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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*.

PETITIONERS' REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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Petitioners file this reply in support of their petition for a writ of certiorari pursuant to Rule 242(g), S.C.A.C.R.

REPLY TO RESPONDENT'S ARGUMENTS

A. What Was Before the Master

The primary thrust of Respondent's contention is that the Master's subject-matter jurisdiction was limited by the consent order of reference. **Return** at 12–19. This much is true. However, Respondent's accounting cause of action was based on precisely the same allegations of wrongdoing as his other causes of action.[1]

The gravamen of **all** of Respondent's claims was the allegation that Ms. Billips had comingled corporate and personal assets and/or siphoned money out of the corporation for personal use.[2] *See* **R. p. 0080** - Am. Compl. at ¶¶ 33, 34, 38, 47, 64, 68. Indeed, the accounting cause of action itself alleges:

> 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.

[1] As discussed above, Respondent is bound by his counsel's admission that all his causes of action relate to the same alleged malfeasance. *Supra* Part I. Nevertheless, it bears repeating that there is no factual contention in Respondent's pleading that was not placed before the Master as part of the accounting.

[2] At trial, Respondent further sought to prove that Ms. Billips used her majority interest to deny Respondent a meaningful ability to influence the direction of the corporation, including the sale of certain locations of Alex's Restaurants as a result of financial hardships suffered by the company. *E.g.*, **R. pp. 0437-44** - Trial Tr. (Aug. 24, 2021) at 235:8–242:18. This was likewise unsuccessful, the Master finding Ms. Billips' efforts, including making the difficult decision to close certain locations, were the only thing that kept the business afloat. **R. pp. 0715-16** - Trial Tr. (Aug. 25, 2021) at 241:19–242:17.

R. p. 0084 - Am. Compl. ¶ 38. This allegation was placed squarely before the Master, who ruled as follows:

> The Court finds that the use of proceeds from the sale of assets of Alex's [the business at issue] in order to satisfy tax obligations for Flowertown [a separate business owned by Ms. Billips] requires an adjustment in the valuation of Alex's. Contemporary accounting records show that $170,277.57 of proceeds from those sales went to satisfying tax obligations for Flowertown.
>
> [. . .]
>
> However, contemporary accounting records also establish that Ms. Billips contributed $168,213.90 in personal assets for the benefit of Alex's during this same time period, as follows:
>
> [. . .]
>
> As the proceeds to Flowertown exceeded Ms. Billips' personal contributions by $2,063.67, the Court finds that Ms. Billips owes $2,063.67 to Alex's Inc., increasing the valuation of Alex's Inc. by that amount, for a total of $301,030.30.

R. pp. 0035-36 - Order (Nov. 22, 2021) at 5–6. Contrary to Respondent's assertion then, the Master heard evidence regarding Respondent's allegations of co-mingling and siphoning funds from the corporation (which are the basis for all of Respondent's causes of action) and ruled that the full extent of damage to the business was $2,063.67. There can be no contention the matter was not properly before the Master or properly resolved by the Master.

Nonetheless, Respondent contends that "[t]he Master only considered a narrow set of facts to make one narrow determination on the value of Respondent's interest in the remaining location of Alex's Inc." **Return at 16**. Notably, Respondent is unable to articulate to this Court a single fact or issue that was not presented to the Master. Nor could he, having conceded that the same factual underlying his other causes of action were an essential component of his accounting cause of action:

> [W]e believe that the malfeasance does go directly to the value of the business.

R. p. 0220 - Trial Tr. (Aug. 24, 2021) at 18:15–16. This argument was reiterated by Respondent's counsel after the close of the evidence (**R. pp. 00706-07** - Trial Tr. (Aug. 25, 2021) at 232:9–233:4) and responded to by Appellant's counsel thereafter. **R. p. 00708** - Trial Tr. (Aug. 25, 2021) at 234:10–21.

Respondent had a full and fair opportunity to prove that Ms. Billips was comingling and/or siphoning funds from Alex's Restaurants, Inc. He cannot be permitted to (i) argue to the trial court that certain evidence was an essential component of the accounting, (ii) present that evidence to the trial court, and then (iii) argue to this Court that he is not bound by the trial court's rulings in relation to that evidence.

B. The Master's Findings

Respondent contends that the Master made no findings that bear on his other causes of action, all of which are centered upon the allegations that Petitioner comingled funds and engaged in self-dealing. These allegations were before the Master in the accounting, and the Master found:

> I think the evidence before the Court is that [Alex's] could not be a going concern but for the efforts of Ms. Billips. Okay?

R. p. 0712 - Trial Tr. (Aug. 25, 2021) at 238:7-9; and:

> This is an ongoing business, and it's largely dependent upon the efforts of Ms. Billips over there. I don't think if it was [not] for her, the business would still be open, is what it sounds like to me. And so there should be some credit there.

R. p. 0715 - Trial Tr. (Aug. 25, 2021) at 241:13-18. Respondent's contention is unsupportable.

C. Accounting

Respondent contends that "[t]he Master's role was solely to make a determination on the value of Respondent's interest in the business." **Return** at 16. This misapprehends the purpose of an accounting and runs contrary to the relief he requested both in his complaint and in his live testimony before the trial court.

An accounting is a cause of action by which a court determines a party's financial interest and enters a judgment thereupon. This Court explained it thus:

> [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)) (emphasis added). This is precisely what *Respondent* requested the trial court do. The prayer for relief in Respondent's amended complaint requested:

> [A] judicial determination of Plaintiff's interest in Alex's Restaurants, Inc. and the distribution of that interest to Plaintiff.

R. p. 0093 - Am. Compl. at 14. During his live testimony at trial, Respondent testified:

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

R. p. 0511 - Trial Tr. (Aug. 25, 2021) at 37:1–10. The Master's November 22, 2021 order granted this very relief, ordering that Respondent receive $44,143.08 in exchange for his interest:

> Accordingly, the Court finds the value of Mr. Billips' 18.3% interest to be $44,143.08. . . . IT IS FURTHER ORDERED that, upon tender of the sum of $44,143.08 to Mr. Billips, his shares shall be transferred back to the corporation for the benefit of Ms. Billips.

R. p. 0032 - Order (Nov. 22, 2021). It was error to reverse the award on reconsideration and remand the case to circuit court so Respondent could have another bite at the apple.

D. Respondent's Contentions Regarding *Lawson v. Rogers*

Respondent contends that *Lawson v. Rogers* is distinguishable from the instant case because, in that case, "<u>all</u> of the issues in a contention partnership dispute were determined by the learned trial court which had subject matter jurisdiction over all issues and all causes of action." **Return** at 16 (emphasis in original). This is incorrect. In *Lawson*, the case was bifurcated, and the legal causes of action were stayed pending the 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 v. Rogers, 312 S.C. 492, 494–95, 435 S.E.2d 853, 855 (1993). Further, the arguments in the accounting cause of action 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.")); and, like here, the same alleged misappropriation that formed the basis of the accounting cause of action was 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.")). Accordingly, this Court held:

> [H]aving chosen to proceed in an accounting action, [the plaintiffs] have made an election of remedies, and may not now proceed with alternative remedies for the same wrong.

Id. The *Lawson* case is squarely on point and precludes Respondent from proceeding with additional causes of action based on the same alleged wrong. There being no causes of action in Respondent's complaint based on different facts than his accounting cause of action, Respondent has elected his remedy and is not permitted to pursue other causes of action based on those same facts.

CONCLUSION

For the reasons set forth herein and those in their petition for a writ of certiorari, Petitioners respectfully request this Court grant the petition, vacate the subject decision of the Court of Appeals, and make its own determination of the issues presented.

Respectfully submitted:

This 8th day of September, 2025
Canaan, NY

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PROOF OF SERVICE

I certify that I have served the Petitioners' Reply In Support of Petition for A Writ of Certiorari on opposing counsel via e-mail on September 8, 2025, addressed to Respondent's counsel of record.

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