STATE OF SOUTH CAROLINA
In the Court of Appeals

On Appeal from Charleston County
Court of Common Pleas

The Honorable J.C. Nicholson, Jr.

Case No. 08-CP-10-7245

Larry S. Bowman,

RESPONDENT,

v.

M. Donald Alexander and Old Dominion, LLC

APPELLANTS.

INITIAL BRIEF OF RESPONDENT

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Statement of the Case

Respondent commenced this action by filing a Summons and Complaint on December 22, 2008 in the Court of Common Pleas for Charleston County, South Carolina. In his Complaint, Respondent sought specific performance of a Settlement Agreement (Settlement Agreement, R.p. ___) which the parties entered into following Mediation on September 10, 2007, prior to either party filing suit. In his First Cause of Action, Respondent also sought damages for Breach of Contract. In his Second Cause of Action, Respondent sought dissolution of Old Dominion Plantation, LLC in which he shared ownership with Appellant M. Donald Alexander. (Complaint, R.p. ___)

In his Answer and Counterclaim filed on March 2, 2009, Appellants denied that Respondent was entitled to specific performance of the Settlement Agreement and denied Breach of Contract. Appellant Alexander contended that the Settlement Agreement could not be enforced and alleged that it violated the terms and conditions of the Conservation Easement which applies to the property owned by Old Dominion Plantation, LLC and which is held by Ducks Unlimited/Wetlands America Trust. In his

Counterclaim, Appellant Alexander seeks specific performance of the terms and requirements of the Conservation Easement. He alleges that Respondent has violated his obligations under the Conservation Easement. Appellant Alexander does not seek damages but seeks a setoff of amounts he has expended on the property as a setoff for any amount he might owe Respondent. (Answer, R.p. ___). Respondent filed his reply on April 27, 2009. (Reply, R.p. ___).

On October 4, 2011, Respondent filed and served a Notice of Withdrawal of his request for specific performance stating "**PLEASE TAKE NOTICE that Plaintiff withdraws his request for specific performance of the Agreement of the parties dated September 10, 2007.**

Plaintiff will proceed on his Complaint for Breach of Contract and Dissolution of Old Dominion Plantation, LLC as requested in his Complaint filed on November 22, 2008." (Withdrawal of Specific Performance Request, R.p. ___).

On October 24, 2011, Appellants filed a Motion to Dismiss pursuant to Rule 12(b)(6) alleging that, in light of Respondent's withdrawal of his request for Specific Performance, the Complaint should be dismissed. The Motion also alleged that venue was improper. (Motion, R.p. ___).

Respondent filed a Return to Appellants' Motion on October 25, 2011. (Return, R.p. ___). Appellants' Motion was heard and denied by the Trial Court on October 25, 2011, the time set for the trial of the case. (Transcript, R.p. ___). After the Motion hearing, the non-jury trial proceeded before the Honorable J.C. Nicholson, Jr.

On May 11, 2012, a Temporary Order was filed by the Court setting forth the Court's intention to Order the LLC dissolved as well as other intended rulings. The Temporary Order instructed the parties to present additional financial information to the Court so that it could conduct an accounting of money spent on behalf of Old Dominion Plantation, LLC by its members. (R.p. ___). Appellants filed a Motion for a New Trial and/or to Void Judgment as well as a Motion to Alter or Amend pursuant to Rule 59(e), SCRCP on May 31, 2012. R.p. ___). On June 12, 2012, the Trial Court indicated that it declined to rule on the Post-Trial Motions because the May 11, 2012 Order was temporary and the Motions were premature. (R.p. ___). On July 26, 2012, Respondent filed a Motion seeking an Order requiring the parties to exchange financial information for the accounting in advance of any hearing on the matter. (R.p. ___). On September 7, 2012, Appellants filed a Memorandum on several issues they perceived were to be

addressed by the Court. (R.p. ___).

The hearing was held on September 7, 2012. On October 4, 2012, a Consent Order was entered setting forth an initial method of how the parties would attempt to sell the property in the event the LLC was Ordered dissolved and the property sold. (R.p. ___). On October 11, 2012, Appellant Alexander submitted an Affidavit pursuant to the Temporary Order setting forth various financial expenditures he claimed to have made on behalf of the LLC. (R.p. ___). Respondent filed an Affidavit of his expenditures on October 26, 2012. (R.p. ___). On November 1, 2012, the parties appeared before the Trial Court for a hearing on the financial expenditures. At that hearing, Appellants submitted an additional Affidavit and supporting documents. (R.p. ___). The parties agreed in Court to the Affidavits submitted by each other and there was no contest of the expenditures each party claimed.

By Order of March 1, 2013, the Trial Court issued its Order finding that Appellant Alexander had breached the Settlement Agreement and providing for damages to Respondent. The Court also Ordered the dissolution of Old Dominion Plantation, LLC and provided that the assets be sold by the method set forth in the Consent Order filed on October 4,

2012. The Court also Ordered that if the property was not sold by the time specified in the Consent Order, either party could apply to the Trial Court for an Order requiring the property to be sold at public auction under terms and conditions set by the Court. The Court's Order denied Appellants' request for Specific Performance of the Conservation Easement. The Court Ordered that, from Appellant Alexander's portion of the proceeds of the sale of the property, Respondent is entitled to $9,060.00 for his one-half interest in certain personal items and $67,000.00 for return of one (1) payment made by the Respondent to Appellants under the Settlement Agreement. The Trial Court also found that, from the proceeds of the sale of the property, Respondent was entitled to a credit of $149,747.58 and Appellant Alexander was entitled to a credit of $475,612.48 for funds each party spent for repairs and enhancing the value of Old Dominion Plantation, LLC. The Trial Court also Ordered that, after the distribution of the proceeds from the sale of the property, the attorneys for the parties cooperate to secure the dissolution of Old Dominion Plantation, LLC. (Order, R.p. ___).

On March 15, 2013, Appellants filed and served a Motion for a New Trial and/or to Void Judgment and a Motion to Alter or Amend, pursuant to Rule 59(e), SCRCP. (Motion, R.p. ___). On April 1, 2013, Respondent filed

Memoranda in Opposition to Appellents' Motions (R.p. ___) and filed a Supplement on April 3, 2013 to his Memorandum in Opposition to Appellants' Motion to Alter or Amend. (R.p. ___). Appellants filed a Reply to the Memorandum (R.p. ___) on April 10, 2013 and Respondent filed a Response to Appellants' Reply on April 25, 2013. (R.p. ___)

On May 20, 2013, the Trial Court filed an Order denying Appellants' Motion for New Trial and the Motion to Alter or Amend. (R.p. ___). Appellants' Notice of Appeal was dated and served June 19, 2013 and filed on June 21, 2013. (R.p. ___).

Statement of the Facts

Respondent and Appellant Alexander were friends for many years prior to forming Old Dominion Plantation, LLC, a South Carolina Limited Liability Company. Upon forming the Limited Liability Company, the parties adopted an Operating Agreement dated March 1, 1995. The Agreement was subsequently amended on September 1, 1998. The Operating Agreement and First Amendment are referred to as the Operating Agreement throughout the Transcript of Record.

In 1995, the parties purchased a 647-acre plantation on Edisto Island

in Charleston County. In 1999, the parties purchased an additional 78 acres from the Nature Conservacy. The two parcels are jointly referred to as the property of Old Dominion Plantation, LLC.

From the purchase of the property to the year 2007, Appellant and Respondent had many disagreements and difficulties concerning the ownership and operation of the Limited Liability Company as well as the care for and proper maintenance of the plantation property. In his Answer to the Complaint, Appellant Alexander acknowledged that prior to September 10, 2007, the parties were deadlocked in their operation of the Limited Liability Company and its assets.

On September 10, 2007, the parties and their attorneys participated in a Mediation with Attorney Tom Wills as Mediator. The parties reached an agreement which was reduced to writing and signed by the parties at the Mediation. The Settlement Agreement required the parties to cooperate extensively and to consult with and secure the consent of Ducks Unlimited to a division of the property. The consent was required by a Deed of Conservation Easement ("Conservation Easement") on Old Dominion Plantation.

Following the signing of the Mediation Agreement, problems

between the parties continued and their relationships appeared to deteriorate. The parties immediately disagreed on a survey required by the Settlement Agreement. In fact, Appellant even refused to pay for his portion of the survey because of his dissatisfaction with the surveyor's work. In his brief, Appellant Alexander discusses many perceived problems with the Settlement Agreement which were never a part of the dispute and disagreement between the parties until slightly before the trial of this case.

The evidence shows that no progress was made to implement the Settlement Agreement prior to the filing of this action by Respondent on December 22, 2008.

The suit filed by Respondent alleged that Appellant breached the Settlement Agreement, a contract, which resulted in damages to Respondent. Respondent sought damages and the specific performance of the Settlement Agreement. In his Second Cause of Action, Respondent alleged that if the Settlement Agreement is not specifically performed, Respondent was entitled to dissolution of Old Dominion Plantation, LLC, a South Carolina Limited Liability Company.

It is now interesting to note that during the trial of the case and in much of his brief on this appeal, Appellant contends that he always favored

the Settlement Agreement and its implementation. A reading of Appellant Alexander's Answer and Counterclaim shows that those assertions are totally untrue. In his Answer and Counterclaim, Appellant denied that the Settlement Agreement was possible under the terms of the Conservation Easement. He alleged that the division of the property as contemplated by the Settlement Agreement is illegal. Even though Appellant states in his brief that he counterclaimed for specific performance of the Settlement Agreement, that assertion is untrue. A reading of the Counterclaim reveals that Appellant sought specific performance of the Conservation Easement and did not seek specific performance of the Settlement Agreement of the parties. Throughout the trial of the case and since that time, Appellant Alexander constantly resisted the implementation of the Settlement Agreement.

In his testimony, Respondent gave his reason for withdrawing his request for specific performance of the Settlement Agreement. He requested that specific performance be withdrawn because he knew that he would be in a legal fight for the rest of his life if he and Appellant Alexander continued to hold Old Dominion Plantation in its legal structure jointly. Respondent testified that he could not bare the thought of what would

happen when the children of the parties become owners of the Limited Liability Company and its assets.

The evidence shows that severe problems existed between Respondent and Appellant Alexander from the year 2000 to the trial of this case. All problems and disagreements revolved around the ownership and maintenance of Old Dominion Plantation, LLC and its property.

ARGUMENT

Scope of Review

An Action to Dissolve a Business Corporation or a Limited Liability Company is an action in equity. An action for Breach of Contract and Damages is an action at law. When legal and equitable actions are maintained in one suit, each retain their identity for purposes of the applicable standard of review upon appeal. Ward v Ward Farms, Inc., 283 SC 568, 324 SE2d 63(1984). In an action in equity tried without a reference, the Appellate Court may find facts in accordance with its own view of the preponderance of the evidence. A claim for Breach of Contract and Damages is an action at law and, if tried without a jury, the Trial Judge's findings should be upheld unless without evidentiary support.

Future Group, II v NationsBank, 324 SC 89, 478 SE2d 45 (1996).

1. Was the Lower Court correct in refusing to change venue to Richland County?

Appellants rely on SC Code §33-14-310 which concerns venue in a proceeding to dissolve a corporation. That code section deals with the dissolution of a corporation and has no applicability to this case.

The code section cited by Appellants has nothing to do with Limited Liability Companies. Limited Liabilities Companies are governed by SC Code §33-44-101, et seq. Section 33-44-101(9) defines a Limited Liability Company. That section states, "Limited Liability Company means a Limited Liability Company organized under this Chapter". The chapter which deals with Limited Liability Companies has no venue requirements for actions which seek the dissolution of a Limited Liability Company.

Respondent contends that if Appellants had a venue issue, it was waived. The venue issue is required to be raised in a Rule 12(b)(6) Motion or in a Responsive Pleading. In this case, the venue issue was not raised until the afternoon prior to a scheduled trial in the Charleston Court of Common Pleas.

Appellants contend their reason for failing to raise the venue issue in a Rule 12(b)(6) Motion or in responsive pleadings was because Respondent's First Cause of Action was for specific performance of a Settlement Agreement. This position is without merit. Respondent filed and served the Summons and Complaint in this action on December 22, 2008. The First Cause of Action was for Breach of Contract / Specific Performance and the Second Cause of Action was for Dissolution of the Limited Liability Company. In their argument of the Motion at trial and in this appeal, Appellants argued that they could not have filed their Motion to Change Venue earlier since Respondent's withdrawal of the First Cause of Action was not received until October 4, 2011 even though the Cause of Action for Dissolution of the Limited Liability Company had been a part of the pleading since December of 2008. No Motion questioning venue was filed until less than one day before the scheduled trial. The trial of the case had been scheduled for several weeks and Appellants and their attorneys knew for more than 2 ½ years that the question of the dissolution of the Limited Liability Company was a part of the pleadings in the case.

To summarize the situation, at the time Appellants' Motion to Change Venue was argued, there was no venue statute applicable to the dissolution

of a Limited Liability Company and the Cause of Action for Breach of Contract had not been withdrawn. In that circumstance, Appellants had no viable motion available for change of venue. In spite of that fact, Appellants moved to change venue literally hours before the scheduled trial citing a statute which has no applicability to the case. Appellants had no grounds for a Motion to Change Venue and, if Appellants had such grounds, they waived the right to file the motion by failing to properly raise it in initial pleadings or in a Rule 12(b)(6) Motion.

In their argument of the venue motion, Appellants contended that the Court should have denied the Motion to Change Venue for the convenience of witnesses. That issue was first raised by the Court during the argument of the motion. Respondent then pointed out that the case had been scheduled for a period of time and was not a jury trial. The record reflects that the Respondent is from Oconee County and Appellant Alexander is from Richland County. Neither party scheduled any other witness to testify at the trial of the case but agreed for the use of two (2) depositions which had already been presented to the Court. Appellants now argue that even if the convenience of witnesses was obvious to the Court, that Respondent is required to show that the change of venue also supports the ends of justice

and failed to do so in this instance.

It is Respondent's position that the Court which scheduled a trial in Charleston County involving litigants from Oconee County and Richland County was within its authority and discretion to determine that the ends of justice would be promoted by going forward with the trial rather than changing venue. Neither party presented any evidence or argument that either Charleston County or Richland County would be more or less convenient for witnesses.

In addition, since Appellants' Motion to Change Venue was based upon a statute which was not applicable, the Court's decision to leave venue in Charleston County was unnecessary since no proper Motion to Change Venue was before the Court.

At the time of the Argument, it was obvious to the Trial Judge that all parties who would testify were present and prepared to testify. It was also obvious that all attorneys were present and prepared for trial and that the Court and Court Reporter were in place ready to go forward. Certainly under those circumstances, a court has the discretion to determine that the convenience of witnesses and the promotion of justice will be served by going forward with the trial as scheduled rather than grant a Motion to

Change Venue made less than one (1) day prior to the trial.

There is no requirement in a case to dissolve a Limited Liability Company that venue be in any particular county. During the venue argument before the Court, Respondent's attorney informed the Court that the case was brought under the statute dealing with dissolution of a Limited Liability Company rather than the dissolution of a business corporation. It was made clear in the argument that the statute dealing with dissolution of a Limited Liability Company has no venue requirement as contended by Appellant. (Trial Tr., p. 18, ll. ___).

Appellants had no grounds to seek a change of venue and simply cited a statute which had no applicability. If Appellants had grounds for a Motion to Change Venue, they waived that right. If the change of venue was necessary, it was within the discretionary power of the Court to deny the motion to provide for the convenience of the witnesses.

2. Was the Lower Court correct in its ruling upon Respondent's Claim for Dissolution of Old Dominion Plantation, LLC, a South Carolina Limited Liability Company?

Appellants contend that the Lower Court should not have ruled upon

Respondent's claim for dissolution of the Limited Liability Company because, Appellants contend, Respondent voluntarily withdrew his legal claim before the trial.

This position has no merit. Initially it should be noted that Respondent did not, at any time, withdraw his legal claim which was alleged in the Complaint. The First Cause of Action in the Complaint is for Breach of Contract / Specific Performance. The Second Cause of Action seeks dissolution of Old Dominion LLC, a Limited Liability Company. Appellants now contend that Respondent withdrew his "valid legal claim" and that, absent a legal claim, the Court should not have ruled upon Respondent's equitable claim for dissolution.

A review of the pleadings and transcript will show that Respondent did not withdraw his legal claim for Breach of Contract. His Notice concerning the withdrawal only withdrew his request for Specific Performance and had no bearing on his cause of action for Breach of Contract and damages. In fact, the Lower Court's Order finds that Appellant Alexander did in fact, breach the contract and awards damages to Respondent. (Order, R. pp. 19-20). Appellants' position that Respondent's legal cause of action was withdrawn is simply not true.

Appellants contend that Respondent had an adequate remedy at law which was withdrawn and therefore he was not entitled to dissolution of the Limited Liability Company. The proposition advanced by Appellants has no applicability here. In this case the relief as sought by Respondent and granted by the Lower Court is statutory relief. South Carolina Code §43-44-801 sets out the statutory requirements for dissolution of a Limited Liability Company. In this case, the Court found that the evidence supported Respondent's position and that the proper remedy was dissolution of the Limited Liability Company.

3. Did the Lower Court fail to recognize and enforce the Settlement Agreement of the parties?

Appellants now argue that the Lower Court failed to recognize and follow the Settlement Agreement. Appellant Alexander's testimony and his position before this Court is that he always favored implementation of the Settlement Agreement. The evidence at the trial of the case and even Appellant Alexander's pleadings show otherwise.

The evidence shows that the conflict between the parties was settled at Mediation on September 10, 2007 which resulted in a written Settlement

Agreement. The Lower Court found and, the testimony shows, that immediately following the mediated settlement, the parties were in controversy concerning implementation of the Settlement Agreement. The parties literally disagreed on every item in the Settlement Agreement including a survey and the payment for the survey. The testimony shows that the parties could not even agree upon a party to conduct a biological survey in an effort to implement the Settlement Agreement. (Order, R. pp. 9-15).

Finally on December 22, 2008, this action was filed by Respondent for Breach of the Settlement Agreement, Specific Performance of the Settlement Agreement, Damages, and, as a Second Cause of Action, Dissolution of Old Dominion Plantation, LLC. In his answer to the Complaint, Appellant Alexander admitted that a deadlock existed between the parties at the time of the mediation in 2007.

The trial testimony shows, and the Lower Court found, that Appellant Alexander's position is simply untrue and contrary to his position in the litigation. Alexander's Answer and Counterclaim alleged that the 2007 Settlement Agreement is illegal because it violates the terms of the Conservation Easement applicable to the plantation property. Appellant

Alexander denied that Respondent was entitled to specific performance of the Settlement Agreement. In his Counterclaim, Appellant Alexander sought specific performance of the terms and conditions of the Conservation Easement, not specific performance of the Settlement Agreement as he contended in his testimony. (Answer, R. p ___).

The testimony and evidence show that Appellant Alexander did everything within his power to prevent the implementation of the Settlement Agreement and, in doing so, extended the deadlock which existed prior to the mediated settlement in 2007.

In his brief, Appellant Alexander repeatedly points to disputes concerning efforts to implement the Settlement Agreement, and in particular, disputes concerning the work of Coy Johnston and R.K. Williams which was aimed toward a possible division of the property. It should be pointed out that for several years following the Settlement Agreement in 2007, Appellant Alexander refused to have any contact with Mr. Johnston or Mr. Williams and refused to participate in their efforts to make an environmental assessment of the possible division. The evidence at trial reveals that Appellant Alexander even wrote to Ducks Unlimited seeking the approval of a plan submitted by Mr. Johnston, without any consultation

with Respondent. This action was taken by Appellant Alexander shortly before trial and after he had resisted the division of the property for approximately 4 years.

Appellant Alexander now argues that the Lower Court should have enforced Part Two of the Settlement Agreement and even contends that he supported such a plan. That position, as found by the Lower Court, is totally without merit. The testimony shows, and the Lower Court found, that Appellant Alexander totally refused to abide by the Settlement Agreement and was in breach of the Settlement Agreement from the time it was reached on September 10, 2007 until shortly prior to the trial of this case. In his pleadings, Appellant Alexander never sought enforcement of the Settlement Agreement. His Counterclaim for Specific Performance was the specific performance of the Conservation Easement, not the Settlement Agreement which he alleged to be illegal and unenforceable.

The Lower Court was correct in finding that a Settlement Agreement existed and that the Settlement Agreement was breached by Appellant Alexander.

4. Did the Lower Court apply the correct Statute and facts in

concluding that Dissolution of the Limited Liability Company was warranted?

Appellants argue that the Court applied the wrong statute in deciding whether Old Dominion Plantation, LLC should be dissolved as requested by Respondent in his pleadings. Appellants argue that Respondent alleged that the parties were deadlocked in the management of their affairs and, therefore, conclude that the only possible applicable statute concerning dissolution is SC Code § 33-14-300. That statute was relied upon by Appellants throughout the trial of the case in spite of the case that Respondent and Respondent's attorney repeatedly informed the Court that the statute which Appellants contended controlled had no application and only applies to business corporations.

It is without question that Respondent and the Lower Court recognized the appropriate statutory law governing Limited Liability Companies. SC Code § 33-44-801 deals with the dissolution of Limited Liability Companies and sets out the showing that is necessary for the Court to find that a Limited Liability Company should be dissolved.

In his brief, Appellant makes much of the fact that Respondent alleged that the parties were deadlocked in their management and operation

of the Limited Liability Company and its property.

Appellants spend much time and effort in their brief pointing out why the Lower Court should have agreed with Appellants and refused to dissolve Old Dominion Plantation, LLC. The numerous arguments advanced were never a part of the dispute between the parties prior to the deposition of Coy Johnston which occurred shortly before the trial of the case. From the time of the Settlement Agreement on September 10, 2007 until shortly before the trial in 2011, Appellants used all of their efforts to defeat the intent of the Settlement Agreement and to continue the controversy between the parties over the use and governance of the property.

In their brief, Appellants and their attorney on several occasions accused Respondent's attorney of engaging in *ex part* communications with the Court. Those charges are untrue and repulsive. Appellants even contend that the attorney for Respondent drafted the Lower Court's Temporary Order. That charge is untrue. In support of Appellant's claim of *ex parte* communications, they cite the Trial Transcript (Trial Transcript, pp 214-217). It is clear from reading the instructions from the Court to the attorneys that the Court did not expect nor want the attorneys to exchange proposed Orders. At one point, one of the attorneys for Appellants inquired of the

Court, "MS. KING: Judge, did you want them exchanged between Counsel? I know you don't want us to respond, but did you want them exchanged or not exchanged?

THE COURT: Not the first Order. Just please give me the case laying out your Findings of Fact and the law to support your case. Send that directly to me. Once I make a decision, then I'll ask one of you to send a proposed Order. Then I'll let you swap and you all can make comments."

Appellants have made no showing of any *ex parte* correspondence or communication and indeed, there was none. The only proposed Order furnished to the Court by the attorney for Respondent was pursuant to the instructions of the Court.

5. Did the Trial Court have the authority to provide for the public auction of property owned by an LLC as a Dissolution of the LLC?

Prior to the Court's Final Order in this case, Appellant Alexander and Respondent Bowman reached an agreement concerning the plan for selling Old Dominion Plantation real property. The agreement of the parties as embodied in the Court's Consent Order dated October 4, 2012 provided for

an effort to sell the property within 180 days of the Court's Final Order. In its Final Order, the Court provided that if the property was not sold in the method agreed upon by the parties in 180 days, either party "may apply to the Court for an Order requiring the property to be sold at public auction under terms and conditions set out by the Court". (Order, R.p.23).

Appellant Alexander contends that the Court did not have the authority to provide for a possible public auction.

It is clear that the parties agreed on a method of listing the property and providing for its sale during the first 180 days of the listing. The dispute raised by Appellant Alexander is whether, after the 180-day listing, the Court has the authority to entertain an application by one of the parties to sell the property in some other fashion such as public auction or whether the Court is required to proceed under the Operating Agreement of Old Dominion Plantation, LLC.

Respondent contends that the method of selling the property is within the discretion of the Court. In Historic Charleston Holdings, LLC v Mallon, 381SC 417, 673 SE2d 448 (2009), the South Carolina Supreme Court stated, "....the LLC Act grants broad judicial discretion is fashioning remedies in actions by members of an LLC against the LLC and/or other members".

Respondent contends that the method of sale provided by the Court in this case is within its discretion in dealing with the dissolution of Old Dominion Plantation, LLC.

6. Did Respondent withdraw his Cause of Action for Breach of Contract damages? Was the Lower Court correct in awarding damages?

Appellants contend that the Trial Court's Order is internally inconsistent in awarding damages on a cause of action which was withdrawn. That position is not true.

As previously pointed out by Respondent, the First Cause of Action alleged in the Complaint was Breach of Contract / Specific Performance. The allegations of the Complaint alleged that the Settlement Agreement was a contract which was breached by Appellant Alexander's absolute refusal to attempt implementing the division of property contained in the Settlement Agreement, by refusing to pay for personal property obtained pursuant to the Agreement and by retaining a payment made by Respondent under the terms of the Agreement even though the Agreement was breached by Appellant Alexander.

The evidence at trial revealed that from the time of the Settlement Agreement on September 10, 2007 until just before the trial of the case in 2011, Appellant Alexander did everything possible to avoid going forward with the Settlement Agreement.

When Respondent withdrew his request for Specific Performance of the contract on October 4, 2011, the Notice actually stated that he intended to proceed on his claim for Breach of Contract and Damages.

The Lower Court's Order found that Appellant Alexander had breached the Settlement Agreement and awarded damages for the breach. (Order, R.pp 19-20).

7. The Trial Court failed to correct an uncontested amount of reimbursement to which Appellant Alexander is entitled.

Respondent does not contest that the proper amount for reimbursement to Appellant Alexander is $499,632.19. Respondent joins in Appellant Alexander's request that the reimbursement amount be amended.

CONCLUSION

The parties to this action entered into a Settlement Agreement at

Mediation on September 10, 2007. The evidence before the Lower Court clearly shows that Respondent did everything he possibly could to avoid proceeding with the Settlement Agreement. Finally, on December 22, 2008, Respondent filed this action. The First Cause of Action alleged that Appellant Alexander had breached the terms of the Settlement Agreement which resulted in damages to Respondent. The First Cause of Action also sought Specific Performance of the Agreement. The testimony clearly shows that Appellant Alexander continued to refuse any cooperation to implement the Settlement Agreement and that his opposition continued, almost to the date of trial of this case.

In his Second Cause of Action, Respondent sought dissolution of Old Dominion Plantation, LLC, a South Carolina Limited Liability Company.

This case was brought on a Complaint for Breach of Contract and Damages. The initial request for Specific Performance of the contract was withdrawn prior to the trial and no longer an issue at trial. The Cause of Action for Dissolution of the Limited Liability Company proceeded under the appropriate statute dealing with Limited Liability Companies. A review of the record will show that Appellants contended from the start that the Business Corporation Act, SC Code §33-14-300 et seq. applies. Throughout

the trial of the case, Respondent contended that the case is controlled by the Limited Liability Corporation statute, SC Code §33-14-800, et seq.

The issues were properly tried and determined by the Lower Court and the Lower Court's judgment should be affirmed.

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January 3, 2014

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v.

M. Donald Alexander and Old Dominion, LLC

APPELLANTS.

RESPONDENT'S DESIGNATION OF MATTER TO BE INCLUDED IN THE RECORD ON APPEAL

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Respondent Larry S. Bowman, hereby designates the following matter for inclusion in the record on appeal:

1. Transcript from September 12, 2012;

2. Transcript from November 1, 2012;

3. Transcript from October 25, 2011;

4. Complaint;

5. Answer of Defendant;

6. Court's Temporary Order filed May 11, 2012;

7. Court's Short Order filed June 21, 2012;

8. Consent Order filed October 4, 2012;

9. Plaintiff's Memorandum in Opposition to Defendants' Motion to Alter or Amend filed April 1, 2012;

10. Supplement to Plaintiff's Memorandum in Opposition to Defendants' Motion to Alter or Amend filed April 3, 2012;

11. Plaintiff's Affidavit filed on October 26, 2012;

12. Appraisal of Atlantic Appraisals, LLC as of February 13, 2013;

13. Appraisal of Atlantic Appraisals, LLC as of March 12 2007;

14. Plaintiff's Trial Exhibit 2 (Operating Agreement);

15. Plaintiff's Trial Exhibit 3 (Settlement Agreement);

16. Plaintiff's Trial Exhibit 7;

17. Plaintiff's Trial Exhibit 8;

18. Plaintiff's Trial Exhibit 9;

19. Plaintiff's Trial Exhibit 10;

20. Plaintiff's Trial Exhibit 11;

21. A.K. Williams' Deposition;

22. Coy Johnston Deposition;

23. Plaintiff's Deposition;

24. All financial documents submitted at November 1, 2012 hearing;

I certify that this Designation contains no matter which is irrelevant to this Appeal.

GLENN, HAIGLER & STATHAKIS, LLP

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PROOF OF SERVICE

I, Sherryl B. Laing, employee of the law firm of Glenn, Haigler & Stathakis, LLP, do hereby certify that I have served Initial Brief of Respondent and Designation of Matter to be Included in the Record on Appeal in the above-captioned action upon opposing counsel by mailing a copy of same, first-class postage prepaid and return address clearly indicated, to said opposing counsel addressed as follows:

A. Camden Lewis
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Sherryl B. Laing

January 3, 2014