STATE OF SOUTH CAROLINA COUNTY OF HORRY	)	IN THE COURT OF COMMON PLEAS FIFTEENTH JUDICIAL CIRCUIT
Thomas Wade Long and Clyde Kiser, Individually and on Behalf of TnW and More, LLC, Plaintiffs, Timothy D. Kettner, Donald Kettner and TNT and More, Inc. d/b/a Crab Catchers on the Waterfront, Defendants.	)	Civil Action No. 2021-CP-26-01512 ORDER DENYING DEFENDANTS' MOTIONS FOR JNOV

A jury trial in this matter was conducted between June 10, 2024 and June 20, 2024. The jury returned a verdict for Plaintiff and all defendants made post-trial motions for judgment notwithstanding the verdict. The parties requested this Court delay its ruling on this motion in order to engage in some post-trial negotiations and mediation. Those attempts failed and an in person hearing was held on July 21, 2025 at which Defendant TNT & more, Inc. and Plaintiffs Wade Long, Clyde Kiser and TNW & More LLC were present. Attorneys for Tim Kettner appeared remotely but presented argument to the Court. After a careful review of the law and evidence presented at trial, this Court denies the motions for JNOV. Each motion will be addressed in turn.

Standard of Review

"In ruling on directed verdict or JNOV motions, the trial court is required to view the evidence and the inferences that reasonably can be drawn therefrom in the light most favorable to the party opposing the motions." *Sabb v. S.C. State Univ.*, 350 S.C. 416, 427, 567 S.E.2d 231, 236 (2002). "The trial court must deny the motions when the evidence yields more than one inference or its inference is in doubt." *Id.* The appellate court "will reverse the trial court's rulings on these motions only [when] there is no evidence to support the rulings or [when] the rulings are controlled by an error of law." *Hinkle v. Nat'l Cas. Ins. Co.*, 354 S.C. 92, 96, 579 S.E.2d 616, 618 (2003).

"When considering a JNOV, 'neither [an appellate] court, nor the trial court has authority to decide credibility issues or to resolve conflicts in the testimony or the evidence.'" *Curcio v. Caterpillar, Inc.*, 355 S.C. 316, 320, 585 S.E.2d 272, 274 (2003) (quoting *Reiland v. Southland Equip. Serv., Inc.*, 330 S.C. 617, 634, 500 S.E.2d 145, 154 (Ct. App. 1998), *abrogated on other grounds by Webb v. CSX Transp., Inc.*, 364 S.C. 639, 653, 615 S.E.2d 440, 448 (2005)). A "JNOV should not be granted unless only one reasonable inference can be drawn from the evidence." *Reiland*, 330 S.C. at 634, 500 S.E.2d at 154.

Background

Plaintiffs Wade Long and Clyde Kiser were in business with Defendant Timothy Kettner by virtue of Plaintiff TNW & More, LLC. TNW was formed to operate a marina next door to Defendant TNT & More, Inc., also known as Crabcatchers. A dispute arose between all the various parties concerning the operation of the marina and the real estate of the respective companies. Plaintiffs brought this action against Defendant TNT, Defendant Kettner, along with several other individuals, for breach of a joint venture agreement, interference with contractual relations, and promissory estoppel. Plaintiff brought an additional claim for breach of fiduciary duty against Mr. Kettner. A jury trial was conducted between June 10, 2024 and June 20, 2024, at the conclusion of which the jury returned a verdict in favor of Plaintiff.

Defendant Kettner's Motion For JNOV

1. All defendants ask this Court to direct a verdict as to cause of action for Breach of the Joint Venture Contract. The arguments made by Defendants focus on two elements of a joint venture to argue they are entitled to a dismissal as a matter of law. However, Defendants misconstrue the joint venture presented by Plaintiff at trial. All defendants argue that each member of the joint venture must be able to control all aspects of the other businesses in the joint venture. This is simply not the law. A joint venture is a partnership between entities that is not formally created under any statutory scheme. Defendants are correct that to

constitute a joint venture, each party must enjoy an equal right to control the conduct of the other party. But that control is limited to the common purpose of the joint venture, not the separate businesses of the members to the joint venture. *Spradley v. Houser*, 247 S.C. 208, 146 S.E. (2d) 621 (1966). The joint venture presented at trial was the use of the docks built by TNW and the parking lot owned by TNT. Thus, the purpose of the joint venture was to use each other's property to allow both separate businesses to enjoy the benefits and make more profits through those separate companies. The evidence of this joint venture was more than just a scintilla:

- TNW claimed the bathrooms in the TNT building as its own, which were required to obtain the marina permit;
- TNW used the offices in the TNT building as its own with the full approval of TNT;
- All of TNW's records were kept in the TNT building;
- Wade Long and Clyde Kiser testified that without the use of the parking lot, TNW could not operate a marina under the current applicable regulations;
- The Credit Memorandum (Plaintiff's #11 and Defendant Kettner's #1) unambiguously stated that TNT needed the parking lot constructed by TNW to continue its operation as a restaurant;
- The joint venture was the use of the parking lot by TNW in exchange for the use of two boat slips in the marina by TNT for its customers;
- The joint venture was never to combine the businesses, control the businesses jointly, or allow either business to assert control over the core functions of the others' business;

- The testimony was clear that both businesses operated in accordance with this joint venture agreement for three years;
- The evidence demonstrated that TNW was one of two entities that could control the parking lot as the signs placed by TNT stated that to the public;
- TNT used, and continues to use, the boat slips in the marina;
- Steve Crosson testified that TNT controlled the fuel operations of TNW whenever there were no employees of TNW present;
- Steve Crosson testified that credit cards for ski rentals were run on TNT credit card machines when TNT employees controlled the jet ski operations;
- Steve Crosson testified that TNT employees used the jet skis free of charge in the off season; and
- The parties jointly obtained a $1.1 million loan to build the marina and pay off the loans on the real property where the parking lot was built.

The second element Defendants argued was lacking from Plaintiffs' proof was the sharing of profits. However, Defendants argued, repeatedly, that TNW never made a profit. Now they seek a dismissal for the failure of TNW to share those non-existent profits. This cannot be the law as it would require "profit" before any relationship can be deemed a joint venture. The testimony and evidence at trial demonstrated that both TNW and TNT needed the parking lot to stay in compliance with the regulatory requirements of each business. Plaintiffs presented evidence that TNW paid for the development of the parking lot, not TNT. Construing all of this in the light most favorable to Plaintiffs, there was more than enough evidence to support the jury's verdict with regards to the existence of a joint venture.

2. Defendants Timothy D. Kettner, Donald Kettner and TNT and More, Inc. all argue that the Plaintiffs' claims should be dismissed as they are barred by the Statute of Frauds. The

South Carolina Statute of Frauds requires that certain contracts must be in writing, and to remove an oral contract from the Statute of Frauds, a party must show part performance of the oral contract. *Settlemeyer v. McCluney*, 359 S.C. 317, 596 S.E.2d 514 (Ct. App. 2004). In the context of real estate transactions, partial performance may be proven by evidence of the following: (1) improvements to the real estate; (2) possession of the real estate; or (3) payment of the purchase price. *Bradshaw v. Ewing*, 297 S.C. 242, 376 S.E.2d 264, (1989). In this case, Plaintiffs presented proof of all three. Wade Long improved the real estate to be combined by filling in a pond, tearing down a house, providing fill dirt and rock, and grading the entirety of the parking lot area owned by TNT & More, Inc. *Deposition of Wade Long*, pp. 216-219. Kettner and Long paid for full architectural plans for the construction of a harbormaster building on the land owned by TNT & More, Inc. *Id.* at pp. 285-289. Kettner and Long paid for the drafting of recombination plats joining the real properties of TNT & More, Inc. and TNW & More, LLC. *Id.* at pp. 208-209. Long placed a temporary hut and a fuel tank on the land owned by TNT & More, Inc., *Id.* at p.286. Both TNT & More, Inc. and TNW & More, LLC jointly executed a loan for $1.1 million, pledging the real estate owned by both entities as collateral for that loan. *Id. pp.*165-181. Finally, all parties operated under and in accordance with this agreement for three years. There is additional evidence of partial performance in the record of this case, including Donald Kettner representing TNW & More, LLC as its risk manager for purposes of insurance, the use of the Crabcatcher's restaurant building as the home office for TNW & More, LLC, *Deposition of Wade Long*, pp. 162-163, and the use of TNT & More, Inc. employees to help operate the ski and fuel business of TNW & More, LLC. *Id.* at pp. 112-113. All of these acts remove this case and the agreement between the parties from the Statute of Frauds and support the jury's verdict.

3. Defendants claim there is no evidence of damages from the breach of the joint venture agreement. However, both Wade Long and Clyde Kiser testified that without having access to the TNT real property located in the parking lot, they could not operate their business. This is sufficient to affirm the jury's verdict.
4. Defendants claim that there was no evidence of the value of the enhancement to the parking lot. The Credit Memorandum (Plaintiff's #11 and Defendant Kettner's #1) stated that TNT needed the parking lot constructed by TNW to continue its operation as a restaurant. In addition, the text messages from Tim Kettner submitted into evidence placed the cost of filling and grading the pond at $70,000.00. Finally, TNT still owed $284,000.00 for the real estate where the parking lot was built. Under the terms of the mortgage executed by all defendants and their principals, TNW pledged its own real estate so secure repayment of the loans TNT used to purchase the parking lot. The testimony was that the land where the parking lot exists was unusable prior to the work performed by TNW. This evidence demonstrates the value of the improvements to the parking lot real estate and is sufficient to affirm the jury's verdict.
5. Defendants claim that Plaintiffs "could have argued to the jury that the loan payments constituted contract damages. They chose not to do so." This argument was specifically made in closing when Plaintiffs told the jury TNW had already paid $334k in loan payments, still owed $800k in November on the balloon payments. In addition, Plaintiffs Long and Kiser testified that they paid $280k of their own money into TNW. Counsel argued to the jury that this $1.4 million number was the out of pocket loss before looking at the value of the real estate. I find there was sufficient evidence to affirm the jury's verdict on this issue.
6. Defendants both make the same argument regarding the damages for tortious interference with contract. Defendants claim the only evidence of damages was the value of the contract with Eric Rolf. Plaintiffs agree that this is the only measure of special damages introduced

by Plaintiffs. However, as I charged the jury (without objection from any party) the measure of damages for interference with contract include:

- Unforeseen expenses
- Damage to reputation
- Damage for loss of employees
- Damage for loss of customers
- Damage for loss of goodwill

The testimony from Wade Long, Clyde Kiser, and Eric Rolf contained several examples of bullying, hostility, and property destruction conducted by Defendants between 2020 and 2022. While no mathematical calculation was provided, general damages are not typically susceptible to such reduction. The tax returns of TNW were in evidence and so were the projections from the Credit Memorandum (Plaintiff's #11 and Defendant Kettner's #1). While this Court expressed some concern over the projections provided in that memorandum, Geoff Hopkins testified that those projections were not pure speculation and were important to the decision by the bank to loan the $1.1. million. More importantly, Defendants agreed that those projections were submitted on their behalf in applying for the loan. The jury was charged regarding speculative damages and gave the evidence the weight they deemed appropriate in their deliberations. I find there was sufficient evidence to support the jury's verdict.

7. Defendant argues that there is no evidence that anyone took action at the direction of Tim Kettner to interfere with customers. The evidence submitted at trial demonstrated that Tim Kettner sent a text message that stated Wade Long was the enemy and that Robert Benoit should act as an "incognito infiltrator" to wage war against Plaintiffs. There was no evidence to dispute this from Mr. Benoit as he chose not to testify. But there was evidence of Robert

Benoit calling the regulatory authorities to self-report violations to shut down TNW, attempting to pull over a 10,000 gallon fuel tank with a tractor and a chain, and filing a false report of a fuel spill of "hundreds of gallons" of fuel. There was testimony that Benoit repeatedly stated that he owned the dock and attempted to intimidate and threaten the customers of TNW while they were on the dock. Finally, Mr. Benoit climbed on the tractor of Wade Long to stop him from following an Order of this Court to place the Ski Shed back in its lawful place, which lead directly to Wade Long being "arrested" for calling 911. We do not know why Mr. Benoit took these actions, but the evidence in the record can be reasonably construed that the encouragement of Mr. Kettner was a contributing factor. The evidence in the Record is more than sufficient for the jury to infer that Mr. Kettner's texts constituted proof of coordination to interfere with TNW's business.

8. Defendants claim that there was no evidence of Tim Kettner's financial status and that precludes an award of punitive damages. There is no caselaw that requires Defendant to introduce evidence of a Defendant's ability to pay. This is a factor to be considered, but it is not a pleading or evidentiary requirement of the party seeking punitive damages. Moreover, there was evidence in the record of Mr. Kettner's wealth. The financial declaration of Tim Kettner, which was provided by Mr. Kettner in relation to the $1.1 million loan, was introduced into evidence and discussed during his direct testimony. Mr. Kettner was specifically asked about his $4 million valuation and said some things had changed since it was introduced. The only thing he could point out was the sale of some real estate, but he could not state a current value of his net worth. Defendants want this Court to rule Mr. Kettner can completely avoid punitive damages by simply refusing to answer a question about his financial condition. This is not the law and I find there was sufficient evidence to affirm the jury's verdict.

9. All punitive damages awarded in this case were well within the acceptable range under South Carolina law. No punitive award was more than 3 times the actual damages and SC Courts have allowed up to 9.9 times the amount of actuals as punitive damages. *Collins Entm't Corp. v. Coats & Coats Rental Amusement*, 355 S.C. 125, 143, 584 S.E.2d 120, 130 (Ct. App. 2003) (finding a 9.9 to 1 punitive to actual damage ratio was proper based upon defendant's tortious interference with contract). There are multiple South Carolina cases in which award for punitive damages were upheld for tortious interference with contractual relations claims. *See Collins Entm't Corp. v. Coats & Coats Rental Amusement*, 355 S.C. 125, 139, 584 S.E.2d 120, 128 (Ct. App. 2003) (finding a 9.9 to 1 ratio was proper); *Collins Music Co. v. Terry*, 303 S.C. 358, 360, 400 S.E.2d 783, 784 (Ct. App. 1991) (finding a 6 to 1 ratio was proper); *Todd v. S.C. Farm Bureau Mut. Ins. Co.*, 287 S.C. 190, 193, 336 S.E.2d 472, 474 (1985) (reinstating a punitive damage award with a ratio of 1.5 to 1). Therefore, the law allowed punitive damages and the punitive damages awarded were well within the established guidelines established by South Carolina law.

10. *Election of remedies* – Plaintiffs agree that they will be required to make an election of remedies upon the resolution of the equitable issues remaining to be decided by the Court. However, Plaintiffs are not required to elect between the damages for breach of fiduciary duty and tortious interference with contract. These were two separate and distinct causes of action based on different duties and different damages. The tortious interference cause of action was based on the overt actions to damage the business of TNW through cutting access to the parking lot, harassing customers on the dock, and destroying TNW property. The breach of fiduciary duty was based on Kettner's breach of loyalty (as demonstrated by the 2020 and 2021 texts), his failure to provide access to the financial records (Wade Long testified that he was shut out of the books after confronting Kettner about the missing cash, Kettner admitted he could not account for the cash received during the summer of 2020) and

his failure to pay his fair share of the capital needed to keep TNW operating since 2020. There is no double recovery by allowing Plaintiffs to recover the $50,000.00 actual/$150,000.00 punitive award for the breach of fiduciary duty and the $120,000 actual/$120,000.00 punitive award for tortious interference. Therefore, Plaintiffs are not require to elect between the two recoveries.

Waites v. South Carolina Windstorm and Hail Underwriting Association, 279 S.C. 362, 366, 307 S.E. (2d) 223, 225 (1983) (owner may testify as to the value of damaged real or personal property); *State v. Brown*, 402 S.C. 119, 740 S.E.2d 493 (2013)(Owner's testimony concerning the value of his stolen personal property was sufficient alone to sustain the criminal conviction for grand larceny)

Defendant TNT'S motion for JNOV

Defendant TNT provided a list of 17 points to summarize their arguments to this Court.

A. ***TNW and TNT did not share profits.*** – At trial, Defendants argued that TNW never made a profit. Now they seek a dismissal for the failure of TNW to share those non-existent profits. This cannot be the law as it would require "profit" before any relationship can be deemed a joint venture. The testimony and evidence at trial demonstrated that both TNW and TNT needed the parking lot to stay in compliance with the regulatory requirements of each business. Plaintiffs presented evidence that TNW paid for the development of the parking lot, not TNT. Construing all of this in the light most favorable to Plaintiffs, there was more than enough evidence to support the jury's verdict with regards to the existence of a joint venture.

B. ***There are no tax filings associated with the joint venture*** – The Court is unaware of any testimony that such tax filings were required. The only thing Kim Bryant, the accountant for both TNW and TNT, testified to was that if there was a joint venture that made profits, it would have to issue K-1's to the members who received those profits. Joint ventures are not separate fictional entities under South Carolina law such as limited liability companies, C-Corporations, S-

Corporations, and limited partnerships. No expert testified that such taxes are required for the existence of a joint venture and the Court is unaware of any law that prescribes such tax filings for the existence of a joint venture.

C. ***The joint venture never issued a K1 to anyone*** – Kim Bryant, the accountant for both TNW and TNT testified to was that if there was a joint venture that made profits, it would have to issue K-1's to the members who received those profits. She further testified that she never issued K-1's for any profit other than TNT and TNW. It seems axiomatic that no profit was made by the joint venture.

D. ***Neither TNT nor TNW benefited from or were liable for any taxes associated with the joint venture for more than eight years*** – As presented in the Underwriting Memorandum (Exhibit #1) and through testimony, TNT and TNW both required use of the parking lot to remain in operation. This parking lot was developed by TNW. TNT placed signs on the parking lot that specifically stated that TNW was authorized to use and control that parking lot. The testimony of Wade Long demonstrated that TNT enjoyed, as part of the joint venture, the value of using two boat slips at the marina (valued at $1000.00 per month) since it was built in 2018. While there may not have been a direct monetary benefit from the joint use of the parking lot and the docks, that use was valuable and constitutes sufficient consideration to affirm the jury's verdict.

E. ***TNW had no right to control the operations of the restaurant*** – As discussed above, this argument is irrelevant. The operation of the Crabcatchers Restaurant was not part of the joint venture. The joint venture was the shared use of the parking lot and the marina docks.

F. ***TNT had no right to control the operations of the marina*** – As discussed above, this argument is irrelevant. The operation of the Crabcatchers Restaurant was not part of the joint venture. The joint venture was the shared use of the parking lot and the marina docks.

G. ***The joint venture could not have been completed in one year*** – This argument is based on the Statute of Frauds and as stated above, there was sufficient evidence of partial performance to take this case out of the statute of frauds and affirm the jury's verdict.

H. ***The joint venture involved the transfer and/or use in perpetuity of TNT's land without financial compensation being paid to them in the form of cash*** – The jury found the unambiguous promise which binds TNT was the "shared use of all properties and facilities including docks, parking lot, recombination plat, and TNT's restrooms and office space." In exchange for this promise, TNT received the construction of the parking lot by TNW *without cost*. More importantly, TNW pledged its own real estate to secure the loan and paid off the purchase money mortgage for the actual purchase of the real estate. There is no merit to the argument that TNT did not receive compensation and/or consideration for the promise. There is sufficient consideration and benefit to justify the contract and the jury's verdict.

I. ***Neither TNW nor TNT had any insurance on a joint venture***. During the trial there was no law, regulation, or expert testimony set forth establishing the requirement for insurance to establish the existence of a joint venture. This evidence may support an argument that the failure to file taxes or obtain insurance shows a lack of intent to form a joint venture, but those arguments were rejected by the jury.

J. ***TNT was fined as a result of TNW operating without necessary permitting by Horry County Zoning and Planning***. There was a fair amount of testimony concerning regulatory authorities at trial. However, obtaining a regulatory fine does not deny the existence of a contract or a joint venture. Such a fine does not preclude recovery with regards to the causes of action pled by Plaintiffs.

K. ***There is no written contract associated with the joint venture***. As stated above, there was sufficient evidence of partial performance to take this case out of the statute of frauds and affirm the jury's verdict

L. ***Despite the terms of TNW and TNT's operating agreements regarding the necessity of voting for certain acts at issue in this case, no vote took place whatsoever by either company to enter into a joint venture.*** The jury was charged with apparent authority. The Record demonstrates that only

one person was required to sign the $1.1 million note and mortgage to bind TNT. More importantly, the act of every other member of TNT signing a guarantee to that note and mortgage can be construed as acquiescence to Mr. Kettner's authority. Finally, the evidence at trial was that the parties acted in cooperation and compliance with the joint venture for three years before the relationship broke down. There is sufficient evidence to affirm the jury's verdict.

M. ***There is no evidence of a business valuation for TNW*** – At the outset of trial, this Court made it clear that Plaintiff would not be able to present a business valuation without an expert witness. The Court ruled that Plaintiffs could testify regarding the money invested and lost. The Court also ruled that Plaintiffs could present their own testimony concerning the valuation of real estate, as is allowed in South Carolina law. *Waites v. South Carolina Windstorm and Hail Underwriting Association*, 279 S.C. 362, 366, 307 S.E. (2d) 223, 225 (1983) (owner may testify as to the value of damaged real or personal property); *State v. Brown*, 402 S.C. 119, 740 S.E.2d 493 (2013)(Owner's testimony concerning the value of his stolen personal property was sufficient alone to sustain the criminal conviction for grand larceny). During the motion in Limine, Defendants were most concerned with the income projections found in **Exhibit 1** and any testimony from the individual plaintiffs as to the value of TNW's business. Yet, the very first exhibit from Defendant Kettner was the unredacted Underwriting Memorandum that contained the income projections. When the banker, Geoff Hopkins, testified he stated those projections were not pure speculation and played an important role in the bank's decision to issue the $1.1 million loan. More importantly, Defendants read the portions of Wade Long's deposition transcript in which he specifically stated he believed the value of the business was "ten million dollars." Defendant Kettner did it again during his cross examination. When he was asked by counsel about that ten million dollar valuation, he did not reject it. He stated he would have to see some "appraisals." It does not appear that the jury used the $10 million valuation from Mr. Long in reaching their verdict, but Defendants cannot claim there was no evidence of valuation.

N. ***There is no expert testimony as to the value of TNW's land***. The law in South Carolina is that an owner of real or personal property can testify concerning his opinion of value as to that property. *Waites v. South Carolina Windstorm and Hail Underwriting Association*, 279 S.C. 362, 366, 307 S.E. (2d) 223, 225 (1983) (owner may testify as to the value of damaged real or personal property); *State v. Brown*, 402 S.C. 119, 740 S.E.2d 493 (2013)(Owner's testimony concerning the value of his stolen personal property was sufficient alone to sustain the criminal conviction for grand larceny). Our Courts allow the opinion of an owner as to the value of stolen property, alone, to establish an essential element of a felony in this State. Under South Carolina law, the evidence was properly admitted and supports the jury's verdict.

O. ***TNW has not, will not, and was never under any threat of losing their land***. If the parties default on the joint $1.1 million loan and mortgage, they would all lose their real estate to a foreclosure. In the context of Defendant's argument, the zero valuation made by Clyde Kiser was based on the sale value of the land. The market value of the land is directly attributable to the highest and best use of property. The testimony at trial was that the highest and best use of that real property was as a marina. The elimination of access to the parking lot destroyed that highest and best use, rendering the property useless and worthless, according to its owner. This is the evidence presented at trial and is sufficient to affirm the jury's verdict.

P. ***TNW has been continuously operating since 2016 with only minor interruptions***. TNW was forced to obtain a TRO by this Court to maintain its operations. The jury awarded over $1 million in actual and punitive damages for the interference with business between 2020 and 2022. The contempt motions focus on the interference between 2022 and the current date.

Q. ***There is no evidence in the record of profits lost by TNW as a direct and proximate result of any actions by TNT***. Wade Long and Clyde Kiser testified that the inference and destruction of property was a major reason TNW did not turn a profit during the years between 2020 and 2024. Plaintiffs presented testimony that the destruction of the ski hut and the harassment of Eric Rolf was

directly related to the loss of his rental agreement that paid TNW $10,000.00 for over two years. Both of these are sufficient in and of themselves to establish the casual link between the actions of TNT and the loss of profits for TNW. It is sufficient to affirm the jury's verdict.

TNT makes several other arguments in the body of its brief. TNT complains that Plaintiffs are barred by unclean hands. However, the jury was charged with that defense and rejected it. TNT argues that because Tim Kettner did not comply with the operating agreement for TNT, TNT cannot be bound by his agreement. Again, the jury was specifically charged on apparent authority and found that his actions did bind TNT. Moreover, there is still a third-party complaint seeking redress from Mr. Kettner for these actions. TNT argues that TNW was allowed to use the parking lot for three years was under a license and not a joint venture. This argument was presented to the jury and rejected. The evidence was sufficient to support the jury's verdict that it was not a license but a joint venture and an unambiguous promise to TNW. TNT argues that there is no evidence to support the specific language of the unambiguous promise used by the jury in its verdict. While TNT continues to cite to the deposition transcript of Wade Long in support of this argument, the trial testimony was clear. The parties agreed to combine their real estate for the operation of a ships store, an ice cream shop, a jet ski rental business, fishing charters, and an eventual restaurant. Every finding of the jury's verdict was sufficiently supported by the evidence presented at trial. It is the province of the jury to accept or reject any, all or merely portions of the testimony presented.

TNT argues that Rule 23(b), SCRCP argument precludes recovery by Plaintiffs. This argument is without merit. It does not apply, and it never applied. As stated above, a joint venture is an essentially a partnership that is not officially registered with the Secretary of State. There is no derivative action between partners in a general partnership. South Carolina law specifically grants the right to bring a derivative action against (1) corporations (S.C. Code 33-7-400); (2) limited liability companies (S.C. Code 33-44-1101) (3) non-profit corporations S.C. Code Corporations (S.C. Code 33-31-630) (4) and limited partnerships (S.C. Code 33-42-1810). There is no statute

within the Uniform Partnership Act authorizing a derivative action. Even if there was such a statute, Plaintiffs made a Rule 15(b), SCRCP Motion to amend to state the obvious: consultation was a fruitless endeavor and was not required to bring a direct claim against TNT. Finally, the Court would like to point out an obvious inconsistency in Defendants' argument. Derivative suits are necessary to protect minority shareholders from tyranny of the majority by giving them rights that may not be accessible within the entity itself. However, as Defendants argued in this case, there are no minority shareholders in a joint venture as all parties must have equal rights to control the purpose of the joint venture. Plaintiffs never sued a fictional entity that was the joint venture. Plaintiffs sued the other partner in the joint venture to satisfy its obligations according to the joint venture agreement and the unambiguous promise made by that partner.

The Court intends to conduct additional hearings on Defendant Kettner's motion to dissolve TNW and will address any additional arguments on this point at that time.

CONCLUSION

After reviewing the arguments and written submissions of all the parties, applying the appropriate standard of review, and applying the governing law of South Carolina, I find that there was sufficient evidence submitted to the jury to support the verdict of the jury. Therefore, the motions to set aside the verdict are denied.

IT IS SO ORDERED.

Honorable B. Alex Hyman

Horry Common Pleas

Case Caption: Thomas Wade Long , plaintiff, et al VS Timothy D Kettner , defendant, et al

Case Number: 2021CP2601512

Type: Order/JNOV

15th Circuit Resident Judge

s/ B. Alex Hyman