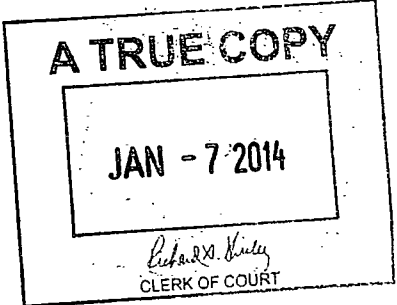


STATE OF SOUTH CAROLINA )  
 )  
 COUNTY OF ANDERSON )  
 )  
 SHOU MARTIN )  
 )  
 Plaintiff )  
 )  
 vs. )  
 )  
 WILMER (JOHN) RIFE AND )  
 BARBARA ANN DOOMEY, )  
 )  
 Defendants )  
 )

IN THE COURT OF COMMON PLEAS  
 2010-CP-04-4554

**ORDER**



This matter is before the Court pursuant to the Defendant's Motion to Vacate or Reconsider this Court's prior Order, dated June 13, 2013. This matter involved a written agreement for the purchase of contents and property and all inventory and good will of a non-profit corporation named Simon's of Anderson, Inc. The action was brought by Shou Martin in her individual capacity and not by the corporation. The Corporation was organized under the provisions of S.C. Code §61-6-1600 *et seq* pertaining to non-profit corporations being able to operate a private club and sell alcoholic beverages.

The case was tried to a jury verdict in favor of the individual Plaintiff, Shou Martin, and the Defendants, during the course of the trial, had made appropriate motions for non-suit, directed verdict and motion to vacate and reconsider the award of the jury verdict. The Motion to Reconsider was timely filed on June 21, 2013 and submits that the Court should reconsider its decision refusing the vacate the judgement on the basis that the Plaintiff, Shou Martin, had no standing to maintain the action before the Court. This Motion was based upon the fact that it was undisputed that Simon's of Anderson, Inc. was organized and operated as a not for profit corporation pursuant to S.C. Code of Laws §61-6-1600; and that the provisions of S.C. Code Reg. R 7-401-3401-4(a-f) and specifically (e) and (f) provides that "no residual assets must enure to the benefit of any member or shareholder but must be turned over to one or more non-

profit organizations”.

### FINDINGS OF FACT

1. Shou Martin is an individual and was the owner of stock in Simon's of Anderson, Inc.
2. Simon's of Anderson, Inc. was organized and existing under the regulations provided for non-profit corporations organized to sell alcoholic beverages, S.C. Code of Laws §61-6-1600.
3. I find that the provisions of S.C. Code Regulations R.7-401.3401-4 (a-4) apply to Simon's of Anderson, Inc.
4. I find that the Complaint in this matter consists of a single cause of action based upon an agreement between Shou Martin individually as Seller and John Rife and Barbara Ann Doomey as Purchasers (written agreement dated October 1, 2007).
5. I find that Shou Martin did not produce any evidence at the trial of this case that she was the owner of the contents and assets of the corporation, the property of the corporation, the inventory of the corporation, or had the right to sell the good will of the business in her individual capacity, or these items pursuant to the agreement on which she based her cause of action. The following testimony of Shou Martin from the transcript of record is set forth as the basis for this Finding of Fact:

Transcript, p. 40, Mullinax cross-examination:

Q: And Simon's of Anderson, Inc. was a non-profit corporation?

A: Yes.

Q: And you incorporated Simon's of Anderson in October of 2003?

A: Yes.

Q: You have always been familiar with the requirements of South Carolina Law to operate a non-profit corporation?

A: Yes.

Transcript, p. 41, continued:

Q: And in order to operate a private club you've got to be a non-profit corporation:

A: Yes.

Q. And as part of the rules and regulations of the State of South Carolina, when a non-profit corporation sells or dissolves, it has to give all of its profits to another non-profit corporation, doesn't it?

A: I don't understand what you're saying about that.

Q: When a non-profit corporation, under South Carolina Law, sells its assets, it has to give its profit to another non-profit corporation. Right?

A: Yeah. But, ok – go ahead.

Cross-examination continued, p. 42:

Q. You haven't provided us any list of invoices or anything to show that you actually did own anything, have you?

A. I don't provide the.. what?

Q. Have you provided me any bills to show that you paid for any of the equipment that was in Simon's?

A. I got some. Yes, I can.

Q. But you didn't provide them to me when I asked for them. Did you?

Mr. Mullinax: Your Honor, I would just ask that she answer my question.

The Court: Yes ma'am, just make sure you answer the questions.

Ms. Martin: Ok.

The Court: Answer yes or no, I'll let you explain the answer.

Ms. Martin: Yeah, ok, ok.

Q. You have provided me no evidence, no documentary evidence, that you purchased or owned anything, have you?

A. No.

Cross-examination continued, p. 48

Q. And although I've been asking you to provide me documentation of proof that you owned anything in the bar, for over 10 months, you still have not provided me any documents to prove that you owned anything, have you?

A. Ok. Danny working on that.

Page 49:

Q. You have not provided me any documents to proof that you individually, owned anything. Have you?

A. I guess you say, no. I say, no.

Page 52:

Q. You've got no proof that you owned a thing. Do you?

A. Now, you tell me to bring that.

Q. You've got no proof in this Courtroom today, that you owned anything?

A. I didn't show it to you. I guess not.... I know it my heart it does.

6. I find as a fact that the corporate tax return indicates that Simon's of Anderson, Inc. owned all assets and equipment and inventory.

7. The Defendants in their Request to Produce had required the Plaintiff to produce any and all evidence of ownership which she may have of the property described in the sales Agreement and also required the Plaintiff to produce the corporate income tax returns of Simons of Anderson, Inc. I find that the Plaintiff failed to produce any documentary evidence of ownership of assets in her individual capacity, and further only produced one income tax return; that being the income tax return dated 2005 for Simons of Anderson, Inc. This tax return showed conclusively that the corporation claimed depreciation on the equipment, furniture and furnishings and under penalty of perjury in the filing of a tax return, asserted

ownership of this property.

### CONCLUSIONS OF LAW

1. S.C. Code Reg. R.7-41.3401.4 (a - f), and specifically (e) and (f) provide that “no residual assets must enure to the benefit of any member or shareholder, but must be turned over to one or more non-profit organizations.... Paragraph (f) further provides that no member or shareholder of such non-profit organization shall be paid or directly or indirectly receive in the form of compensation any of the profit from the sale or distribution other than a salary.

2. Plaintiff’s Motion questions the jurisdiction and standing of the Plaintiff Shou Martin to prosecute this lawsuit. The Court has reviewed carefully the transcript of the testimony presented at trial and concludes that Shou Martin did not have standing to maintain the action. She is an individual and brought this action on her behalf and not on behalf of the corporation, Simon’s of Anderson, Inc.

3. I conclude as a matter of law that no justiciable controversy was put forth in this matter, and that Shou Martin having no standing to prosecute, that the verdict must be vacated and the case dismissed. See Brock v. Bennett 313 S.C. 443, SE 2d 409 (Ct. App. 1994) where the Court stated as follows:

“Standing is a fundamental requirement for instituting an action... No justiciable controversy is presented unless the Plaintiff has standing to maintain the action... Once it is determined a Plaintiff has no standing to prosecute, the Court must dismiss the action.”

The Court concludes that Shou Martin, as an individual, presented no evidence of ownership of any of the assets she purported to sell in the written agreement. The evidence showed, contrary to her assertions, that the assets, inventory and equipment was owned by the corporation, which is an entity in its own right, and is the only one which had standing to maintain the within action. “Good will” is also an asset of the corporation.

NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

*JCO*  
*without*

1. That the Judgement in this matter is hereby vacated and the matter is dismissed with  
prejudice.

AND IT IS SO ORDERED.

*J. Cordell Maddox*  
\_\_\_\_\_  
THE HONORABLE J. CORDELL MADDOX  
JUDGE, TENTH JUDICIAL CIRCUIT

Anderson, South Carolina

~~December \_\_\_\_\_, 2013~~

January 6, 2014

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