, v. John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC, Defendants. v. Carolina Custom Converting, LLC, Counterclaim Plaintiff, v. David Wilson, Steve Norvell, Neologic Distribution, Inc., and Fresh Water Systems, Inc. Counterclaim Defendants.	)	**ORDER**

This matter comes before this Court on reference by order dated October 8, 2020 as well as a Consent Order dated January 26, 2021 to determine the amount of post-judgment interest, if any, that has accrued on the January 9, 2015 judgment in the above-reference matter.

INTRODUCTION

The facts and procedural history of this 9-year litigation are set out fully in *Wilson v. Gandis*, 430 S.C. 282, 844 S.E.2d 631 (2020), by which the S.C. Supreme Court unanimously upheld Judge Garrison Hill's judgment in favor of Plaintiff Dave Wilson against Defendants for acts of shareholder oppression. The Supreme Court concluded: "We completely agree with the

trial court's conclusion that '[t]he record—particularly the remarkable emails between Gandis and Shirley—abounds with evidence of calculated oppression.' We find Wilson has proven [John] Gandis and [Andrea] Shirley engaged in oppressive conduct against him." *Id. at* 309, 844 S.E.2d at 645. The Supreme Court affirmed the judgment, but modified the judgment to require that Defendant Carolina Custom Converting, LLC ("CCC") to have a reasonable amount of time to pay the judgment. After a reasonable time, Plaintiff could seek to have the judgment paid by Defendants Gandis and Shirley.

After collecting the original judgment amount from the bond posted by the Defendants, Plaintiff seeks to begin supplemental proceedings to collect post-judgment interest pursuant South Carolina Code section 34-31-20(B). Defendants argue that the Supreme Court's decision affirming as modified the January 9, 2015 judgment constitutes a new judgment. Defendants asked this Court to declare that South Carolina Code section 34-31-20(B) is inoperative in the instant case.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On January 9, 2015, Plaintiff Dave Wilson obtained a money judgment for the value of his membership interest in Carolina Custom Converting, LLC. As it relates to post-judgment interest for money judgments, South Carolina law is clear:

> A money decree or judgment of a court enrolled or entered *must* draw interest according to law. The legal rate of interest is equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the damages are awarded, plus four percentage points, compounded annually. The South Carolina Supreme Court shall issue an order by January 15 of each year confirming the annual prime rate. This section applies to all judgments entered on or after July 1, 2005. For judgments entered between July 1, 2005, and January 14, 2006, the legal rate of interest shall be the first prime rate as published in the first edition of the Wall Street Journal after January 1, 2005, plus four percentage points.

S.C. Code Ann. § 34-31-20 (B)(emphasis added). "Our courts have consistently held that use of words such as "shall" or "must" indicates the Legislature's intent to enact a mandatory

requirement." *See e.g., State v. Frey*, 362 S.C. 511, 516, 608 S.E.2d 874, 877 (Ct. App. 2005). The Supreme Court has stated that post-judgment interest under §34-31-20(B) is mandatory (such that a plaintiff does not even need to request it or plead its entitlement). *Calhoun v, Calhoun*, 339 S.C. 96, 102, 529 S.E.2d 14 (2000). This statute creates no exceptions, and the S.C. Supreme Court has found none. [1]

In recognition of the mandatory nature of § 34-31-20(B), our Supreme Court created a "bright-line test" for determining the date of judgments that are "affirmed, but modified." In *Calhoun v. Calhoun*, 339 S.C. 96, 529 S.E.2d 14 (2000), the amount of the judgment had changed on appeal and one of the issues on cert before the Supreme Court was whether modification of the judgment impacted application of the § 34-31-20(B). The Supreme Court held that statutory post-judgment interest runs from the date of the original judgment despite the modification. The Court found that the statute's mandatory language (shall/must) controlled. The Court reasoned as follows:

> The case before us is a perfect example of how complicated calculating post-judgment interest can become when a money judgment is modified at several different junctures before reaching finality and why a bright line rule for the accrual of interest needs to be established. While different jurisdictions have come up with creative and complicated methods of resolving the issue, it appears that the simplest way to resolve it is by adopting a rule that when a money judgment is finalized, whether in a lower court or in an appellate court, the interest on that amount, whether it has been modified upward or downward or remains the same, runs from the date of the original judgment.

Calhoun v. Calhoun, 339 S.C. 96, 104, 529 S.E.2d 14, 18–19 (2000).

In *Calhoun*, the Court states clearly that after a judgment is modified (even at "at several different junctures"), the judgment becomes "finalized" in the appellate court. However, the

[1] "[T]he purpose of post-judgment interest is to compensate the successful plaintiff for being deprived of compensation for the loss from the time between the ascertainment of the damage and the payment by the defendant." *Kaiser Aluminum & Chem. Corp. v. Bonjorno*, 494 U.S. 827, 835–36, 110 S. Ct. 1570, 1576, 108 L. Ed. 2d 842 (1990)(citation omitted). *See* Affidavit of David Wilson.

interest runs from the "date of the *original* judgment." The Supreme Court agreed and held that post-judgment interest accrues from the date of judgment's origin and not the date of the judgment's finalization. So, it is in this case, and this Court finds that Plaintiff is entitled to an award of interest pursuant to S.C. Code § 34-31-20(B) from the date of the January 9, 2015 judgment.

Moreover, although the Supreme Court decision makes CCC primarily liable for payment of the money judgment, Gandis and Shirley remain obligated in the event that the judgment is not paid within a reasonable time. Moreover, the fact that Gandis and Shirley are the majority owners of CCC and the individuals who made the decisions leading to the trial court's order, there is no undue prejudice by allowing the statutory interest. In fact, to hold otherwise, would be to allow a windfall to the at-fault and appealing parties. *See Calhoun*, 529 S.E.2d at 14.

South Carolina Code Ann. § 34-31-20 (B) (2020) provides that the legal rate of interest on money decrees and judgments "is equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the damages are awarded, plus four percentage points, compounded annually." The Supreme Court Order 2021-01-04-01 provides that the statutory rate of interest from January 15, 2021 through January 14, 2022 shall be 7.25%. Based upon the Supreme Court orders setting forth the amount of interest, this Court finds that the total accrued interest through the date of May 1, 2021 is equal to $208,930.15.[2]

This court denies Plaintiff's request for attorneys' fees. This Court finds that the issues raised herein are novel and do not justify an award of fees.

IT IS SO ORDERD.

JUDGE'S SIGNATURE PAGE TO FOLLOW

[2] Interest will continue to accrue until January 14, 2022 at a rate of $40.97/day. After this date, interest will accrue at the statutory rate issued by the Supreme Court for that year.

Greenville Common Pleas

Case Caption: David Wilson , plaintiff, et al vs. John Gandis , defendant, et al

Case Number: 2012CP2302887

Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE	IN THE COURT OF COMMON PLEAS Civil Action No. 2012-CP-23-02887
David Wilson, individually and on behalf of Carolina Custom Converting, LLC, Plaintiff, v. John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC, Defendants. v. Carolina Custom Converting, LLC, Counterclaim Plaintiff, v. David Wilson, Steve Norvell, Neologic Distribution, Inc., and Fresh Water Systems, Inc. Counterclaim Defendants.	**ORDER**

This matter comes before the Court on Defendant Carolina Custom Converting, LLC's (hereinafter "CCC") motion to reconsider this Court's order dated May 4, 2021 determining Plaintiff is entitled to accrued statutory post-judgment interest on the January 9, 2015 judgment. A hearing was held June 8, 2021.

For the reasons stated in the May 4, 2021 order, the Court denies this motion. In the May 4, 2021 order, the Court construed South Carolina Code Section 34-31-20 consistent with the plain meaning of the statute and S.C. Supreme Court precedent. Plaintiff is entitled to statutory post-judgment interest accruing from January 9, 2015 until the judgment is fully paid.

However, Defendant did raise additional arguments: Defendant argues that the post-judgment interest should have ceased accruing upon the date of the remittitur (June 26, 2020) because the Supreme Court provided CCC a reasonable time to pay the judgment before the obligation reverting to Defendants John Gandis and Andrea Comeau-Shirley. However, the Supreme Court's order does not provide for any such suspension of the accrual of post-judgment interest under S.C. Code Section 34-31-20. Statutory post-judgment interest accrues from the date of the entry of the judgment until the judgment is fully paid. The May 4, 2021 order accurately establishes the amount of accrued interest as of May 4, 2021.

Notwithstanding the above, CCC filed a "SUPPLEMENTAL Rule 59 (c) Motion" on June 10, 2021. To the extent the court has jurisdiction and authority to hear the issues raised in this motion, which the court does not believe it does, the same would be denied. The substance of the argument is that by posting an appeal bond, interest on a judgment no longer accrues. An appeal bond suspends enforcement of a judgment but does not, in the court's opinion, suspend accruing of statutory interest.

IT IS ORDERED.

JUDGE'S ELECTRONIC SIGNATURE TO FOLLOW

Greenville Common Pleas

Case Caption: David Wilson , plaintiff, et al vs. John Gandis , defendant, et al

Case Number: 2012CP2302887

Type: Master/Order/Other

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE David Wilson, individually and on behalf of Carolina Custom Converting, LLC, Plaintiff, v. John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC, Defendant, v. Carolina Custom Converting, LLC Counterclaim Plaintiff, v. David Wilson, Steve Norvell, Neologic Distribution Inc., and Fresh Water Systems, Inc. Counterclaim Defendants.	IN THE COURT OF COMMON PLEAS C/A No. 2012-CP-23-02887 **CONSENT ORDER FOR MOTION TO DEPOSIT FUNDS PURSUANT TO RULE 67, SCRCP**

This matter comes before the Court through Carolina Custom Converting, LLC, John Gandis, and Andrea Comeau-Shirley's (the "Movants") Rule 67 Motion to Deposit Funds (the "Motion"). At the time Movant's filed the Motion, David Wilson ("Mr. Wilson" and along with the Movants, hereinafter referred to as the "Parties") stated that he would not oppose the motion. Subsequently, the Court has been notified that Movants and Mr. Wilson have reached an agreement on the Motion and seek entry of a consent order to memorialize and effectuate the agreement.

WHEREAS, in an Order dated May 4, 2021, the Court found that Mr. Wilson was entitled to a post-judgment interest award of $208,930.15 and accruing at a rate of $40.97/day.

WHEREAS, on May 11, 2021, the Movants filed the Motion seeking to deposit the post-judgment interest award into Court in anticipation of an appeal of the May 4, 2021 Order.

WHEREAS, the Parties have reached an agreement regarding the Motion that they seek to memorialize and effectuate through entry of a consent order.

Effective as of the date of the Order, the Movants are directed to deposit the sum of $210,650.89 into the Fidelity Total Bond Fund, ticker FTBFX, (the "Fund") in the name of Carolina Custom Converting, LLC. The Parties agree that the deposit of the monies into the Fund will be treated as a deposit of monies into the Court for purposes of Rule 67. Specifically, any accrual of post-judgment interest will cease upon deposit of the monies into the Fund. The Parties further agree that any monies owed to Mr. Wilson by Carolina Custom Converting, LLC, John Gandis, and/or Andrea Comeau-Shirley as a result of the May 4, 2021 Order or appellate court decisions, will be satisfied exclusively by the monies in the Fund regardless of whether the amount of monies in the Fund is sufficient to satisfy the amount owed.

Carolina Custom Converting, LLC shall not use or move the monies in the Fund until a final disposition of the appeal, or as mutually agreed upon by the Parties as provided hereinbelow. Carolina Custom Converting, LLC will provide statements of the Fund to Mr. Wilson upon request or provide him with view-only access.

Mr. Wilson and Movants agree that any payment owed Mr. Wilson following the appeal will be made exclusively from the Fund. Mr. Wilson and the Movants understand that during the life of the forthcoming appeal the value of the Fund could decrease below the amount of the post-judgment interest award of $210,650.89. Mr. Wilson and Movants have accepted that risk.

Upon conclusion of the forthcoming appeal of the May 4, 2021 Order the Fund shall be distributed as follows:

- If Mr. Wilson obtains an affirmance of the May 4, 2021 Order, then he shall be entitled to the monies held in the Fund.
- If Movants obtain a reversal of the May 4, 2021 Order, then Movants shall be entitled to the monies held in the Fund.
- If the appeal produces a reduction of the post-judgment interest award found in the May 4, 2021 Order, then the amount of monies owed to Mr. Wilson shall be reduced on a percentage basis as follows. If an appellate court awards less than the initial sum of $210,650.89 , then the Parties shall calculate the percent of the reduced award against the initial sum of $210,650.89 and multiply that percentage by the amount of the Fund. For example, if an appellate court awards post judgment interest of $186,240.59 to Mr. Wilson, that award would represent 89.14% of the initial Fund amount. Consequently, if there is $230,000.00 in the Fund at the conclusion of the appeal, then Mr. Wilson would be entitled to 89.14% of those monies or $205,022. The balance in this scenario would belong to Carolina Custom Converting, LLC.

The Parties further agree to allow for an escape hatch in the event market conditions cause the Parties to believe it would be in their best interest to remove the monies from the Fund. In the event this occurs, and upon mutual agreement of the Parties, the invested monies may be sold, and the resulting monies placed into an interest-bearing account within the Fidelity platform in the name of Carolina Custom Converting, LLC. The above-described restriction on the use of those monies and the subsequent pay-out of the monies at the conclusion of the appeal would operate in the same manner as set forth above.

The Parties further agree that any fees or costs associated with the creation and maintenance of the Fund will be paid from the $210,650.89 that is used to open the Fund. Consequently, the initial funding amount may be less than $210,650.89.

IT IS THEREFORE ORDERED.

JUDGE'S SIGNATURE BLOCK BELOW

WE SO CONSENT:

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Greenville Common Pleas

Case Caption: David Wilson , plaintiff, et al vs. John Gandis , defendant, et al

Case Number: 2012CP2302887

Type: Order/Consent Order

And It Is So Ordered!

s/ Judge Charles B. Simmons, Jr. (3023)

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC, Plaintiff,

v.

John Gandis, Andrea Comeau-Shirley, Zoi Films, LLC, and Carolina Custom Converting, LLC, Defendants,

John Gandis and Andrea Comeau-Shirley, Third-Party Plaintiffs,

v.

Carolina Custom Converting, LLC, Third Party Defendant and Counterclaim Plaintiff,

v.

Dave Wilson, Steve Norvell, Neologic Distribution, Inc. and Fresh Water Systems, Inc.,

Of Whom David Wilson, Neologic Distribution, Inc., and Fresh Water Systems, Inc., are the Respondents,

and

John Gandis, Andrea Comeau-Shirley, and Carolina Custom Converting, LLC, are the Appellants.

Appellate Case No. 2015-000476

Appeal From Greenville County
D. Garrison Hill, Circuit Court Judge

Unpublished Opinion No. 2018-UP-078
Heard November 8, 2017 – Filed February 7, 2018

AFFIRMED

Joseph Owen Smith, of Roe Cassidy Coates & Price, PA, and D. Randle Moody, II, of Jackson Lewis, P.C., both of Greenville, for Appellants John Gandis and Andrea Comeau-Shirley; and Burl F. Williams, of Nexsen Pruet, LLC, of Greenville, for Appellant Carolina Custom Converting, LLC.

Bruce Bellinger Campbell, of Horton Law Firm, P.A., of Greenville, for Respondents Neologic Distribution, Inc. and Fresh Water Systems, Inc.; and W. Andrew Arnold, of Horton Law Firm, P.A., of Greenville, for Respondent David Wilson.

PER CURIAM: In this civil matter, Carolina Custom Converting, LLC (CCC), John Gandis, and Andrea Comeau-Shirley appeal the circuit court's order finding Gandis and Shirley "froze-out" David Wilson as the minority shareholder of CCC and ordering Gandis and Shirley to buy out Wilson's interest in CCC. On appeal, Gandis and Shirley argue the circuit court erred in (1) finding Wilson did not breach his fiduciary duties to Gandis and Shirley, (2) finding Gandis and Shirley froze-out and oppressed Wilson, (3) ordering them to buy out Wilson's interest despite the absence of unconscionable conduct, and (4) awarding Wilson equitable relief when he had unclean hands. CCC argues the circuit court erred in (1) finding no trade secret existed under the South Carolina Trade Secret Act, (2) finding CCC did not sufficiently safeguard its confidential information, (3) finding CCC was not entitled to damages for trade secret misappropriation, and (4) misapplying fiduciary duty law and the statute of limitations to the claims of breach of fiduciary duty and usurpation of corporate opportunity. We affirm and

adopt the circuit court's order in full. *See Byrd v. Livingston*, 398 S.C. 237, 245, 727 S.E.2d 620, 624 (Ct. App. 2012) (adopting the circuit court's order as to some issues); *Grosshuesch v. Cramer*, 367 S.C. 1, 6, 623 S.E.2d 833, 835 (2005) (adopting the reasoning set forth in the circuit court's order as to some of the issues on appeal).

AFFIRMED.

WILLIAMS, THOMAS, and MCDONALD, JJ., concur.

THE STATE OF SOUTH CAROLINA
In The Supreme Court

David Wilson, individually and derivatively on behalf of Carolina Custom Converting, LLC, Plaintiff,

v.

John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC, Defendants,

John Gandis and Andrea Comeau-Shirley, Third-Party Plaintiffs,

v.

Carolina Custom Converting, LLC, Third Party Defendant and Counterclaim Plaintiff,

v.

Dave Wilson, Steve Norvell, Neologic Distribution, Inc. and Fresh Water Systems, Inc.,

Of Whom David Wilson, Neologic Distribution, Inc., and Fresh Water Systems, Inc., are the Respondents,

and

John Gandis, Andrea Comeau-Shirley, and Carolina Custom Converting, LLC, are the Petitioners.

Appellate Case No. 2018-001140

ON WRIT OF CERTIORARI TO THE COURT OF APPEALS

Appeal from Greenville County
D. Garrison Hill, Circuit Court Judge

Opinion No. 27980
Heard June 12, 2019 – Filed June 3, 2020

AFFIRMED AS MODIFIED AND REMANDED

D. Randle Moody III and John William Sulau, of Jackson Lewis P.C., of Greenville, both for Petitioners Andrea Comeau-Shirley and John Gandis.

Burl F. Williams and Konstantine Peter Diamaduros, of Nexsen Pruet, LLC, of Greenville, both for Petitioner Carolina Custom Converting, LLC.

Bruce Bellinger Campbell, of Horton Law Firm, P.A., of Greenville, for Respondents Fresh Water Systems, Inc. and Neologic Distribution, Inc.

W. Andrew Arnold, of Horton Law Firm, P.A., of Greenville, for Respondent David Wilson.

JUSTICE JAMES: We granted a writ of certiorari to review the court of appeals' decision in *Wilson v. Gandis*, Op. No. 2018-UP-078 (S.C. Ct. App. filed Feb. 7, 2018). We affirm as modified the court of appeals' decision as to David Wilson's claim for oppression, we affirm the court of appeals' decision as to John Gandis' and Andrea Comeau-Shirley's claim for breach of fiduciary duty, and we affirm the court of appeals' decision as to Carolina Custom Converting, LLC's claim for misappropriation of trade secrets.

I.

David Wilson, John Gandis, and Andrea Comeau-Shirley (Shirley) are members of Carolina Custom Converting, LLC (CCC). Wilson, a 45% member, brought an action against Gandis (also a 45% member), Shirley (a 10% member), and CCC alleging they engaged in oppressive conduct against him. Wilson also brought a derivative action against CCC. Relief sought by Wilson included a forced buyout of his membership interest by Gandis, Shirley, and CCC. CCC counterclaimed against Wilson, alleging Wilson misappropriated its trade secrets and communicated these secrets to Neologic Distribution, Inc. and to Fresh Water Systems, Inc.

During a five-day bench trial, the trial court received over three hundred exhibits and heard testimony from ten witnesses. The trial court found Gandis and Shirley engaged in oppressive conduct and ordered them to individually purchase Wilson's distributional interest in CCC for $347,863.23. The trial court found in favor of Wilson on CCC's, Gandis', and Shirley's counterclaim for breach of fiduciary duty.[1] The trial court also found in favor of Wilson, Neologic, and Fresh Water on CCC's trade secrets claim. CCC, Gandis, and Shirley appealed. In an unpublished opinion, the court of appeals affirmed the trial court and adopted the trial court's order in its entirety. *Wilson v. Gandis*, Op. No. 2018-UP-078 (S.C. Ct. App. filed Feb. 7, 2018). CCC, Gandis, and Shirley filed petitions for writs of certiorari to review the court of appeals' decision. We granted their petitions.

II. STANDARDS OF REVIEW

We must apply different standards of review to the cases before us. CCC is not a corporation but rather is a limited liability company. In the corporate setting, a minority shareholder's action for shareholder oppression is one in equity. *See Pertuis v. Front Roe Rests., Inc.*, 423 S.C. 640, 648, 817 S.E.2d 273, 277 (2018) ("An action for stockholder oppression is one in equity."). We conclude a minority LLC member's action for oppression is likewise an action in equity. This Court reviews "factual findings and legal conclusions in an equitable action de novo." *See Regions Bank v. Wingard Props., Inc.*, 394 S.C. 241, 248, 715 S.E.2d 348, 352 (Ct. App. 2011). "Therefore, we may find facts according to our own view of the preponderance of the evidence." *Ballard v. Roberson*, 399 S.C. 588, 593, 733 S.E.2d

[1] CCC appealed from this ruling to the court of appeals; however, CCC did not argue the issue of breach of fiduciary duty in its brief to this Court.

107, 109 (2012). "However, this broad scope of review does not require [this Court] to disregard the findings below or ignore the fact that the trial judge [was] in the better position to assess the credibility of the witnesses." *Pinckney v. Warren*, 344 S.C. 382, 387, 544 S.E.2d 620, 623 (2001). In addition, a petitioner is not relieved of its burden of convincing this Court that the trial court committed error in its findings. *Id.* at 387-88, 544 S.E.2d at 623.

CCC seeks money damages from Wilson, Neologic, and Fresh Water under the South Carolina Trade Secrets Act.[2] Under subsection 39-8-40(A) of the Trade Secrets Act, a complainant is entitled to recover actual damages for misappropriation of its trade secrets. Under subsection 39-8-50(A), the complainant may also obtain injunctive relief for actual or threatened misappropriation of its trade secrets. Whether a trade secret misappropriation action is an action at law or an action in equity depends in part on the relief sought by the complainant. *See LinkCo, Inc. v. Fujitsu Ltd.*, 232 F. Supp. 2d 182, 192 (S.D.N.Y. 2002) (internal citation omitted) ("Where a plaintiff seeks damages for trade secret misappropriation, rather than equitable relief, the claim is essentially legal in nature. Because [plaintiff] is seeking damages, its misappropriation claim is an action at law. . . ."); *see also Cedar Cove Homeowners Ass'n, Inc. v. DiPietro*, 368 S.C. 254, 258, 628 S.E.2d 284, 286 (Ct. App. 2006) ("The character of an action as legal or equitable depends on the relief sought.").

CCC's action for misappropriation of trade secrets is an action at law. "In an action at law tried without a jury, an appellate court's scope of review extends merely to the correction of errors of law." *Temple v. Tec-Fab, Inc.*, 381 S.C. 597, 599-600, 675 S.E.2d 414, 415 (2009). "The Court will not disturb the trial court's findings unless they are found to be without evidence that reasonably supports those findings." *Id.* at 600, 675 S.E.2d at 415. Of course, we review de novo the trial court's legal conclusions in an action at law. *See id.* at 599-600, 675 S.E.2d at 415.

As to Gandis' and Shirley's petition, we affirm the court of appeals as modified. We find Wilson has proven that Gandis and Shirley engaged in oppressive conduct against him. We find Wilson is entitled to a buyout of his interest in CCC, and we agree with the trial court's valuation of Wilson's distributional interest. However, we modify the trial court's order to make CCC liable for the purchase of Wilson's interest in the first instance, with Gandis and Shirley being secondarily liable for the purchase, in proportion to their respective membership interests in

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[2] S.C. Code Ann. §§ 39-8-10 to -130 (Supp. 2019) (hereinafter, the Trade Secrets Act).

CCC. We remand this issue to the trial court for further proceedings consistent with this opinion. We also affirm the court of appeals as to Gandis' and Shirley's counterclaim for breach of fiduciary duty.

As to CCC's petition, we hold the evidence in the record supports the trial court's conclusion that CCC failed to prove its trade secret misappropriation claim against Wilson, Neologic, and Fresh Water. Therefore, we affirm the court of appeals' holding in the trade secrets case.

III. FACTS

Gandis, Shirley, and CCC maintain the evidence supports none of the trial court's dispositive factual findings, and they likewise contend the trial court's dispositive conclusions of law are entirely erroneous. Wilson, Neologic, and Fresh Water maintain the trial court's factual and legal findings are unassailable. In the following recitation of our factual findings relative to the oppression claim, we will not undertake to set forth every point of disagreement asserted by Gandis, Shirley, and CCC.

In November 2007, Wilson and Gandis formed CCC, a manager-managed limited liability company, with each man owning a 50% membership interest. Gandis served as president and manager, and Wilson served as vice-president. Wilson and Gandis never executed a formal operating agreement for CCC, but many of their oral agreements were memorialized through email correspondence and on a questionnaire they completed with the intent to create an operating agreement. Wilson and Gandis signed no noncompete, nondisclosure, or non-solicitation of employee(s) agreements.

When CCC was formed, Wilson owned and operated Eastern Film Solutions (EFS), which bought and sold polyester, plastic, and metalized films. Gandis owned and operated DecoTex, which bought and sold decorative designs for vinyl film. Wilson and Gandis initially agreed that CCC would perforate and slit film. Wilson agreed to run some of EFS's slitting business through CCC.

In 2008, Wilson and Gandis discussed expanding CCC's scope of operations and winding down their individual businesses. They discussed EFS buying film from CCC and selling it as an additional source of income to CCC. Wilson also agreed to make CCC the buyer and seller of film for one of EFS's major accounts, Minova, resulting in significant additional revenues for CCC. The Minova account prompted additional discussions between Gandis and Wilson about EFS winding

down and running all new film business through CCC. However, Wilson advised Gandis he intended to keep three import accounts separate from CCC, namely Modular Metal, West Carrollton, and a portion of J.P. Lamborn. After CCC's expansion, Wilson led CCC's sales efforts, and Gandis managed its operations. By July 2009, Wilson completed the year-long process of winding down EFS.

In exchange for transferring EFS's accounts to CCC, Wilson received $8,000 per month. Wilson and Gandis later agreed to increase this to $12,000 per month. Gandis continued to own and operate DecoTex, and he agreed to fund CCC through credit lines from DecoTex and his other business, M-Tech. In addition, Gandis and Wilson both received distributions from CCC. CCC operated out of a building owned by M-Tech; since Gandis owned M-Tech, he received the benefit of rent payments made by CCC to M-Tech.

In 2008, Gandis engaged Shirley, a certified public accountant licensed in Georgia, to provide CCC with accounting and formation advice. In 2009, Gandis and Wilson each transferred a 5% interest in CCC to Shirley in exchange for her services. Shirley did not have a formal voting interest; however, she took an active role in managing CCC. Shirley provided extensive personal counsel to Gandis about his operation of CCC. Gandis and Shirley largely excluded Wilson from their discussions about CCC's business operations. As we will discuss, Gandis and Shirley exchanged a myriad of emails about the operation of CCC, and these emails provide evidence of their oppressive conduct against Wilson.

CCC's business grew, and with the help of a film shortage in the industry, CCC posted a profit of over one million dollars in 2010. Since CCC is a limited liability company, its members have income tax liability proportionate to their membership interests. From the time CCC was formed in 2007 and through 2010, CCC reserved funds for the members to cover their individual tax liabilities. However, CCC had an operating loss in 2011. The high profits from 2010 combined with excess inventory created phantom income for the members, and the leaner revenue from 2011 resulted in a shortfall for the planned 2010 tax distributions.

Gandis had previously procured a line of credit for M-Tech, one of his other businesses. CCC typically relied upon the line to help even out cash flow and to purchase inventory. In private emails to Gandis in early 2011, Shirley urged Gandis to use funds set aside by CCC for its members' 2010 tax liability to pay off CCC's obligation on the M-Tech line of credit. These reserved tax funds were typically kept on hand by CCC and distributed to members to cover their income tax liability. In one early 2011 email to Gandis, Shirley stated, "What I want to do is to keep the

cash balance [of CCC] relatively low . . . so we don't get a request around tax time [from Wilson] to 'distribute' any extra money . . . instead . . . it will already have been used to repay debt. Which is a better use!" (ellipses in original). She then advised Gandis to use the M-Tech line of credit to pay his own taxes, which Gandis did. On April 15, 2011, Shirley told Wilson by email that no distributions would be made to CCC members to cover tax liability.

Trial testimony and emails between Shirley and Gandis from early 2011 reveal their plan to use CCC's employees to perform tasks for Gandis' other businesses, M-Tech and DecoTex. Also, Shirley and Gandis began secretly monitoring Wilson's emails. Shirley sent an email to Gandis in March 2011 telling Gandis that she contacted a CCC employee "to get the name of the software . . . the more we act like nothing special is going on . . . the less likely they are to think that something unusual is going on . . . . The same stuff that protects the business ALSO helps protect the other goals." (ellipses in original). Gandis testified he and Shirley were not secretly monitoring Wilson's emails but were simply collecting all of CCC's incoming emails into an archive so customer quotes and other information would be available for future reference. We agree with the trial court that this testimony was not credible.

Gandis also testified Wilson received notice from CCC's employee handbook that emails were subject to review. However, an employee handbook had never been issued. The record contains an affidavit signed by Gandis with a draft copy of the never-issued handbook attached; the draft provides in pertinent part, "There is no personal privacy in any matter created, received, or sent from the E-mail system. [CCC], in its discretion, reserves the right to monitor and to access any matter created, received, or sent from the E-mail system." Since the handbook was never issued to Wilson or anyone else employed by CCC, Gandis' contention that CCC had the right to monitor Wilson's emails is completely without evidentiary support.

On September 19, 2011, Gandis retrieved a September 12, 2011 email sent to Wilson by Wilson's wife. We agree with the trial court's conclusion that, "[f]rom this point forward, the emails between Gandis and Shirley evidence an effort to exclude Wilson from the benefits of ownership and to cease paying [Wilson] his monthly income as part of an effort to 'squeeze' [Wilson] to relinquish his ownership interest." In the September 12 email to Wilson from his wife, Wilson's wife referenced Wilson hanging up on her during a telephone conversation and also expressed her frustration about Shirley's and Gandis' operation of CCC.

Adding to Gandis' credibility problems was his initial testimony that he did not recall reading any emails between Wilson and Wilson's wife. When confronted with the September 12 email during trial, Gandis testified Wilson's wife should not have emailed her husband at his company email address if she considered the email to be private. Gandis admitted he forwarded the indisputably private email to Shirley with the comment, "I just want you to know what I know so that when the time comes . . . ?" (ellipsis in original). Shirley responded to Gandis that the email demonstrated marital discord, and she advised Gandis of a possible way to take advantage of the situation:

> This is probably your opportunity to make a RESTRUCTURING offer to [Wilson] under which you restructure your relationship with him so that he gives up his equity ownership and converts to a structure where he is only [ ] taxed on what he receives!
>
> . . . .
>
> Now is the time to see if he wants to be in a different structure . . . we can restructure so that he is not an owner as of 1/1/[2012] . . . and you can put him into a different deal that compensates him for his time and energy – maybe more like a regional sales manager is paid – so he gets paid on his sales and also on the sales of the team.

(most ellipses in the original).

The next morning, Shirley sent Gandis an even more detailed email expanding on her previous advice to restructure Wilson's position with CCC. In that email, Shirley referenced Wilson's wife and directed Gandis on the tactics he should employ in getting Wilson to agree to restructure his relationship with CCC, with the obvious goal of Wilson divesting his membership in CCC and becoming an employee with a noncompete agreement. She then presented a framework that reflected the ultimate goal of Wilson becoming a salaried employee on terms that would allow CCC to terminate him for the smallest of reasons and with a noncompete agreement standing in his way to other employment. Even though Wilson held a 45% interest in CCC, Shirley admonished Gandis that Wilson "cannot continue to have access to the financial records" of CCC.

On September 21, 2011, Wilson sent Gandis an email asking for a meeting with Gandis and Shirley. Wilson expressed his interest in knowing what "the game plan is for cash flow and taxes." Gandis forwarded the email to Shirley with the comment, "Now maybe the panic[] is setting in." Shirley responded to Gandis with, among other things, her recommendation that Gandis continue to push Wilson toward relinquishing his membership interest and becoming an employee.

In the spring of 2011, Gandis and Shirley began to defer their member distributions, and CCC began to classify Wilson's monthly member distributions as loans from CCC. Wilson testified Gandis had foregone his distributions in the past, and that at the end of the year, CCC would write Gandis a check to "catch things up." Wilson testified he assumed the same would happen for 2011. In early October 2011, on the advice of Shirley, Gandis presented Wilson with two options: (1) surrender his membership interest in CCC in exchange for the satisfaction of his $123,000 loan balance or (2) become an employee of CCC paid on commission. Wilson responded that he believed the value of his membership interest in CCC was over four times more than $123,000, and he countered with three options for Gandis and Shirley to consider: (1) CCC makes regular distributions to the members to cover each of their tax liabilities; (2) Wilson resigns from CCC while maintaining his 45% interest in CCC and competing with CCC; or (3) Wilson resigns and dissociates from CCC, and CCC either purchases his distributional interest or dissolves. In late October 2011, Gandis responded to Wilson with three options: (1) Wilson remains a member but foregoes the agreed-upon monthly compensation; (2) Wilson retires his membership interest, becoming a salaried at-will employee of CCC with a five-year noncompete agreement; or (3) CCC buys out Wilson's interest; however, the buyout would not eliminate Wilson's tax liability for 2010 or 2011. Wilson was required to choose an option by November 21. In November 2011, Shirley extended Wilson's deadline to January 7, 2012. Unbeknownst to Wilson, around this time, Shirley revoked Wilson's authority to make wire transfers. Also, Wilson was removed as a signatory on CCC's bank account, and Gandis remained the only signatory on the account.

As the January 7 deadline approached, Shirley prepared a "Pro-Forma Balance Sheet" to accompany an offer to Wilson to buy his membership interest. However, the balance sheet contained questionable accruals and removed assets that had been listed on previous CCC balance sheets. The balance sheet also devalued Wilson's interest in CCC. Gandis and Shirley indicated they would sell their membership interests at a price based upon this balance sheet; however, their actual offer to Wilson had materially different terms, including a requirement that Shirley be paid

a $100,000 "preference on units" and the requirement that Wilson purchase M-Tech's building, which Shirley previously deemed a "burden."

The parties did not reach an agreement, and Wilson did not receive his $12,000 monthly compensation in January 2012. With Gandis' consent, Wilson approached potential buyers of CCC and provided them with information about CCC's financial status, absent customer names, and subject to a non-disclosure agreement. During this time, Shirley counseled Gandis to be patient and to allow the pressure to build on Wilson. Specifically, in a January 5 email from Shirley to Gandis, with the subject "[Wilson's] Offer Expires? Patience, grasshopper, patience . . .," Shirley advised Gandis to "PLEASE JUST LET THIS SLEEPING DOG LIE." In the same email, Shirley made other statements, such as:

> We need to remember that we don't care if he is a partner or not . . . only he cares, and even then, he really only cares about getting his cash in front of vendors and employees – and we have told him [ ] NO MORE!
>
> . . . .
>
> My first preference is he buys us out at the price we offered him – there is no deadline on that ability. He can make that offer anytime over the next month or so.
>
> My second preference is that we keep him as a partner – but we have to recapitalized [sic] and reorganize the company to continue. I hope he stays as partner . . . . Then we need to increase my equity for my additional participation and then we will increase your equity for the funding you are providing to the company . . . and I can see us ending up in a structure where you are 50% – [Wilson] is 25% and I am 25%. Your new LLC shares have super-voting rights [and] have a PRIORITY at liquidation. My new shares will also have a priority. . . . We get the additional money from you we need to buy this film – we give you the new super-voting shares and we get on with getting on!
>
> The last thing I want is [Wilson] as an employee. First he will never agree to an all commission deal that is right for

> our company. He will want a base that is so SAFE he knows he can earn in his sleep; I worry that we will never get a contract with him that is *good for us*! . . .
>
> Once we restructure our partnership – then if [Wilson] wants to make a million bucks – then he is going to have to make you 2 million bucks (as you will own twice the equity that he owns). ALSO – if he is going to make a million – then I will as well. From my perspective – at least as I am working hard to make our company money and to get positioned for growth – I won't be in the position of making [Wilson] rich while I just barely earn my hourly rate for services!
>
> He has already gone 5 days longer than normal without asking for a check! Let's just keep on focus for our operating plan for 2012 and try not to let him be the giant distraction that he was in 2011.

(most ellipses in original) (emphasis added).

In addition to approaching potential buyers of CCC, Wilson discussed potential employment with FILMtech, a competing company, and indicated he was not bound by a noncompete or a non-disclosure agreement. In a January 16 email to FILMtech, Wilson promised to "move as much of the business I manage at CCC to Filmtech as quickly as possible. In addition, I will work to bring prospective business that CCC has been working on or qualifying over the past 3 to 6 months." However, Wilson did not secure employment with FILMtech.

January 17 emails between Gandis and Shirley reveal their decision to terminate Wilson and physically lock him out of his office but at the same time maintain the narrative that Wilson resigned. Gandis emailed Shirley regarding "[p]ossible legal ramifications for firing [Wilson]" and asking "[w]hat words should I use in the termination?" and "[w]hat steps would I have to go through to get the law on site for the termination?" Shirley gave Gandis what she termed a "small pep talk," with the following instructions: (1) to "remember you have already fired other people and that SC has fairly lax employment laws. So you really cannot botch this as long as you keep a professional attitude and you don't say anything that is not necessary"; (2) to tell Wilson that Wilson's attorney contacted their attorney to

inform them he intended to leave CCC; and (3) to not accept an oral offer Wilson previously made.

On January 18, Gandis arrived at CCC's Greenville office with a law enforcement officer and a locksmith and advised Wilson his resignation was accepted. Wilson protested that he had not resigned. The officer did not force Wilson from the premises because Wilson was a co-owner of CCC; however, Wilson eventually left with two laptops, a Blackberry, files, his personal tax returns, and bank statements. The locksmith completed the lock replacement, and the next day, CCC's attorney sent Wilson's attorney a letter demanding that Wilson return CCC's property and instructing that Wilson "not destroy, copy, sell, or use any of this property, including the computer data." In a January 21 email to Gandis, Shirley advised Gandis to "ignore what I said about '[Wilson] resigned'" and to instead take the position that Wilson was locked out because Shirley and Gandis believed him to be competing against CCC.

Immediately after locking Wilson out, Gandis and Shirley terminated Wilson's and his family's health insurance coverage and cell phone service. Gandis and Shirley increased CCC's monthly rent payments to M-Tech (wholly owned by Gandis) from $2,500 to $6,000. They also increased the interest rate on the M-Tech line of credit used by CCC, thereby increasing the return to Gandis.

In July 2012, unbeknownst to Wilson, Gandis and Shirley formed ZOi Films, LLC, in Georgia. ZOi was organized with two members: M-Tech (owned by Gandis) and Major Brain Storms, Inc., a Georgia corporation owned by Shirley. Gandis and Shirley initially claimed ZOi was formed to "rebrand" CCC because, in their judgment, "CCC didn't have the best reputation for quality." Shirley advised Gandis "to consider another Company name to use [other than CCC]. . . . In this manner – we don't need to haggle with [Wilson] about how much of this new stuff is 'his.'" (ellipsis in original). After Wilson discovered Gandis and Shirley had formed ZOi, Gandis and Shirley maintained ZOi was intended to be a wholly-owned subsidiary of CCC; however, they did not explain why they did not let Wilson, their fellow member in CCC, know about ZOi's formation.

Once Wilson was locked out of CCC premises, he began working and selling for Neologic, a competitor of CCC owned by the wife of Steve Norvell, Wilson's brother-in-law. Norvell's wife also partly owns Fresh Water, and Norvell is president of Neologic and Fresh Water. Fresh Water is not in the film industry. Neologic began selling film in 2012, mostly to CCC's customers with whom Wilson

had long-term relationships that predated CCC's existence. In 2013 and 2014, Wilson continued to sell film for Neologic to CCC's customers.

Wilson filed suit against Gandis and Shirley in 2012 and set forth several causes of action. Wilson sued CCC at a later time, and at some point, Neologic, Fresh Water, and Wilson were sued by CCC. Pertinent to this appeal are (1) Wilson's claim against Gandis and Shirley for minority member oppression, (2) Gandis' and Shirley's counterclaim against Wilson for breach of fiduciary duty, and (3) CCC's claim against Wilson, Neologic, and Fresh Water for misappropriation of trade secrets.

IV. TRIAL COURT'S RULING

Following a five-day bench trial in 2014, the trial court found Gandis and Shirley engaged in oppressive conduct against Wilson and ordered them to individually purchase Wilson's interest in CCC. Specifically, the court found, "This is a classic squeeze-out, and Wilson established by clear and convincing evidence that 'the managers [and] members in control of [CCC] have acted, are acting [and] will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to [Wilson].'" (most alterations in original) (quoting S.C. Code Ann. § 33-44-801(4)(e)).

The trial court also found "[t]he record—particularly the remarkable emails between Gandis and Shirley—abounds with evidence of calculated oppression," providing "multiple examples of oppressive and prejudicial actions by Gandis, CCC's manager, and Shirley, who exercised control delegated to her by Gandis, including the management of CCC's financial affairs." The trial court summarized Gandis' and Shirley's following acts as oppressive and unfairly prejudicial: (1) initiating an "Exit Strategy from [Wilson]"; (2) threatening to stop Wilson's agreed-upon and guaranteed monthly payments unless he relinquished his membership interest and became an at-will employee with a noncompete agreement; (3) refusing to make a tax distribution to Wilson while using the money set aside for the distribution to pay off a line of credit so Gandis could borrow against that line to pay his own taxes; (4) monitoring all of Wilson's private emails, including those with his wife, his attorney, and his accountant; (5) withholding Wilson's agreed-upon and guaranteed monthly distributions in January 2012; (6) making representations that Wilson may not receive distributions for two years; (7) managing the money supply to make it appear as if cash was more limited than it was in actuality; (8) continually making unilateral changes, including secretly back-paying rent at a higher rate than agreed upon and transferring assets, e.g., an air conditioner, to Gandis' entities by

expensing such items as rent; (9) limiting Wilson's access to CCC's financial information; (10) removing Wilson from signatory authority on CCC's operating account; (11) removing Wilson's ability to make wire transfers for CCC; (12) excluding Wilson from discussions about CCC's business operations; (13) manipulating the December 2011 "Pro-Forma Balance Sheet" to devalue Wilson's interest in CCC; (14) physically locking Wilson out of his company and refusing to allow him to return; (15) demanding possession of Wilson's laptops and Blackberry; (16) terminating the cell phone plans for Wilson and his family while maintaining coverage for the other members; (17) terminating health insurance coverage for Wilson and his family; and (18) forming ZOi to compete with CCC in order to siphon profits until Wilson caught them.

The trial court found against CCC, Gandis, and Shirley on their breach of fiduciary duty claim against Wilson. The trial court found against CCC on its trade secrets claim against Wilson, Neologic, and Fresh Water. CCC, Gandis, and Shirley filed a joint motion for a new trial or reconsideration under Rule 59(e) of the South Carolina Rules of Civil Procedure. The trial court denied the motion, reaffirming its previous factual findings "based as they were on the court's finding that [Wilson's] testimony was credible on the key issues. [Gandis'] and [Shirley's] testimony lacked credibility in most important respects." The trial court also found "[t]he evidence revealed that [ ] Gandis and [Shirley] deliberately collaborated to oppress [ ] Wilson. Their conduct was unconscionable. They purposely created a toxic business environment with the goal of driving [ ] Wilson out." CCC, Gandis, and Shirley appealed. The court of appeals affirmed the trial court in an unpublished decision and adopted the trial court's order in its entirety. *Wilson v. Gandis*, Op. No. 2018-UP-078 (S.C. Ct. App. filed Feb. 7, 2018). CCC, Gandis, and Shirley filed petitions for writs of certiorari to review the court of appeals' decision. We granted their petitions.

V. GANDIS' AND SHIRLEY'S PETITION

A. Issues

1. Did the trial court err in finding Gandis and Shirley oppressed Wilson; if not, did the trial court err in ordering Gandis and Shirley to personally buy Wilson's distributional interest?

2. Did the trial court err in finding Gandis and Shirley failed to prove Wilson breached a fiduciary duty to them?

3. Did the trial court err in determining the value of Wilson's distributional interest in CCC?

B. Discussion

1. Member Oppression

"A member or manager may maintain an action against a limited liability company or another member or manager for legal or equitable relief" to enforce his statutory rights under the Uniform Limited Liability Company Act of 1996 (the LLC Act),[3] his rights under an operating agreement, and "the rights that otherwise protect the interests of the member." S.C. Code Ann. § 33-44-410(a). The comment to section 33-44-410 provides there is "broad judicial discretion to fashion appropriate legal remedies." If a member establishes that "the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial" to the member, a court may dissolve the limited liability company. S.C. Code Ann. § 33-44-801(4)(e). The comment to this section provides "the court has the discretion to order relief other than the dissolution of the company. Examples include . . . the purchase of the distributional interest of the applicant." S.C. Code Ann. § 33-44-801 cmt.

In establishing the proper considerations for evaluating a claim for oppression in the context of a closely held corporation, we have observed that "the terms 'oppressive' and 'unfairly prejudicial' are elastic terms whose meaning varies with the circumstances presented in a particular case." *Ballard*, 399 S.C. at 594, 733 S.E.2d at 110 (quoting *Kiriakides v. Atlas Food Sys. & Servs., Inc.*, 343 S.C. 587, 602, 541 S.E.2d 257, 266 (2001)). Determining if oppression exists requires "a fact-sensitive review and should therefore be determined through a 'case-by-case analysis, supplemented by various factors which may be indicative of oppressive behavior.'" *Id.* (quoting *Kiriakides*, 343 S.C. at 603, 541 S.E.2d at 266). In order to prove minority oppression, the plaintiff is not required to prove illegal or fraudulent conduct by the majority shareholders. *Id.* at 595, 733 S.E.2d at 110. "The concern and focus in shareholder oppression cases is that the minority 'faces a trapped investment and an indefinite exclusion [from] participation in business returns.'" *Id.* (alteration in original) (quoting *Kiriakides*, 343 S.C. at 604, 541 S.E.2d at 267). We hold these considerations also apply to a claim for oppression made by a minority member of a limited liability company.

[3] S.C. Code Ann. §§ 33-44-101 to -1208 (2006 & Supp. 2019).

The phrases "freeze out" or "squeeze out" are often used interchangeably and denote "the use by some of the owners or participants in a business enterprise of strategic position, inside information, or powers of control, or the utilization of some legal device or technique, to eliminate from the enterprise one or more of its owners or participants." *Kiriakides*, 343 S.C. at 604 n.26, 541 S.E.2d at 267 n.26.

In *Kiriakides*, we held a majority shareholder's conduct in a family-owned close corporation constituted "a classic situation of minority 'freeze out.'" 343 S.C. at 605, 541 S.E.2d at 267. The Kiriakides family owned Atlas Food Systems & Services, Inc. (Atlas), and Alex was the majority shareholder, owning 57.68% of the corporation. His siblings, John and Louise, owned 37.7% and 3% of the corporation, respectively. John and Louise sued Alex and the corporation seeking, *inter alia*, a buyout of their shares because of minority oppression and fraud. We considered the following actions taken by Alex and Atlas and concluded Alex oppressed John and Louise, the minority shareholders: Alex paid Louise based on 271 shares of Atlas stock when she in fact owned 301 shares of stock; Alex transferred 21% of a wholly owned subsidiary to his children instead of to a partnership which included John and Louise; Alex and his family received substantial benefits from their ownership in Atlas, through employment, while Louise and John had no such expectations of benefit; Atlas declared it would not declare dividends in the foreseeable future, even though it had substantial cash and assets and carried little debt; and Atlas's extremely low buyout offers to John and Louise. *Id.* at 605-07, 541 S.E.2d at 267-68.

In *Ballard*, we held the majority shareholders' conduct oppressed the minority shareholder Ballard. 399 S.C. at 597-98, 733 S.E.2d at 112. Ballard incorporated Warpath Development, Inc., to develop a marina. He owned 40,000 shares of Warpath's authorized 100,000 shares of stock. After several years of working with Duke Energy Carolinas, LLC, which owned lakefront property, Warpath entered into a lease with Duke to use its lakefront property. Subsequently, three men paid Ballard $1,000,000 in exchange for 20,000 of Ballard's shares and Warpath's outstanding 60,000 shares. Following this exchange, Ballard held 20% of the stock, and the three men held 80% of the stock.

Incorporated into the lease with Duke was a plan for the marina, which included a projected number of 100 to 200 boat slips. However, it was later determined the marina could only accommodate 102 slips. Upset over the decrease in their projected income because of fewer boat slips, the three men collaborated with each other and sent an email to Ballard in an effort to convince him to return some or all of the $1,000,000, or to return his 20,000 shares to Warpath and cease involvement with the development. They sent Ballard another email asking that he return the $1,000,000 in full or at least return a portion of the money if he wanted to

move forward. Emails between these three shareholders (who constituted the majority) evinced their hope that Ballard "[would] take his [$1,000,000] and run [ ] after a little threatening, posturing and whining." *Id.* at 595, 733 S.E.2d at 111 (alterations in original). One majority shareholder emailed the others and asked, "Don't we want to get him out of the deal?" *Id.*

Ballard declined both options, and the three majority shareholders removed him from Warpath's board of directors. The majority shareholders did not hire Ballard as an employee, and the majority shareholders issued 900,000 new shares of stock in violation of the articles of incorporation, which decreased Ballard's ownership interest from 20% to 2%.

We held the evidence established a clear intent by the majority shareholders to freeze out Ballard and exclude him from involvement with Warpath and from the benefits of ownership. *Id.* at 597, 733 S.E.2d at 112. We reasoned the majority shareholders did not afford Ballard an opportunity to benefit through salary or stock incentives or to participate, meaningfully, in the development because the majority shareholders failed to communicate with him to provide him with updates. We also found email communications between the majority shareholders "clearly indicate their desire to oust Ballard." *Id.* at 595, 733 S.E.2d at 110. We noted, "Although at trial the individual [majority shareholders] sought to downplay the implications of these electronic exchanges, [the] enunciation of their intent to force out Ballard simply contextualizes their subsequent actions." *Id.* at 595, 733 S.E.2d at 111.

The essence of the de novo standard of review is that the appellate court must not simply accept the factual findings of the trial court but instead must diligently review the record to make findings of fact based upon its own review of the preponderance of the evidence. However, the appellate court cannot ignore the crucial reality that the trial court was in a better position to evaluate the credibility of the witnesses who testified during the trial. The logic of this premise, especially in a case such as the one before us, is self-evident. The credibility of witnesses who testified during this five-day trial was especially vital to the trial court's evaluation of all the evidence. As previously noted, the trial court stated its factual findings were based on its conclusion that "[Wilson's] testimony was credible on the key issues. [Gandis'] and [Shirley's] testimony lacked credibility in most important respects." These findings are not a death blow to Gandis' and Shirley's ability to convince this Court to partially or even completely disagree with the trial court's credibility findings. In this case, however, we agree with the trial court's succinct credibility conclusions.

Further, under the de novo standard of review, the aggrieved party bears the burden of establishing the trial court's factual findings are against the weight of the evidence. Here, the trial court's credibility findings necessarily bled into its evaluation of the preponderance of all the evidence. Based on our review of the record, we are compelled to conclude that Gandis and Shirley—and by extension, CCC—have failed to carry their burden of convincing this Court that the trial court committed error in its factual findings relative to Wilson's oppression cause of action.

The trial court characterized Gandis' and Shirley's efforts as a "tightly controlled cabal to oust Mr. Wilson [that] could serve as a script for minority [ ] oppression." We must agree. The record in this case is replete with evidence of "freeze out" machinations on the part of Gandis and Shirley. The emails between Gandis and Shirley reveal their explicit scheme to oust Wilson, and we agree with the trial court that the emails unveil their step-by-step efforts to convert Wilson from a significant owner, with a promised $12,000 monthly compensation, to either a former owner or an employee bound by a noncompete agreement. The emails between Gandis and Shirley prove they calculated each move against Wilson. As the trial court observed, Shirley even posited to Gandis "we will freeze his capital account and provide that he will be paid out ONLY when the LLC has made distributions to you in excess of your guaranteed payment (and your tax liability)," and that "might mean that [Wilson] sits with a frozen capital account until the LLC liquidates (and he will still have a 2010 tax bill that he has to pay)."

Gandis and Shirley surreptitiously reviewed Wilson's email communications with his wife and used information gathered from this review to develop pressure tactics to squeeze out Wilson. They also deprived Wilson of the benefits of ownership when they withheld Wilson's distribution for his tax liability, while indirectly providing for Gandis to meet his tax liability, and when they withheld Wilson's promised monthly compensation beginning in January 2012. The accounts Wilson transferred from EFS to CCC were Wilson's investment in CCC. Wilson made clear to Gandis that he would transfer those accounts to CCC in exchange for monthly compensation because he was forfeiting income he would have received through EFS. By withholding Wilson's compensation, Gandis and Shirley trapped Wilson's investment in CCC.

Gandis and Shirley also prevented Wilson from meaningfully participating in CCC operations by excluding him from many of their communications regarding CCC. Many times, Shirley advised Gandis to withhold important business information, such as financial and LLC formation information from Wilson, despite Wilson being a co-founder and a 45% owner of CCC. Gandis willingly followed

along, as he did Shirley's other orchestrations. When they knew they had Wilson trapped, Gandis and Shirley presented Wilson with unfavorable alternatives for his future with CCC: (1) become an employee with an onerous noncompete, (2) remain an LLC member but forego the monthly compensation he relied upon, (3) accept a low buyout offer, or (4) buy Gandis and Shirley out on undesirable terms.

Also, Shirley and Gandis collaborated to physically lock Wilson out of CCC's premises and denied him access to CCC's financial information until they were compelled by the trial court to produce such information. After ousting Wilson, Gandis and Shirley routed CCC earnings to Gandis through higher rent and higher interests rates on the M-Tech line of credit. We also agree with the trial court's finding that Gandis and Shirley formed ZOi to compete with CCC in order to siphon profits from CCC.

Gandis and Shirley maintain the trial court erred in awarding equitable relief to Wilson despite his unclean hands. The doctrine of unclean hands "precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." *Ingram v. Kasey's Assocs.*, 340 S.C. 98, 107 n.2, 531 S.E.2d 287, 292 n.2 (2000). Gandis and Shirley contend Wilson orchestrated a steady stream of side deals that he concealed from them, shared CCC's trade secrets and confidential information with competitors, and destroyed evidence before and during this litigation. We hold Wilson's conduct did not rise to the level complained of by Gandis and Shirley. Therefore, the doctrine of unclean hands does not preclude Wilson's recovery in this case.

Gandis and Shirley also argue their actions were not oppressive because their actions were not motivated by a desire to shut Wilson out of the business, but were rather an attempt to provide Wilson with options that would allow him to remain a member of CCC while satisfying his tax liability. They contend Wilson was not oppressed or frozen out and he did not find himself in a "trapped investment" or suffering "indefinite exclusion from participation in business returns," which are consequences of oppression. Similarly, Gandis and Shirley claim their locking Wilson out of CCC's premises, demanding Wilson return CCC-owned laptops and Blackberry, and terminating Wilson's cell phone service were "efforts to secure CCC's proprietary information against Wilson's attempts to steal it." We disagree.

We reject Gandis' and Shirley's argument that their actions are protected by the business judgment rule, as the rule only applies "absent a showing of a lack of good faith, fraud, self-dealing or unconscionable conduct." *Dockside Ass'n, Inc. v. Detyens*, 294 S.C. 86, 87, 362 S.E.2d 874, 874 (1987). We completely agree with the trial court's conclusion that "[t]he record—particularly the remarkable emails

between Gandis and Shirley—abounds with evidence of calculated oppression." We find Wilson has proven Gandis and Shirley engaged in oppressive conduct against him.

2. Buyout of Wilson's Interest

Gandis and Shirley argue the trial court "took the extreme and legally unsupported step of holding [them] personally liable for alleged oppression of another member." Gandis and Shirley argue they acted in good faith and in the ordinary course of their responsibility to protect CCC from Wilson's malfeasance, and they contend subsection 33-44-303(c) of the LLC Act protects LLC members from personal liability for actions taken in the ordinary course of business of the LLC. We agree in general with the latter statement, but we repeat our conclusion that Gandis and Shirley committed acts of "calculated oppression" against Wilson. We note—and agree with—the trial court's description of Gandis' and Shirley's conduct in other quite pointed language: "unconscionable," "brazen but clumsy," "unfairly prejudicial," "deliberately collaborated to oppress," "created a toxic business environment," and "overt scheme." We reject the argument that an LLC member who commits acts of "calculated oppression" against another member has acted in the ordinary course of business of the LLC.

We have recognized "the LLC Act grants broad judicial discretion in fashioning remedies in actions by a member of an LLC against the LLC and/or other members." *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 428, 673 S.E.2d 448, 454 (2009) (citing S.C. Code Ann. §§ 33-44-410 cmt., -801 cmt.). Importantly, subsection 33-44-410(a) specifically provides that an LLC member may maintain an action against the LLC or another member for legal or equitable relief "to enforce: (1) the member's rights under the operating agreement; (2) the member's rights under [the LLC Act]; and (3) the rights that otherwise protect the interests of the member. . . ." Courts do indeed have the authority under the LLC Act to order either the LLC or the oppressing member(s) to purchase the oppressed member's interest in the LLC.

Even though the trial court ordered Gandis and Shirley to purchase Wilson's interest, in the exercise of our de novo review, we may order the relief we conclude is most equitable under the relevant circumstances. While we conclude Gandis and Shirley personally engaged in the requisite unconscionable and oppressive conduct to entitle Wilson to a buyout of his interest in CCC, we modify the trial court's order requiring Gandis and Shirley to individually purchase Wilson's interest, and we remand this case to the trial court for proceedings consistent with the following instructions. We first order CCC to purchase Wilson's interest in CCC, and Gandis

and Shirley shall be obligated to purchase Wilson's interest only if CCC does not comply with our order that it do so. On remand, the trial court shall conduct a potentially two-step process for the buyout to take place. In the first (and perhaps only) step, CCC will first be responsible for purchasing Wilson's interest. In this case, the trial court issued a post-judgment order requiring CCC, Gandis, and Shirley to post bond or other surety to fund the purchase of Wilson's interest. The trial court noted CCC was required to post the bond "should an appellate court decide that the obligation to pay [Wilson] for his membership interest properly rests with CCC, and the company . . . becomes insolvent or otherwise unable to pay the judgment should it be affirmed." At oral argument, it was confirmed this bond was purchased and remains in place.[4] The bond should ensure compliance with our order that CCC purchase Wilson's interest. If CCC complies with our order that it purchase Wilson's interest, the trial court need not reach the second step of requiring Gandis and Shirley to purchase Wilson's interest.

With the aid of the bond or otherwise, if CCC's purchase of Wilson's interest does not take place within a reasonable time after the remittitur is issued, the trial court shall take the second step and require Gandis and Shirley to complete the buyout in proportion to their respective membership interests in CCC. Even though Shirley owns a 10% interest in CCC and Gandis owns a 45% interest in CCC, the trial court concluded Gandis and Shirley were jointly and severally liable for the entire purchase price. Shirley argues, and Gandis agrees, that her responsibility to purchase any portion of Wilson's interest should be limited to the proportion her interest in CCC bears to the entire obligation to purchase. We agree.[5]

3. Breach of Fiduciary Duty

Gandis and Shirley argue the trial court erred in finding for Wilson on their breach of fiduciary duty claim. They allege in their counterclaim that Wilson breached fiduciary duties owed to CCC and to them by (1) usurping CCC's business

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[4] After the trial court entered its initial order ordering Gandis and Shirley to purchase Wilson's interest, CCC, Gandis and Shirley filed a joint Rule 59(e) motion (authored by counsel for CCC) and argued CCC, not Gandis and Shirley, should be required to purchase Wilson's interest.

[5] We do not foreclose the possibility that an LLC member who acts to oppress another member can be held liable for an amount greater than his or her proportional interest in the LLC.

opportunities with customers from EFS and engaging in secretive side deals; (2) misappropriating CCC's alleged trade secrets and confidential information; and (3) destroying evidence on CCC's laptops and Blackberry. Wilson argues Gandis and Shirley lack standing to bring the breach of fiduciary claim against him. We agree with Wilson.

Because CCC would have sustained any financial loss caused by Wilson's purported actions, Gandis and Shirley lack standing to bring a breach of fiduciary duty claim in their individual capacities.[6] Any loss suffered by Gandis and Shirley would be derivative of the loss suffered by CCC and not separate and distinct from losses suffered by CCC. *See Hite v. Thomas & Howard Co.*, 305 S.C. 358, 361, 409 S.E.2d 340, 342 (1991), *overruled on other grounds by Huntley v. Young*, 319 S.C. 559, 462 S.E.2d 860 (1995) (internal citations omitted) ("A shareholder may maintain an individual action only if his loss is separate and distinct from that of the corporation. A shareholder's suit is derivative if the gravamen of his complaint is an injury to the corporation and not to the individual interest of the shareholder."). Gandis and Shirley were required to bring a fiduciary duty claim derivatively, on behalf of CCC. On the merits, we find the trial court correctly concluded Wilson did not breach any fiduciary duties owed to Gandis and Shirley.

4. Valuation of Wilson's Distributional Interest in CCC and Date of Valuation

Gandis and Shirley claim the trial court erred by valuing Wilson's distributional interest at the time of his departure from CCC and not taking into account that Wilson's subsequent actions negatively impacted CCC's financial situation. They argue this error resulted in a windfall for Wilson.

Section 33-44-702 outlines the procedure for a court to use when determining the fair value of a member's distributional interest when that interest is to be purchased by the company. *See* S.C. Code Ann. § 33-44-701(e). We conclude, as did the trial court, that the same approach should be employed when individual members are ordered to buy the distributional interest. However, "there is little [ ] authority setting the proper date of valuing a company in a buy out situation." *Hendley v. Lee*, 676 F. Supp. 1317, 1327 (D.S.C. 1987). "In cases of minority stockholder oppression, the date of ouster seems appropriately used." *Id.*

[6] As noted above, CCC did not argue the issue of breach of fiduciary duty in its brief to this Court.

The parties presented expert testimony on CCC's value and the value of Wilson's distributional interest. Wilson's expert, Catherine Stoddard, valued CCC's total equity at $1,018,753 and Wilson's interest at $408,335 as of December 31, 2011. She valued Wilson's interest at $233,776 as of December 31, 2013. Del Bradshaw (the trial court's appointed expert), Stoddard, and Charles Alford (the defense's expert) testified of possible adjustments to the value of CCC due to equipment moving costs, excess inventory, and advances.

The trial court noted CCC, Gandis, and Shirley failed to present evidence of CCC's then-current financial condition. The court found Stoddard's December 31, 2011 valuation credible but applied Alford's three downward adjustments to calculate the value of Wilson's interest as of that date. First, the trial court reduced CCC's $1,018,753 total value by $50,625, which was half the value of CCC's excess inventory. Second, the trial court reduced the value of CCC's equipment by 25% of its fair market value to account for moving costs. These two downward adjustments reduced the company's total value to $884,140.50, with Wilson's 45% interest valued at $397,863.23. The trial court then applied Alford's third adjustment by reducing the value of Wilson's interest by $50,000 for advances he previously received from CCC. Therefore, the trial court determined the fair value of Wilson's distributional interest in CCC was $347,863.23. We agree with the trial court's valuation of Wilson's interest.

Under the facts of this case, we find the most equitable valuation date is December 31, 2011. *See Hendley*, 676 F. Supp. at 1327 ("[T]he ultimate issue [in establishing a proper valuation date] is what is fair between the parties in each case."). First, as noted by the trial court, CCC, Gandis, and Shirley failed to present evidence of CCC's then-current financial condition during the 2014 trial, partly because CCC failed to file tax returns for the 2012 and 2013 tax years. Second, Gandis and Shirley initiated an exit strategy and ousted Wilson in January 2012; therefore, valuing CCC and Wilson's interest in CCC as of December 31, 2011, provides an accurate value of CCC when Wilson was an active member of CCC with an opportunity to impact CCC's financial condition. Conversely, December 31, 2013, is an inappropriate valuation date because from January 2012, when Gandis and Shirley ousted Wilson, until present, Gandis and Shirley have prevented Wilson from participating in any CCC business decisions or operations that impact CCC's value.

VI. CCC'S PETITION

A. Issue

Did the trial court err in finding CCC failed to prove its trade secret misappropriation claim against Wilson, Neologic, and Fresh Water?

B. Discussion

CCC's trade secrets cause of action is based on its contention that it spent significant time, effort, and resources developing its customer and supplier contact lists, electronic vendor reference program, and inventory reference program, all of which CCC claims are its trade secrets. CCC contends Wilson misappropriated these trade secrets when he began working for Neologic. Neologic is CCC's competitor and is owned by the wife of Wilson's brother-in-law and CCC's defendant, Steve Norvell. Norvell's wife also partly owns Fresh Water, and Norvell is president of Neologic and Fresh Water. Fresh Water is not in the film industry; however, CCC claims Wilson, Norvell, and Fresh Water formed Neologic about two months after Wilson left CCC and claims Neologic and Fresh Water have common employees, operate out of the same location, and operate with the same funds—funds CCC claims at least partially derive from CCC's trade secrets.

When Wilson left CCC premises on the day of his ouster, he took with him two CCC-owned laptops and a Blackberry. The laptops contained CCC files and CCC emails that Wilson testified he wanted to have "to prove what happened" to him. The Blackberry contained Wilson's personal information such as bank account numbers, passwords, and his children's social security numbers. He testified he copied CCC files and emails that were on the laptops to his own computer and erased the laptops. He testified he then put the CCC files and emails back on the laptops and returned them to CCC's attorney. Wilson testified he reformatted the Blackberry to erase his and his family's personal information and returned the device to CCC. Wilson testified he used the information he copied from the laptops not to compete with CCC, but solely as evidence in this litigation.

"The first issue to be determined in every trade secret case is . . . whether, in fact, there was a trade secret to be misappropriated." *Lowndes Prods., Inc. v. Brower*, 259 S.C. 322, 327, 191 S.E.2d 761, 764 (1972). Though *Lowndes* was decided before the passage of the Trade Secrets Act, that proposition remains

fundamental. The Trade Secrets Act defines a "trade secret" as information, including a compilation, program, system, process, or procedure that:

> [(a)](i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain economic value from its disclosure or use, and
>
> (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.
>
> (b) A trade secret may consist of a simple fact, item, or procedure, or a series or sequence of items or procedures which, although individually could be perceived as relatively minor or simple, collectively can make a substantial difference in the efficiency of a process or the production of a product, or may be the basis of a marketing or commercial strategy. The collective effect of the items and procedures must be considered in any analysis of whether a trade secret exists and not the general knowledge of each individual item or procedure.

S.C. Code Ann. § 39-8-20(5) (Supp. 2019).

In order to decide "whether something is a trade secret, one must consider the extent to which the information is known outside of his business and the ease or difficulty with which the information could be properly acquired or duplicated by others." *Carolina Chem. Equip., Co. v. Muckenfuss*, 322 S.C. 289, 296, 471 S.E.2d 721, 724 (Ct. App. 1996). In the instant case, the trial court found the information pertaining to pricing, customers, and vendors/suppliers was "publicly accessible" and therefore did not rise to the level of being a trade secret.

There is evidence in the record to support the trial court's finding, as there was evidence presented at trial that the information lacked "independent economic value," as the information was readily ascertainable by proper means by the public or was ascertainable by other persons who could obtain economic value from the use of the information. Mike Myers and Bruce Hotmer, both experienced film brokers, testified vendor/supplier information, pricing information, manufacturer information, and customer information were ascertainable from trade associations, through trade journals, at trade shows, or from other publicly available sources.

Hotmer testified customers of film distributors typically do not sign nondisclosure agreements and are free to share with him what product they are buying, from whom they are buying it, and at what price they are buying it. Hotmer also testified his customers are his primary source of what they are paying other film distributors. He clarified that information as to how manufacturers price their film "[is] not only widely available, it's part of the expectation of your organization of the sales force. It's what you expect." He explained he had been a sales representative, a regional sales representative, and a national sales representative and that "[w]e were expected to know all that information about our customers, and our competitors, and their competitors."

We hold the trial court's finding that the information did not have the required independent economic value is supported by evidence in the record. Therefore, we need not address CCC's remaining arguments pertinent to its trade secrets claim.[7]

VII. CONCLUSION

As to Wilson's claim for oppression, we hold: (1) Gandis and Shirley engaged in oppressive and unconscionable conduct against Wilson; (2) the trial court properly valued Wilson's 45% distributional interest in CCC at $347,863.23; and (3) Wilson is entitled to a buyout of his distributional interest, and this equitable remedy is not barred by the doctrine of unclean hands. We modify the court of appeals' oppression holding and hold CCC is first obligated to purchase Wilson's interest in CCC. If CCC does not complete the purchase within a reasonable time after the remittitur is sent to the lower court, Gandis and Shirley shall be required to purchase Wilson's interest in proportion to their respective membership interests in CCC.

We affirm the court of appeals as to Gandis' and Shirley's action against Wilson for breach of fiduciary duty.

We also affirm the court of appeals as to CCC's trade secrets claim.

AFFIRMED AS MODIFIED AND REMANDED.

BEATTY, C.J., KITTREDGE, HEARN, and FEW, JJ., concur.

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[7] For information to be considered a trade secret, the owner of the information must exercise "efforts that are reasonable under the circumstances to maintain its secrecy." S.C. Code Ann. § 39-8-20(5)(a)(ii). The owner must also prove its damages were proximately caused by misappropriation. The trial court concluded CCC had proven neither of these elements.

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE David Wilson, individually and on behalf of Carolina Custom Converting, LLC, Plaintiff, v. John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC, Defendant, v. Carolina Custom Converting, LLC Counterclaim Plaintiff, v. David Wilson, Steve Norvell, Neologic Distribution Inc., and Fresh Water Systems, Inc. Counterclaim Defendants.	IN THE COURT OF COMMON PLEAS C/A No. 2012-CP-23-02887 **MOTION FOR REMAND STATUS CONFERENCE AND RULING REGARDING THE TIME TO COMPLETE PURCHASE OF DISTRIBUTIONAL INTEREST**

Carolina Custom Converting, LLC ("CCC") moves this Court to conduct a post-remand status conference and hearing. The purpose of the hearing is to resolve a dispute regarding the timing for CCC's obligation to complete the purchase of David Wilson's ("Mr. Wilson") distributional interest in CCC pursuant to the Supreme Court's Opinion filed on June 3, 2020, and remanded to this Court by remittitur dated June 22, 2020.

The appealed from trial court order addressed, relevant here, a minority shareholder oppression case filed by Mr. Wilson against, among others, CCC and its other members, John

Gandis ("Mr. Gandis") and Andrea Comeau Shirley ("Ms. Shirley"). The appealed from trial court order required Mr. Gandis and Ms. Shirley to individually purchase Mr. Wilson's distributional interest for $347,863.23.

CCC, Mr. Gandis, and Ms. Shirley appealed the trial court order. The Supreme Court recently handed down an Opinion that modified the trial court order. The modification shifted the obligation to purchase Mr. Wilson's distributional interest in the first instance from Mr. Gandis and Ms. Shirley to CCC. *See also* S.C. Code Ann. §33-44-701 (setting forth procedures for company purchase of distributional interest). The Opinion further provided that "[i]f CCC does not complete the purchase within a reasonable time after the remittitur is sent to the lower court, [Mr.] Gandis and [Ms.] Shirley shall be required to purchase [Mr.] Wilson's interest."

A dispute has arisen regarding what a "reasonable amount of time" means. CCC has proposed to complete the purchase of Mr. Wilson's distributional interest by making a substantial down payment against the $347,863.23 purchase price, followed by monthly payments. Mr. Wilson has indicated that he does not agree with the timeframe proposed by CCC to complete the purchase.

CCC gives notice of its intention to timely support the subject motion with a memorandum of law in advance of the requested status conference and hearing.

Pursuant to Rule 11, SCRCP, counsel for CCC affirms that he has communicated with counsel for Mr. Wilson and has attempted in good faith to resolve the matter contained in this motion.

[SIGNATURE PAGE FOLLOWS]

Dated July 13, 2020

Respectfully submitted,

BURL F. WILLIAMS, P.A.

s/ Burl F. Williams
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864-546-5035
burl@burlfwilliams.com

Attorney for Carolina Custom Converting, LLC

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

David Wilson, individually and on behalf of Carolina Custom Converting, LLC,

Plaintiff,

v.

John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC,

Defendant,

v.

Carolina Custom Converting, LLC

Counterclaim Plaintiff,

v.

David Wilson, Steve Norvell, Neologic Distribution Inc., and Fresh Water Systems, Inc.

Counterclaim Defendants.

IN THE COURT OF COMMON PLEAS

C/A No. 2012-CP-23-02887

MOTION FOR REMAND STATUS CONFERENCE AND RULING REGARDING THE TIME TO COMPLETE PURCHASE OF DISTRIBUTIONAL INTEREST

(AFFIDAVIT OF JOHN GANDIS)

The undersigned, John Gandis, provides the following affidavit under oath:

1. I am over the age of eighteen years and have personal knowledge of the matters addressed in this affidavit.

2. I am the LLC Manager of Carolina Custom Converting, LLC.

3. I am also the President of CCC.

4. I own 45% of the membership equity in CCC.

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5. My co-defendant, Andrea Comeau-Shirley owns 10% of the membership equity in CCC.

6. Including myself, CCC currently has fifteen employees.

7. After the circuit court handed down the order requiring myself and co-defendant Andrea Comeau-Shirley to purchase David Wilson's distributional interest in CCC for $347,863.23, Mrs. Comeau-Shirley and I appealed that order.

8. After the appeal was filed, Mr. Wilson endeavored to collect the entire amount of the purchase price ($347,863.23) from Mrs. Comeau-Shirley by domesticating the order in Georgia.

9. Mr. Wilson also sought to initiate supplemental proceedings in South Carolina to collect the entire amount of the purchase price from me.

10. My personal counsel attempted to halt the collection proceedings while the case was on appeal, but I ultimately had to personally post a supersedeas bond for the amount of the purchase price in order to stop Mr. Wilson from forcing a sale of my family's home.

11. I did not have the necessary collateral or monies to secure a supersedeas bond.

12. In order to obtain a supersedeas bond, I had to have my parents allow me to use a retirement account belonging to them as collateral.

12. The supersedeas bond that is in place is secured by my parent's retirement account.

13. After the Supreme Court handed down its opinion shifting the obligation to purchase Mr. Wilson's distribution interest to CCC in the first instance, on June 22, 2020, I sent Mr. Wilson a letter on behalf of CCC offering to begin the purchase. The letter is attached as ***Exhibit 1*** to this affidavit.

 9/16/2020

14. As the letter sets-out, CCC offered to make a substantial down payment in the range of $175,000 - $225,000, followed by monthly payments at 4% interest for the following two to three years.

15. Mr. Wilson refused to negotiate regarding the proposed process to complete the purchase of his distributional interest.

16. As a result, I was forced to seek the assistance of this Court.

17. CCC has the financial ability to complete Mr. Wilson's distributional purchase as proposed by it.

18. For example, notwithstanding COVID-19, company sales through July of this year are $1,676,215.18 resulting in net income from sales in the amount of $205,657.03.

Further affiant sayeth not.

John Gandis

Cryptal B. Phillips
Notary for State of South Carolina
My commission expires 11/15/2026

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

David Wilson, individually and on behalf of Carolina Custom Converting, LLC,

Plaintiff,

v.

John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC,

Defendant,

v.

Carolina Custom Converting, LLC

Counterclaim Plaintiff,

v.

David Wilson, Steve Norvell, Neologic Distribution Inc., and Fresh Water Systems, Inc.

Counterclaim Defendants.

IN THE COURT OF COMMON PLEAS

C/A No. 2012-CP-23-02887

MOTION FOR REMAND STATUS CONFERENCE AND RULING REGARDING THE TIME TO COMPLETE PURCHASE OF DISTRIBUTIONAL INTEREST

***EXHIBIT 1* TO AFFIDAVIT OF JOHN GANDIS**

CCC-FILMS.COM
CAROLINA CUSTOM CONVERTING

6/22/2020

Mr. Wilson
10 Queen Ann Rd
Greenville, SC 29615

Dear Mr. Wilson:

As you know, on June 3, 2020, the SC Supreme Court revised the lower courts' rulings and held that Carolina Custom Converting, LLC should purchase your distributional interest in a reasonable amount of time. As the company does not have an existing agreement for a redemption installment period, this letter outlines the terms for a proposed redemption as contemplated by the court. The redemption amount is $347,863.20. The company will make a down payment installment in the range of $175,000 - $225,000.00 upon execution of the redemption agreement. The remaining purchase price will be paid as follows:

Remaining Redemption Amount	$122,863.20 - 172,863.20
Payment periods	Monthly
Effective Date	July 1, 2020
Installment Period	24-36 months
Rate of Interest	4%
Default Rate of Interest	7%
Collateral/Security	Tangible operating assets

We are in the process of drafting a redemption agreement consistent with the above, and we will provide a draft in the near term.

We believe the above terms are consistent with the SC Supreme Court's ruling, which revised the lower court's ruling and restored the LLC redemption hierarchy. We have been working with our lender since the opinion was released. With the current Covid-19 situation, the bank may move a bit slower than normal but we have asked them to move as quickly as possible.

Sincerely,

John Gandis
Sole Manager

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE David Wilson, individually and on behalf of Carolina Custom Converting, LLC, Plaintiff, v. John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC, Defendant, v. Carolina Custom Converting, LLC Counterclaim Plaintiff, v. David Wilson, Steve Norvell, Neologic Distribution Inc., and Fresh Water Systems, Inc. Counterclaim Defendants.	IN THE COURT OF COMMON PLEAS C/A No. 2012-CP-23-02887 **MOTION FOR REMAND STATUS CONFERENCE AND RULING REGARDING THE TIME TO COMPLETE PURCHASE OF DISTRIBUTIONAL INTEREST** **(SECOND AFFIDAVIT OF JOHN GANDIS)**

The undersigned, John Gandis, provides the following affidavit under oath:

1. I am over the age of eighteen years and have personal knowledge of the matters addressed in this affidavit.

2. I am the LLC Manager of Carolina Custom Converting, LLC ("CCC").

3. I have read Mr. Wilson's affidavit dated September 18, 2020.

4. It brings me no joy to read about the financial difficulties that Mr. Wilson described in his affidavit.

9/21/2020

5. Mr. Wilson and I were in business for approximately 3-4 years, and during that time, I considered Mr. Wilson a friend and looked forward to the possibility of building a business that could be passed down to our children.

6. The Supreme Court's opinion touches upon the unravelling of our relationship in its discussion of the tax liability that Mr. Wilson faced. Of course, I faced the same tax liability and burden.

7. I must respond to the idea put forward by Mr. Wilson that he attempted to negotiate a fair purchase price before filing this lawsuit. As the Supreme Court's opinion recognizes, Mr. Wilson was escorted out of CCC on January 18, 2012.

8. This lawsuit was filed on April 27, 2012.

9. The time for the filing of his lawsuit means that Mr. Wilson did not follow the rules, which give the company and its members a 120-day window to negotiate on a purchase price before a lawsuit should be filed. S.C. Code. Ann. §33-44-701(d). I can only imagine that this and the many other tactics employed by Mr. Wilson during this lawsuit forced him to spend more than was necessary.

10. Moreover, I tried to negotiate a resolution of this case on multiple occasions. At one point I even agreed to accept what Mr. Wilson's counsel described as a low-ball offer. But even after agreeing to this, Mr. Wilson would not put an end to this case. Mr. Wilson has always been in control of whether this dispute could be settled.

11. And while I am saddened to hear about the financial difficulties described by Mr. Wilson, I must also respond to the idea put forward by Mr. Wilson that his removal from the company caused these issues. As the Supreme Court opinion recognized, Mr. Wilson took a number of customers and businesses doing business with CCC with him to a company in

9/20/2020

competition with CCC. After Mr. Wilson brought CCC into this lawsuit, it filed a trade secret claim against Mr. Wilson and the company he went to work for.

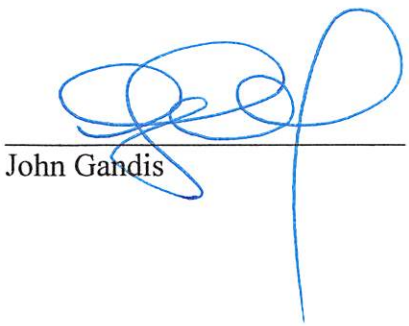
12. Mr. Wilson and the competitor company won the trade secret claim, which means he and the competitor company retained all the benefits of the business taken from CCC.

13. I also do not understand why Mr. Wilson references his wife's health care. Under South Carolina's state law version of the federal COBRA law, all Mr. Wilson had to do was pay the premiums and he would have continued to receive the exact same coverage.

14. Finally, this lawsuit has also cost me personally, as well as my family. My family has made tremendous sacrifices in order to keep our children in the school they have attended and with help from our family.

15. This lawsuit has also affected CCC. I have spent years rebuilding CCC from the time when it nearly fell apart over this dispute and during the lawsuit. The company employs 14 people, and 5 of these people have been with us since prior to this lawsuit.

I certify that the foregoing statements made by me are true. I am aware that if any of the foregoing statement made by me are willfully false, I am subject to punishment by contempt.



John Gandis

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE David Wilson, individually and on behalf of Carolina Custom Converting, LLC, Plaintiff, v. John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC, Defendants. v. Carolina Custom Converting, LLC, Counterclaim Plaintiff, v. David Wilson, Steve Norvell, Neologic Distribution, Inc., and Fresh Water Systems, Inc. Counterclaim Defendants.	IN THE COURT OF COMMON PLEAS Civil Action No. 2012-CP-23-02887 **MOTION TO LIFT STAY and TO EXECUTE ON SUPERSEDEAS BOND**

COMES NOW Plaintiff, by and through his counsel, and files this Motion to Lift Stay and to Execute on Supersedeas Bond. After a one-week trial of this matter, Judge Garrison Hill ruled for Plaintiff David Wilson on his claim that he had been fraudulently and oppressively "squeezed out" of the business he had started with Defendant John Gandis. Judge Hill awarded a money judgment against Defendants John Gandis and Andrea Comeau-Shirley in the amount of $347,863.23. After a writ of execution was returned *nulla bona*, the Court issued a Rule to Show Cause for Defendants' failure to pay the money judgment. After a hearing on the Rule, the Court issued an order staying execution of the judgment upon the posting of a bond in the amount of the money judgment. (See Attachment 1, hereinafter "Bond Order.") Defendants posted a bond.

The Bond Order provided that Plaintiff would be entitled to recover against the bond in the event Plaintiff prevailed on appeal even if the judgment was modified to be payable by Defendant Carolina Custom Converting, LLC (hereinafter "CCC"). (Attachment 2).

Eight years after Defendants fraudulently forced Plaintiff out of his business and 6 years after Plaintiff prevailed in this action, the South Carolina Supreme Court unanimously upheld the money judgment and issued a stinging rebuke of Defendants' oppressive and dishonest scheme, but the Supreme Court as expected modified the judgment to be payable by CCC. However, CCC is undeterred and continues to refuse to pay the judgment or the over $200,000 in interest that has accrued since issuance of the money judgment. Instead, CCC is seeking to further delay its 8-year-old obligation to pay Plaintiff the money judgment and the interest it has accrued. As the Bond Order provides, the bond "shall provide for payment to Plaintiff in the event that one or more Defendants is required to pay Plaintiff for the value of his interest in CCC as ordered after the appeal is concluded." (This order was not appealed by any of the Defendants.)

Accordingly, Plaintiff seeks an order of this court lifting the stay so that Plaintiff may proceed to collect the supersedeas bond consistent with the Bond Order.

Respectfully Submitted,

s/ W. Andrew Arnold
W. Andrew Arnold (SC Bar No. 65311)
Horton Law Firm, P.A.
307 Pettigru St.
Greenville, SC 29601
Phone: 864-233-4351Facsimile: 864-233-7142
Email: aarnold@hortonlawfirm.net
ATTORNEY FOR DAVID WILSON

September 2, 2020

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE David Wilson, individually and on behalf of Carolina Custom Converting, LLC, Plaintiff, v. John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC, Defendant, v. Carolina Custom Converting, LLC Counterclaim Plaintiff, v. David Wilson, Steve Norvell, Neologic Distribution Inc., and Fresh Water Systems, Inc. Counterclaim Defendants.	IN THE COURT OF COMMON PLEAS C/A No. 2012-CP-23-02887 **CCC'S RULE 59(e), SCRCP MOTION TO RECONSIDER OR AMEND ORDER**

On October 8, 2020, this Court entered an Order that required Carolina Custom Converting, LLC, ("CCC") to make a $250,000 payment toward the $347,863.23 purchase price of David Wilson's ("Wilson") distributional interest and provided Wilson with the right to seek the balance from the supersedeas bond. The Court's Order also referred the case to the Master in Equity for "supplemental proceedings" so that the payment and amount of post-judgment interest could be determined. CCC respectfully requests that the Court reconsider, amend or clarify this Order.

The Buyout Payment

Following the remand and failed negotiations with Wilson, CCC moved the Court to enter an order authorizing the structured buyout of Wilson's distributional interest with a $200,000 payment followed by monthly payments. This request, CCC submitted, tracked the holding of the Supreme Court. Specifically, the Supreme Court held that CCC should make the purchase within a reasonable time; the decision did not instruct CCC to make the purchase within a specific time period—*e.g.*, 90 or 120 days.

The Court disagreed with CCC's motion and issued an Order requiring CCC to make a $250,000 payment and for Wilson to collect the remainder from the supersedeas bond. CCC respectfully submits that the Court's ruling is inconsistent with the Supreme Court's Opinion. Notwithstanding the error respectfully identified by CCC, because the Court denied CCC's request for a structured buyout, CCC has authorized the institution that holds the supersedeas bond to process payment to Wilson for the entire sum of $347,863.23. Moreover, this result is the relief sought by Wilson in his motion to execute against the supersedeas bond. Consequently, CCC respectfully requests that the Court amend the Order to provide that full payment may be made from the supersedeas bond.

Supplemental Proceedings

The Court also ruled that the case is "referred to the Master in Equity for supplemental proceedings so that the amount and payment of interest can be determined." CCC does not object to having the Master in Equity make this determination in the first instance. Nevertheless, the Court used the phrase supplemental proceedings to describe this process. CCC seeks clarification from this Court to ensure that the Master in Equity is not tasked with conducting supplemental proceedings at this stage. As the case stands now, and as noted above, CCC has instructed the

financial institution to make a complete payment of the $347,863.23 obligation. Accordingly, there is presently no basis for the Master in Equity to conduct supplemental proceedings; rather, the Master in Equity has been tasked with making the post-judgment interest determination.

Dated October 19, 2020

Respectfully submitted,

BURL F. WILLIAMS, P.A.

s/ Burl F. Williams
Burl F. Williams (S.C. Bar No. 77901)
201 Riverplace, Suite 500
Greenville, South Carolina 29601
864-546-5035
burl@burlfwilliams.com

Attorney for Carolina Custom Converting, LLC

law office of W. ANDREW ARNOLD, P.C.

W. Andrew Arnold
Shareholder
Admitted in SC

February 4, 2021

VIA ELECTRONIC FILING
The Honorable Charles B. Simmons, Jr.
Greenville County Courthouse, Suite 313
305 East North Street
Greenville, SC 29601

RE: ***Wilson v. Gandis, et al.***
C.A. No. 2012-CP-23-02887

Dear Judge Simmons:

This letter memorandum is to provide a calculation of post judgment interest consistent with the January 26, 2021 order referring this matter to the Master in Equity. The primary matter for consideration is the calculation of interest on the money judgment entered on January 9, 2015 in the amount of $347,863.23. On June 3, 2020, the Supreme Court "affirmed as modified" the January 9, 2015 judgment. Defendant Carolina Custom Converting, LLC ("CCC") paid $347,866.23 on November 2, 2020. Defendant CCC has not paid any accrued interest. Plaintiff Dave Wilson seeks to collect the post judgment interest that accrued from the date of the judgment until present.

South Carolina Code Ann. § 34-31-20 (B) (2020) provides that the legal rate of interest on money decrees and judgments "is equal to the prime rate as listed in the first edition of the Wall Street Journal published for each calendar year for which the damages are awarded, plus four percentage points, compounded annually. The South Carolina Supreme Court shall issue an order by January 15 of each year confirming the annual prime rate. This section applies to all judgments entered on or after July 1, 2005. For judgments entered between July 1, 2005, and January 14, 2006, the legal rate of interest shall be the first prime rate as published in the first edition of the Wall Street Journal after January 1, 2005, plus four percentage points." Based upon the Supreme Court orders setting forth the amount of interest, Plaintiff calculates the total accrued interest through the date of February 15, 2021 to equal **$206,267.10.**

Plaintiff has attached the calculation of total post-judgment interest. In addition, Supreme Court Order 2021-01-04-01 provides that the rate of interest from January 15, 2021 through January 14, 2022 shall be 7.25%. Interest on the upaid portion of the judgment is accruing at a rate of $40.97/day.

This court should take note that there is no reason for the above calculation to be a matter about which the parties cannot agree. It is math. Plaintiff provided this calculation months ago in an effort to reach some small stipulation that would save the parties and

the court time and effort. However, like every other subject that has arisen during the previous 9 years of litigation, math is just another subject in dispute and for delay. So, Defendants refuse to even concede the obvious while prepared to argue for a radical change to well settled law that all money judgments "must draw interest according to law." Considering Defendants' conduct as described in the Supreme Court's unanimous affirmance of Judge Garrison Hill's order, it should surprise no one.

Sincerely,

s/W. Andrew Arnold

	Original Judgment			**$ 347,863.23**	
period	year	Interest rate	Interest accrued	balance at end of period	total interest accrued
1/9/15 - 1/14/15	2015	7.25%	$ 483.67	$ 348,346.90	$ 483.67
1/15/15 - 1/14/16	2015	7.25%	$ 25,255.15	$ 373,602.05	$ 25,738.82
1/15/16 - 1/14/17	2016	7.50%	$ 28,020.15	$ 401,622.21	$ 53,758.98
1/15/17 - 1/14/18	2017	7.75%	$ 31,125.72	$ 432,747.93	$ 84,884.70
1/15/18 - 1/14/19	2018	8.50%	$ 36,783.57	$ 469,531.50	$ 121,668.27
1/15/19 - 1/14/20	2019	9.50%	$ 44,605.49	$ 514,136.99	$ 166,273.76
1/15/20 - 11/1/20	2020	8.75%	$ 35,743.09	$ 549,880.08	$ 202,016.85
				-347863.23	202016.85
				$ 202,013.85	202013.85
11/2/20 - 1/14/21	2020	8.75%	$2,989.51	$ 205,003.36	$ 205,003.36
1/15/21 - 2/15/21	2021	7.25%	$ 1,263.74	$ 206,267.10	$ 206,267.10

STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE David Wilson, individually and on behalf of Carolina Custom Converting, LLC, Plaintiff, v. John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC, Defendant, v. Carolina Custom Converting, LLC Counterclaim Plaintiff, v. David Wilson, Steve Norvell, Neologic Distribution Inc., and Fresh Water Systems, Inc. Counterclaim Defendants.	IN THE COURT OF COMMON PLEAS C/A No. 2012-CP-23-02887 **CAROLINA CUSTOM CONVERTING, LLC'S RESPONSE TO DAVID WILSON'S POST-JUDGMENT INTEREST REQUEST**

Carolina Custom Converting, LLC ("CCC") submits this memorandum in opposition to David Wilson's ("Mr. Wilson") filing requesting the award of post-judgment interest. Mr. Wilson's request should be denied as he failed to demonstrate any entitlement to post-judgment interest considering the facts. Mr. Wilson's request ignores a central holding of the Supreme Court's June 2, 2020 decision that changed the judgment debtor. Further, CCC submits that no post-judgment interest has ever accrued because the company acted proactively in accordance with

the Supreme Court's decision to ensure that the judgment was timely paid. The request should, respectfully, be denied and the case ended.

I.
ARGUMENT

A. Mr. Wilson is Not Entitled to Post-Judgment Interest on the Prior Order

Mr. Wilson seeks to advance the novel idea that he is entitled to post-judgment interest on a January 2, 2015 order that the Supreme Court's June 3, 2020, opinion abrogated. The Supreme Court's opinion is a ***new*** judgment for it fundamentally altered the prior judgment in the area that matters most for his current request: it changed the identity of the judgment debtor.

"[T]he purpose of postjudgment interest is to penalize nonpayment of a judgment by a judgment debtor." *Sears v. Fowler*, 293 S.C. 43, 45, 358 S.E.2d 574, 575 (1987). A judgment debtor is a "person against whom a money judgment has been entered but not yet satisfied." Black's Law Dictionary, 861 (8th ed. 2004). The Supreme Court's decision created a brand-new judgment debtor for Mr. Wilson (the judgment creditor) and removed the old judgment debtors. As a result, there is no uncompliant individual to penalize for nonpayment. The payment as ordered by the Circuit Court should never have occurred and, as such, was abrogated with regards to the debtor.

This is an LLC governance case, and Mr. Wilson obtained an order calculating his undistributed equity balance and providing that he was entitled to a buyout of his membership interest in CCC. The Circuit Court held that the individual CCC members, John Gandis and Andrea Comeau-Shirley, were jointly, severally, and personally liable to fund the buyout of Mr. Wilson's capital account balance. The Supreme Court modified that order and held that CCC should have been made liable to fund the buyout. The Supreme Court further held that only if CCC could not fund the buyout, then and only then, Mr. Gandis and Ms. Shirley would have an obligation to do

so. The Supreme Court abrogated the joint and several obligation imposed by the Circuit Court and held that the contingent obligation to fund the buyout by the individual members should be borne in proportion to their membership interest in CCC if the stated contingency arose.

Until the Supreme Court handed down its Opinion, Mr. Gandis and Ms. Shirley were liable to fund Mr. Wilson's buyout, and ***CCC owed nothing to Mr. Wilson***. Indeed, during the appeal and before entry of a supersedeas bond, Mr. Wilson skipped pursuing collection against the company's manager and majority owner and travelled to Georgia to collect the entire buyout payment of $347,863.23 from its minority, non-managing member, Ms. Shirley. Pursuant to the Circuit Court's now abrogated order, Ms. Shirley, who only owned 10% of CCC, was obligated to make the full buyout payment. Under the Supreme Court's Opinion, her liability not only was changed mathematically but was also made contingent. The Supreme Court held that CCC was liable for the buyout payment in the first instance, and failing that, only then would Ms. Shirley have some liability that was in proportion to her membership interest.

Stated differently, as a result of the Supreme Court decision, neither individual member of CCC had a presently fixed or absolute payment obligation to Mr. Wilson and would only become obligated to him upon the happening of some uncertain future event (which, significantly, did not materialize). Mr. Wilson's novel argument that the Court should disregard the plain language of the statute and the legal status of the two separately issued judgments should be denied and the case should be closed.

B. <u>The Post Judgment Interest Statute Defeats Mr. Wilson's Argument</u>

Mr. Wilson is not entitled to post judgment interest under a plain reading of the statute. The post judgment interest statute states that, "[a] money decree or judgment of a court enrolled

or entered must draw interest according to law." South Carolina Code Ann. § 34-31-20. The word "judgment" does all the work here. The judgment at issue is the Supreme Court's modified opinion.

"Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." *Id.* at 85, 533 S.E.2d at 581. "'What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.'" *Id.* at 85, 533 S.E.2d at 581 (citing *Norman J. Singer*, SUTHERLAND STATUTORY CONSTRUCTION § 46.03 at 94 (5th ed. 1992)).

The judgment in this case mandates that CCC purchase Mr. Wilson's equity interest within a reasonable amount of time following issuance of the remittitur. On June 22, 2020, the Supreme Court issued the remittitur to the Greenville County Clerk of Court. The remittitur stated that, "[a] copy of the ***judgment*** of this Court . . . is enclosed." (June 22, 2020 *Remittitur*, at p.1, attached as ***Exhibit 1*** (emphasis added)). The judgment of the Supreme Court was then entered by the Greenville County Clerk of Court on June 26, 2020. (*Id.* (filing stamp on the first page, at p.3). It is clear that the Supreme Court decision is a "judgment" and should be the point of reference in applying the statute on post-judgment interest.

CCC recognizes that likely all remittitur letters refer to the decision of the Supreme Court as a judgment. The point here is that the Supreme Court also regards its decisions as judgments regardless of whether that has any significance in the lower court proceedings. Here, it does have significance because of the Supreme Court's change in the judgment debtor.

The actual workings of the new judgment make the point. Shortly after the Supreme Court's decision was handed down, CCC began diligently working to complete the buyout as ordered. On June, 22, 2020, before the remittitur was issued, Mr. Gandis sent a letter, in his capacity as the manager of CCC, to Wilson offering to begin CCC's purchase, and seeking terms. (Gandis Affidavit, filed on September 16, 2020, letter attached as *Exhibit 1* to the affidavit). Had CCC not initiated the buy-out process after the decision was handed down, Mr. Wilson's legal avenues for pursuing payment were markedly different based upon an opinion simply affirming the Circuit Court's order versus the Supreme Court's actual decision. Under the Supreme Court decision, if Mr. Wilson had to force the collection issue, he had one option: demand that CCC purchase his equity interest. Prior to the entry of that judgment he had two different options based on the prior (and now abrogated) judgment: demand that either Mr. Gandis or Ms. Comeau-Shirley or both purchase his equity interest. Plainly a new judgment was entered on June 26, 2020.

As applied here, the judgment referred to by § 34-31-20 is clear: the Supreme Court's decision. Accordingly, if any post-judgment interest accrued pursuant to the statute, it began to accrue no earlier than on the date the operative judgment was entered: June 26, 2020. As discussed next, however, no post-judgment accrued because CCC complied with the judgment within the required reasonable amount of time.

C. Post-Judgment Interest Has Not Accrued Since Entry of the New Judgment

Post-judgment could not begin accruing until after a reasonable amount of time from entry of the Supreme Court's decision on June 26, 2020. As noted above, the post-judgment interest statute provides, relevant here, that "[a] money decree or judgment of a court enrolled or entered must draw interest according to law." S.C. Code. Ann. 34-31-20. Under the Supreme Court's Opinion, CCC was ordered to fund the buyout within a "reasonable time." As noted above, CCC

initiated the process to begin the purchase almost immediately, and the full buyout payment was received by Mr. Wilson on or about November 1, 2020.

The passage of four months occurred, as mentioned above, because CCC initially requested the right to make an approximately $200,000 down payment, followed by monthly payments that would have included interest for the balance. On June 22, 2020, CCC sent a letter to Mr. Wilson that begin this discussion. On July 13, 2020, after Mr. Wilson elected not to engage on the request, CCC filed a motion for a remand status conference and order regarding the payment process.[1] On October 8, 2020, the Circuit Court denied CCC's request and the judgment was thereafter paid in full within weeks.

Finally, the statutory phrase "must draw interest according to law" also suggests the Court may look to the judgment, itself. As noted, the Supreme Court specifically provided for payment to occur within a "reasonable time after the remittitur." In a different context, our Supreme Court has held that "reasonable time" and "immediate" are two separate periods of time. *Wheeler v. State*, 247 S.C. 393, 400, 147 S.E.2d 627, (1966) ("A speedy trial does not mean an ***immediate*** one; it does not imply undue haste, for the state, too, is entitled to a ***reasonable time*** in which to prepare its case. . . .") (emphasis added). Accordingly, CCC submits that when the full payment was made on or about November 1, 2020, it was made within a reasonable time. As a result, no post-judgment interest ever accrued on the judgment.

[1] CCC requested a structured payout pursuant to the changes made to the judgment in the Supreme Court's decision. (*See* September 17, 2020 Memorandum of Law filed with the Circuit Court).

II.
CONCLUSION

Mr. Wilson's novel application of the post-judgment interest statute should be rejected. The Supreme Court created a new judgment debtor. The Supreme Court ordered that new judgment debtor to pay the judgment within a reasonable time. The judgment was paid in a reasonable time. Accordingly, no post-judgment interest is due. Case closed.

Dated: February 25, 2021

Respectfully submitted,

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE David Wilson, individually and on behalf of Carolina Custom Converting, LLC, Plaintiff, v. John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC, Defendant, v. Carolina Custom Converting, LLC Counterclaim Plaintiff, v. David Wilson, Steve Norvell, Neologic Distribution Inc., and Fresh Water Systems, Inc. Counterclaim Defendants.	IN THE COURT OF COMMON PLEAS C/A No. 2012-CP-23-02887 **RULE 59(e) MOTION TO ALTER OR AMEND**

Carolina Custom Converting, LLC ("CCC"), John Gandis, and Andrea Comeau-Shirley (hereinafter and collectively the "Movants") submit this Rule 59(e), SCRCP, Motion to Alter of Amend the Court's Order dated May 4, 2021 (the "Post-Judgment Interest Order"). The Post-Judgment Interest Order should, respectfully, be amended to provide that David Wilson ("Mr. Wilson") is not entitled to collect post-judgment interest as a result of the modifications made to the judgment by the Supreme Court. The grounds for the motion are as follows:

I. THE COURT ERRED BY APPLYING EQUITABLE CONSIDERATIONS TO A LEGAL QUESTION OF STATUTORY INTERPRETATION

The Movants submit that the Court erred by applying equitable and improper considerations into a purely legal and statutory interpretation question. "[T]his case is purely one of statutory interpretation, dependent only on how the undisputed facts apply to the statute." *Commissioner of Public Works of the City of Laurens v. City of Fountain Inn*, 428 S.C. 209, 219 n.4, 833 S.E.2d 834, 839 n.4 (2019). "Questions of statutory interpretation are questions of law." *Id.* at 218 n4., 833 S.E.2d at 838 n4. The undisputed facts are that the trial court awarded a judgment to Mr. Wilson against the individual members of the Company. After the Supreme Court modified the judgment, it awarded Mr. Wilson a judgment against CCC in the first instance. The Court's sole obligation was to examine the text of the applicable statute against these undisputed facts.

The post-judgment interest statute states that, "[a] money decree or judgment of a court enrolled or entered must draw interest according to law." South Carolina Code Ann. § 34-31-20. The Supreme Court has stated that, "the purpose of post[-]judgment interest is to penalize nonpayment of a judgment by a ***judgment debtor***." *Sears v. Fowler*, 293 S.C. 43, 45, 358 S.E.2d 574, 575 (1987). (emphasis added)

The Court erred in applying the statute to the undisputed facts and disregarded the substitution of a new judgment debtor by the Supreme Court. In its ruling the Court reasoned that, "the fact that Gandis and Shirley are the majority owners of CCC, and the individuals who made the decisions leading to the trial court's order, there is no undue prejudice by allowing the statutory interest. In fact, to hold otherwise, would be to allow a windfall to the at-fault and appealing parties. *See Calhoun*, 529 S.E.2d at 14." (Post-Judgment Interest Order, at 4.)

The use of the wording "no undue prejudice by allowing the statutory interest" and "to hold otherwise[] would be to allow a windfall" demonstrates, respectfully, that the Court did not undertake the required "balls and strikes" approach to deciding this question of law. Instead, the Court employed equitable considerations that it should not have. Whether application of the undisputed facts to the law would generate "no undue prejudice" or "allow a windfall" is not an appropriate consideration for the Court. The Court was confined to determining whether the undisputed facts as applied to the post-judgment interest statute resulted in an award of post-judgment interest. As set forth the in the pre-Post-Judgment Interest Order briefing, the answer to that question is no.

II. THE COURT ERRED BY ESSENTIALLY REVERSE PIERCING THE CORPORATE VEIL OF CCC

The Movants submit that the Court erred by essentially reverse piercing the corporate veil of CCC when it held that CCC should have to pay post-judgment interest on a judgment (now abrogated) against the Company's members. Reverse veil piercing obligates a company for the liabilities of its shareholders. *Sky Cable, LLC v. DIRECTV, Inc.*, 886 F.3d 375, 385-86 (4th Cir. 2018) (collecting cases). A "corporation is an entity, separate and distinct from its officers and stockholders and its debts are not the individual indebtedness of its stockholders." *Hunting v. Elders*, 359 S.C. 217, 223, 597 S.E.2d 803, 806 (Ct. App. 2004). Similarly, it is axiomatic that the debts of a company's shareholder are not the debts of the company. Whether to pierce the corporate veil is an equitable consideration. *Drury Development Corp. v. Foundation Ins. Co.*, 380 S.C. 97, 668 S.E.2d 798 (2009). "Although the corporate entity may be disregarded in some situations, piercing the corporate veil is not a doctrine to be applied without substantial reflection." *Mid-South Management Co. v. Sherwood Development Corp.*, 374 S.C. 588, 597, 649 S.E.2d 135, 140 (Ct.

App. 2007). Indeed, South Carolina courts employ a two-prong approach, with the first prong alone including an eight-factor test. *Id.* at 597, 649 S.E.2d at 140.

The Court essentially concluded that CCC was liable for the prior obligations of its shareholders because it was the alter-ego of the individuals. "[T]he fact that Gandis and Shirley are the majority owners of CCC, and the individuals who made the decisions leading to the trial court's order, there is no undue prejudice by allowing the statutory interest." (Post-Judgment Interest Order, at 4.)

Respectfully, the Court erred in its reasoning and judgment. First, there was no motion before the Court to undertake any veil piercing relief. Second, veil piercing type relief is an equitable power of the Court. Deciding whether post-judgment interest is owed is not an equitable issue; it is a legal issue. Third, there is absolutely no evidence that CCC has been disregarded as corporate entity. The Court's decision to undertake a reverse veil piercing to avoid what it believed would be a windfall was in error. Respectfully, the Court's reasoning is in error and an amended order finding that no post-judgment interest is owed should be entered.

III. THE COURT ERRED BY PLACING A POST-JUDGMENT INTEREST OBLIGATION ON A NEW DEBTOR

"[T]he purpose of post[-]judgment interest is to penalize nonpayment of a judgment by a judgment debtor." *Sears v. Fowler*, 293 S.C. 43, 45, 358 S.E.2d 574, 575 (1987). The Supreme Court's opinion created a brand-new judgment debtor and removed the old judgment debtors. As a result, there is no one to penalize for nonpayment. The payment as ordered by the Circuit Court should never have occurred. That is a central holding of the Supreme Court's opinion. Respectfully, the Court's ruling does not give recognition to this holding.

The post-judgment interest statute states that, "[a] money decree or judgment of a court enrolled or entered must draw interest according to law." South Carolina Code Ann. § 34-31-20.

The judgment at issue is the Supreme Court's modified opinion that held the obligation to purchase Mr. Wilson's equity rests with the corporate entity.

"Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute." *Id.* at 85, 533 S.E.2d at 581. "'What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore, the courts are bound to give effect to the expressed intent of the legislature.'" *Id.* at 85, 533 S.E.2d at 581 (citing *Norman J. Singer*, SUTHERLAND STATUTORY CONSTRUCTION § 46.03 at 94 (5th ed. 1992)).

The judgment in this case mandates that CCC purchase Mr. Wilson's equity interest within a reasonable amount of time following issuance of the remittitur. On June 22, 2020, the Supreme Court issued the remittitur to the Greenville County Clerk of Court. The remittitur stated that, "[a] copy of the ***judgment*** of this Court . . . is enclosed." (June 22, 2020 *Remittitur*, at p.1) (emphasis added)). The judgment of the Supreme Court was then entered by the Greenville County Clerk of Court on June 26, 2020. (*Id.* (filing stamp on the first page, at p.3). The company later complied with the obligations of the judgment.

As applied here, the judgment referred to by § 34-31-20 is clear: the Supreme Court's opinion.

IV. THE POST-JUDGMENT INTEREST AMOUNT IS IN ERROR

The Court awarded Mr. Wilson $208,930.15 in post-judgment interest. This calculation resulted from running post-judgment interest from the date the original order was entered until May 1, 2021. Assuming post-judgment interest should be awarded, which as discussed above, it

should not, this ruling conflicts with the Supreme Court's opinion. The calculation for the running of post-judgment interest should end on June 26, 2020—the date the remittitur was entered.

When the Supreme Court changed the judgment debtor, it held that the judgment must be paid in a reasonable time. The modified judgment was subsequently paid in a reasonable time. The Court's failure to end the running of interest from the deadline imposed by the Supreme Court, and met by CCC, operates as a failure to enforce the Supreme Court's opinion. Accordingly, to the extent the Court maintains its ruling that post-judgment interest accrued from the date of the underlying order, then the interest should have ceased accruing upon the date of the remittitur, or June 26, 2020. Giving CCC credit for meeting the Supreme Court's payment deadline would operate to backout approximately 309 days of interest, resulting in a reduction of the post-judgment interest award from $208,930.15 to $186,240.59.

V. CONCLUSION

The Supreme Court does change lower court decisions for no reason. The Post-Judgment Interest Order, respectfully, does not give effect to the changes made to the judgment by the Supreme Court. As a result, the Post-Judgment Interest Order made an award that does not comport with the Supreme Court's opinion or the text of the post-judgment interest statute. The Post-Judgment Interest Order should be reconsidered and amended to provide that no post-judgment interest accrued. In the alternative, the Post-Judgment Interest Order should be reconsidered and amended to roll back the date for the accrual of post-judgment interest to June 26, 2020, resulting in an award of $186,240.59.

[Signature Pages Follow]

Dated: May 14, 2021

Respectfully submitted,

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STATE OF SOUTH CAROLINA COUNTY OF GREENVILLE David Wilson, individually and on behalf of Carolina Custom Converting, LLC, Plaintiff, v. John Gandis, Andrea Comeau-Shirley, ZOi Films, LLC, and Carolina Custom Converting, LLC, Defendant, v. Carolina Custom Converting, LLC Counterclaim Plaintiff, v. David Wilson, Steve Norvell, Neologic Distribution Inc., and Fresh Water Systems, Inc. Counterclaim Defendants.	IN THE COURT OF COMMON PLEAS C.A. No. 2012-CP-23-02887 **SUPPLEMENTAL Rule 59(e) Motion to Alter or Amend**

Carolina Custom Converting, LLC ("CCC"), John Gandis, and Andrea Comeau-Shirley (hereinafter and collectively the "Movants") submit this Supplemental Rule 59(e), SCRCP, Motion to Alter of Amend the Court's Order dated May 4, 2021 (the "Post-Judgment Interest Order"). The Post-Judgment Interest Order should, respectfully, be amended to provide that David Wilson ("Mr. Wilson") is not entitled to collect post-judgment interest as a result of the modifications made to the judgment by the Supreme Court and the posting and payment of a supersedeas bond.

I. THE COURT ERRED BY DETERMINING THAT POST-JUDGMENT INTEREST ACCRUED EVEN THOUGH A SUPERSEDEAS BOND WAS POSTED BY MOVANTS AND ACCEPTED BY THE COURT

Movants submit that the Court erred by determining that post-judgment interest continued to accrue once a supersedeas bond was posted and accepted by the court.

South Carolina statute specifically requires that a posted bond not exceed the amount of the judgment. The South Carolina appeals statute states that if "the presiding judge grants a stay of execution and requires a bond or other surety to guarantee the payment of the judgment pending the appeal, **the amount of the bond or other surety may not exceed the amount of the judgment** . . ." South Carolina Code Ann. § 18-9-130. (emphasis added). Further, the South Carolina Appellate Court Rules state that an appeal acts "to automatically stay matters decided" and to "automatically stay the relief ordered." Rule 241(a), SCACR. Money judgments are normally an exception to this rule. Rule 241(b)(1), SCACR.

However, a court can still use its discretion to grant a supersedeas. 241(c)(1), SCACR. The court did so in this case, and according to the rules, "the effect of the granting of a supersedeas is to suspend or stay the matters decided," which in this case was the money judgment. *Id.* Since the judgment was suspended, the money is not "due" within the meaning of the code. "In all cases of accounts stated and in all cases wherein any sum or sums of money shall be ascertained and, being due, shall draw interest according to law, the legal interest shall be at the rate of eight and three-fourths percent per annum." South Carolina Code Ann. § 34-31-20. "[B]eing due" is the key phrase here. The judgment was suspended or stayed pending appeal and cannot be collected, which means the money cannot be due, which means interest cannot accrue.

The South Carolina Supreme Court has addressed a similar issue before. *Miller v. Atl. C. L. R. Co.*, 140 S.C. 123 (1926). In that case, the trial court assessed damages of $25,000 against a

manufacturing company. The manufacturing company appealed and asked the court to suspend enforcement of the judgment until the appeal was heard. The court said that a bond was necessary, and that an "appeal by the manufacturing company shall not operate as a supersedeas" unless it totaled "$29,000 for the payment of the judgment, interest, and costs against it, in the event that the judgment appealed from should be affirmed." *Id.* at 160. In sum, the South Carolina Supreme Court knew that interest would not legally accrue once the supersedeas bond was granted, so they required an extra $4000 to be filed with the court to cover the interest that would have accrued had a supersedeas not been granted.

However, the current statute, which was enacted after 1926, does *not* say anything about an interest calculation being included in the initial bond accepted by the court. In fact, the statute says that the bond "may not exceed" the amount of the judgment. South Carolina Code Ann. § 18-9-130.

Other states have mandated in their own statutes that interest be factored into the initial granting of a supersedeas bond. For example, Texas state law says that the granting of a supersedeas bond must account for compensatory damages, costs awarded in judgment, and "interest for the estimated duration of the appeal." Tex. Civ. Prac. & Rem. Code § 52.006.

South Carolina is in the minority in that interest calculations are not currently part of the supersedeas bond granting process, but this is by statutory design. This Court is aware that statues are to be given and interpreted by their plain and ordinary meaning. Of particular import here, in 2005, South Carolina legislators attempted to amend the state code to include interest calculations at the pre-bond or bond stage. The legislators wanted to amend the statute to say that the "court shall require that supersedeas bond or other form of security be given with surety and in an amount to cover the entire amount of the judgment remaining unsatisfied, costs on the appeal, interest, and

damages for delay, unless the court, after notice and hearing and for good cause shown, fixes a lesser amount." 2005 Bill Text SC H.B. 4363. The amendment did not pass. South Carolina courts, other state courts, and the South Carolina legislature would not pay such careful attention to the explicit inclusion of interest clauses in supersedeas calculations if interest continued to accrue normally after the bond was accepted. The supersedeas bond stays interest and interest does not accrue.

Regarding the "retention and use of capital" argument made by counsel for Plaintiff, thas argument does not apply in a situation where the supersedeas bond has been posted pursuant to a court order. This is the case because the money (capital) is effectively tied up with the Court and not retained and/or used by Movants.

II. CONCLUSION

The posting of a supersedeas bond prevents a money judgment from becoming "due" under South Carolina law. The exact language of South Carolina Code Ann. § 34-31-20 supports the argument that the money is not "due" once a judgment has been suspended, as this judgment was when the supersedeas bond was posted and accepted by the court. The supersedeas bond paid out the judgment following the determination by the Supreme Court which amended the holding of the lower court. For all these reasons, the Post-Judgment Interest order should be reconsidered and amended.

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Respectfully submitted,

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Counsel for Carolina Custom Converting, LLC

Dated: June 10, 2021

STATE OF SOUTH CAROLINA	)	
	)	COURT OF COMMON PLEAS
COUNTY OF GREENVILLE	)	2012-CP-23-02887
	)	
	)	
	)	
	)	
	)	
DAVID WILSON, ET AL.,	)	
PLAINTIFFS,	)	
	)	
vs.	)	TRANSCRIPT OF RECORD
	)	
JOHN GANDIS, ET AL.,	)	
DEFENDANTS.	)	**ORIGINAL**
	)	

September 21, 2020
Greenville, South Carolina

B E F O R E:

THE HONORABLE ALEX KINLAW, JR., JUDGE,

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

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Attorney for the Plaintiff

BURL F. WILLIAMS, ESQ.
Attorney for Defendant Carolina Custom Converting

D. RANDLE MOODY, II, ESQ.
Attorney for Defendant John Gandis and Andrea Comeau-Shirley

HOLLIE M. JENKINS
Circuit Court Reporter

I N D E X

(There were no witnesses called.)

E X H I B I T S

(There were no exhibits introduced.)

PROCEEDINGS

THE COURT: It appears that the first matter before the Court today is in the interest of David Wilson, Plaintiff, and others vs. John Gandis, Defendant, and others, case #2012-CP-23-02887.

I've got two matters before the Court involving those named parties. One is a Defendant's motion regarding a -- a status conference, and the Plaintiff's motion regarding supersedes.

So I don't know if there's any particular order --

Yes, Counsel.

I'll tell you what, just for the record, just so my -- my law clerk will know who you are, just identify your name, so he'll know who -- who's talking. Okay.

MR. WILLIAMS: Your Honor, my name is Burl Williams --

THE COURT: Yes, sir.

MR. WILLIAMS: -- of Burl Williams Law Firm. I represent Carolina Custom Converting, the company.

MR. MOODY: Hi, Your Honor.

Randy Moody of Jackson Lewis. I represent John Gandis and Andrea Comeau-Shirley, as the individuals who were -- the Supreme Court modified the order regarding their liability.

THE COURT: Last name is Shirley?

MR. MOODY: Yes, Your Honor. It's Comeau, C-O-M-E-A-U, dash, Shirley.

THE COURT: All right. Yes, sir.

MR. ARNOLD: And I'm Andy Arnold. I represent Dave Wilson.

THE COURT: Yeah. I know who he is. Okay.

MR. WILLIAMS: And, Your Honor, the first motion that was filed was the companies motion to ask for a -- a remand status conference.

THE COURT: Okay.

MR. WILLIAMS: So I think it -- it makes sense to proceed with that motion first.

THE COURT: Very well.

MR. WILLIAMS: May it please the Court.

THE COURT: Yes, sir.

MR. WILLIAMS: My name is Burl Williams. And I represent the company.

With me today is Mr. Gandis, who sits in between Mr. Moody and myself. He is the LLC manager and he's the president of the company. Behind me, with the exception of one individual sitting in the -- the gallery, are the employees of the company. And they are here in support of the company whom I represent. In addition, Mr. Gandis is joined by his wife, Denise, who is hidden back here.

The Supreme Court modified an order that this -- this

Court issued a handful of years ago. Nothing that the Supreme Court affirmed or that we tried the case about is important this morning. The only thing that's important is what the Supreme Court did. And what it did is it said consistent with the LLC Act that in a member dispute where the -- where the Court orders a buyout of a member that the company should make that purchase.

Prior to the Supreme Court making that decision, the Court had obligated two other members to make the purchase and had obligated them jointly and severally liable.

The Supreme Court changed that. It said, No, what's proper is that the company does it in the first instance and has a reasonable amount of time to execute. And in the second instance, if there is no payments and the completion of the distributional interest is not purchased, then we go to the individuals.

And so after the Supreme Court handed down its opinion, the LLC managers sent a letter to the other shareholder, Mr. Wilson, and said, You know, I'd like to make a down payment on the distributional interest between 175,000 and 225,000. The total purchase price is 347,000 and some change. I'd like to make a down payment and I'd like to give you --

THE COURT: Give me those numbers again, the down -- down payment.

MR. WILLIAMS: Yes, Your Honor. And I'll -- I'll slow down with those.

So the --

THE COURT: Offer.

MR. WILLIAMS: -- circuit court, Judge Hill, when he was here, ruled that --

THE COURT: It was 300 and some odd dollars.

MR. WILLIAMS: Yes, Your Honor. It's $347,863.23.

And the Supreme Court affirmed. And there's no dispute about any of that.

So after they remanded and the Supreme Court said, you know, Company you have the obligation to make the purchase, the companies LLC manager, also, the president of the company sent a letter to Mr. Wilson and said, you know, Now -- now that it's shifted to the company, we're going to -- we'll pay you 175 and 225,000 down payment. We'd like to pay the remainder at four percent interest over two to three years.

The first exhibit of John Gandis that was filed on September 16th, Exhibit No. 1 to that affidavit, Your Honor -- I've got a copy I can hand up. I know you operate pretty well off the computer. So I'll -- you tell me, would -- would you like a copy or --

THE COURT: Just -- you can give it to me.

MR. WILLIAMS: Okay.

THE COURT: Give it to the law clerk.

MR. WILLIAMS: The last page of it is the -- the letter that was sent.

THE COURT: All right.

MR. WILLIAMS: And so the letter consisted with the opinion of our Supreme Court, set out what the plan was. But we were unable, the company, to receive anything meaningful in response.

And so shortly thereafter, Your Honor, you can see the -- the motion. I believe it was filed in the first week or so of -- maybe the second week of July to get in front of Your Honor.

Today, the number has become more fixed now that we've figured out what bank financing is. And so today, we are asking Your Honor to -- to rule consistent with the opinion that -- that the buyout -- the staggered buyout is -- is appropriate. It's appropriate under the LLC Act.

And what we would ask that you rule is that it -- CCC may make the first purchase of $200,000 upon entry of your order followed by two to three years, which we -- which we leave to Your Honor's discretion at -- at four percent interest, which we think is the appropriate interest rate.

But today, we -- we have the availability to do the $200,000. That letter gave a range. So I guess the argument's going to be, should we -- should Your Honor say

do it all right now.

THE COURT: Go ahead.

MR. WILLIAMS: The argument's going to be, should -- should Your Honor order the entire payment right now, or should it allow the position proffered by the company, which is that a reasonable structured buyout take place.

We submit that -- that the conclusion that a reasonable structured buyout should take place -- you can't -- you can't conclude anything different if you look at the Supreme Court's opinion. The Supreme Court knows that Mr. Gandis runs the company, knows that Mrs. Comeau-Shirley assists with the company. And that it's a very small company.

By shifting the liability to purchase Mr. Wilson's interest from those two individuals to the company, if the Court meant that to mean anything, then it would mean that the company has time to make the purchase. Otherwise, it's -- it's a futile act. It's just saying, guys, go make the -- go fund the company to go make the full purchase immediately.

If the Supreme Court thought that was the appropriate response, then it would not have shifted the purchase obligation to the company. And so it's the inescapable conclusion that the Supreme Court set forth what it thought should occur. And that's consistent with the LLC

Act, which is that the company make the members purchase his distributional interest.

Now, I've referenced the -- the act. And it's in a memorandum of law that I submitted, Your Honor, on September 17th.

THE COURT: Yeah. I read that.

MR. WILLIAMS: Okay. And so 33-44-701 discusses a member -- the company purchasing the distributional interest. That's what the Court did. It shifted it in light of the LLC Act.

So then we get next to, what's a reasonable amount of time? And, of course, we couldn't find anything on point in South Carolina that talks about a buyout.

I cited the Court a case from the District of Maine. It's a shareholder oppression case. The Court concluded that the shareholder had been oppressed and imposed the obligation of a buyout. And the company was provided five years for the buyout.

And, of course, we don't ask for five years. We ask for, first, a very substantial down payment, which was not what was done in Caplin [phonetic], followed by two to three years. I think it's important to note that one of the arguments proffered in Caplin was that five years was too long. And I'm quoting, Because the oppressed shareholder who has had to resort to extraordinary costly

litigation over a period of years shouldn't have to wait for that relief.

Well, the Court rejected that and said that's just the way it works. This isn't personal injury litigation. This is company membership shareholder interest litigation, which is just filled up with statutory mechanisms for how things operate. So it's -- it's very different.

So that's the case we cited. And I can hand -- I -- I know Your Honor has a copy, but I can hand up a copy, if it would be beneficial.

THE COURT: Yeah. You can give it to my clerk.

MR. WILLIAMS: Okay.

THE COURT: All right. Go ahead.

MR. WILLIAMS: Yes, Your Honor.

And then, of course, a reasonable amount of time. So there's the LLC Act. And it says you can do the buyout. You can do the structured buyout. That's the appropriate way to do it. And I submit that based on the Supreme Court's holding that that's what they intended to occur.

And then there's just the separate issue of what does reasonable amount of time even mean? We've identified a case that our Supreme Court handed down a long time ago. And it discussed reasonable time. And the Supreme Court said, context matters. It -- it talked about, I believe,

the construction of the courthouse in York County and said that, you know, if -- if -- if the iron they needed to build that courthouse didn't come in time -- and so a lawsuit was started.

And the company -- and the Supreme Court said, you know, reasonable amount of time is judged by how big a company we're talking about. If they had contracted with the largest iron foundry in America, then their expectation is that that contract would have been executed very swiftly. But if it's a smaller company, then reasonable time is altered.

Reasonable time's altered here because we're not dealing with a large company. We are dealing with a small closely-held company of -- of 10 -- 15 employees. It's not a -- it doesn't throw off a ton of money. I mean, it -- it employs its employees and it makes money. But in the context of the size, a reasonable amount of time would be the two to three years that we've proffered.

The Caplin case that we cited, Your Honor, also, discusses this point. And it says, Well, how much stock is being purchased? If it were 10 percent of the stock, that'd be one thing. It's 45 percent.

And so all of these things -- these items together, we submit, show that what the Supreme Court intended was a structured buyout. We ask that Your Honor order that

buyout.

And let me make one last point about the size of the company. When -- after the circuit court issued the order imposing personal liability, that was modified. The circuit court required a supersedes bond. The company -- the company didn't have the -- the company didn't post a supersedes bond. One of the shareholders posted a supersedes bond and had to seek assistance from the family to be able to do that.

So that -- that speaks to the size of this company and speaks to what's reasonable in terms of a buyout. I'll -- I'll -- I'll rest with that and -- and answer any questions.

THE COURT: All right. Before -- before I hear from Mr. Arnold, let me -- let me ask you this, would -- would it be reasonable to assume that, obviously, the -- Judge Hill heard the case. The Supreme Court heard it. There was a judgment in some fashion in the amount of 342,000 -- whatever -- whatever that amount is.

MR. WILLIAMS: Yes, Your Honor.

THE COURT: It's reasonable to assume that; is that correct? That's reasonable to assume that?

MR. WILLIAMS: That all those things did occur?

THE COURT: That that's the judgment? That would be the judgment amount?

MR. WILLIAMS: Yes, Your Honor.

THE COURT: I'm looking at Section 34-31-20. And it talks about interest -- when interest accrues on a judgment. And I'm -- I'm calculating 7.5 percent. But my -- I guess my question is, was that in the discussion at all in terms of any interest accruing on that amount?

MR. WILLIAMS: Before the -- before we filed the motion?

THE COURT: Right.

MR. WILLIAMS: I mean, as between the two of us?

THE COURT: Yeah.

MR. WILLIAMS: Yes.

THE COURT: Are you going to talk about that?

MR. ARNOLD: I can talk about it.

THE COURT: Okay. Do you -- do you want to address it or --

MR. WILLIAMS: No. I -- I can tell Your Honor on the front end, it's -- it's -- it's firm that postjudgment interest does not apply. Because the Supreme Court shifted the obligor on the judgment. It went from two individuals to a company.

THE COURT: And you think -- okay. Go ahead. Go ahead.

MR. WILLIAMS: So that's -- that's going to be the position. But the -- Mr. Wilson hasn't moved for the

application of postjudgment interest. So that hasn't been briefed or...

THE COURT: Oh, okay. Well, I -- well, I just wanted to ask that.

MR. WILLIAMS: Sure.

THE COURT: Okay.

MR. ARNOLD: May it please the Court.

THE COURT: Yeah.

MR. ARNOLD: I'm Andy Arnold representing Dave Wilson.

You know, I feel like I've been here, done this. And we keep winning. And they keep arguing. We keep winning. They keep refusing to pay what the Court ordered them to pay.

So we go back eight years. You know, they don't want to talk about anything else but John Gandis' alleged financial difficulties in paying for his bad acts. So the context is that eight years ago, they had an obligation to purchase this man's interest. Eight years ago, they forced him out of the business he formed, lied, cheated, and stole. It's all in the order.

And now, they want this Court after eight years of them ignoring the LLC statute, ignoring their legal obligations, placing this family in extreme financial hardship, kicked him out of his business, cancelled his

health insurance, cut his income, took his business, took his company. And now, we've got to feel sorry for John Gandis that he got caught. And now, he's got to pay. And woe is him.

Well, we've got a 340 -- was it $347,000 judgment? That's not negotiable. You know, the time to negotiate is on the front end. And we tried that. And that didn't work. So after spending hundreds of thousands of dollars -- I've got to believe they spent two because we spent about that, a couple hundred grand on trying to cheat him out of his business, and now we're supposed to look out and go, ah, well, you used your money you should have bought him out with to try to cheat him. But now, we're going to extend to you a couple more years.

So I would just say the context of this is what's a reasonable time for a company that cheated its owner, lied about it -- you go through and one of the things they talk about in this Supreme Court order is the credibility findings of Mr. Gandis and Ms. Shirley. And so here we are. They're wanting more time.

So let me just tell you what the Supreme Court did. First of all, they affirmed Judge Hill's order. It rejected their counterclaims and found and upheld the -- the verdict, the money judgment given to Dave Wilson. Then what they did is they said, you know, we're going to

let CCC have the first shot of paying this. Okay.

So CCC gets the first shot. And if they -- if CCC doesn't pay in a reasonable time, then you can go after these individuals. But it didn't say -- and I want to hand up a portion of the -- the Supreme Court's order, just the two pages. And I've -- where the Court, actually, discusses what it expects to happen.

So when we got our judgment, we tried to collect it. And Judge Hill granted a stay, kept us on the sidelines for four years because they posted a bond. And if you look at the bond, Your Honor, the bond anticipated what the Supreme Court did. I'm going to tell you what I anticipated what the Supreme Court did.

And what the -- what the bond says is -- is if we prevail and they don't pay, we get to collect the bond. It, also, said that if we go up and the Court changes the order, instead of allowing John Gandis and Ms. Shirley to pay, if it orders CCC to pay by the terms of the bond, it still applies. We anticipated this result.

And the Supreme Court said very clearly -- and this is on Page 22nd -- or Page 21, which is the second page I handed you.

THE COURT: All right.

MR. ARNOLD: And it's about -- on that first paragraph on that -- that second page, it says, The trial

court noted that CCC was required to post the bond should an appellate court decide that the obligation to pay Wilson for his membership interest properly rests with CCC and the company becomes [inaudible]. Otherwise, then they will pay the judgment should it be affirmed. At oral argument, it was confirmed that the bond was purchased and remains in place. The bond should ensure compliance with our order that CCC purchase Wilson's interest.

So what I would say about their motion is that it is supported -- there -- there's not one thing in the record today about CCC's finances. We hear all about John Gandis' finances, about his daddy's retirement. But we don't know what's going on with CCC. We don't know how much money he sucks out of that business every month. We don't know what the assets of it are. We don't know what the bank account is. We don't know that information.

So the -- the first thing this Court should do is, first of all, you should disregard his self-serving affidavit. Because he didn't become credible all the sudden. The Court should order us -- refer this to the master to determine what a reasonable amount of time is to pay the $200,000 of interest. That's what the interest is in this case.

Once again, they're going to spend CCC's money fighting the obvious. There isn't a case out there that

stands for the proposition that a judgment -- which the statute you just read says, Shall. And there's cases out there that say you don't have to make a motion for interest. It -- it's an operation of law. We're entired -- entitled to that interest.

So we got a -- a judgment for the 340 some odd. We've got interest of 197,000. 143. 34. Do you know what? We'll probably work out terms on the 197, depending on what supplemental proceedings show about the assets of CCC.

But one asset we know they have is the bond. That bond was to protect us. And now, they want to change the whole scheme of appellate jurisdiction, appellate import and have us disregard the exhibits of the bond, act like the bond doesn't exist, or feel sorry for Mr. Gandis and say, oh, I'm sorry, we never -- we're not going to hurt you. We don't want this to -- we don't want this to cause you any pain. We don't want to have to -- you to have to take your children out of private school. We don't want you to feel any of this. So we're just going to ignore the bond.

So, Your Honor, you should lift the stay, which is, I think, just a matter of -- of formality, really. I think the stay is for the appellate [phonetic] that the Court issued its order. So that's a matter of course. You lift

the stay. We go after the bond. We collect the three -- the 347 of the bond. Supplemental proceedings can determine the rest of the equation. It can determine the amount of interest it's owed. It can look at their assets. It can see what really CCC has.

And the Court after examining CCC's finances can decide what -- maybe we go seize all their damn -- excuse my language -- seize all their equipment and payoff this man. But let's just be clear, since 2012, John Gandis has been earning a living with his money. And it should stop today.

So we should lift the stay. If they don't want to pay it, we go collect the bond. And then we determine how much time they have to pay the interest.

The last thing I want to say is, they keep coming back to this reasonable time. The Court didn't say -- the Supreme Court didn't say, well, CCC has a reasonable time to pay before you get the bond. No. What the Supreme Court said -- and you just -- you can see it is that CCC should have no problem paying because of the bond.

But what it said was a reasonable -- CCC has a reasonable time before we get to go back after John and Andrea, not until we go after the bond. That's -- that's conflating things that the Court did not say. What the Court says is, if you want to go after John and Andrea

for -- for the rest, you can after CCC has a reasonable time. But you're probably not going to have to do that because you've got a bond.

So, Your Honor, I believe this Court's really -- I mean, it's pretty simple. We got a judgment. We won. We're entitled to the money. We got a bond. You lift the stay. We collect the bond. And then we determine how they pay the interest.

THE COURT: All right. I'm looking at the Court's decision. I read it last week.

Counsel, I'll let you comment.

There's some pretty poignant language in here. It says -- as it relates to talking about the bond, it says, The bond should ensure compliance with our order that CCC purchase Wilson's interest. If CCC complies with our order, then the purchase of Wilson's interest the trial court need not reach the second step of requiring C -- Gandis and Shirley to purchase -- then it goes on to talk about the bond again.

And it says, With the aid of the bond or otherwise, if CCC's purchase of Wilson's interest does not take place within a reasonable time after the remittitur's issued, the trial Court should order the second step. Then it goes on to tell what the second step is.

It -- it seems to me that the spirit of the Supreme

Court's order is saying if this does not take place -- we've got this bond. And if that does not take place, then the bond is the -- is the go to. At least, that's the spirit of the order that I read. And I'll be glad to let you comment on that.

You know, and I really think, as you stated at the outset, this is not to -- to go over whether your client -- or whether your client's honest, and who's honest and who's dishonest. That's not what this is about. You know, the way I read this order is it's a matter of -- of this Court making a decision as to payment and -- and how that should be done.

So go ahead. I'll hear -- I'll hear from you.

MR. WILLIAMS: Yes, Your Honor. And I -- I think you hit the nail on the head. You know, the -- the advocacy from my friend at opposing counsel's table regarding the order is, frankly, unnecessary. It's -- it's not before the Court. And, you know, of course, all this is disputed. And -- but here's the issue, here's the point speaking to your question --

THE COURT: Well, let me -- let me -- before you do that, I think Counsel made an interesting point. And I want you to address it.

MR. WILLIAMS: Sure.

THE COURT: Is that there was no exchange between the

two of you regarding -- I know we've got Gandis, Shirley. But in the -- in the affidavit, any statement as to the value or any assets of CCC.

MR. WILLIAMS: Sure. So in the first affidavit, it talks about -- it talks about year to date. That's on Paragraph 18.

THE COURT: Okay.

MR. WILLIAMS: And if -- and if the Court needs to -- well, so I'll let you look at that.

THE COURT: No, no. Go ahead.

MR. WILLIAMS: Okay. But here's -- here's -- here's the broader point, which I think speaks to your first question.

THE COURT: Okay.

MR. WILLIAMS: So you -- you read from the opinion. But if you go up about two lines -- and it's quoting Judge Hill's order. And if I could read it to Your Honor.

THE COURT: Go ahead.

MR. WILLIAMS: Requiring -- I'm reading from the -- well, I'll read from the opinion. It will be just as easy. The trial court noted triple C was required to post the bond.

Do you see that, Your Honor?

THE COURT: Yeah.

MR. WILLIAMS: Decide that the obligation to pay

Wilson for his membership interest properly rests with triple C. And the company becomes insolvent or, otherwise, unable to pay the judgment should it be affirmed. That's what the bond is for.

We stand here saying we will wire $200,000 to begin the payment process. There's nothing showing that this company has -- does not have the ability to make that payment. And that's all the bond's for. And so when the Supreme Court shifted it back to the company, this is the process. The process that we're advocating is what it meant.

Now, again, Paragraph 18 tells the company what the year to date is. But I submit -- if you want us to submit financials, we can do that. But there's an even easier response to this. Your Honor, of course, should issue an order regarding the structured payout. But every payment -- we can keep a bond in place. And when that 200,000 hits tomorrow, it'll reduce it by 200. And every payment will continue to reduce it. That way, there's never any question about the financial ability to pay.

So that -- that -- Your Honor could issue that order. And that would be complied with.

THE COURT: And I could change your numbers.

MR. WILLIAMS: I -- I'm not sure about the changing of numbers on postjudgment interest --

THE COURT: No, no, not -- not on interest, but in terms of structured payment.

MR. WILLIAMS: Yes, Your Honor. And that's your authority. That's your authority. And that's what the Supreme Court's telling you -- asked you to do.

Now, we've submitted what -- what -- what should occur. But I'll -- I'll, certainly, respond to any questions Your Honor has on --

THE COURT: How was the $200,000 amount determined?

MR. WILLIAMS: Money. Ability to pull up money. I could -- I could ask my client for a more appropriate answer, if you want -- or a better answer. Just money that is easily obtained. That amount of money could be obtained.

May I --

THE COURT: Yeah.

(Pause.)

MR. WILLIAMS: I guess in Paragraph 18, the LLC manager talked about the money that's been generated this year.

(Pause.)

THE COURT: All right. Go ahead.

MR. WILLIAMS: So -- so that -- that, Your Honor, responds to Mr. -- Mr. Arnold's argument on the position of the bond. And, frankly, that's what I was going to get

up here and tell you. And -- and Your Honor was already there.

So are there any -- are there any other questions?

I -- I have a couple more comments, but I'll -- I'll pause.

THE COURT: And I'm assuming that there's been no middle ground between Counsel in terms of determining a resolution at this point.

MR. ARNOLD: No, there hasn't. I mean, they made this offer to pay something less than what they owe. And then they wanted to change the -- the interest statute and -- and propose they pay four percent interest.

THE COURT: I saw that.

MR. ARNOLD: Again, I mean, this is not -- you know, so. So, no, there hasn't, other than because, again, I'm going to just tell you our position was and is, you just have to pay. And if you want to pay 200 grand, you don't need the Court's permission to pay $200,000. You just pay it. That's how this works. You owe it, you pay it. And you've got a bond.

So if they want to pay 289 -- I mean 200, then we can go after the bond for the 189 or 149.

THE COURT: What do you say about that?

MR. WILLIAMS: I -- I'm not sure I know the question.

THE COURT: Well, I -- well, I'm just piggy backing

on what Mr. Arnold said, you know, you want to pay $200,000 and let them go after the bond on the rest of it.

MR. WILLIAMS: Sure.

THE COURT: And then -- and then hopefully -- and I'm -- I'm sure that -- Mr. Arnold said a minute ago that you can talk about the interest. I mean, you can kind of talk about that.

I disagree with the four percent. I -- I disagree with that -- with that figure. I think it's somewhere in the neighborhood of seven, I think, you know.

But, anyway, I think that they're willing to talk to you about the interest. But what's -- what's your position? You know, I'm sort of getting you to talk now in the courtroom. That seems to me that's a -- a position that -- that was thrown out there.

What's -- what's your position on that?

MR. WILLIAMS: Sure.

THE COURT: Because I think the bond's there.

MR. WILLIAMS: The bond is there. And I guess here's the -- here's why we're back here is because my -- my friend is -- he's -- he's offering a -- a scenario for how the purchase goes as if there's not a statute. There's a whole host of statutes that talk about how the purchase goes.

I mean, the -- the reason we're back here is because

Judge Hill imposed personal liability joint and severally on shareholders. And the Supreme Court said, you shouldn't have done that. You should give the company the opportunity to purchase it.

And so the -- we've offered up the structured buyout process, which the company -- which the Supreme Court said we're leaving it to the trial court to figure that out. We've offered it up. And -- and for the reasons I've argued in the memorandum, our position is the Supreme Court did not make an empty modification. The Supreme Court clearly knew what the bond order said regarding the ability to pay by the company.

And so if the Supreme Court's words mean anything, it means what we're advocating.

MR. ARNOLD: And I would point out, Your Honor, you know, their -- this payment plan they've got just completely disregards $197,000 in interest. And they're going to make us litigate that.

MR. WILLIAMS: Your -- that is correct. And, Your Honor, here's the reason why it's correct, there's case law that say, okay, you get the award of $450 against somebody or 450,000 against somebody. Take it up on appeal. The appeal says, no, it should have been 350. Judgment is still -- postjudgment interest still runs. No question about that --

THE COURT: Yeah.

MR. WILLIAMS: -- when the money number changes. But -- but that's not what the Supreme Court did. What the Supreme Court did is said someone else is responsible for making that payment.

And so when you shift it to someone else -- not the amount, someone else, how do you impose postjudgment interest when the -- when the someone else should have been paying it all along? And so -- and that is not an answered question. And, frankly, we think it's an appropriate --

THE COURT: It's a technicality.

MR. ARNOLD: What -- what case is that?

THE COURT: It's a technicality. But I -- I hear what you're saying.

MR. WILLIAMS: Okay. And so we've had a hard time getting conversations going, as you can -- as Your Honor can see.

THE COURT: Yeah. Well, you know, a judgment's a judgment, you know. And what's this, eight years? This is 2012?

MR. WILLIAMS: Since it was filed. April --

THE COURT: Well, 2012 since everybody knew what was going on.

MR. WILLIAMS: Right. And I -- and I'll add, Your

Honor -- I'll -- I'll be quiet. I know --

THE COURT: No, no. Don't be quiet. Go ahead.

MR. WILLIAMS: No. I'll just add, we have -- we filed a response affidavit today. And it says that -- that Mr. Wilson short circuited the LLC statute. The case was filed. There's a 120-day window where it says y'all have to negotiate. You have to figure out how to do everything. The case was filed in violation of the 120-day window.

MR. ARNOLD: That's done.

MR. WILLIAMS: Of course, it's done. But it just shows the -- the absence of following the --

MR. ARNOLD: What it shows is the willingness to keep arguing about stuff that's already been resolved, any effort to deny him what is rightfully his. That's -- that's the only thing that's -- that -- that this is about. That affidavit wants to relitigate the case he lost. They -- they keep -- they keep refusing to admit that the Court didn't buy it the first time and they're selling it again.

THE COURT: All right. Anything else from anybody?

MR. ARNOLD: No, Your Honor.

MR. WILLIAMS: No, Your Honor.

THE COURT: All right.

MR. MOODY: Judge Kinlaw.

THE COURT: Yes.

MR. MOODY: Randy Moody.

May I say something just briefly on behalf of the individuals --

THE COUR: Yes.

MR. MOODY: -- that I hope's not lost?

This language -- and -- and may I talk without this --

THE COURT: Yes, yes. Go ahead.

MR. MOODY: Thank you.

I'm not going to sing, or anything like that.

A point Mr. Williams makes on brief and in this argument is if you adopt the fact and just run through this purchase concept and the structured purchase of the CCC and don't allow the company to do the structured purchase, as the statute allows, then everything the Supreme Court did in the modification becomes a nullity. Because we go right back to imposing the liability upon the individuals.

The Court, also, wrote and put in footnote four and five about the fact that Ms. Comeau Shirley is only a 10 percent owner in this whole issue of proportional interest.

One of the things that happened in this case -- and I know, Judge, there's -- there's a lot of bad feelings and

things that happened. I just got involved for the appeal. And I certainly can't speak about what the Supreme Court does like Mr. Williams because he clerked there. But things happened in this case that this Court nor the Supreme Court has visibility to. And it's in the affidavit.

Mr. Wilson went down to Georgia and tried to collect the entire judgment against Ms. Comeau Shirley, who's a Georgia resident. So that led to this whole placement of the bond. And that's why Judge Hill put in the case -- their whole argument is CCC's going to be insolvent. We need a bond to protect ourself.

So that language is placed in the Supreme Court's opinion to protect from the fact that this company vaporizes. What you have is a company with people who've come to support it who depend on this company for their livelihoods.

This man has suffered. This family has suffered. Everybody has suffered from litigation. And I can say that because I wasn't in the trial. I just was involved in the appeal.

So from the individual's perspective, we urge this Court that Judge Hill imposed individual liability. We took it up. Thankfully, the Court -- the Supreme Court modified that, wrote extensively on it to allow the

company in the first instance to make the purchase in a reasonable amount of time. That's what we have. That's what the company has asked for, to make a very substantial -- more than 50 percent payment and structure out the terms. Mr. Williams has said the bond will be there to -- to protect the rest of the payments.

If there's issue about postjudgment interest, that can be -- that can be managed at another time. But today, it's about the company making the offer to purchase in a reasonable amount of time. And that's what the authority of this Court is.

So on behalf of the individuals, and their interest, and what they've been through through this litigation, and how the Supreme Court came in and changed it and modified everything, I thought I ought to say just those few words just to -- just so that their interests are heard. The company is doing what the Court said for it to do.

MR. ARNOLD: And the bond should fulfill the purpose that the Supreme Court intended it to fulfill.

THE COURT: All right. Gentlemen, first of all, I -- I find that this Court has continuing jurisdiction. And I make the following finding: First of all, I will find that it's appropriate to lift the stay. That's number one.

Secondly, I'm in receipt of Counsel's submission to

the Court regarding the structured payment schedule by Custom Carolina -- Carolina Custom Converting, LLC. And I modify it to this extent. I will allow or permit CCC to pay the sum of $250,000.

The -- I will allow Plaintiff to -- Counsel to pursue the balance under the terms of the bond that was issued by the -- in -- in this matter. And I would refer -- refer the matter to the master to determine a reasonable time for the payment of interest, understanding full well that Counsel on both sides could talk to each other about a determination of interest, whether or not we're talking about a four percent window or a seven percent.

And I think that that covers it.

MR. ARNOLD: I'll be happy to draft the order, Your Honor.

THE COURT: All right. Do me a formal order, Mr. Arnold, and send a copy to Counsel for his review before you send it to m.

MR. ARNOLD: I'll do that.

THE COURT: E-mail it to my law clerk.

MR. ARNOLD: Okay. Thank you, Your Honor.

THE COURT: All right. Thank y'all.

**********END OF PARTIAL TRANSCRIPT OF RECORD**********

CERTIFICATE OF REPORTER

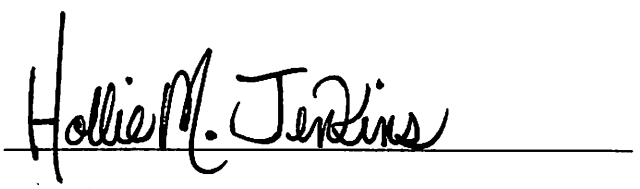
STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

I, HOLLIE JENKINS, Official Court Reporter for the Thirteenth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete Transcript of Record of the proceedings had and the evidence introduced in the captioned case, relative to appeal, in the Court of Common Pleas for Greenville County, South Carolina, on the 21st day of September, 2020.

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

October 14, 2020



Hollie M. Jenkins, Court Reporter

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) 2012-CP-23-02887

David Wilson, et al,)
)
Plaintiff,)
)
vs.)
) **TRANSCRIPT OF TESTIMONY**
John Gandis, et al,)
)
Defendant(s).)
_____)

April 13, 2021
Greenville, South Carolina

B E F O R E:

HONORABLE CHARLES B. SIMMONS, JR., MASTER IN EQUITY

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

W. Andrew Arnold, Esquire
Attorney for Dave Wilson

Burl F. Williams, Esquire
Attorney for Carolina Custom Converting, LLC

Danette P. Hanks, CCR
Court Reporter

THE COURT: For the record, this is 2012-02887. Case has been referred. To say that this has a long-standing history would be an understatement. And gentlemen, let me start by noting, we are proceeding today under a Zoom format in light of the ongoing coronavirus issues. And this is also done with the consent of the attorneys. So if I could get both of the attorneys to identify yourselves and who you're here on behalf of this afternoon.

MR. ARNOLD: Your Honor, this is Andy Arnold. I represent Dave Wilson, the Plaintiff.

THE COURT: All right.

MR. WILLIAMS: Your Honor, this is Burl Williams. I represent CCC, the Defendant.

THE COURT: And as far as Mr. Gandis and Ms. Shirley, are they -- first, are you representing them, Mr. Williams?

MR. WILLIAMS: No. And the dispute is about a payment regarding the company, so the interests are represented.

THE COURT: All right. But is there some degree of possibility -- and Mr. Arnold, let me start with you with this question, that Mr. Gandis and Mr. Shirley could end up being responsible or liable for post-judgment interest. But obviously, in light of the history of this case, all issues need to be joined. All parties need to be present when the arguments are made in order to have a clean record for Columbia.

So, Mr. Arnold, let me hear your thoughts.

MR. ARNOLD: Honestly, I would have expected Randy Moody to be present, who represents the individual Defendants. He was consulted, had a hand in the drafting of the Order that you requested when we were referring this matter to you to make sure it was clear of all the issues that were being referred. He received notice of this hearing. And so although I'm surprised they're not present, they were provided notice. And I guess Burl is right in one way, I mean, look, they're all in the same boat in a sense. But I don't think their attendance is necessary, having been given notice and elected not to appear.

THE COURT: All right. Mr. Williams, let me hear your thoughts. I'm truly not trying to create an issue. I'm trying to lessen an issue for our very fine Appellate Courts.

MR. WILLIAMS: Sure. I do not believe that the individuals' lawyers need to be here. The company can represent their interests. Their interests are now all aligned following the Supreme Court's opinion. So I think it's -- I think the issue is ready for Your Honor to rule. And can be resolved in this hearing with the lawyers present.

THE COURT: Okay. Then we'll go ahead and proceed. Let me go over a couple of what I understand to be procedural background issues that I don't think there's any controversy over. The Trial Court issued its Order on January 9, 2015. And at that point Gandis, Shirley, CCC filed an appeal. And the Supreme Court issued its Order dated June 6th, 2020, some five

years later. In that decision -- and I'm looking at the conclusion of the Supreme Court Order that was filed at 844 S.E.2d 631 -- and in that Order they agreed with the trial judge except they do use this language, we modify the Court of Appeals oppression holding and hold CCC as first obligated to purchase Wilson's interest in CCC. If CCC does not complete the purchase within a reasonable time after the remittitur is sent to the lower court, then Gandis and Shirley shall be required to purchase Wilson's interest. And I think that obviously raises what appears to be a very novel and interesting legal issue.

So gentlemen -- and I apologize for not knowing this -- but the remittitur by the Supreme Court was filed when? Do either one of you know offhand or have it in front of you?

MR. ARNOLD: The remittitur was entered at the Greenville Clerk of Court on June 26th ---

THE COURT: Okay. And has CCC completed the purchase of Wilson's interest?

MR. WILLIAMS: It has paid the full amount. It hasn't received any paperwork, but that's a ministerial act that Mr. Wilson -- excuse me -- Mr. Arnold and I have just as yet to complete.

THE COURT: All right. So under the most narrow of issues, Mr. Arnold, is there any argument that CCC did not comply with the Supreme Court's Order to complete the purchase within a reasonable time after the remittitur was sent?

MR. ARNOLD: Well, look, I certainly think there is an argument to be made. But that's not an argument we're making here today.

THE COURT: Okay. And again, I'm just trying to ---

MR. ARNOLD: Sure.

THE COURT: --- separate the wheat from the chaff which is never easy, but especially not when you've got good lawyers in complex issues such as this.

Now, as far as the Order of Reference that was filed January 26, 2021, the only issues that I am to decide are, first, is post judgment interest collectible on the Order entered on January 9, 2015. And if so, how much? And if so, how much being determined, does there need to be some type of supplemental proceedings to collect the amount? So does everybody agree that kind of sets the scope of the arguments here this afternoon?

MR. ARNOLD: Yes, Your Honor.

MR. WILLIAMS: Yes, Your Honor.

THE COURT: Okay. All right. And I've got three or four questions, gentlemen, if y'all will, I guess, allow me to go through it.

Mr. Arnold, Mr. Williams makes the argument that the Supreme Court took two debtors, Gandis and Shirley, and effectively said, you are no longer liable, but now CCC is liable. So Mr. Williams is arguing that there is a brand new judgment debtor and that the brand new judgment debtor, CCC, should not now be tagged with

interest going back to 2015. So in light of the language used by the Supreme Court, has there been, Mr. Arnold, a brand new judgment debtor created by the Supreme Court?

MR. ARNOLD: Well, so there certainly is a new individual or new entity who is responsible for the judgment, so perhaps, yes, there is a new judgment debtor. I think the question, though, is, is there a new judgment? The statute provides that the interest attaches to the judgment and irrespective of who is obligated to pay it, the judgment is an indication that somebody owes my client money and that somebody is in possession of my client's money. So perhaps what we didn't know when the Court first issued its ruling was that CCC would be required to pay it and not the individuals. But what we now know then is that CCC is the party who had been in possession of my client's money for all those years. So the question is, is why should CCC get to possess that money for all those years and not pay interest for it?

THE COURT: Well, the flipside -- and Mr. Wilson, I'm certainly going to hear -- or Mr. Williams, I'm certainly going to hear from you in just a moment -- the flipside is Mr. Williams argues, hey, CCC for over five years had no hint that they were going to ultimately be liable, so why should they now be forced to retroactively go pick up five years of interest when they would have negotiated, they would have thought through, they would have handled everything different?

MR. ARNOLD: No, they wouldn't have handled everything differently. What they did is they both appealed. And CCC appealed its -- and the individuals appealed. And the individuals who were the owners of CCC are the ones that argue that CCC should be the one that holds the debt. So there was no surprise. We knew that one of three people -- or one of three entities would be responsible for this. They argued that it was CCC.

THE COURT: All right. And just to make clear for the record, Gandis, at the time of the original lawsuit or trial, owned forty-five percent, Shirley owned ten percent and Wilson owned forty-five percent; correct?

MR. ARNOLD: That's correct.

THE COURT: All right. So, Mr. Williams, what's wrong with Mr. Arnold's argument that you can't get a backdoor windfall, CCC, because you were in here from day one. You appealed it. You're part of the reason that Mr. Wilson has done without his money for five years.

MR. WILLIAMS: So I think there -- well, one it's a new judgment debtor. First you've got to look at it, Your Honor, as just a statutory interpretation question. And the question is the statute says that -- I'll give you the relevant here version, a judgment of the Court entered must draw interest according to law. So you've got to identify what the judgment is. I submit that the judgment is the amended judgment entered by the Supreme

Court. And it has to be because it created a new judgment debtor.

THE COURT: All right. But now is that -- the judgment goes back to Judge Hill's Order; correct?

MR. WILLIAMS: Well, that's the original judgment.

THE COURT: All right. So that's been out there?

MR. WILLIAMS: Correct.

THE COURT: But it just took a little while for it to land in the lap of CCC?

MR. WILLIAMS: Correct.

THE COURT: And so -- go ahead.

MR. WILLIAMS: So the statute talks about a judgment. We've got to decide what judgment we're talking about. I submit that the judgment is the Supreme Court's judgment which amended it. The case law teaches that the purpose of this statute is to penalize non-payment of the judgment by a judgment debtor. That's *Sears against Fowler*, 293 S.C. 45, 258 S.E.2d 575. Another case teaches that the running of the post judgment interest further encourages judgment debtors to pay judgments promptly. That's *Hunting against Elders*, 259 S.C. 229, 597 S.E.2d at 809. And so the purpose of the statute is to have the judgment debtor that's on the hook to have a penalty imposed for not paying, while that penalty shouldn't exist if they had no obligation to pay in the first instance. And what the Supreme Court opinion did was it corrected it. It said, no, the original

judgment debtors have no obligation. We should have -- it should have first been placed with the company.

THE COURT: The company, the majority was owned by the two individuals; correct?

MR. WILLIAMS: That is correct.

THE COURT: So is that a distinction with a difference or is that a distinction without a difference?

MR. WILLIAMS: It's a distinction with a difference. And I'll cite again to the *Hunting and Elders* and this is the law in South Carolina and I assume it's the law in every state. A corporation is an entity separate and distinct from its officers and stockholders and its debts are not the individual indebtedness of its stockholders.

I think what's missing here is that the obligation to pay was imposed upon the individuals which is something that was sought in the lower court by Mr. Wilson. And until he was cashed out last year, he still held an equity position. And so what he looked for was the individuals to pay. If the company had paid, he could have made hay about that because it wasn't a company debt or obligation while he was still an equity holder. The company didn't really have the ability to use its own assets, its own whatever to make payment until the Supreme Court gave it license. So I think that those differences resolve the question.

THE COURT: All right. Let me ask, just for the record, is the statute you're referring to, is it 34-31-20?

MR. WILLIAMS: Yes, Your Honor.

THE COURT: Okay. So, Mr. Arnold, what Mr. Williams says, it is a distinction with a difference. How do you respond to that?

MR. ARNOLD: Well, I mean, look, the judgment was affirmed. I mean, to me an affirm -- they could have reversed the judgment. And if they had reversed the judgment, there would be no issue. But they didn't reverse the judgment. They affirmed it. And so the idea that affirming the judgment was intended to operate as a new judgment -- look, it's certainly a novel argument. And I've always prided myself on being creative. I'm not sure I would have been this creative, but it obviously has some appeal. No pun intended. The -- but again, I would just say we're focusing on the wrong thing. The judgment was affirmed. And so if the judgment was affirmed, what's the date of that judgment? And the date of that judgment will determine the date from which the interest will accrue.

Let me say one other -- just real quick.

THE COURT: Yes, sir.

MR. ARNOLD: That CCC technically never paid the judgment. The Court ordered them to make payment and they didn't make payment. So we ended up collecting on the bond. So, you know, this idea that, hey, if we had just known it was our obligation, we would have done what we were supposed to. They have fought every step of the way. And so even when, in this

case it was you've got to pay it, they didn't pay it. And we ended up collecting on the bond. So I just throw that out just to be complete -- for the record to be complete.

THE COURT: All right. But Mr. Arnold, had the original Trial Court Order, at that point back in 2015, the judgment debtors were Gandis and Shirley; correct?

MR. ARNOLD: Right.

THE COURT: Based on the June 2020 Supreme Court Order ---

MR. ARNOLD: The judgment debtor was CCC.

THE COURT: Well, the primary judgment debtor. It gets a little bit gray everywhere you turn in this case. But -- and again, we may have already plowed this ground, so I apologize. But Mr. Williams is saying, hey, the Supreme Court took out the individuals and so we don't disagree that the judgment was entered, but we weren't, CCC, put into the game until the Supreme Court Order in 2020. So what's wrong with the rationale of that argument?

MR. ARNOLD: Well, again, the rationale is he doesn't have any supporting law. I mean what the law says is that every judgment shall accrue interest. This would come within that subset of every. And this judgment was affirmed. The case we haven't discussed, which I'll cite, and I'm not going to read my brief, but the *Calhoun versus Calhoun* ---

THE COURT: *Calhoun*, yes, sir.

MR. ARNOLD: --- established a bright line test for determining when you begin to -- when a judgment begins to accrue interest. And it established the bright line test that it is the date of the original judgment. And in that case it changed. So, you know, they could argue, well, we knew we didn't owe five hundred dollars; we only owed a hundred dollars. And so how can we be said to have not, you know, done what we were supposed to because the Court even said we didn't owe all the money that the original judgment. But the Court said, we're going to do a bright line test. So unless the judgment is reversed, then the date -- the bright line test says it's the date of the original judgment.

THE COURT: All right. Mr. Williams, let me come back to you. Under your argument and analysis, Wilson ends up with five years of no post judgment interest; correct?

MR. WILLIAMS: Correct.

THE COURT: Doesn't that somehow just not sit right? That he doesn't appeal. He's the Respondent. He wins at the Court of Appeals. He wins on the Supreme Court. And now for the Judge to say -- for the Court to say, well, you know what, you didn't appeal. You won twice. But sorry, you don't get interest pursuant to the statute for that five years.

MR. WILLIAMS: I don't think I -- I appreciate the question, Your Honor, but I think ---

THE COURT: Yeah, it's a good question.

MR. WILLIAMS: --- but the result is -- sure -- I think it's a result that he requested. You know, when we tried the case there was the specific request imposed personal liability obligations upon the members. And in that request, the Supreme Court ultimately concluded that was granted was wrong. And the wrongness of it has consequences.

You know, I think one thing to point out here is that the general thrust of the argument is that Mr. Wilson -- Mr. Arnold is making is that nothing really changed. Imposed post judgment interest, regardless of what the Supreme Court opinion said, but something did change. We argued the case in the early part of June 2019 and it was handed down a year later in June of 2020. I know that prior to that oral argument, the whole Court read the briefs and they read the record. So this Court looked at this for a long time. And they generated a unanimous decision. They had to have gone back and forth on how to get to that unanimous decision. And I think they knew that making changes which they made would have consequences. And I think we can only conclude that the length of time it took to generate that unanimous decision, that those consequences were thought through. And they said that's what we're going to do. That's, I think, the big take-away from this in response to the question, Your Honor.

MR. ARNOLD: Your Honor, we're left to believe that the five/oh Supreme Court who found what these Defendants did -- I'll let you -- you read the characterizations. I won't repeat

it. Burl seems to take objection when I characterize it. I may use a little bit more inflammatory terminology, but I've lived with the case, too, so ... But that Supreme Court found that they oppressed my client engaged in just atrocious behavior, that that Supreme Court struggled for a year to figure out how to compromise so that Burl's clients would have gotten an interest-free loan from my client for the pendency of the appeal. And we're going to assume that because it took them a year, they were trying to figure out how they could make John Gandis, Andrea Comeau-Shirley and CCC a little better off. That's just -- first of all, it's not supported by anything in the text of the opinion. And when it comes right down to it, even if they said nothing but affirmed but modified, we would be entitled to interest.

THE COURT: All right. So gentlemen, is there anything else that y'all would like to have on the record as we bring the hearing to conclusion?

MR. ARNOLD: Well, I want to say one more thing just to make sure it's clear. I had asked for attorneys' fees. And I'm not asking for attorneys' fees for the whole case. I don't know what Burl ---

THE COURT: And I saw that, yes, sir, in the form of a sanction.

MR. ARNOLD: Yeah, just because I think that this argument, and not citing controlling authority -- you know my

argument -- so I just want to make clear that we're not saying -- this isn't an attempt to litigate attorneys' fees that could have, should have been litigated nine years ago. We actually did request attorneys' fees nine years ago. This is an attempt to collect attorneys' fees because we have had to fight, scratch and Zoom in order to get what was rightfully Dave's. And there really isn't anything in law that supports Burl's argument.

THE COURT: All right.

MR. WILLIAMS: Your Honor, I'd like to note that ---

THE COURT: Mr. Williams, I'm going -- and hope that this will save you a few words. And Mr. Arnold, you're always such a fine advocate. I'm just not going to grant that relief. I think there's enough question about the language the Supreme Court used, there's enough question about the case authority and exactly who the judgment, the post judgment interest lands on. So I'm going to go ahead and state that for the record.

So, Mr. Williams, does that shortcut your argument?

MR. WILLIAMS: It'll make it shorter. I wasn't going to spend a terrible amount of time there. But I think it is important to note that, you know, coming through a lot of the rhetoric of Mr. Arnold, the question during the whole dispute in this case, there was never a question that Mr. Wilson shouldn't be cashed out. It was always a question of what; what he should be cashed out at. The ultimate value assigned by Judge Hill, the numerical value, that was a number that the Defendants could

never achieve prior to trial. In order for the Defendants to receive a number that low, they had to try the case. And then after they tried the case, Mr. Arnold convinced the Court to impose joint and several personal liability on the members. So the idea that we've got a five-year interest-free loan and this thing has been hard fought forever and it's all the other side's fault, is just not factually correct. The five-year interest-free loan is based upon legal error.

And Your Honor, the Court did wrestle with it. We heard from the bench, the Justices wondering why liability would go straight to the members without going to the company. And of course, this isn't litigation on that point, but statutes discuss how it should happen and those statutes talk about the company making the payment. Ultimately it took five years for the Supreme Court to rectify it. And I think the Latin phrase *ita lex scripta est* just applies here. It is the law. It's the way it works in this instance.

THE COURT: All right, gentlemen. Thank you. From the judiciary, fascinating argument. From the litigants, is this circus ever going to end? Am I ever going to quit having to deal with lawyers and spending money. So I really do, I get it. And I know this is important to all concerned. I'll try to have at least a memorandum decision out within the next ten days. I do want to, now that I've heard from the lawyers, look back through everything again. But I appreciate very much the preparation and

the fine thoughts and the strong advocacy.

So gentlemen, that will conclude the hearing. Thank you.

MR. ARNOLD: Thank you very much, Your Honor.

MR. WILLIAMS: Thank you, Judge.

-----END OF REQUESTED TRANSCRIPT OF RECORD-----

The undersigned, Danette P. Hanks, Court Reporter, Office of Master in Equity for Greenville County, South Carolina do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, before The Honorable Charles B. Simmons, Jr., as Master in Equity for Greenville County, South Carolina on the 13th day of April, 2021.

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

September 1, 2021

Danette P. Hanks

Danette P. Hanks, CCR

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF GREENVILLE) 2012-CP-23-02887

David Wilson, et al,)
)
Plaintiff,)
)
vs.)
) **TRANSCRIPT OF TESTIMONY**
John Gandis, et al,)
)
Defendant(s).)
_____)

June 8, 2021
Greenville, South Carolina

B E F O R E:

HONORABLE CHARLES B. SIMMONS, JR., MASTER IN EQUITY

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

W. Andrew Arnold, Esquire
Attorney for Dave Wilson

Burl F. Williams, Esquire
Attorney for Carolina Custom Converting, LLC

D. Randle Moody, Esquire
Attorney for John Gandis and Andrea Comeu-Shirley

Danette P. Hanks, CCR
Court Reporter

THE COURT: For the record, this is 2012-02887; the matter of Wilson versus Gandis and others. We're here today on two motions. I believe the most substantive, which we'll talk about in just a moment, is the Rule 59 motion.

But gentlemen, where do things stand on the motion to deposit the money with the Clerk's office?

MR. ARNOLD: I think we about agreed, I believe, on a ---

COURT REPORTER: Mr. Arnold, I can't hear you.

THE COURT: Mr. Arnold, the audio is real soft.

MR. ARNOLD: I'm trying to figure out what's going on.

MR. WILLIAMS: I think what he was about to tell Your Honor is that we've basically agreed on how it's supposed to work. We're just -- have a little bit left to figure out where we actually want to agree on where the payment would go. We had generally talked about a certain type of fund, but there's been some reconsideration of that and we just -- it's happened so recent to this hearing that we haven't really been able to fix that in our heads.

THE COURT: All right. Is ten days realistic to circle back up on that?

MR. WILLIAMS: Yes, Your Honor.

THE COURT: Okay. Now, Mr. Arnold, are we going to be able to proceed, because obviously we need a clean record because I notice it's heading down to Columbia.

MR. ARNOLD: What I'm going to do right now is call and use my phone audio.

THE COURT: Well, we can hear you right now. And also just the trial realities of the docket, I'm got another matter scheduled at 9:30.

MR. ARNOLD: Well, if I start screaming ---

THE COURT: I'll accept that that's fairly standard for a lawyer.

MR. ARNOLD: Okay. Especially for me.

THE COURT: All right. Now, Mr. Williams, obviously it's never an easy thing in a very proper and appropriate ways to gently tell a judge how you missed it. So I understand the position you're in. But let me hear from you first on your client's contention that equitable considerations have been pulled in when it's a legal analysis only.

MR. WILLIAMS: Sure. So the -- you know, the question before the Court is application of 34-31-20. I could have said that in the wrong order. And that's a statute. And of course, the statute calls for post judgment interest when the text of it is met. Interpreting the statute is purely a legal matter, which is done based upon the facts at issue. The facts at issue here are not in dispute. There's a judgment that was entered, judgment debtors were created and the Supreme Court changed that. So the question is how do you apply that statute to that set of facts? And application of those facts to that statute would say

that post judgment interest cannot run until the Supreme Court enters the new Order. It ran in the background applying the facts to that statute. But once the Supreme Court changed the judgment debtor, the facts tell the Court, respectfully, that no post judgment interest can apply on the new judgment debtor.

And I think another way of looking at it, Your Honor, is doing the opposite, which is to say saying the post judgment interest has been running all along regardless of who the judgment debtor is, is essentially saying that the joint and several liability has been imposed on all three parties and it's running all at the same time. And of course, that's not what the Supreme Court said. I'll pause there. That's the general thrust of ---

THE COURT: Mr. Arnold, I mean, Mr. Williams he's a good lawyer and makes a good argument. What's wrong with that argument?

MR. ARNOLD: The Court has established a bright line test. So what Mr. Williams is asking for is based on certain equitable considerations that this Court should not impose the interest that accrues by statute on CCC. My argument would be that he is appealing to equitable issues and the Supreme Court in the one case he cited, *Sears versus Fowler*, it created the only exception that has been created to this statute. And that exception was created that when a judgment creditor appeals their verdict for insufficiency, then interest doesn't accrue during

the pendency of that appeal if the original judgment is upheld. What the Court said is that they found, after careful consideration, that the majority rule was the most equitable one. So the Court, in making decisions, can resort to principals of equity.

The last thing I want to say on this is his resort to equity is really this argument. Why should we be punished because we didn't have an obligation to pay until now. And again, he cites *Sears*. Now, I will tell you that I think that the citation or the quotation is a little bit questionable. But nonetheless, what the Supreme Court said in that case, right after it said that the majority position is that post judgment interest penalizes non-payment, it said a judgment creditor is required to pay interest on his debt as compensation for -- against further retention and use of the judgment creditor's money.

And so again, what I would say here, the equitable considerations are being argued are being considered by this Court on both ends. They've been considered before. The question is what the statute says. He's arguing that the statute doesn't mean what it says. And he's resorting to equity. And I think if anybody is going to create an exception to the Supreme Court's bright line rule based on equitable considerations, it ought to be the Supreme Court.

THE COURT: All right. Well, let me ask you this, Mr. Arnold. Mr. Williams also argues that effectively there's been a

reverse veil piercing by the Court in determining the statutory interest. What's your response to that?

MR. ARNOLD: I don't quite -- I mean I can't quite grasp the logic of that. I mean the Supreme Court essentially said that -- not that John and Andrea were completely off the hook, not that they aren't contingent judgment debtors. What they said is, we're going to give CCC a chance to pay it first. And so the Court has created this alternative contingent liability on behalf of these three entities.

THE COURT: The Court being the Supreme Court in this situation?

MR. ARNOLD: Yes, Your Honor.

THE COURT: All right, Mr. Williams, let me hear from you. Just briefly how is this a backdoor veil piercing?

MR. WILLIAMS: Sure. So the reverse veil piercing is -- I'm sure the Court is well aware the body of law is when you find that a shareholder's debts become the debts of the company. And so the way the Court set this case up, the Court being the Trial Court a number of years ago before the appeal was made, was to find that the debts to do the buyout belonged and were imposed upon the LLC member Defendants. The Supreme Court changed that and said, no, in the principal first instance, that obligation resides with a different thing, the company. And then by running the statutory post judgment interest against the company for the debts of the LLC members, you -- what you do is you impose a

reverse veil piercing. And it's also akin to looking at it as if they're joint and several, the way I opened, Your Honor. I think you can come at it two different ways. But the end result is the same.

THE COURT: All right. Mr. Moody, do you wish to be heard on either issue?

MR. MOODY: No, Your Honor, I think Mr. Williams just covered it.

THE COURT: Okay. And then I think we've already covered this. But, Mr. Arnold, another basis in the Rule 59 motion is that the Supreme Court created a brand new judgment debtor and removed the old judgment debtor. And that the new judgment debtor is the one who should be responsible for the interest. So how do you respond to that?

MR. ARNOLD: Well, again, I think the way I would characterize is, is what the Court did was created a contingent liability for both. And then we've got three entities or an entity and two people who are potentially liable. And this idea that the fact that CCC now is primarily liable for the debt doesn't -- the interest attaches to the judgment itself and I would say all the Courts say the date of the original judgment. So if there's some subsequent judgment, the Court has already said, we look to the original judgment. And because what we have determined is that CCC is in possession of Dave Wilson's money and has been in possession of Dave Wilson's money since day one,

then it just makes sense that they should pay interest. Whoever has had his money has used it as the Court said, the retention and use of the judgment creditor's money, whoever has had that use and retention of that money should be the one to pay the interest.

MR. WILLIAMS: And so it's -- if I may, Your Honor. I know ---

THE COURT: Yes, sir.

MR. WILLIAMS: It's a continued push of equitable principals, which are frankly inappropriate in this circumstance.

THE COURT: The last issue is -- and Mr. Williams, as good lawyers do, always have, well, this is my first line of defense, this is my second line of defense, this is my third line. And what his last argument is, in the unlikely event that the Appellate Courts uphold what Simmons has done here, which has been known to happen, that the post judgment interest should end on June 26, 2020, the date the remittitur was entered. So my question is, is the stop date the date the remittitur is entered or is the stop date the date the judgment is actually paid. So Mr. Williams, let me hear from you on that.

MR. WILLIAMS: Sure. So for the Court's benefit, the judgment was paid on November 2nd last year.

THE COURT: 11/2/2020?

MR. WILLIAMS: Yes, Your Honor. And the amount ---

THE COURT: And that was ---

MR. WILLIAMS: --- three forty-seven, the judgment that was created by the Circuit Court, the number, the original number. That number was paid. Now I'm telling you November 2nd. I believe that's when the check was cut. Andy may say he received it a few days later. I'm not sure. But that's when it was paid.

THE COURT: Okay. So is your argument then, Mr. Williams, that the date of the remittitur stops the interest or is it date of payment?

MR. WILLIAMS: Well, I wanted to give you the backstop on the payment. It's the date of the remittitur and the reason is because the Court imposed a deadline. The deadline was a reasonable amount of time. And November 2nd is a reasonable amount of time. And I don't think I've heard yet in our proceedings in front of Your Honor that that was not met in a reasonable amount of time. And so in order to begin running interest or continue to run interest, you've got to kind of have a hard set time. And since we met it, that's our position.

THE COURT: All right. So it's your client's position that the four and a half months is the reasonable time defined by the Supreme Court in their decision?

MR. WILLIAMS: Yes, Your Honor.

THE COURT: All right, Mr. Arnold, let me ask you. Does the interest stop on the date of remittitur or on the date of payment?

MR. ARNOLD: Well, it would stop on the date of payment of the entire judgment. But the judgment had accrued interest. And so it is when they pay the full judgment plus interest. And so it would be on the date of payment. What the Supreme Court said was not that you've got a reasonable amount of time to pay it and interest won't accrue until after a reasonable amount of time. What they said was, you have a reasonable amount of time to pay it or else we're going back to John and Andrea. It wasn't -- it didn't have anything to do with interest. It was a reasonable amount of time to pay it before these secondary judgment debtors became primary again.

THE COURT: All right. Mr. Moody, anything to weigh in on?

MR. MOODY: No. I think both of them covered it.

THE COURT: All right. These are interesting issues. I have the benefit of it being an academic issue and intellectual issue. Unfortunate part is you're living with it with real dollars and cents. And I really do understand that.

I'm going to deny the motion. And on the -- as far as the last argument that was just discussed, the post judgment interest stop date, my ruling is going to be that the stop date is always the date of payment. So that would be the November 2nd, 2020 date and not the date remittitur was sent.

So, Mr. Arnold, if you would work on a very short Order and of course send it to opposing counsel. And gentlemen, thank

y'all so much for the good arguments and the preparation. And for whatever it's worth, Mr. Williams, the times I get a Rule 59 motion, which thankfully is not a whole lot, I don't normally grant a motion hearing. But you raised such good issues, I wanted to make sure that I understood it and make sure that the record was complete for appeal. So thank you very much.

MR. ARNOLD: Thank you, Your Honor.

-----END OF REQUESTED TRANSCRIPT OF RECORD-----

The undersigned, Danette P. Hanks, Court Reporter, Office of Master in Equity for Greenville County, South Carolina do hereby certify that the foregoing is a true, accurate and complete Transcript of Record of all of the proceedings had and evidence introduced in the hearing of the captioned case, relative to appeal, before The Honorable Charles B. Simmons, Jr., as Master in Equity for Greenville County, South Carolina on the 8th day of June, 2021.

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

September 1, 2021

Danette P. Hanks

Danette P. Hanks, CCR

IN THE Thirteenth Judicial Circuit COURT OF THE Common Pleas,

IN AND FOR THE COUNTY OF Greenville County

David Wilson

Plaintiff,

vs.

John Gandis and Andrea Comeau-Shirley and Carolina Custom Converting, LLC

Defendant

Bond# KBS00405

SUPERSEDEAS BOND

Case# 2012-CP-23-02887

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned John Gandis and Andrea Comeau-Shirley and Carolina Custom Converting, LLC as principal, and Knightbrook Insurance Company, as Surety, are held and truly bound unto the Plaintiff up to the penal sum of Three Hundred Forty Seven Thousand Eight Hundred and Sixty Three and 23/100 dollars ($ 347,863.23.00) lawful money of the United States of America for the payment of which will and truly be made, we bind ourselves, jointly and severally, and our respective successors and assigns by these presents.

The condition of this obligation is such that:
WHEREAS, on the Jan. 9th, 2015, a Judgment and decree was entered in the above Court in the above cause number in favor of the Plaintiff and against the Defendant, a copy of which said Judgment is attached hereto and by this reference made a part hereof; and,

WHEREAS, Defendant is desirous of filing a Notice of Appeal and the Appeal is now pending; and,

WHEREAS, the above entitled Court, has fixed the maximum amount of the Supersedeas Bond at Three Hundred Forty Seven Thousand Eight Hundred and Sixty Three and 23/100 ($ 347,866.23.00).

NOW THEREFORE, if the Defendant shall prosecute the said Appeal with diligence, and if the decision of the above entitled Court be affirmed, or said Appeal dismissed, if said Defendant complies with said Judgment and pays all costs and damages finally adjudged against it and pays to the Plaintiff all damages which Plaintiff may sustain by the suspension of provisions of the attached Judgment of the stay of proceedings, and then this obligation shall be void; otherwise to remain in full force and effect.

DATED 6th DAY OF April 20 16.

John Gandis and Andrea Comeau-Shirley and Carolina Custom Converting, LLC
Principal

By: _____

Knightbrook Insurance Company

By: _____
Andrew C. Heaner Attorney-In-Fact

NOTICE
All correspondence arising from the execution of this bond should be addressed to:
365 Northridge Road
Suite 400
Atlanta, GA 30350

John Gandis and Andrea Comeau-Shirley as Appellants and Carolina Custom Converting, LLC

COURT BOND APPLICATION

Attached and made part of Application as detailed below:

As regards South Carolina

CASE # 2012-CP-23-02887 **Undertaking Statute& State: SC 18-9-130; SC App Ct.R.241**

Bond to be filed in:

Thirteenth Judicial Circuit, Greenville Couty, Court of **Common Pleas,** State of **South Carolina**

Greenville County Courthouse, 305 East North Street, Greenville South Carolina 29601

As regards Georgia enforcement of foreign judgment

CASE # 15-A-3015-4 **Undertaking Statute& State: SC 18-9-130; SC App Ct.R.241**

Bond to be filed in:

State Court of Cobb County, State of **Georgia**

State Court Building,12 East Park Square, Marietta, Georgia, 30090-9630

The Appellants filed an appeal to dispute, amongst other things, the value assigned to Plaintiff's interest in Carolina Custom Converting, LLC.

Pursuant to the Bond Order issued by the Honorable D. Garrison Hill on July 22, 2015, the Appellants are required to post a bond in the amount of $347,863.23 pursuant to Rule 241(c)(3), SCAR, for the value of Plaintiff's interest in Carolina Custom Converting, LLC as order after the appeal is concluded, should the judgment be affirmed. In addition, considering the unique circumstances of the case, the court ordered that Carolina Custom Converting LLC be included in the bond to protect Plaintiff should the appellate court decide that the obligation to pay Plaintiff for his membership interest rests with Carolina Custom Converting LLC and the company would otherwise be unable to pay the judgment, should it be affirmed.

Separately Plaintiff filed under O.C.G.A 9-12-130, et all to domesticate 100% of the South Carolina judgment against Andrea Comeau-Shirley, a resident of Cobb County. A separate filing of the bond is requested to demonstrate to the Georgia Court that a supersedeas bond in SC should apply to stay separate enforcement within Georgia.

KNIGHTBROOK INSURANCE COMPANY

4751 Wilshire Boulevard, Suite 111
Los Angeles, CA 90010

SPECIAL POWER OF ATTORNEY

Know all men by these Presents, that the KNIGHTBROOK INSURANCE COMPANY ("KnightBrook"), a Delaware corporation, had made, constituted and appointed, and by these presents does make, constitute and appoint, in accordance with the limitations of the Managing General Agency Agreement and Underwriting Guidelines, Andrew C. Heaner of Atlanta, Georgia; Richard L. Shanahan of Atlanta, Georgia; Stefan E. Tauger of Parker, Colorado; Arthur S. Johnson of Atlanta, Georgia; James E. Feldner of West Lake, Ohio; Jeffery L. Booth of Parma, Ohio; Melanie J. Stokes of Atlanta, Georgia; David R. Brett of Columbia, South Carolina; Scott E. Stoltzner of Birmingham, Alabama; Diane L. McLain of Fitchburg, Wisconsin; Brian A. O'Neal of Parker, Colorado; Jason S. Centrella of Jacksonville, Florida; Kelley E.M. Nys of Decatur, Georgia; Michael K. Thompson of Atlanta, Georgia; or Brian Clark of Charlotte, North Carolina, EACH as its true and lawful attorney for it and its name, place and stead to execute on behalf of the said company, as surety, bonds, undertakings and contracts of suretyship to be given to all obligees provided that no bond or undertaking or contract of suretyship executed under this authority shall exceed in amount of the sum of **$2,000,000** (Two Million Dollars).

This Power of Attorney is granted and is signed and sealed by facsimile under and by the authority of the following Resolution adopted pursuant to due authorization by the Executive Committee of the Board of Directors of the KNIGHTBROOK INSURANCE COMPANY on the 14th day of April, 2014:

RESOLVED, that the President of the Company be, and that each or any of them hereby is, authorized to execute Powers of Attorney qualifying the attorney named in the given Power of Attorney to execute in behalf of the KNIGHTBROOK INSURANCE COMPANY bonds, undertakings and all contracts of suretyship; and that any Officer, Secretary or any Assistant Secretary be, and that each or any of them hereby is, authorized to attest the execution of any such Power of Attorney, and to attach thereto the seal of the Company.

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be valid and binding upon the Company when so affixed and in the future, with respect to any bond undertaking or contract of suretyship to which it is attached.

In Witness Whereof, the KNIGHTBROOK INSURANCE COMPANY has caused its official seal to be hereto affixed, and these presents to be signed by its President and attested by its General Counsel this 8th day of October, 2014.

KNIGHTBROOK INSURANCE COMPANY

Attest: _____
John Rygh

By: _____
Eric D. Jarvis, President

STATE of California
COUNTY of Los Angeles

On October 8, 2014 before me, Eric D. Jarvis, President, personally appeared, who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/ their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument. I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature _____ (Seal)

JENNY LEMUS-AGUILAR
COMM. #2046560
Notary Public - California
Los Angeles County
My Comm. Expires Oct. 24, 2017

I, the undersigned, an Officer of KNIGHTBROOK INSURANCE COMPANY, a Delaware Corporation, DO HEREBY CERTIFY that the foregoing and attached Power of Attorney remains in full force and has not been revoked; and, furthermore, that the Resolution of the Executive Committee of the Board of Directors set forth in the Power of Attorney is now in force.

Signed and sealed at the City of Los Angeles, Dated the 16th day of April, 2016.

_____
Eric D. Jarvis, President

CCC-FILMS.COM
CAROLINA CUSTOM CONVERTING

6/22/2020

Mr. Wilson
10 Queen Ann Rd
Greenville, SC 29615

Dear Mr. Wilson:

As you know, on June 3, 2020, the SC Supreme Court revised the lower courts' rulings and held that Carolina Custom Converting, LLC should purchase your distributional interest in a reasonable amount of time. As the company does not have an existing agreement for a redemption installment period, this letter outlines the terms for a proposed redemption as contemplated by the court. The redemption amount is $347,863.20. The company will make a down payment installment in the range of $175,000 - $225,000.00 upon execution of the redemption agreement. The remaining purchase price will be paid as follows:

Remaining Redemption Amount	$122,863.20 - 172,863.20
Payment periods	Monthly
Effective Date	July 1, 2020
Installment Period	24-36 months
Rate of Interest	4%
Default Rate of Interest	7%
Collateral/Security	Tangible operating assets

We are in the process of drafting a redemption agreement consistent with the above, and we will provide a draft in the near term.

We believe the above terms are consistent with the SC Supreme Court's ruling, which revised the lower court's ruling and restored the LLC redemption hierarchy. We have been working with our lender since the opinion was released. With the current Covid-19 situation, the bank may move a bit slower than normal but we have asked them to move as quickly as possible.

Sincerely,

John Gandis
Sole Manager

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

Dated: January 12, 2022

Respectfully submitted,

s/ Burl F. Williams
Burl F. Williams
Burl F. Williams, P.A.
201 Riverplace, Suite 501
Greenville, SC 29601
Tel: 864.546.5035
burl@burlfwilliams.com

Attorney for Appellant