

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2016-CP-10-3328

The Construction Services Group, Inc.,
PLAINTIFF(S)

Victor Apat
DEFENDANT/THIRD PARTY PLAINTIFF

James Ronald McCollum
THIRD PARTY DEFENDANT

Submitted by: JOHN MASSALON

Attorney for : Plaintiff Defendant
or
 Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. See Page 2 for additional information.
- ACTION DISMISSED (CHECK REASON):** Rule 12(b), SCRPC; Rule 41(a), SCRPC (Vol. Nonsuit); Rule 43(k), SCRPC (Settled); Other
- ACTION STRICKEN (CHECK REASON):** Rule 40(j), SCRPC; Bankruptcy; Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; Other
- STAYED DUE TO BANKRUPTCY**
- DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
 Affirmed; Reversed; Remanded; Other

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

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

ORDER INFORMATION

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

RECEIVED

Mar 19 2025

SC Court of Appeals

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Note: Title abstractors and researchers should refer to the official court order for judgment details.

E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

John Massalon
SPECIAL REFEREE

Judge Code

6/11/2024

Date

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE
(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The “Information for the Judgment Index” section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the “Judgment in Favor of” column, enter the name of the party to whom the judgment is awarded. In the “Judgment Against” column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the “Judgment Amount” column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate “N/A” in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section “For the Clerk of Court Office Use Only” should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through “Circuit Court Judge” and indicate “Arbitrator” in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 The Construction Services Group, Inc.,)
)
 Plaintiff,)
)
 v.)
)
 Victor Apat,)
)
 Defendant/Third Party Plaintiff,)
)
 v.)
)
 James Ronald McCollum,)
)
 Third-Party Defendant.)

BEFORE THE ARBITRATOR
 CASE NO.: 2016-CP-10-3328

**FINDINGS OF FACT AND
 CONCLUSIONS OF LAW**

The Parties and their attorneys participated in a hearing on the merits beginning on April 18, 2023. Thereafter, the parties submitted written summations. Based upon the evidence submitted during the hearing, the arguments of counsel submitted following the hearing and the applicable law I make the following findings of fact and conclusions of law pursuant to Rule 53 of the South Carolina Rules of Civil Procedure and the Order of Reference:

FINDINGS OF FACT

1. Mr. Apat formed Complete Building Corporation (“CBC”) on June 6, 1986.
2. Mr. McCollum was employed by CBC prior to the formation of the Plaintiff, The Construction Services Group, Inc. (“CSG”).
3. Mr. Mr. McCollum filed the Articles of Incorporation for CSG on September 28, 2005.
Plaintiffs Ex. 1.
4. On the date that CSG was incorporated, 100 shares of stock were issued. The Minutes of the Organizational Meeting of the Incorporators of CSG show that 51 shares were issued to Mr. McCollum and 49 shares were issued to Mr. Apat. **Plaintiff’s Ex. 1.**

5. The minutes of the First Meeting of the Board of Directors of CSG indicate that Mr. McCollum was elected President and Treasurer and Mr. Apat was elected Vice President and Secretary. **Plaintiff's Ex. 1.**
6. The By-Laws of CSG did not include any provision for the involuntary purchase of a shareholder's stock or a formula for valuing it. **Plaintiff's Ex. 1.**
7. According to the testimony, CSG operated from 2005 until 2015 without any issues or significant conflict between Mr. McCollum and Mr. Apat.
8. Mr. McCollum testified that initially CSG was a one-person operation, but business picked up significantly in approximately 2007 when the company was certified as a Service Disabled Veteran (SDV) owned business. The SDV designation allowed CSG to bid on certain federal government contracts.
9. The testimony was that once CSG began receiving the government contracts, CBC was hired as a subcontractor to do much of the work awarded to CSG under those contracts.
10. In 2012 CSG was denied recertification as an SDV owned business due to a finding by the Department of Veterans Affairs that Mr. McCollum did not have sufficient control over the company. Thereafter, changes were made to the organization and governance of CSG to allow it to have the SDV certification restored. Significantly, the shareholders of CSG passed a resolution giving Mr. McCollum two votes for each share of stock he owned, and the Board of Directors was reconstituted so that Mr. McCollum was the sole director. **Plaintiff's Exhibit 14.**
11. In late 2015 and early 2016, issues began to arise between Mr. McCollum and Mr. Apat about the operation of CSG. That led to the following sequence of events which forms the basis of this lawsuit and defines the legal issues referred to me.
12. According to the testimony of both Mr. McCollum and Mr. Apat, on March 1, 2016, Mr. McCollum made an offer to purchase Mr. Apat's stock. There was no evidence introduced that Mr. McCollum's offer included any specific terms. The evidence was undisputed that Mr. Apat was receptive to selling his shares to Mr. McCollum.
13. Also on March 1, 2016, Mr. McCollum sent Mr. Apat a letter titled "MEMO of 90 Day Severance" terminating Mr. Apat's employment with CSG and detailing several payments which were included with that memo and a statement that "[u]ntil an agreement has been reached" CSG would continue to pay the monthly loan payments on a 2015 Chevy Tahoe

and a SouthState Bank boat loan. The March 1st memo did not include a specific offer to purchase Mr. Apat's stock in CSG. **Plaintiff's Exhibit 15**

14. On March 8, 2016, Mr. Apat sent Mr. McCollum a letter offering to sell his stock for a total of \$2,000,000 payable in installments. Alternatively, Mr. Apat proposed that he and Mr. McCollum jointly hire a firm to value the company. That offer from Mr. Apat included additional details of the offer that Mr. McCollum made on March 1. Specifically in Mr. Apat's telling the offer was to purchase his stock immediately or over 2 years, but significantly the price offered, if any, by Mr. McCollum on March 1 was not mentioned in the March 8th letter. **Plaintiff's Ex 16.**
15. Mr. McCollum rejected Mr. Apat's March 8th offer and scheduled a joint meeting of the CSG Board of Directors and stockholders on April 14, 2016.
16. The day prior to the April 14th meeting of the Board of Directors and stockholders, Mr. McCollum as sole member of the Board of Directors signed a Written Consent to Action Without a Meeting in which it was resolved to "correct the books and records of the Company to add the deferred compensation owed to Ronald McCollum to the balance sheet and chart of accounts; and that it shall take the form of a liability, not as owners (sic) equity." The schedule of deferred compensation dating back to 2007 was attached to the April 13th Written Consent to Action Without a Meeting and totaled \$1,325,764.14. **Plaintiff's Ex 12**
17. The Minutes of the April 14th meeting state that Mr. McCollum and Mr. Apat attended along with Andy Moody and Rebecca Taylor. **Plaintiff's Ex 2**
18. At the April 14, 2016 meeting Mr. McCollum and Mr. Moody signed a Written Consent to Action with a Meeting that contained the following resolutions:
 - a. That CSG would repurchase Mr. Apat's 49% interest;
 - b. That the effective date of the repurchase would be April 14, 2016;
 - c. That Mr. Apat would receive \$1,000 as partial compensation for the purchase of his stock;
 - d. That a second meeting of the shareholders would be held on April 28, 2016, at which time "Victor Apat and any representative(s) on his behalf may present information regarding the value of the repurchased shares for the Corporation to consider"

- e. That CSG would issue a Resolution at the April 28th meeting setting the amount for the repurchase of Mr. Apat's shares;
 - f. That after setting the amount for the repurchase of Mr. Apat's stock, CSG would either pay that amount or provide a payment schedule to pay him; and
 - g. Andy Moody, Mr. McCollum's stepson, was appointed to the Board of Directors as a non-voting member.
19. The Minutes and the Written Consent to Action with a Meeting dated April 14th indicate that it was passed by a vote of 102 to 49. **Plaintiffs's Ex 2 & 5.** 1
20. A special meeting of the shareholders of CSG was held on April 29, 2016. In addition to Mr. McCollum and Mr. Apat, Andy Moody and Rebecca Taylor attended the April 29th meeting. The following is reflected in the Minutes of Special Meeting of Shareholders of the Construction Services Group, Inc. dated May 2, 2016, which were introduced as **Plaintiff's Exhibit 3:**
- a. CSG retained Dixon Hughes Goodman, LLP (DHG) to determine the value of Mr. Apat's interest as of April 15, 2016;
 - b. DHG engaged Ferira, Ainsworth & Company LLC (FAC) to audit the CHG financial records;
 - c. The calculation performed by DHG yielded a value of \$307,000 for Mr. Apat's 49% interest;
 - d. From that amount, CSG made the following additional deductions as shown in Plaintiff's Exhibit 19 resulting in a net amount of \$80,690.24 proposed by CSG for the purchase of Mr. Apat's stock in the company:
 - i. \$35,214 for the value of a 2015 Tahoe transferred to Mr. Apat;
 - ii. \$101,400 for a "loan from Chiller #1";
 - iii. \$43,836.73 for "Patient Lifts (overpaid CBC)";
 - iv. \$44,859.03 for "Sandpiper (Overpaid CBC)"; and
 - v. \$1,000 for "Check #8204"

1 A copy of the April 14th Written Consent to Action with a Meeting was also introduced into evidence as Plaintiffs Exhibit 17, but the only difference that appears between Exhibit 5 and Exhibit 17 is that the words "to forty-nine votes (49%)" is underlined in red on Exhibit 17. Thereafter on June 22, 2016, the Written Consent to Action with a Meeting dated April 14, 2016, was amended to correct an error in recording the vote. The Amended Written Consent to Action With a Meeting states that the vote was carried by a vote of 102 to zero. **Plaintiff's Ex 4.**

- e. Mr. McCollum tendered a check to Mr. Apat for \$80,690.24 which was “instantly rejected” according to the testimony and Mr. Apat requested access to various business records of CSG and itemized in the minutes.²
 - f. Additionally, Mr. Apat disputed that April 14, 2016, was the effective date of the transfer of his stock.
 - g. A discussion of other issues related to the valuation of Mr. Apat’s interest ensued which did not result in any agreement on the purchase price.
21. Mr. McCollum testified that in addition to rejecting the \$80,690.24 check, Mr. Apat did not cash the check for \$1,000 which is referenced in the minutes of both the shareholders’ meeting on April 14 and the meeting on April 29. Mr. McCollum testified that Mr. Apat did accept the transfer of the title to the 2015 Tahoe.
22. In addition to those deductions discussed during the April 29 shareholder meeting, Plaintiff introduced evidence of a settlement payment of \$42,697.15 paid by CSG to McGowan Heating & Air, Inc. d/b/a Arnold Service Company related to work performed by McGowan on a kitchen upgrade at the VA Medical Center in Fayetteville. Mr. McCollum testified that Mr. Apat committed CSG to perform that job but did not pay McGowan and so CSG had to incur the expense of that settlement. Plaintiff claims that \$42,697.15 should be deducted from any payment to Mr. Apat in addition to those deductions itemized in Plaintiff’s Exhibit 3.
23. Plaintiff offered the following exhibits regarding a lawsuit filed by The Hanover Insurance Company against CSG, Mr. McCollum and Barbara McCollum (C.A. # 2020-CP-10-4970):
- a. Summons & Complaint was marked as Plaintiff’s Exhibit 24 for identification;
 - b. The Construction Services Group, Inc., James R. McCollum and Barbara McCollum’s Answer to the Complaint of the Hanover Insurance Company and Third-Party Complaint was marked as Plaintiff’s Exhibit 25 for identification; and
 - c. An accounting provided by the Hanover Insurance Group was marked as Exhibit 26 for identification.

² A letter from David A. Collins dated July 11, 2016, requesting information on Mr. Apat’s behalf was also introduced into evidence. **Plaintiff’s Ex. 20.**

24. Defendant Apat objected to the introduction of Plaintiff's Exhibits 24, 25 and 26 and I took those objections under advisement. On January 2, 2024, I denied Plaintiff's motion to amend in part to exclude the claim relating to C.A. # 2020-CP-10-4970 and therefore, I find that these exhibits are not relevant and sustain Defendant Apat's objections to them.
25. Although the governing documents do not include any restriction on the sale of shares, I find there is no public market for Mr. Apat's shares because there are only two shareholders, Mr. Apat owns a minority interest, Mr. McCollum is the sole voting member of the Board and the rules that apply to a SDV businesses require Mr. McCollum to be in complete control of its operations.
26. The recording of the April 14, 2016 shareholder meeting includes a discussion between Mr. McCollum and Mr. Apat about how the value would be determined. In response to Mr. Apat's question about how Mr. McCollum envisioned the process working, Mr. McCollum replied that "we both will come to a valuation on the 28th and sit here and hash it out."
27. On the issue of the value of Mr. Apat's stock, Mr. Ewart's testimony was consistent with his report introduced as **Plaintiff's Ex. #9**. In sum, he testified that the fair market value of CSG as of April 14, 2016 was \$1,249,000 and that Mr. Apat's 49% interest had a value of \$459,000 after applying a control/marketability/illiquidity discount of 25%.
28. Likewise, Mr. Apat's expert Jon Taylor testified in accordance with his report which was introduced into evidence as **Apat Ex. 4**. He testified that the value of CSG and Mr. Apat's interest in it should be determined by reference to the purchase and sale prices of other businesses that Mr. Taylor determined to be comparable to CSG. Using that approach, Mr. Taylor opined that Mr. Apat's interest in CSG was worth \$3,923,000 as of December 31, 2015.
29. In reply, the Plaintiff called Mr. Ewart to opine on the valuation methodology used by Mr. Taylor and Mr. Ewart's view of various shortcomings in Mr. Taylor's methodology and opinions. Additionally, Plaintiff offered Exhibits 29 and 31. Counsel for Mr. Apat objected to the reply testimony and Exhibits 29 and 31 as outside scope of reply. I conclude that the reply testimony and Exhibits 29 and 31 were largely repetitive of Plaintiff's cross-examination of Mr. Taylor and consideration of that information is useful to an understanding of the complex valuation issues presented by this case. Therefore, I

overrule Defendant's objections to the reply testimony and admit Exhibits 29 and 31 into evidence.

CONCLUSIONS OF LAW

30. In the Amended Complaint, Plaintiff CSG alleged causes of action for a declaratory judgment, conversion/set-off, Loans to Shareholder/set-off, and breach of fiduciary duty/set-off. ³
31. Defendant Apat denied the material allegations of the Amended Complaint and alleged the following affirmative defenses:
- a. Lack of personal jurisdiction;
 - b. Failure to mitigate damages;
 - c. Sole negligence;
 - d. Comparative negligence;
 - e. Violation of constitutional guarantees;
 - f. Statute of limitations;
 - g. Limitations on damages under S.C. Code Ann. Sec 15-32-200 et. seq.
 - h. Limitations on damages under S.C. Code Ann. Sec 15-32-510 et. seq.
 - i. Set-off/double recovery;
 - j. Contribution Among Joint Tortfeasors Act;
 - k. Failure to state facts sufficient to constitute a cause of action;
 - l. Unclean hands;
 - m. Laches;
 - n. Estoppel;
 - o. Sole breach of fiduciary duty, self-dealing, corporate waste and theft and
 - p. Breach of contract.
32. Additionally, in his initial responsive pleading dated October 4, 2016, Defendant Apat alleged the following counterclaims against CSG and third-party claims against Mr. McCollum, David Andy Moody and Denise Smith ⁴:

³ In an order dated January 2, 2024, I denied the Plaintiff's motion to add additional causes of action.

⁴ Mr. Moody and Ms. Smith filed motions to dismiss which were granted in separate orders dated February 23, 2017.

- a. Breach of fiduciary duty as to Mr. McCollum and Mr. Moody;
 - b. Involuntary judicial dissolution under S.C. Code Ann. Sec. 33-14-300 et. seq.;
 - c. Shareholder derivative action under S.C. Code Ann. Sec. 33-7-400;
 - d. Fraud as to Mr. McCollum;
 - e. Aiding and abetting a breach of fiduciary duty as to Ms. Smith; and
 - f. Accounting.
33. CSG denied the allegations of Defendant Apat's counterclaims and alleged various affirmative defenses including:
- a. A statutory defense to involuntary dissolution;
 - b. A statutory defense to the shareholder derivative claim;
 - c. A defense to the accounting claim;
 - d. Accord and satisfaction;
 - e. Failure to state facts sufficient to constitute a cause of action;
 - f. Estoppel; and
 - g. A claim for attorneys' fees.
34. Third-Party Defendant McCollum denied the substantive allegations of the Third-Party Complaint, alleged many of the same affirmative defenses as those alleged by CSG and alleged a counterclaim against Defendant Apat requesting a declaratory judgment as to the amount owed to Mr. Apat for the purchase of his stock in CSG and a counterclaim for conversion/set-off.
35. Defendant Apat denied the material allegations of the counterclaims alleged by the Third-Party Defendant McCollum and alleged the following affirmative defenses;
- a. Failure to state facts sufficient to constitute a cause of action;
 - b. Laches/waiver/estoppel;
 - c. Unclean hands; and
 - d. Fraud/illegality.
36. Of the claims, counter-claims and third-party claims alleged, I conclude as a matter of law that the defining legal issue is Defendant Apat's claim for involuntary judicial dissolution under S.C. Code Ann. Sec. 33-14-300 et. seq.
37. According to Sec 33-14-300(2)(ii) courts may dissolve a corporation if it is established in a proceeding by a shareholder that "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 any shareholder. . .”.

38. The official comment to that statute states that “[t]he application of these grounds for dissolution to specific circumstances obviously involves judicial discretion in the application of a general standard to concrete circumstances.” Section 33-14-300, cmt 2(b).
39. An action to dissolve a corporation and for oppression are equitable claims. *Mason v. Mason*, 412 S.C. 28, 770 S.E. 2d 405 (Ct. App. 2015).
40. I do not find any evidence that any of the parties engaged in conduct that was illegal or fraudulent. Under Section 33-14-300 (2) (ii) a showing of illegal or fraudulent conduct is not required to justify dissolution. *Mason v. Mason*, 412 S.C. 28, 770 S.E.2d 405 (Ct. App 2015).
41. However, Section 33-14-300(2)(ii) provides for dissolution if the directors or those in control of a corporation have acted in a manner that is oppressive or unfairly prejudicial either to the corporation or any shareholder. I conclude that the following actions by Mr. McCollum as majority shareholder of CSG were oppressive or unfairly prejudicial to Mr. Apat:
 - a. Mr. McCollum’s unilateral decision to send Mr. Apat the March 1, 2016 “MEMO of 90 Day Severance” terminating Mr. Apat’s employment with CSG.
 - b. Mr. McCollum’s decision to issue the Written Consent to Action Without a Meeting in which he resolved to add deferred compensation to himself of over one million dollars on the day before the meeting that Mr. McCollum scheduled to vote to have CSG purchase Mr. Apat’s shares. Of particular interest for purposes of this analysis is that the schedule of deferred compensation dated back to 2007.
 - c. Mr. McCollum’s vote in favor of the April 14, 2016, Written Consent to Action with a Meeting directing CSG to purchase Mr. Apat’s stock and setting the effective date of that purchase on April 14, 2016, the day after Mr. McCollum voted without a meeting for CSG to acknowledge that Mr. McCollum was owed over a million dollars in deferred compensation dating back nearly a decade.
 - d. Mr. McCollum’s decision to exclude Mr. Apat from the valuation process prior to the April 28, 2016, meeting.

42. Since no illegal or fraudulent conduct is involved and CSG is a healthy and profitable business I conclude that dissolution of CSG would not be an appropriate remedy.
43. However, I find that because of the claim for dissolution, I have jurisdiction to consider the remedies provided in Sec. 33-14-310(d) other than dissolution which include “canceling, altering or enjoining any act or resolution of the corporation” or “providing for the purchase at their fair value of shares of any shareholder, either by the corporation or by other shareholders”.
44. Based upon the evidence submitted during the hearing, both testimony and exhibits, I conclude that the appropriate remedy is an order requiring CSG to purchase of Mr. Apat’s shares at their fair value.
45. Having concluded that CSG must purchase Mr. Apat’s shares at fair value, I must next determine the appropriate date to use in determining the fair value of Mr. Apat’s shares. As described above CSG and McCollum disagree with Apat about the appropriate valuation date.⁵
46. CSG and McCollum take the position that the valuation date should April 14, 2016, when Mr. McCollum exercised his controlling voting power to pass a resolution that CSG would “repurchase” Mr. Apat’s 49% interest effective that date at a price subsequently determined by CSG.
47. Mr. Apat and his expert testified that the valuation date should be set as of December 31, 2015, but no support was offered for that date.
48. The statute itself provides no guidance on the date to be used. On the issue of the date of valuation I find the case of *Wilson v. Gandis*, 430 S.C. 282, 844 S.E.2d 631 (2020) to be persuasive. In that case the Court decided that the interest of the minority member should be valued as of the date of ouster. *Id.* 430 S.C. at 313, 844 S.E.2d at 648. Although *Wilson* was decided under the dissolution provision of the Limited Liability Company Act, I conclude that the language of that statute, particularly S.C. Code Ann. Sec 33-44-801 (4)(e), to be sufficiently similar to Sec. 33-14-300(2)(ii) so that the reasoning in *Wilson* about the proper date to value Mr. Apat’s interest applies here.

⁵ This analysis is also dispositive of Plaintiff’s Motion for Partial Summary Judgment which requested a determination of the valuation date.

49. I conclude that the appropriate date to value Mr. Apat's interest is March 1, 2016, which the evidence shows was the day that Mr. Apat was effectively ousted as a shareholder. That day Mr. McCollum tendered payment to Mr. Apat for 90 days of severance pay and informed Mr. Apat that his stock was going to be repurchased. **Plaintiff's Ex. 15.**
50. In reaching this conclusion I find that CSG's claim under Section 33-13-102 does not apply in this instance. Likewise, the procedure for valuing a distributional interest under Section 33-44-702 of the LLC Act does not directly apply as CSG is a corporation. Instead, language of Sec. 33-44-310(d)(4) establishes "fair value" as the valuation standard.
51. The record includes evidence of four determinations of "fair value".
- a. The earliest in time is the offer that Mr. Apat extended on March 8, 2016 to sell his shares for \$2,000,000 payable in installments.
 - b. Before the meeting on April 29, 2016, CSG retained DHG to value Mr. Apat's interest and that evaluation yielded a value of \$307,000 for Mr. Apat's 49% interest which was further reduced to \$80,690.24 due to deductions for the value of a vehicle and transactions between CSG and CBC.
 - c. CSG's expert, Mr. Ewart, testified that Mr. Apat's interest was worth \$459,000 (rounded) as of April 14, 2016.
 - d. Mr. Apat's expert, Mr. Taylor, testified that Mr. Apat's interest was worth \$3,923,000 (rounded) as of December 31, 2015.
52. "In appraising the fair value of stock, South Carolina law indicates, where applicable, at least three values should ordinarily be taken into account—market value, investment value and net asset value—then a proper weight should be given to each value in order to determine the fair value of the stock." *Morrow v. Martschink*, 922 F. Supp. 1093 (D.S.C. 1995) (citing, *Santee Oil Co. v. Cox*, 265 S.C. 270, 217 S.E.2d 789 (S.C. 1975); *Metromont Materials Corp. v. Pennell*, 270 S.C. 9, 239 S.E.2d 753 (S.C. 1977); *Dibble v. Sumter Ice & Fuel Co.*, 283 S.C. 278, 322 S.E.2d 674 (S.C. Ct. App. 1984). The proper weight to be given to each factor varies with the type of business to be valued. *Id.* (citation omitted.)
53. As to the 2016 value in Mr. Apat's March 8th letter and the initial valuation described in Plaintiff's Ex. 3, the record does not provide me with sufficient information to judge the credibility of those values, and so I have not considered them in my analysis of fair value.

54. Having considered the testimony and reports of Mr. Ewart and Mr. Taylor, I find the approach to valuation taken by Mr. Ewart to be more persuasive than Mr. Taylor's approach. In particular, I was not persuaded by Mr. Taylor's market analysis or the comparable transactions upon which he relied.
55. While I find that Mr. Ewart's valuation methodology to be more useful, he used a valuation date of April 14, 2016, which post-dates the March 1, 2016, valuation date that I chose earlier in this order. In reviewing the calculations attached to Mr. Ewart's report (**Plaintiff's Ex 9**), the biggest financial impact between the valuation date that I determined and that used by Mr. Ewart is the deferred compensation amount that Mr. McCollum granted himself on April 13, 2016. To correct for that difference, I removed the deferred compensation amount of \$1,325,764 from Exhibit 1 of Mr. Ewart's report which increased the stockholders' equity amount from \$842,107 to \$2,167,872. I then substituted the newly calculated stockholders' equity in Mr. Ewart's calculations in Exhibit 3 to the report which (after applying Mr. Apat's 49% ownership percentage) yielded a value of \$1,261,456 (rounded).
56. Mr. Ewart's calculation included a 25% discount for lack of control/marketability/illiquidity. However, the note on Exhibit 3 of his report specifies that the discount is [p]rincipally related to time to sell a 49% minority interest in a SDVOSB". Although I have previously found that there is not a private market for Mr. Apat's shares, I conclude as a matter of law that the marketability discount should not be applied to devalue Mr. Apat's stock because this sale will be a court-ordered sale to CSG and thus, not subject to market conditions. See *Morrow*, 922 F.Supp at 1104-1105.
57. Plaintiff claims that any amount due to Mr. Apat should be reduced by \$226,309.76 due to the value of truck transferred to Mr. Apat, a loan in the amount of \$101,400, profits that Plaintiff claims were excessive or fraudulent received by CBC under subcontracts with CSG. **Plaintiff's Ex. 19 and McCollum's Ex. 5**. Of those claims, I find that Plaintiff is entitled to an offset for \$35,214 for the value of the 2015 Tahoe transferred to Mr. Apat.
58. As to the loans and the claims for excessive profits, I find that Plaintiff is not entitled to offsets for two reasons. First and most importantly, those claims would be against CBC, which is not a party to this action. Second, based on the dates of those transactions shown

in **Plaintiff's Ex. 21 and 22 and Third-Party Defendant's Exhibits** they are likely too remote in time.

59. I find that Mr. Apat is not entitled to pre-judgment interest on the amount that I have determined to be the fair value of his shares. S.C. Code Section 34-31-20 provides that “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 rate shall be the rate of eight and three-fourths percent per annum”. The case of *Dixie Belle v. Redd*, 376 S.C 361, 656 S.E.2d 765 (Ct. App 2007) contains a very instructive discussion of this issue. In that decision the Court of Appeals provided a thorough description of an unliquidated claim in the context of a dispute over the purchase of an investor’s interest in a development company. The Court of Appeals ultimately concluded that the Plaintiff’s claim was unliquidated and could not justify an award of prejudgment interest under Section 34-31-20 because: (1) there was no agreement between the parties as to a sum certain, (2) it could not be reduced to a sum certain by computation or formula, (3) the purchase price was not contractually stipulated, (4) it was not reduced to a sum certain by operation of law or a controlling statute, and (5) it could only be reduced to certainty by a jury determination.” The same is true of Mr. Apat’s claim in this case so I conclude that his claim for prejudgment interest should be denied.
60. I conclude that Mr. McCollum is not entitled to recover attorneys’ fees under S.C. Code Ann. Section 33-44-1104. That section allows recovery of fees in derivative action by member on behalf of LLC, but the claims in this action are not derivative. Instead, CSG alleged its claims against Mr. Apat directly. To the extent that any claims here may be characterized as derivative, those claims have not produced a recovery for CSG. Instead, CSG will be paying the amount specified above to purchase Mr. Apat’s interest. Lastly, Section 1104 allows for the recovery of fees in an action on behalf of a Limited Liability Company and does not apply in this case as CSG is a corporation, not a limited liability company. I am not aware of any other basis to award attorneys’ fees to any party.
61. Having determined that a court-ordered purchase of Mr. Apat’s stock by CSG under Sec. 33-14-310(d) is the appropriate remedy, I find it unnecessary to rule on any of the remaining claims, counterclaims, third-party claims and defenses alleged in the pleadings, and so I deny all other claims for relief and defenses alleged by all parties.

Accordingly, based on the foregoing, it is

ORDERED, that Plaintiff CSG shall pay Defendant Apat the sum of One Million, Two Hundred Twenty-Six Thousand, Two Hundred Forty-Two Dollars (\$1,226,242) representing the fair value of Mr. Apat's stock in CSG. It is

FURTHER ORDERED, that upon payment of the sum of One Million, Two Hundred Twenty-Six Thousand, Two Hundred Forty-Two Dollars (\$1,226,242.00) by CSG Defendant Apat shall transfer his stock in CSG to CSG. It is

FURTHER ORDERED, that all remaining claims, counterclaims, third-party claims and defenses alleged in the pleadings by all parties are denied.

AND IT IS SO ORDERED.

s/John A. Massalon
John A. Massalon
WILLS MASSALON & ALLEN LLC
Post Office Box 859
Charleston, South Carolina 29402
(843) 727-1144
jmassalon@wmalawfirm.net

CHARLESTON, SC

June 10, 2024

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 The Construction Services Group, Inc.,)
)
 Plaintiff,)
)
 v.)
)
 Victor Apat,)
)
 Defendant/Third Party Plaintiff,)
)
 v.)
)
 James Ronald McCollum,)
)
 Third-Party Defendant.)

BEFORE THE ARBITRATOR
 CASE NO.: 2016-CP-10-3328

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 10, 2024, a copy of the attached has been served upon the following via United States Postal Service and Electronic Mail:

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June 11, 2024

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VIA HAND DELIVERY

The Honorable Julie J. Armstrong
Clerk of Court, Charleston County
100 Broad Street, Suite 106
Charleston, South Carolina 29401

RE: The Construction Services Group, Inc. v. Victor Apat, et al.
Case No.: 2016-CP-10-3328
Our File No.: 619-325

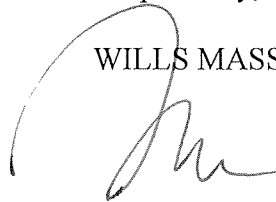
Dear Mrs. Armstrong:

In regard to the above-referenced matter, enclosed please find the original and one (1) copy of a Form 4, Findings of Fact and Conclusions of Law, and Certificate of Service. Please file the originals, file-stamp the copies, and return the file-stamped copies to me via the bearer of this correspondence. If you have any questions, please do not hesitate to contact me.

With kind regards, I am

Respectfully,

WILLS MASSALON & ALLEN LLC



John A. Massalon
jmassalon@wmalawfirm.net

JAM/ky
Enclosures

cc (via Email and U.S. Mail):
Eric B. Laquiere, Esquire
Robert T. Lyles, Esquire
Paul B. Ferrara, III, Esquire