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SC Court of Appeals

In the Supreme Court For the State of South Carolina

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

The Honorable Mikell Scarborough, Master in Equity

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

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

v.

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

PETITION FOR A WRIT OF CERTIORARI

EPTING & RANNIK, LLC
Jaan Rannik
46A State Street
Charleston, South Carolina
(843) 377-1871
jgr@epting-law.com

ATTORNEY FOR PETITIONERS

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CERTIFICATE OF COUNSEL

Counsel for Petitioners certifies that a Petition for Rehearing was made and finally ruled upon by the Court of Appeals on May 22, 2025, and that, by Order of June 17, 2025, this Court granted an extension to the deadline to file this petition until July 14, 2025.

INTRODUCTION

In *Lawson v. Rogers*, 312 S.C. 492, 435 S.E.2d 853 (1993), this Court held that, when a plaintiff's causes of action are all grounded in the same alleged facts, the pursual of an accounting cause of action to its conclusion constitutes an election of remedies. Here, the Plaintiff, Tony Billips, filed suit against Petitioner Carolyn Billips, bringing an accounting cause of action along with multiple other claims. It is undisputed that all of the claims were grounded upon the same alleged malfeasance by Petitioner in her capacity as President and majority shareholder of Alex's Restaurants, Inc. ("Alex's"), a family restaurant based in Goose Creek, South Carolina.

By consent order, the Parties obtained a referral of the case to the Master in Equity for resolution of the accounting cause of action. At the trial before the Master, Plaintiff reiterated that he sought a ruling from the Master ordering that he be paid the value of his shares in Alex's. The Master did so following a multi-day trial, valuing his interest at $44,143.08.

The question then arose of whether Plaintiff, by electing to pursue his accounting cause of action to its conclusion, had elected his remedy. That question is resolved in the affirmative by this Court's holding in *Lawson v. Rogers*. Nevertheless, the Master ruled that Plaintiff had *not* elected a remedy, and the Court of Appeals affirmed. Petitioner comes now before this Court contending that *Lawson v. Rogers* is determinative, that the Court of Appeals erred in failing to rule consistent therewith, and requesting that this Court issue a writ of *certiorari*.

QUESTION PRESENTED

1. Whether the Court of Appeals' opinion, which holds that Plaintiff did *not* elect a remedy by pursuing his accounting cause of action to a final conclusion, conflicts with this Court's precedent in *Lawson v. Rogers*, 312 S.C. 492, 435 S.E.2d 853 (1993), which holds that a party who pursues his accounting cause of action to its final conclusion *has* elected a remedy.

STATEMENT OF THE CASE

Defendant/Appellant Carolyn Billips ("Ms. Billips") is the President and majority shareholder of Alex's Restaurants, Inc. ("Alex's"), a family restaurant based in Goose Creek, South Carolina. Ms. Billips' owns a 66.33% interest in Alex's. Ms. Billips also owns and operates another restaurant in Summerville, South Carolina called "Family Restaurant," formerly operated as "Flowertown Restaurant."

Plaintiff/Respondent Tony Billips ("T. Billips") is Ms. Billips' stepson and owns an 18.33% interest in Alex's. The remaining shareholder is Ms. Billips' son, Alex Jr., also with 18.33%, whose shares Ms. Billips has the authority to vote.

Alex's is an ongoing business, although one that has suffered through recessions, the COVID pandemic, and economic uncertainty.[1] To ensure Alex's could weather the past and present financial difficulties, Ms. Billips paid herself a sub-market salary for running the business,[2] sold personal assets and contributed the proceeds to the business to keep it afloat, and made business loans between Family Restaurant and Alex's. Without Ms. Billips' actions, Alex's would not have survived.[3]

[1] Previously, there were multiple locations of Alex's, but all other locations closed because of financial difficulties largely related to the end of video poker.

[2] At times, Ms. Billips took no salary at all.

[3] As the Master in Equity found.

T. Billips sued Ms. Billips in 2016 on numerous theories,[4] legal and equitable, contending that Ms. Billips had mismanaged the business to his detriment. **R. p. 0046 (Compl.)**; **R. p. 0080 (Am. Compl.)**. All of Plaintiff's causes of action arise from the same facts and alleged misconduct. *See infra*, Argument Part A.2. On May 3, 2017, the case was referred to the Master in Equity for a trial on the accounting cause of action. **R. p. 0003**.

The case was tried before the Master on August 24 and 25, 2021. **R. pp. 0203, 0475**. On the morning of trial, Plaintiff requested the matter instead be sent to Circuit Court for a single trial on all of his causes of action, noting that the factual allegations underlying his contentions as to the accounting were the same as those underlying his other causes of action. **R. p. 0219, lines 7–23**; *infra*. The Master denied the request, finding that the case was referred to him by consent for an accounting and that the Master would abide by the order of reference. **R. p. 0221, lines 13–15**.[5]

Plaintiff's claim for an accounting alleges that "[t]he amount due to Plaintiff [from the sale of his stock] from Defendant is not readily ascertainable . . . ." **R. p. 0084 ¶ 38**. At trial, Plaintiff acknowledged that the buyout of his stock was the relief he sought via the accounting:

> Q. And you're asking this Court to determine the value of that interest and cash you out on your interest, correct?
>
> A. Yeah, from the – what was given to me when it was given to me.
>
> Q. And that would be based on the value today of –
>
> A. Correct.

---

[4] Plaintiff's amended complaint, filed January 1, 2018, asserts claims for Injunctive Relief, Fraud, Accounting, Piercing the Corporate Veil, Breach of Trust, Breach of Fiduciary Duty as Co-Trustee, Breach of Fiduciary Duty as Majority Shareholder, Judicial Determination of Shareholder's Interest, Oppression, Constructive Trust, Conversion, and Resulting Trust. **R. pp. 0080–94.**

[5] While there was no appeal of this ruling, a trial court's rulings related to maintaining control of the docket are reviewed for abuse of discretion. *S.C. Pub. Interest Found. v. Richland Cnty.*, 436 S.C. 271, 278 871 S.E.2d 599, 603 (Ct. App. 2021).

Q. – the operations?

A. Yes, sir.

R. p. 0511, lines 1–10.

The Master ruled that the present value of Plaintiff's 18.33% interest in Alex's was $44,143.08 and ordered that Defendant pay that amount to Plaintiff, **R. pp. 0032–38**, noting on the record that Ms. Billips' extraordinary efforts were the sole reason the business remained in operation. **R. p 0712, lines 7–9; R. p. 0715, lines 13–18**. In light of Plaintiff's requested remedy, the Master further ruled that, upon tender of that amount to Plaintiff, his shares would be returned to the corporation. **R. p. 0038**.

Plaintiff moved for reconsideration, claiming that a forced buyout of Plaintiff's interest would deny Plaintiff an election of remedies as to his other causes of action. **R. pp. 0183–85**. Ms. Billips opposed the motion, noting Plaintiff had elected a remedy by pursuing his accounting cause of action to its conclusion and requesting that the Master order a buyout of his shares. **R. p. 0195–96**. The Master granted Plaintiff's motion (**R. p. 0040**), and Defendants timely appealed. **R. p. 0813**.

On March 26, 2025, the Court of Appeals affirmed the Master in a per curiam opinion without addressing the controlling precedent *Lawson v. Rogers*, which provides that, where all causes of action arise from the same allegations of fact and an accounting cause of action is pursued to its conclusion, an election of remedies has occurred. **Opinion**. Ms. Billips raised this and other arguments in her Petition for Rehearing, timely filed April 10, 2025. **Petition for Rehearing**. On May 22, 2025, the Petition for Rehearing was denied. **Order**.

On June 17, 2025, this Court granted an extension through July 14, 2025 for the filing of this petition for a writ of certiorari, which Petitioner now submits.

ARGUMENT

A. The Court of Appeals' Opinion Conflicts With This Court's Precedent.

Under the circumstances of this case—in which Plaintiff brought claims, including for an accounting, all based upon the same alleged wrongdoing and pursued the accounting claim to its conclusion—and this Court's holding in *Lawson v. Rogers*,[6] Plaintiff elected a remedy and may no longer pursue alternative claims relating to the same alleged wrong. The Court of Appeals issued a per curiam opinion to the contrary. As this opinion conflicts with this Court's precedent, Petitioner requests this Court issue a writ of *certiorari* and review this matter.

1. Legal Standards

a. Election of Remedies

The doctrine of election of remedies involves a choice between two or more different and coexisting modes of procedure and relief afforded by law for the same injury. *Tzouvelekas v. Tzouvelekas*, 206 S.C. 90, 33 S.E.2d 73 (1945). The doctrine seeks to prevent a double recovery for a single wrong. *Save Charleston Found. v. Murray*, 286 S.C. 170, 333 S.E.2d 60 (Ct. App. 1985). When one set of facts entitles the plaintiff to alternative remedies, he may plead and prove his entitlement to either or both; however, the plaintiff may not recover both. *Id.* The invocation of one remedy constitutes an election of remedies that will bar another remedy consistent therewith where the suit upon the remedy first invoked reach the state of final adjudication. *Id.*

b. Accounting as a Cause of Action

An accounting is an equitable cause of action seeking a remedy in which a determination is made as to whether an amount is owing from one party to another and a judgment is rendered for that amount:

[6] 312 S.C. 492, 435 S.E.2d 853 (1993).

> [T]he equitable remedy of "accounting" sought by the parties in the instant case . . . refers to "an adjustment of the accounts of the parties and a rendering of a judgment for the balance ascertained to be due."

Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 427, 673 S.E.2d 448, 453 (2009) (citing 1 AM. JUR. 2d *Accounts and Accounting* § 52 (2005)).

2. *Lawson v. Rogers* Holds That Pursuing an Accounting Claim to its Conclusion Precludes Pursuing Other Claims Based Upon the Same Facts.

In *Lawson v. Rogers*, the non-managing partners of a hotel filed suit against the managing partners, alleging wrongful appropriation of partnership assets. The suit included claims for an accounting, civil conspiracy, breach of contract, breach of contract with a fraudulent act, breach of fiduciary duty, breach of the covenant of good faith, and violations of the South Carolina Unfair Trade Practices Act. As in the instant matter, the case was bifurcated, and all legal causes of action were stayed pending an accounting:

> The legal actions were stayed while the hearing on the accounting was held. After hearing the evidence presented by both sides related to the accounting action, Judge Lockemy issued a decree.

Lawson, 312 S.C. at 494-95, 435 S.E.2d at 855; *see also* **R. p. 0004**. The arguments in the accounting cause of action in *Lawson* centered on two types of alleged misappropriation (*id.* at 495, 435 S.E.2d at 855 ("Two separate types of misappropriation are alleged in this action.")); the withholding of revenues and misappropriation of cash disbursements. As here, the alleged misappropriation that formed the basis of the accounting cause of action was also the basis for the legal causes of action (*id.* at 501, 435 S.E.2d at 858 ("The pleadings reflect all the claims arise out of the same set of facts and wrongdoing.")).

The accounting cause of action was tried first and to its completion, and the plaintiffs' efforts to subsequently pursue their additional causes of action were rejected on the basis that plaintiffs had elected a remedy. This Court affirmed, holding:

> Lawson and Houck, having chosen to proceed in an accounting action, have made an election of remedies, and may not now proceed with alternative remedies for the same wrong.

Id.

3. Plaintiff's Additional Claims Are Based Upon the Same Facts as his Accounting Claim.

It is undisputed that all of Plaintiff's claims arise from the same alleged misconduct and are based upon the same facts, as established by Plaintiff's counsel's concessions at trial and as reflected in the pleadings.

a. Concessions by Counsel at Trial

At trial, Plaintiff's counsel requested that, because all claims arose from the same facts, the action before the Master be referred back to the circuit court so all claims could be tried together:

> MR. ELLIS: [W]e do not think judicial economy is best served by *presenting to both this Court and the fact – finder of facts in Common Pleas . . .*
>
> THE COURT: Well, we are way past judicial economy. We are five years into this case, and we haven't gotten anywhere.
>
> MR. ELLIS: . . . of *how her malfeasance has – how she's treated Alex's as her own bank account to fund her other businesses and has co-mingled funds so much*. We do not think judicial economy is best served by *presenting her malfeasance twice*.

R. p. 0218, line 25 – p. 0219, line 12 (emphasis added). Later, counsel confirmed Plaintiff's position that the accounting arose from the same alleged misconduct underlying his other claims:

> And again, at the beginning of this case, we said that malfeasance of the defendant is a large factor in determining the valuation of this case.

R. p. 0593, lines 11–14.

b. Plaintiff's Amended Complaint

That Plaintiff's claims arise from the same alleged conduct—alleged self-dealing and siphoning of corporate assets—is further reflected in Plaintiff's Amended Complaint (**R. pp. 0080–95**). For example:

- Plaintiff's Accounting cause of action alleges that an accounting was necessary "to prevent unjust enrichment by Defendant" (**R. p. 0084 ¶ 33**), "to determine what assets have been liquidated by the Defendant for her personal benefit" (***id.*, ¶ 34**), and because "the amount due to Plaintiff from Defendant is not readily ascertainable because the amount of corporate assets siphoned out of the corporation to the Defendant in her personal capacity is unknown" (***id.*, ¶ 38**);

- His claim for Breach of Fiduciary Duty alleges that "Defendant breached her fiduciary obligation owed to Plaintiff by siphoning off corporate assets of Alex's Restaurants, Inc., and engaging in self dealing by personally profiting off of those above-mentioned transactions." (**R. p. 0085 ¶ 47**);

- His claim for Conversion alleges that "Defendant has failed to deliver assets to Plaintiff and has converted corporate assets for personal gain" (**R. p. 0086 ¶ 53**) and that "[t]he value of the corporate assets on the day that Defendant converted them needs to be determined at trial." (***id.*, ¶ 55**);

- His claim for Breach of Trust alleges that "[t]he Defendant has breached her fiduciary duty by siphoning off corporate assets of Alex's Restaurants Inc." (**R. p. 0087 ¶ 59**);

- His claim for a Derivative Shareholder Action alleges that Ms. Billips, "as controlling shareholder, was siphoning off corporate assets for personal gain." (***id.*, ¶ 64**) and "engaged in self dealing by liquidating a substantial majority of corporate assets for personal financial gain." (**R. p. 0088 ¶ 68**).

- His claim for "Piercing the Corporate Veil" alleges that Defendant "began liquidating corporate assets and selling restaurants while profiting personally off of those transactions." (**R. p. 00849 ¶ 76**);

- His claim for Determination of Shareholder's Interest alleges that "Defendant has failed and refused to offer Plaintiff his distributional interest in the corporation" (*id.*, ¶ 84) and that her "failure to provide the required financial information [was] arbitrary, willful, wanton, and in bad faith." (**R. p. 0090 ¶ 85**);

- His claim for Constructive Trust alleges "Defendant has sold off significant corporate assets at the expense of the minority shareholder, the Plaintiff, for Defendant's self dealing." (**R. p. 0091 ¶ 93**);

- His claim for Resulting Trust alleges that Defendant "convert[ed] [Plaintiff's] interest in the corporation into personal assets of the Defendant." (**R. p. 0092 ¶ 100**);

- His claim for Oppression alleges Defendant "has misapplied and wasted corporate assets" (***id.***, ¶ 104) and "exclude[ed] [Plaintiff] from participation in business returns' (***id.***, ¶ 105).

It is therefore not only undisputed, but also indisputable, that all of Plaintiff's claims arise from the same alleged misconduct, as in *Lawson v. Rogers*.

4. Plaintiff Pursued his Accounting Claim to its Conclusion; His Other Claims Are Precluded.

This matter was referred by consent to the Master for an accounting on May 3, 2017 and was tried on August 24 and 25, 2021. During this time, Ms. Billips prepared her case with the understanding that it would be tried as an accounting. Though the allegations of wrongdoing are the same between the various causes of action, the accounting is an equitable case of action to be tried nonjury before the Master, whereas Plaintiff's legal causes of action would be tried before a jury. Ms. Billips's approach in front of the Master was very different to what it would have been in front of a jury, and Ms. Billips relied upon Plaintiff's admission that the alleged malfeasance in the accounting claim and its remaining claims was the same malfeasance.

In such circumstances, this Court has noted that it is appropriate to require an election of remedies prior to trial:

> In this case, Ethridge and Fann have pleaded both legal and equitable causes of action. The legal cause of action-breach of contract accompanied by a fraudulent act-seeks both actual and punitive damages. The equitable causes of action seek an accounting between partners and the award of a one third interest in real property and other assets of the partnership. Because of the difference in these remedies, the proof of damages involves significantly different evidence. Much of the accounting evidence would not be relevant to measuring damages for breach of contract; the evidence on punitive damages would be irrelevant to the equitable claims. The equitable causes of action assume Harper is a member of the partnership. The legal cause of action rests on the theory that he has been wrongfully excluded from the partnership and is no longer a partner. Finally, the legal claim is triable by a jury.

> The equitable claims are typically referred to the master in equity for trial without a jury.
>
> In these circumstances, it is reasonable to require Harper to make an election of remedies prior to trial. The facts alleged in the complaint show that one primary wrong is involved entitling the plaintiffs to a single recovery. This much is conceded by Harper himself. The burden of defending different claims involving substantially different proof, the requirement of different modes of trial, and the potential for jury confusion regarding evidence of damages if the legal and equitable claims are tried together, all suggest that fairness and orderly adjudication will be better served by requiring an election.

Harper v. Ethridge, 290 S.C. 112, 121–23, 348 S.E.2d 374, 379–81 (Ct. App. 1986).

Here, pursuant to this Court's precedent, Plaintiff *did* elect his remedy by proceeding with an accounting to determine what amount was due to him for purchase of his interest to its conclusion. *Lawson v. Rogers*, 312 S.C. 492, 435 S.E.2d 853 (1993); *Save Charleston Found. v. Murray*, 286 S.C. 170, 333 S.E.2d 60 (Ct. App. 1985). Allowing him to force a do-over by electing and pursuing a different remedy post-trial prejudices Defendant and is contrary to this Court's precedent.

CONCLUSION

Because the Court of Appeals' Opinion conflicts with this Court's holding in *Lawson v. Rogers*, Petitioner requests this Court issue a writ of *certiorari* and review the Court of Appeals' ruling.

Respectfully submitted:

This 14th day of July, 2025
Charleston, South Carolina

EPTING & RANNIK, LLC
/s/ Jaan Rannik
Jaan G. Rannik
46A State Street
Charleston, South Carolina
(843) 377-1871
jgr@epting-law.com

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PROOF OF SERVICE

I certify that I have served the Petitioners' Petition for Writ of Certiorari on opposing counsel via e-mail on July 14, 2025, addressed to Respondent's counsel of record.

Michael W. Sautter, Esq. – mikewsautter147@aol.com
O. Grady Query, Esq. – gquery@qlawsc.com

EPTING & RANNIK, LLC

*/s/ Gwyn L. Martin*________
Gwyn L. Martin
Legal Assistant to Jaan G. Rannik
46A State Street
Charleston, SC 29401
Phone: 843-377-1871
glm@epting-law.com