

**THE STATE OF SOUTH CAROLINA
In the Supreme Court**

**APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas**

**Marvin H. Dukes, III
Master-in-Equity**

Unpublished Opinion No. 2014-UP-203 (S.C. Ct. App filed May 28, 2014)

Helena P. Tirone and Truman's Eclectic Irish Pub, Inc. Respondents,

v.

Thomas W. Dailey Petitioner.

**APPENDIX OF PETITION FOR WRIT OF *CERTIORARI*
Volume I**

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Attorney for *PETITIONER*

RECEIVED

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S.C. Supreme Court

INDEX

Volume I

1. RECORD ON APPEAL.....	iii

Volume II

2. APPELLANT'S FINAL BRIEF.....	455
3. RESPONDENT'S FINAL BRIEF.....	484
4. OPINION OF THE APPELLATE COURT.....	515
5. PETITION FOR REHEARING.....	518
6. RESPONDENTS' RETURN TO APPELLANT'S PETITION FOR REHEARING.....	527
7. PETITIONERS REPLY TO RESPONDENT'S RETURN.....	532
8. ORDER OF THE COURT OF APPEALS DENYING PETITION FOR REHEARING.....	538

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Circuit Court
Marvin Dukes, Jr.
Master-in-Equity

Case No. 2011-CP-07-2216
Appellate Case No. 2012-213582

Helena P. Tirone and Truman's Eclectic Irish Pub, Inc. Respondents,

v.

Thomas W. Dailey Appellant.

RECORD ON APPEAL

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INDEX

Orders

- (1) Order of Master-in-Equity Marvin Dukes (dated 20 May 2011).....001
- (2) Order of Master-in-Equity Marvin Dukes (dated 30 June 2011).....003
- (3) Order of Judge Carmen T. Mullen (dated 13 October 2011).....009
- (4) Order of Master-in-Equity Marvin Dukes (dated 10 August 2012).....011
- (5) South Carolina Form 4 by Master-in-Equity Marvin Dukes
(dated 7 December 2012).....018

Pleadings

- (6) Summons of Helena Tirone et. al.(dated 20 May 2011).....021
- (7) Complaint of Helena Tirone et. al. .(dated 20 May 2011).....022
- (8) Verified Amended Complaint of Helena Tirone et. al. (dated 3 August 2011)..026
- (9) Second Amended Complaint of Helena Tirone et. al. (dated 29 August 2012)..041
- (10) Answer and Counterclaim of Thomas Dailey (dated 3 June 2011).....192
- (11) Amended Answer and Counterclaim of Thomas Dailey (dated 5 December 2011)
.....197
- (12) Second Amended Answer and Counterclaim of Thomas Dailey (dated 21 June
2012).....203
- (13) Notice of Motion and Motion for Summary Judgment of Helena Tirone (dated 21
June 2012).....213
- (14) Memorandum of Law of Thomas Dailey for 30 July 2012 Motions Hearing (dated
30 July 2012).....215
- (15) Motion to Reconsider of Thomas Dailey (dated 25 September 2012).....324

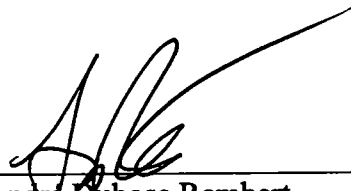
Transcripts

(16)	Transcript of Record (30 July 2012).....	339
(17)	Deposition of Thomas Dailey (9 May 2012).....	343
(18)	Deposition of Helena Tirone (27 July 2012)	395

Other Documents

(19)	Dailey Deposition Plaintiff's Exhibit 4.....	421
(20)	Key Employment Contracts.....	83-86,436-438
(21)	Statements of Stanvec and Marlow (from Plaintiffs' Supplemental Answers to Defendant's First Set of Interrogatories).....	441
(22)	Plaintiffs' Answers to Defendant's Second Set of Interrogatories.....	444
(23)	Affadavit of J. Ashley Twombly.....	452

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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14 June 2013

INDEX

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(1)	Order of Master-in-Equity Marvin Dukes (dated 20 May 2011).....	001
(2)	Order of Master-in-Equity Marvin Dukes (dated 30 June 2011).....	003
(3)	Order of Judge Carmen T. Mullen (dated 13 October 2011).....	009
(4)	Order of Master-in-Equity Marvin Dukes (dated 10 August 2012).....	011
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(9)	Second Amended Complaint of Helena Tirone et. al. (dated 29 August 2012)..	041
(10)	Answer and Counterclaim of Thomas Dailey (dated 3 June 2011).....	192
(11)	Amended Answer and Counterclaim of Thomas Dailey (dated 5 December 2011)	197
(12)	Second Amended Answer and Counterclaim of Thomas Dailey (dated 21 June 2012).....	203
(13)	Notice of Motion and Motion for Summary Judgment of Helena Tirone (dated 21 June 2012).....	213
(14)	Memorandum of Law of Thomas Dailey for 30 July 2012 Motions Hearing (dated 30 July 2012).....	215
(15)	Motion to Reconsider of Thomas Dailey (dated 25 September 2012).....	324

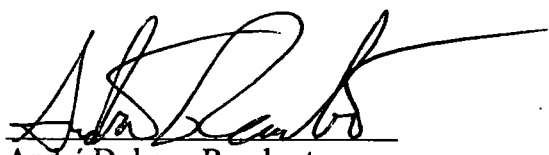
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14 June 2013

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2011-CP-07-02216
HELENA P. TIRONE AND TRUMAN'S ECLECTIC IRISH PUB, INC.,	)	
Plaintiffs,	)	
vs.	)	
THOMAS W. DAILEY,	)	
Defendant.	)	

**ORDER GRANTING TEMPORARY
RESTRAINING ORDER**

2011 MAY 20 PM 12:18
CLERK OF COURT
BEAUFORT COUNTY, S.C.

This matter came before me on Plaintiffs, Helena P. Tirone and Truman's Eclectic Irish Pub, Inc., motion for a temporary restraining order. After hearing from counsel for Plaintiff and fully considering the record before the Court, I find as follows:

It appears that Helena P. Tirone is the sole Director of Truman's Eclectic Irish Pub, Inc. (hereinafter "Company") and that the Company entered into a Lease Agreement for 205 West Street, Beaufort, South Carolina (hereinafter "the Premises"). Therefore, Plaintiffs should have access and control of the Premises.

It further appears by affidavit that on or about May 20, 2011, Thomas W. Dailey, a former employee of the Company, entered the Premises and changed the locks, without permission of Plaintiffs. Plaintiffs request a temporary restraining order restraining Defendant from entering the premises.

"A temporary restraining order . . . is an order issued without notice to an adverse party that restrains certain conduct. It enjoins conduct until a hearing can be had on a temporary injunction, and is designed to afford emergency relief against irreparable injury until a hearing

12:19 pm
5/20/11

1 of 2

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Diane Cade
Diane Cade - Clerk of Court
Beaufort County, SC

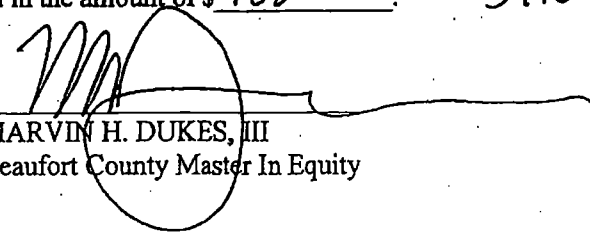
can be held." See S.C. Jur. Pru., Injunction 5. Rule 65(b) authorizes this Court to enter a temporary restraining order without the requisite service and notice requirements. See S.C.R.Civ.Pro 65(b). Substantively, if a party can "define the injury and state why it is irreparable and why the order [should be] granted without notice," the Court should grant the party's request for a temporary restraining order. Id.

I find that if Plaintiffs' arguments are correct, Plaintiffs will be injured and that said injury will likely be irreparable. I further find that Plaintiffs are entitled to this order without a formal showing of notice to the Defendant.

Therefore, Thomas W. Dailey is hereby restrained from entering upon the Premises of 205 West Street, Beaufort, South Carolina until further notice. ^{① Injunction} A supplemental hearing will be held on this matter at 9:00 am on May 23, 2011 at the Beaufort County Court House. If Defendant would like an expedited hearing he can contact the court by calling (843) 470-5297.

Plaintiffs shall be required to post bond in the amount of \$ 100⁰⁰ ²⁵⁵⁻⁵⁷¹⁰

IT IS SO ORDERED.


MARVIN H. DUKES, III
Beaufort County Master In Equity

Beaufort, South Carolina

May 20, 2011

① This order does not restrain the Plaintiff and/or authorized representatives from entry upon the property.

12:19 pm
5/20/11

2 of 2

2

2011 JUN 30 AM 10:17
JEREMY D. BEAUFORT
CLERK OF COURT

STATE OF SOUTH CAROLINA COUNTY OF BEAUFORT	IN THE COURT OF COMMON PLEAS COUNTY OF BEAUFORT CIVIL ACTION NO: 2011-CP-07-02216
HELENA P. TIRONE AND TRUMAN'S ECLECTIC IRISH PUB, INC., Plaintiffs, vs. THOMAS W. DAILEY, Defendant.	ORDER ON CROSS MOTIONS FOR INJUNCTIONS AND TO AMEND COMPLAINT

This matter was before the Court on June 23, 2011 for Plaintiffs' and Defendant's Cross Motions for Injunctions and Plaintiffs' Motion to Amend the Complaint. Present for the hearing was J. Ashley Twombly, Esquire, for Plaintiff and Fred Kuhn, Esquire, for Defendant. After hearing from the parties and fully considering the record before the Court, I find that Plaintiffs' Motion for Injunction and to Amend the Complaint are due to be, and are hereby, granted. I find that Defendant's Motion for an Injunction is due to be denied.

Background

This case arises out of a personal and business relationship between Plaintiff Helena Tirone (hereinafter "Tirone") and Defendant Thomas W. Dailey (hereinafter "Dailey"). Tirone and Dailey met in November of 2009 while working for the Fluor Daniel Corporation in Afghanistan. After returning to the United States, they decided to put their efforts into opening a pub in Beaufort, South Carolina. A corporation was formed with the South Carolina Secretary of State named Truman's Eclectic Irish Pub, Inc. (hereinafter "Truman's") for that purpose.

From December of 2010 through May of 2011, the parties worked to open the pub.

Space was leased at 205 West Street in Beaufort and renovations were undertaken.¹ In addition, some equipment and supplies were purchased. While the parties dispute the specific amounts of money invested by each of them in the endeavor, Dailey concedes that Tirone was the "source of the vast majority of the funds." During this time, Tirone was continuously employed with the Flour Daniel Corporation.

In late April of 2011, Tirone alleges that she conducted a review of Truman's checking account and discovered that Dailey was embezzling/misappropriating money. Tirone alleges that when she questioned Dailey about the expenditures he became upset and eventually presented her with two employment contracts (hereinafter the "Agreements"). Tirone alleges that Dailey demanded that she sign the Agreements and threatened to provide her employer, Flour Daniel Corporation, with disparaging information about Tirone if she did not sign the Agreements. Therefore, Tirone argues that the Agreements were executed under duress and are voidable at her option under South Carolina law.

Dailey denies that he embezzled any money from Truman's or that he threatened to get Tirone fired if she did not sign the Agreements. Dailey alleges that the Agreements arose because he lost trust in Tirone as a business partner and became fearful that she would replace him. Dailey alleges that he sent Tirone the Agreements in order to protect his "rights, investment and ownership" in Truman's.

The Agreements obligate Truman's to employ Dailey as its general manager for a period of 48 months at a weekly salary of \$1,250. The Agreements further provide that Dailey "cannot be terminated." However, the Agreements also provide that if Dailey is terminated, he is entitled to an immediate lump sum payment of "all future monies yet unpaid throughout the term of this

¹ Dailey personally guaranteed the lease on behalf of the corporation.

agreement" as well as the immediate transfer of "50 % of the company stock."

After the Agreements were executed, Tirone terminated Dailey and changed the locks at 205 West Street for the purpose of keeping Dailey out. Tirone alleges that Dailey knew the locks had been changed for the purpose of keeping him out and that, notwithstanding this knowledge, Dailey hired a locksmith to pick the locks to 205 West Street and rekey the keys. Tirone alleges that Dailey then called ADT security and attempted to have an alarm system installed at the building to keep her out. Finally, Tirone alleges that after this dispute arose, Dailey tried to sell equipment that was purchased with Tirone's money for his own personal financial gain which resulted in Tirone calling the police in an effort to try and stop him.

On May 20, 2011, Plaintiffs filed the within action against Dailey for trespass. Plaintiffs also sought a temporary restraining order (TRO) to restrain Dailey from entering 205 West Street in light of the fact that Dailey had allegedly broken into the building and was attempting to sell equipment that Tirone purchased. This Court conducted an ex parte hearing on May 20, 2011 after which it granted the TRO restraining Dailey from entering 205 West Street. An injunction hearing was scheduled for May 23, 2011 at 9:00 am; however, the parties jointly requested that the hearing be postponed. The hearing was continued at the request of the parties until June 23, 2011.

Since May 20, 2011, Dailey has answered and moved for his own injunction. Dailey requests that Plaintiffs be enjoined from terminating him due to the fact that the Agreements provide that he cannot be terminated. Alternatively, Dailey requests that Plaintiffs be enjoined from "interfering with his rights as a 50% stockholder" pursuant to the Agreements. Dailey argues that irreparable harm will occur if his injunction is not granted because he "has no adequate remedy at law" and will suffer damages in the form of "lost profits for a new business"

which are "due to their nature, incapable of precise calculation."

Plaintiffs have filed a motion to amend their complaint and further requested that the TRO entered by the Court on May 20, 2011 restraining Dailey from entering 205 West Street be converted into an injunction. Plaintiffs also request that Dailey be enjoined from contacting Tirone's employer for purposes of disparaging Tirone. Plaintiffs argue that they will suffer irreparable harm because Dailey is insolvent and judgment proof and further because allowing Dailey to have any access or control over the business will put Tirone's substantial financial investment at further risk with no adequate legal remedies against Dailey in the future.

Injunction

In deciding whether to grant a temporary injunction, this Court has discretion to balance the equities and do what is fair and just. "An injunction is an equitable remedy . . . committed to the discretion of the court and granted when a review of all of the evidence establishes that it is necessary to prevent irreparable harm." *Flanagan*, South Carolina Civil Procedure 511 (2d ed. 1996) (hereinafter "*Flanagan*"), see *Grobs v. Kimbrell*, 311 S.C. 261, 270, 428 S.E.2d 725, 730 (Ct. App. 1993). South Carolina courts consider four factors in deciding whether to grant a temporary injunction: (1) irreparable harm if the injunction is not granted, (2) the plaintiff's likelihood of success on the merits, (3) the relative harm to the plaintiff if the injunction is not granted and to the defendant if it is granted, and (4) the public interest. See *Flanagan* at 508. "When a prima facie showing has been made entitling plaintiff to injunctive relief, a temporary injunction will be granted without regard to the ultimate termination of the case on the merits." *Columbia Broadcasting System v. Custom Recording Co.*, 258 S.C. 465, 471-72, 189 S.E.2d 305, 308 (1972); accord *Helsel v. North Myrtle Beach*, 307 S.C. 29, 32, 413 S.E.2d 824, 826 (1992). Temporary injunctive relief rests within the sound discretion of the trial judge and will

not be overturned unless the order is clearly erroneous. Atwood Agency v. Black, 646 S.E.2d 882 (S.C. 2007).

The Defendant is requesting that the Court order specific performance of the employment contract. The enforceability of this contract, however, is contested. If the Defendant is correct in his assertion the employment contract is enforceable and has been breached, he has an adequate remedy at law in damages for breach of contract. Likewise, since the Defendant is not employed by the Plaintiffs, he has no reason to be on the Plaintiff's business premises. I accordingly conclude that the Plaintiffs' requested injunctive relief should be granted and the Defendant's requested injunctive relief should be denied.

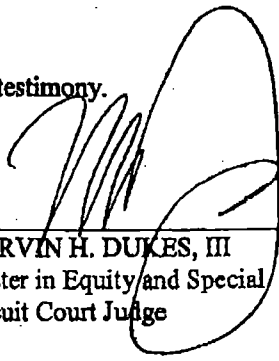
Conclusion

Therefore, IT IS HEREBY ORDERED as follows:

- 1) The TRO entered against Thomas W. Dailey on May 20, 2011 is hereby converted to an injunction and Dailey is restrained from entering upon the 205 West Street, Beaufort, South Carolina until further order of the Court;
- 2) All parties to this litigation are jointly enjoined from contacting the other, the employer of the other for purposed of disparaging the other, and from posting anything on any social media site regarding the other;
- 3) Plaintiffs shall be given 20 days to file an amended complaint; and
- 4) The facts, recitations and conclusions in this Order are set forth herein for the purposes of this Order only, shall have no precedential or binding force or effect, are not the law of the case, shall not prejudice or impair any party in their ability to challenge said facts at any trial of this action, does not relieve any party of its burden of proving said facts, and shall not limit any party in its presentation of

otherwise admissible evidence or testimony.

AND IT IS SO ORDERED



MARVIN H. DUKES, III
Master in Equity and Special
Circuit Court Judge

Beaufort, South Carolina

June 22, 2011

COPY

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2011-CP-07-02216
	)	
HELENA P. TIRONE AND TRUMAN'S ECLECTIC IRISH PUB, INC.,	)	
Plaintiffs,	)	
vs.	)	ORDER ON MOTIONS
THOMAS W. DAILEY,	)	
Defendant.	)	

2011 OCT 13 PM 4:55
BEAUFORT COUNTY
CLERK OF COURT

This matter was before the Court on October 4, 2011 on a) Plaintiffs' Motion to expand an injunction entered in this case on June 30, 2011, b) Plaintiff's Motion for another injunction related to the potential distribution of photos taken of Plaintiff Tirone, and c) Plaintiff's Motion for sanctions related to Defendant's alleged violation of the June 30, 2011 injunction. Present for the hearing were J. Ashley Twombly, Esquire, for Plaintiffs and Fred Kuhn, Esquire, for Defendant. After hearing from the parties and fully considering the record before the Court, I find as follows:

1) Plaintiffs' Motion to expand the injunction entered in this case on June 30, 2011 is due to be and is hereby granted. In addition to being enjoined from entering upon the premises of 205 West Street, Thomas W. Dailey is hereby enjoined from entering upon the sidewalk in front of 205 West Street, any parking spaces around 205 West Street, the entrance way of 205 West Street, the exit way for 205 West Street, and any other part or portion of 205 West Street that would in anyway interfere or interact with anyone in the building or around the building. Nothing in this order shall be constructed to limit the injunction entered by the Court on June 30,

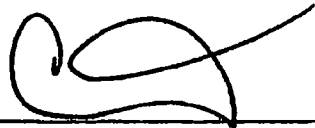
2011 which shall remain in full force and effect. Counsel for Defendant shall immediately provide Mr. Dailey with a copy of this order;

2) Thomas W. Dailey is hereby enjoined from sending, distributing, or otherwise publishing any photos of Plaintiff Helena Tirone to anyone and further from posting any photos of Tirone on any website for any reason whatsoever. Defendant consents to this provision of the order;

3) Plaintiffs' motion for sanctions related to Defendant's alleged violation of the June 30, 2011 order is hereby continued until further notice. The Court's continuation of this portion of Plaintiffs' motion shall in no way be construed to address or affect the merits of the motion when it is heard in the future; and

4) With respect to Plaintiffs' Motion to Compel filed August 11, 2011, because that motion relates to statements made by Mr. Dailey during a hearing before Judge Marvin Dukes, I find that the Motion to Compel should be heard by Judge Dukes. The parties shall schedule the same with his chambers accordingly.

AND IT IS SO ORDERED



CARMEN T. MULLEN
Presiding Administrative Judge of the
Fourteenth Judicial Circuit

Beaufort, South Carolina

October 17, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2011-CP-07-02216
	)	
HELENA P. TIRONE AND TRUMAN'S	)	
ECLECTIC IRISH PUB, INC.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
THOMAS W. DAILEY,	)	
	)	
Defendant.	)	
	)	

2012 AUG 10 PM 3:45
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

ORDER

This matter was before the Court on July 30, 2012 for a hearing on the following motions: 1) Plaintiffs' Motion for Summary Judgment; 2) Defendant's Supplemental Motion for a Protective Order; 3) Defendant's Motion for an Injunction; 4) Plaintiffs' Motion to Commission Out of State Subpoenas; 5) Defendant's Motion to Compel; and 6) Plaintiffs' Motions to Amend Complaint. Present before the Court was J. Ashley Twombly, Esquire for Plaintiffs and Andre Rembert, Esquire for Defendant. After hearing from counsel, reviewing the motions and memoranda, and fully considering the record before the Court, I find as follows.

Motion for Summary Judgment

On June 25, 2012, Plaintiffs' moved for summary judgment in this matter as to the individual liability of Plaintiff Helena Tirone. Dailey asserts three causes of action against Plaintiffs: Breach of Contract, Breach of Contract Accompanied by a Fraudulent Act and Violation of the Payment of Wages Act. All three (3) causes of action arise from an alleged breach of two Key Employee Employment Agreements (hereinafter the "Contracts"). Plaintiffs argue that summary judgment is due to be granted as to Tirone individually because there is no

Certified - A True Copy

Jeri Ann Roseneau / Clerk of Court
 Beaufort County, SC - Melissa Kilby

genuine dispute of material fact that the Contracts are between Plaintiff Truman's Eclectic Irish Pub, Inc. and Dailey. Tirone is allegedly not a party to either Contract. Therefore, Plaintiffs argue that Tirone, individually, is not a proper defendant in this litigation.

Dailey argues that the manner in which Tirone signed the two Contracts raises a scintilla of evidence which should defeat summary judgment. Specifically, Dailey argues that Tirone signed the Contracts in her individual name rather than on behalf of the corporation.

A review of the Contracts clearly shows that they are "by and between Truman's Eclectic Irish Pub, Inc." as the employer and "Thomas W. Dailey" as the employee. The Contracts further specify that notice is to be given to "Employer: Truman's Eclectic Irish Pub, Inc." When Dailey was asked during his deposition who the parties were to the Contracts, he conceded that they were between "Truman's Eclectic Irish Pub, Inc. employer, and Thomas W. Dailey, employee."

I find that the Contracts clearly and unambiguously provide that the employer is Truman's Eclectic Irish Pub, Inc. Tirone's name does not appear anywhere in the Contracts except on the signature line where she signed as "Owner, President & CEO, Truman's Eclectic Irish Pub." If there were any question as to who the Contracts are between, Dailey clarified the matter in his deposition. Even if the Contracts were ambiguous, I find that Dailey drafted the Contracts, and that any possible ambiguity regarding who are parties to the Contracts would be construed against Dailey.

Dailey also argues that Tirone should remain in the case as he may seek to pierce the corporate veil. A review of the Dailey's Second Amended Counterclaim reveals that he has not plead any facts at all to set up a veil piercing theory, nor does his prayer/demand for judgment request that the corporate veil be pierced. While there is authority to support the idea

that a party is not required to affirmatively plead veil piercing as a separate cause of action (and can in some instances attempt to pierce post-judgment), a party seeking to pierce the corporate veil is still required to set forth basic facts (as well as a request for relief) to put an individual on notice that it seeks to hold the individual liable for the debts of the corporation under a veil piercing theory. Rule 8(a), SCRCF; see also Drury Dev. Corp. v. Found. Ins. Co., 380 S.C. 97, 104, 668 S.E.2d 798, 802 (2008) (finding that only when a party has "pled facts sufficient to survive a motion to dismiss as to the corporate liability claims and the alter ego claim, [should] the trial court [] move forward to determination of both matters.")

Here, Dailey has filed three (3) separate counterclaim pleadings over the course of twelve (12) months: June 3, 2011; December 5, 2011 and June 21, 2012. Dailey has never alleged any facts to support a veil piercing theory or even requested that the corporate veil be pierced. Based on the above, Plaintiffs' Motion for Summary Judgment as to the individual liability of Tirone is hereby granted.

Defendant's Supplemental Motion for a Protective Order

Dailey requests that the Court issue a protective order preventing Plaintiffs from conducting miscellaneous discovery on the grounds that the discovery 1) serves no useful purpose, 2) is a rampant abuse of the discovery process, and 3) is designed solely to harass and annoy Dailey. Plaintiffs argue that the discovery at issue is reasonable, legitimate, and directly relevant to the claims at issue in this litigation. After carefully considering the arguments of counsel, I find that Dailey's motion is due to be and is hereby denied. The discovery at issue requested by Plaintiffs is reasonable and legitimate, is not an abuse of the discovery process, and was not interposed to harass or annoy. Specifically, the Court orders as follows:

- 1) Plaintiffs' subpoena to David Harper is proper and should be responded to in full.
- 2) Dailey shall fully respond to each of Plaintiffs' Third Set of Request for Production by August 17, 2012. However, with respect to requests No. 6 and 7, if Dailey determines that he has an excessive number of responsive documents such that it would be unduly burdensome to make a copy of the documents available to Plaintiffs, Dailey shall file a supplemental motion for a protective order providing a short description of the responsive documents and a brief description of why it would be unduly burdensome to produce a copy of the same to Plaintiffs.
- 3) Plaintiffs' subpoena to Sprint is proper; however, Plaintiffs shall limit the time period in which responsive documents should be produced from December of 2010 through June 2011. However, should Plaintiffs determine that additional records are needed from other time periods; Plaintiffs shall file the appropriate motion with the Court.
- 4) Regarding Plaintiffs' out of State Subpoenas, please see the Court's ruling below (p. 6) which allows the subpoenas.

Defendant's Motion for an Injunction

Dailey requests that the Court issue an injunction preventing Plaintiffs from subletting and/or disposing of the lease to the property at 205 West Street. According to Dailey, he will "suffer immediate and irreparable injury, loss and/or damages of contractual rights, profits, ownership and all other such appertaining benefits without entry of the requested injunctive relief."

In deciding whether to grant a temporary injunction, this Court has discretion to balance the equities and do what is fair and just. "An injunction is an equitable remedy . . . committed to the discretion of the court and granted when a review of all of the evidence establishes that it is necessary to prevent irreparable harm." Flanagan, South Carolina Civil Procedure 511 (2d ed. 1996) (hereinafter "Flanagan"); see Gibbs v. Kimbrell, 311 S.C. 261, 270, 428 S.E.2d 725, 730 (Ct. App. 1993). Two conditions are essential for the grant of a temporary injunction. First, the application must allege facts sufficient to constitute a cause of action for injunction. Second, it must appear in all the circumstances that the injunction is reasonably necessary to preserve the rights of the plaintiff pending the litigation. 27 S.C. App. Injunctions § 9. An assertion of irreparable injury is not sufficient to establish entitlement to a temporary injunction. The court must be convinced based on verified facts that injury is imminent. Id.

I find that an injunction is not reasonable necessary to preserve the alleged rights of Dailey pending the conclusion of the litigation. If Dailey is correct in his assertion that the Contracts are enforceable and have been breached, he has an adequate remedy at law in damages for breach of contract against Truman's Eclectic Irish Pub, Inc. I also find that because the property in questions is already in use by others who are not parties to this action, preserving the "status quo" would not protect Dailey from the alleged irreparable harm. The injunction is also due to be denied because it is not supported by any verified pleadings or affidavits. Accordingly, Dailey's request for an injunction is hereby denied.

Plaintiffs' Motion for an Order to Produce and to Commission Out of State Subpoenas

Plaintiffs request an order directing Experian, TransUnion, and Equifax to produce a copy of Thomas W. Dailey's credit report. Plaintiffs also request authorization to

issue out of state subpoenas to compel the production of documents from PayPal and Washington State Unemployment Office - Office of Special Investigations.

Regarding the credit report, the Court understands that both Experian, Equifax and TransUnion may take the position that pursuant to 15 U.S.C. §1681, et seq., they can only provide a credit report in response to an order signed by a judge and not in response to a traditional subpoena. In order to remove this potential impediment, the Court hereby orders Experian, Equifax and TransUnion to produce to Plaintiffs (through their attorney, J. Ashley Twombly) a copy of Thomas W. Dailey's credit report.

Regarding the out of state subpoenas to PayPal and Washington State Unemployment Office - Office of Special Investigations, I find that they may be in possession of information and documentation relevant to the subject of this lawsuit that is likely necessary for Plaintiffs to fully prepare their case. Accordingly, the undersigned, on behalf of the Beaufort County Court of Common Pleas, hereby requests that 1) the Superior Court for Santa Clara, California issue a subpoena to PayPal pursuant to Rule 45 of the South Carolina Rules of Civil Procedure and applicable California law, and 2) the Superior Court for Thurston County, Washington issue a subpoena to the Washington State Unemployment Office - Office of Special Investigations, pursuant to Rule 45 of the South Carolina Rules of Civil Procedure and applicable Washington law.

Defendant's Motion to Compel

Dailey's Motion to Compel is granted in part and denied in part. Plaintiffs shall provide a copy of her most recent CV to Defendant. Plaintiffs shall also provide a list (using broad categories such as furniture, appliances, art and glassware) of the items removed from 205 West

Street. Plaintiffs shall also provide her lay opinion on the value of the items on the list. Plaintiffs shall provide the same by August 17, 2012.

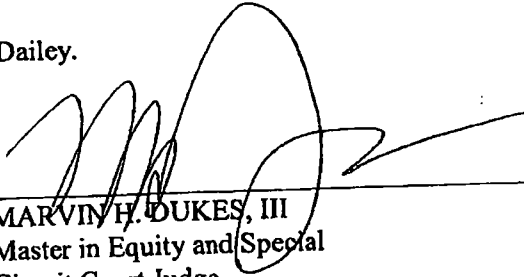
Plaintiffs' Motions to Amend Complaint

Plaintiffs seek to amend their complaint to include additional factual allegations to support previously asserted causes of action and theories of liability. The proposed amended pleading does not add any additional parties, does not add any additional causes of action, and does not add any additional theories of liability. In other words, the proposed amendment will not create any additional discovery or otherwise delay the trial of this case. Because the amendment will not prejudice Defendant in any way and will not delay the trial of this case, I find that the amended pleading is due to be and is hereby allowed pursuant to Rule 15(a), SCRPC and Foggie v. CSX Transportation, Inc., 431 S.E.2d 5887 (S.C. 1993).

Protective Order

Due to the sensitive nature of information that may be found in Dailey's credit report, Plaintiffs shall keep the report confidential and limit their use and dissemination of the report solely to matters related to this litigation. Upon the conclusion of the litigation, Plaintiffs shall destroy the report upon the written request of Dailey.

IT IS SO ORDERED!


MARVIN H. DUKES, III
Master in Equity and Special
Circuit Court Judge

August 10, 2012
Beaufort, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-07-02216

Helena P. Tirone, et al.

2012 DEC -7

THOMAS W. DAILEY

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: BEAUFORT COUNTY MASTER IN EQUITY

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

THIS CASE BEFORE ME ON DEFENDANT THOMAS W. DAILEY'S MOTION FOR RECONSIDERATION, FILED SEPTEMBER 25, 2012. AFTER DUE CONSIDERATION I HEREBY DENY THE MOTION.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3069

Judge Code

February 6, 2012

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

J. ASHLEY TWOMBLEY

ANDRE' D. REMBERT

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter: N/A

For Clerk of Court Office Use Only

This judgment was entered on 26 December, 2012, and a copy mailed first class or placed in the appropriate attorney's box on 26 December, 2012, to attorneys of record or to parties (when appearing pro se) as follows:

James Ashley Twombly 311 Carteret St. Beaufort, SC
29902

ATTORNEY(S) FOR THE PLAINTIFF(S)

Andre DuBose Rembert 2302 Mount Pleasant Street
Charleston, SC 29403

ATTORNEY(S) FOR THE DEFENDANT(S)

Jamie Thompson

Jerri Ann Roseneau - Clerk of Court

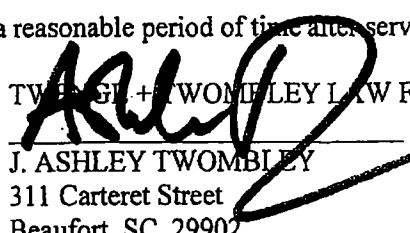
Court Reporter-N/A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2011-CP-07-02216
HELENA P. TIRONE AND TRUMAN'S ECLECTIC IRISH PUB, INC.,	)	2011 MAY 20 AM 11:42 CLERK OF COURT BEAUFORT COUNTY, S.C.
Plaintiffs,	)	
vs.	)	
THOMAS W. DAILEY,	)	
Defendant.	)	
		SUMMONS

TO: DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to the said Complaint on the Plaintiff by and through their attorney(s), J. Ashley Twombly of TWENGE + TWOMBLY, LLC, 311 Carteret Street, Beaufort, SC 29902, within thirty (30) days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint. Any Answer that you serve on the parties in this action must be filed with the Clerk of Court within a reasonable period of time after service.

BY:


TWENGE + TWOMBLY LAW FIRM
J. ASHLEY TWOMBLY
311 Carteret Street
Beaufort, SC 29902
Telephone: (843) 982-0100
Facsimile: (843) 982-0103
www.twlawfirm.com
Attorneys for Plaintiff

Beaufort, South Carolina
May 20, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2011-CP-07-02216
HELENA P. TIRONE AND TRUMAN'S ECLECTIC IRISH PUB, INC.,	)	
Plaintiffs,	)	
vs.	)	COMPLAINT
THOMAS W. DAILEY,	)	
Defendant.	)	

2011 MAY 20 AM 11:42
 BEAUFORT COUNTY, S.C.
 CLERK OF COURT

TO: DEFENDANT ABOVE NAMED:

PARTIES AND JURISDICTION

1. Plaintiff Truman's Eclectic Irish Pub, Inc. is a corporation organized and existing in the State of South Carolina.
2. Plaintiff Helena P. Tirone is a resident of South Carolina.
3. Defendant Thomas W. Dailey is a resident of Beaufort, South Carolina.
4. The Court has personal jurisdiction over the parties and subject matter jurisdiction over the issues herein.

BACKGROUND

5. On January 21, 2011 Truman's Eclectic Irish Pub, Inc. entered into a Lease Agreement with JWL Properties, LLC , BRD Real Estate, LLC, Henry Danish and HDL Family LLC (collectively "Landlord) to lease 205 West Street, Beaufort, South Carolina (hereinafter "Premises") for a term ending the 31st day of January 2015, which real estate is the subject of this action.

(sic) May 1, 2011

6. Plaintiffs hired Thomas W. Dailey on June 1, 2011 to act as General Manager of Truman's Eclectic Irish Pub.

(sic) Defendant
7. Plaintiff has subsequently been terminated.

8. After his termination, Plaintiffs entered the Premises unlawfully and has further asserted to authorities that he has the legal right to be on the Premises.

9. On or about May 20, 2011, Defendant trespassed against Plaintiffs' leased Premises and changed the locks so that Plaintiffs could not enter their leased Premises.

10. On May 20, 2011 Plaintiffs called the police and reported that Defendant trespassed.

11. Defendant's actions have caused Plaintiffs financial damages, emotional distress as well as pain and suffering.

TRESPASS

12. Plaintiffs reassert and reaffirm all allegations stated above as if repeated herein verbatim.

13. Defendant is trespassing on property that is leased by Plaintiffs and controlled by Plaintiffs.

14. Defendant has no legal right to be on the Premises and Plaintiffs hereby request that Defendant be restrained from entering the premises.

15. Plaintiffs further request that damages be awarded against Defendant for his improper actions.

PERMANENT INJUNCTION

16. Plaintiffs repeat and allege, as if set forth here verbatim, all of the allegations made above.

17. Defendant has and is wrongfully asserting to the authorities and others that he has the right to be on the Premises and control the Premises.

18. There is no legitimate reason why Defendants should continue to do so.

19. There is no legitimate reason why Defendants should continue to assert that the property at issue is theirs or anyone other than Plaintiffs.

20. Plaintiffs seeks to preserve their legitimate property interest by enjoining Defendants from taking any action whatsoever that is inconsistent with Plaintiffs' true and lawful ownership interest.

21. An injunction in this case will not violate the public policy of the state of South Carolina.

22. Plaintiff prays for the issuance of a permanent injunction against Defendants to restrain and enjoin them from taking any action whatsoever inconsistent with the fact that Plaintiffs are the true and lawful owners of the lease for the Premises.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays:

- A. For all damages available under the law;
- B. For the costs of this action;
- C. For attorney's fees;
- D. For a permanent injunction; and
- E. For such other and further relief as this Court may deem just and proper.

TWENGE + TWOMBLEY LAW FIRM

BY:

J. ASHLEY TWOMBLEY

311 Carteret Street
Beaufort, SC 29902
Telephone: (843) 982-0100
Facsimile: (843) 982-0103
www.twlawfirm.com
Attorneys for Plaintiff

Beaufort, South Carolina

May 20, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2011-CP-07-02216
HELENA P. TIRONE AND TRUMAN'S ECLECTIC IRISH PUB, INC.,	)	
Plaintiffs,	)	
vs.	)	VERIFIED AMENDED COMPLAINT
THOMAS W. DAILEY,	)	
Defendant.	)	

TO: DEFENDANT ABOVE NAMED:

PARTIES AND JURISDICTION

1. Plaintiff Truman's Eclectic Irish Pub, Inc. is a corporation organized and existing in the State of South Carolina.
2. Plaintiff Helena P. Tirone is a resident of South Carolina.
3. Defendant Thomas W. Dailey is a resident of Beaufort, South Carolina.
4. The Court has personal jurisdiction over the parties and subject matter jurisdiction over the issues herein.

BACKGROUND

5. Plaintiff Helena Tirone and Defendant Thomas W. Dailey (hereinafter "Dailey") met in November of 2009 while working for Fluor Daniel Corporation in Afghanistan.
6. Upon information and belief, Defendant Dailey was let go by Fluor Daniel and left the company on bad terms.
7. Plaintiff Helena Tirone continues to work for Fluor Daniel.

8. In late 2010, Truman's Eclectic Irish Pub, Inc. was taking steps to open a pub in Beaufort, South Carolina.

9. Truman's sole stock holder and sole director is Plaintiff Helena Tirone.

10. Dailey was interested in the project, sought to participate and represented that he was qualified to do so.

11. Specifically, Dailey represented that he had previous experience in a bar in Florida.

12. Dailey also represented that he was a fiscally responsible person, that he possessed business acumen and was otherwise capable and able of opening a bar/restaurant in Beaufort, South Carolina.

13. Dailey was allowed to help oversee preparations for opening Truman's Eclectic Irish Pub, Inc.

14. While the parties had no written agreement regarding the assistance Dailey would provide, Truman's Eclectic Irish Pub, Inc. and Dailey discussed the possibility that in the future Dailey might be employed to manage the pub and – assuming an adequate work performance, the long term financial success of the business and other factors – might further be given opportunities to participate in ownership of Truman's Eclectic Irish Pub, Inc.

15. While the parties discussed these matters, it was absolutely clear that Plaintiffs were not required or otherwise obligated regarding management or ownership.

16. In early 2011, as part of his employment, Dailey was given access to a Truman's Eclectic Irish Pub, Inc.'s BB&T checking account so that he could purchase equipment and supplies for the pub.

17. Dailey knew he was not supposed to use the account or the money in the account

for any other reason.

18. Dailey was the only person who used the account from January 2011 through April 2011.

19. In April of 2011, Truman's Eclectic Irish Pub, Inc. conducted a review of the BB&T checking account.

20. Numerous suspicious expenses were identified.

21. As one example, Dailey used the BB&T account to make purchases at Saltus River Grill, Luther's Rare & Well Done, Emily's, Bill's Liquor Store, Reilleys Bar & Grill, and Breakwater.

22. As another example, Dailey laundered money to himself by writing checks to EBJ Corporation.

23. EBJ Corporation is a corporation owned solely by Dailey.

24. EBJ's mailing address is 330 Robert Smalls Pkwy, Suite 24 Beaufort, SC 29906.

25. Dailey wrote himself (EBJ) the following checks:

a. February 9, 2011 - \$3,600

b. March 9, 2011 - \$2,000

c. April 14, 2011 - \$3,400

\$9,000

26. Copies of the checks Dailey wrote to EBJ Corporation are attached as Exhibit A.

27. EBJ did not do work for Plaintiffs and was simply Dailey's channel for misappropriating money to himself.

28. Dailey also misappropriated money by making cash withdrawals from ATM machines.

29. In total, Dailey withdrew over \$3,000 in cash from ATMs.
30. Copies of the BB&T bank statements showing the cash withdrawals are attached as Exhibit B.
31. An initial review has revealed over \$30,000 of unauthorized charges on the BB&T account.
32. On April 30, 2011, a meeting was held between Truman's Eclectic Irish Pub, Inc., Dailey, Jatin Patel, CPA and Martin Craft and Casey Craft.
33. Dailey was questioned about various checks that had been written on the BB&T account as well as numerous ATM cash withdrawals.
34. After the meeting, Plaintiffs questioned Dailey further about the questionable expenditures.
35. Dailey became extremely hostile, aggressive, manic and upset.
36. While no official action was taken, Dailey knew that Truman's Eclectic Irish Pub, Inc. was looking for someone to manage the pub and further that his fiscal irresponsibility would prevent him from ever serving in a management position at Truman's or otherwise take part in ownership.
37. Dailey then stated that he would not lose his job.
38. Dailey further stated that if he got fired from Truman's he would make sure that Plaintiff Helena Tirone was fired from her job with the Fluor Daniel Corporation.
39. Specifically, Dailey said "If I lose my job, you [Helena] will lose your job at Fluor."
40. Thereafter, on May 4, 2011, Dailey sent Truman's Eclectic Irish Pub, Inc. two employment contracts titled "Key Employee Employment Agreement." See Key Employee

Employment Agreements (Attached as Exhibit C) (hereinafter "Employment Agreements").

41. The Employment Agreements were first sent to Helena Tirone (on behalf of Truman's Eclectic Irish Pub, Inc.) on May 4, 2011 at 4:24 pm while she was at work.

42. At that time, Dailey provided the address of a UPS store and instructed Plaintiffs to sign the Agreements, take them to the UPS store and send the Agreements back to him via "OVERNIGHT" mail. See Email from Dailey attached Employment Agreements (Attached as Exhibit D).

43. Dailey asked for the documents to be mailed to him at "330 Robert Smalls Pkwy, Suite 24 Beaufort, SC 29906" which is the address of his EBJ corporation that he wrote himself checks to.

44. Plaintiff Helena Tirone signed the Employment Agreements on behalf of Truman's solely because Dailey threatened to destroy her name and creditability with her employer.

45. The Employment Agreements at issue were downloaded off of the internet by Dailey and then edited and prepared by Dailey.

46. The Employment Agreements contain preposterous and unconscionable terms.

47. For example, the Employment Agreements that Dailey prepared purport to state that Dailey "cannot be terminated."

48. The Agreements go on to state that if Dailey is fired he is automatically entitled to a lump sum payment worth (4) years of salary (\$256,205) and 50 % of the stock on Truman's Eclectic Irish Pub, Inc.

49. The Agreements also require Plaintiffs to pay all attorneys fees "associated with the agreement and its enforcement."

50. After the Employment Agreement were signed, it became clear to Plaintiffs that Dailey would not stop using threats of getting Plaintiff fired to force Plaintiffs to do what they otherwise would not do.

51. Plaintiffs decided that they were no longer willing to live under the constant threat and fear that Dailey might force them to do something that was not of their own free will.

52. Therefore, Truman's Eclectic Irish Pub, Inc. terminated Dailey and sought to enforce its rights under the laws of the state of South Carolina.

53. After Dailey was terminated, Truman's Eclectic Irish Pub, Inc. changed the locks to a building that had been leased as a proposed location for the pub (hereinafter the "Premises").

54. Dailey knew the locks had been changed, and further knew that the purpose of changing the locks was to keep him out of the Premises.

55. Despite this knowledge, Dailey hired a locksmith to pick the locks to the building so that he could gain access to the Premises.

56. Dailey then had the locks changed in an effort to exclude Plaintiffs from the Premises.

57. Dailey then called ADT security and attempted to have an alarm system installed at the building to keep Plaintiffs out.

58. Dailey also tried to sell equipment that was purchased for use by the pub for his own personal financial gain.

FOR A FIRST CAUSE OF ACTION

(DECLARATORY JUDGMENT – DURESS/CONTRACT RECESSION)

59. Plaintiffs reassert and reaffirm all allegations stated above as if repeated herein verbatim.

\$4,377.08, as evidenced by the attachment hereto as Exhibit F;

- c. Dailey has defaulted on a \$354,450.00 Construction Loan Promissory Note with MCAS Beaufort Federal Credit Union, and has a deficiency judgment in the amount of \$392,690.12 as of December 29, 2009, as evidenced by the attachment hereto as Exhibit G;
- d. Dailey has defaulted on a \$130,500.00 Balloon Note with MCAS Beaufort Federal Credit Union, and has a deficiency judgment in the amount of \$150,519.88 as of December 29, 2009, as evidenced by the attachment hereto as Exhibit H;
- e. Dailey has defaulted on a \$270,000 Note with Deutsche Bank National Trust Company, as Trustee on Behalf of the HIS Asset Securitization Corporation Trust 2007-HEI, and has a deficiency judgment in the amount of \$327,942.29 as of July 17, 2010, as evidenced by the attachment hereto as Exhibit I;
- f. Dailey has defaulted on a \$5,000.00 contract with Central Star Credit Union for the purchase of a 1998 Jeep Wranger, Vin No. 1J4FY1957WP708544, which was pledged as collateral to secure payment to Central Star Credit Union, and has a collection action in the amount of \$3,051.71 pending against him, as evidenced by the attachment hereto as Exhibit J;
- g. Dailey has defaulted on a contract with Central Star Credit Union for the purchase of a 2007 Honda Element, VIN No. 5J6YH18377L013038, which was pledged as collateral to secure payment to Central Star Credit Union, and has a collection action in the amount of \$27,493.90 pending against him, as evidenced by the attachment hereto as Exhibit K;

- h. Dailey has defaulted on a contract with Central Star Credit Union for the purchase of a 1987 Pace Arrow, Vin No. 1GBKP37W6H3338386, which was pledged as collateral to secure payment to Central Star Credit Union, and has a collection action in the amount of \$10,820.63 pending against him, as evidenced by the attachment hereto as Exhibit L;
- i. Dailey has defaulted on a \$5,000.00 loan advance contract with Central Star Credit Union, and has a collection action in the amount of \$4,087.53 pending against him, as evidenced by the attachment hereto as Exhibit M;
- j. Dailey has defaulted on a \$3,000.00 Overdraft Protection Line of Credit Agreement with Central Star Credit Union, and has a collection action in the amount of \$4,161.84 pending against him, as evidenced by the attachment hereto as Exhibit N;

78. Dailey knew the representations were false or acted with reckless disregard for the truth or falsity of the representations.

79. Dailey intended that Plaintiffs rely and act on these false representations.

80. Plaintiffs were at all times ignorant as to the falsity of the representations.

81. Plaintiffs justifiably relied upon the truth of Dailey's false representations.

82. Plaintiffs had a right to rely upon the truth of the false representations.

83. Plaintiffs have suffered a pecuniary loss as the proximate result of their reliance upon Dailey's false representations.

84. As a result of Dailey's fraudulent representations, Plaintiffs are entitled to recover actual or compensatory damages and punitive damages in amounts to be determined during the trial of this action.

FOR A FOURTH CAUSE OF ACTION

(CONVERSION)

85. Plaintiffs reallege all of the above allegations as if fully repeated verbatim herein.

86. At all relevant times, Dailey knew that he did not have a right to take the property and assets of Plaintiffs for his own personal benefit.

87. Dailey wrongfully converted and appropriated the assets owned by Plaintiffs to his own use and for his own benefit without the permission of Plaintiffs and with the intent of depriving Plaintiffs of possession of said assets.

88. The appropriation and conversion of property was willful, wanton, heedless, gross and reckless.

89. Plaintiffs have suffered and continue to suffer actual damages proximately caused by Dailey's breaches and misconduct and are entitled to damages in an amount which will adequately compensate Plaintiffs' injuries.

90. In addition to actual damages due Plaintiffs due to the intentional conduct of Dailey, Plaintiffs are entitled to an amount of punitive damages which will adequately punish and impress upon Dailey the seriousness of his conduct.

FOR A FIFTH CAUSE OF ACTION

(BREACH OF CONTRACT AND BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT)

91. Plaintiffs repeat and reallege each and every allegation contained in the above paragraphs as if repeated hereinafter verbatim.

92. Truman's Eclectic Irish Pub, Inc. and Dailey entered into an agreement regarding Dailey assisting Truman's Eclectic Irish Pub, Inc. in opening a pub.

93. Dailey obligated himself to act in good faith and fair dealing as well as to perform

each and every obligation under the agreement with due care and in a timely fashion.

94. Dailey breached his obligations pursuant to the agreement; said breaches amount to willful acts and omissions of bad faith, self-dealing, intentional misconduct, knowing misappropriation and conversion of funds, knowing and willful breaches of duties under the agreement, and knowing violations of the law.

95. The breaches constitute bad faith violations of the implied contractual covenant of good faith and fair dealing and were committed with a fraudulent intent and accompanied by fraudulent acts.

96. The willful and intentional bad faith acts and omissions which constitute breaches under the agreement were at all times not in the best interests of Plaintiffs.

97. As a direct and proximate result of Dailey's breaches, Dailey has caused Plaintiffs to suffer grave damages.

98. Plaintiffs are entitled to an amount of actual, consequential damages and punitive damages in amounts to be determined at the trial of this action.

FOR A SIXTH CAUSE OF ACTION

(TRESPASS)

99. Plaintiffs reallege all of the above allegations as if fully repeated verbatim herein.

100. After his termination, Dailey trespassed on the Premises.

101. After trespassing on the Premises, Dailey illegally had the locks to the building changed.

102. Dailey had and has no legal right to be on the Premises and Plaintiffs hereby request that Dailey be restrained from entering the premises.

103. Plaintiffs further request that damages be awarded against Dailey for his improper

actions.

FOR A SEVENTH CAUSE OF ACTION

(INJUNCTION)

104. Plaintiffs repeat and allege, as if set forth here verbatim, all of the allegations made above.

105. Dailey is seeking to exercise his rights under the Employee Agreements that he improperly forced Truman's Eclectic Irish Pub, Inc. to sign.

106. Dailey has also entered the Premises unlawfully and changed the locks to the building.

107. Dailey has sought to sell equipment that was purchased for use in the business.

108. Dailey has not invested a dime of money in the Premises or the pub in general and has no money at stake whatsoever.

109. Plaintiff Tirone has invested over \$125,000 dollars in the business in the form of a loan.

110. Plaintiff also has a security agreement over all property owned, possessed, leased, acquired, hereinafter acquired by Truman's Eclectic Irish Pub, Inc., including but in no way limited to equipment, financial accounts, accounts receivable, profits, revenues, lease agreements, good will, electronic data, inventory, or any other property of any kind whatsoever.

111. Plaintiffs seek to preserve their legitimate property interest by enjoining Dailey from exercising his rights any specific performance rights pursuant to Employee Agreements.

112. Plaintiffs also seek to enjoin Dailey from contacting Plaintiff's Helena Tirone's employer for any reason whatsoever related to Plaintiff.

113. An injunction in this case will not violate the public policy of the state of South

Carolina.

114. Plaintiffs pray for the issuance of an injunction against Dailey to restrain and enjoin him from attempting to exercise his specific performance rights under the fraudulent Employment Agreement and further from contacting Plaintiff's employer for any reason whatsoever related to Plaintiff.

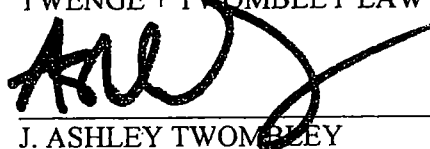
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

- a) For all damages available under the law;
- b) For an injunction;
- c) That the Court enter a declaratory judgment declaring that the Employment Agreements are null and void due to Plaintiff Tirone being coerced and threatened into entering into said Agreements;
- d) That actual, consequential, direct, special and punitive, double and treble damages be awarded against Dailey in amounts to be determined by the trier of fact;
- e) That the Court award attorney's fees and costs in this matter;
- f) That the Court provide such other and further relief as it deems just and proper.

TWENG + TWOMBLY LAW FIRM

BY:



J. ASHLEY TWOMBLY

311 Carteret Street

Beaufort, SC 29902

Telephone: (843) 982-0100

Facsimile: (843) 982-0103

www.twlawfirm.com

Attorneys for Plaintiffs

Beaufort, South Carolina
August 3, 2011

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2011-CP-07-02216
HELENA P. TIRONE AND TRUMAN'S ECLECTIC IRISH PUB, INC.,	)	
Plaintiffs,	)	
vs.	)	VERIFICATION
THOMAS W. DAILEY,	)	
Defendant.	)	

PERSONALLY appeared before me, Helena P. Tirone, Individually and as Owner and President of Truman's Eclectic Irish Pub, who being duly sworn, deposes and says that she is a Plaintiff in the foregoing action; that she has read the foregoing Verified Amended Complaint and the same is true of her own knowledge, save and except any matters therein alleged upon information and belief, and as to those matters, she verily believes them to be true.

Helena P. Tirone
HELENA P. TIRONE, Individually and as Owner
and President of Truman's Eclectic Irish Pub

SWORN to and subscribed before me
this 22nd day of June 2011.

Andrea Smith
Notary Public for South Carolina
My Commission Expires: _____



STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2011-CP-07-02216
	)	
HELENA P. TIRONE AND TRUMAN'S	)	
ECLECTIC IRISH PUB, INC.,	)	
	)	
Plaintiffs,	)	
	)	SECOND AMENDED COMPLAINT
vs.	)	
	)	
THOMAS W. DAILEY,	)	
	)	
Defendant.	)	
	)	

TO: DEFENDANT ABOVE NAMED:

PARTIES AND JURISDICTION

1. Plaintiff Truman's Eclectic Irish Pub, Inc. is a corporation organized and existing in the State of South Carolina.
2. Plaintiff Helena P. Tirone is a resident of South Carolina.
3. Defendant Thomas W. Dailey is a resident of Beaufort, South Carolina.
4. The Court has personal jurisdiction over the parties and subject matter jurisdiction over the issues herein.

BACKGROUND

5. Plaintiff Helena Tirone and Defendant Thomas W. Dailey (hereinafter "Dailey") met in November of 2009 while working for Fluor Daniel Corporation in Afghanistan.
6. Upon information and belief, Defendant Dailey was let go by Fluor Daniel and left the company on bad terms.
7. Plaintiff Helena Tirone continues to work for Fluor Daniel.

8. In late 2010, Truman's Eclectic Irish Pub, Inc. was taking steps to open a pub in Beaufort, South Carolina.

9. Truman's sole stock holder and sole director is Plaintiff Helena Tirone.

10. Dailey represented that he was qualified to manage the creation of the pub.

11. Specifically, Dailey represented that he had previous experience in a bar in Florida.

12. Dailey also represented that he was a fiscally responsible person, that he possessed business acumen, that he had been very successful in all of his prior business ventures and was otherwise capable and able of opening a bar/restaurant in Beaufort, South Carolina.

13. Tirone and Dailey agreed that Dailey would oversee preparations for opening Truman's Eclectic Irish Pub, Inc.

14. While the parties had no written agreement regarding the assistance Dailey would provide, Truman's Eclectic Irish Pub, Inc. and Dailey discussed the possibility that in the future, assuming an adequate work performance, the long term financial success of the business and other factors – Dailey would potentially be given the opportunity to participate in ownership of Truman's Eclectic Irish Pub, Inc.

15. While the parties discussed these matters, it was absolutely clear that Plaintiffs were not required or otherwise obligated regarding management or ownership.

16. In early 2011, as part of his employment, Dailey was given access to Truman's Eclectic Irish Pub, Inc.'s BB&T checking account so that he could purchase equipment and supplies for the pub.

17. Dailey knew he was not supposed to use the account or the money in the account for any other reason.

18. Dailey was the only person who used the account from January 2011 through April 2011.

19. In late April of 2011, Truman's Eclectic Irish Pub, Inc. conducted a review of the BB&T checking account.

20. Numerous suspicious expenses were identified.

21. As one example, Dailey used the BB&T account to make purchases at Saltus River Grill, Luther's Rare & Well Done, Emily's, Bill's Liquor Store, Reilly's Bar & Grill, and Breakwater.

22. As another example, Dailey laundered money to himself by writing checks to EBJ Corporation.

23. EBJ Corporation is a corporation owned solely by Dailey.

24. EBJ's mailing address is 330 Robert Smalls Pkwy, Suite 24 Beaufort, SC 29906.

25. Dailey wrote himself (EBJ) the following checks:

a. February 9, 2011	-	\$3,600
b. March 9, 2011	-	\$2,000
c. <u>April 14, 2011</u>	-	<u>\$3,400</u>
		\$9,000

26. Copies of the checks Dailey wrote to EBJ Corporation are attached as Exhibit A.

27. EBJ did not do work for Plaintiffs and was simply Dailey's channel for misappropriating money to himself.

28. Dailey also misappropriated money by making cash withdrawals from ATM machines.

29. Dailey withdrew at least \$3,000 in cash from ATMs.

30. Copies of the BB&T bank statements showing the cash withdrawals are attached as Exhibit B.

31. An initial review has revealed over \$30,000 of unauthorized charges on the BB&T account.

32. On April 30, 2011, a meeting was held between Truman's Eclectic Irish Pub, Inc., Dailey, Jatin Patel, CPA and Martin Craft and Casey Craft.

33. Dailey was questioned about various checks that had been written on the BB&T account as well as numerous ATM cash withdrawals.

34. After the meeting, Plaintiffs questioned Dailey further about the questionable expenditures.

35. Dailey became extremely hostile, aggressive, manic and upset.

36. While no official action was taken, Dailey knew that his fiscal irresponsibility would likely prevent him from ever serving in a management position at Truman's or otherwise take part in ownership.

37. Dailey then stated that he would not lose his job.

38. Dailey further stated that if he got fired from Truman's, he would make sure that Plaintiff Helena Tirone was fired from her job with the Fluor Daniel Corporation.

39. Specifically, Dailey said "If I lose my job, you [Helena] will lose your job at Fluor."

40. Thereafter, on May 4, 2011, Dailey sent Truman's Eclectic Irish Pub, Inc. two employment contracts titled "Key Employee Employment Agreement." See Key Employee Employment Agreements (Attached as Exhibit C) (hereinafter "Employment Agreements").

41. The Employment Agreements were first sent to Helena Tirone (on behalf of

Truman's Eclectic Irish Pub, Inc.) on May 4, 2011 at 4:24 pm while she was at work.

42. At that time, Dailey provided the address of a UPS store which was approximately 17 miles from Ms. Tirone's place of employment. Dailey instructed Plaintiff to sign the Agreements, take them to the UPS store and send the Agreements back to him via "OVERNIGHT" mail. See Email from Dailey attached Employment Agreements (Attached as Exhibit D).

43. Dailey asked for the documents to be mailed to him at "330 Robert Smalls Pkwy, Suite 24 Beaufort, SC 29906" which is the address of his EBJ Corporation that he wrote himself checks to.

44. Plaintiff Helena Tirone signed the Employment Agreements on behalf of Truman's Eclectic Irish Pub, Inc. solely because Dailey threatened to destroy her name and creditably with her employer.

45. The Employment Agreements at issue were downloaded off of the internet by Dailey and then edited and prepared by Dailey.

46. The Employment Agreements contain preposterous and unconscionable terms.

47. For example, the Employment Agreements that Dailey prepared purport to state that Dailey "cannot be terminated."

48. The Agreements go on to state that if Dailey is fired he is automatically entitled to a lump sum payment worth (4) years of salary (\$256,205) and 50% of the stock on Truman's Eclectic Irish Pub, Inc.

49. The Agreements also require Plaintiffs to pay all attorneys fees "associated with the agreement and its enforcement."

50. After the Employment Agreement were signed, it became clear to Plaintiffs that

Dailey would not stop using threats of getting Plaintiff fired to force Plaintiffs to do what they otherwise would not do.

51. Plaintiffs decided that they were no longer willing to live under the constant threat and fear that Dailey might force them to do something that was not of their own free will.

52. Therefore, Truman's Eclectic Irish Pub, Inc. terminated Dailey and sought to enforce its rights under the laws of the state of South Carolina.

53. After Dailey was terminated, Truman's Eclectic Irish Pub, Inc. changed the locks to 205 West Street that had been leased as a proposed location for the pub (hereinafter the "Premises").

54. Dailey knew the locks had been changed, and further knew that the purpose of changing the locks was to keep him out of the Premises.

55. Despite this knowledge, Dailey hired a locksmith to pick the locks to the Premises so that he could gain access to the Premises.

56. Dailey then had the locks changed in an effort to exclude Plaintiffs from the Premises.

57. Dailey then called ADT security and attempted to have an alarm system installed at the Premises to keep Plaintiffs out.

58. Dailey also tried to sell equipment that was purchased for use by the pub for his own personal financial gain.

59. In July of 2011, after a restraining order had been entered against Dailey prohibiting him from entering the Premises, Dailey entered the doorway of the Premises and began to harass and chastise Plaintiff.

60. Plaintiff immediately turned her back to Defendant and walked to the back of the

building. Dailey then made inappropriate comments to Plaintiff's friends and then exited the Premises and walked to his car which was parked in the parking lot.

61. The next morning, Plaintiff went back to 205 West Street and, out of an abundance of caution, posted a copy of the Court ordered restraining order against Dailey on a window at the Premises.

62. Dailey apparently came back to 205 West Street and saw the posted order.

63. After seeing the order, Dailey began to send Plaintiff a series of harassing and threatening text messages.

64. For example, Defendant sent several texts to Plaintiff informing "The police are looking for you. Please answer their call;" "I am headed into town, I hope you have removed that from the window;" "[I]f your intent is to embarrass me with that in the window, then perhaps I should stoop to your level and share with the folks downtown pictures of you today;" "I know some folks at Coops would like to see them." See Print Out of Text Messages from Dailey to Tirone (Attached as Exhibit E).

65. "Coops" is the gym where Plaintiff Tirone exercises and the pictures Dailey threatened to share were private picture of Plaintiff Helena Tirone in her underwear.

66. The messages were sent in direct violation of the Court's order prohibiting Dailey from contacting Plaintiff.

67. The messages were also not true.

68. On July 18, 2011, City of Beaufort Police Department Lieutenant Darrel Gruel searched the department's computer database and reported no knowledge of the City of Beaufort Police Department "looking for" Plaintiff Tirone.

FOR A FIRST CAUSE OF ACTION
(DECLARATORY JUDGMENT – DURESS/CONTRACT RECESSION)

69. Plaintiffs reassert and reaffirm all allegations stated above as if repeated herein verbatim.

70. The employment contract prepared by Dailey is voidable at the option of Truman's Eclectic Irish Pub, Inc. because it was executed under duress.

71. Specifically, improper external pressure and influence was placed on Truman's Eclectic Irish Pub, Inc. to sign the employment agreement or otherwise suffer Dailey's wrath.

72. The influence and pressure was such that it destroyed the free agency of Truman's Eclectic Irish Pub, Inc. and caused it to sign an agreement that was not of its own volition.

73. Dailey's threats placed him in a position to dictate the terms of the employment agreement to the extent that his will was substituted for the will of Truman's Eclectic Irish Pub, Inc.

74. The employment agreement is not a mutual, voluntary agreement, but an agreement emanating entirely from Dailey's own mind.

75. At the time, Truman's Eclectic Irish Pub, Inc. believed that there was no reasonable alternative other than succumbing to Dailey's threats.

76. Therefore, the agreement should be, and Plaintiffs hereby request, that it be declared void.

FOR A SECOND CAUSE OF ACTION
(BLACKMAIL)

77. Plaintiffs reassert and reaffirm all allegations stated above as if repeated herein verbatim.

78. Dailey threatened to send false and defamatory information to Plaintiff Helena

Tirone's employer if Truman's Eclectic Irish Pub, Inc. did not sign the Employee Agreements Dailey had prepared and return the Agreements to him via overnight mail.

79. Dailey also threatened to send compromising photographs of Plaintiff Helena Tirone to Ms. Tirone's friends and colleagues if she did not acquiesce to Dailey's demands.

80. Dailey also threatened to call the police and make false and defamatory statements about Tirone.

81. Dailey's goal was to extort money or other things of value from Plaintiffs, and further prevent Plaintiffs from exercising their rights.

82. Truman's Eclectic Irish Pub, Inc. has been damaged in that it signed an employment agreement that it would not have otherwise signed.

83. Plaintiff Helena Tirone has been damaged in that she was forced to hire an attorney and further forced to seek numerous orders from this Honorable Court to judicially restrain Dailey from publishing compromising photographs of Plaintiff and from taking other improper actions.

84. Plaintiff Tirone has also been damaged in that she has suffered emotional distress.

85. Plaintiffs request that all available damages under the law be awarded against Dailey for his improper actions.

FOR A THIRD CAUSE OF ACTION
(MISREPRESENTATION – DECEIT)

86. Plaintiffs reallege all of the above allegations as if fully repeated verbatim herein.

87. Between January 2011 and May 2011 Dailey was assisting with creating and opening Truman's Eclectic Irish Pub, Inc.

88. While the parties had no written agreement governing the terms of Dailey's services to Truman's Eclectic Irish Pub, Inc., the parties generally agreed that Dailey would

assist in establishing and opening the pub, and may be given ownership opportunities in the future.

89. Prior to providing said assistance, Dailey represented to Truman's Eclectic Irish Pub, Inc. that he was a fiscally responsible person, that he was a successful businessman, that he possessed business acumen and was otherwise capable of opening a bar/restaurant in Beaufort, South Carolina.

90. The representations made by Dailey were false.

91. Specifically, Truman's Eclectic Irish Pub, Inc. has recently discovered the following:

- a. Over the past several years, Dailey has failed to timely make child support payments as ordered by family court. Numerous "Civil Contempt Order[s] Non-Support" and rules to show cause have been issued against Dailey, as evidenced by the attachment hereto as Exhibit F;
- b. Dailey is currently in arrears in child support payments in the amount of \$4,377.08, as evidenced by the attachment hereto as Exhibit G;
- c. Dailey has defaulted on a \$354,450.00 Construction Loan Promissory Note with MCAS Beaufort Federal Credit Union, and has a deficiency judgment in the amount of \$392,690.12 as of December 29, 2009, as evidenced by the attachment hereto as Exhibit H;
- d. Dailey has defaulted on a \$130,500.00 Balloon Note with MCAS Beaufort Federal Credit Union, and has a deficiency judgment in the amount of \$150,519.88 as of December 29, 2009, as evidenced by the attachment hereto as Exhibit I;
- e. Dailey has defaulted on a \$270,000 Note with Deutsche Bank National Trust Company, as Trustee on Behalf of the HIS Asset Securitization Corporation Trust 2007-HEI, and has a deficiency judgment in the amount of \$327,942.29 as of July 17, 2010, as evidenced by the attachment hereto as Exhibit J;
- f. Dailey has defaulted on a \$5,000.00 contract with Central Star Credit Union for the purchase of a 1998 Jeep Wrangler, Vin No. 1J4FY1957WP708544, which was pledged as collateral to secure payment to Central Star Credit Union, and has a collection action in the amount of \$3,051.71 pending against him, as evidenced by the attachment hereto as Exhibit K;

- g. Dailey has defaulted on a contract with Central Star Credit Union for the purchase of a 2007 Honda Element, VIN No. 5J6YH18377L013038, which was pledged as collateral to secure payment to Central Star Credit Union, and has a collection action in the amount of \$27,493.90 pending against him, as evidenced by the attachment hereto as Exhibit L;
- h. Dailey has defaulted on a contract with Central Star Credit Union for the purchase of a 1987 Pace Arrow, Vin No. 1GBKP37W6H3338386, which was pledged as collateral to secure payment to Central Star Credit Union, and has a collection action in the amount of \$10,820.63 pending against him, as evidenced by the attachment hereto as Exhibit M;
- i. Dailey has defaulted on a \$5,000.00 loan advance contract with Central Star Credit Union, and has a collection action in the amount of \$4,087.53 pending against him, as evidenced by the attachment hereto as Exhibit N;
- j. Dailey has defaulted on a \$3,000.00 Overdraft Protection Line of Credit Agreement with Central Star Credit Union, and has a collection action in the amount of \$4,161.84 pending against him, as evidenced by the attachment hereto as Exhibit O;
- k. Dailey has various creditors related to unpaid credit card accounts and unpaid cellular telephone accounts who are currently looking for him;
- l. At the time the representation were made, Dailey had not filed a 2008 personal tax returns;
- m. At the time the representation were made, Dailey had not filed a 2009 personal tax returns;
- n. At the time the representation were made, Dailey had not filed a 2010 personal tax returns;
- o. Dailey's EBJ Corporation has never filed a tax return;
- p. Dailey has previously filed Chapter 13 Bankruptcy. Thereafter, he defaulted on his agreed upon plan to pay back his creditors;
- q. After defaulting on his Chapter 13 bankruptcy, Dailey filed Chapter 7 Bankruptcy, which is the most severe type of bankruptcy; and
- r. Dailey has been involved in other civil lawsuits in which he was sued over his failure to pay his debts.

92. Dailey knew the representations were false or acted with reckless disregard for the

truth or falsity of the representations.

- 93. Dailey intended that Plaintiffs rely and act on these false representations.
- 94. Plaintiffs were at all times ignorant as to the falsity of the representations.
- 95. Plaintiffs justifiably relied upon the truth of Dailey's false representations.
- 96. Plaintiffs had a right to rely upon the truth of the false representations.
- 97. Plaintiffs have suffered a pecuniary loss as the proximate result of their reliance upon Dailey's false representations.

98. As a result of Dailey's fraudulent representations, Plaintiffs are entitled to recover actual or compensatory damages and punitive damages in amounts to be determined during the trial of this action.

FOR A FOURTH CAUSE OF ACTION
(CONVERSION)

- 99. Plaintiffs reallege all of the above allegations as if fully repeated verbatim herein.
- 100. At all relevant times, Dailey knew that he did not have a right to take the property and assets of Plaintiffs for his own personal benefit.
- 101. Dailey wrongfully converted and appropriated the assets owned by Plaintiffs to his own use and for his own benefit without the permission of Plaintiffs and with the intent of depriving Plaintiffs of possession of said assets.
- 102. The appropriation and conversion of property was willful, wanton, heedless, gross and reckless.
- 103. Plaintiffs have suffered and continue to suffer actual damages proximately caused by Dailey's breaches and misconduct and are entitled to damages in an amount which will adequately compensate Plaintiffs' injuries.
- 104. In addition to actual damages due Plaintiffs due to the intentional conduct of

Dailey, Plaintiffs are entitled to an amount of punitive damages which will adequately punish and impress upon Dailey the seriousness of his conduct.

FOR A FIFTH CAUSE OF ACTION

(BREACH OF CONTRACT AND BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT)

105. Plaintiffs repeat and reallege each and every allegation contained in the above paragraphs as if repeated hereinafter verbatim.

106. Truman's Eclectic Irish Pub, Inc. and Dailey entered into an agreement regarding Dailey assisting Truman's Eclectic Irish Pub, Inc. in opening a pub.

107. Dailey obligated himself to act in good faith and fair dealing as well as to perform each and every obligation under the agreement with due care and in a timely fashion.

108. Dailey breached his obligations pursuant to the agreement; said breaches amount to willful acts and omissions of bad faith, self-dealing, intentional misconduct, knowing misappropriation and conversion of funds, knowing and willful breaches of duties under the agreement, and knowing violations of the law.

109. The breaches constitute bad faith violations of the implied contractual covenant of good faith and fair dealing and were committed with a fraudulent intent and accompanied by fraudulent acts.

110. The willful and intentional bad faith acts and omissions which constitute breaches under the agreement were at all times not in the best interests of Plaintiffs.

111. As a direct and proximate result of Dailey's breaches, Dailey has caused Plaintiffs to suffer grave damages.

112. Plaintiffs are entitled to an amount of actual, consequential damages and punitive damages in amounts to be determined at the trial of this action.

FOR A SIXTH CAUSE OF ACTION
(TRESPASS)

113. Plaintiffs reallege all of the above allegations as if fully repeated verbatim herein.

114. After his termination, Dailey trespassed on the Premises.

115. After trespassing on the Premises, Dailey illegally had the locks to the building changed.

116. Dailey had and has no legal right to be on the Premises and Plaintiffs were forced to obtain a Court order to restrain Dailey from entering the premises.

117. Plaintiffs request that actual and punitive damages be awarded against Dailey for his improper actions.

FOR A SEVENTH CAUSE OF ACTION
(INJUNCTION)

118. Plaintiffs repeat and allege, as if set forth here verbatim, all of the allegations made above.

119. Dailey is seeking to exercise his rights under the Employee Agreements that he improperly forced Truman's Eclectic Irish Pub, Inc. to sign.

120. Dailey has also entered the Premises unlawfully and changed the locks to the building.

121. Dailey has sought to sell equipment that was purchased for use in the business.

122. Dailey has not invested a dime of money in the Premises or the pub in general and has no money at stake whatsoever.

123. Plaintiff Tirone has invested over \$125,000 dollars in the business in the form of a loan.

124. Plaintiff also has a security agreement over all property owned, possessed, leased,

acquired, hereinafter acquired by Truman's Eclectic Irish Pub, Inc., including but in no way limited to equipment, financial accounts, accounts receivable, profits, revenues, lease agreements, good will, electronic data, inventory, or any other property of any kind whatsoever.

125. Plaintiffs seek to preserve their legitimate property interest by enjoining Dailey from exercising his rights any specific performance rights pursuant to Employee Agreements.

126. Plaintiffs also seek to enjoin Dailey from contacting Plaintiff's Helena Tirone's employer for any reason whatsoever related to Plaintiff.

127. An injunction in this case will not violate the public policy of the state of South Carolina.

128. Plaintiffs pray for the issuance of an injunction against Dailey to restrain and enjoin him from attempting to exercise his specific performance rights under the fraudulent Employment Agreement and further from contacting Plaintiff's employer for any reason whatsoever related to Plaintiff.

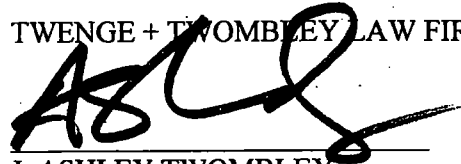
PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray:

- a) For all damages available under the law;
- b) For an injunction;
- c) That the Court enter a declaratory judgment declaring that the Employment Agreements are null and void due to Plaintiff being coerced and threatened into entering into said Agreements;
- d) That actual, consequential, direct, special and punitive, double and treble damages be awarded against Dailey in amounts to be determined by the trier of fact;
- e) That the Court award attorney's fees and costs in this matter;
- f) That the Court provide such other and further relief as it deems just and proper.

TWENGE + TWOMBLEY LAW FIRM

BY:



J. ASHLEY TWOMBLEY

311 Carteret Street

Beaufort, SC 29902

Telephone: (843) 982-0100

Facsimile: (843) 982-0103

www.twlawfirm.com

Attorneys for Plaintiffs

Beaufort, South Carolina

August 29, 2012

CERTIFICATE OF SERVICE

The undersigned, Andrea Smith, hereby avers that she is the Paralegal to TWENGE + TWOMBLEY LAW FIRM, Attorneys for Plaintiffs, and that on the 29th day of August 2012 a true and accurate copy of the attached was placed in an envelope with first class postage thereon prepaid through the United States Postal Service, and mailed to all counsel of record as follows:

André DuBose Rembert, Esquire
Attorney at law
183 Queen Street, Ste B
Charleston SC 29401
Telephone: (843) 518-3232
andrerembert@gmail.com
Attorney for Defendant

BY:

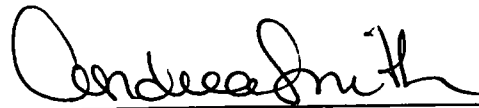

Andrea Smith, Paralegal to
TWENGE + TWOMBLEY LAW FIRM

EXHIBIT A

65

o.v.p.			
	DEPOSITS		
TOTAL			
THIS CHECK		3600	00
OTHER TRANS +/-			
BALANCE			

TRUMAN'S ECLECTIC IRISH PUB INC.
205 West Street
Beaufort, SC 29902

PAY to the
Order of

EBJ Corporation

Three thousand Six hundred



BRANCH BANKING AND TRUST COMPANY
1-800-BANK BBST BBST.COM

Ellickson's / Pkg

Date

1001

87-180/532

3,600⁰⁰

Dollars

NOT NEGOTIABLE

⑈00001001⑈ ⑆053201607⑆000523381570⑈

NOT NEGOTIABLE

111			
loop			
Baths			
	DEPOSITS		
TOTAL			
THIS CHECK		3400.00	
OTHER TRANS +/-			
BALANCE			

TRUMAN'S ECLECTIC IRISH PUB INC.

205 West Street
Beaufort, SC 29902

1028

67-160/532

PAY to the
order of

E.B.J. Corporation
three thousand four hundred

Date 11 April 11

3,400.00

Dollars



BRANCH BANKING AND TRUST COMPANY
1-800-BANK BB&T BB&T.com

Renovating (walk/Bathrooms)

NOT NEGOTIABLE

⑈00001028⑈ ⑆053201607⑆000522845307⑈

EXHIBIT B



0005222845302

BB&T

900-10-01-00 15110 0 C 001 30 50 002
 TRUMANS ECLECTIC IRISH PUB INC
 3620 PELHAM RD STE 107
 GREENVILLE SC 29615-5044

Your account statement

For 01/31/2011

Contact us



BBT.com



(800) BANK-BBT or
 (800) 226-5228

Important Information About Your BB&T Check Card Rewards Program

The BB&T Check Card Rewards Program is changing. The BB&T Visa Extras program is being discontinued and will be replaced by a new BB&T Check Card cash back rewards program.

As we transition to the new rewards program, please keep these important dates in mind:

March 31, 2011, is the last day for Check Card Visa Extras clients to earn points.

April 30, 2011, is the last day for Check Card Visa Extras clients to redeem points toward rewards. All remaining points will expire after this date.

We look forward to sharing more information about the new BB&T Check Card rewards program soon! For more information regarding these changes, please visit bbt.com/extras or contact your local financial center.

BUSINESS VALUE 500 CHECKING 0005222845302

Account summary

our previous balance as of 01/17/2011	\$0.00
checks	- 0.00
other withdrawals, debits and service charges	- 2,851.98
deposits, credits and interest	+ 50,280.73
our new balance as of 01/31/2011	= \$47,428.75

Other withdrawals, debits and service charges

DATE	DESCRIPTION	AMOUNT(\$)
1/19	INTERNET PAYMENT TRIALDEBIT USAA FSB 275176929	0.73
1/31	BB&T CHECK CARD PURCHASE LUMBER LIQUIDATORS 01-29 SAVANNAH GA 5248	2,830.41
1/31	BB&T CHECK CARD PURCHASE-PIN 01-29-11 BLUFFTON SC 5248 LOWE'S #1533	15.98
1/31	BB&T CHECK CARD PURCHASE-PIN 01-28-11 BLUFFTON SC 5248 THE HOME DEPOT 1115	4.86
Total other withdrawals, debits and service charges		= \$2,851.98

deposits, credits and interest

DATE	DESCRIPTION	AMOUNT(\$)
1/19	DEPOSIT	280.00
1/19	TRIALCREDIT USAA FSB XXXXXXXXXXXX6927	0.47
1/19	TRIALCREDIT USAA FSB XXXXXXXXXXXX6923	0.26
1/21	INCOMING WIRE TRANSFER WIRE REF# 20110121-00011534	50,000.00
Total deposits, credits and interest		= \$50,280.73



900-10-01-00 15110 0 C 001 30 50 002
 TRUMANS ECLECTIC IRISH PUB INC
 3620 PELHAM RD STE 107
 GREENVILLE SC 29615-5044

Your account statement

for 02/28/2011

Contact us



BBT.com



(800) BANK-BBT or
 (800) 226-5228

Small Business OnLine offers new features!

BB&T is pleased to announce the arrival of Small Business OnLine! This new online banking product offers all of the same online banking utilities as before, plus new features designed specifically for Small Businesses. Small Business OnLine gives you industry-leading online security and optional premium features, such as ACH/Wire and Manage Users, that enable you to customize your online banking experience to best suit your business. Please visit www.bbt.com/smallbusinessonline to learn more!

BUSINESS VALUE 500 CHECKING 0005222845302

Account summary

Previous balance as of 01/31/2011	\$47,428.75
Checks	- 6,780.99
Other withdrawals, debits and service charges	- 10,786.29
Deposits, credits and interest	+ 0.00
New balance as of 02/28/2011	= \$29,861.47

Checks

DATE	CHECK #	AMOUNT(\$)	DATE	CHECK #	AMOUNT(\$)	DATE	CHECK #	AMOUNT(\$)
02/09	1001	3,600.00	02/10	1002	1,374.00	02/18	1003	1,806.99
Total checks								= \$6,780.99

Other withdrawals, debits and service charges

DESCRIPTION	AMOUNT(\$)
1 ✓ BB&T CHECK CARD PURCHASE DELTA AIR 006797 01-30 MANKATO MN 5248	184.40
2 ✓ CHECK CHRG HARLAND CLARKE TRUMAN'S ECLECTIC IRIS	91.97
2 ✓ BB&T CHECK CARD PURCHASE-PIN 02-01-11 BEAUFORT SC 5248 CITY OF BEAUFORT	50.00
2 ✓ BB&T CHECK CARD PURCHASE-PIN 02-01-11 BEAUFORT SC 5248 STAPLES, INC.	36.90
3 ✓ BB&T CHECK CARD PURCHASE GRAYCO - LADY'S IS 02-01 843-5218060 SC 5248	67.55
3 ✓ BB&T CHECK CARD PURCHASE-PIN 02-02-11 BEAUFORT SC 5248 LOWE'S #1521	78.72
✓ BB&T CHECK CARD PURCHASE SHELL OIL 24693220 02-03 BEAUFORT SC 5248	57.46
✓ BB&T CHECK CARD PURCHASE THE UPS STORE #356 02-04 GREENVILLE SC 5248	5.92
✓ BB&T CHECK CARD PURCHASE GRAYCO - LADY'S IS 02-03 843-5218060 SC 5248	5.43
✓ BB&T CHECK CARD PURCHASE PILOT 0000 02-04 CLINTON SC 5248	75.00
✓ BB&T CHECK CARD PURCHASE-PIN 02-05-11 BEAUFORT SC 5248 LOWE'S #1521	60.38
✓ BB&T CHECK CARD PURCHASE LUTHER'S RARE AND 02-05 BEAUFORT SC 5248	58.29
✓ BB&T CHECK CARD PURCHASE-PIN 02-05-11 BEAUFORT SC 5248 AUTOZONE 1005 2602 BOU	8.01
✓ CHECK CARD NON-BB&T ATM FEE 02-10-11 FIRST CITIZENS 5248 921 BAY ST BEAUFORT SC	2.00
✓ BB&T CHECK CARD PURCHASE-PIN 02-10-11 BEAUFORT SC 5248 LOWE'S #1521	76.68
✓ ATM NETWORK CASH WITHDRAWAL 02-10-11 FIRST CITIZENS 5248 921 BAY ST BEAUFORT SC	43.00

continued

DATE	DESCRIPTION	AMOUNT(\$)
02/10	✓ BB&T CHECK CARD PURCHASE 84 LUMBER #2414 02-09 BEAUFORT SC 5248	X 3.20
02/14	✓ BB&T CHECK CARD PURCHASE BEAUFORT GENERAL S 02-11 BEAUFORT SC 5248	X 50.00
02/14	✓ BB&T CHECK CARD PURCHASE-PIN 02-12-11 BEAUFORT SC 5248 LOWE'S #1521	X 46.48
02/14	✓ BB&T CHECK CARD PURCHASE-PIN 02-12-11 BEAUFORT SC 5248 LOWE'S #1521	X 21.37
02/16	✓ BB&T CHECK CARD PURCHASE DTA HOLDINGS 02-15 216-751-5930 OH 5248	X 3,451.21
02/16	✓ BB&T CHECK CARD PURCHASE EZ SHOP #16 02-14 YEMASSEE SC 5248	X 75.00
02/16	✓ BB&T CHECK CARD PURCHASE CHIEFS WINGS AND F 02-14 GREENVILLE SC 5248	X 17.03
02/16	✓ BB&T CHECK CARD PURCHASE-PIN 02-16-11 BEAUFORT SC 5248 STAPLES, INC.	X 4.27
02/16	✓ BB&T CHECK CARD PURCHASE-PIN 02-16-11 BEAUFORT SC 5248 LOWE'S #1521	X 3.00
02/17	✓ BB&T CHECK CARD PURCHASE SCE & G 02-16 800-967-9649 SC 5248	X 598.50
02/17	✓ BB&T CHECK CARD PURCHASE SCE & G 02-16 800-967-9649 SC 5248	X 394.36
02/17	✓ BB&T CHECK CARD PURCHASE LOVES COUNTRY 0000 02-15 NEWBERRY SC 5248	X 74.98
02/17	✓ BB&T CHECK CARD PURCHASE PRINTS MADE EASY.C 02-15 800-263-0847 CA 5248	X 60.89
02/18	✓ CHECK CARD NON-BB&T ATM FEE 02-17-11 GEOVISTA CU 5248 400 AIRWAYS A SAVANNAH, GA	X 2.00
02/18	✓ CHECK CARD NON-BB&T ATM FEE 02-17-11 GEOVISTA CU 5248 400 AIRWAYS A SAVANNAH, GA	X 2.00
02/18	✓ BB&T CHECK CARD PURCHASE-PIN 02-18-11 BEAUFORT SC 5248 LOWE'S #1521	X 1,000.00
02/18	✓ ATM NETWORK CASH WITHDRAWAL 02-17-11 GEOVISTA CU 5248 400 AIRWAYS A SAVANNAH, GA	X 302.00
02/18	✓ BB&T CHECK CARD PURCHASE SEA ISLAND WINE AN 02-17 BEAUFORT SC 5248	X 30.07
02/18	✓ ATM NETWORK CASH WITHDRAWAL 02-17-11 GEOVISTA CU 5248 400 AIRWAYS A SAVANNAH, GA	X 22.00
02/22	✓ BB&T CHECK CARD PURCHASE-PIN 02-20-11 BEAUFORT SC 5248 LOWE'S #1521	X 1,000.00
02/22	✓ BB&T CHECK CARD PURCHASE SALTUS RIVER GRILL 02-19 BEAUFORT SC 5248	X 128.17
02/22	✓ BB&T CHECK CARD PURCHASE KANGAROO EXP #862 02-21 BEAUFORT SC 5248	X 90.67
02/22	✓ BB&T CHECK CARD PURCHASE SHELL OIL 24693220 02-19 BEAUFORT SC 5248	X 53.09
02/22	✓ BB&T CHECK CARD PURCHASE LUTHER'S RARE AND 02-20 BEAUFORT SC 5248	X 45.46
02/22	✓ BB&T CHECK CARD PURCHASE GRAYCO - LADYS ISL 02-18 843-5218060 SC 5248	X 6.40
02/23	✓ BB&T CHECK CARD PURCHASE LUTHER'S RARE AND 02-21 BEAUFORT SC 5248	X 50.52
02/23	✓ BB&T CHECK CARD PURCHASE LUTHER'S RARE AND 02-21 BEAUFORT SC 5248	X 32.00
02/24	✓ BB&T CHECK CARD PURCHASE dublin down Irish 02-22 daniel island SC 5248	X 99.08
02/24	✓ BB&T CHECK CARD PURCHASE PAPAJOHNS#2419.COM 02-23 843-524-3400 SC 5248	X 36.80
02/24	✓ BB&T CHECK CARD PURCHASE MADRA RUA IRISH PU 02-22 N CHARLESTON SC 5248	X 28.03
02/25	✓ BB&T CHECK CARD PURCHASE-PIN 02-25-11 BEAUFORT SC 5248 LOWE'S #1521	X 1,000.00
02/28	✓ BB&T CHECK CARD PURCHASE-PIN 02-27-11 BEAUFORT SC 5248 LOWE'S #1521	X 1,000.00
02/28	✓ BB&T CHECK CARD PURCHASE EMILY'S 02-25 BEAUFORT SC 5248	X 73.33
02/28	✓ BB&T CHECK CARD PURCHASE NIPPY'S FISH 02-26 BEAUFORT SC 5230	X 42.97
02/28	✓ BB&T CHECK CARD PURCHASE THE NEW MONTANAS 02-25 BLUFFTON SC 5248	X 39.70
Total other withdrawals, debits and service charges		= \$10,786.29

In March of 2010, BB&T began waiving per item fees (Overdraft Paid Fees) incurred for ATM and debit card transactions if your account was overdrawn by less than \$5.00 at the end of posting. Please be aware that the waiving of the per item fees does not waive any other applicable service fees, including the Negative Account Balance fee.

The Negative Account Balance fee of \$33.00 is charged to your account if it remains negative for 7 consecutive days.

As a client, you are in the best position to maintain an accurate and current record of your deposits and withdrawals. We encourage you to utilize information provided through your local BB&T Financial Center, BB&T ATM machines, BB&T Phone24, BB&T Online, and BB&T Mobile in maintaining your account record prior to writing a check, withdrawing cash, or initiating any electronic or debit transaction.

Effective December 31, 2010 through December 31, 2012; noninterest-bearing transaction accounts are insured in full by the Federal Deposit Insurance Corporation. This temporary unlimited coverage is in addition to, and separate from, the coverage of at least 250,000.00 available to depositors under the FDIC's general deposit insurance rules.

The term "noninterest-bearing transaction account" includes a traditional checking account or demand deposit account on which the insured depository institution pays no interest. It does not include other accounts, such as traditional checking or demand deposit accounts that may earn interest, NOW accounts, and money-market deposit accounts.

February 2011

Check - 1001 - 3600.=-

check - 1002 - 1374.=-

Check - 1003 - 1806.99

- 1) Travel - Airfare - 184.40
- (2) Check's - 91.97
- (3) City of Beaufort - 50.00 ?
- 4) Staples - 36.90 (Office Supplies)
- 5) Grayco - 67.55 ?
- 6) Lowe's - 78.72 - Build-Out / Supplies
- 7) Shell Oil - 57.46 - Gas / Fuel ?
- 8) UPS - 5.92 - Postage
- 9) Grayco - 5.43 ?
- 10) Pilot - 75.00 ?
- 11) Lowe's - 60.38 - Build-out / Supplies
- 12) Luther's Pub - 58.29 - Restaurant
- 13) Autozone - 8.01
- 14) ATM Fee - Bank Service Charge - 2.00
- 15) Lowe's - 76.68 - Build-out / Supplies
- 16) ATM Cash - 43.60 ?

84 Lumber - 3.20 - Build Out / Supplies

General - 50.00 ?

- (17) Lowes - 46.48 - Build Out.
- (20) Lowes - 21.37 - Build / Supplies
- (30) DTA Holdings - 3451.21
- (31) VENASSEE - 75.00 ?
- (42) Chief Wigs - 17.03 (Hair)
- (33) staples - 4.27 - Office
- (34) Lowes - 3.00 Build / Supplies
- (35) SCE's G - 598.50 - ?
- (36) SCE's G - 394.36 - ?
- (37) Lowes - 74.98 ?
- (38) Prints - 60.89 ?
- (39) ATM Fee - 2.00
- (40) ATM Fee - 2.00
- (41) Lowes - 1,000.00 - Build / Supplies
- (42) ATM - 302.00 ?
- (43) Sea Island Inn - 30.67
- (44) ATM - 22.00 ?
- (45) Lowes - 1000.00 Supplies / Build
- (46) Seltos Pub - 128.17
- (47) Kunguon Express - 90.67
- (48) Shell Oil - 53.09

(Over)

- 1) Luttering Lane - 45.44
- 1) Greycoi - 6.40
- 1) Luttering Lane - 50.52
- 1) Luttering Lane - 32.00
- 1) Dublin Irish Pub - 99.03
- 1) Pappa John's - 36.80
- 1) Lowes - 1000.00
- 1) Lowes - 1000.00
- 1) Family's - 73.33
- 1) Hippys Fish - 42.97
- 1) The New Montanas - 39.70



SERVICE ADDRESS

TRUMAN'S ECLECTIC IRISH PUB INC
205 WEST ST
BEAUFORT SC 29902-5558ACCOUNT NUMBER
1-2100-8845-2117

Page 1 of 2

TOTAL AMOUNT DUE
\$1,800.00

www.sceg.com

CUSTOMER SERVICE - 24 HOURS A DAY
1-800-251-7234, toll-freeNOTICE DATE
January 19, 2011**Payment Options****Online:** Visit sceg.com to pay directly from your bank account or credit card.**By Mail:** Pay by check or money order using the enclosed envelope. Please do not pay by cash.**By Phone:** Call 1-800-450-9160, toll-free, 24 hours a day to pay using your credit card, debit card or directly from your bank account. There is a fee of \$3.50 per transaction that BillMatrix receives for providing this service. Additional limitations may apply.**Business Office:** Visit an SCE&G business office located near you to pay in person. This is a free service.

BEAUFORT OFFICE, 108 ROBERT SMALLS PARKWAY, BEAUFORT SC 29901

A late payment charge of 1.5 % will be added to any balance remaining 25 days after billing.

Unauthorized Payment Agencies: Additional payment centers may exist that are not SCE&G authorized payment agencies. While these unauthorized agencies may accept your SCE&G payment, they will charge you a fee for doing so, and your payment will be delayed in reaching SCE&G.**DEPOSIT NOTICE**

A deposit of \$1,800.00 has been billed to your account. Interest, currently 3.5%, will be earned on this deposit after payment is received, provided it is held for at least six (6) months.

Please pay \$1,800.00 by 5:00 PM on February 1, 2011 to avoid further credit action, which may include disconnection of your service.

If service is disconnected, some or all of the following may be required to restore your service:

- the total amount due for electric and/or natural gas service,
- a reconnection fee, and
- a deposit.

Please use one or more of the following payment options:

- CASH • CHECK • MONEY ORDER • CASHIER'S CHECK
- ONLINE at sceg.com (by credit card or directly from your bank account)
- BY PHONE using BillMatrix

If this notice does not agree with your records, or if you require assistance with payment options, please contact SCE&G immediately at 1-800-251-7234. Para mayor explicación acerca de este importante aviso, por favor llame a SCE&G y pida hablar con un representante en español.

PLEASE RETURN THIS PORTION WITH YOUR PAYMENT.

DEPOSIT AMOUNT
\$1,800.00 due 2/1/11ACCOUNT NUMBER
1-2100-8845-2117TOTAL AMOUNT DUE
\$1,800.00

80204

019502755

TRUMAN'S ECLECTIC IRISH PUB INC
205 WEST ST
BEAUFORT SC 29902-5558PO Box 100255
Columbia, SC 29202-3255

Please enter amount enclosed.

\$

Write account number on check
and make payable to SCE&G.

1210088452117030000018000001110000180000

68



DL 0005222845302



900-10-01-00 15110 0 C 001 30 50 002
TRUMANS ECLECTIC IRISH PUB INC
3620 PELHAM RD STE 107
GREENVILLE SC 29615-5044

Your account statement

For 03/31/2011

Contact us



BBT.com



(800) BANK-BBT or
(800) 226-5228

New Year's resolutions are hard to keep - except when they simplify your life.

Every day we make decisions to simplify our busy personal lives. We use online banking with bill payment and use the online statement feature to save time and money as we manage our personal finances. What about your business life? You can make the same decisions to save time, save money and be more effective in the new year! Less paper means easier access, less time filing and more time to do the things that are most important to your business.

- CD-Rom Imaging provides you a CD with images of all of your paid checks for the month - convenient access and control are yours without the hassle, inconvenience and storage expense of paper documents.
- Check Safekeeping provides you an image of a paid check when you need it. BB&T ensures full images of your paid checks are available to you for 10 years.
- Full check images may be viewed and/or saved via your favorite BB&T online banking service.

If you would like to learn more about any of these options, contact your BB&T Relationship Manager or visit your nearest financial center.

■ BUSINESS VALUE 500 CHECKING 0005222845302

Account summary

Your previous balance as of 02/28/2011	\$29,861.47
Checks	- 17,922.08
Other withdrawals, debits and service charges	- 22,579.42
Deposits, credits and interest	+ 16,830.41
Your new balance as of 03/31/2011	= \$6,190.38

Checks

DATE	CHECK #	AMOUNT(\$)	DATE	CHECK #	AMOUNT(\$)	DATE	CHECK #	AMOUNT(\$)
03/02	1004	1,000.00	03/14	1010	2,550.00	03/25	1017	2,865.92
03/04	1005	2,000.00	03/14	1011	930.00	03/29	1018	1,000.00
03/17	1006	225.00	03/16	1012	508.00	03/02	*1100	500.00
03/11	*1008	2,000.00	03/17	*1015	2,000.00	03/17	1101	143.16
03/22	1009	2,000.00	03/22	1016	200.00			

indicates a skip in sequential check numbers above this item

Total checks = \$17,922.08

Other withdrawals, debits and service charges

DATE	DESCRIPTION	AMOUNT(\$)
03/01	BB&T CHECK CARD PURCHASE LUTHER'S RARE AND 02-27 BEAUFORT SC 5248	87.07 ✓
03/01	BB&T CHECK CARD PURCHASE PAPA JOHNS #2419 02-27 843-524-3400 SC 5248	51.14 ✓
03/01	BB&T CHECK CARD PURCHASE SHELL OIL 53905200 02-27 LADIES ISLAND SC 5248	23.68 ✓

continued

DATE	DESCRIPTION	AMOUNT(\$)
03/01	CHECK CARD NON-BB&T ATM FEE 02-28-11 Star NE 5248 1300 BOUNDRY BEAUFORT SC	2.00✓
03/01	ATM NETWORK CASH WITHDRAWAL 02-28-11 Star NE 5248 1300 BOUNDRY BEAUFORT SC	122.50✓
03/01	BB&T CHECK CARD PURCHASE-PIN 02-28-11 BEAUFORT SC 5248 LOWE'S #1521	64.44✓
03/01	BB&T CHECK CARD PURCHASE KANGAROO EXP #862 02-28 BEAUFORT SC 5248	16.08✓
03/02	BB&T CHECK CARD PURCHASE BILL'S LIQUOR STOR 03-01 BEAUFORT SC 5248	22.88✓
03/02	BB&T CHECK CARD PURCHASE REILLYS BAR & GRI 03-01 HILTON HEAD I SC 5248	16.95✓
03/02	BB&T CHECK CARD PURCHASE-PIN 03-01-11 BEAUFORT SC 5248 BILLS LIQUOR STORE #1	26.52✓
03/03	BB&T CHECK CARD PURCHASE BEAUFORT GENERAL S 02-28 BEAUFORT SC 5248	50.00✓
03/03	CHECK CARD NON-BB&T ATM FEE 03-02-11 FIRST CITIZENS 5248 921 BAY ST BEAUFORT SC	2.00✓
03/03	ATM NETWORK CASH WITHDRAWAL 03-02-11 FIRST CITIZENS 5248 921 BAY ST BEAUFORT SC	123.00✓
03/03	BB&T CHECK CARD PURCHASE NIPPY'S FISH 03-02 BEAUFORT SC 5248	6.45✓
03/07	BB&T CHECK CARD PURCHASE LUTHER'S RARE AND 03-03 BEAUFORT SC 5248	35.71✓
03/07	CHECK CARD NON-BB&T ATM FEE 03-04-11 BANK OF AMERICA 5248 *LADIES ISLAN BEAUFORT SC	2.00✓
03/07	BB&T CHECK CARD PURCHASE-PIN 03-06-11 BEAUFORT SC 5248 LOWE'S #1521	1,000.00✓
03/07	BB&T 24 CASH WITHDRAWAL 03-06-11 5248 PORT REPUBLIC STREET BEAUFORT	300.00✓
03/07	BB&T 24 CASH WITHDRAWAL 03-05-11 5248 PORT REPUBLIC STREET BEAUFORT	220.00✓
03/07	BB&T CHECK CARD PURCHASE-PIN 03-05-11 BEAUFORT SC 5248 LOWE'S #1521	213.06✓
03/07	BB&T 24 CASH WITHDRAWAL 03-05-11 5248 PORT REPUBLIC STREET BEAUFORT	120.00✓
03/07	BB&T CHECK CARD PURCHASE BEST WESTERN HOTEL 03-06 BEAUFORT SC 5248	116.54✓
03/07	ATM NETWORK CASH WITHDRAWAL 03-04-11 BANK OF AMERICA 5248 *LADIES ISLAN BEAUFORT SC	102.00
03/07	BB&T CHECK CARD PURCHASE LUTHER'S RARE AND 03-04 BEAUFORT SC 5248	89.29
03/07	BB&T CHECK CARD PURCHASE KANGAROO EXP #862 03-05 BEAUFORT SC 5248	62.55
03/07	BB&T CHECK CARD PURCHASE BEAUFORT GENERAL S 03-05 BEAUFORT SC 5248	49.09
03/07	BB&T CHECK CARD PURCHASE GRAYCO - LADYS ISL 03-05 843-5218060 SC 5248	44.18
03/07	BB&T CHECK CARD PURCHASE-PIN 03-06-11 BEAUFORT SC 5248 LOWE'S #1521	40.46
03/07	BB&T CHECK CARD PURCHASE-PIN 03-04-11 BEAUFORT SC 5248 PUBLIX SUPER MAR 163 SE	32.21
03/07	BB&T CHECK CARD PURCHASE MCDONALD'S F3466 03-05 BEAUFORT SC 5248	29.43
03/07	BB&T CHECK CARD PURCHASE-PIN 03-05-11 BEAUFORT SC 5248 LOWE'S #1521	28.60
03/07	BB&T 24 CASH WITHDRAWAL 03-05-11 5248 PORT REPUBLIC STREET BEAUFORT	20.00
03/07	BB&T CHECK CARD PURCHASE MCDONALD'S F13609 03-06 BEAUFORT SC 5248	16.35
03/07	BB&T CHECK CARD PURCHASE GRAYCO - LADYS ISL 03-05 843-5218060 SC 5248	10.70
03/07	BB&T CHECK CARD PURCHASE-PIN 03-05-11 BEAUFORT SC 5248 LOWE'S #1521	6.05
03/08	BB&T CHECK CARD PURCHASE LUTHER'S RARE AND 03-06 BEAUFORT SC 5248	50.78
03/09	BB&T CHECK CARD PURCHASE SPRINT *WIRELESS 03-09 800-639-6111 VA 5248	1,305.04
03/09	BB&T CHECK CARD PURCHASE RR ENTERPRISES 03-08 BEAUFORT SC 5248	58.62
03/10	BB&T CHECK CARD PURCHASE CHARTER COMM 03-10 888-438-2427 SC 5248	120.85
03/11	BB&T CHECK CARD RECURRING PYMT ELICKSON USA LLC 03-09 443-2035168 MD 5248	534.00
03/11	BB&T CHECK CARD PURCHASE 03-10-11 CAYCE SC 5248 PILOT	96.30
03/11	BB&T CHECK CARD PURCHASE-PIN 03-10-11 BEAUFORT SC 5248 STAPLES, INC.	75.15
03/14	BB&T CHECK CARD PURCHASE PRO DISPOSAL 03-11 843-3212333 SC 5248	363.68
03/14	BB&T CHECK CARD PURCHASE BEAUFORT GENERAL S 03-10 BEAUFORT SC 5248	49.20
03/14	BB&T CHECK CARD PURCHASE EMILY'S 03-11 BEAUFORT SC 5230	79.78
03/14	BB&T CHECK CARD PURCHASE-PIN 03-12-11 BEAUFORT SC 5230 PIGGLY WIGGLY 033	74.02
03/14	BB&T CHECK CARD PURCHASE-PIN 03-12-11 BEAUFORT SC 5230 STAPLES, INC.	31.55
03/14	BB&T CHECK CARD PURCHASE LUTHER'S RARE AND 03-11 BEAUFORT SC 5230	26.25
03/15	BB&T CHECK CARD PURCHASE LUTHER'S RARE AND 03-13 BEAUFORT SC 5230	39.11
03/15	BB&T CHECK CARD PURCHASE SALTUS RIVER GRILL 03-12 BEAUFORT SC 5230	28.76
03/15	CHECK CARD NON-BB&T ATM FEE 03-14-11 KATIE O'DONALD'S 5230 1008 FORDING Bluffton SC	2.00
03/15	ATM NETWORK CASH WITHDRAWAL 03-14-11 KATIE O'DONALD'S 5230 1008 FORDING Bluffton SC	103.00
03/15	BB&T CHECK CARD PURCHASE-PIN 03-14-11 BEAUFORT SC 5230 LOWE'S #1521	29.77
03/16	BB&T CHECK CARD PURCHASE MICRO MATIC DISPEN 03-15 818-8828012 CA 5230	6,298.22
03/16	BB&T CHECK CARD PURCHASE PENDER BROTHERS, I 03-15 PORT ROYAL SC 5230	224.70
03/16	BB&T CHECK CARD PURCHASE BEST WESTERN HOTEL 03-15 BEAUFORT SC 5230	116.54
03/17	BB&T CHECK CARD PURCHASE LUTHER'S RARE AND 03-16 BEAUFORT SC 5230	54.75
03/18	BB&T CHECK CARD PURCHASE LUTHER'S RARE AND 03-16 BEAUFORT SC 5230	100.03
03/18	BB&T CHECK CARD PURCHASE-PIN 03-17-11 BEAUFORT SC 5230 LOWE'S #1521	316.29
03/21	BB&T CHECK CARD PURCHASE LUTHER'S RARE AND 03-17 BEAUFORT SC 5230	18.00
03/21	BB&T CHECK CARD PURCHASE-PIN 03-20-11 BEAUFORT SC 5230 LOWE'S #1521	288.65

continued



■ BUSINESS VALUE 500 CHECKING 0005222845302 (continued)

DATE	DESCRIPTION	AMOUNT(\$)
03/21	BB&T 24 CASH WITHDRAWAL 03-20-11 5230 PORT REPUBLIC STREET BEAUFORT	220.00
03/21	BB&T 24 CASH WITHDRAWAL 03-19-11 5230 PORT REPUBLIC STREET BEAUFORT	200.00
03/21	BB&T CHECK CARD PURCHASE ABC SELF STORAGE 03-19 BEAUFORT SC 5230	195.00
03/21	BB&T CHECK CARD PURCHASE PENDER BROTHERS, I 03-18 PORT ROYAL SC 5230	96.30
03/21	BB&T CHECK CARD PURCHASE CIRCLE K 05386 03-19 BEAUFORT SC 5230	74.21
03/21	BB&T CHECK CARD PURCHASE-PIN 03-18-11 BEAUFORT SC 5230 LADY'S ISLAND FEED & SE	56.70
03/21	BB&T CHECK CARD PURCHASE LUTHER'S RARE AND 03-19 BEAUFORT SC 5230	47.12
03/21	BB&T CHECK CARD PURCHASE-PIN 03-20-11 BEAUFORT SC 5230 LOWE'S #1521	46.32
03/22	BB&T CHECK CARD PURCHASE LUTHER'S RARE AND 03-20 BEAUFORT SC 5230	38.99
03/22	BB&T CHECK CARD PURCHASE-PIN 03-21-11 BEAUFORT SC 5230 LOWE'S #1521	190.04
03/22	BB&T CHECK CARD PURCHASE-PIN 03-21-11 BEAUFORT SC 5230 LOWE'S #1521	2.97
03/23	BB&T CHECK CARD PURCHASE-PIN 03-22-11 BEAUFORT SC 5230 LOWE'S #1521	292.57
03/23	BB&T CHECK CARD PURCHASE-PIN 03-22-11 BEAUFORT SC 5230 LOWE'S #1521	122.96
03/23	BB&T CHECK CARD PURCHASE ABC SELF STORAGE 03-22 BEAUFORT SC 5230	56.00
03/23	BB&T CHECK CARD PURCHASE-PIN 03-22-11 BEAUFORT SC 8612 PUBLIX SUPER MAR 163 SE	54.40
03/24	BB&T CHECK CARD PURCHASE EXXONMOBIL 4755 03-22 BEAUFORT SC 8612	61.06
03/24	BB&T CHECK CARD PURCHASE ABC SELF STORAGE 03-23 BEAUFORT SC 5230	53.00
03/24	BB&T CHECK CARD PURCHASE FIREHOUSE SUBS #49 03-23 BEAUFORT SC 8612	21.54
03/24	BB&T CHECK CARD PURCHASE-PIN 03-23-11 BEAUFORT SC 8612 PIGGLY WIGGLY 033	83.44
03/24	BB&T 24 CASH WITHDRAWAL 03-23-11 8612 PORT REPUBLIC STREET BEAUFORT	60.00
03/24	BB&T CHECK CARD PURCHASE-PIN 03-23-11 BEAUFORT SC 8612 LOWE'S #1521	49.11
03/25	BB&T CHECK CARD PURCHASE U-HAULABC SELF STO 03-23 BEAUFORT SC 5230	105.00
03/25	BB&T CHECK CARD PURCHASE U-HAULABC SELF STO 03-23 BEAUFORT SC 5230	97.40
03/25	BB&T CHECK CARD PURCHASE LUTHER'S RARE AND 03-23 BEAUFORT SC 8612	69.44
03/25	BB&T CHECK CARD PURCHASE CIRCLE K 05386 03-23 BEAUFORT SC 8612	13.63
03/25	BB&T CHECK CARD PURCHASE-PIN 03-24-11 BEAUFORT SC 8612 LOWE'S #1521	352.31
03/28	BB&T CHECK CARD PURCHASE-PIN 03-26-11 BEAUFORT SC 8612 LOWE'S #1521	530.55
03/28	BB&T CHECK CARD PURCHASE-PIN 03-26-11 BEAUFORT SC 8612 LOWE'S #1521	370.89
03/28	BB&T CHECK CARD PURCHASE-PIN 03-27-11 BEAUFORT SC 8612 LOWE'S #1521	303.02
03/28	BB&T CHECK CARD PURCHASE BREAKWATER 03-26 BEAUFORT SC 8612	212.07
03/28	BB&T CHECK CARD PURCHASE-PIN 03-26-11 BEAUFORT SC 8612 LOWE'S #1521	121.54
03/28	BB&T CHECK CARD PURCHASE-PIN 03-26-11 BEAUFORT SC 8612 LOWE'S #1521	60.54
03/28	BB&T CHECK CARD PURCHASE BEAUFORT GENERAL S 03-26 BEAUFORT SC 8612	49.08
03/28	BB&T CHECK CARD PURCHASE-PIN 03-26-11 BEAUFORT SC 8612 PIGGLY WIGGLY 033	30.91
03/28	BB&T CHECK CARD PURCHASE-PIN 03-26-11 BEAUFORT SC 8612 BI-LO 158	27.92
03/28	BB&T CHECK CARD PURCHASE LUTHER'S RARE AND 03-26 BEAUFORT SC 8612	26.00
03/29	BB&T CHECK CARD PURCHASE BEAUFORT WINLECTRI 03-28 BEAUFORT SC 8612	667.97
03/29	BB&T 24 CASH WITHDRAWAL 03-28-11 8612 PORT REPUBLIC STREET BEAUFORT	200.00
03/29	BB&T CHECK CARD PURCHASE-PIN 03-28-11 BEAUFORT SC 8612 LOWE'S #1521	105.33
03/29	BB&T CHECK CARD PURCHASE-PIN 03-28-11 BEAUFORT SC 8612 LOWE'S #1521	74.84
03/29	BB&T CHECK CARD PURCHASE-PIN 03-29-11 BEAUFORT SC 8612 LOWE'S #1521	64.49
03/30	BB&T CHECK CARD PURCHASE HARLEYSVILLE INSUR 03-29 800-3388301 PA 8612	1,313.60
03/30	BB&T CHECK CARD PURCHASE BEAUFORT GENERAL S 03-28 BEAUFORT SC 8612	49.15
03/30	BB&T CHECK CARD PURCHASE GRAYCO - HOME CENT 03-28 843-5218044 SC 8612	15.99
03/30	BB&T CHECK CARD PURCHASE-PIN 03-29-11 BEAUFORT SC 8612 LOWE'S #1521	18.75
03/31	BB&T CHECK CARD PURCHASE PRO DISPOSAL 03-29 843-3212333 SC 8612	309.50
03/31	BB&T CHECK CARD PURCHASE BEAUFORT JASPER WA 03-29 843-9879270 SC 8612	259.96
03/31	BB&T CHECK CARD PURCHASE KANGAROO EXP # 912 03-29 RIDGELAND SC 8612	58.44
03/31	ACH CORP DEBIT NTCLBIVRC THE HARTFORD TRUMAN'S ECLECTIC IRIS	1,311.40
03/31	BB&T 24 CASH WITHDRAWAL 03-30-11 8612 PORT REPUBLIC STREET BEAUFORT	100.00
Total other withdrawals, debits and service charges		= \$22,579.42

deposits, credits and interest

DATE	DESCRIPTION	AMOUNT(\$)
1/21	DEPOSIT	14,000.00

continued

171

DATE	DESCRIPTION	AMOUNT(\$)
03/24	BB&T CHECK CARD RETURN LUMBER LIQUIDATORS 03-23 SAVANNAH GA 5248	2,830.41
Total deposits, credits and interest		= \$16,830.41

AMENDMENT TO THE BUSINESS SERVICES PRICING GUIDE Effective May 1, 2011

The following changes are being made to the *Business Services Pricing Guide* that you received when you opened your BB&T account. Continued use of your account after **May 1, 2011**, constitutes your acceptance of the changes. Also, important changes are being made to BB&T Treasury Management Fees. These fees are referenced in the Treasury Management Agreement you have with BB&T. You may not be impacted by the fee changes listed, depending on your account activity and the services that you use. Except for the information contained in this communication, the remainder of the terms and conditions of your agreement with BB&T remain unchanged. If you do not have a copy of the *Business Services Pricing Guide*, or if you have questions about the Treasury Management fees, contact your local BB&T financial center, your relationship manager, or call 1-800-BANK BBT (1-800-226-5228).

Business Services Pricing Guide

Treasury Services Fees

Business Regular Checking, Collateral Reserve Checking, Public Fund Regular Checking, Not-For-Profit Special Interest Checking, and Public Special Money Rate Checking		Wholesale Lockbox Services	
Monthly Maintenance Fee	\$15.00	Maintenance	\$115.00
Earnings² Checking and Earnings² Checking, Public Funds		Payments	\$0.40
Deposit or Other Credit	\$0.82	Monthly Package Prep	\$20.00
Deposited Items - BB&T	\$0.12	Remitter Data Entry	\$0.015
Check Paid or Other Debit	\$0.20	MICR Repair	\$0.015
Coin and Currency, Per \$1,000 Deposited	\$1.90	CD Fee	\$15.00
Depository Services		DVD Fee	\$15.00
Pre-Encoded Deposit Items - BB&T	\$0.12	Retail Lockbox Services	
Pre-Encoded Deposit Items - Other In-State Institution	\$0.12	Monthly Package Prep	\$20.00
Pre-Encoded Deposit Items - Out-of-State Institution	\$0.12	MICR Repair	\$0.015
Statement Services		OCR Repair	\$0.015
Easy Image Statement	\$2.00	CD Fee	\$15.00
(This fee will be charged for clients who receive as part of their deposit statement reduced-size front images, 10 per page, of paid checks. You may avoid this fee by requesting free BB&T Check Safekeeping.)		DVD Fee	\$15.00
Check/Substitute Check Enclosure, Per Check	\$0.06	Stop File Maintenance	\$50.00
(This fee applies only to clients using this service in products Business Regular Checking, Collateral Reserve Checking, Public Fund Regular Checking, Earnings ² Checking, Public Special Money Rate Checking, NFP Special Interest Checking, Business Interest Checking with ECR, and Public Fund Interest Checking with ECR. You may avoid this fee by requesting free BB&T Check Safekeeping.)		Check & List/Check Only	\$0.015
International Services		ACH	
Foreign Check Returned Item	\$30.00	ACH Received Credits (up to 100)	\$0.55
(This fee will be charged when USD/FX denominated checks drawn on foreign banks are being returned by the drawee bank for any reason. This is in addition to any foreign bank fee.)		Small Business ACH Items	\$1.50
		Wire Transfer	
		Incoming Wire - Domestic	\$14.00
		Incoming Wire - International	\$18.00
		CashManager OnLine - Repetitive Wire	\$10.00
		CashManager OnLine - Non Repetitive Wire	\$11.00
		Positive Pay (Fax delivery, not yet converted to CMOL)	
		Positive Pay Maintenance Fee (Fax delivery)	\$50.00
		Positive Pay Items (Fax delivery)	\$0.10
		CashManager OnLine Maintenance	
		Prior Day Maintenance	\$40.00
		Current Day Maintenance	\$40.00
		Small Business Maintenance	\$35.00
		Controlled Disbursement	
		Controlled Disbursement - Maintenance (InfoFax delivery)	\$150.00



On April 11, 2011, the name of the fees for non-sufficient funds will change as follows:

- The "NSF Item Paid Fee" will become "Overdraft Fee."
- The "NSF Item Return Fee" will become "Returned Item Fee."

Depending on the type of item presented and your decision for Overdraft Review, overdrawn items that are paid will be charged an "Overdraft Fee" and overdrawn items that are returned will be charged a "Returned Item Fee." There is no change to the fee amount. Please contact your local Financial Center if you have any questions. Thank you.



900-10-01-00 15110 0 C 001 30 50 002
 TRUMANS ECLECTIC IRISH PUB INC
 3620 PELHAM RD STE 107
 GREENVILLE SC 29615-5044

Your account statement

For 04/29/2011

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To discover more about our award-winning service, visit one of our financial centers, talk to a Relationship Manager, call 1-800-BANK BBT (1-800-226-5228) or visit BBT.com/Greenwich.

The Greenwich competitive benchmarking survey was taken in 2010 and was based on more than 10,000 interviews with companies with sales of \$1MM to \$500MM.

■ BUSINESS VALUE 500 CHECKING 0005222845302

Account summary

Your previous balance as of 03/31/2011	\$6,190.38
Checks	- 9,534.00
Other withdrawals, debits and service charges	- 10,853.39
Deposits, credits and interest	+ 29,022.76
Your new balance as of 04/29/2011	= \$14,825.75

Checks

DATE	CHECK #	AMOUNT(\$)	DATE	CHECK #	AMOUNT(\$)	DATE	CHECK #	AMOUNT(\$)
04/04	1020	980.00	04/14	1023	2,000.00	04/18	1027	654.00
04/13	1021	950.00	04/14	*1025	500.00	04/15	1028	3,400.00
04/13	1022	60.00	04/14	1026	990.00			

* indicates a skip in sequential check numbers above this item

Total checks = \$9,534.00

Other withdrawals, debits and service charges

DATE	DESCRIPTION	AMOUNT(\$)
04/01	BB&T CHECK CARD PURCHASE LUTHER'S RARE AND 03-30 BEAUFORT SC 8612	10.25
04/01	BB&T CHECK CARD PURCHASE-PIN 03-31-11 BEAUFORT SC 8612 PIGGLY WIGGLY 033	59.43
04/04	BB&T CHECK CARD PURCHASE ABC SELF STORAGE 04-01 BEAUFORT SC 5230	475.00
04/04	BB&T CHECK CARD PURCHASE STATE FARM INSURAN 04-01 800-956-6310 IL 8612	471.90
04/04	BB&T CHECK CARD PURCHASE DTA HOLDINGS 04-01 216-751-5930 OH 8612	576.00

continued

DATE	DESCRIPTION	AMOUNT(\$)
4/04	BB&T CHECK CARD PURCHASE-PIN 04-01-11 BEAUFORT SC 8612 LOWE'S #1521	120.19
4/04	BB&T CHECK CARD PURCHASE SHELL OIL 24693220 04-01 BEAUFORT SC 8612	79.36
4/04	BB&T CHECK CARD PURCHASE HOME TEAM BBQ OF S 04-02 SULLIVANS ISL SC 8612	51.91
4/06	BB&T CHECK CARD PURCHASE ELICKSON USA LLC 04-04 443-2035168 MD 8612	1,065.00
4/06	BB&T CHECK CARD PURCHASE STOP N SHOP 04-05 YEMASSEE SC 8612	60.10
4/06	BB&T CHECK CARD PURCHASE KANGAROO EXP # 321 04-05 LATTA SC 8612	56.19
4/06	BB&T 24 CASH WITHDRAWAL 04-06-11 8612 PORT REPUBLIC STREET BEAUFORT	100.00
4/06	BB&T CHECK CARD PURCHASE SCE & G 04-05 800-967-9649 SC 8612	59.13
4/06	BB&T CHECK CARD PURCHASE-PIN 04-05-11 YEMASSEE SC 8612 STOP N SHOP	10.04
4/07	BB&T CHECK CARD RECURRING PYMT ELICKSON USA LLC 04-05 443-2035168 MD 8612	1,065.00
4/07	BB&T CHECK CARD PURCHASE EXXONMOBIL 4228 04-05 ENFIELD NC 8612	72.22
4/07	BB&T CHECK CARD PURCHASE MURPHY7260ATWALMRT 04-06 WALTERBORO SC 8612	67.32
4/07	BB&T CHECK CARD PURCHASE SHELL OIL 54529880 04-05 EMPORIA VA 8612	58.35
4/07	BB&T CHECK CARD PURCHASE BEAUFORT JASPER WA 04-05 843-9879270 SC 8612	48.39
4/07	CHECK CARD NON-BB&T ATM FEE 04-06-11 FIRST CITIZENS 8612 921 BAY ST BEAUFORT SC	2.00
4/07	BB&T CHECK CARD PURCHASE THE UPS STORE #516 04-06 CUMBERLAND MD 8612	277.55
4/07	BB&T CHECK CARD PURCHASE-PIN 04-06-11 BEAUFORT SC 8612 BEST BUY #1110	186.15
4/07	ATM NETWORK CASH WITHDRAWAL 04-06-11 FIRST CITIZENS 8612 921 BAY ST BEAUFORT SC	103.00
4/07	BB&T CHECK CARD PURCHASE-PIN 04-06-11 BEAUFORT SC 8612 KMART 7160	12.07
4/08	BB&T CHECK CARD PURCHASE SUNOCO 0330699000 04-06 SAINT PAULS NC 8612	70.22
4/08	BB&T CHECK CARD PURCHASE DAYS INN EMPORIA 04-06 EMPORIA VA 8612	63.11
4/08	BB&T CHECK CARD PURCHASE U-HAULABC SELF STO 04-06 BEAUFORT SC 8612	33.55
4/08	BB&T CHECK CARD PURCHASE-PIN 04-07-11 BEAUFORT SC 8612 LOWE'S #1521	37.04
4/08	BB&T CHECK CARD PURCHASE CONNOLLY'S IRISH P 04-07 GREENVILLE SC 8612	33.67
4/08	BB&T CHECK CARD PURCHASE-PIN 04-07-11 BEAUFORT SC 8612 LOWE'S #1521	32.07
4/08	BB&T CHECK CARD PURCHASE-PIN 04-07-11 BEAUFORT SC 8612 LOWE'S #1521	10.87
4/11	BB&T CHECK CARD PURCHASE EZ SHOP #16 04-07 YEMASSEE SC 8612	75.00
4/11	BB&T CHECK CARD PURCHASE LOVES COUNTRY 0000 04-07 NEWBERRY SC 8612	72.43
4/11	BB&T CHECK CARD PURCHASE JET PEP 437 04-08 TUSCALOOSA AL 8612	71.99
4/11	BB&T CHECK CARD PURCHASE Flying J C store o 04-08 Commerce GA 8612	40.91
4/11	BB&T CHECK CARD PURCHASE Flying J C store i 04-08 Commerce GA 8612	28.42
4/11	BB&T CHECK CARD PURCHASE-PIN 04-08-11 GREENVILLE SC 5230 COSTCO WHSE #1005	100.00
4/11	BB&T CHECK CARD PURCHASE 04-08-11 VICKSBURG MS 8612 CHEVRON 00201499	61.15
4/13	BB&T CHECK CARD PURCHASE 04-12-11 RUSTON LA 8612 CHEVRON 00308533	99.00
4/13	BB&T CHECK CARD PURCHASE 04-12-11 TUSCALOOSA AL 8612 PILOT	88.61
4/14	BB&T CHECK CARD PURCHASE KANGAROO EXPRESS 3 04-13 HARDEEVILLE SC 8612	75.00
4/14	CHECK CARD NON-BB&T ATM FEE 04-13-11 PALMETTO STATE B 8612 2347 BOUNDARY BEAUFORT SC	2.00
4/14	ATM NETWORK CASH WITHDRAWAL 04-13-11 PALMETTO STATE B 8612 2347 BOUNDARY BEAUFORT SC	103.00
4/14	BB&T CHECK CARD PURCHASE-PIN 04-13-11 BEAUFORT SC 8612 LOWE'S #1521	93.12
4/18	BB&T CHECK CARD PURCHASE WILCO 933 0000 04-14 SAINT MATTHEW SC 8612	74.20
4/18	BB&T CHECK CARD PURCHASE DIRTY NELLY'S 04-15 BOSTON MA 8612	28.00
4/18	BB&T CHECK CARD PURCHASE SUBWAY AIRPORT 04-15 EAST BOSTON MA 8612	20.00
4/18	BB&T CHECK CARD PURCHASE NATL MS SOCIETY MA 04-16 781-890-6097 MA 8612	250.00
4/18	BB&T CHECK CARD PURCHASE FHM CHEERS 04-16 BOSTON MA 8612	56.16
4/18	BB&T CHECK CARD PURCHASE BOSTON SAIL LOFT 04-17 BOSTON MA 8612	45.77
4/18	BB&T CHECK CARD PURCHASE DIRTY NELLY'S 04-16 BOSTON MA 8612	28.00
4/18	BB&T CHECK CARD PURCHASE LIR 04-15 BOSTON MA 8612	23.58
4/18	BB&T CHECK CARD PURCHASE NED DEVINE'S PARRI 04-16 BOSTON MA 8612	23.50
4/18	BB&T CHECK CARD PURCHASE BELL IN HAND TAVER 04-15 BOSTON MA 8612	18.00
4/18	BB&T CHECK CARD PURCHASE BOSTON TAXI 04-16 LONG ISLAND C NY 8612	14.20
4/18	BB&T CHECK CARD PURCHASE BOS TAXI MED 0056 04-17 LONG ISLAND C NY 8612	14.11
4/19	BB&T CHECK CARD PURCHASE BERTUCCI'S #012 04-17 BOSTON MA 8612	42.23
4/19	BB&T CHECK CARD PURCHASE THE PURPLE SHAMROC 04-17 BOSTON MA 8612	12.70
4/20	BB&T CHECK CARD PURCHASE CHARLOTTE AVIATION 04-19 CHARLOTTE NC 8612	30.00
4/20	BB&T CHECK CARD PURCHASE-PIN 04-19-11 SAINT MATTHEW SC 8612 WILCO #933	6.10
4/21	BB&T CHECK CARD PURCHASE MILLENNIUM BOSTONI 04-19 BOSTON MA 5230	1,763.54
4/21	BB&T CHECK CARD PURCHASE WILCO 933 0000 04-19 SAINT MATTHEW SC 8612	75.00
4/22	BB&T CHECK CARD PURCHASE GRAYCO - LADYS ISL 04-20 843-5218060 SC 8612	41.42
4/22	BB&T CHECK CARD PURCHASE LUTHER'S RARE AND 04-20 BEAUFORT SC 8612	24.36

continued

■ BUSINESS VALUE 500 CHECKING 0005222845302 (continued)

DATE	DESCRIPTION	AMOUNT(\$)
04/22	BB&T CHECK CARD PURCHASE GRAYCO - LADYS ISL 04-20 843-5218060 SC 8612	13.24
04/22	BB&T 24 CASH WITHDRAWAL 04-22-11 8612 PORT REPUBLIC STREET BEAUFORT	500.00
04/22	BB&T CHECK CARD PURCHASE-PIN 04-21-11 BEAUFORT SC 8612 EXXONMOBIL POS	16.63
04/25	BB&T CHECK CARD PURCHASE INSTAWARES 04-22 800-8923622 GA 8612	378.37
04/25	BB&T CHECK CARD PURCHASE THE UPS STORE #348 04-22 BEAUFORT SC 8612	156.00
04/25	BB&T CHECK CARD PURCHASE LUTHER'S RARE AND 04-23 BEAUFORT SC 8612	49.75
04/25	BB&T CHECK CARD PURCHASE LUTHER'S RARE AND 04-23 BEAUFORT SC 8612	27.50
04/26	BB&T CHECK CARD PURCHASE SPECIALITY WOODWOR 04-25 PEORIA IL 8612	648.00
04/27	BB&T CHECK CARD PURCHASE LUTHER'S RARE AND 04-25 BEAUFORT SC 8612	36.37
04/27	BB&T CHECK CARD PURCHASE-PIN 04-26-11 BEAUFORT SC 5230 LOWE'S #1521	136.19
04/29	BB&T CHECK CARD PURCHASE LUTHER'S RARE AND 04-27 BEAUFORT SC 8612	22.76
Total other withdrawals, debits and service charges		= \$10,853.39

Deposits, credits and Interest

DATE	DESCRIPTION	AMOUNT(\$)
04/08	TRANSFER USAA SAV-SVC REP XXXXXXXXXXXXX2249	26,000.00
04/08	TRANSFER USAA CHK-INTRNT XXXXXXXXXXXXX8947	3,000.00
04/28	DEPOSIT	22.76
Total deposits, credits and Interest		= \$29,022.76

900-10-01-00 15110 0 C 001 30 50 002
 TRUMANS ECLECTIC IRISH PUB INC
 3620 PELHAM RD STE 107
 GREENVILLE SC 29615-5044

Your account statement

For 05/31/2011

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Loans are subject to credit approval.

■ BUSINESS VALUE 500 CHECKING 0005222845302

Account summary

Your previous balance as of 04/29/2011	\$14,825.75
Checks	- 4,258.87
Other withdrawals, debits and service charges	- 10,070.70
Deposits, credits and interest	+ 2,595.00
Your new balance as of 05/31/2011	= \$3,091.18

Checks

DATE	CHECK #	AMOUNT(\$)	DATE	CHECK #	AMOUNT(\$)	DATE	CHECK #	AMOUNT(\$)
05/02	1030	700.00	05/09	1033	400.00	05/09	1036	66.00
05/04	1031	160.00	05/09	1034	225.00	05/12	1037	522.13
05/10	1032	1,585.74	05/09	1035	600.00			

Total checks = \$4,258.87

Other withdrawals, debits and service charges

DATE	DESCRIPTION	AMOUNT(\$)
05/02	BB&T CHECK CARD PURCHASE ENMARK BEAUFORT 04-29 BEAUFORT SC 8612	87.93
05/02	BB&T CHECK CARD PURCHASE RCI AUCTIONS MIDSO 04-29 NASHVILLE TN 8612	77.55
05/02	BB&T 24 CASH WITHDRAWAL 04-30-11 8612 PORT REPUBLIC STREET BEAUFORT	300.00
05/02	BB&T CHECK CARD PURCHASE-PIN 05-02-11 BEAUFORT SC 8612 LOWE'S #1521	241.51
05/02	BB&T CHECK CARD PURCHASE RCI AUCTION GROUP 04-29 804-334-7100 VA 8612	185.29
05/02	BB&T CHECK CARD PURCHASE-PIN 04-29-11 BEAUFORT SC 8612 LOWE'S #1521	168.02
05/02	BB&T CHECK CARD PURCHASE CIRCLE K 05386 04-29 BEAUFORT SC 8612	74.16
05/02	BB&T CHECK CARD PURCHASE KANGAROO EXP #490 04-30 PORT ROYAL SC 8612	55.14
05/02	BB&T CHECK CARD PURCHASE-PIN 05-01-11 BEAUFORT SC 8612 LOWE'S #1521	49.12
05/02	BB&T CHECK CARD PURCHASE RCI AUCTIONS MIDSO 04-30 NASHVILLE TN 8612	34.00
05/03	BB&T CHECK CARD RECURRING PYMT ELICKSON USA LLC 05-01 443-2035168 MD 8612	1,065.00
05/03	BB&T CHECK CARD PURCHASE ABC SELF STORAGE 05-02 BEAUFORT SC 5230	475.00
05/03	BB&T CHECK CARD PURCHASE RCI AUCTION GROUP 04-30 804-334-7100 VA 8612	12.22

continued

DATE	DESCRIPTION	AMOUNT(\$)
05/03	BB&T 24 CASH WITHDRAWAL 05-03-11 8612 PORT REPUBLIC STREET BEAUFORT	340.00
05/03	BB&T CHECK CARD PURCHASE-PIN 05-02-11 SAVANNAH \ GA 8612 RESTAURANT2601 WHITAKER	155.37
05/03	BB&T CHECK CARD PURCHASE-PIN 05-02-11 SAVANNAH GA 8612 RESTAURANT2601 WHITAKER	29.32
05/04	BB&T CHECK CARD PURCHASE SHELL OIL 57541544 05-02 SAVANNAH GA 8612	59.19
05/05	BB&T CHECK CARD PURCHASE FINDLEGALFORMS.COM 05-04 760-322-6900 CA 8612	8.99
05/05	BB&T CHECK CARD PURCHASE-PIN 05-05-11 RIDGELAND SC 8612 KANGAROO EXP #912	9.71
05/06	BB&T CHECK CARD PURCHASE KANGAROO EXP #862 05-05 BEAUFORT SC 8612	80.26
05/06	BB&T CHECK CARD PURCHASE WALMART.COM 05-05 WALMART.COM AR 8612	64.18
05/06	BB&T CHECK CARD PURCHASE KEILYS 05-04 908-684-3200 NJ 8612	47.15
05/06	BB&T CHECK CARD PURCHASE-PIN 05-05-11 POOLER 31322 GA 8612 SAM'S CLUB	437.98
05/06	BB&T CHECK CARD PURCHASE-PIN 05-05-11 POOLER 31322 GA 8612 SAM'S CLUB	267.36
05/09	BB&T CHECK CARD PURCHASE SPRINT *WIRELESS 05-07 800-639-6111 VA 8612	299.18
05/09	CHECK CARD NON-BB&T ATM FEE 05-07-11 FIRST CITIZENS 8612 921 BAY ST BEAUFORT SC	2.00
05/09	BB&T CHECK CARD PURCHASE-PIN 05-06-11 BEAUFORT SC 8612 WAL-MART SUPER CENTER	403.98
05/09	BB&T CHECK CARD PURCHASE-PIN 05-06-11 BEAUFORT SC 8612 STAPLES, INC.	196.47
05/09	BB&T CHECK CARD PURCHASE BEST WESTERN HOTEL 05-07 BEAUFORT SC 5230	179.81
05/09	ATM NETWORK CASH WITHDRAWAL 05-07-11 FIRST CITIZENS 8612 921 BAY ST BEAUFORT SC	83.00
05/09	BB&T CHECK CARD PURCHASE SUN OILS INC 05-06 PORT ROYAL SC 8612	62.95
05/09	BB&T CHECK CARD PURCHASE-PIN 05-07-11 BEAUFORT SC 8612 WALGREEN COMPANY 155 SE	35.31
05/09	BB&T CHECK CARD PURCHASE LUTHER'S RARE AND 05-07 BEAUFORT SC 5230	30.00
05/10	BB&T CHECK CARD PURCHASE LUTHER'S RARE AND 05-08 BEAUFORT SC 8612	37.76
05/10	BB&T CHECK CARD PURCHASE-PIN 05-09-11 BEAUFORT SC 8612 LOWE'S #1521	40.00
05/10	BB&T CHECK CARD PURCHASE-PIN 05-09-11 BEAUFORT SC 8612 LOWE'S #1521	28.25
05/11	BB&T CHECK CARD PURCHASE MICRO MATIC DISPEN 05-10 818-8828012 CA 8612	293.92
05/11	BB&T CHECK CARD PURCHASE-PIN 05-11-11 BEAUFORT SC 8612 LOWE'S #1521	103.95
05/12	BB&T CHECK CARD PURCHASE GRAYCO - LADYS ISL 05-10 843-5218060 SC 8612	7.37
05/12	BB&T 24 CASH WITHDRAWAL 05-12-11 8612 PORT REPUBLIC STREET BEAUFORT	80.00
05/12	BB&T CHECK CARD PURCHASE-PIN 05-12-11 BEAUFORT SC 8612 LOWE'S #1521	4.65
05/13	BB&T CHECK CARD PURCHASE RESTAURANT EQUIPME 05-12 912-2367181 GA 8612	1,717.35
05/13	BB&T CHECK CARD PURCHASE PALM AND MOON BAGE 05-12 BEAUFORT SC 8612	16.28
05/13	BB&T CHECK CARD PURCHASE-PIN 05-12-11 BEAUFORT SC 8612 LOWE'S #1521	685.96
05/18	FORCE PAY DEBIT MEMO	540.00
05/18	FORCE PAY DEBIT MEMO	356.96
05/18	FORCE PAY DEBIT MEMO	134.90
05/18	FORCE PAY DEBIT MEMO	107.70
05/18	FORCE PAY DEBIT MEMO	75.00
05/18	FORCE PAY DEBIT MEMO	74.90
05/18	FORCE PAY DEBIT MEMO	68.42
05/18	FORCE PAY DEBIT MEMO	60.92
05/18	FORCE PAY DEBIT MEMO	19.26

Total other withdrawals, debits and service charges

= \$10,070.70

Deposits, credits and interest

DATE	DESCRIPTION	AMOUNT(\$)
05/10	BB&T CHECK CARD RETURN ABC SELF STORAGE 05-03 BEAUFORT SC 5230	95.00
05/17	TRANSFER USAA SAV-INTRNT XXXXXXXXXXXX2249	2,500.00
05/18	BTOT DEP BANKCARD TRUMANS ECLECTIC IRISH 99660001810	0.00

Total deposits, credits and interest

= \$2,595.00

Amendment to the Business Services Pricing Guide Effective July 1, 2011

The following changes are being made to the *Business Services Pricing Guide* that you received when you opened your BB&T account. Continued use of your account after **July 1, 2011**, constitutes your acceptance of the changes. Also, important changes are being made to BB&T Vault Service Fees. These fees are referenced in the Treasury Management Agreement you have with BB&T. You may not be impacted by the fee changes listed, depending on your account activity and the services that you use. Except for the information contained in this communication, the remainder of the terms and conditions of your agreement with BB&T remain unchanged. If you do not have a copy of the *Business Services Pricing Guide*, or if you have questions, contact your local BB&T financial center, your relationship manager, or call **1-800-BANK BBT (1-800-226-5228)**.

Other Services

Non-BB&T ATM Fee	\$2.50
(Charged when using any domestic ATM except a BB&T 24 ATM, unless otherwise disclosed.)	

Vault Services

Vault360 is a specialized suite of deposit solutions that create efficiency for clients *in and out* of the BB&T footprint, especially retailers, who use armored couriers anywhere across the continental United States. The following applies only to clients using BB&T Vault360 services, **not clients using standard branch-based deposit services**. For more information on Vault360, visit www.bbt.com/bbt/business/products/vault360.

Vault - per deposit charge	\$1.00
Vault - per envelope charge	\$1.00
Vault - coin and currency	\$1.10/\$1,000
Vault - in-store safe deposit credit	\$1.20/\$1,000
Vault - deposit adjustment	\$5.00
Vault - deposited items (on-us)	\$0.13
Vault - deposited items (in-state)	\$0.13
Vault - deposited items (out-of-state)	\$0.13
Vault - coin deposit standard	\$2.00
Vault - coin deposit non-standard	\$5.00
Vault - coin deposit subject to count	\$5.00
Vault - change order standard	\$3.00
Vault - change order non-standard	\$7.00
Vault - change order late	\$25.00
Vault - currency sales	\$1.00/\$1,000
Vault - coin roll sales	\$0.10/roll
Vault - coin supplied box	\$2.00/box

Amendment to the Commercial Bank Services Agreement Effective July 1, 2011

The following changes are being made to the *Commercial Bank Services Agreement* you received with your BB&T account. Continued use of your account after **July 1, 2011**, constitutes your acceptance of the changes. Except as expressly changed by this Amendment, the terms and conditions of your Agreement with BB&T remain unchanged. If you do not have a copy of the *Commercial Bank Services Agreement*, or if you have questions, contact your local BB&T financial center, your relationship manager, or call **1-800-BANK BBT (1-800-226-5228)**.

PROVISIONAL CREDIT

The first sentence in the second paragraph is deleted and replaced with the following:

in receiving items for deposit or collection, the Bank acts as your collection agent and you agree that our duty of care is governed by Section 4-202 of the Uniform Commercial Code. You further agree that the term "cleared" or "check cleared" or a similar statement made by the Bank about a check not drawn on us, means only that you were provided provisional credit, subject to final payment. You agree to contact the bank on which the check was drawn to determine if a check you deposit has "cleared" or is "good".

PAYMENT OF ITEMS

The first six sentences of the second paragraph are deleted and replaced with the following:

In general, the Bank will post transactions to your account in chronological order when *both* date and time are available at the time of processing. Prior day items and fees post before current day items. Processing for each day will occur in the following order: First, credits *without* both date and time. Next, items (credits and debits) with both date and time information. Last, debits without both date and time. In summary, our posting is as follows:

- Credits without both date and time information, in low to high dollar amount
- Debits and credits with both date and time information in chronological order
- Debits without both date and time information, in low to high dollar amount, with checks in sequential order

We may change the posting order or categories at any time. The Bank has the discretion to process items even if your account has an insufficient available balance to pay such items. Your "available" balance represents the amount of funds available for withdrawal or to pay items presented against your account. The "available" balance may not be the same as your "current" or "posted" balance. For example, your available balance may be reduced by a POS transaction in which the merchant has obtained authorization from the Bank but that has not been presented for payment. We consider such pending transactions in the calculation of your available balance.

FUNDS AVAILABILITY

LONGER DELAYS MAY APPLY

In this subsection, the numerical amount, \$100 is replaced with \$200.

NON-SUFFICIENT FUNDS/OVERDRAFTS (renamed "OVERDRAFTS" as of 4/1/11)

Replace existing section with the following:

OVERDRAFTS. An overdraft is created when you have insufficient funds in your account to cover a check, withdrawal, automatic transfer, electronic transaction (e.g., ATM or point-of-sale purchase), returned deposited item, or any other electronic purchase, payment, or debit. If your account is linked to Overdraft Protection, the overdraft will be paid, pursuant to the terms of the OVERDRAFT PROTECTION paragraph stated below (and subject to the funds available in your Overdraft Protection). Overdraft Protection transfer fees as described in the Business Services Pricing Guide will also apply.

To assess overdrafts on your account, the Bank has a process called Overdraft Review. Overdraft Review is the methodology the Bank uses to determine whether your items and debit transactions should either be paid or rejected when you have insufficient funds in your account to cover the item or transaction. You have the right to decide if you want to participate (opt-in), or not to participate (opt-out), in the Overdraft Review process. Participation in Overdraft Review does not guarantee that the bank will always authorize and pay your transactions and items. The Bank still retains the discretion to decline payment of items or transactions that will overdraw your account.

The overdraft and returned item fees disclosed in the Business Services Pricing Guide will apply to your account based upon the type of transaction and your decision for Overdraft Review. Overdraft fees can include the per item overdraft fee and Negative Account Balance fees. Please see your Business Services Pricing Guide for details. If you have multiple overdrafts on a given day, we may honor any one or more and return the others in any order. Multiple overdraft fees can be charged against your account per day on these occasions.

You are in the best position to ensure that your account has sufficient funds to cover any check or other debit by maintaining an accurate and current record of your deposits and withdrawals. You have the ability to confirm your current and available account balances through any BB&T ATM, BB&T Phone24, BB&T OnLine or by contacting any branch prior to writing a check, withdrawing cash, or initiating any electronic or debit transaction. Current and available balances do not include outstanding checks or debits not yet submitted to the Bank.

Message Alert: Be advised, daily limits on Overdraft Fees for Debit Card and ATM transactions will no longer be in effect for commercial accounts. Specific fees are disclosed in the Business Services Pricing Guide.



Questions, comments or errors?

For general questions/comments or to report errors about your statement or account, please call BB&T Phone24 at 1-800-BANK BBT (1-800-226-5228) 24 hours a day, 7 days a week. BB&T Phone24 Client Service Associates are available to assist you from 6 a.m. until midnight ET. You may also contact your local BB&T financial center. To locate a BB&T financial center in your area, please visit BBT.com.

Electronic fund transfers

In case of errors or questions about your electronic fund transfers, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt, contact us as soon as possible. You may write to us at the following address:

BB&T Liability Risk Management
P.O. Box 996
Wilson, NC 27894-0996

You may also call BB&T Phone24 at 1-800-BANK BBT or visit your local BB&T financial center. We must hear from you no later than sixty (60) days after we sent you the FIRST statement on which the error or problem appeared. Please provide the following information:

- Your name and account number
- Describe the error or transfer you are unsure about, and explain in detail why you believe this is an error or why you need more information
- The dollar amount of the suspected error

We will investigate your complaint/concern and promptly take corrective action. If we take more than ten (10) business days to complete our investigation, your account will be credited for the amount you think is in error, minus a maximum of \$50 if we have a reasonable basis to believe that an unauthorized electronic fund transfer has occurred. This will provide you with access to your funds during the time it takes us to complete our investigation. You may have no liability for unauthorized Check Card purchases, subject to the terms and conditions in the current BB&T Electronic Fund Transfer Agreement and Disclosures. If you have arranged for direct deposit(s) to your account, please call BB&T Phone24 at 1-800-BANK BBT to verify that a deposit has been made.

If your periodic statement shows transfers that you did not make, tell us at once. If you do not inform us within sixty (60) days after the statement was mailed to you, you may not get back any money you lost after sixty (60) days. This will occur if we can prove that we could have stopped someone from taking the money if you had informed us in time. If a good reason kept you from informing us, we will extend the time periods.

Important information about your Constant Credit Account

Once advances are made from your Constant Credit Account, an **INTEREST CHARGE**

will automatically be imposed on the account's outstanding "Average daily balance." The **INTEREST CHARGE** is calculated by applying the "Daily periodic rate" to the "Average daily balance" of your account (including current transactions) and multiplying this figure by the number of days in the billing cycle. To get the "Average daily balance," we take the beginning account balance each day, add any new advances or debits, and subtract any payments or credits and the last unpaid **INTEREST CHARGE**. This gives us the daily balance. Then we add all of the daily balances for the billing cycle and divide the total by the number of days in the billing cycle. This gives us the "Average daily balance."

Billing rights summary

In case of errors or questions about your Constant Credit statement

If you think your statement is incorrect, or if you need more information about a Constant Credit transaction on your statement, please call 1-800-BANK BBT or visit your local BB&T financial center. To dispute a payment, please write to us on a separate sheet of paper at the following address:

BankCard Services Division
P.O. Box 200
Wilson, NC 27894-0200

We must hear from you no later than sixty (60) days after we sent you the FIRST statement on which the error or problem appeared. You may telephone us, but doing so will not preserve your rights. In your letter, please provide the following information:

- Your name and account number
- Describe the error or transfer you are unsure about, and explain in detail why you believe this is an error or why you need more information
- The dollar amount of the suspected error

During our investigation process, you are not responsible for paying any amount in question; you are, however, obligated to pay the items on your statement that are not in question. While we investigate your question, we cannot report you as delinquent or take any action to collect the amount in question.

Mail-in deposits

If you wish to mail a deposit, please send a deposit ticket and check to your local BB&T financial center. Visit BBT.com to locate the BB&T financial center closest to you. Please do not send cash.

Change of address

If you need to change your address, please visit your local BB&T financial center or call BB&T Phone24 at 1-800-BANK BBT (1-800-226-5228).

How to Reconcile Your Account		Outstanding Checks and Other Debits (Section A)			
		Date/Check #	Amount	Date/Check #	Amount
1. List the new balance of your account from your latest statement here:					
2. Record any outstanding debits (checks, check card purchases, ATM withdrawals, electronic transactions, etc.) in section A. Record the transaction date, the check number or type of debit and the debit amount. Add up all of the debits, and enter the sum here:					
3. Subtract the amount in line 2 above from the amount in line 1 above and enter the total here:					
4. Record any outstanding credits in section B. Record the transaction date, credit type and the credit amount. Add up all of the credits and enter the sum here:					
5. Add the amount in line 4 to the amount in line 3 to find your balance. Enter the sum here. This amount should match the balance in your register.					
For more information, please contact your local BB&T relationship manager, visit BBT.com, or contact BB&T Phone24 at 1-800-BANK BBT (1-800-226-5228).					

Outstanding Deposits and Other Credits (Section B)			
Date/Type	Amount	Date/Type	Amount

EXHIBIT C

KEY EMPLOYEE EMPLOYMENT AGREEMENT
for
Thomas W. Dailey

This Employment Agreement (the "Agreement") is made effective as of May 1, 2011, by and between Truman's Eclectic Irish Pub, Inc. (the "Employer") and Thomas W. Dailey (the "Employee," and collectively, the "Parties"), and the term (the "Term") shall be for 48 months, which makes this Agreement valid and effective through April 30, 2015.

WHEREAS, Employee (*currently/desires to*) provide(s) services to Employer; and

WHEREAS, Employer wishes to recognize its appreciation of Employee's services and to set forth the terms of the employment relationship with Employee in writing;

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the Parties agree as follows:

1. **Employment.** Employer shall employ Employee in the position of General Manager of Truman's Eclectic Irish Pub. Employee's duties shall include: complete oversight, management and operational control of Truman's Eclectic Irish Pub. Typical duties also include, but are not limited to marketing & advertising concepts, interior design, interior construction & renovations, employee hiring & firing, employee training and any other duties required to ensure success of Truman's Eclectic Irish Pub.
2. **Salary and Profit Sharing.**
 - a. **Salary.** For the services provided, Employer will pay Employee a weekly salary of \$1,250.
 - b. **Profit Sharing.** Once the Employer (the sole owner of all stock in Truman's Eclectic Irish Pub, Inc.) has recouped or been repaid all initial investment monies (as delineated in the Truman's Eclectic Irish Pub Initial Investment Worksheet), ownership of 50% of Company Stock shall be transferred to Employee, or his designated recipient; at such time Employer and Employee (or his designated recipient) shall decide upon profit sharing payments.
3. **Termination, Term and Conditions.**
 - a. **Termination.** Employee may not be terminated by Employer during the term of this Agreement.
 - b. **Term.** The term of this agreement (the "Term") shall be for 48 Months.

c. Conditions. If Employee is terminated, Employer shall pay to Employee in lump sum form, all future monies yet unpaid throughout the term of this agreement.

1) For example, if employee is terminated after four (4) months, Employer shall immediately pay Employee 44 months of unpaid potential salary.

2) In addition to this lump sum payment, Employer shall immediately transfer ownership of 50% of Company Stock to Employee, or his designated recipient.

4. Binding Effect. The covenants and conditions contained in the Agreement shall apply to and bind the Parties and the heirs, legal representatives, successors and permitted assigns of the Parties.

5. Cumulative Rights. The Parties' rights under this Agreement are cumulative, and shall not be construed as exclusive of each other unless otherwise required by law.

6. Waiver. The failure of either party to enforce any provisions of this Agreement shall not be deemed a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

7. Severability. If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect.

8. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified in writing and must be signed by both Employee and Employer.

9. Employer agrees to pay all legal fees associated with this agreement and its enforcement.

10. Notice. Any notice required or otherwise given pursuant to this Agreement shall be in writing and mailed certified return receipt requested, postage prepaid, or delivered by overnight delivery service, addressed as follows:

Employer: Truman's Eclectic Irish Pub, Inc.
205 West Street
Beaufort, SC 29902

Employee: Thomas W. Dailey
2918 Waters Edge Ct East
Beaufort, SC 29902

Either party may change such addresses from time to time by providing notice as set forth above.

HPT 84

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

EMPLOYER:

Helena Tirone
Signature

Helena P. Tirone
Name - Please Print

Owner, President & CEO, Truman's Eclectic Irish Pub
Title

EMPLOYEE:

Signature

Thomas W. Dailey
Name - Please Print

11/1/85

KEY EMPLOYEE EMPLOYMENT AGREEMENT
for
Thomas W. Dailey

This Employment Agreement (the "Agreement") is made effective as of June 1, 2011, by and between Truman's Eclectic Irish Pub, Inc. (the "Employer") and Thomas W. Dailey (the "Employee," and collectively, the "Parties"), and the term (the "Term") shall be for 48 months, which makes this Agreement valid and effective through May 31, 2015.

WHEREAS, Employee (*currently/desires to*) provide(s) services to Employer; and

WHEREAS, Employer wishes to recognize its appreciation of Employee's services and to set forth the terms of the employment relationship with Employee in writing;

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the Parties agree as follows:

1. **Employment.** Employer shall employ Employee in the position of General Manager of Truman's Eclectic Irish Pub. Employee's duties shall include: complete oversight, management and operational control of Truman's Eclectic Irish Pub. Typical duties also include, but are not limited to marketing & advertising concepts, interior design, interior construction & renovations, employee hiring & firing, employee training and any other duties required to ensure success of Truman's Eclectic Irish Pub.

2. **Salary and Profit Sharing.**

a. **Salary.** For the services provided, Employer will pay Employee a weekly salary of \$1,250.

b. **Profit Sharing.** Once the Employer (the sole owner of all stock in Truman's Eclectic Irish Pub, Inc.) has recouped or been repaid all initial investment monies (as delineated in the Truman's Eclectic Irish Pub Initial Investment Worksheet), ownership of 50% of Company Stock shall be transferred to Employee, or his designated recipient; at such time Employer and Employee (or his designated recipient) shall decide upon profit sharing payments.

3. **Termination, Term and Conditions.**

a. **Termination.** Employee may not be terminated by Employer during the term of this Agreement.

b. **Term.** The term of this agreement (the "Term") shall be for 48 Months.

c. Conditions. If Employee is terminated, Employer shall pay to Employee in lump sum form, all future monies yet unpaid throughout the term of this agreement.

1) For example, if employee is terminated after four (4) months, Employer shall immediately pay Employee 44 months of unpaid potential salary.

2) In addition to this lump sum payment, Employer shall immediately transfer ownership of 50% of Company Stock to Employee, or his designated recipient.

4. Binding Effect. The covenants and conditions contained in the Agreement shall apply to and bind the Parties and the heirs, legal representatives, successors and permitted assigns of the Parties.

5. Cumulative Rights. The Parties' rights under this Agreement are cumulative, and shall not be construed as exclusive of each other unless otherwise required by law.

6. Waiver. The failure of either party to enforce any provisions of this Agreement shall not be deemed a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

7. Severability. If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect.

8. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified in writing and must be signed by both Employee and Employer.

9. Employer agrees to pay all legal fees associated with this agreement and its enforcement.

10. Notice. Any notice required or otherwise given pursuant to this Agreement shall be in writing and mailed certified return receipt requested, postage prepaid, or delivered by overnight delivery service, addressed as follows:

Employer: Truman's Eclectic Irish Pub, Inc.
205 West Street
Beaufort, SC 29902

Employee: Thomas W. Dailey
2918 Waters Edge Ct East
Beaufort, SC 29902

Either party may change such addresses from time to time by providing notice as set forth above.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

EMPLOYER:

Helena Tirone
Signature

Helena P. Tirone
Name - Please Print

Owner, President & CEO, Truman's Eclectic Irish Pub
Title

EMPLOYEE:

Signature

Thomas W. Dailey
Name - Please Print

EXHIBIT D

Andrea Smith

From: Ashley Twombly

Sent: Wednesday, June 22, 2011 4:52 PM

To: Andrea Smith

Subject: FW: Employee Contract

Attachments: Dailey - Trumans Employee Contract.pdf, Dailey - Trumans Employee Contract - temp.pdf

From: hptirone@charter.net [mailto:hptirone@charter.net]

Sent: Wednesday, June 15, 2011 7:16 PM

To: Ashley Twombly

Subject: FW: Employee Contract

----- Begin forwarded message -----

Subject: Employee Contract

Date: 5/4/11 4:24:49 PM

From: "Tom Dailey"

To: "Helena"

Here is the Aiken UPS Store address and phone number:
262 Eastgate Dr, Aiken, SC 29803 - (803) 642-0069

Please OVERNIGHT these docs to:
330 Robert Smalls Pkwy, Suite 24
Beaufort, SC 29906

6/22/2011

10

KEY EMPLOYEE EMPLOYMENT AGREEMENT

for

Thomas W. Dailey

This Employment Agreement (the "Agreement") is made effective as of June 1, 2011, by and between Truman's Eclectic Irish Pub, Inc. (the "Employer") and Thomas W. Dailey (the "Employee," and collectively, the "Parties"), and the term (the "Term") shall be for 48 months, which makes this Agreement valid and effective through May 31, 2015.

WHEREAS, Employee (*currently/desires to*) provide(s) services to Employer; and

WHEREAS, Employer wishes to recognize its appreciation of Employee's services and to set forth the terms of the employment relationship with Employee in writing;

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the Parties agree as follows:

1. **Employment.** Employer shall employ Employee in the position of General Manager of Truman's Eclectic Irish Pub. Employee's duties shall include: complete oversight, management and operational control of Truman's Eclectic Irish Pub. Typical duties also include, but are not limited to marketing & advertising concepts, interior design, interior construction & renovations, employee hiring & firing, employee training and any other duties required to ensure success of Truman's Eclectic Irish Pub.

2. **Salary and Profit Sharing.**

a. **Salary.** For the services provided, Employer will pay Employee a weekly salary of \$1,250.

b. **Profit Sharing.** Once the Employer (the sole owner of all stock in Truman's Eclectic Irish Pub, Inc.) has recouped or been repaid all initial investment monies (as delineated in the Truman's Eclectic Irish Pub Initial Investment Worksheet), ownership of 50% of Company Stock shall be transferred to Employee, or his designated recipient; at such time Employer and Employee (or his designated recipient) shall decide upon profit sharing payments.

3. **Termination, Term and Conditions.**

a. **Termination.** Employee may not be terminated by Employer during the term of this Agreement.

b. **Term.** The term of this agreement (the "Term") shall be for 48 Months.

c. Conditions. If Employee is terminated, Employer shall pay to Employee in lump sum form, all future monies yet unpaid throughout the term of this agreement.

1) For example, if employee is terminated after four (4) months, Employer shall immediately pay Employee 44 months of unpaid potential salary.

2) In addition to this lump sum payment, Employer shall immediately transfer ownership of 50% of Company Stock to Employee, or his designated recipient.

4. Binding Effect. The covenants and conditions contained in the Agreement shall apply to and bind the Parties and the heirs, legal representatives, successors and permitted assigns of the Parties.

5. Cumulative Rights. The Parties' rights under this Agreement are cumulative, and shall not be construed as exclusive of each other unless otherwise required by law.

6. Waiver. The failure of either party to enforce any provisions of this Agreement shall not be deemed a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

7. Severability. If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect.

8. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified in writing and must be signed by both Employee and Employer.

9. Employer agrees to pay all legal fees associated with this agreement and its enforcement.

10. Notice. Any notice required or otherwise given pursuant to this Agreement shall be in writing and mailed certified return receipt requested, postage prepaid, or delivered by overnight delivery service, addressed as follows:

Employer: Truman's Eclectic Irish Pub, Inc.
205 West Street
Beaufort, SC 29902

Employee: Thomas W. Dailey
2918 Waters Edge Ct East
Beaufort, SC 29902

Either party may change such addresses from time to time by providing notice as set forth above.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

EMPLOYER:

Signature

Helena P. Tirone

Name – Please Print

Owner, President & CEO, Truman's Eclectic Irish Pub

Title

EMPLOYEE:

Signature

Thomas W. Dailey

Name – Please Print

KEY EMPLOYEE EMPLOYMENT AGREEMENT
for
Thomas W. Dailey

This Employment Agreement (the "Agreement") is made effective as of May 1, 2011, by and between Truman's Eclectic Irish Pub, Inc. (the "Employer") and Thomas W. Dailey (the "Employee," and collectively, the "Parties"), and the term (the "Term") shall be for 48 months, which makes this Agreement valid and effective through April 30, 2015.

WHEREAS, Employee (*currently/desires to*) provide(s) services to Employer; and

WHEREAS, Employer wishes to recognize its appreciation of Employee's services and to set forth the terms of the employment relationship with Employee in writing;

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the Parties agree as follows:

1. Employment. Employer shall employ Employee in the position of General Manager of Truman's Eclectic Irish Pub. Employee's duties shall include: complete oversight, management and operational control of Truman's Eclectic Irish Pub. Typical duties also include, but are not limited to marketing & advertising concepts, interior design, interior construction & renovations, employee hiring & firing, employee training and any other duties required to ensure success of Truman's Eclectic Irish Pub.

2. Salary and Profit Sharing.

a. Salary. For the services provided, Employer will pay Employee a weekly salary of \$1,250.

b. Profit Sharing. Once the Employer (the sole owner of all stock in Truman's Eclectic Irish Pub, Inc.) has recouped or been repaid all initial investment monies (as delineated in the Truman's Eclectic Irish Pub Initial Investment Worksheet), ownership of 50% of Company Stock shall be transferred to Employee, or his designated recipient; at such time Employer and Employee (or his designated recipient) shall decide upon profit sharing payments.

3. Termination, Term and Conditions.

a. Termination. Employee may not be terminated by Employer during the term of this Agreement.

b. Term. The term of this agreement (the "Term") shall be for 48 Months.

c. Conditions. If Employee is terminated, Employer shall pay to Employee in lump sum form, all future monies yet unpaid throughout the term of this agreement.

1) For example, if employee is terminated after four (4) months, Employer shall immediately pay Employee 44 months of unpaid potential salary.

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6. Waiver. The failure of either party to enforce any provisions of this Agreement shall not be deemed a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

7. Severability. If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect.

8. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified in writing and must be signed by both Employee and Employer.

9. Employer agrees to pay all legal fees associated with this agreement and its enforcement.

10. Notice. Any notice required or otherwise given pursuant to this Agreement shall be in writing and mailed certified return receipt requested, postage prepaid, or delivered by overnight delivery service, addressed as follows:

Employer: Truman's Eclectic Irish Pub, Inc.
205 West Street
Beaufort, SC 29902

Employee: Thomas W. Dailey
2918 Waters Edge Ct East
Beaufort, SC 29902

Either party may change such addresses from time to time by providing notice as set forth above.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

EMPLOYER:

Signature

Helena P. Tirone

Name – Please Print

Owner, President & CEO, Truman's Eclectic Irish Pub

Title

EMPLOYEE:

Signature

Thomas W. Dailey

Name – Please Print

EXHIBIT E

07-CP-07-861

STATE OF SOUTH CAROLINA)

JUDGMENT IN A CIVIL CASE

COUNTY OF BEAUFORT)

CASE NO: 2007-DR-07-397

FAMILY COURT)

JUDGMENT ROLL NO.: _____

SCDSS/ Susan M. Centeno

vs Thomas W. Dailey

Plaintiff(s)

Defendant(s)

() JURY VERDICT. This action came before the court for a trial by jury.
The issues have been tried and the verdict rendered.

☒ DECISION BY THE COURT. This action came to trial or hearing before the court.
The issues have been tried or heard and a decision rendered.

() ACTION DISMISSED. () Rule 12(b), SCRPC; () Rule 41(a), SCRPC
(Vol. Nonskid); () Rule 43(k), SCRPC (Settled); () Other

IT IS ORDERED AND ADJUDGED:

☒ See attached order

() Statement of Judgment by the Court.

Dated at Beaufort, South Carolina this 16th day of March, 2007.

S/Gerald C. Smoak Jr.
Presiding Judge

This Judgment was entered on the 16th day of March, 2007,
and a copy mailed this 16th day of March, 2007 to the attorney's
of record or the pro-se parties as follows:

Pro Se

Pro Se

Attorneys(s) for the Plaintiff(s)

Attorney(s) for the Defendant(s)

Lathu Washington
Clerk of Court

cc: _____

STATE OF SOUTH
COUNTY OF BEAUFORT

MS. SUSAN M. CENTENO
31 PORCHER PINCKNEY RD.
BEAUFORT, SC 29906,

PLAINTIFF,

-VS-

THOMAS W. DAILEY,
2918 Waters Edge Ct.
Beaufort, SC 29902

DEFENDANT.

IN THE FAMILY COURT

NOTICE OF FILING AND REGISTRATION
OF FOREIGN SUPPORT ORDER

Docket No. 2007-07-397

2007 MAR 16 PM 12:51
FAMILY COURT
BEAUFORT COUNTY
BEAUFORT, S.C.

TO THE DEFENDANT NAMED ABOVE AND THE COURT:

The above-captioned support Order has been filed and registered in the Registry of Foreign Support Orders of Beaufort County under S.C. Code Ann., Section 20-7-960 et seq. (1976). The Order is enforceable as of the date of registration. Except as provided in Sections 20-7-1135 through 20-7-1200 (1976), the Family Court shall recognize and enforce and may not modify this registered Order.

The obligor has twenty (20) days after the mailing of the Notice of Registration to file a motion in the Family Court of Beaufort County to contest the validity or enforcement of the registered Order and to serve the attorney for Plaintiff, to the attention of Harry O. Shaw, III, Child Support Enforcement Legal Division, Post Office Box 150012, North Charleston, SC, 29415-0012. If the obligor does not file a motion with the Court, the support Order is confirmed by operation of law and the Order and arrears will be enforced and the obligor will be precluded from any further contest of the Order with respect to any matter that could have been asserted.

Pursuant to the terms of the above-captioned support Order, the obligor is in arrears \$ 7438.00 as of 12/01/06.

07 MAY -8 AM 10:58

07-07-861

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

FAMILY COURT)

CLERK OF COURT
BEAUFORT CO.

JUDGMENT IN A CIVIL CASE

CASE NO: 2007-DR-07-397

JUDGMENT ROLL NO.: _____

SCDSS/Susan M. Centeno

vs

Thomas W. Dalley

Plaintiff(s)

Defendant(s)

- () JURY VERDICT. This action came before the court for a trial by jury.
The issues have been tried and the verdict rendered.
- (X) DECISION BY THE COURT. This action came to trial or hearing before the court.
The issues have been tried or heard and a decision rendered.
- () ACTION DISMISSED. () Rule 12(b), SCRCP: () Rule 41(a), SCRCP
(Vol. Nonskid): () Rule 43(k), SCRCP(Settled): () Other

IT IS ORDERED AND ADJUDGED:

(X) See attached order

- () Statement of Judgment by the Court.

Dated at Beaufort, South Carolina this 2nd day of May, 2007.

S/Frances P. Segars-Andrews
Presiding Judge

This Judgment was entered on the 2nd day of May, 2007
and a copy mailed this 2nd day of May, 2007 to the attorney's
of record or the pro-se parties as follows:

H. Shaw

Pro Se

Attorneys(s) for the Plaintiff(s)

Attorney(s) for the Defendant(s)

Kather Washington
Clerk of Court

STATE OF SOUTH CAROLINA

IN THE FAMILY COURT

2007 MAY -3 PM 3:00

FOURTEENTH JUDICIAL CIRCUIT

COUNTY OF BEAUFORT

FILE NO: 07-DR-07-397

SCDSS/Susan M. Centeno
Plaintiff
BEAUFORT COUNTY
BEAUFORT, S.C.

DSS#: 688181

vs
Thomas W. Dailey
Defendant.

CIVIL CONTEMPT ORDER
NON-SUPPORT

HEARING DATE: 5/2/07

JUDGE: Frances P. Sagars-Andrews

ATTORNEY FOR PLAINTIFF H. Shaw

COURT REPORTER J. Pye

ATTORNEY FOR DEFENDANT Pro Se

GUARDIAN AD LITEM

Pursuant to (Rule to Show Cause/Bench Warrant), this matter was heard on the date shown above. Plaintiff did/ did not appear. Defendant did/did not appear. I find that Defendant owes a support arrearage of \$ 12,379.50 as of the hearing date. My conclusions are based on the following facts:

Failure To Pay Support

Therefore, I find:

- () Defendant is not in contempt of this court.
- () Defendant is in civil contempt of court, and I ORDER that Defendant be confined to the County Detention Center/County Public Works. Defendant may purge himself/herself of contempt and be released from confinement by:
 - () payment of court costs in the amount of \$ _____ for expenses related to the prosecution of this proceeding to the Clerk of Court.
 - () payment of \$ _____ to the Beaufort County Clerk of Court to apply against arrearages.
 - () _____
- Confinement shall commence
 - () Immediately
 - () at _____ o'clock _____ m., on _____, 20____, when Defendant shall report to _____, unless he/she has earlier purged himself/herself of contempt.

PROVIDED that the period of confinement shall not exceed one(1) year/

(No Good Time Credit)

IT IS FURTHER ORDERED that Defendant

- () pay the sum of \$ _____ (+5% court costs) per _____ to apply against arrearages, commencing _____, in addition to any previously ordered payments.

IT IS FURTHER ORDERED

- () enforcement of collection of the support arrearages shall be held in abeyance until further order of this Court.
- () the Clerk of Court shall implement wage-withholding immediately.
- () Rule Dismissed: _____
- () Rule is continued for _____ Days/Months _____
- () _____

IT IS FURTHER ORDERED

- (X) the Clerk of Court shall issue a Bench Warrant for:
 - (X) Failure to pay support
 - (X) Failure to appear for the hearing
 - () If missed _____ payments/months
 - () Avoiding service of process

IT IS FURTHER ORDERED that the parties shall advise the Clerk of Court of their current addresses at all times.

Beaufort, South Carolina

May 3

2007

PRESIDING JUDGE - The Family Court of the 14th Judicial Circuit

Copy (delivered) / (Mailed) to Plaintiff/Defendant by _____ on _____

SCCA/437 (3/93)

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

FAMILY COURT)

SCDSS/Susan M. Centeno

vs

07-CP-07-864
JUDGMENT IN A CIVIL CASE

CASE NO: 2007-DR-07-397

JUDGMENT ROLL NO.: _____

Thomas W. Dailey

Plaintiff(s)

Defendant(s)

() JURY VERDICT. This action came before the court for a trial by jury.
The issues have been tried and the verdict rendered.

(X) DECISION BY THE COURT. This action came to trial or hearing before the court.
The issues have been tried or heard and a decision rendered.

() ACTION DISMISSED. () Rule 12(b), SCRCP; () Rule 41(a), SCRCP
(Vol. Nonskid); () Rule 43(k), SCRCP (Settled); () Other

IT IS ORDERED AND ADJUDGED:

(X) See attached order

() Statement of Judgment by the Court.

Dated at Beaufort, South Carolina this 20th day of June, 2007.

S. F. P. Segura-Andrews
Presiding Judge

This Judgment was entered on the 20th day of June, 2007,
and a copy mailed this 20th day of June, 2007 to the attorney's
of record or the pro-se parties as follows:

H. Shaw

Pro Se

Attorneys(s) for the Plaintiff(s)

Attorney(s) for the Defendant(s)

Kathleen Washington
Clerk of Court

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

SCDSS/Susan M. (Family Court)
Plaintiff BEAUFORT COUNTY
BEAUFORT S.C.

vs Thomas W. Darley
Defendant

HEARING DATE: 6/20/07
ATTORNEY FOR PLAINTIFF H. Shaw
ATTORNEY FOR DEFENDANT PO Se

IN THE FAMILY COURT
FOURTEENTH JUDICIAL CIRCUIT
FILE NO: 07-DR-07-397
DSS#: 688181

CIVIL CONTEMPT ORDER
NON-SUPPORT

JUDGE: F.P. Regans-Andrew
BERRY L. Mobley
COURT REPORTER
GUARDIAN AD LITEM

Pursuant to (Rule to Show Cause/Bench Warrant), this matter was heard on the date shown above. Plaintiff did/did not appear. Defendant did/did not appear. I find that Defendant owes a support arrearage of \$ 14,664.30 as of the hearing date. My conclusions are based on the following facts:

Failure to Pay Support

Therefore, I find:

- () Defendant is not in contempt of this court.
- () Defendant is in civil contempt of court, and I ORDER that Defendant be confined to the County Detention Center/County Public Works. Defendant may purge himself/herself of contempt and be released from confinement by:
 - () payment of court costs in the amount of \$ _____ for expenses related to the prosecution of this proceeding to the Clerk of Court.
 - () payment of \$ _____ to the Beaufort County Clerk of Court to apply against arrearages.
 - () _____
- Confinement shall commence
 - () Immediately
 - () at _____ o'clock _____ m., on _____, 20____, when Defendant shall report to _____, unless he/she has earlier purged himself/herself of contempt.

PROVIDED that the period of confinement shall not exceed one(1) year/ _____ (No Good Time Credit)

IT IS FURTHER ORDERED that Defendant

- () pay the sum of \$ _____ (+5% court costs) per _____ to apply against arrearages, commencing _____, in addition to any previously ordered payments.

IT IS FURTHER ORDERED

- () enforcement of collection of the support arrearages shall be held in abeyance until further order of this Court.
- () the Clerk of Court shall implement wage-withholding immediately.
- () Rule Dismissed: _____
- () Rule is continued for _____ Days/Months
- () _____

IT IS FURTHER ORDERED

- (X) the Clerk of Court shall issue a Bench Warrant for:
 - (X) Failure to pay support
 - () Failure to appear for the hearing
 - () If missed _____ payments/months
 - () Avoiding service of process

IT IS FURTHER ORDERED that the parties shall advise the Clerk of Court of their current addresses at all times.

Beaufort, South Carolina

6-25 2007 PRESIDING JUDGE - The Family Court of the 14th Judicial Circuit

Copy (delivered) / (Mailed) to Plaintiff/Defendant by _____ on _____
SCCA/437 (3/93)

2007CP0700861

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
FAMILY COURT

JUDGMENT IN A DOMESTIC CASE

CASE NO. 2007-DR-07-397

SCDSS/SUSAN M. CENTENO
PLAINTIFF(S)

VS THOMAS W. DAILEY
DEFENDANT(S)

CLERK OF COURT
BEAUFORT COUNTY, SOUTH CAROLINA

2008 FEB 26 PM 12:01

CHECK ONE:

- ☒ **DECISION BY COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and an order rendered.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other

IT IS ORDERED AND ADJUDGED: ☒ See attached order; ☐ Statement of Judgment by the Court:

Dated at BEAUFORT, South Carolina, this 25TH day of FEBRUARY, 2008.

S/ROBERT S. ARMSTRONG
JUDGE

This judgment was entered on the 25TH day of FEBRUARY, 2008, and a copy mailed first class this 25TH day of FEBRUARY, 2008 to attorneys of record or to parties (when appearing pro se) as follows:

PRO SE
ATTORNEY(S) FOR THE PLAINTIFF(S)

PRO SE
ATTORNEY(S) FOR THE DEFENDANT(S)

EATHER WASHINGTON
DEPUTY CLERK OF COURT

✓

184

STATE OF SOUTH CAROLINA)

IN THE FAMILY COURT

COUNTY OF BEAUFORT

2008 FEB 25 AM 9:35
FAMILY COURT
BEAUFORT COUNTY
BEAUFORT, S.C.

FOURTEENTH JUDICIAL CIRCUIT
FILE NO: 07-DR-07-397

DSS#: 688181

SCDSS/Susan M. Centanni

Plaintiff

vs

Thomas W. Dailey

Defendant

CIVIL CONTEMPT ORDER
NON-SUPPORT

HEARING DATE: 2/25/08

JUDGE: Robert S. Armstrong

ATTORNEY FOR PLAINTIFF Po Se

COURT REPORTER D. Anderson

ATTORNEY FOR DEFENDANT Po Se

GUARDIAN AD LITEM

Pursuant to (Rule to Show Cause/Bench Warrant), this matter was heard on the date shown above. Plaintiff did/did not appear. Defendant did/did not appear. I find that Defendant owes a support arrearage of \$5,677.87 as of the hearing date. My conclusions are based on the following facts:

Failure to pay support

Therefore, I find:

- () Defendant is not in contempt of this court.
(x) Defendant is in civil contempt of court, and I ORDER that Defendant be confined to the County Detention Center/County Public Works. Defendant may purge himself/herself of contempt and be released from confinement by:

(x) payment of court costs in the amount of \$100.00 for expenses related to the prosecution of this proceeding to the Clerk of Court.

(x) payment of \$1000.00 to the Beaufort County Clerk of Court to apply against arrearages.

()
Confinement shall commence

(x) Immediately

() at _____ o'clock _____ m. on _____, 20____, when Defendant shall report to _____, unless he/she has earlier purged himself/herself of contempt.

PROVIDED that the period of confinement shall not exceed one(1) year/ 30 days
(No Good Time Credit)

IT IS FURTHER ORDERED that Defendant

(x) pay the sum of \$50.00 (+5% court costs) per MO. to apply against arrearages, commencing 1/1/08, in addition to any previously ordered payments.

IT IS FURTHER ORDERED

() enforcement of collection of the support arrearages shall be held in abeyance until further order of this Court.

() the Clerk of Court shall implement wage-withholding immediately.

() Rule Dismissed:

() Rule is continued for _____ Days/Months

(x) renewed on March 12, 2008 - claim he is paying NC
IT IS FURTHER ORDERED Clerk shall call NC + see if he is paying there.

() the Clerk of Court shall issue a Bench Warrant for:

() Failure to pay support

() Failure to appear for the hearing

() If missed _____ payments/months

() Avoiding service of process

IT IS FURTHER ORDERED that the parties shall advise the Clerk of Court of their current addresses at all times.

Beaufort, South Carolina

February 25, 2008

PRESIDING JUDGE - The Family Court of the 14th Judicial Circuit

Copy (delivered) / (Mailed) to Plaintiff/Defendant by _____ on _____

SCCA/437 (3/93)

STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

FAMILY COURT)

SCDSS/ SUSAN M CENTENO

Plaintiff(s)

07-CP-07-861
JUDGMENT IN A CIVIL CASE

CASE NO: 2007 -DR-07- 397

JUDGMENT ROLL NO.: _____

vs THOMAS W DAILEY

Defendant(s)

() JURY VERDICT. This action came before the court for a trial by jury.
The issues have been tried and the verdict rendered.

(x) DECISION BY THE COURT. This action came to trial or hearing before the court.
The issues have been tried or heard and a decision rendered.

() ACTION DISMISSED. () Rule 12(b), SCRPC; () Rule 41(a), SCRPC
(Vol. Nonskid); () Rule 43(k), SCRPC(Settled); () Other

IT IS ORDERED AND ADJUDGED:

() See attached order.

() Statement of Judgment by the Court.

Dated at Beaufort, South Carolina this 12th day of MARCH, 2008.

s/FRANCES P. SEGARS-ANDREWS

Presiding Judge

This Judgment was entered on the 12th day of MARCH, 2008
and a copy mailed this 12th day of MARCH, 2008 to the attorney's
of record or the pro-se parties as follows:

HARRY SHAW

PRO-SE

Attorneys(s) for the Plaintiff(s)

Attorney(s) for the Defendant(s)

Debra J. Brantley
Clerk of Court

cc: _____

CLERK OF COURT
BEAUFORT, S.C.
2008 MAR 17 AM 11:39

STATE OF SOUTH CAROLINA

IN THE FAMILY COURT

COUNTY OF BEAUFORT

FOURTEENTH JUDICIAL CIRCUIT

SCDSS/Susan M. Centeno

2009 MAR 12 PM 3:12

FILE NO: 07-DR-07-397

DSS#: 688181

Plaintiff

FAMILY COURT
BEAUFORT COUNTY

vs

Thomas W. Dailey

BEAUFORT, S.C.

CIVIL CONTEMPT ORDER
NON-SUPPORT

Defendant

HEARING DATE:

3/12/08

JUDGE:

F.P. Segars-Andrews

ATTORNEY FOR PLAINTIFF

H. Shaw

COURT REPORTER

D. Anderson

ATTORNEY FOR DEFENDANT

Pro Se

GUARDIAN AD LITEM

Pursuant to (Rule to Show Cause/Bench Warrant), this matter was heard on the date shown above. Plaintiff did/did not appear. Defendant did/did not appear. I find that Defendant owes a support arrearage of \$4,679.67 as of the hearing date. My conclusions are based on the following facts:

Failure To Pay Support

Therefore, I find:

- ☒ Defendant is not in contempt of this court.
☐ Defendant is in civil contempt of court, and I ORDER that Defendant be confined to the County Detention Center/County Public Works. Defendant may purge himself/herself of contempt and be released from confinement by:

☐ payment of court costs in the amount of \$_____ for expenses related to the prosecution of this proceeding to the Clerk of Court.

☐ payment of \$_____ to the Beaufort County Clerk of Court to apply against arrearages.

☐ _____
Confinement shall commence

☐ Immediately

☐ at _____ o'clock _____ m. on _____, 20____, when Defendant shall report to _____, unless he/she has earlier purged himself/herself of contempt.

PROVIDED that the period of confinement shall not exceed one(1) year/_____

(No Good Time Credit)

IT IS FURTHER ORDERED that Defendant

- ☐ pay the sum of \$_____ (+5% court costs) per _____ to apply against arrearages, commencing _____, in addition to any previously ordered payments.

IT IS FURTHER ORDERED

- ☐ enforcement of collection of the support arrearages shall be held in abeyance until further order of this Court.

☐ the Clerk of Court shall implement wage-withholding immediately.

☐ Rule Dismissed: _____

☐ Rule is continued for _____ Days/Months.

☒ Pay as previously ordered.

IT IS FURTHER ORDERED

- ☐ the Clerk of Court shall issue a Bench Warrant for:

☐ Failure to pay support

☐ Failure to appear for the hearing

☐ If missed _____ payments/months

☐ Avoiding service of process

IT IS FURTHER ORDERED that the parties shall advise the Clerk of Court of their current addresses at all times.

Beaufort, South Carolina

3/12

2008

PRESIDING JUDGE - The Family Court of the 14th Judicial Circuit

Copy (delivered) / (Mailed) to Plaintiff/Defendant by _____ on _____
SCCA/437 (3/93)

EXHIBIT F

CASE NBR-20-0770397 DEFENDANT PLAINTIFF
 ENBR-688181 DAILEY THOMAS W CENTENO SUSAN M.
 ACCT TYPE..S PAY TO
 GROUP.....U 2918 WATERS EDGE COURT SUSAN M CENTENO
 FREQUENCY..M APT. E
 STATUS..... BEAUFORT SC 29902

ORDER START DATE.....03/01/07
 LAST BW ISSUE DATE...07/17/07
 LAST DATE RULED IN...03/12/08
 LAST PAID DATE.....05/13/11

 --- S T A T U S ---

PERIODIC PAYMENT
 CUR PYMT... 627.00 CUR DUE.... 3281.77 CUR BAL..... 3877.42
 ARR PYMT... .00 ARR DUE.... .00 ARREARS BAL.. 499.66
 FEE..... 31.35 FEE DUE.... 1095.31 -----
 ----- TOTAL ACT BAL 4377.08
 TOT PYMT... 658.35 TOT DUE.... 4377.08 ABEYANCE AMT. .00

 --A C T I V I T Y--
 FROM 00/00/00 THRU 06/17/11

DE	DATE	CHARGE	PAYMENT	CURRENT	ARREARS	FEE-AMT	ACCT-BAL
	06/01/11	658.35		627.00	.00	31.35	4377.08
	05/13/11	NON CUSTOD	700.00	666.67	.00	33.33	3718.73
	05/01/11	658.35		627.00	.00	31.35	4418.73
	04/15/11	NON CUSTOD	700.00	666.67	.00	33.33	3760.38
	04/01/11	658.35		627.00	.00	31.35	4460.38
	03/11/11	NON CUSTOD	700.00	666.67	.00	33.33	3802.03
	03/01/11	658.35		627.00	.00	31.35	4502.03
	02/09/11	NON CUSTOD	700.00	666.67	.00	33.33	3843.68
	02/01/11	658.35		627.00	.00	31.35	4543.68
	01/12/11	NON CUSTOD	700.00	666.67	.00	33.33	3885.33
	01/01/11	658.35		627.00	.00	31.35	4585.33
	12/02/10	NON CUSTOD	700.00	666.67	.00	33.33	3926.98
	12/01/10	658.35		627.00	.00	31.35	4626.98
	11/02/10	NON CUSTOD	700.00	666.67	.00	33.33	3968.63
	11/01/10	658.35		627.00	.00	31.35	4668.63
	10/07/10	NON CUSTOD	700.00	666.67	.00	33.33	4010.28
	10/01/10	658.35		627.00	.00	31.35	4710.28
	09/02/10	NON CUSTOD	700.00	666.67	.00	33.33	4051.93
	09/01/10	658.35		627.00	.00	31.35	4751.93
	08/05/10	NON CUSTOD	700.00	666.67	.00	33.33	4093.58
	08/01/10	658.35		627.00	.00	31.35	4793.58
	07/09/10	NON CUSTOD	700.00	666.67	.00	33.33	4135.23
	07/01/10	658.35		627.00	.00	31.35	4835.23
	06/10/10	NON CUSTOD	700.00	666.67	.00	33.33	4176.88
	06/01/10	658.35		627.00	.00	31.35	4876.88
	05/07/10	NON CUSTOD	700.00	666.67	.00	33.33	4218.53
	05/01/10	658.35		627.00	.00	31.35	4918.53

SCANNED

CLIENT # 1679

109

ASE NBR-20-0770397

DEFENDANT

PLAINTIFF

ENBR-688181

DAILEY THOMAS W

CENTENO SUSAN M.

04/07/10	NON CUSTOD	700.00	666.67	.00	33.33	4260.18
04/01/10	658.35		627.00	.00	31.35	4960.18
03/15/10	NON CUSTOD	700.00	666.67	.00	33.33	4301.83
03/01/10	658.35		627.00	.00	31.35	5001.83
02/11/10	NON CUSTOD	700.00	666.67	.00	33.33	4343.48
02/01/10	658.35		627.00	.00	31.35	5043.48
01/22/10	NON CUSTOD	700.00	666.67	.00	33.33	4385.13
01/01/10	658.35		627.00	.00	31.35	5085.13
12/29/09	NON CUSTOD	700.00	666.67	.00	33.33	4426.78
12/01/09	658.35		627.00	.00	31.35	5126.78
11/30/09	NON CUSTOD	1400.00	1333.33	.00	66.67	4468.43
11/01/09	658.35		627.00	.00	31.35	5868.43
10/21/09	WAGE-WITH	679.35	647.00	.00	32.35	5210.08
10/01/09	658.35		627.00	.00	31.35	5889.43
09/17/09	WAGE-WITH	679.35	647.00	.00	32.35	5231.08
09/01/09	658.35		627.00	.00	31.35	5910.43
08/11/09	WAGE-WITH	679.35	647.00	.00	32.35	5252.08
08/01/09	658.35		627.00	.00	31.35	5931.43
07/28/09	ALTER CASE		6000.00-	.00	.00	5273.08
07/01/09	658.35		627.00	.00	31.35	11273.08
06/15/09	WAGE-WITH	623.61	593.91	.00	29.70	10614.73
06/01/09	2284.80		2176.00	.00	108.80	11238.34
05/22/09	WAGE-WITH	495.38	471.79	.00	23.59	8953.54
05/01/09	2284.80		2176.00	.00	108.80	9448.92
04/20/09	WAGE-WITH	2024.19	1927.80	.00	96.39	7164.12
04/01/09	2284.80		2176.00	.00	108.80	9188.31
03/17/09	WAGE-WITH	2389.80	2276.00	.00	113.80	6903.51
03/01/09	2284.80		2176.00	.00	108.80	9293.31
02/01/09	2284.80		2176.00	.00	108.80	7008.51
01/15/09	WAGE-WITH	2061.86	1963.68	.00	98.18	4723.71
01/01/09	2284.80		2176.00	.00	108.80	6785.57
12/01/08	NON CUSTOD	200.00	190.48	.00	9.52	4500.77
12/01/08	2284.80		2176.00	.00	108.80	4700.77
11/24/08	NON CUSTOD	5185.00	2630.09	2554.91	.00	2415.97
11/10/08	WAGE-WITH	1471.46	1376.39	25.00	70.07	7600.97
11/01/08	2337.30		2176.00	50.00	111.30	9072.43
10/31/08	NON CUSTOD	1030.00	.00	979.76	50.24	6787.63
10/31/08	25.00		25.00	.00	.00	7817.63
10/01/08	2337.30		2176.00	50.00	111.30	7842.63
09/12/08	WAGE-WITH	2202.77	2047.88	50.00	104.89	5557.83
09/01/08	2337.30		2176.00	50.00	111.30	7760.60
08/12/08	WAGE-WITH	1956.06	1812.91	50.00	93.15	5475.80
08/01/08	2337.30		2176.00	50.00	111.30	7431.86
07/15/08	WAGE-WITH	1404.81	1312.91	25.00	66.90	5147.06
07/01/08	2337.30		2176.00	50.00	111.30	6551.87
06/09/08	NON CUSTOD	2375.00	2172.05	88.67	114.28	4267.07
06/09/08	25.00		25.00	.00	.00	6642.07
06/01/08	2337.30		2176.00	50.00	111.30	6667.07
05/06/08	NON CUSTOD	2400.00	2235.71	50.00	114.29	4382.27
05/01/08	2337.30		2176.00	50.00	111.30	6782.27
04/04/08	NON CUSTOD	2400.00	2095.24	190.48	114.28	4497.47
04/01/08	2337.30		2176.00	50.00	111.30	6897.47

CASE NBR-20-0770397

DEFENDANT

PLAINTIFF

ENBR-688181

DAILEY THOMAS W

CENTENO SUSAN M.

DATE	DESCRIPTION	DEFENDANT	PLAINTIFF	TOTAL
03/04/08	NON CUSTOD	2350.00	62.10	4612.67
03/01/08	2337.30	2176.00	50.00	6962.67
02/25/08	NON CUSTOD	1000.00	952.38	4677.87
02/25/08	FINE PYMT	100.00	47.62	5677.87
02/25/08	ALTER CASE	5053.30-	5053.30	5677.87
02/01/08	2284.80	2176.00	108.80	5677.87
01/01/08	2284.80	2176.00	108.80	3393.07
12/19/07	ALTER CASE	18172.70-	944.13-	1108.27
12/01/07	2284.80	2176.00	108.80	20225.10
11/05/07	NON CUSTOD	8148.00	7438.00	17940.30
11/01/07	2284.80	2176.00	108.80	26088.30
10/01/07	2284.80	2176.00	108.80	23803.50
09/01/07	2284.80	2176.00	108.80	21518.70
08/01/07	2284.80	2176.00	108.80	19233.90
07/01/07	2284.80	2176.00	108.80	16949.10
06/01/07	2284.80	2176.00	108.80	14664.30
05/01/07	2284.80	2176.00	108.80	12379.50
04/01/07	2284.80	2176.00	108.80	10094.70
03/16/07	ALTER CASE	7438.00	371.90	7809.90

END OF PAYMENT HISTORY

--H E A R I N G D A T A--

FROM 00/00/00 THRU 06/17/11

DATE	PRESIDING JUDGE	CURRENT PYMT	ARREARAGE BAL	TOT BAL
01/01/09		.00	.00	.00
01/01/09	LEFT V/MSG FOR CP TO SEE IF SHE'S GOING TO PICK UP HER LG			
01/01/09	CK.PLR			
02/28/09		.00	.00	.00
02/28/09	ADJ:NCP GIVEN CREDIT \$6,000.00 PAID DIRECT TO CP. EY			
02/22/09	123ARMSTRO	.00	.00	.00
02/22/09	ORD: CP GAVE NCP CREDIT \$6,000.00 PAID DIRECT TO HER.EY			
02/22/09		.00	.00	.00
02/15/09	NCP CALLED RE: MOD. IF DFAS SNDS OVER PAYMENT, ASK VB ABOUT			
02/15/09	REFUNDING NCP. NCP IS ONLY A RESERVIST. KP			
02/10/09		.00	.00	.00
02/10/09	W/W MOD FXD & MAILED TO DFAS!PLR			
02/28/09		.00	.00	.00
02/28/09	ORDER CS#07-838:NCP PAY \$627 + 5% BEGIN 7/1/09.FYG			
02/22/09		.00	.00	.00
02/22/09	PYMNT FOR \$495.38 IS CORRECT; KLP			
02/25/09		.00	.00	.00
02/25/09	CP PICK UP CK FOR PMT POSTED 3/17/09.FYG			
02/12/09		.00	.00	.00
02/12/09	MICHELE/DSS REQ AFFD ARRS/PYMT HISTORY;INFO SENT. EY			
02/21/09		.00	.00	.00
02/21/09	CP PICK UP CK FOR PMT POSTED 1/15/09.FYG			

EXHIBIT G

STATE OF SOUTH CAROLINA

) IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

) DOCKET NO. 2009-CP-07-3361

MCAS Beaufort Federal Credit Union,

) Plaintiff,

) JUDGEMENT OF FORECLOSURE AND SALE
) (Deficiency Judgment Demanded)

vs.

Thomas W. Dailey, South Carolina Department
of Social Services, and Susan M. Centeno,

) Defendant(s)

Raymond H. Williams, Esquire
Attorney for the Plaintiff

10 JAN -5 PM 12:07
BEAUFORT COUNTY, S.C.
CLERK OF COURT

A hearing was held December 29, 2009 at 10:30 a.m. The testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on July 16, 2009.
2. The Summons and Complaint were filed on July 16, 2009.
3. Service was made upon the Defendant(s) named in this report as shown by the proofs of service filed herein.
4. The Defendant Thomas W. Dailey is in default as shown by affidavit or order filed herein.
5. The Defendant and/or all attorneys of record were notified of the time, date, and place of hearing in this matter.
6. According to the affidavit filed herein, the Defendant Thomas W. Dailey is in default and that the Defendant Thomas W. Dailey is not on active duty in the Military Service of the United States of America, as contemplated under the Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. Seq. According to a separate affidavit filed herein, the Defendant Susan M. Centeno is not in the Military Service of the United States of America, as contemplated under the Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. Seq.
7. For value received, Thomas W. Dailey made, executed and delivered a Construction Loan Promissory Note ("Note") dated February 9, 2006 promising thereby to pay the sum of \$354,450.00 with interest at 7.25% per annum.

8. To better secure the payment of the Note described above Thomas W. Dailey made, executed and delivered to MCAS Beaufort Federal Credit Union a certain real estate Mortgage in writing, dated February 9, 2006 covering real property in Beaufort County, which is the same as that described in the Complaint. The first Mortgage was recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on February 15, 2006 in Book 2321 at Page 1257.

9. This Mortgage constitutes a first mortgage lien on the property, subject only to ad valorem or other liens/taxes given priority by statute.

10. The Plaintiff in this action is the owner and holder of the Note and Mortgage and it is seeking to foreclose.

11. Any notice required by the terms of the Mortgage or by state or federal statutes has been given to the applicable Defendant(s) prior to the commencement of this action.

12. Payment due on the Note has not been made as provided for therein, and the Plaintiff, as the holder or nominee for the holder thereof, has elected to require immediate payment of the entire amount due thereon and had placed the Note and Mortgage in the hands of the attorney herein for collection by foreclosure.

13. The sum of ^{5000⁰⁰}~~\$5,000.00~~ is a reasonable fee to allow as attorney's fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the Note and Mortgage. These sums are likewise reasonable based on the time necessarily devoted to representation of the Plaintiff during the several month course of proceedings. The services of counsel performed for the Plaintiff, including the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case also support the amount awarded. The fees are also reasonable given the professional standing of the Plaintiff's counsel and his experience in handling foreclosure matters. The fees awarded herein are also reasonable in light of the fees customarily awarded by the Court for similar services in this locality. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure of the Mortgage. Service anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

14. After all payments received by the Plaintiff have been credited to the subject loan, the amount due and owing on the Note, with interest at the rate provided in the Note, and other costs and expenses of the within action, including attorney's fees, secured by the Note and Mortgage, is as follows:

a. Principal due on December 29, 2009.....	\$ 350,655.66
b. Interest from through December 29, 2009 at 7.5% per annum.....	\$ 37,672.93
c. Late charges.....	\$ 0.00

d. Advances/Costs of collection prior to hearing (service, filing, etc.)\$ 861.53
e. Attorney's fee.....\$ ~~5,000.00~~
3,500.00
TOTAL debt secured by Note and Mortgage, including interest to date shown.....\$ 394,190.12

\$392,690.12

Interest for the period from the date shown in (b) above through the date of this judgment at above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 7.25% per annum (pursuant to the terms of the Note, on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

15. Plaintiff is seeking the usual foreclosure of the Mortgage and has in the Complaint (or subsequently thereto in writing) expressly requested the right to a personal or deficiency judgment.

16. The Defendant(s) claim(s) or may claim a lien or legal interest in the subject property and in the event there is a surplus from the sale of the subject property, such Defendant(s) may present any such lien or legal interest at a hearing subsequent to the sale, in accordance with Rule 71(c) South Carolina Rules of Civil Procedure.

IT IS THEREFORE ORDERED:

17. There is due on the Note and Mortgage set forth in the Complaint the sum of \$394,190.12, as set out in the Findings of Facts *supra*, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

18. The amount due in the preceding paragraph (the "Final Total Debt" as set out in the Findings of Fact *supra*) shall accrue interest at the rate of the respective Note rate(s) per annum and together with such interest shall constitute the total judgment debt due the Plaintiff.

19. The amount of the judgment shall be subject to increase to permit the Plaintiff to recover additional costs, commissions and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. §14-11-310 (1976). It may also increase to include supplemental compensation for attorney's services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs and/or supplemental compensation. Such additional costs, commissions, and expenses may be established by affidavit and shall be adjudicated by the court without further hearing.

20. The Defendant(s) liable for the aforesaid judgment debt of the Note and Mortgage including interest

of the highest bidder and so from time to time thereafter until a full compliance shall be secured.

25. In the event an agent of Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale at the next available sales date upon the same terms and conditions as set forth in this Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

26. If Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses, and the indebtedness of Plaintiff in full, Plaintiff may pay to the Master in Equity only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

27. The Master in Equity will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian ad Litem fee or fees of attorneys appointed under Order of Court;

NEXT: To the payment to the Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest (including attorney's fees) or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus should be held pending further Order of this Court.

28. In the event the successful bidder is other than the Defendant(s) in possession herein, the Sheriff of Beaufort County is ordered and directed to eject and remove from the property the occupant(s) of the property sold, if applicable, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet, and peaceful possession of said property without delay, and to keep said successful bidder or his assigns in such peaceable possession.

29. In the event the successful bidder is other than the Defendants in possession herein and the occupants have voluntarily vacated the property or have been ejected from the property leaving furnishings, fixtures and items not subject to the Plaintiff's Mortgage on said property, the Purchaser is authorized to remove therefrom all furnishings, fixtures and items not subject to the lien of the Plaintiff's Mortgage, which personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

30. The Defendant(s) named herein, and all persons whosoever claiming under Defendant(s) are forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged property so sold, or any part thereof.

31. In accordance with Rule 77(d), SCRPC, the Clerk of Court shall serve a notice of entry of this Judgment of Foreclosure upon all parties not in default for failure to appear herein.

32. The deed of conveyance made pursuant to said sale shall contain the names of only the first-named Plaintiff and the first-named Defendant(s), and the Defendant(s) who was/were the titleholder(s) of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of

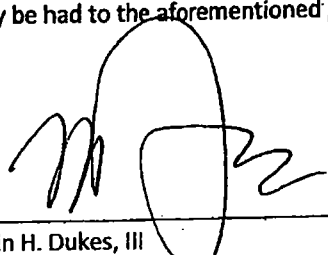
the grantee; and the Register of Deeds/Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

33. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

34. The following is a description of the property herein ordered to be sold:

ALL that certain piece, parcel or lot of land, situate, lying and being on Lady's Island, Beaufort County, South Carolina, shown and designated as Lot 41, Phase I, of Newpoint Subdivision on that certain plat or map prepared by David Gasque, RLS, RLS, dated December 30, 1991, redrawn April 21, 1998, a copy of which is recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 65 at Page 56. For a more detailed description of said lot as to metes, courses, distances, and bounds, reference may be had to the aforementioned plat of record.

Tax Map: R200 015 00A 0039 00000



Marvin H. Dukes, III
Master in Equity for Beaufort County

Beaufort, South Carolina

12/29 2009

EXHIBIT H

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	DOCKET NO. 2009-CP-07-3362
	)	
MCAS Beaufort Federal Credit Union,	)	
	)	
Plaintiff,	)	JUDGEMENT OF FORECLOSURE AND SALE
	)	(Deficiency Judgment Demanded)
vs.	)	
	)	
Thomas W. Dailey, South Carolina Department	)	
of Social Services, and Susan M. Centeno,	)	
	)	
Defendant(s)	)	

Raymond H. Williams, Esquire
Attorney for the Plaintiff

10 JAN -5 PM 12:09
CLERK OF COURT

A hearing was held December 29, 2009 at 10:30 a.m. The testimony was taken, which is reported herewith, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on July 16, 2009.
2. The Summons and Complaint were filed on July 16, 2009.
3. Service was made upon the Defendant(s) named in this report as shown by the proofs of service filed herein.
4. The Defendant Thomas W. Dailey is in default as shown by affidavit or order filed herein.
5. The Defendant and/or all attorneys of record were notified of the time, date, and place of hearing in this matter.
6. According to the affidavit filed herein, the Defendant Thomas W. Dailey is in default and that the Defendant Thomas W. Dailey is not on active duty in the Military Service of the United States of America, as contemplated under the Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. Seq. According to a separate affidavit filed herein, the Defendant Susan M. Centeno is not in the Military Service of the United States of America, as contemplated under the Servicemembers Civil Relief Act, 50 U.S.C. § 501 et. Seq.
7. For value received, Thomas W. Dailey made, executed and delivered a Balloon Note (Fixed Rate) dated February 9, 2006 promising thereby to pay the sum of \$130,500.00 with interest at 7.5% per annum.
8. To better secure the payment of the Balloon Note (Fixed Rate) described above Thomas W. Dailey made, executed and delivered to MCAS Beaufort Federal Credit Union a certain real estate Mortgage in

writing, dated February 9, 2006 covering real property in Beaufort County, which is the same as that described in the Complaint. The first Mortgage was recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on February 9, 2006 in Book 2318 at Page 1916.

9. This Mortgage constitutes a first mortgage lien on the property, subject only to ad valorem or other liens/taxes given priority by statute.

10. The Plaintiff in this action is the owner and holder of the Balloon Note (Fixed Rate) and Mortgage and it is seeking to foreclose.

11. Any notice required by the terms of the Mortgage or by state or federal statutes has been given to the applicable Defendant(s) prior to the commencement of this action.

12. Payment due on the Balloon Note (Fixed Rate) has not been made as provided for therein, and the Plaintiff, as the holder or nominee for the holder thereof, has elected to require immediate payment of the entire amount due thereon and had placed the Balloon Note (Fixed Rate) and Mortgage in the hands of the attorney herein for collection by foreclosure.

13. The sum of \$3,500.00 is a reasonable fee to allow as attorney's fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the within action, under the terms of the Balloon Note (Fixed Rate) and Mortgage. These sums are likewise reasonable based on the time necessarily devoted to representation of the Plaintiff during the several month course of proceedings. The services of counsel performed for the Plaintiff, including the number and types of pleadings and documents prepared, the incumbent liabilities, and the difficulties involved in this particular case also support the amount awarded. The fees are also reasonable given the professional standing of the Plaintiff's counsel and his experience in handling foreclosure matters. The fees awarded herein are also reasonable in light of the fees customarily awarded by the Court for similar services in this locality. Moreover, the efforts of Plaintiff's counsel have had the beneficial result of a prompt foreclosure of the Mortgage. Service anticipated to be performed until final adjudication contemplates completion of this matter within a reasonable time and does not include exceptional circumstances delaying conclusion beyond the normal time.

14. After all payments received by the Plaintiff have been credited to the subject loan, the amount due and owing on the Balloon Note (Fixed Rate), with interest at the rate provided in the Balloon Note (Fixed Rate), and other costs and expenses of the within action, including attorney's fees, secured by the Balloon Note (Fixed Rate) and Mortgage, is as follows:

a. Principal due on December 29, 2009.....	\$ 131,120.15
b. Interest from through December 29, 2009 at 7.5% per annum.....	\$ 14,992.57
c. Late charges.....	\$ 45.63

d. Advances/Costs of collection prior to hearing (service, filing, etc.)	\$	861.53
e. Attorney's fee.....	\$	3,500.00
TOTAL debt secured by Balloon Note (Fixed Rate) and Mortgage,		
including interest to date shown.....	\$	150,519.88

Interest for the period from the date shown in (b) above through the date of this judgment at above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 7.5% per annum (pursuant to the terms of the Balloon Note (Fixed Rate and Mortgage), on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage through the date to which such interest is computed.

15. Plaintiff is seeking the usual foreclosure of the Mortgage and has in the Complaint (or subsequently thereto in writing) expressly requested the right to a personal or deficiency judgment.

16. The Defendant(s) claim(s) or may claim a lien or legal interest in the subject property and in the event there is a surplus from the sale of the subject property, such Defendant(s) may present any such lien or legal interest at a hearing subsequent to the sale, in accordance with Rule 71(c) South Carolina Rules of Civil Procedure.

IT IS THEREFORE ORDERED:

17. There is due on the Balloon Note (Fixed Rate) and Mortgage set forth in the Complaint the sum of \$152,019.88, as set out in the Findings of Facts *supra*, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

18. The amount due in the preceding paragraph (the "Final Total Debt" as set out in the Findings of Fact *supra*) shall accrue interest at the rate of the respective Note rate(s) per annum and together with such interest shall constitute the total judgment debt due the Plaintiff.

19. The amount of the judgment shall be subject to increase to permit the Plaintiff to recover additional costs, commissions and expenses not included in the minimum deposit previously made in compliance with S.C. Code Ann. §14-11-310 (1976). It may also increase to include supplemental compensation for attorney's services not contemplated by the initial fee award. Jurisdiction over the fee award and total debt is reserved to facilitate the assessment and payment of any such costs and/or supplemental compensation. Such additional

costs, commissions, and expenses may be established by affidavit and shall be adjudicated by the court without further hearing.

20. The Defendant(s) liable for the aforesaid judgment debt of the Balloon Note (Fixed Rate) and Mortgage including interest thereon at the rate of 7.5% per annum shall on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

21. On default of payment at or before the time herein indicated, the mortgaged property described in the Complaint, as hereinafter set forth, shall be sold by the Master in Equity at public auction, at the Beaufort County Courthouse, in the City of Beaufort, County and State aforesaid on February 1, 2010 at 11:00 a.m., or on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on the next business day succeeding such holiday), on the following terms, that is to say:

For cash: The Master in Equity will require a deposit of 5% on the amount of the bid (in cash or equivalent) same to be applied to purchase price if compliance is made, but in the event compliance is not made, the deposit may be forfeited without further hearing and applied first to costs of the action and then to Plaintiff's debt. Should the successful bidder at the regularly conducted sale fail or refuse to either make the required deposit at time of bid or comply with the other terms of the bid within 30 days, then the property may be re-sold on the same terms and conditions on the same or some subsequent sales day, but at the risk of the defaulting bidder(s).

- a. Interest on the balance of the bid shall be paid through the day of compliance at the rate of 7.5%.
- b. The sale shall be subject to taxes and assessments, existing easements and restrictions of record, and any other senior encumbrances.
- c. Purchaser to pay for any statutory commission on sale from the proceeds of the final bid amount.
- d. Purchaser to pay for deed preparation, costs of recording the deed and satisfaction of mortgage, and transfer taxes on the deed.
- e. Purchaser shall be entitled to possession of the property only after Purchaser fully complies with the bid amount and a deed is issued by the Court.

22. A personal or deficiency judgment having been requested, the bidding will remain open for thirty (30) days after the final bid after the date of sale and compliance with the bid may be made immediately.

23. Plaintiff may waive any of its rights, including its right to a deficiency judgment in accordance with Rule 71, South Carolina Rules of Civil Procedure, prior to sale.

24. The Master in Equity will, by advertisement according to law, give notice of the time and place of such sale and the terms thereof and will execute to the Purchaser(s), a deed to the property sold. The Plaintiff,

or any such other party to this action, may become a purchaser at such sale, and if, upon such sale being made, the Purchaser(s), should fail to comply with the terms thereof within 30 days after date of sale, then the Master In Equity may advertise the said property for sale on the next or some subsequent sales day at the risk of the highest bidder and so from time to time thereafter until a full compliance shall be secured.

25. In the event an agent of Plaintiff does not appear at the time of sale, the within property shall be withdrawn from sale at the next available sales date upon the same terms and conditions as set forth in this Judgment of Foreclosure and Sale or such terms as may be set forth in a supplemental order.

26. If Plaintiff is the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses, and the indebtedness of Plaintiff in full, Plaintiff may pay to the Master in Equity only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

27. The Master in Equity will apply the proceeds of the sale as follows:

FIRST: To the payment of the amount of the costs and expenses of this action, including any Guardian ad Litem fee or fees of attorneys appointed under Order of Court;

NEXT: To the payment to the Plaintiff or Plaintiff's attorney of the amount of Plaintiff's debt and interest (including attorney's fees) or so much thereof as the purchase money will pay on the same;

NEXT: Any surplus should be held pending further Order of this Court.

28. In the event the successful bidder is other than the Defendant(s) in possession herein, the Sheriff of Beaufort County is ordered and directed to eject and remove from the property the occupant(s) of the property sold, if applicable, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet, and peaceful possession of said property without delay, and to keep said successful bidder or his assigns in such peaceable possession.

29. In the event the successful bidder is other than the Defendants in possession herein and the occupants have voluntarily vacated the property or have been ejected from the property leaving furnishings, fixtures and items not subject to the Plaintiff's Mortgage on said property, the Purchaser is authorized to remove therefrom all furnishings, fixtures and items not subject to the lien of the Plaintiff's Mortgage, which personal property, being deemed abandoned, shall be removed by the Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

30. The Defendant(s) named herein, and all persons whosoever claiming under Defendant(s) are forever barred and foreclosed of all right, title, interest, equity of redemption or lien in the said mortgaged property so sold, or any part thereof.

31. In accordance with Rule 77(d), SCRCF, the Clerk of Court shall serve a notice of entry of this Judgment of Foreclosure upon all parties not in default for failure to appear herein.

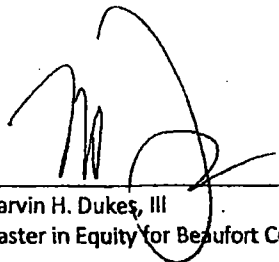
32. The deed of conveyance made pursuant to said sale shall contain the names of only the first-named Plaintiff and the first-named Defendant(s), and the Defendant(s) who was/were the titleholder(s) of the mortgaged property at the time of the filing of the notice of pendency of the within action, and the name of the grantee; and the Register of Deeds/Clerk of Court is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said deed.

33. The undersigned will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

34. The following is a description of the property herein ordered to be sold:

ALL that certain piece, parcel or lot of land, situate, lying and being on Port Royal Island, Beaufort County, South Carolina, shown and designated as Lot 572, Phase V, Habersham, on a plat thereof prepared by Gasque & Associates, Inc., consisting of 3 pages, dated November 1, 2004, last revised March 14, 2005, and recorded in Plat Book 106 at Page 39, Office of the Register of Deeds for Beaufort County, South Carolina.

Tax Map: R100 027 000 0814 0000



Marvin H. Dukes, III
Master in Equity for Beaufort County

Beaufort, South Carolina

12/19 2009

EXHIBIT I

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

Deutsche Bank National Trust Company, as Trustee on
Behalf of the HSI Asset Securitization Corporation
Trust 2007-HE1,

PLAINTIFF,

vs.

Thomas W. Dailey, South Carolina Department of
Social Services and Susan M. Centeno,

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

MASTER'S ORDER AND
JUDGMENT OF FORECLOSURE AND
SALE

(NON-JURY MORTGAGE
FORECLOSURE)

C/A NO:2009-CP-07-1915

DEFICIENCY REQUESTED

10 SEP 17 PM 12:21
CLERK OF COURT
BEAUFORT COUNTY, S.C.

F29-02479

TO:

Korn Law Firm, P.A.
Attorney for Plaintiff

Pursuant to Rule 53 SCRPC, the above-entitled matter was referred to the undersigned to make appropriate findings of fact and conclusions of law with authority to enter a final judgment in the cause.

Pursuant to the said Order of Reference a hearing was held, attended by the attorneys of record, the testimony was taken, which is reported herewith, and from the testimony and evidence, I find conclude and order as follows:

FINDINGS OF FACT:

1. The Lis Pendens was filed on April 23, 2009.
2. The Summons and Complaint were filed on April 23, 2009.
3. Service was made upon the Defendant(s) named in this Report as is shown by the Proof(s) of Service filed herein.
4. That the Defendants Thomas W. Dailey, South Carolina Department of Social Services and Susan M. Centeno are in default as shown by Affidavit on file herein.
5. The Defendants and/or all attorneys of record were notified of the time, date, and place of the hearing in this matter.
6. According to the Affidavit filed herein, no Defendant in default is in the Military Service of the United States of America, as contemplated under the Soldiers' and Sailors' Civil Relief Act of 1940, and any amendments thereto.

7. For value received, Thomas W. Dailey made, executed and delivered a Note dated October 10, 2006, promising thereby to pay to the order of Decision One Mortgage Company, LLC the sum of Two Hundred Seventy Thousand And 00/100 Dollars (\$270,000.00), with interest at an adjustable rate. Other terms and conditions are stated in the Note, which is of record herein.

8. To better secure the payment of the Note described above, the said Thomas W. Dailey made, executed and delivered to Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Decision One Mortgage Company, LLC a Mortgage in writing, dated October 10, 2006, covering real property in Beaufort County, which is the same as that described in the Complaint. The mortgage was filed on November 30, 2006, and is of record in the Office of the Register of Deeds for Beaufort County in Mortgage Book 2482 at page 2143.

9. Thereafter, by virtue of an assignment dated April 15, 2009, recorded April 23, 2009, in Mortgage Book 2835 at page 1827, Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Decision One Mortgage Company, LLC assigned said mortgage unto Deutsche Bank National Trust Company, as Trustee on Behalf of the HSI Asset Securitization Corporation Trust 2007-HE1. Deutsche Bank National Trust Company, as Trustee on Behalf of the HSI Asset Securitization Corporation Trust 2007-HE1 is present lien holder and Plaintiff herein.

10. The above referenced instrument constitutes a first lien priority mortgage.

11. Payment due on the Note has not been made as provided for therein, and the Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of the attorney herein for collection.

12. I find that since the inception of this action, plaintiff's attorney has assumed responsibility for the institution of this action and has searched and updated the title on the subject property from the date the current owner received the property or the date the mortgage was executed to the date of the filing of the Lis Pendens. He has been responsible for the preparation of the following pleadings:

1. Lis Pendens
2. Summons and Complaint
3. Affidavit of Default
4. Order of Reference
5. Notice of Hearing
6. Proposed Final Decree
7. Notice of Sale
8. Transcript of Testimony
9. Other documents as applicable pertaining to service and finalization of this action.

Additionally, he has arranged for service of process on the defendant(s), has scheduled and attended the hearing in this matter, has provided reinstatement figures to the primary defendant, if requested, and has had telephone conversations with the defendant(s), if requested. Future duties include forwarding copies

of the Decree to the defendant(s), advising the defendant(s) of the date that the property will be sold, arranging and coordinating the amount to be bid by plaintiff, representation of plaintiff at sale and preparation of after sale documentation as required. In light of the potential liabilities inherent in a property matter, the attendant responsibilities and the size of the mortgage debt, I find that the attorney fees requested by the plaintiff in the amount of three thousand five hundred and 00/100 (\$3,500.00) are reasonable.

13. The amount due and owing on the Note, with interest at the rate provided in the Note, and other costs and expenses of collection, including an attorney's fee, secured by the Note and Mortgage, is as follows:

(a)	Principal due as of 7/16/2008	\$265,984.45
(b)	Interest from 6/16/2008 through 9/17/2010 at 7.80%	\$ 51,026.12
(c)	Escrow adjustments (debits or credits)	\$ 5,178.88
	Insurance \$ 2,943.00	
	Taxes \$ 2,235.88	
(d)	Late charges	\$ 194.36
(e)	Appraisal fee	\$ 190.00
(f)	Property maintenance (preservation)	\$ 487.25
(g)	Costs of Collections Prior to Hearing	\$ 1,381.23
(h)	Attorney Fees	\$ 3,500.00
	TOTAL DEBT secured by Note and Mortgage, including interest to date shown	\$327,942.29

Interest for the period from the date shown in (b) above, through the date of this Judgment at the above stated rate to be added to the above stated "Total Debt" to comprise the amount of the judgment debt entered herein and interest after the date of judgment at the rate of 7.800 percent per annum (pursuant to the terms of the Note and Mortgage) on the judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the mortgage through the date to which such interest is computed.

14. That the Defendants, South Carolina Department of Social Services and Susan M. Centeno, are made parties by virtue of a Judgment against Thomas W. Dailey, dated March 12, 2008 and recorded March 17, 2008 in the amount of Four Thousand Six Hundred Twelve And 67/100 (\$4,612.67) and is identified as 2007-CP-07-861.

15. That the Plaintiff does not waive but specifically demands judgment against the Defendant(s), Thomas W. Dailey, for the full amount found to be due to Plaintiff on the note and mortgage held by plaintiff, with the right to enter personal judgment against the Defendant(s) for any deficiency in this action remaining after sale of the mortgaged premises.

16. As a personal or deficiency judgment is demanded, the bidding will remain open for a period of thirty (30) days pursuant to S.C. CODE Ann. Section 15-39-720 (1976).

17. The mortgage loan is owned, securitized or guaranteed by FNMA or FHLMC, or the servicing agent has executed an agreement under the HMP, but the HMP modification process has been completed without modification.

CONCLUSION OF LAW

I, therefore, conclude as follows:

1. The Plaintiff should have judgment of foreclosure of the mortgage and the mortgaged property should be ordered sold at public auction after due advertisement.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED:

1. There is due to the Plaintiff on the obligation and mortgage set forth in the Complaint the sum of Three Hundred Twenty-Seven Thousand Nine Hundred Forty-Two And 29/100 Dollars (\$327,942.29) representing the "Total Debt" due Plaintiff as set forth supra, together with interest at the rate provided therein on the balance of principal from the date aforesaid to the date hereof.

2. The amount due in the preceding paragraph (the "Total Debt" as set forth supra and later accrued interest on the principal) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of 7.800% percent per annum.

3. That the Defendants liable for the aforesaid mortgage debt shall, on or before the date of sale of the property hereinafter described, pay to the Plaintiff, or Plaintiff's attorney the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

4. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, as hereinafter set forth, be sold by the Master in Equity at public auction at the Beaufort County Courthouse in Beaufort, South Carolina, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in the such event, the sales day shall be on Tuesday next succeeding such holiday), on the following terms, that is to say:

A. FOR CASH: The Master in Equity will require a deposit of Five percent (5%) on the amount of the bid (in cash or equivalent) at the time of the sale, same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within Thirty (30) days same to be forfeited and applied to the costs and Plaintiff's debt.

B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 7.800 percent.

C. The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record.

D. The above referenced instrument constitutes a first lien priority mortgage.

E. Purchaser to pay for Deed Stamps and costs of recording the Deed.

5. If Plaintiff be the successful bidder at the said sale, for a sum not exceeding the amount of costs, expenses and the indebtedness of the Plaintiff in full, Plaintiff may pay to the undersigned Master in Equity only the amount of the costs and expenses crediting the balance of the bid on Plaintiff's indebtedness.

6. Fourth, Plaintiff have judgment against the Defendant, Thomas W. Dailey, for the full amount found to be due Plaintiff on the note and mortgage, with right to enter personal judgment against the Defendant, Thomas W. Dailey, for any deficiency in this action remaining after sale of the mortgaged premises.

7. That the Master in Equity will, by advertisement according to law, give notice of the time, and place of sale, and the terms thereof; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. The Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within Thirty (30) days after date of sale, then the Master in Equity may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

8. That the Master in Equity will apply the proceeds of the sale as follows:

FIRST: To payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court.

NEXT: To the payment to the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, so much thereof as the purchase money will pay on the same.

NEXT: Any surplus will be held pending further order of the court.

9. It is further ORDERED, ADJUDGED AND DECREED that in the event the successful bidder to whom the deed of conveyance has been issued subsequent to the sale is other than the Defendants in possession herein, the Sheriff of Beaufort County is ordered and directed to eject and remove from the premises the occupants of the property sold, together with all personal property located thereon, and put the successful bidder to whom the deed of conveyance has been issued or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession. All valid tenant rights shall be protected.

10. And it is further ORDERED, ADJUDGED AND DECREED that each Defendant and all persons whomsoever claiming under him, her or them, be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

11. And it is further ORDERED, ADJUDGED AND DECREED that any prior lien that has been paid in full is hereby satisfied and cancelled of record.

12. IT IS FURTHER ORDERED that the Deed of conveyance made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant who was the titleholder of the mortgaged property at the time of filing of the Notice of Pendency of the within action, and the name of the Grantee, and the Register of Deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said Deed.

13. The Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance.

14. Upon issuance of a Master in Equity Report on Sale and Disbursements, the Register of Deeds is directed to release of record the mortgage lien being foreclosed, which mortgage lien is described as follows:

That Mortgage originally given to Mortgage Electronic Registration Systems, Inc., acting solely as nominee for Decision One Mortgage Company, LLC by Thomas W. Dailey, dated 10/10/2006 and recorded 11/30/2006, in Mortgage Book 2482 at page 2143.

15. The following is a description of the premises herein ordered to be sold:

LEGAL DESCRIPTION AND PROPERTY ADDRESS:

All that certain piece, parcel or lot of land, with all improvements thereon, situate, lying and being in the City of Beaufort, Beaufort County, South Carolina, shown and designated as Lot 15, of Waters Edge Subdivision, as shown on that certain plat prepared by R. D. Trogon, Jr., RLS, dated August 25, 1989, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 36 at Page 208. For a more complete description of said property, reference may be had to an individual plat prepared by David E. Gasque, RLS, dated March 19, 1991, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Deed Book 572 at Page 1516.

This property is subject to all applicable restrictions, easements and rights of way of record in the Office of the Register of Deeds for Beaufort County, South Carolina.

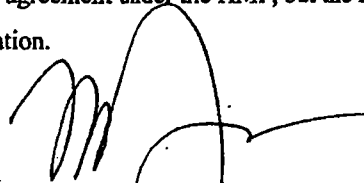
This being the same property conveyed to Thomas W. Dailey by deed of Lila N. Meeks, Virginia Meeks Shuman f/k/a Virginia D. Meeks and Sydney N. Meeks as Co-Trustees of the Testamentary Trust U/W of Clarence Irving Meeks, III dated September 5, 1995 dated March 15, 2005 and recorded April 25, 2005 in the Register of Deeds Office for Beaufort County, South Carolina in Book 2136 at Page 1750.

2918 Waters Edge Court East, Beaufort, SC 29902

TMS R120-003-000-0737-0000

16. IT IS FURTHER ORDERED that if the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-described property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day.

17. IT IS FURTHER ORDERED the mortgage loan is owned, securitized or guaranteed by FNMA or FHLMC, or the servicing agent has executed an agreement under the HMP, but the HMP modification process has been completed without modification.



Marvin H. Dukes, III
Master in Equity
For Beaufort County

Beaufort, South Carolina
7/17, 2010.

EXHIBIT J

2011-CP-07-2121

Defendant.

LIBRARY - 9 PM 4:07
HARRIS COUNTY, S.C.
CLERK OF COURT
RECEIVED

6. As of March 9, 2011, the Defendant is indebted to the Plaintiff in the principal amount of \$2,288.88, together with unpaid accrued interest as of March 9, 2011, in the amount of \$762.83. In addition, pursuant to the terms of the parties' agreements, the Defendant is further indebted to the Plaintiff for the costs and disbursements in this action and reasonable attorneys' fees. The per diem accumulation from March 9, 2011, is \$.9406. This debt is more fully set forth on the Verification of Amount Due attached hereto and an Affidavit of Statement of Account of Whitney Byrd incorporated herein as Exhibit "B."

7. The Plaintiff, by virtue of the Defendant's default, is informed and believes that it is entitled to immediate possession of the property which is the subject of said Contract.

8. On December 18, 2008, Plaintiff sent to the Defendant a Formal Demand and Request to Cure specifying the last day of payment and the amount then due.

9. Any notices of default, notifications or requests under 15 U.S.C. §1601 et. seq. or demand for the amount due under the terms of the Note or other loan documents, if any, have been or are hereby made.

10. Attached hereto and incorporated herein as Exhibit "C" is the Notice Required by the Fair Debt Collection Practices Act, (The Act) 15 U.S.C. Section 1601 as amended.

11. **THIS NOTICE IS AN ATTEMPT TO COLLECT A DEBT AND INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

12. The Plaintiff is informed and believes that, under the terms of the Defendant's Contract with Plaintiff, it is entitled to collect all expenses, including reasonable attorneys' fees, incurred in the collection of the amount payable thereunder and the recovery and sale of the property, and that said Defendant is further liable under the terms of said Contract for interest on the entire amount of principal and interest due, from the date of default, and delinquency charges, as set forth in said Contract.

13. According to Plaintiff's best knowledge, information and belief, the subject property is located at or based at and operated from Defendant's place of business or residence at the following address: 2918 Waters Edge Court, Beaufort, SC 29906.

14. The subject property is wrongfully detained by the Defendant, and, on information and belief, the cause of this withholding or detention is Defendant's desire to continue using the property, without paying for same.

15. The property has not, on information and belief, been taken for any tax, assessment or fine pursuant to a statute, nor has it been seized under an execution or attachment against said property.

16. The Plaintiff by or through its agents and employees has attempted to obtain possession of the collateral.

17. Demand has been made upon the Defendant to deliver the property to Plaintiff or to make payment pursuant to the Contract but said Defendant failed and refused to do so.

18. Defendant has refused to surrender possession and is actively concealing the collateral.

19. By virtue of Defendant's wrongful detention of the subject property, Plaintiff has been damaged in that it has been denied the use of the money to which it is entitled or the use of the property, which is rapidly depreciating in value, and in that it has incurred attorneys' fees and other costs and expenses for which it is entitled to recover pursuant to the terms of the Contract.

FOR A SECOND CAUSE OF ACTION:

20. Plaintiff realleges and repleads the allegations set forth in paragraphs 1 through 19 above as fully and completely as if set forth herein verbatim.

21. Plaintiff is informed and believes it is entitled to judgment against Defendant in the amount of \$2,288.88, together with unpaid accrued interest as of March 9, 2011, in the amount of \$762.83, together with interest and costs as set forth herein. In addition, pursuant to the terms of the parties' agreements, the Defendant is further indebted to the Plaintiff for the costs and disbursements in this action and reasonable attorneys' fees. The per diem accumulation from March 9, 2011, is \$.9406. This debt is more fully stated in the Verification of Amount Due and Affidavit of Statement of Account of Whitney Byrd, which is attached hereto and incorporated herein as Exhibit "B."

FOR A THIRD CAUSE OF ACTION:

22. Plaintiff realleges and repleads the allegations set forth in paragraphs 1 through 21 above as fully and completely as if set forth herein verbatim. On or about April 24, 2007, Thomas W. Dailey entered into a contract with Plaintiff whereby said Thomas W. Dailey borrowed the sum stated therein for the purpose of purchasing a 2007 Honda Element Vin No. 5J6YH18377L013038, which was pledged as collateral to secure payment of the sums Thomas W. Dailey owes to Plaintiff. A copy of said Request for Loan Advance ("Contract") is attached hereto and incorporated herein as Exhibit "D".

23. The Plaintiff was neither the manufacturer nor the seller of the property in question, and the property was purchased for consumer purposes.

24. The Defendant failed to make payments when due pursuant to said Contract, and in accordance with the terms of said Contract Plaintiff has declared the entire balance on the Contract to be presently due and payable.

25. As of March 9, 2011, the Defendant is indebted to the Plaintiff in the principal amount of \$22,527.91, together with unpaid accrued interest as of March 9, 2011, in the amount of \$4,965.99. In addition, pursuant to the terms of the parties' agreements, the Defendant is further indebted to the Plaintiff for the costs and disbursements in this action and reasonable attorneys' fees. The per diem accumulation from March 9, 2011, is \$5.5548. This debt is more fully set forth on the Verification of Amount Due attached hereto and an Affidavit of Statement of Account of Whitney Byrd incorporated herein as Exhibit "E."

26. The Plaintiff, by virtue of the Defendant's default, is informed and believes that it is entitled to immediate possession of the property which is the subject of said Contract.

27. On December 17, 2008, Plaintiff sent to the Defendant a Formal Demand and Request to Cure specifying the last day of payment and the amount then due.

28. Any notices of default, notifications or requests under 15 U.S.C. §1601 et. seq. or demand for the amount due under the terms of the Note or other loan documents, if any, have been or are hereby made.

29. Attached hereto and incorporated herein as Exhibit "F" is the Notice Required by the Fair Debt Collection Practices Act, (The Act) 15 U.S.C. Section 1601 as amended.

30. **THIS NOTICE IS AN ATTEMPT TO COLLECT A DEBT AND INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

31. The Plaintiff is informed and believes that, under the terms of the Defendant's Contract with Plaintiff, it is entitled to collect all expenses, including reasonable attorneys' fees, incurred in the collection of the amount payable thereunder and the recovery and sale of the property, and that said Defendant is further liable under the terms of said Contract for interest on the entire amount of principal and interest due, from the date of default, and delinquency charges, as set forth in said Contract.

32. According to Plaintiff's best knowledge, information and belief, the subject property is located at or based at and operated from Defendant's place of business or residence at the following address: 2918 Waters Edge Court, Beaufort, SC 29906.

33. The subject property is wrongfully detained by the Defendant, and, on information and belief, the cause of this withholding or detention is Defendant's desire to continue using the property, without paying for same.

34. The property has not, on information and belief, been taken for any tax, assessment or fine pursuant to a statute, nor has it been seized under an execution or attachment against said property.

35. The Plaintiff by or through its agents and employees has attempted to obtain possession of the collateral.

36. Demand has been made upon the Defendant to deliver the property to Plaintiff or to make payment pursuant to the Contract but said Defendant failed and refused to do so.

37. Defendant has refused to surrender possession and is actively concealing the collateral.

38. By virtue of Defendant's wrongful detention of the subject property, Plaintiff has been damaged in that it has been denied the use of the money to which it is entitled or the use of the property, which is rapidly depreciating in value, and in that it has incurred attorneys' fees and other costs and expenses for which it is entitled to recover pursuant to the terms of the Contract.

FOR A FOURTH CAUSE OF ACTION:

39. Plaintiff realleges and repleads the allegations set forth in paragraphs 1 through 38 above as fully and completely as if set forth herein verbatim.

40. Plaintiff is informed and believes it is entitled to judgment against Defendant in the amount of \$22,527.91, together with unpaid accrued interest as of March 9, 2011, in the amount of \$4,965.99, together with interest and costs as set forth herein. In addition, pursuant to the terms of the parties' agreements, the Defendant is further indebted to the Plaintiff for the costs and disbursements in this action and reasonable attorneys' fees. The per diem accumulation from March 9, 2011, is \$5.5548. This debt is more fully stated in the Verification of Amount Due and Affidavit of Statement of Account of Whitney Byrd, which is attached hereto and incorporated herein as Exhibit "E."

FOR A FIFTH CAUSE OF ACTION:

41. Plaintiff realleges and repleads the allegations set forth in paragraphs 1 through 40 above as fully and completely as if set forth herein verbatim. On or about June 21, 2007, Thomas W. Dailey entered into a contract with Plaintiff whereby said Thomas W. Dailey borrowed the sum stated therein for the purpose of purchasing a 1987 Pace Arrow Vin No. 1GBKP37W6H3338386, which was pledged as collateral to secure payment of the sums Thomas W. Dailey owes to Plaintiff. A copy of said Request for Loan Advance ("Contract") is attached hereto and incorporated herein as Exhibit "G".

42. The Plaintiff was neither the manufacturer nor the seller of the property in question, and the property was purchased for consumer purposes.

43. The Defendant failed to make payments when due pursuant to said Contract, and in accordance with the terms of said Contract Plaintiff has declared the entire balance on the Contract to be presently due and payable.

44. As of March 9, 2011, the Defendant is indebted to the Plaintiff in the principal amount of \$8,476.78, together with unpaid accrued interest as of March 9, 2011, in the amount of \$2,120.25, together with late charges in the amount of \$223.60. In addition, pursuant to the terms of the parties' agreements, the Defendant is further indebted to the Plaintiff for the costs and disbursements in this action and reasonable attorneys' fees. The per diem accumulation from March 9, 2011, is \$2.2063. This debt is more fully set forth on the Verification of Amount Due attached hereto and an Affidavit of Statement of Account of Whitney Byrd incorporated herein as Exhibit "H."

45. The Plaintiff, by virtue of the Defendant's default, is informed and believes that it is entitled to immediate possession of the property which is the subject of said Contract.

46. On January 28, 2011, Plaintiff sent to the Defendant a Formal Demand and Request to Cure specifying the last day of payment and the amount then due

47. Any notices of default, notifications or requests under 15 U.S.C. §1601 et. seq. or demand for the amount due under the terms of the Note or other loan documents, if any, have been or are hereby made.

48. Attached hereto and incorporated herein as Exhibit "I" is the Notice Required by the Fair Debt Collection Practices Act, (The Act) 15 U.S.C. Section 1601 as amended.

49. THIS NOTICE IS AN ATTEMPT TO COLLECT A DEBT AND INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

50. The Plaintiff is informed and believes that, under the terms of the Defendant's Contract with Plaintiff, it is entitled to collect all expenses, including reasonable attorneys' fees, incurred in the collection of the amount payable thereunder and the recovery and sale of the property, and that said Defendant is further liable under the terms of said Contract for interest on the entire amount of principal and interest due, from the date of default, and delinquency charges, as set forth in said Contract.

51. According to Plaintiff's best knowledge, information and belief, the subject property is located at or based at and operated from Defendant's place of business or residence at the following address: 2918 Waters Edge Court, Beaufort, SC 29906.

52. The subject property is wrongfully detained by the Defendant, and, on information and belief, the cause of this withholding or detention is Defendant's desire to continue using the property, without paying for same.

53. The property has not, on information and belief, been taken for any tax, assessment or fine pursuant to a statute, nor has it been seized under an execution or attachment against said property.

54. The Plaintiff by or through its agents and employees has attempted to obtain possession of the collateral.

55. Demand has been made upon the Defendant to deliver the property to Plaintiff or to make payment pursuant to the Contract but said Defendant failed and refused to do so.

56. Defendant has refused to surrender possession and is actively concealing the collateral.

57. By virtue of Defendant's wrongful detention of the subject property, Plaintiff has been damaged in that it has been denied the use of the money to which it is entitled or the use of the property, which is rapidly depreciating in value, and in that it has incurred attorneys' fees and other costs and expenses for which it is entitled to recover pursuant to the terms of the Contract.

FOR A SIXTH CAUSE OF ACTION:

58. Plaintiff realleges and repleads the allegations set forth in paragraphs 1 through 57 above as fully and completely as if set forth herein verbatim.

59. Plaintiff is informed and believes it is entitled to judgment against Defendant in the amount of \$8,476.78, together with unpaid accrued interest as of March 9, 2011, in the amount of \$2,120.25, together with interest and costs as set forth herein, together with late charges in the amount of \$223.60. In addition, pursuant to the terms of the parties' agreements, the Defendant is further indebted to the Plaintiff for the costs and disbursements in this action and reasonable attorneys' fees. The per diem accumulation from March 9, 2011, is \$2.2063. This debt is more fully stated in the Verification of Amount Due and Affidavit of Statement of Account of Whitney Byrd, which is attached hereto and incorporated herein as Exhibit "H."

FOR A SEVENTH CAUSE OF ACTION:

60. Plaintiff reiterates the allegations of paragraphs 1 through 59 of this Complaint as fully and completely as if they were restated herein verbatim.

61. On or prior to March 30, 2007, for value received, Thomas W. Dailey executed and delivered to Plaintiff a Request for Loan Advance ("Agreement") in writing whereby Thomas W. Dailey promised to pay Plaintiff the sum of \$5,000.00, together with interest thereon from the date thereof and at the rate set forth in such Agreement, a copy of which is attached hereto and incorporated herein by reference as Exhibit "J."

62. On or prior to October 31, 2008, Defendant defaulted on Defendant's obligation to repay the Plaintiff pursuant to the Agreement by failing and refusing to pay interest and principal payments on said Agreement when due, and as of the date of this Complaint has failed and continues to refuse to cure this default.

63. Any notices of default, notifications or requests under 15 U.S.C. §1601 et seq. or demand for the amount due under the terms of the Note or other loan documents, if any, have been or are hereby made and incorporated herein by reference as Exhibit "K."

64. On January 28, 2011, and subsequently, Plaintiff sent to Defendant(s) a Notice of Consumers' Right to Cure specifying the last day of payment and the amount then due.

65. Despite demand by the Plaintiff, Defendant has refused and continues to refuse to pay the amounts due and owing to the Plaintiff.

66. The Plaintiff, as a result of the defaults under the Agreement, and other loan documents, has incurred and is incurring collection costs and expenses, including attorneys' fees, for the collection and enforcement of payment of these obligations. The amount of these costs and expenses will be proven in detail to the Court.

67. There is now due on the Agreement the principal sum of \$2,996.51, being the outstanding principal balance of the loan, together with unpaid accrued interest from October 4, 2008, at the per diem rate of \$1.2314, as computed by reference to the terms of the Agreement, together with the costs and disbursements of collection of this action and attorneys' fees. Plaintiff refers the court to the Verified Statement of Account, a copy of which is attached hereto and is incorporated herein by reference as Exhibit "L."

FOR A EIGHTH CAUSE OF ACTION:

68. Plaintiff reiterates the allegations of paragraphs 1 through 67 of this Complaint as fully and completely as if they were restated herein verbatim.

69. On or prior to October 18, 2004, for value received, Thomas W. Dailey executed and delivered to Plaintiff a Overdraft Protection Line of Credit Agreement and Disclosure Form ("Agreement") in writing whereby Thomas W. Dailey promised to pay Plaintiff the sum of \$3,000.00, together with interest thereon from the date thereof and at the rate set forth in such Agreement, a copy of which is attached hereto and incorporated herein by reference as Exhibit "M."

70. On or prior to October 1, 2008, Defendant defaulted on Defendant's obligation to repay the Plaintiff pursuant to the Agreement by failing and refusing to pay interest and principal payments on said Agreement when due, and as of the date of this Complaint has failed and continues to refuse to cure this default.

71. Any notices of default, notifications or requests under 15 U.S.C. §1601 et seq. or demand for the amount due under the terms of the Note or other loan documents, if any, have been or are hereby made and incorporated herein by reference as Exhibit "N."

72. On January 28, 2011, and subsequently, Plaintiff sent to Defendant(s) a Notice of Consumers' Right to Cure specifying the last day of payment and the amount then due

73. Despite demand by the Plaintiff, Defendant has refused and continues to refuse to pay the amounts due and owing to the Plaintiff.

74. The Plaintiff, as a result of the defaults under the Agreement, and other loan documents, has incurred and is incurring collection costs and expenses, including attorneys' fees, for

the collection and enforcement of payment of these obligations. The amount of these costs and expenses will be proven in detail to the Court.

75. There is now due on the Agreement the principal sum of \$2,997.64, being the outstanding principal balance of the loan, together with unpaid accrued interest from October 4, 2008, at the per diem rate of \$1.3140, as computed by reference to the terms of the Agreement, together with the costs and disbursements of collection of this action and attorneys' fees. Plaintiff refers the court to the Verified Statement of Account, a copy of which is attached hereto and is incorporated herein by reference as Exhibit "O."

WHEREFORE, Plaintiff prays for judgment as follows:

ON ITS FIRST, THIRD, AND FIFTH CAUSES OF ACTION:

1. That the subject property be ordered to be delivered into its possession and that it be allowed to sell the property, and that it be allowed to apply the proceeds of such sale to Defendant's indebtedness to it as provided by law.

2. That judgment be rendered against the Defendant in the total sum of any deficiency owing under the parties' Contracts, including but not limited to interest, costs, attorneys' fees, the costs of repossession, return, delivery, sale and any other sums provided for by said Contracts or applicable law; after the proceeds of any sale of the property in question are credited.

3. That if possession of the property cannot be had by the Sheriff, for an Order requiring the Defendant to appear before this Honorable Court or its appointee, to answer under oath as to where the property may be found.

4. That this Court issue its Order establishing the attorneys' fees herein.

5. That if possession of the property cannot be had, for an Order of Judgment against the Defendant for the full balance due under the agreements between the parties together with attorneys' fees and costs and disbursements of this action.

6. For such other and further relief as may be deemed just and proper by the Court.

ON ITS REMAINING CAUSES OF ACTION:

7. For judgment against Thomas W. Dailey on Plaintiff's second cause of action in the sum of \$3,051.71, together with interest as provided for in the loan documents, attorneys' fees, and for such other and further relief as this Court may deem just and proper.

8. For judgment against Thomas W. Dailey on Plaintiff's fourth cause of action in the sum of \$27,493.90, together with interest as provided for in the loan documents, attorneys' fees, and for such other and further relief as this Court may deem just and proper.

9. For judgment against Thomas W. Dailey on Plaintiff's sixth cause of action in the sum of \$10,820.63, together with interest as provided for in the loan documents, attorneys' fees, and for such other and further relief as this Court may deem just and proper.

10. For judgment against Thomas W. Dailey on Plaintiff's seventh cause of action in the sum of \$4,087.53, together with interest as provided for in the loan documents, attorneys' fees, and for such other and further relief as this Court may deem just and proper.

11. For judgment against Thomas W. Dailey on Plaintiff's eighth cause of action in the sum of \$4,161.84, together with interest as provided for in the loan documents, attorneys' fees, and for such other and further relief as this Court may deem just and proper.

SHERPY & JONES, P.A.

By: Christy C. Jones
Christy C. Jones
Post Office Box 2599
Lexington, South Carolina 29071
(803) 356-3327
ATTORNEY FOR PLAINTIFF

March 29th, 2011

Lexington, South Carolina

EXHIBIT

D

03/11/1997 15:34 8435246464

04-21-'87 18:52 FROM-Central Star

PAGE 02

T-523 P02/10 U-597

CENTRAL STAR
 CREDIT UNION

 9331 Corporate Hills Drive
 Wichita, Kansas

 REQUEST FOR
 LOAN ADVANCE

Borrower Name THOMAS W GALEY		CREDIT ADVANCE REQUEST		Date 04/21/97
Address (Home) 304 ROBERT AMALIA PKWY STE 24		City/State/Zip BEAUFORT, NC 28516-4104		Member ID/Type
PURPOSE OF ADVANCE I HEREBY REQUEST THIS SUM BE ADDED TO MY PRESENT ACCOUNT AND BALANCE, IF ANY, SUBJECT AND PURSUANT TO THE TERMS AND CONDITIONS OF		AMOUNT REQUESTED 310,366.00		
PURCHASE 2007 HONDA ELEMENT		CREDIT INFORMATION		
APPROXIMATE 4.99%	ANNUAL PERCENTAGE RATE 8.00%	PAYMENT \$623.00	NUMBER OF PAYMENTS MONTHLY	DATE OF FIRST PAYMENT 04/01/97
FINANCIALS \$1,300	NET WORTH \$18,992.00	OTHER Gap Insurance	SPIN \$3,000	NEW BALANCE \$10,266.00

SECURITY INFORMATION					
VEHICLE	YEAR	MAKE	MODEL	BODY TYPE	VEHICLE NUMBER
2007	HONDA	ELEMENT	EX	AF57H1577L017000	
SECURITY	ACCOUNT NUMBER	ACCOUNT	ACCOUNT	ACCOUNT	ACCOUNT
SECURITY					

To obtain payment of this advance and all expenditures incurred by the credit union in connection with this advance, I agree to the credit union's security interest in the property described above. This pledge of security is governed by the Security Agreement (see page 2) for this Credit Union's Plan. Property given as security for this loan or for any advance will remain all security I owe the credit union now and in the future. This includes a security interest in all my share in the credit union. Moreover, for purposes of this advance, the credit union specifically agrees my security interest in my dwelling is explained in Paragraph 1 of the Security Agreement on page 2 of this document. However, the credit union will not accept this advance.

Regulatory Information: Member may report information about my account to credit bureaus. Loan payments, delinquent payments, or other defaults on my personal credit by reported to my credit report.

Signature [Signature]	DATE 24 Apr 07	☐ CO-SIGNER ☐ MEMBER ☐ GUARANTOR	DATE 24 Apr 07

OTHER NOTES: Any other notes will be a security interest (other than a power of attorney) in the above described vehicle. The other person, other than myself, who is authorized to sign this document, is not authorized to sign this document. The credit union will not accept this advance. The credit union will not accept this advance. The credit union will not accept this advance.

FOR CREDIT UNION USE ONLY
LOAN OFFICER X

17440117 14512-010 14118 Rev. 1/04

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page 1 of 2

MEMBER NAME

THOMAS W DANLEY

ACCOUNT

IN THESE AGREEMENTS, THE WORDS "I," "ME," "MY," AND "MINE" MEAN ALL PERSONS WHO COMPLETED AN OPEN-END CREDIT PLAN APPLICATION AND ALSO ENDORSED THE PROCEEDS CHECK. THE WORDS "YOU," "YOUR," AND "YOURS" MEAN THE CREDIT UNION.

CREDIT AGREEMENT

Advances are subject to the Credit Agreement.

Contractual Pledge of Shares: I pledge all my shares and deposits in the credit union, including future additions, as security for advances under this Open-end Credit Plan. As long as I default, you may apply those shares and deposits to the payment of all sums due at the time of default, including costs of collection and reasonable attorney's fees. My lien or right to improve a lien on shares and deposits shall apply to any of my shares which may be held in an "Individual Retirement Account" or "Keogh Plan."

SECURITY AGREEMENT

Security Interest; PLEDGE OF SHARES: Should you lend me all or part of the money I borrow from you, I agree to give you a security interest in the property described in this document. ("Collateral"). The security interest includes all insurance, substitutions and additions to the secured property, proceeds from any insurance on the secured property and all earnings received from the secured property. The security interest also includes all accounts, accessories and things which are attached to or installed in the property now or in the future. The security interest also includes any replacement for the property which I buy within 10 days of the loss or any complete, partial or voluntary return of the item. If the value of the property declines, I promise to give you more security if asked to do so. I also agree to abide by the terms of the Security Agreement. (b) I GRANT AND FLEND TO YOU A CONSENSUAL LIEN ON ALL SUMS OR DEPOSITS to secure my obligations to the credit union pursuant to applicable state law. "All sums on deposit" and "deposits" for purposes of this pledge means all deposits in any share savings, share draft, check, certificate, R.O.D., negotiable note or certificate account(s), whether jointly or individually held, that you have on deposit now or in the future, all of which we deemed "general deposits" for the purpose of this pledge. My pledge does not include any IRA, Keogh, tax center, investment fund or fiduciary account in which I do not have vested ownership interest. (c) I acknowledge and agree to reimbursement of the Credit Union's attorney fees under the Federal Credit Union Act and/or applicable state law as of the date of my loan, which gives you the right to apply the sums in my account(s) to satisfy my obligations I owe to the credit union, regardless of contributions at the time of default, and without further notice to me or any owner of the account(s). (d) I acknowledge and agree to your "reasonable" right to set off indebtedness due to me with advances you to apply the funds in my joint or individual account to my obligations owed to you if I default or fail to pay or satisfy my obligation to you without any legal process, court proceeding or any notice to any owner of the account(s) affected hereunder or otherwise under this Agreement. (e) I specifically agree that you have a right to place an administrative freeze on any of my joint or individual account(s) and that such action shall not violate 11 USC 362 or other applicable law.

Multiple Rights; Considerate Newholder: I understand and agree that the Credit Union has multiple rights as set forth herein and that the remedies are cumulative. Nothing herein shall limit or restrict the remedies available to you following any event of default under the terms of any loan documents.

Cross-collateralization: Property given as security for this loan or for any other loan I have with the credit union will secure all accounts I owe the credit union now and in the future. However, property securing another debt will not secure this loan if such property is my principal residence (unless the present residence is given and any other legal requirements are satisfied), or separate personal property household goods.

Transfer of Collateral: I will not change the location of, sell or transfer the collateral unless I have your prior written consent.

Good Title: I warrant that I have good title to the collateral, free of all security interests except that given to the credit union and except for my interest of a non-prior course of the collateral.

Maintenance of Collateral: I will pay all taxes, assessments, and fees against or attached to the property described, and further agree to keep the property in good condition and housed in a suitable shelter. I agree to execute financing statements and security agreement amendments at your request and will defend the property against adverse third party claims.

Property Insurance: I will maintain insurance to cover any vehicle or other property in which you have a security interest. This insurance will be in a form and an amount satisfactory to you. I will supply you with proof of such insurance.

within 15 days of obtaining such insurance and the policy shall name you as the loss payee until all sums owed to you and secured by this property are repaid. If I fail to purchase such insurance, you may, but are not required to, obtain insurance of your own and add the cost of such to the sums owed. This cost will bear interest at the contract rate until paid. I further assign to you the right to receive the proceeds directly to you. I authorize you to endorse any check or draft provided to the proceeds of such insurance, and apply those proceeds to the sums owed to you. I further authorize you to provide your Insurance Service Center with the necessary information for verification of subsequent coverage. I acknowledge that insurance, on any additional property placed by you is without benefit to me individually but is primarily for the protection of you.

Notice: You may elect all requirements for sending me a notice of any kind if you send it to me by means of United States mail, at my last given address.

Advances: Any additional advances made to me for the payment of taxes or assessments or fees of any kind, or premiums on attached insurance and the interest owing thereon shall also be secured by this agreement.

Actions Upon Default: If a default as defined in the credit agreement should occur, you have the authority, upon such default, to represent and sell the collateral in a lawful manner. In such cases, you or your authorized representative may, at your option, enter the premises where the collateral is kept and take possession, subject to applicable laws. You have the right to render the property pledged as collateral inalienable and dispose of the collateral on the premises where the collateral is kept. If you decide to sell the collateral at a public sale, private sale or otherwise dispose of the collateral, you will notify me of the time and place of the intended disposition ten (10) days prior to the sale or disposition. If you sell or otherwise dispose of the collateral you may collect from me reasonable expenses incurred in the marketing, holding and preparing the collateral for sale, including the sale of the collateral. I agree to pay the costs of collection (including stock costs, attorney fees and/or collection agency fees) to the extent provided by law incurred in connection with disposition of the property. Unless I default, I may keep possession of the property (collateral) and use it in any lawful manner consistent with this agreement or with the insurance policy on the collateral. I understand that you have certain rights and legal remedies available to you under the Uniform Commercial Code and other applicable laws, and that you may use those rights or enforce payment if I default. In that event, I will at your request assemble the property (collateral) and make it available to you at a place of your choosing. If you decide to waive this default, I will not constitute a waiver of any other subsequent default.

Attorney-in-Fact: You are hereby appointed as my Attorney-in-Fact to perform any act which you feel is necessary to protect the collateral and the security interest which this agreement creates.

Joint Borrowers: If there is more than one borrower, our obligations under this agreement are joint and several, each being equally responsible to fulfill the terms of the agreement.

Others Bound: This security agreement not only binds me, but my executor, administrators, heirs and assigns.

Additional Security: Should you find at any time that the security provided here is insufficient in value, or for any other reason find that additional security is required, I agree to assign to you within (10) days whatever additional security you feel is necessary to protect yourself against possible loss.

Indemnification: My signing and endorsing any checks or drafts issued under this agreement covers my acceptance of its terms and conditions.

Further Assurances: I agree to execute any further documents, and to take any further actions, reasonably requested by Credit Union in order to evidence or perfect the security interest granted herein or to effectuate the rights granted to Credit Union.

Governing Law: This Security Agreement is being executed and delivered in, and is intended to be performed in, the State of Kansas and shall be construed and enforced in accordance with the laws of the State of Kansas, except to the extent that the Uniform Commercial Code provides for the application of the law of another state.

Fee for Statement and Accounting: Credit Union reserves the right to impose a fee for any statement or accounting requested, in accordance with applicable law.

Authorization to File Financing Statement: I authorize Credit Union to file any financing statement(s) necessary to evidence or perfect the security interest granted herein.

747



CURRENT TITLE

VIN 5J6YH18377L013038
New/Used: USED

Year: 2007 Make: HOND Model: ELEMENT
Empty Weight: 3422

BS SU

Title Number: 7701002041965948
Purchase Date: 04/07/2009
Odometer: 39989
Vehicle Brands:

Status: CURRENT TITLE
Issue Date: 04/07/2009
Legend: ACTUAL MILEAGE

Dup: N
Salvage %: 0

None.

Owner Number: 31474514
Owner Name: ATLANTIC WHOLESALE
Owner Address: 4196 BALMORAL CT NORTH CHARLESTON SC, 294185520

Prior Title State: SC Prior Title Number: 770270197432700

End of Report

EXHIBIT "E"

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO.

Central Star Credit Union,

Plaintiff,

vs.

Thomas W. Dailey,

Defendant.

AFFIDAVIT AND VERIFIED
STATEMENT OF ACCOUNT

PERSONALLY APPEARED BEFORE ME, Whitney Byrd, who being duly sworn deposes and says as follows:

6. She is a duly authorized representative of the Plaintiff and is authorized to make this Affidavit on behalf of the said Plaintiff;

7. She is familiar with the account forming the basis for the within action, that all the matters alleged therein are true of her own knowledge or upon the records of the Plaintiff, except for those allegations upon information and belief, and as to those, affiant believes them to be true;

8. That the Defendant contracted with the Plaintiff from April 24, 2007.

9. As a result of said Contracts as described above, the Plaintiff had a direct contractual relationship with the Defendant and fully performed all of its contractual obligations.

10. The following itemized statement of account of the Plaintiff against the Defendant dated March 9, 2011, is correct within the affiant's knowledge as of the date below and that:

a.	Principal balance 3/9/2011	\$22,527.91
b.	Accrued interest as of 3/9/2011	\$4,965.99
c.	TOTAL DUE 3/9/2011	\$27,493.90
d.	Interest per day (APR)	\$5,5548

EXHIBIT "F"

**NOTICE REQUIRED BY THE
FAIR DEBT COLLECTION
PRACTICES ACT, (THE ACT)
15 U.S.C. SECTION 1601 AS AMENDED**

1. The amount of the debt is \$22,527.91, plus interest, costs and attorneys' fees.
2. The Creditor is Central Star Credit Union.
3. The debt described in the complaint attached hereto will be assumed to be valid by the Creditor's law firm unless you, the debtor, within thirty (30) days after the receipt of this notice, dispute, in writing, the validity of the debt or some portion thereof.
4. If you, the debtor, notify the Creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to you, the debtor, by the Creditor's law firm.
5. If the creditor named in the attached complaint is not the original Creditor, and if you make a written request to the Creditor's law firm within the thirty (30) days from the receipt of this notice, the name and address of the original Creditor will be mailed to you by the Creditor's law firm.
6. Written requests should be addressed to Christy C. Jones, Sherpy & Jones, P.A., P.O. Box 2599, Lexington, South Carolina 29071.
7. This notice should not be construed as a thirty (30) days grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days and a default judgment shall be sought against you as set forth in the Summons and Complaint.
8. This notice is an attempt to collect a debt and information obtained will be used for that purpose.

**Notice of Consumer's Right to Cure
Default of Required Payment**

12/17/2008

THOMAS W DAILEY
330 ROBERT SMALLS PKWY STE 24 BOX 111
BEAUFORT, SC 29906-4240

Account Number

Brief Description of Credit Transaction
2007 HONDA ELEMENT

Last Day for Payment 01/06/2009

Amount Now Due \$1,266.00

You are late in making your payment(s). If you pay the Amount Now Due by the Last Day for Payment, you may continue with the contract as though you were not late. If you do not pay by this date, we may exercise our rights under the law.

If you are late again in making your payments, we may exercise our rights without sending you another notice like this one. If you have any questions, write or telephone the credit union office promptly.

Your failure to abide by this notice will give the Credit Union the right to accelerate your payments and declare the full amount of your liabilities to the credit union immediately due and payable and the right to take action to immediately take possession and sell the security given by you as collateral.

Sincerely,

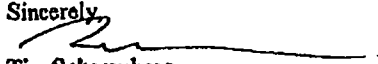

Tim Scharenberg
Loan Officer
316-685-9555 ext. <field not found>

EXHIBIT L

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO. 2011-CP-07-2121

Central Star Credit Union,

Plaintiff,

vs.

Thomas W. Dailey,

Defendant.

COMPLAINT
(Non Jury)
(Claim and Delivery)
(Debt Collection)

11 MAY - 9 PM 4:01
J. C. HIGGINS
CLERK OF COURT
BEAUFORT COUNTY, S.C.

The above named Plaintiff, complaining of the Defendant herein, would respectfully allege and show that:

PARTIES AND JURISDICTION:

1. The Plaintiff is a state credit union organized and existing by virtue of the laws of the State of Kansas.
2. The Defendant, Thomas W. Dailey, is a citizen and resident of the State of South Carolina, County of Beaufort.

FOR A FIRST CAUSE OF ACTION:

3. On or about October 26, 2006, Thomas W. Dailey entered into a contract with Plaintiff whereby said Thomas W. Dailey borrowed the sum stated therein for the purpose of purchasing a 1998 Jeep Wrangler Vin No. 1J4FY1957WP708544, which was pledged as collateral to secure payment of the sums Thomas W. Dailey owes to Plaintiff. A copy of said Request for Loan Advance ("Contract") is attached hereto and incorporated herein as Exhibit "A".
4. The Plaintiff was neither the manufacturer nor the seller of the property in question, and the property was purchased for consumer purposes.
5. The Defendant failed to make payments when due pursuant to said Contract, and in accordance with the terms of said Contract Plaintiff has declared the entire balance on the Contract to be presently due and payable.

6. As of March 9, 2011, the Defendant is indebted to the Plaintiff in the principal amount of \$2,288.88, together with unpaid accrued interest as of March 9, 2011, in the amount of \$762.83. In addition, pursuant to the terms of the parties' agreements, the Defendant is further indebted to the Plaintiff for the costs and disbursements in this action and reasonable attorneys' fees. The per diem accumulation from March 9, 2011, is \$.9406. This debt is more fully set forth on the Verification of Amount Due attached hereto and an Affidavit of Statement of Account of Whitney Byrd incorporated herein as Exhibit "B."

7. The Plaintiff, by virtue of the Defendant's default, is informed and believes that it is entitled to immediate possession of the property which is the subject of said Contract.

8. On December 18, 2008, Plaintiff sent to the Defendant a Formal Demand and Request to Cure specifying the last day of payment and the amount then due.

9. Any notices of default, notifications or requests under 15 U.S.C. §1601 et. seq. or demand for the amount due under the terms of the Note or other loan documents, if any, have been or are hereby made.

10. Attached hereto and incorporated herein as Exhibit "C" is the Notice Required by the Fair Debt Collection Practices Act, (The Act) 15 U.S.C. Section 1601 as amended.

11. THIS NOTICE IS AN ATTEMPT TO COLLECT A DEBT AND INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

12. The Plaintiff is informed and believes that, under the terms of the Defendant's Contract with Plaintiff, it is entitled to collect all expenses, including reasonable attorneys' fees, incurred in the collection of the amount payable thereunder and the recovery and sale of the property, and that said Defendant is further liable under the terms of said Contract for interest on the entire amount of principal and interest due, from the date of default, and delinquency charges, as set forth in said Contract.

13. According to Plaintiff's best knowledge, information and belief, the subject property is located at or based at and operated from Defendant's place of business or residence at the following address: 2918 Waters Edge Court, Beaufort, SC 29906.

14. The subject property is wrongfully detained by the Defendant, and, on information and belief, the cause of this withholding or detention is Defendant's desire to continue using the property, without paying for same.

15. The property has not, on information and belief, been taken for any tax, assessment or fine pursuant to a statute, nor has it been seized under an execution or attachment against said property.

16. The Plaintiff by or through its agents and employees has attempted to obtain possession of the collateral.

17. Demand has been made upon the Defendant to deliver the property to Plaintiff or to make payment pursuant to the Contract but said Defendant failed and refused to do so.

18. Defendant has refused to surrender possession and is actively concealing the collateral.

19. By virtue of Defendant's wrongful detention of the subject property, Plaintiff has been damaged in that it has been denied the use of the money to which it is entitled or the use of the property, which is rapidly depreciating in value, and in that it has incurred attorneys' fees and other costs and expenses for which it is entitled to recover pursuant to the terms of the Contract.

FOR A SECOND CAUSE OF ACTION:

20. Plaintiff realleges and repleads the allegations set forth in paragraphs 1 through 19 above as fully and completely as if set forth herein verbatim.

21. Plaintiff is informed and believes it is entitled to judgment against Defendant in the amount of \$2,288.88, together with unpaid accrued interest as of March 9, 2011, in the amount of \$762.83, together with interest and costs as set forth herein. In addition, pursuant to the terms of the parties' agreements, the Defendant is further indebted to the Plaintiff for the costs and disbursements in this action and reasonable attorneys' fees. The per diem accumulation from March 9, 2011, is \$.9406. This debt is more fully stated in the Verification of Amount Due and Affidavit of Statement of Account of Whitney Byrd, which is attached hereto and incorporated herein as Exhibit "B."

FOR A THIRD CAUSE OF ACTION:

22. Plaintiff realleges and repleads the allegations set forth in paragraphs 1 through 21 above as fully and completely as if set forth herein verbatim. On or about April 24, 2007, Thomas W. Dailey entered into a contract with Plaintiff whereby said Thomas W. Dailey borrowed the sum stated therein for the purpose of purchasing a 2007 Honda Element Vin No. 5J6YH18377L013038, which was pledged as collateral to secure payment of the sums Thomas W. Dailey owes to Plaintiff. A copy of said Request for Loan Advance ("Contract") is attached hereto and incorporated herein as Exhibit "D".

23. The Plaintiff was neither the manufacturer nor the seller of the property in question, and the property was purchased for consumer purposes.

24. The Defendant failed to make payments when due pursuant to said Contract, and in accordance with the terms of said Contract Plaintiff has declared the entire balance on the Contract to be presently due and payable.

25. As of March 9, 2011, the Defendant is indebted to the Plaintiff in the principal amount of \$22,527.91, together with unpaid accrued interest as of March 9, 2011, in the amount of \$4,965.99. In addition, pursuant to the terms of the parties' agreements, the Defendant is further indebted to the Plaintiff for the costs and disbursements in this action and reasonable attorneys' fees. The per diem accumulation from March 9, 2011, is \$5.5548. This debt is more fully set forth on the Verification of Amount Due attached hereto and an Affidavit of Statement of Account of Whitney Byrd incorporated herein as Exhibit "E."

26. The Plaintiff, by virtue of the Defendant's default, is informed and believes that it is entitled to immediate possession of the property which is the subject of said Contract.

27. On December 17, 2008, Plaintiff sent to the Defendant a Formal Demand and Request to Cure specifying the last day of payment and the amount then due.

28. Any notices of default, notifications or requests under 15 U.S.C. §1601 et. seq. or demand for the amount due under the terms of the Note or other loan documents, if any, have been or are hereby made.

29. Attached hereto and incorporated herein as Exhibit "F" is the Notice Required by the Fair Debt Collection Practices Act, (The Act) 15 U.S.C. Section 1601 as amended.

30. **THIS NOTICE IS AN ATTEMPT TO COLLECT A DEBT AND INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

31. The Plaintiff is informed and believes that, under the terms of the Defendant's Contract with Plaintiff, it is entitled to collect all expenses, including reasonable attorneys' fees, incurred in the collection of the amount payable thereunder and the recovery and sale of the property, and that said Defendant is further liable under the terms of said Contract for interest on the entire amount of principal and interest due, from the date of default, and delinquency charges, as set forth in said Contract.

32. According to Plaintiff's best knowledge, information and belief, the subject property is located at or based at and operated from Defendant's place of business or residence at the following address: 2918 Waters Edge Court, Beaufort, SC 29906.

33. The subject property is wrongfully detained by the Defendant, and, on information and belief, the cause of this withholding or detention is Defendant's desire to continue using the property, without paying for same.

34. The property has not, on information and belief, been taken for any tax, assessment or fine pursuant to a statute, nor has it been seized under an execution or attachment against said property.

35. The Plaintiff by or through its agents and employees has attempted to obtain possession of the collateral.

36. Demand has been made upon the Defendant to deliver the property to Plaintiff or to make payment pursuant to the Contract but said Defendant failed and refused to do so.

37. Defendant has refused to surrender possession and is actively concealing the collateral.

38. By virtue of Defendant's wrongful detention of the subject property, Plaintiff has been damaged in that it has been denied the use of the money to which it is entitled or the use of the property, which is rapidly depreciating in value, and in that it has incurred attorneys' fees and other costs and expenses for which it is entitled to recover pursuant to the terms of the Contract.

FOR A FOURTH CAUSE OF ACTION:

39. Plaintiff realleges and repleads the allegations set forth in paragraphs 1 through 38 above as fully and completely as if set forth herein verbatim.

40. Plaintiff is informed and believes it is entitled to judgment against Defendant in the amount of \$22,527.91, together with unpaid accrued interest as of March 9, 2011, in the amount of \$4,965.99, together with interest and costs as set forth herein. In addition, pursuant to the terms of the parties' agreements, the Defendant is further indebted to the Plaintiff for the costs and disbursements in this action and reasonable attorneys' fees. The per diem accumulation from March 9, 2011, is \$5.5548. This debt is more fully stated in the Verification of Amount Due and Affidavit of Statement of Account of Whitney Byrd, which is attached hereto and incorporated herein as Exhibit "E."

FOR A FIFTH CAUSE OF ACTION:

41. Plaintiff realleges and repleads the allegations set forth in paragraphs 1 through 40 above as fully and completely as if set forth herein verbatim. On or about June 21, 2007, Thomas W. Dailey entered into a contract with Plaintiff whereby said Thomas W. Dailey borrowed the sum stated therein for the purpose of purchasing a 1987 Pace Arrow Vin No. 1GBKP37W6H3338386, which was pledged as collateral to secure payment of the sums Thomas W. Dailey owes to Plaintiff. A copy of said Request for Loan Advance ("Contract") is attached hereto and incorporated herein as Exhibit "G".

42. The Plaintiff was neither the manufacturer nor the seller of the property in question, and the property was purchased for consumer purposes.

43. The Defendant failed to make payments when due pursuant to said Contract, and in accordance with the terms of said Contract Plaintiff has declared the entire balance on the Contract to be presently due and payable.

44. As of March 9, 2011, the Defendant is indebted to the Plaintiff in the principal amount of \$8,476.78, together with unpaid accrued interest as of March 9, 2011, in the amount of \$2,120.25, together with late charges in the amount of \$223.60. In addition, pursuant to the terms of the parties' agreements, the Defendant is further indebted to the Plaintiff for the costs and disbursements in this action and reasonable attorneys' fees. The per diem accumulation from March 9, 2011, is \$2,2063. This debt is more fully set forth on the Verification of Amount Due attached hereto and an Affidavit of Statement of Account of Whitney Byrd incorporated herein as Exhibit "H."

45. The Plaintiff, by virtue of the Defendant's default, is informed and believes that it is entitled to immediate possession of the property which is the subject of said Contract.

46. On January 28, 2011, Plaintiff sent to the Defendant a Formal Demand and Request to Cure specifying the last day of payment and the amount then due

47. Any notices of default, notifications or requests under 15 U.S.C. §1601 et. seq. or demand for the amount due under the terms of the Note or other loan documents, if any, have been or are hereby made.

48. Attached hereto and incorporated herein as Exhibit "I" is the Notice Required by the Fair Debt Collection Practices Act, (The Act) 15 U.S.C. Section 1601 as amended.

49. THIS NOTICE IS AN ATTEMPT TO COLLECT A DEBT AND INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

50. The Plaintiff is informed and believes that, under the terms of the Defendant's Contract with Plaintiff, it is entitled to collect all expenses, including reasonable attorneys' fees, incurred in the collection of the amount payable thereunder and the recovery and sale of the property, and that said Defendant is further liable under the terms of said Contract for interest on the entire amount of principal and interest due, from the date of default, and delinquency charges, as set forth in said Contract.

51. According to Plaintiff's best knowledge, information and belief, the subject property is located at or based at and operated from Defendant's place of business or residence at the following address: 2918 Waters Edge Court, Beaufort, SC 29906.

52. The subject property is wrongfully detained by the Defendant, and, on information and belief, the cause of this withholding or detention is Defendant's desire to continue using the property, without paying for same.

53. The property has not, on information and belief, been taken for any tax, assessment or fine pursuant to a statute, nor has it been seized under an execution or attachment against said property.

54. The Plaintiff by or through its agents and employees has attempted to obtain possession of the collateral.

55. Demand has been made upon the Defendant to deliver the property to Plaintiff or to make payment pursuant to the Contract but said Defendant failed and refused to do so.

56. Defendant has refused to surrender possession and is actively concealing the collateral.

57. By virtue of Defendant's wrongful detention of the subject property, Plaintiff has been damaged in that it has been denied the use of the money to which it is entitled or the use of the property, which is rapidly depreciating in value, and in that it has incurred attorneys' fees and other costs and expenses for which it is entitled to recover pursuant to the terms of the Contract.

FOR A SIXTH CAUSE OF ACTION:

58. Plaintiff realleges and repleads the allegations set forth in paragraphs 1 through 57 above as fully and completely as if set forth herein verbatim.

59. Plaintiff is informed and believes it is entitled to judgment against Defendant in the amount of \$8,476.78, together with unpaid accrued interest as of March 9, 2011, in the amount of \$2,120.25, together with interest and costs as set forth herein, together with late charges in the amount of \$223.60. In addition, pursuant to the terms of the parties' agreements, the Defendant is further indebted to the Plaintiff for the costs and disbursements in this action and reasonable attorneys' fees. The per diem accumulation from March 9, 2011, is \$2,206.31. This debt is more fully stated in the Verification of Amount Due and Affidavit of Statement of Account of Whitney Byrd, which is attached hereto and incorporated herein as Exhibit "H."

FOR A SEVENTH CAUSE OF ACTION:

60. Plaintiff reiterates the allegations of paragraphs 1 through 59 of this Complaint as fully and completely as if they were restated herein verbatim.

61. On or prior to March 30, 2007, for value received, Thomas W. Dailey executed and delivered to Plaintiff a Request for Loan Advance ("Agreement") in writing whereby Thomas W. Dailey promised to pay Plaintiff the sum of \$5,000.00, together with interest thereon from the date thereof and at the rate set forth in such Agreement, a copy of which is attached hereto and incorporated herein by reference as Exhibit "J."

62. On or prior to October 31, 2008, Defendant defaulted on Defendant's obligation to repay the Plaintiff pursuant to the Agreement by failing and refusing to pay interest and principal payments on said Agreement when due, and as of the date of this Complaint has failed and continues to refuse to cure this default.

63. Any notices of default, notifications or requests under 15 U.S.C. §1601 et seq. or demand for the amount due under the terms of the Note or other loan documents, if any, have been or are hereby made and incorporated herein by reference as Exhibit "K."

64. On January 28, 2011, and subsequently, Plaintiff sent to Defendant(s) a Notice of Consumers' Right to Cure specifying the last day of payment and the amount then due.

65. Despite demand by the Plaintiff, Defendant has refused and continues to refuse to pay the amounts due and owing to the Plaintiff.

66. The Plaintiff, as a result of the defaults under the Agreement, and other loan documents, has incurred and is incurring collection costs and expenses, including attorneys' fees, for the collection and enforcement of payment of these obligations. The amount of these costs and expenses will be proven in detail to the Court.

67. There is now due on the Agreement the principal sum of \$2,996.51, being the outstanding principal balance of the loan, together with unpaid accrued interest from October 4, 2008, at the per diem rate of \$1.2314, as computed by reference to the terms of the Agreement, together with the costs and disbursements of collection of this action and attorneys' fees. Plaintiff refers the court to the Verified Statement of Account, a copy of which is attached hereto and is incorporated herein by reference as Exhibit "L."

FOR A EIGHTH CAUSE OF ACTION:

68. Plaintiff reiterates the allegations of paragraphs 1 through 67 of this Complaint as fully and completely as if they were restated herein verbatim.

69. On or prior to October 18, 2004, for value received, Thomas W. Dailey executed and delivered to Plaintiff a Overdraft Protection Line of Credit Agreement and Disclosure Form ("Agreement") in writing whereby Thomas W. Dailey promised to pay Plaintiff the sum of \$3,000.00, together with interest thereon from the date thereof and at the rate set forth in such Agreement, a copy of which is attached hereto and incorporated herein by reference as Exhibit "M."

70. On or prior to October 1, 2008, Defendant defaulted on Defendant's obligation to repay the Plaintiff pursuant to the Agreement by failing and refusing to pay interest and principal payments on said Agreement when due, and as of the date of this Complaint has failed and continues to refuse to cure this default.

71. Any notices of default, notifications or requests under 15 U.S.C. §1601 et seq. or demand for the amount due under the terms of the Note or other loan documents, if any, have been or are hereby made and incorporated herein by reference as Exhibit "N."

72. On January 28, 2011, and subsequently, Plaintiff sent to Defendant(s) a Notice of Consumers' Right to Cure specifying the last day of payment and the amount then due

73. Despite demand by the Plaintiff, Defendant has refused and continues to refuse to pay the amounts due and owing to the Plaintiff.

74. The Plaintiff, as a result of the defaults under the Agreement, and other loan documents, has incurred and is incurring collection costs and expenses, including attorneys' fees, for

the collection and enforcement of payment of these obligations. The amount of these costs and expenses will be proven in detail to the Court.

75. There is now due on the Agreement the principal sum of \$2,997.64, being the outstanding principal balance of the loan, together with unpaid accrued interest from October 4, 2008, at the per diem rate of \$1.3140, as computed by reference to the terms of the Agreement, together with the costs and disbursements of collection of this action and attorneys' fees. Plaintiff refers the court to the Verified Statement of Account, a copy of which is attached hereto and is incorporated herein by reference as Exhibit "O."

WHEREFORE, Plaintiff prays for judgment as follows:

ON ITS FIRST, THIRD, AND FIFTH CAUSES OF ACTION:

1. That the subject property be ordered to be delivered into its possession and that it be allowed to sell the property, and that it be allowed to apply the proceeds of such sale to Defendant's indebtedness to it as provided by law.

2. That judgment be rendered against the Defendant in the total sum of any deficiency owing under the parties' Contracts, including but not limited to interest, costs, attorneys' fees, the costs of repossession, return, delivery, sale and any other sums provided for by said Contracts or applicable law; after the proceeds of any sale of the property in question are credited.

3. That if possession of the property cannot be had by the Sheriff, for an Order requiring the Defendant to appear before this Honorable Court or its appointee, to answer under oath as to where the property may be found.

4. That this Court issue its Order establishing the attorneys' fees herein.

5. That if possession of the property cannot be had, for an Order of Judgment against the Defendant for the full balance due under the agreements between the parties together with attorneys' fees and costs and disbursements of this action.

6. For such other and further relief as may be deemed just and proper by the Court.

ON ITS REMAINING CAUSES OF ACTION:

7. For judgment against Thomas W. Dailey on Plaintiff's second cause of action in the sum of \$3,051.71, together with interest as provided for in the loan documents, attorneys' fees, and for such other and further relief as this Court may deem just and proper.

8. For judgment against Thomas W. Dailey on Plaintiff's fourth cause of action in the sum of \$27,493.90, together with interest as provided for in the loan documents, attorneys' fees, and for such other and further relief as this Court may deem just and proper.

9. For judgment against Thomas W. Dailey on Plaintiff's sixth cause of action in the sum of \$10,820.63, together with interest as provided for in the loan documents, attorneys' fees, and for such other and further relief as this Court may deem just and proper.

10. For judgment against Thomas W. Dailey on Plaintiff's seventh cause of action in the sum of \$4,087.53, together with interest as provided for in the loan documents, attorneys' fees, and for such other and further relief as this Court may deem just and proper.

11. For judgment against Thomas W. Dailey on Plaintiff's eighth cause of action in the sum of \$4,161.84, together with interest as provided for in the loan documents, attorneys' fees, and for such other and further relief as this Court may deem just and proper.

SHERPY & JONES, P.A.

By: _____



Christy C. Jones
Post Office Box 2599
Lexington, South Carolina 29071
(803) 356-3327
ATTORNEY FOR PLAINTIFF

March 29th, 2011

Lexington, South Carolina

MEMBER NAME

THOMAS W DAILEY

ACCOUNT

BY THESE AGREEMENTS, THE WORDS "I," "ME," "MY," AND "MINE" MEAN ALL PERSONS WHO COMPLETED AN OPEN-END CREDIT PLAN APPLICATION AND ALSO ENDORSED THE PROCEEDS CHECK. THE WORDS "YOU," "YOUR," AND "YOURS" MEAN THE CREDIT UNION.

CREDIT AGREEMENT

Advances are subject to the Credit Agreement.

Contractual Pledge of Shares: I pledge all my shares and deposits in the credit union, including future additions, as security for advances under this Open-end Credit Plan. In case I default, you may apply these shares and deposits to the payment of all sums due at the time of default, including costs of collection and reasonable attorney's fee. No lien or right to improve in these shares and deposits shall apply to any of my shares which may be held in an "Individual Retirement Account" or "Roth Plan."

SECURITY AGREEMENT

Security Interest: PLEDGE OF SHARES; Statutory Lien; Set off; Administration Proceeds:

To secure the payment of this loan and all expenses incurred by the credit union in connection with this loan: (a) I grant the Credit Union a security interest in the property described on Page 1 of this document ("Collateral"). The security interest includes all interests, subdivisions and additions to the secured property, proceeds from any insurance on the secured property and all earnings derived from the secured property. The security interest also includes all accretions. Accretions are things which are attached to or built into the property now or in the future. The security interest also includes any replacement for the property which I buy within 30 days of the loss or any extension, renewal or refinancing of the loan. If the value of the property declines, I promise to give you more security if asked to do so. I also agree to abide by the terms of the Security Agreement. (b) I GRANT AND PLEDGE TO YOU A CONVEYANCE-LIEN ON ALL SAVING DEPOSITS to secure my obligations to the credit union pursuant to applicable state law. "All sums on deposit" and "where" for purposes of this pledge means all deposits in any share savings, share draft, check, certificate, P.O.D., retrievable trust or custodial account(s), whether jointly or individually held, that you have on deposit now or in the future, all of which are deemed "general deposits" for the purpose of this pledge. My pledge does not include any IRA, 401(k), tax deferral, irrevocable trust or fiduciary account in which I do not have vested ownership interest. (c) I acknowledge and agree to impairment of the Credit Union's statutory lien rights under the Federal Credit Union Act under applicable state law as of the date of my loan, which gives you the right to apply the sums in my account(s), to satisfy my obligations I owe to the credit union, regardless of contributions at the time of default, and without further notice to me or any owner of the account(s). (d) I acknowledge and agree to your "reasonable lien" right to set off uncollectible state law which authorizes you to apply the funds in any joint or individual account to my obligations owed to you if I default or fail to pay or satisfy any obligation before without any legal process, court proceeding or any action to any owner of the account(s) a limited lienholder or otherwise under this Agreement. (e) I specifically agree that you have a right to place an administrative freeze on any of my joint or individual account(s) and that such action shall not violate 12 U.S.C. 3602 or other applicable law.

Multiple Rights: Concurrent Remedies: I understand and agree that the Credit Union has multiple rights as enumerated above and that the remedies are cumulative. Nothing herein shall limit or restrict the remedies available to you following any event of default under the terms of any loan document.

Concurrent Remedies: Property given as security for this loan or for any other loan I have with the credit union will secure all obligations I owe the credit union now and in the future. However, property securing another debt will not secure this loan if such property is my principal residence (unless the proper recording notice is given and any other legal requirements are satisfied), or any other purchase money lienhold good.

Transfer of Collateral: I will not change the location of, sell or transfer the collateral without your prior written consent.

Good Title: I warrant that I have good title to the collateral, free of all security interests except that given to the credit union and except for any interest of a non-consenting owner of the collateral.

Maintenance of Collateral: I will pay all taxes, assessments, and liens against or attached to the property described, and further agree to keep the property in good condition and insured in a suitable manner. I agree to submit financing statements and security agreement instrument(s) at your request and will defend the property against adverse third party claims.

Property Insurance: I will maintain insurance to cover any vehicle or other property in which you have a security interest. This insurance will be in a form and an amount satisfactory to you. I will supply you with proof of such insurance.

within 15 days of obtaining such insurance and the policy shall name you as the loss payee until all sums owed to you and secured by this property are repaid. If I fail to maintain such insurance, you may, but are not required to, obtain insurance of your own and add the cost of such to the sums owed. This cost will bear interest at the contract rate until paid. I further assign to you the right to receive the proceeds directly to you. I authorize you to endorse any check or draft provided as the proceeds of such insurance, and apply those proceeds to the sums owed to you. I further authorize you to provide your insurance Service Center with the necessary information for verification of adequate coverage. I acknowledge that insurance, or any extension thereof, placed by you is without benefit to a third party but is primarily for the protection of you.

Notice: You may post all requirements for sending me a notice of any kind if you send it to me by instant of United States mail, at my last given address.

Advances: Any additional advances made to enable the payment of taxes or encumbrances or loss of any kind, or payments on authorized insurance and the interest owing thereon shall also be secured by this agreement.

Action Upon Default: If a default as defined in the credit agreement should occur, you have the authority, upon such default, to repossess and sell the collateral in a lawful manner. In such cases, you or your authorized representatives may, at your option, enter the premises where the collateral is kept and take possession, subject to applicable laws. You have the right to repossess the property pledged as collateral hereunder and dispose of the collateral on the premises where the collateral is kept. If you decide to sell the collateral at a public sale, private sale or otherwise dispose of the collateral, you will notify me of the time and place of the intended disposition (10 days prior to the sale or disposition). If you sell or otherwise dispose of the collateral and you may collect more reasonable expenses incurred in the repossessing, holding and preparing the collateral for and arranging the sale of the collateral. I agree to pay the costs of collection (including court costs, attorney's fee and/or collection agency fees) to the extent provided by law in connection with disposition of the property. Unless I default, I may keep possession of the property (collateral) described and use it in any lawful manner consistent with this agreement or with the insurance policy on the collateral. I understand that you have certain rights and legal remedies available to you under the Uniform Commercial Code and other applicable laws, and that you may use these rights to enforce payment if I default. In that event, I will at your request assemble the property (collateral) and make it available to you at a place of your choosing. If you decide to waive this default, it will not constitute a waiver of any other subsequent default.

Attorney-in-Fact: You are hereby appointed as my Attorney-in-Fact to perform any law which you feel are necessary to protect the collateral and the security interest which this agreement creates.

Joint Borrowers: If there is more than one borrower, our obligations under this agreement are joint and several, each being equally responsible to fulfill the terms of the agreement.

Others Bound: This security agreement not only binds me, but my executors, administrators, heirs and assigns.

Additional Security: Should you feel at any time that the security presented here diminished in value, or for any other reason feel that additional security is required, I agree to assign to you within 60 days whatever additional security you feel is necessary to protect yourself against possible loss.

Endorsements: My signing and endorsing any checks or drafts issued under this agreement shows my acceptance of its terms and conditions.

Further Assurances: I agree to execute any further documents, and to take any further actions, reasonably requested by Credit Union in order to evidence or perfect the security interests granted herein or to effectuate the rights granted to Credit Union.

Governing Law: This Security Agreement is being executed and delivered in, and is intended to be performed in, the State of Kansas and shall be construed and enforced in accordance with the laws of the State of Kansas, except to the extent that the Uniform Commercial Code provides for the application of the law of another state.

Fees for Statements and Accounting: Credit Union reserves the right to impose a fee for any statements or accountings requested, in accordance with applicable law.

Authorization to File Financing Statement: I authorize Credit Union to file any financing statement(s) necessary to evidence or perfect the security interest granted herein.

04/14/1997 18:31
Jun 21 07 03:53p

8435246464
Ken Carter

DAILEY

3172915870

PAGE 02
p.1

INDIANA CERTIFICATE OF TITLE



STATE OF INDIANA
CERTIFICATE OF TITLE FOR A VEHICLE



MAKE CHEVROLET	MODEL NAME UNKNOWN	YEAR 1987	VIN 1GBKPS7W6H3338386
TITLE TYPE NORMAL	FORMER TITLE/STATE 82279046 / VA	PURCHASE DATE 01/19/06	BODY TYPE RV
MAILING ADDRESS		USAGE TAX PAID 0	ISSUE DATE 02/06/07

KENNETH J CARTER
6663 MAPLEWOOD DR
SPEEDWAY IN 46224

ODONISYER/BRAND
040423

/ACTUAL

BRAND(S)

OWNER(S) NAME
KENNETH J CARTER
6663 MAPLEWOOD DR
SPEEDWAY IN 46224

SECOND LIENHOLDER

ADDITIONAL OWNER(S)

LIEN RELEASED BY:

X

PRINTED NAME:

POSITION:

DATE:

FIRST LIENHOLDER

THIRD LIENHOLDER

LIEN RELEASED BY:

X

LIEN RELEASED BY:

X

PRINTED NAME:

POSITION:

PRINTED NAME:

POSITION:

DATE:

DATE:

The Commissioner of the Bureau of Motor Vehicles, pursuant to the laws of the State of Indiana, certifies that the vehicle/instrument has been duly titled and the owner of the described vehicle/instrument is subject to the laws set forth.

INDIANA BUREAU OF MOTOR VEHICLES
Ronald L. Stiver, Commissioner

TITLE NUMBER
07540019003

E1163690

DO NOT SIGN OR FILL IN ANY OF THESE SPACES UNLESS SPECIFICALLY INSTRUCTED TO DO SO

165

Notice of Consumer's Right to Cure
Default of Required Payment

01/28/2011

THOMAS W DAILEY
330 ROBERT SMALLS PKWY STE 24 BOX 111
BEAUFORT, SC 29906-4240

Account Number

Brief Description of Credit Transaction
1987 PACE ARROW RV

Last Day for Payment 02/17/2011

Amount Now Due \$ 4,814.04

You are late in making your payment(s). If you pay the Amount Now Due by the Last Day for Payment, you may continue with the contract as though you were not late. If you do not pay by this date, we may exercise our rights under the law.

If you are late again in making your payments, we may exercise our rights without sending you another notice like this one. We may report information about your account to credit bureaus. Late payments, missed payments or other defaults on your account may be reflected in your credit report. If you have any questions, write or telephone the credit union office promptly.

Your failure to abide by this notice will give the Credit Union the right to accelerate your payments and declare the full amount of your liabilities to the credit union immediately due and payable and the right to take action to immediately take possession and sell the security given by you as collateral.

Sincerely,

Whitney Byrd
Special Accounts Representative
316-685-9555

EXHIBIT "H"

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO.

Central Star Credit Union,

Plaintiff,

vs.

Thomas W. Dailey,

Defendant.

AFFIDAVIT AND VERIFIED
STATEMENT OF ACCOUNT

PERSONALLY APPEARED BEFORE ME, Whitney Byrd, who being duly sworn deposes and says as follows:

11. She is a duly authorized representative of the Plaintiff and is authorized to make this Affidavit on behalf of the said Plaintiff;

12. She is familiar with the account forming the basis for the within action, that all the matters alleged therein are true of her own knowledge or upon the records of the Plaintiff, except for those allegations upon information and belief, and as to those, affiant believes them to be true;

13. That the Defendant contracted with the Plaintiff from June 21, 2007.

14. As a result of said Contracts as described above, the Plaintiff had a direct contractual relationship with the Defendant and fully performed all of its contractual obligations.

15. The following itemized statement of account of the Plaintiff against the Defendant dated March 9, 2011, is correct within the affiant's knowledge as of the date below and that:

a.	Principal balance 3/9/2011	\$8,476.78
b.	Accrued interest as of 3/9/2011	\$2,120.25
c.	TOTAL DUE 3/9/2011.....	\$10,820.63

EXHIBIT "I"

**NOTICE REQUIRED BY THE
FAIR DEBT COLLECTION
PRACTICES ACT, (THE ACT)
15 U.S.C. SECTION 1601 AS AMENDED**

1. The amount of the debt is \$8,476.78, plus interest, costs and attorneys' fees.
2. The Creditor is Central Star Credit Union.
3. The debt described in the complaint attached hereto will be assumed to be valid by the Creditor's law firm unless you, the debtor, within thirty (30) days after the receipt of this notice, dispute, in writing, the validity of the debt or some portion thereof.
4. If you, the debtor, notify the Creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to you, the debtor, by the Creditor's law firm.
5. If the creditor named in the attached complaint is not the original Creditor, and if you make a written request to the Creditor's law firm within the thirty (30) days from the receipt of this notice, the name and address of the original Creditor will be mailed to you by the Creditor's law firm.
6. Written requests should be addressed to Christy C. Jones, Sherpy & Jones, P.A., P.O. Box 2599, Lexington, South Carolina 29071.
7. This notice should not be construed as a thirty (30) days grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days and a default judgment shall be sought against you as set forth in the Summons and Complaint.
8. This notice is an attempt to collect a debt and information obtained will be used for that purpose.

EXHIBIT M

EXHIBIT

02/14/1997 05:33 8435246464

03-26-'87 12:30 FROM-Central Star CU

7-294 PML/04 PAGE 02

CENTRAL STAR
CREDIT UNION

9539 Corporate Hills Drive
Wichita, Kansas 67225

**REQUEST FOR
LOAN ADVANCE**

MEMORANDUM THOMAS W. DALLIN ALBANY, NEW YORK 12208		CREDIT BUREAU, NEW YORK, NEW YORK		CITY, STATE NEW YORK, NY 10001		CREDIT BUREAU, NEW YORK, NEW YORK	
100 HENRY STREET, NEW YORK 10001		CITY, STATE NEW YORK, NY 10001		CITY, STATE NEW YORK, NY 10001		CITY, STATE NEW YORK, NY 10001	
I HEREBY REQUEST THIS SUM BE ADDED TO MY PRESENT ACCOUNT AND BALANCE, IF ANY, SUBJECT AND PURSUANT TO THE TERMS AND CONDITIONS OF		CITY, STATE NEW YORK, NY 10001		CITY, STATE NEW YORK, NY 10001		CITY, STATE NEW YORK, NY 10001	
NEW YORK, NEW YORK		CITY, STATE NEW YORK, NY 10001		CITY, STATE NEW YORK, NY 10001		CITY, STATE NEW YORK, NY 10001	
MICHAEL L. ANDERSON		CITY, STATE NEW YORK, NY 10001		CITY, STATE NEW YORK, NY 10001		CITY, STATE NEW YORK, NY 10001	
CREDIT INFORMATION							
ANNUAL PERCENTAGE RATE 10.00%		ANNUAL PERCENTAGE RATE 10.00%		ANNUAL PERCENTAGE RATE 10.00%		ANNUAL PERCENTAGE RATE 10.00%	
ANNUAL PERCENTAGE RATE 10.00%		ANNUAL PERCENTAGE RATE 10.00%		ANNUAL PERCENTAGE RATE 10.00%		ANNUAL PERCENTAGE RATE 10.00%	
ANNUAL PERCENTAGE RATE 10.00%		ANNUAL PERCENTAGE RATE 10.00%		ANNUAL PERCENTAGE RATE 10.00%		ANNUAL PERCENTAGE RATE 10.00%	

SECURITY INFORMATION				
VEHICLE:	YEAR	MAKE	MODEL	EXPIRATION
STATUS:	ACCIDENT HISTORY	ALCOHOL	ACCIDENT	ALCOHOL
OTHER COLLATERAL:	See Security Agreement			

To secure payment of this advance and all expenditures incurred by the credit union in connection with this advance, I grant to the credit union a security interest in the property described above. This pledge of security is governed by the Security Agreement on page 2 of this Open and Credit Line. Property given as security for this loan, or any other loan I receive from any bank or any other lender, is not subject to any other security interest in any claim against the credit union. Payment for this advance, the credit union assumes by waiving any security interest in my dwelling as described in Paragraph 3 of the Security Agreement on page 2 of this document. I understand that the credit union will not release this document.

Notwithstanding the foregoing, you agree to indemnify and hold the Government harmless from and against all claims, damages, losses, and expenses, including reasonable attorneys' fees, that may be asserted against or incurred by the Government or any of its officers, employees, agents, contractors, or subcontractors in connection with or arising out of the performance or non-performance of this contract, whether or not caused in whole or in part by the negligence of any of the foregoing, without limitation to any monetary limit on the amount or type of damages, compensation, or benefits payable by or for any third party under any workers compensation act, disability benefit act, or other employee benefit act, and whether or not such claim, damage, loss, or expense is caused in whole or in part by the negligence of any of the foregoing.

Indicated in my original report.

Signature: *[Signature]* Date: 30 June

☒ 60-6000000 ☐ 70000 ☐ 8000000 ☐ 9000000

X

[illegible]

OTHER CRIMINAL INFORMATION

Advances are subject to the Credit Agreement.

17)

EXHIBIT "K"

**NOTICE REQUIRED BY THE
FAIR DEBT COLLECTION
PRACTICES ACT, (THE ACT)
15 U.S.C. SECTION 1601 AS AMENDED**

1. The amount of the debt is \$2,996.51, plus interest, costs and attorneys' fees.
2. The Creditor is Central Star Credit Union.
3. The debt described in the complaint attached hereto will be assumed to be valid by the Creditor's law firm unless you, the debtor, within thirty (30) days after the receipt of this notice, dispute, in writing, the validity of the debt or some portion thereof.
4. If you, the debtor, notify the Creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to you, the debtor, by the Creditor's law firm.
5. If the creditor named in the attached complaint is not the original Creditor, and if you make a written request to the Creditor's law firm within the thirty (30) days from the receipt of this notice, the name and address of the original Creditor will be mailed to you by the Creditor's law firm.
6. Written requests should be addressed to Christy C. Jones, Sherpy & Jones, P.A., P.O. Box 2599, Lexington, South Carolina 29071.
7. This notice should not be construed as a thirty (30) days grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days and a default judgment shall be sought against you as set forth in the Summons and Complaint.
8. This notice is an attempt to collect a debt and information obtained will be used for that purpose.

Notice of Consumer's Right to Cure
Default of Required Payment

01/28/2011

THOMAS W DAILEY
330 ROBERT SMALLS PKWY STE 24 BOX 111
BEAUFORT, SC 29906-4240

Account Number

Brief Description of Credit Transaction
MISCELLANEOUS

Last Day for Payment 02/17/2011

Amount Now Due \$2,996.51

You are late in making your payment(s). If you pay the Amount Now Due by the Last Day for Payment, you may continue with the contract as though you were not late. If you do not pay by this date, we may exercise our rights under the law.

If you are late again in making your payments, we may exercise our rights without sending you another notice like this one. We may report information about your account to credit bureaus. Late payments, missed payments or other defaults on your account may be reflected in your credit report. If you have any questions, write or telephone the credit union office promptly.

Your failure to abide by this notice will give the Credit Union the right to accelerate your payments and declare the full amount of your liabilities to the credit union immediately due and payable and the right to take action to immediately take possession and sell the security given by you as collateral.

Sincerely,

Whitney Byrd
Special Accounts Representative
316-685-9555

EXHIBIT "L"

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO.

Central Star Credit Union,

Plaintiff,

vs.

Thomas W. Dailey,

Defendant.

VERIFIED STATEMENT
OF ACCOUNT
Loan No. 10-04

(Seventh Cause of Action)

PERSONALLY APPEARED before me Whitney Byrd, who being duly sworn, states that she is an employee and the collection agent for the Plaintiff; that she has knowledge of the facts set forth below; that she is authorized to make this affidavit; that the following itemized statement of account of the Plaintiff against the Defendant dated March 9, 2011, is correct within the affiant's knowledge as of the date below and that:

1. Principal balance 09/26/2008 \$2,996.51
2. Per diem interest rate from 09/26/2008 \$1.2314

The Affiant states that the Defendant owes the Plaintiff \$2,996.51 as of September 26, 2008, plus interest at \$1.2314 per day since September 26, 2008, plus all costs and attorneys' fees incurred by Plaintiff as a result of this action; and that no part sued upon has been paid by discount or otherwise.

SWORN to before me this 22nd
day of March, 2011.

Cherise R. McFadden
Notary Public for Kansas

My Commission Expires: 06-17-11

Whitney Byrd
Whitney Byrd

CHERISE R. McFADDEN
NOTARY PUBLIC
STATE OF KANSAS
My Appt. Exp. 6-17-2011

EXHIBIT N

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
) CIVIL ACTION NO. 2011-CP-07-2121

Central Star Credit Union,

Plaintiff,

vs.

Thomas W. Dailey,

Defendant.

COMPLAINT
(Non Jury)
(Claim and Delivery)
(Debt Collection)

11 MAY - 9 PM 4:07
CLERK OF COURT
COUNTY OF BEAUFORT
SOUTH CAROLINA

The above named Plaintiff, complaining of the Defendant herein, would respectfully allege and show that:

PARTIES AND JURISDICTION:

1. The Plaintiff is a state credit union organized and existing by virtue of the laws of the State of Kansas.

2. The Defendant, Thomas W. Dailey, is a citizen and resident of the State of South Carolina, County of Beaufort.

FOR A FIRST CAUSE OF ACTION:

3. On or about October 26, 2006, Thomas W. Dailey entered into a contract with Plaintiff whereby said Thomas W. Dailey borrowed the sum stated therein for the purpose of purchasing a 1998 Jeep Wrangler Vin No. 1J4FY1957WP708544, which was pledged as collateral to secure payment of the sums Thomas W. Dailey owes to Plaintiff. A copy of said Request for Loan Advance ("Contract") is attached hereto and incorporated herein as Exhibit "A".

4. The Plaintiff was neither the manufacturer nor the seller of the property in question, and the property was purchased for consumer purposes.

5. The Defendant failed to make payments when due pursuant to said Contract, and in accordance with the terms of said Contract Plaintiff has declared the entire balance on the Contract to be presently due and payable.

6. As of March 9, 2011, the Defendant is indebted to the Plaintiff in the principal amount of \$2,288.88, together with unpaid accrued interest as of March 9, 2011, in the amount of \$762.83. In addition, pursuant to the terms of the parties' agreements, the Defendant is further indebted to the Plaintiff for the costs and disbursements in this action and reasonable attorneys' fees. The per diem accumulation from March 9, 2011, is \$.9406. This debt is more fully set forth on the Verification of Amount Due attached hereto and an Affidavit of Statement of Account of Whitney Byrd incorporated herein as Exhibit "B."

7. The Plaintiff, by virtue of the Defendant's default, is informed and believes that it is entitled to immediate possession of the property which is the subject of said Contract.

8. On December 18, 2008, Plaintiff sent to the Defendant a Formal Demand and Request to Cure specifying the last day of payment and the amount then due.

9. Any notices of default, notifications or requests under 15 U.S.C. §1601 et. seq. or demand for the amount due under the terms of the Note or other loan documents, if any, have been or are hereby made.

10. Attached hereto and incorporated herein as Exhibit "C" is the Notice Required by the Fair Debt Collection Practices Act, (The Act) 15 U.S.C. Section 1601 as amended.

11. THIS NOTICE IS AN ATTEMPT TO COLLECT A DEBT AND INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

12. The Plaintiff is informed and believes that, under the terms of the Defendant's Contract with Plaintiff, it is entitled to collect all expenses, including reasonable attorneys' fees, incurred in the collection of the amount payable thereunder and the recovery and sale of the property, and that said Defendant is further liable under the terms of said Contract for interest on the entire amount of principal and interest due, from the date of default, and delinquency charges, as set forth in said Contract.

13. According to Plaintiff's best knowledge, information and belief, the subject property is located at or based at and operated from Defendant's place of business or residence at the following address: 2918 Waters Edge Court, Beaufort, SC 29906.

14. The subject property is wrongfully detained by the Defendant, and, on information and belief, the cause of this withholding or detention is Defendant's desire to continue using the property, without paying for same.

15. The property has not, on information and belief, been taken for any tax, assessment or fine pursuant to a statute, nor has it been seized under an execution or attachment against said property.

16. The Plaintiff by or through its agents and employees has attempted to obtain possession of the collateral.

17. Demand has been made upon the Defendant to deliver the property to Plaintiff or to make payment pursuant to the Contract but said Defendant failed and refused to do so.

18. Defendant has refused to surrender possession and is actively concealing the collateral.

19. By virtue of Defendant's wrongful detention of the subject property, Plaintiff has been damaged in that it has been denied the use of the money to which it is entitled or the use of the property, which is rapidly depreciating in value, and in that it has incurred attorneys' fees and other costs and expenses for which it is entitled to recover pursuant to the terms of the Contract.

FOR A SECOND CAUSE OF ACTION:

20. Plaintiff realleges and repleads the allegations set forth in paragraphs 1 through 19 above as fully and completely as if set forth herein verbatim.

21. Plaintiff is informed and believes it is entitled to judgment against Defendant in the amount of \$2,288.88, together with unpaid accrued interest as of March 9, 2011, in the amount of \$762.83, together with interest and costs as set forth herein. In addition, pursuant to the terms of the parties' agreements, the Defendant is further indebted to the Plaintiff for the costs and disbursements in this action and reasonable attorneys' fees. The per diem accumulation from March 9, 2011, is \$.9406. This debt is more fully stated in the Verification of Amount Due and Affidavit of Statement of Account of Whitney Byrd, which is attached hereto and incorporated herein as Exhibit "B."

FOR A THIRD CAUSE OF ACTION:

22. Plaintiff realleges and repleads the allegations set forth in paragraphs 1 through 21 above as fully and completely as if set forth herein verbatim. On or about April 24, 2007, Thomas W. Dailey entered into a contract with Plaintiff whereby said Thomas W. Dailey borrowed the sum stated therein for the purpose of purchasing a 2007 Honda Element Vin No. 5J6YH18377L013038, which was pledged as collateral to secure payment of the sums Thomas W. Dailey owes to Plaintiff. A copy of said Request for Loan Advance ("Contract") is attached hereto and incorporated herein as Exhibit "D".

23. The Plaintiff was neither the manufacturer nor the seller of the property in question, and the property was purchased for consumer purposes.

24. The Defendant failed to make payments when due pursuant to said Contract, and in accordance with the terms of said Contract Plaintiff has declared the entire balance on the Contract to be presently due and payable.

25. As of March 9, 2011, the Defendant is indebted to the Plaintiff in the principal amount of \$22,527.91, together with unpaid accrued interest as of March 9, 2011, in the amount of \$4,965.99. In addition, pursuant to the terms of the parties' agreements, the Defendant is further indebted to the Plaintiff for the costs and disbursements in this action and reasonable attorneys' fees. The per diem accumulation from March 9, 2011, is \$5.5548. This debt is more fully set forth on the Verification of Amount Due attached hereto and an Affidavit of Statement of Account of Whitney Byrd incorporated herein as Exhibit "E."

26. The Plaintiff, by virtue of the Defendant's default, is informed and believes that it is entitled to immediate possession of the property which is the subject of said Contract.

27. On December 17, 2008, Plaintiff sent to the Defendant a Formal Demand and Request to Cure specifying the last day of payment and the amount then due.

28. Any notices of default, notifications or requests under 15 U.S.C. §1601 et. seq. or demand for the amount due under the terms of the Note or other loan documents, if any, have been or are hereby made.

29. Attached hereto and incorporated herein as Exhibit "F" is the Notice Required by the Fair Debt Collection Practices Act, (The Act) 15 U.S.C. Section 1601 as amended.

30. **THIS NOTICE IS AN ATTEMPT TO COLLECT A DEBT AND INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.**

31. The Plaintiff is informed and believes that, under the terms of the Defendant's Contract with Plaintiff, it is entitled to collect all expenses, including reasonable attorneys' fees, incurred in the collection of the amount payable thereunder and the recovery and sale of the property, and that said Defendant is further liable under the terms of said Contract for interest on the entire amount of principal and interest due, from the date of default, and delinquency charges, as set forth in said Contract.

32. According to Plaintiff's best knowledge, information and belief, the subject property is located at or based at and operated from Defendant's place of business or residence at the following address: 2918 Waters Edge Court, Beaufort, SC 29906.

33. The subject property is wrongfully detained by the Defendant, and, on information and belief, the cause of this withholding or detention is Defendant's desire to continue using the property, without paying for same.

34. The property has not, on information and belief, been taken for any tax, assessment or fine pursuant to a statute, nor has it been seized under an execution or attachment against said property.

35. The Plaintiff by or through its agents and employees has attempted to obtain possession of the collateral.

36. Demand has been made upon the Defendant to deliver the property to Plaintiff or to make payment pursuant to the Contract but said Defendant failed and refused to do so.

37. Defendant has refused to surrender possession and is actively concealing the collateral.

38. By virtue of Defendant's wrongful detention of the subject property, Plaintiff has been damaged in that it has been denied the use of the money to which it is entitled or the use of the property, which is rapidly depreciating in value, and in that it has incurred attorneys' fees and other costs and expenses for which it is entitled to recover pursuant to the terms of the Contract.

FOR A FOURTH CAUSE OF ACTION:

39. Plaintiff realleges and repleads the allegations set forth in paragraphs 1 through 38 above as fully and completely as if set forth herein verbatim.

40. Plaintiff is informed and believes it is entitled to judgment against Defendant in the amount of \$22,527.91, together with unpaid accrued interest as of March 9, 2011, in the amount of \$4,965.99, together with interest and costs as set forth herein. In addition, pursuant to the terms of the parties' agreements, the Defendant is further indebted to the Plaintiff for the costs and disbursements in this action and reasonable attorneys' fees. The per diem accumulation from March 9, 2011, is \$5.5548. This debt is more fully stated in the Verification of Amount Due and Affidavit of Statement of Account of Whitney Byrd, which is attached hereto and incorporated herein as Exhibit "E."

FOR A FIFTH CAUSE OF ACTION:

41. Plaintiff realleges and repleads the allegations set forth in paragraphs 1 through 40 above as fully and completely as if set forth herein verbatim. On or about June 21, 2007, Thomas W. Dailey entered into a contract with Plaintiff whereby said Thomas W. Dailey borrowed the sum stated therein for the purpose of purchasing a 1987 Pace Arrow Vin No. 1GBKP37W6H3338386, which was pledged as collateral to secure payment of the sums Thomas W. Dailey owes to Plaintiff. A copy of said Request for Loan Advance ("Contract") is attached hereto and incorporated herein as Exhibit "G".

42. The Plaintiff was neither the manufacturer nor the seller of the property in question, and the property was purchased for consumer purposes.

43. The Defendant failed to make payments when due pursuant to said Contract, and in accordance with the terms of said Contract Plaintiff has declared the entire balance on the Contract to be presently due and payable.

44. As of March 9, 2011, the Defendant is indebted to the Plaintiff in the principal amount of \$8,476.78, together with unpaid accrued interest as of March 9, 2011, in the amount of \$2,120.25, together with late charges in the amount of \$223.60. In addition, pursuant to the terms of the parties' agreements, the Defendant is further indebted to the Plaintiff for the costs and disbursements in this action and reasonable attorneys' fees. The per diem accumulation from March 9, 2011, is \$2,2063. This debt is more fully set forth on the Verification of Amount Due attached hereto and an Affidavit of Statement of Account of Whitney Byrd incorporated herein as Exhibit "H."

45. The Plaintiff, by virtue of the Defendant's default, is informed and believes that it is entitled to immediate possession of the property which is the subject of said Contract.

46. On January 28, 2011, Plaintiff sent to the Defendant a Formal Demand and Request to Cure specifying the last day of payment and the amount then due

47. Any notices of default, notifications or requests under 15 U.S.C. §1601 et. seq. or demand for the amount due under the terms of the Note or other loan documents, if any, have been or are hereby made.

48. Attached hereto and incorporated herein as Exhibit "I" is the Notice Required by the Fair Debt Collection Practices Act, (The Act) 15 U.S.C. Section 1601 as amended.

49. THIS NOTICE IS AN ATTEMPT TO COLLECT A DEBT AND INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

50. The Plaintiff is informed and believes that, under the terms of the Defendant's Contract with Plaintiff, it is entitled to collect all expenses, including reasonable attorneys' fees, incurred in the collection of the amount payable thereunder and the recovery and sale of the property, and that said Defendant is further liable under the terms of said Contract for interest on the entire amount of principal and interest due, from the date of default, and delinquency charges, as set forth in said Contract.

51. According to Plaintiff's best knowledge, information and belief, the subject property is located at or based at and operated from Defendant's place of business or residence at the following address: 2918 Waters Edge Court, Beaufort, SC 29906.

52. The subject property is wrongfully detained by the Defendant, and, on information and belief, the cause of this withholding or detention is Defendant's desire to continue using the property, without paying for same.

53. The property has not, on information and belief, been taken for any tax, assessment or fine pursuant to a statute, nor has it been seized under an execution or attachment against said property.

54. The Plaintiff by or through its agents and employees has attempted to obtain possession of the collateral.

55. Demand has been made upon the Defendant to deliver the property to Plaintiff or to make payment pursuant to the Contract but said Defendant failed and refused to do so.

56. Defendant has refused to surrender possession and is actively concealing the collateral.

57. By virtue of Defendant's wrongful detention of the subject property, Plaintiff has been damaged in that it has been denied the use of the money to which it is entitled or the use of the property, which is rapidly depreciating in value, and in that it has incurred attorneys' fees and other costs and expenses for which it is entitled to recover pursuant to the terms of the Contract.

FOR A SIXTH CAUSE OF ACTION:

58. Plaintiff realleges and repleads the allegations set forth in paragraphs 1 through 57 above as fully and completely as if set forth herein verbatim.

59. Plaintiff is informed and believes it is entitled to judgment against Defendant in the amount of \$8,476.78, together with unpaid accrued interest as of March 9, 2011, in the amount of \$2,120.25, together with interest and costs as set forth herein, together with late charges in the amount of \$223.60. In addition, pursuant to the terms of the parties' agreements, the Defendant is further indebted to the Plaintiff for the costs and disbursements in this action and reasonable attorneys' fees. The per diem accumulation from March 9, 2011, is \$2,206.3. This debt is more fully stated in the Verification of Amount Due and Affidavit of Statement of Account of Whitney Byrd, which is attached hereto and incorporated herein as Exhibit "H."

FOR A SEVENTH CAUSE OF ACTION:

60. Plaintiff reiterates the allegations of paragraphs 1 through 59 of this Complaint as fully and completely as if they were restated herein verbatim.

61. On or prior to March 30, 2007, for value received, Thomas W. Dailey executed and delivered to Plaintiff a Request for Loan Advance ("Agreement") in writing whereby Thomas W. Dailey promised to pay Plaintiff the sum of \$5,000.00, together with interest thereon from the date thereof and at the rate set forth in such Agreement, a copy of which is attached hereto and incorporated herein by reference as Exhibit "J."

62. On or prior to October 31, 2008, Defendant defaulted on Defendant's obligation to repay the Plaintiff pursuant to the Agreement by failing and refusing to pay interest and principal payments on said Agreement when due, and as of the date of this Complaint has failed and continues to refuse to cure this default.

63. Any notices of default, notifications or requests under 15 U.S.C. §1601 *et seq.* or demand for the amount due under the terms of the Note or other loan documents, if any, have been or are hereby made and incorporated herein by reference as Exhibit "K."

64. On January 28, 2011, and subsequently, Plaintiff sent to Defendant(s) a Notice of Consumers' Right to Cure specifying the last day of payment and the amount then due.

65. Despite demand by the Plaintiff, Defendant has refused and continues to refuse to pay the amounts due and owing to the Plaintiff.

66. The Plaintiff, as a result of the defaults under the Agreement, and other loan documents, has incurred and is incurring collection costs and expenses, including attorneys' fees, for the collection and enforcement of payment of these obligations. The amount of these costs and expenses will be proven in detail to the Court.

67. There is now due on the Agreement the principal sum of \$2,996.51, being the outstanding principal balance of the loan, together with unpaid accrued interest from October 4, 2008, at the per diem rate of \$1.2314, as computed by reference to the terms of the Agreement, together with the costs and disbursements of collection of this action and attorneys' fees. Plaintiff refers the court to the Verified Statement of Account, a copy of which is attached hereto and is incorporated herein by reference as Exhibit "L."

FOR A EIGHTH CAUSE OF ACTION:

68. Plaintiff reiterates the allegations of paragraphs 1 through 67 of this Complaint as fully and completely as if they were restated herein verbatim.

69. On or prior to October 18, 2004, for value received, Thomas W. Dailey executed and delivered to Plaintiff a Overdraft Protection Line of Credit Agreement and Disclosure Form ("Agreement") in writing whereby Thomas W. Dailey promised to pay Plaintiff the sum of \$3,000.00, together with interest thereon from the date thereof and at the rate set forth in such Agreement, a copy of which is attached hereto and incorporated herein by reference as Exhibit "M."

70. On or prior to October 1, 2008, Defendant defaulted on Defendant's obligation to repay the Plaintiff pursuant to the Agreement by failing and refusing to pay interest and principal payments on said Agreement when due, and as of the date of this Complaint has failed and continues to refuse to cure this default.

71. Any notices of default, notifications or requests under 15 U.S.C. §1601 *et seq.* or demand for the amount due under the terms of the Note or other loan documents, if any, have been or are hereby made and incorporated herein by reference as Exhibit "N."

72. On January 28, 2011, and subsequently, Plaintiff sent to Defendant(s) a Notice of Consumers' Right to Cure specifying the last day of payment and the amount then due

73. Despite demand by the Plaintiff, Defendant has refused and continues to refuse to pay the amounts due and owing to the Plaintiff.

74. The Plaintiff, as a result of the defaults under the Agreement, and other loan documents, has incurred and is incurring collection costs and expenses, including attorneys' fees, for

the collection and enforcement of payment of these obligations. The amount of these costs and expenses will be proven in detail to the Court.

75. There is now due on the Agreement the principal sum of \$2,997.64, being the outstanding principal balance of the loan, together with unpaid accrued interest from October 4, 2008, at the per diem rate of \$1.3140, as computed by reference to the terms of the Agreement, together with the costs and disbursements of collection of this action and attorneys' fees. Plaintiff refers the court to the Verified Statement of Account, a copy of which is attached hereto and is incorporated herein by reference as Exhibit "O."

WHEREFORE, Plaintiff prays for judgment as follows:

ON ITS FIRST, THIRD, AND FIFTH CAUSES OF ACTION:

1. That the subject property be ordered to be delivered into its possession and that it be allowed to sell the property, and that it be allowed to apply the proceeds of such sale to Defendant's indebtedness to it as provided by law.

2. That judgment be rendered against the Defendant in the total sum of any deficiency owing under the parties' Contracts, including but not limited to interest, costs, attorneys' fees, the costs of repossession, return, delivery, sale and any other sums provided for by said Contracts or applicable law; after the proceeds of any sale of the property in question are credited.

3. That if possession of the property cannot be had by the Sheriff, for an Order requiring the Defendant to appear before this Honorable Court or its appointee, to answer under oath as to where the property may be found.

4. That this Court issue its Order establishing the attorneys' fees herein.

5. That if possession of the property cannot be had, for an Order of Judgment against the Defendant for the full balance due under the agreements between the parties together with attorneys' fees and costs and disbursements of this action.

6. For such other and further relief as may be deemed just and proper by the Court.

ON ITS REMAINING CAUSES OF ACTION:

7. For judgment against Thomas W. Dailey on Plaintiff's second cause of action in the sum of \$3,051.71, together with interest as provided for in the loan documents, attorneys' fees, and for such other and further relief as this Court may deem just and proper.

8. For judgment against Thomas W. Dailey on Plaintiff's fourth cause of action in the sum of \$27,493.90, together with interest as provided for in the loan documents, attorneys' fees, and for such other and further relief as this Court may deem just and proper.

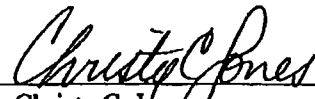
9. For judgment against Thomas W. Dailey on Plaintiff's sixth cause of action in the sum of \$10,820.63, together with interest as provided for in the loan documents, attorneys' fees, and for such other and further relief as this Court may deem just and proper.

10. For judgment against Thomas W. Dailey on Plaintiff's seventh cause of action in the sum of \$4,087.53, together with interest as provided for in the loan documents, attorneys' fees, and for such other and further relief as this Court may deem just and proper.

11. For judgment against Thomas W. Dailey on Plaintiff's eighth cause of action in the sum of \$4,161.84, together with interest as provided for in the loan documents, attorneys' fees, and for such other and further relief as this Court may deem just and proper.

SHERPY & JONES, P.A.

By: _____



Christy C. Jones
Post Office Box 2599
Lexington, South Carolina 29071
(803) 356-3327
ATTORNEY FOR PLAINTIFF

March 29th, 2011

Lexington, South Carolina

EXHIBIT
m

T-669 P02/03 U-667

Overdraft Protection Line of Credit Agreement and Disclosure Form

Друга:

October 18, 2004

Line of Credit	Minimum Monthly Payment	Date of Payment	ANNUAL PERCENTAGE RATE <u>16.00%</u>
<u>\$3,000.00</u>	\$10 per \$100 or a minimum payment of \$25 except where a smaller payment shall reduce the balance plus interest to zero	<u>November 30, 2004</u> <u>and every month thereafter</u>	Which is a Daily Periodic Rate of <u>0.041836%</u>

As amount necessary to cover said deficiency plus enough additional to make the report equal to the next \$50.00.

[illegible]

See reverse side for important additional agreements.

YOUR EXPRESS ACKNOWLEDGENCE RECEIPT OF A COPY OF THIS OVERDRAFT PROTECTION LINE OF CREDIT AGREEMENT AND DISCLOSURE STATEMENT, APPROXIMATELY FILLED IN PRIOR TO COMPLETION OF THE TRANSACTION, AND THAT IT IS TRUE.

DEBTOR OR GUARANTOR

316.685.9335 • fax 316.685.6529

AACU
American Association of Colleges and Universities

EXHIBIT "N"

**NOTICE REQUIRED BY THE
FAIR DEBT COLLECTION
PRACTICES ACT, (THE ACT)
15 U.S.C. SECTION 1601 AS AMENDED**

1. The amount of the debt is \$2,997.64, plus interest, costs and attorneys' fees.
2. The Creditor is Central Star Credit Union.
3. The debt described in the complaint attached hereto will be assumed to be valid by the Creditor's law firm unless you, the debtor, within thirty (30) days after the receipt of this notice, dispute, in writing, the validity of the debt or some portion thereof.
4. If you, the debtor, notify the Creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will obtain a verification of the debt and a copy of the verification will be mailed to you, the debtor, by the Creditor's law firm.
5. If the creditor named in the attached complaint is not the original Creditor, and if you make a written request to the Creditor's law firm within the thirty (30) days from the receipt of this notice, the name and address of the original Creditor will be mailed to you by the Creditor's law firm.
6. Written requests should be addressed to Christy C. Jones, Sherpy & Jones, P.A., P.O. Box 2599, Lexington, South Carolina 29071.
7. This notice should not be construed as a thirty (30) days grace period. Creditor may pursue collection efforts immediately and not wait thirty (30) days and a default judgment shall be sought against you as set forth in the Summons and Complaint.
8. This notice is an attempt to collect a debt and information obtained will be used for that purpose.

Notice of Consumer's Right to Cure
Default of Required Payment

01/28/2011

THOMAS W DAILBY
330 ROBERT SMALLS PKW Y STE 24 BOX 111
BEAUFORT, SC 29906-4240

Account Number

Brief Description of Credit Transaction
OVERDRAFT PROTECTION

Last Day for Payment 02/17/2011

Amount Now Due \$2997.64

You are late in making your payment(s). If you pay the Amount Now Due by the Last Day for Payment, you may continue with the contract as though you were not late. If you do not pay by this date, we may exercise our rights under the law.

If you are late again in making your payments, we may exercise our rights without sending you another notice like this one. We may report information about your account to credit bureaus. Late payments, missed payments or other defaults on your account may be reflected in your credit report. If you have any questions, write or telephone the credit union office promptly.

Your failure to abide by this notice will give the Credit Union the right to accelerate your payments and declare the full amount of your liabilities to the credit union immediately due and payable and the right to take action to immediately take possession and sell the security given by you as collateral.

Sincerely,

Whitney Byrd
Special Accounts Representative
316-685-9555

EXHIBIT "L"

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO.

Central Star Credit Union,

Plaintiff,

vs.

Thomas W. Dailey,

Defendant.

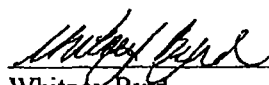
VERIFIED STATEMENT
OF ACCOUNT
Loan No. 10-04

(Seventh Cause of Action)

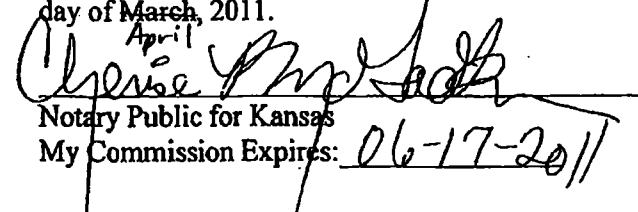
PERSONALLY APPEARED before me Whitney Byrd, who being duly sworn, states that she is an employee and the collection agent for the Plaintiff; that she has knowledge of the facts set forth below; that she is authorized to make this affidavit; that the following itemized statement of account of the Plaintiff against the Defendant dated March 9, 2011, is correct within the affiant's knowledge as of the date below and that:

1.	Principal balance 09/26/2008	\$2,996.51
2.	Per diem interest rate from 09/26/2008	\$1.2314

The Affiant states that the Defendant owes the Plaintiff \$2,996.51 as of September 26, 2008, plus interest at \$1.2314 per day since September 26, 2008, plus all costs and attorneys' fees incurred by Plaintiff as a result of this action; and that no part sued upon has been paid by discount or otherwise.


Whitney Byrd

SWORN to before me this 22nd
day of ~~March~~ April, 2011.


Notary Public for Kansas

My Commission Expires: 06-17-2011

CHERISE R. MCFADDEN
NOTARY PUBLIC
STATE OF KANSAS

My Appt. Exp. 06-17-2011

EXHIBIT "O"

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT) CIVIL ACTION NO.

Central Star Credit Union,

Plaintiff,

vs.

Thomas W. Dailey,

Defendant.

VERIFIED STATEMENT
OF ACCOUNT
Loan No. 10-75

(Eighth Cause of Action)

PERSONALLY APPEARED before me Whitney Byrd, who being duly sworn, states that she is an employee and the collection agent for the Plaintiff; that she has knowledge of the facts set forth below; that she is authorized to make this affidavit; that the following itemized statement of account of the Plaintiff against the Defendant dated March 9, 2011, is correct within the affiant's knowledge as of the date below and that:

3.	Principal balance 10/4/2008	\$2,997.64
4.	Per diem interest rate from 10/4/2008	\$1.3140

The Affiant states that the Defendant owes the Plaintiff \$2,997.64 as of October 4, 2008, plus interest at \$1.3140 per day since October 4, 2008, plus all costs and attorneys' fees incurred by Plaintiff as a result of this action; and that no part sued upon has been paid by discount or otherwise.

SWORN to before me this 22nd
day of March, 2011

Notary Public for Kansas

My Commission Expires: 06-17-2011

Whitney Byrd



IN THE STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT
HELENA P. TIRONE AND TRUMAN'S
ECLECTIC IRISH PUB, INC.,

Plaintiff,

vs.

THOMAS W. DAILEY,

Defendant.

IN THE COURT OF COMMON PLEAS

2011 JUN -3 PM 3:56

CASE NO. 2011-CP-07-02216

JERRALD TRUSSEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

ANSWER AND COUNTERCLAIM

TO: J. ASHLEY TWOMBLEY, ESQUIRE, ATTORNEY FOR THE PLAINTIFFS:

The Defendant, Thomas W. Dailey, answering the Complaint and by way of Counterclaim against the Plaintiffs, would respectfully show unto this Honorable Court as follows:

FOR A FIRST DEFENSE

1. The allegations of Paragraphs 1, 2, 3 and 4 of the Complaint are admitted.
2. The allegations of Paragraph 5 of the Complaint are admitted upon information and belief.
3. The allegations of Paragraph 6 of the Complaint are admitted, with the correction that the effective date of employment is May 1, 2011, as opposed to June 1, 2011.
4. The allegations of Paragraph 7 of the Complaint are admitted, although Defendant was not informed of his termination until after the fact.
5. The allegations of Paragraph 8 of the Complaint are denied in that the

Defendant did not engage in any unlawful conduct.

6. The allegations of Paragraph 9 of the Complaint are denied in that the Defendant did not trespass on the leased premises.

7. The allegations of Paragraph 10 of the Complaint are admitted upon information and belief.

8. The allegations of Paragraph 11 of the Complaint are denied.

9. The allegations of Paragraphs 12, 13, 14 and 15 of the Complaint are denied.

10. The allegations of Paragraphs 16 through 22 of the Complaint are denied.

FOR A SECOND DEFENSE AND BY WAY OF COUNTERCLAIM

11. The Plaintiffs hired the Defendant, effective May 1, 2011, as General Manager of Truman's Eclectic Iris Pub.

12. The parties memorialized the terms of the Defendant's employment by the Plaintiffs by entering into a contract, entitled "Key Employee Employment Agreement for Thomas W. Dailey", a true and accurate copy of which is attached hereto and incorporated herein by reference as fully as if repeated verbatim.

13. The Plaintiffs breached the aforesaid Key Employee Employment Agreement by terminating the Defendant during the term of the agreement.

14. Pursuant to the "Key Employee Employment Agreement", if the Defendant is terminated, then the Plaintiffs shall pay to the Defendant in lump sum form, all future monies yet unpaid throughout the term of the agreement.

15. The agreement had a term of forty-eight (48) months, commencing May 1, 2011 and ending April 30, 2015.

16. The Agreement provides for a weekly salary to be paid by the Plaintiffs to the

Defendant of \$1,250.00.

17. As a direct and proximate result of their termination of the Defendant during the term of the agreement, in violation of the express terms of the agreement, the Plaintiffs owed to the Defendant, in lump sum, all future monies yet unpaid throughout the term of the agreement, to-wit, 205 weeks of salary at \$1,250.00 per week, or \$256,250.00, together with prejudgment interest calculated as of on or about May 20, 2011.

18. The Key Employee Employment Agreement further provides that in addition to the aforesaid lump sum payment, in the event of termination during the term of the agreement, the Plaintiff shall immediately transfer ownership of 50% of the stock of Truman's Eclectic Irish Pub, Inc., to the Defendant.

19. In breach of the aforesaid agreement, the Plaintiffs have failed and refused to transfer to the Defendant, immediately, ownership of 50% of the stock of Truman's Eclectic Irish Pub, Inc.

20. As a direct and proximate result of the Plaintiffs termination of the Defendant, the Defendant is entitled to judgment against the Plaintiffs in the amount of \$256,250.00, together with prejudgment interest, and an Order directing the Plaintiffs to immediately convey to the Defendant ownership of 50% of the stock of Truman's Eclectic Irish Pub, Inc.

21. The Key Employee Employment Agreement further provides that the Plaintiffs will reimburse the Defendant for all legal fees associated with the enforcement of the agreement by the Defendant.

22. The Defendant has incurred attorney's fees in connection with the enforcement of the Key Employee Employment Agreement.

23. The Defendant is informed and believes that he is entitled to judgment

against the Plaintiffs for the fair and reasonable amount of attorney's fees and costs incurred by him in compelling the enforcement of the Key Employee Employment Agreement.

FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM
(STATUTORY UNPAID WAGES)

24. The Plaintiffs have failed and refused to pay to the Defendant the wages owed to the Defendant pursuant to the Key Employee Employment Agreement.

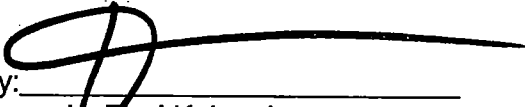
25. The Defendant is informed and believes that he is entitled, pursuant to §41-10-80 of the South Carolina Code of Laws, judgment against the Plaintiffs equal to three (3) times the full amount of the unpaid wages, plus costs and reasonable attorney's fees.

WHEREFORE, the Defendant prays as follows:

- a. That the Complaint be dismissed;
- b. For judgment against the Plaintiffs on the second cause of action in the amount of \$256,250.00, plus prejudgment interest, plus attorney's fees and costs, or alternatively, judgment against the Plaintiffs on the third defense and counterclaim in the amount of \$768,750.00, representing trebled unpaid wages, plus attorney's fees and costs, and as to the second defense and first counterclaim, an Order directing the Plaintiffs to convey to the Defendant 50% of the stock in Truman's Eclectic Irish Pub, Inc., together with such other and further relief as this Honorable Court may deem to be just and proper.

[signature of following page]

MOSS, KUHN & FLEMING, P.A.

By: 

H. Fred Kuhn, Jr.
1601 North Street
Post Office Drawer 507
Beaufort, South Carolina 29901
(843)524-3373
(84)3524-1302- FX

Beaufort, South Carolina
June 2, 2011

Attorneys for Defendant

IN THE STATE OF SOUTH CAROLINA 2011 DEC -5 PM 3:51 IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT

HELENA P. TIRONE AND TRUMAN'S
ECLECTIC IRISH PUB, INC.,

JEROME ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

Plaintiff,

ANSWER AND COUNTERCLAIM
(JURY TRIAL DEMANDED)

vs.

THOMAS W. DAILEY,

Defendant.

TO: J. ASHLEY TWOMBLEY, ESQUIRE, ATTORNEY FOR THE PLAINTIFFS:

The Defendant, Thomas W. Dailey, answering the Complaint, and by way of Counterclaim against the Plaintiffs, would respectfully show unto this Honorable Court as follows:

1. All allegations of the Complaint which are not expressly admitted are denied and strict proof demanded thereof.

2. The allegations of Paragraphs 1, 2, 3 and 4 of the Complaint are admitted.

3. With respect to the allegations of Paragraphs 5 through 58 of the Complaint it is admitted that the Plaintiff Helena Tirone ("Tirone") and the Defendant Thomas W. Dailey ("Dailey") met while working for the Fluor Daniel Corporation, where Tirone continues to be employed. Tirone and Dailey became romantically involved and as a result Dailey shared with Tirone his dream and desire of opening an Irish themed pub. Tirone agreed to assist Dailey in this venture, for their mutual profit. Tirone and Dailey then became partners in a joint venture to open an Irish themed pub in Beaufort, South Carolina, known as Truman's Eclectic Irish Pub and they created the corporate Plaintiff,

Truman's Eclectic Irish Pub, Inc., for that purpose. Tirone and Dailey initially were equal partners with Tirone supplying most of the financial backing and Dailey supplying most of the ideas, energy, contacts, knowledge, and labor. Dailey did not misrepresent to Tirone his financial condition, but rather made known to her his lack of financial capability, which is the reason why Tirone and Dailey decided that Tirone would contribute the majority of the finances and Dailey would contribute the majority of the "sweat equity." As the pub neared completion, the parties' romantic relationship ended. Tirone no longer desired to continue the venture as business partners, and instead, desired to alter the relationship from 50/50 owners and partners, to one in which she was the sole owner of the business and Dailey ran the business as her employee. The parties discussed and negotiated the change in their status from partners to employer-employee, and said negotiations resulted in the "Key Employee Employment Agreement for Thomas W. Dailey" which is Exhibit C to the Amended Complaint. The terms of this contract speak for themselves. Dailey did not threaten Tirone in order to induce her to execute this contract, and she did not execute it under any coercion or duress. This contract, rather, was the result of her request to change the nature of their legal relationship and was the product of their mutual negotiations. After the execution of the contract, the Plaintiff continued to faithfully perform his duties as required thereunder and complied with the terms of the contract. Dailey did not misappropriate any funds or spend any funds without the knowledge, approval, or consent, express or tacit, of Tirone. The remaining allegations of said paragraphs are denied.

4. The allegations of Paragraphs 59 through 66 of the Complaint are denied.
5. The allegations of Paragraphs 67 through 71 of the Complaint are denied.

6. The allegations of Paragraphs 72 through 76 of the Complaint are denied.

7. With respect to the allegations of Paragraphs 77 of the Complaint it is admitted that Exhibits E - N are true and accurate copies of documents they purport to represent and that said documents speak for themselves. Insofar as these allegations are not consistent with the content of these Exhibits said allegations are denied.

8. The allegations of Paragraphs 78 through 84 of the Complaint are denied.

9. The allegations of Paragraphs 85 through 90 of the Complaint are denied.

10. The allegations of Paragraphs 91 through 98 of the Complaint are denied.

11. The allegations of Paragraphs 99 through 103 of the Complaint are denied.

11. The allegations Paragraphs 140 through 114 of the Complaint are denied.

FOR A SECOND DEFENSE AND BY WAY OF COUNTERCLAIM

12. The Plaintiffs hired the Defendant, effective May 1, 2011, as General Manager of Truman's Eclectic Iris Pub.

13. The parties memorialized the terms of the Defendant's employment by the Plaintiffs by entering into a contract, entitled "Key Employee Employment Agreement for Thomas W. Dailey", a true and accurate copy of which is attached to the Complaint as Exhibit C and incorporated herein by reference as fully as if repeated verbatim.

14. The Plaintiffs breached the aforesaid Key Employee Employment Agreement by terminating the Defendant during the term of the agreement.

15. Pursuant to the "Key Employee Employment Agreement", if the Defendant is terminated, then the Plaintiffs shall pay to the Defendant in lump sum form, all future monies yet unpaid throughout the term of the agreement.

16. The agreement had a term of forty-eight (48) months, commencing May 1,

2011 and ending April 30, 2015.

17. The Agreement provides for a weekly salary to be paid by the Plaintiffs to the Defendant of \$1,250.00.

18. As a direct and proximate result of their termination of the Defendant during the term of the agreement, in violation of the express terms of the agreement, the Plaintiffs owed to the Defendant, in lump sum, all future monies yet unpaid throughout the term of the agreement, to-wit, 205 weeks of salary at \$1,250.00 per week, or \$256,250.00, together with prejudgment interest calculated as of on or about May 20, 2011.

19. The Key Employee Employment Agreement further provides that in addition to the aforesaid lump sum payment, in the event of termination during the term of the agreement, the Plaintiff shall immediately transfer ownership of 50% of the stock of Truman's Eclectic Irish Pub, Inc., to the Defendant.

20. In breach of the aforesaid agreement, the Plaintiffs have failed and refused to transfer to the Defendant, immediately, ownership of 50% of the stock of Truman's Eclectic Irish Pub, Inc.

21. As a direct and proximate result of the Plaintiffs termination of the Defendant, the Defendant is entitled to judgment against the Plaintiffs in the amount of \$256,250.00, together with prejudgment interest, and an Order directing the Plaintiffs to immediately convey to the Defendant ownership of 50% of the stock of Truman's Eclectic Irish Pub, Inc.

22. The Key Employee Employment Agreement further provides that the Plaintiffs will reimburse the Defendant for all legal fees associated with the enforcement of the agreement by the Defendant.

23. The Defendant has incurred attorney's fees in connection with the

enforcement of the Key Employee Employment Agreement.

24. The Defendant is informed and believes that he is entitled to judgment against the Plaintiffs for the fair and reasonable amount of attorney's fees and costs incurred by him in compelling the enforcement of the Key Employee Employment Agreement.

FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM

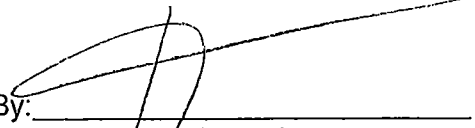
25. The Plaintiffs have failed and refused to pay to the Defendant the wages owed to the Defendant pursuant to the Key Employee Employment Agreement.

26. The Defendant is informed and believes that he is entitled, pursuant to §41-10-80 of the South Carolina Code of Laws, judgment against the Plaintiffs equal to three (3) times the full amount of the unpaid wages, plus costs and reasonable attorney's fees.

WHEREFORE, the Defendant prays as follows:

- a. That the Complaint be dismissed;
- b. For judgment against the Plaintiffs on the second cause of action in the amount of \$256,250.00, plus prejudgment interest, plus attorney's fees and costs, or alternatively, judgment against the Plaintiffs on the third defense and counterclaim in the amount of \$768,750.00, representing trebled unpaid wages, plus attorney's fees and costs, and as to the second defense and first counterclaim, an Order directing the Plaintiffs to convey to the Defendant 50% of the stock in Truman's Eclectic Irish Pub, Inc., together with such other and further relief as this Honorable Court may deem to be just and proper.

MOSS, KUHN & FLEMING, P.A.

By: 

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Attorneys for Defendant

Beaufort, South Carolina
December 1, 2011

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT)
2012 JUN 21 AM 11:55) CIVIL ACTION NO: 2011-CP-07-02216
HELENA P. TIRONE AND TRUMAN'S)
ECLECTIC IRISH PUB, INC.,)
Plaintiffs,)
SECOND AMENDED ANSWER
AND COUNTERCLAIM
vs.)
THOMAS W. DAILEY)
Defendant)

TO: J. ASHLEY TWOMBLEY, ESQUIRE, ATTORNEY FOR THE PLAINTIFFS:

The Defendant, Thomas W. Dailey, answering the Complaint, and by way of Counterclaim against the Plaintiffs, would respectfully show unto this Honorable Court as follows:

1. All allegations of the Complaint which are not expressly admitted are denied and strict proof demanded thereof.
2. The allegations of Paragraphs 1, 2, 3 and 4 of the Complaint are admitted.
3. With respect to the allegations of Paragraph 5 through 58 of the Complaint, it is admitted that Plaintiff Helena Tirone ("Tirone") and the Defendant Thomas W. Dailey ("Dailey") met while working for the Fluor Daniel Corporation, where Tirone continues to be employed. Tirone and Dailey became romantically involved and as a result, Dailey shared with Tirone his dream and desire of opening an Irish-themed pub. Tirone agreed to assist Dailey in this venture, for their mutual profit. Tirone and Dailey then became partners in a joint venture to open an Irish-themed pub known as Truman's Eclectic Irish Pub, named after Dailey's pet English Mastiff, Truman,

in Beaufort, South Carolina, where Dailey lives (Tirone resides in Aiken, South Carolina), and they created the corporate Plaintiff, Truman's Eclectic Irish Pub, Inc., for that purpose. Tirone and Dailey initially were equal partners with Tirone supplying most of the financial backing and Dailey supplying most of the ideas, energy, contacts, knowledge, and labor. Dailey did not misrepresent to Tirone his financial condition, but rather made known to her his lack of financial capability, which is the reason why Tirone and Dailey decided that Tirone would contribute the majority of the finances and Dailey would contribute the majority of the "sweat equity." As the pub neared completion, the parties' romantic relationship ended. Tirone no longer desired to continue the venture as business partners, and instead, desired to alter the relationship from 50/50 owners and partners to one in which she was the sole owner of the business and Dailey ran the business as her employee. The parties discussed and negotiated the change in their status from partners to employer-employee, and said negotiations in the "Key Employee Employment Agreement for Thomas W. Dailey" which is Exhibit C to the Amended Complaint. The terms of the contract speak for themselves. Dailey did not threaten Tirone in order to induce her to execute this contract, and she did not execute it under any coercion or duress. This contract, rather, was the result of her request to change the nature of their legal relationship and was the product of their mutual negotiations. After the execution of the contract, the Plaintiff continued to faithfully perform his duties as required thereunder and complied with the terms of the contract. Dailey did not misappropriate any funds or spend funds without the knowledge, approval, or consent, express or tacit, of Tirone. Any further allegations of paragraphs 5 through 58 of the Complaint not consistent with the above are denied.

4. The allegations of Paragraphs 59 through 66 of the Complaint are denied.
5. The allegations of Paragraphs 67 through 71 of the Complaint are denied.
6. The allegations of Paragraphs 72 through 76 of the Complaint are denied.
7. With respect to the allegations of Paragraph 77 of the Complaint, it is admitted that Exhibits E - N are true and accurate copies of documents they purport to represent and that said documents speak for themselves. Insofar as these allegations are not consistent with the content of these Exhibits said allegations are denied.
8. The allegations of Paragraphs 78 through 84 of the Complaint are denied.
9. The allegations of Paragraphs 85 through 90 of the Complaint are denied.
10. The allegations of Paragraphs 91 through 98 of the Complaint are denied.
11. The allegations of Paragraphs 99 through 103 of the Complaint are denied.
12. The allegations of Paragraphs 104 through 114 of the Complaint are denied.

FOR A FURTHER DEFENSE

13. The Defendant repeats and realleges their responses above as if restated fully herein.
14. The Complaint fails to set forth facts sufficient to constitute a cause of action and therefore should be dismissed pursuant to Rule 12(b)(6), SCRC.P.

FOR A FURTHER DEFENSE

15. The Defendant repeats and realleges their responses above as if restated fully herein.
16. Plaintiffs' inequitable conduct may bar its claims under the doctrine of unclean hands.

FOR A FURTHER DEFENSE

17. The Defendant repeats and realleges their responses above as if restated fully herein.
18. Plaintiffs' claims are barred by the doctrines of waiver, consent and/or estoppel.

FOR A FURTHER DEFENSE

19. The Defendant repeats and realleges their responses above as if restated fully herein.
20. Plaintiffs' claims are barred by the doctrine of misrepresentation.

FOR A SECOND DEFENSE AND BY WAY OF COUNTERCLAIM
(BREACH OF CONTRACT)

21. The Plaintiffs hired the Defendant, effective May 1, 2011, as General Manager of Truman's Eclectic Irish Pub.
22. The parties memorialized the terms of the Defendant's employment under the Plaintiffs by entering into a contract, entitled "Key Employee Employment Agreement for Thomas W. Dailey", a true and accurate copy of which is attached to the Amended Complaint as Exhibit C and incorporated herein by reference.
23. The Plaintiffs breached, in bad faith, the aforesaid Key Employee Employment Agreement by terminating the Defendant during the term of the agreement and other particulars as will be shown after a reasonable period of discovery.
24. Pursuant to the "Key Employee Employment Agreement", if the Defendant is terminated, then the Plaintiffs shall pay to the Defendant in lump sum form, all future monies yet unpaid throughout the term of the agreement.

25. The agreement had a term of forty-eight (48) months, commencing May 1, 2011 and ending April 30, 2015.

26. The Agreement provides for a weekly salary to be paid by the Plaintiffs to the Defendant of \$1,250.00.

27. As a direct and proximate result of their termination of the Defendant during the term of the agreement, in violation of the express terms of the agreement, the Plaintiffs owed to the defendant, in lump sum, all future monies yet unpaid throughout the term of the agreement, to-wit, 209 weeks (52 weeks at 7 days a week equals 364 days in a year; thus over the term of four years there would be 208 weeks; the extra week would be 5 additional days, including 2012 leap day, which would be considered a work week) of salary at \$1250 per week, or 261,250.00, together with prejudgment interest calculated as of on-or-about May 20, 2011.

28. The Key Employee Employment Agreement further provides that in addition to the aforesaid lump sum payment, in the event of termination during the term of the agreement, the Plaintiff shall immediately transfer ownership of 50% of the stock of Truman's Eclectic Irish Pub, Inc., to the Defendant.

29. In breach of aforesaid agreement, the Plaintiffs have failed and refused to transfer to the Defendant, immediately, ownership of 50% of the stock of Truman's Eclectic Irish Pub, Inc.

30. Plaintiff Tirone has subsequently irreparably harmed Defendant Dailey's 50% ownership stake due him by terms of the Key Employee Employment Agreement by virtue of dismantling the near-completed pub since the commencement of this action and

thus negated the possibility of equitable solution as the pub can no longer function in light of its present abandoned state.

31. As a direct and proximate result of the Plaintiffs' termination of the Defendant, the Defendant is entitled to judgment against Plaintiffs in the amount of \$261,250.00, together with prejudgment interest, and the reasonable valuation of 50% of the Pub prior to its dismantling.

32. The Key Employee Employment Agreement further provides that the Plaintiffs will reimburse the Defendant for all legal fees associated with the enforcement of the agreement by the Defendant.

33. The Defendant has incurred attorneys' fees in connection with the enforcement of the Key Employee Employment Agreement.

34. The Defendant is informed and believes that he is entitled to judgment against the Plaintiffs for the fair and reasonable amount of attorneys' fees and costs incurred by him in compelling the enforcement of the Key Employee Employment Agreement.

FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM

(BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT)

35. In addition to breach of contract, the Defendant counterclaims against the Plaintiff Tirone for Breach of Contract Accompanied by Fraudulent Act. In addition to the allegations of paragraphs 21 through 34 herein, Plaintiff Tirone has systematically dismantled the pub, which was, by all accounts, days away from opening to the point where it is at present a mostly empty, abandoned shell.

36. When Plaintiff removed items from the pub, on or about June 19, 2011, she did so with wanton disregard for ascertaining property purchased by the plaintiffs and property purchased by the defendant in furtherance of the project that she removed equipment that was purchased by the Defendant out of pocket in furtherance of the project when they considered themselves partners as opposed to employer/employee. This was a clear unlawful appropriation of another's property by design.

37. The Defendant contends that the contract was breached by the Plaintiff with the clear and convincing fraudulent intent of depriving the Defendant of his rights, benefits, and obligations due him by the terms of the Key Employee Employment Agreement with the subsequent acts of dismantling the near-completed pub in evidence of that fraudulent intent.

38. In so doing, Plaintiff Tirone has irreparably harmed Defendant Dailey's 50% ownership stake due him by terms of the Key Employee Employment Agreement and negated the possibility of equitable solution as the pub can no longer function in light of its present abandoned state.

39. The Defendant is informed and believes that he is entitled to judgment against the Plaintiffs for the full amount of the agreed-upon wages due by the terms of the agreement, \$261,250.00, punitive damages in an amount to be determined by the trier of fact, the reasonable valuation of 50% of the Pub as determined at trial, any other damages to be proven at trial, plus interest, costs, and attorneys' fees.

FOR A FOURTH DEFENSE AND BY WAY OF COUNTERCLAIM

(VIOLATION OF PAYMENT OF WAGES ACT)

40. The Plaintiffs have failed and refused to pay to the Defendant the wages owed to the Defendant pursuant to the Key Employee Employment Agreement.

41. The Plaintiffs are in violation of § 41-10-30 of the South Carolina Payment of Wages Act. At no point did the Plaintiffs notify the Defendant in writing as to the hours and wages agreed upon, the time and place of payment of wages, and the deductions which were to be made from the wages, as required.

42. The Plaintiffs are in violation of § 41-10-50 of the South Carolina Payment of Wages Act. At no point after the Defendant's termination, neither forty-eight hours after time of separation or the next regular payday, did the Plaintiff/Employer pay all wages due as required.

43. The Plaintiffs are in violation of § 41-10-60 of the South Carolina Payment of Wages Act. While the amount of wages is clearly in dispute, what is not in dispute is that the Defendant worked as an employee for the Plaintiffs from May 1, 2011 to May 16 or 20, 2011. Defendant/employer never gave written notice to the Plaintiff/employee of the amount of wages she conceded to be due and did not pay them without condition as required.

44. The Defendant is informed and believes that he is entitled, pursuant to § 41-10-80 of the South Carolina Code of Laws, judgment against the Plaintiffs equal to three (3) times the full amount of unpaid wages, plus interest, costs, and reasonable attorneys' fees.

45. In the alternative, should the Defendant's Key Employee Employment Agreement not be upheld AND should the Defendant be found NOT to have been a partner in the business, then the Plaintiffs have failed and refused to pay the Defendant wages owed by virtue of his employment from January 1, 2011 until on or about May 20, 2011.

46. As the Defendant was working as the de-facto general manager of the pub at this time, and in fact the only employee, it would appear by the allegations in the Amended Complaint, his pay should have been set at a reasonable wage.

47. The \$1,250 per week agreed to in the Key Employee Employment agreement is a reasonable wage for the purposes of determining the Defendant's supposed wages.

48. As per paragraphs 31-33 contained herein, the Plaintiff is in violation of the South Carolina Payment of Wages Act.

49. The Plaintiffs are in violation of § 41-10-60 of the South Carolina Payment of Wages Act. While the amount of wages is clearly in dispute, according to the Plaintiffs' complaint, the Defendant was employed from January 1, 2011 to May 16 or 20, 2011. Defendant/employer never gave written notice to the Plaintiff/employee of the amount of wages she conceded to be due and did not pay them without condition as required.

50. The Defendant is informed and believes that he is entitled, pursuant to § 41-10-80 of the South Carolina Code of Laws, judgment against the Plaintiffs equal to three (3) times the full amount of unpaid wages, plus interest, costs, and reasonable attorneys' fees.

- b. Destroying the enterprise by dismantling the business and moving out the vast majority of equipment and improvements,
- c. Such other acts as will be uncovered in discovery.

57. As a direct and proximate result of the Plaintiffs' breach, the Defendant has suffered actual, direct, incidental, consequential, and special damages to include the reasonable valuation of 50% of the Pub, the contemplated daily revenue over the period of term of the lease, as well as such damages as might be determined at trial.

WHEREFORE, the Defendant prays:

- a. That the Amended Complaint be dismissed.
- b. For judgment against the Plaintiffs on the second defense and counterclaim in the amount of \$261,250.00, the reasonable valuation of 50% of the Pub, plus prejudgment interest, costs, and attorneys' fees, or alternatively, judgment against the Plaintiffs on the third defense and counterclaim in the amount of , \$261,250.00, punitive damages, the reasonable valuation of 50% of the Pub, and any other damages in an amount to be determined by the trier of fact, plus prejudgment interest, costs, and attorneys' fees.
- c. For judgment against the Plaintiffs on the fourth defense and counterclaim in the amount of three times the amount of wages owed per the South Carolina Payment of Wages Act, plus interest costs and reasonable attorneys' fees should the Key Employee Employment Agreement be upheld and the starting date of employment be May 1, 2011, or, alternatively, three times the amount of wages owed per the South Carolina Payment of Wages Act, plus interest, costs, and reasonable attorneys' fees should the Key

Employee Employment Agreement not be upheld and the starting date of employment be January 1, 2011.

d. For judgment against the Plaintiffs on the fifth defense and counterclaim in the amount of the reasonable valuation of 50% of the Pub, the contemplated daily revenue over the period of term of the lease, as well as such damages as might be determined at trial, plus prejudgment interest, costs and attorneys' fees.

e. Any other damages or relief awarded by the trier of fact.

f. That the Court provide such other and further relief as it may deem just and proper.

ANDRE REMBERT, ESQUIRE

By: 

André DuBose Rembert, Esq.
183 Queen Street, Ste. B
Charleston, SC 29401
(843) 518-3232

Charleston, South Carolina
April 12, 2011

Attorney for the Defendant

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2011-CP-07-02216
HELENA P. TIRONE AND TRUMAN'S ECLECTIC IRISH PUB, INC.,	)	
Plaintiffs,	)	
vs.	)	NOTICE OF MOTION AND MOTION FOR SUMMARY JUDGMENT
THOMAS W. DAILEY,	)	
Defendant.	)	

TO: ANDRÉ DUBOSE REMBERT, ESQUIRE, ATTORNEY FOR DEFENDANT:

YOU WILL PLEASE TAKE NOTICE that Plaintiff, Helena P. Tirone, by and through her undersigned attorneys, hereby moves this Honorable Court for an Order granting Summary Judgment in her favor as to her individual liability under the employment contracts at issue in this litigation. Plaintiff's motion is due to be granted because there is no genuine dispute as to the material factual issues with respect to the individual liability of Helena Tirone under the employment contracts, and judgment should be entered as a matter of law.

This motion is made pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, the common law of South Carolina and applicable sections of the South Carolina Code of Laws. The motion shall be supported by the deposition testimony of Defendant, the pleadings on file and such further evidence as may be presented and upon such other law as is applicable.

TWENGE + TWOMBLEY LAW FIRM

BY:



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Beaufort, South Carolina

June 21, 2012

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

**Helena P. Tirone and Truman's Eclectic
Irish Pub, Inc.,**

Plaintiffs,

vs.

Thomas W. Dailey,

Defendant.

IN THE COURT OF COMMON PLEAS

FOURTEENTH JUDICIAL CIRCUIT

CIVIL ACTION NUMBER:

2011-CP-07-2216

2012 JUL 30 AM 9:03
BEAUFORT COUNTY, S.C.
CLERK OF COURT

**MEMORANDUM OF LAW
OF
DEFENDANT THOMAS W. DAILEY
FOR
July 30, 2012 MOTIONS HEARING**

André DuBose Rembert, Esq.
183 Queen Street, Ste. B
Charleston, SC 29401
(843) 518-3232
Attorney for Defendant Thomas W. Dailey

TABLE OF CONTENTS

NATURE OF THE CASE	2
BACKGROUND	2
Procedural History	4
ARGUMENT	5
I. Due to Tirone's Counsel's abuse of the discovery process, Dailey's Motion for Protective Order must be granted.....	5
II. Tirone's Motion for Protective Order is moot.	11
III. Due to the scintilla of evidence supporting actions against Tirone individually, Tirone's Motion for Summary Judgment must be denied.....	11
IV. Tirone's Motion for Out of State Subpoenas must be denied for her abuse of the discovery process.....	16
V. Dailey is entitled to a temporary injunction preventing Tirone from subleasing 205 West Street to another entity.....	16
A. Dailey has been and will be irreparably harmed by Tirone's acts.	16
B. Dailey has a high likelihood of success on the merits of his action.....	17
C. Dailey has no adequate remedy at law.	22
CONCLUSION AND PRAYER FOR RELIEF	23

NATURE OF THE CASE

This is a business dispute between two ex-partners and ex-lovers. The Plaintiffs, Helena P. Tirone and Truman's Eclectic Irish Pub, Inc., have brought actions for Declaratory Judgement-Duress/Contract Recession, Blackmail (which is not a known cause of action in South Carolina), Misrepresentation-Deceit, Conversion, Breach of Contract and Breach of Contract Accompanied by a Fraudulent Act, Trespass, Intentional Infliction of Emotional Distress/Outrage, and Injunction. The Defendant, Thomas W. Dailey, has asserted counterclaims for Breach of Contract, Breach of Contract with Fraudulent Intent, Violation of the Wage Payment Act, and Breach of Fiduciary Duty. The following motions are before the Court:

- 1) Dailey's Motion for Protective Order (Filed on or about May 18, 2012, as supplemented) (Addressed in Part I).
- 2) Tirone's Motion for Protective Order (Filed on or about June 19, 2012) (Addressed in Part II).
- 3) Tirone's Motion for Summary Judgment (Filed on or about June 21, 2012) (Addressed in Part III).
- 4) Tirone's Motion for Out of State Subpoenas (Filed on or about June 25, 2012) (Addressed in Part IV).
- 5) Dailey's Motion for Injunction (Filed on or about June 26, 2012) (Addressed in Part V).

BACKGROUND

Plaintiff Helena Tirone and Defendant Thomas W. Dailey met in late 2009 while working for the Fluor Daniel Corporation in support of the Logistics Civil Acquisition Program (LOGCAP) in Afghanistan whereby the company ran the bases for the military in the north.

(While Tirone continues to work for Fluor, she now works at the Savannah River Site.) Tirone and Dailey became romantically involved and as a result, Dailey shared with Tirone his dream and desire of opening an Irish-themed pub. (Second Amended Counterclaim ¶ 3; Ex. A). On or about December of 2010, Tirone and Dailey decided to become partners in a joint venture to open an Irish-themed pub known as "Truman's Eclectic Irish Pub" (named after Dailey's pet English Mastiff, Truman) in Beaufort, South Carolina. (Second Amended Counterclaim ¶ 3; Ex. A). In furtherance of this venture, Tirone and Dailey created a corporation, Truman's Eclectic Irish Pub, Inc. on December 29, 2010 (Second Amended Counterclaim ¶ 3; Ex. A; Certificate from SC Secretary of State office; Ex. B)

Tirone and Dailey's business relationship was in the nature of equal partners. (Second Amended Counterclaim ¶ 3; Ex. A). Due to Dailey's relatively modest financial situation, Tirone agreed to supply most of the financial backing and Dailey would supply most of the ideas, energy, contacts, knowledge, and labor (*i.e.* "sweat equity"). (Second Amended Counterclaim ¶ 3; Ex. A).

As the pub neared completion in April of 2011, the Tirone and Dailey's romantic relationship ended. (Second Amended Counterclaim ¶ 3; Ex. A). Likely as a result of the change in relationship status, Tirone no longer desired to continue the venture as described above, and sought to alter the venture to one in which she was the sole owner of the business and Dailey ran the business as her employee. (Second Amended Counterclaim ¶ 3; Ex. A). The parties discussed and negotiated the change in the venture, and on May 4, 2011, entered into a "Key Employee Employment Agreement for Thomas W. Dailey" (the "Agreement") (Amended Complaint Ex. C; Ex. C).

After execution, Dailey continued to perform his duties under the Agreement. During a preliminary safety inspection on or about May 16, 2011, the police arrived and stated that a burglary was reported. Dailey showed them a copy of his employment agreement and a copy of the lease, on which he was the guarantor, and they left. Shortly thereafter, the police returned with Tirone's counsel and he was removed from the premises. Tirone's complaint was filed on May 20, 2011 and that was the first time Dailey was informed he was terminated.

On or about June 19, 2011, Tirone dismantled the business, removing furniture and rendering the location an empty shell. (Second Amended Complaint ¶ 35, 36; Ex. A)

Procedural History

This action was originally filed on May 20, 2011.

Timeline of all pleadings, all motions, all hearings:

- I. May 20, 2011-Summons and Complaint
- II May 20, 2011-Motion for Temporary Restraining Order Barring Defendant From Premises
- III June 3, 2011-Answer and Counterclaim
- IV June 10, 2011-Defendant's Motion for Temporary Injunction
- V June 10, 2011- Defendant's Motion to Quash Plaintiff's Temporary Restraining Order or to Increase Bond
- VI June 23, 2011- Plaintiff's Motion to Amend Complaint
- VII June 30, 2011-Order on Cross Motions for Injunction and to Amend Complaint
- VIII July 20, 2011-Plaintiff's Motion for Sanctions and Injunction
- IX August 11, 2011-Plaintiff's Motion to Compel and Sanctions

- X October 4, 2011-Defendant's Motion for a Continuance from Motions Hearing for
October 4, 2011
- XI October 14, 2011-Order on Plaintiff's Motion for Sanctions is granted
- XII November 7, 2011-Plaintiff's Motion to Compel
- XIII November 30, 2011-Order on Motions to Compel
- XIV December 5, 2011-Defendant's Motion to Compel
- XV December 5, 2011-Amended Answer and Counterclaim filed
- XVI January 10, 2012-Defendant's Motion to Be Relieved As Counsel
- XVII February 9, 2012-Consent Order Relieving Counsel of Defendant
- XVIII April 2, 2012-Plaintiff's Motion to Compel and for Sanctions
- XIX April 18, 2012-Defendant's Motion to Amend
- XX April 18, 2012-Hearing for Cross Motions to Compel
- XXI May 3, 2012-Phone Conference on Clarification of Motions to Compel
- XXII May 21, 2012-Defendant's Motion for Protective Order
- XXIII May 31, 2012-Order for Defendant's Motion to Compel on April 18, 2012
- XXIV June 20, 2012-Consent Order for Defendant's Second Amended Answer and
Counterclaim
- XXV June 22, 2012-Plaintiff's Motion for Protective Order
- XXVI June 25, 2012-Plaintiff's Motion for Summary Judgment
- XXVII June 26, 2012-Plaintiff's Motion for Out of State Subpoenas and to Compel Release
- XXVIII June 27, 2012-Defendant's Motion for Injunction
- XXIX July 16, 2012-Defendant's Motion to Compel
- XXX July 24, 2012-Defendant's Motion to Amend Complaint

ARGUMENT

Whether through the use of the discovery process or through the depletion of business resources, Plaintiff has engaged in a lengthy and systematic abuse of Defendant's rights from the beginning of this action, in what appears to be a calculated campaign to harass, annoy, and retaliate against her ex-lover and ex-business partner. It is imperative that this Court intervene to stop this abuse and allow this action to proceed to a trial on the merits.

I. Due to Tirone's Counsel's abuse of the discovery process, Dailey's Motion for Protective Order must be granted.

Plaintiff deposed Defendant on May 9, 2012. (Exerpts of Deposition of Thomas W. Dailey, Ex. D). This deposition lasted for approximately eight hours. (Exerpts of Deposition of Thomas W. Dailey, Ex. D). Because Defendant's deposition uncovered information that was arguably new to Plaintiff, Defendant consented to continuing the deposition at a later date, expressly limiting the scope of this deposition on May 16, 2012 to receipts to be produced in the interim and to bank statements (Exerpts of Deposition of Thomas W. Dailey, Ex.D). When Plaintiff exceeded the agreed scope of Defendant's deposition in its continuation (Exerpt of Continuation Deposition of Thomas W. Dailey, Ex. E), Defendant's counsel terminated the deposition and filed a motion for a protective order on May 18, 2012. It should be noted that Plaintiff's Counsel had a full eight hours at the first deposition to ask the Defendant the question that ultimately violated the expressly limited continuation. The Plaintiff had the information relating to it at the first deposition and chose not to do so.

The deposition conduct is another example of Plaintiff's counsel's disregard for express agreement. This behavior was seen previously when, during the May 3, 2012, phone conference, Judge Dukes expressly ordered Plaintiff's counsel to submit highlighted bank transaction records by midday on May 7, 2012. At 12:35pm on May 7, 2012, Counsel submitted a proposed revised

order for the Judge to sign based on the May 3, 2012 phone conference. This proposed order stated that Plaintiff's counsel had to submit the information by close of business on May 7, 2012. Defendant's counsel immediately objected as those were not the terms ordered. Defendant's counsel replied that his client was sick and that delayed him, but then submitted the bank records in less than five minutes of Defendant's objection, thereby seriously undermining his credibility as to getting them in by the originally ordered time (Email from Plaintiff's Counsel, Ex. F).

The deposition follows the same pattern. There was an express agreement, on the record, on the fact that the continued deposition on May 16th would be limited specifically to receipts provided in the interim and bank transaction records (Exerpts of Deposition of Thomas W. Dailey, Ex. D). Plaintiff's Counsel, after speaking with his client on the phone, began prodding the defendant to matters that were only barely related to the bank transaction records and appeared to be designed to harass the defendant in regards to his current fiancée (Exerpt of Continuation Deposition of Thomas W. Dailey, Ex. E). When he finally asked a question that very clearly had nothing to do with the bank transaction records (Exerpt of Continuation Deposition of Thomas W. Dailey, Ex. E), Defendant's counsel instructed the Defendant not to answer and Plaintiff's Counsel insisted that a protective order be filed.

On July 27, 2012, after the deposition of the Plaintiff, Plaintiff's counsel stated to Defendant's counsel that he would not be requesting a continuation of the deposition so the protective order wouldn't need to be addressed at the July 30, 2012 motions hearing. That is also typical of Plaintiff's counsel's behavior, whereby he will insist on a motion or hearing and then withdraw his objection or agree to consent at the last moment, merely to harass and annoy and unnecessarily burden opposing counsel and waste the court's time. This has also happened previously when Defendant's counsel submitted the proposed 2nd Amended Answer and

Counterclaim to the Plaintiff in order to get consent. The Plaintiff refused to consent, thereby requiring a motion be made and a motion hearing set. The morning of the hearing, Plaintiff's counsel called Defendant's counsel to state that he would consent and that the hearing was no longer necessary (Email to Judge's Clerk; Ex. G).

In the time since this motion was filed, Plaintiffs have initiated a number of motions and actions which, while plausible when each is taken individually, when viewed in the aggregate, appear designed to harass and annoy the defendant and represents an ongoing and egregious abuse of the discovery process. Following an email from Defendant's counsel (Ex. A to Supplement to Motion for Protective Order), the Plaintiff initiated the following barrage of actions:

- 1) Wednesday, June 20- Notice of Motion and Motion for Protective Order (Exhibit B to Supplement to Motion for Protective Order);
- 2) Thursday, June 21- Subpoena to Dave Harper 996 Ribaut Road (Exhibit C to Supplement to Motion for Protective Order);
- 3) Thursday, June 21- Notice of Motion and Motion for Summary Judgment (Exhibit D to Supplement to Motion for Protective Order);
- 4) Friday, June 22- Plaintiffs' Third Set of Request for Production to Defendant (Exhibit E to Supplement to Motion for Protective Order);
- 5) Friday, June 22- Subpoena to Sprint (Exhibit F to Supplement to Motion for Protective Order);
- 6) Monday, June 25- Notice of Motion and Motion for Order to Commission Out of State Subpoenas and to Compel Release regarding the referenced matter (Exhibit G to Supplement to Motion for Protective Order);

- 7) Tuesday, June 26- Subpoena to Dave Harper 913 16th Street (Exhibit H to Supplement to Motion for Protective Order); and
- 8) Tuesday, July 24- Notice of Motion and Motion to Amend Verified Amended Complaint

The Motion for Protective Order (1) is moot, as Tirone's deposition was taken on July 27, 2012.

The subpoena to Dave Harper (2), the Defendant's accountant, serves little to no purpose other than to harass and annoy the defendant. Not only is the subpoena overly broad [requesting up to the current date, when relevancy would be most easily understood to be up to the time that the defendant could have possibly "embezzled" (using the plaintiff's term), which would have been May of 2011], but, if requested for legitimate purposes, would have been requested much sooner than a year after the initiation of the suit as well as prior to the deposition of Dailey.

The Plaintiffs Third Set of Request for Production to Defendant (4) contains seven requests that are redundant to previously requested information, overly broad, burdensome, irrelevant, and/or would appear to have been sent for harassing/ retaliatory purposes.

The subpoena to Sprint (5) serves little to no purpose other than to harass and annoy Dailey. Not only is the subpoena overly broad [requesting up to the current date, when relevancy would be most easily understood to be up to the time that Dailey could have possibly "embezzled" (using the plaintiff's term), which would have been May of 2011], but, if requested for legitimate purposes, would have been requested much sooner than a year after the initiation of the suit as well as prior to the deposition of Dailey. Additionally, the phone records are in regards to a phone the Defendant gave the Plaintiff in May of 2011. During the Deposition of the

Plaintiff on July 27, 2012, the Defendant stated that she didn't use the phone and only had it for two weeks.

The Motion for Order to Commission Out of State Subpoenas and to Compel Release Regarding the Referenced Matter (6) serves little to no purpose other than to harass and annoy the defendant. The defendant is known to be judgment proof and to have a litany of default judgments against him. The plaintiff's complaint against the defendant had numerous exhibits detailing and documenting these many default judgments. The Out of State subpoenas would provide little no information about the current state of the defendant's credit and finances than has already been included in the record to date. In addition, had the subpoenas been requested for legitimate purposes, they would have been requested much sooner than a year after the initiation of the suit as well as prior to the deposition of Dailey.

The second subpoena to Dave Harper (7) is opposed for the same grounds that the first was above.

The Motion to Amend (8) was never submitted to Defendant's counsel for consent as required by Rule 11 of the SCRCF. While Defendant's counsel does not oppose the amendment, on its surface the Amendment seems designed as a further dilatory and harrassing maneuver on the part of Plaintiff's Counsel. Aside from including new "facts" in the background portion, it adds a new cause of action for Intentional Infliction of Emotional Distress/Outrage in which the facts to support it are dubious, at best. Additionally, this amendment has been submitted over a year since the last amended complaint and, in conjunction with the barrage of other spurious motions and actions, appears designed solely to harass and annoy the defendant.

It has become apparent that Plaintiff is engaging in "scorched earth" litigation with the design of inflicting injury on an ex-lover and/or to deplete any assets capable of satisfying a

judgment. Rarely does a discovery motion warrant the extreme penalty of striking of pleadings, but the overwrought and abusive patterns of Plaintiff since the inception of this case weigh heavily toward a summary disposal.

Accordingly, Defendant requests that this Court order that the deposition of Defendant be terminated, that the Defendant be protected from rampant abuse of the discovery process listed in items 2,4-8 above, that Defendant be awarded costs and fees, and that this Court order such other and further relief it deems proper to protect the Defendant and to prevent the abuse of the discovery process. See Rules 26(c), 30(d), & 37(a)(4), SCRPC; *In re Anonymous Member of SC Bar*, 346 S.C. 177, 552 SE.2d 10 (2001).

II. Tirone's Motion for Protective Order is moot.

As Defendant has deposed Plaintiff Tirone on July 27th, 2012, Plaintiff's Motion for a Protective Order is moot. See Part I, *supra*.

III. Due to the scintilla of evidence supporting actions against Tirone individually, Tirone's Motion for Summary Judgment must be denied.

On about June 21, 2012, Plaintiff filed a Motion for Summary Judgment as to Helena P. Tirone individually. The motion lists no grounds or bases for summary judgment other than "there is no genuine dispute as to the material factual issues with respect to the individual liability of Helena Tirone under the employment contracts." It does not include an affidavit. This motion does not state with particularity the grounds for relief required by Rule 7, SCRPC, and should be denied on this ground alone. Assuming, *arguendo*, that this motion truly does assert that Tirone is not individually liable, Dailey need only provide a *scintilla* of evidence that would

create a genuine issue of material fact for trial. Dailey provides this scintilla, and more; Tirone's motion must be denied.

The scant nature of the motion and the timing of it (during the barrage of abusive discovery requests) also tends to reflect its true purpose, which is to harass and annoy the defendant by forcing preparation of a response and a hearing.

Summary Judgment

Summary judgment is appropriate where there is no genuine issue of material fact and it is clear the moving party is entitled to a judgment as a matter of law. Rule 56(c), SCRCP. In determining whether any triable issues of fact exist, the evidence and all inferences which can be reasonably drawn from the evidence must be viewed in the light most favorable to the nonmoving party. Koester v. Carolina Rental Ctr., 313 S.C. 490, 493, 443 S.E.2d 392, 394 (1994). In cases applying the preponderance of the evidence burden of proof, the non-moving party is only required to submit a mere scintilla of evidence in order to withstand a motion for summary judgment. Hancock v. Mid-South Mgt., Inc., 381 S.C. 326, 673 S.E.2d 801 (2009). In cases requiring a higher standard of proof than preponderance of the evidence, more than a scintilla of evidence is necessary to create a genuine issue of material fact. *Id.*

Piercing the Corporate Veil

South Carolina courts have outlined a two-prong test to determine whether a corporate veil should be pierced. The first part of the test requires an eight-factor analysis and looks to observance of the corporate formalities by the dominant shareholders. Sturkie v. Sifly, 280 S.C. 453, 457-58, 313 S.E.2d 316, 318 (Ct.App.1984). "The second part requires that there be an element of injustice or fundamental unfairness if the acts of the corporation be not regarded as

the acts of the individuals.” Id. In determining whether the corporate formalities were observed under the first prong of the Sturkie test, the courts consider eight factors:

- (1) whether the corporation was grossly undercapitalized;
- (2) failure to observe corporate formalities;
- (3) non-payment of dividends;
- (4) insolvency of the debtor corporation at the time;
- (5) siphoning of funds of the corporation by the dominant stockholder;
- (6) non-functioning of other officers or directors;
- (7) absence of corporate records; and
- (8) the fact that the corporation was merely a facade for the operations of the dominant stockholder.

Dumas v. InfoSafe Corp., 320 S.C. 188, 192, 463 S.E.2d 641, 644 (Ct.App.1995). “The conclusion to disregard the corporate entity must involve a number of the eight factors, but need not involve them all.” Id.

Under the second prong of the Sturkie test, the party seeking to pierce the corporate veil must prove injustice or fundamental unfairness if the corporate veil is not pierced. Multimedia Publ'g of S.C., Inc. v. Mullins, 314 S.C. 551, 553, 431 S.E.2d 569, 571 (1993). “The essence of the fairness test is simply that an individual businessman cannot be allowed to hide from the normal consequences of carefree entrepreneuring by doing so through a corporate shell.” Id. at 556, 431 S.E.2d at 573.

While Exhibit C to Tirone's Amended Complaint provides the necessary scintilla of evidence to defeat a motion for summary judgment, the record is replete with other evidence that piercing the corporate veil¹ is appropriate² in this action:

(1) whether the corporation was grossly undercapitalized & (4) insolvency of the debtor corporation at the time. At the time of suit, the business bank account had a balance of roughly \$3091.18. (Ex. B of Amended Complaint). As of July 27th, at the Plaintiff's deposition, all funds had been removed and the account closed by the Plaintiff at an undetermined time prior. Additionally, Truman's Eclectic Irish Pub, Inc. "does not own any assets." (Plaintiff's Responses to Defendant's Second Request for Production; Ex. H)

(2) failure to observe corporate formalities. Tirone signed the Agreement with Dailey as "Helena P. Tirone", not as "Helena P. Tirone, as president of Truman's Eclectic Irish Pub, Inc." (Amended Complaint Ex. C³), whereas she had documented other signatures when signing for Truman's with "director" (Security Agreement and Promissory Note; Ex. J).

(3) non-payment of dividends. Truman's has never paid a dividend.

(5) siphoning of funds of the corporation by the dominant stockholder. Rather than investing equity in the business, Plaintiff Tirone executed a loan for \$125,000 to the Corporation on or about January 21, 2011 (Security Agreement and Promissory Note; Ex. J). However, Plaintiff Tirone did not transfer the money to the Corporation's business account, instead

¹ These facts also support liability for Tirone under an "alter ego" theory of liability. See Peoples Fed. Sav. & Loan Assoc. v. Myrtle Beach Golf & Yacht Club, 310 S.C. 132, 148, 425 S.E.2d 764, 774 (Ct.App.1992) ("An alter-ego theory requires a showing of total domination and control of one entity by another and inequitable consequences caused thereby.")

² A party does not need to plead veil piercing as a separate cause of action in South Carolina. ~~CITE~~. To the extent these allegations are not properly encompassed in the Second Amended Counterclaims, Dailey moves to amend his Second Amended Counterclaims consistent with these allegations.

³ Dailey notes for the Court that Tirone verified the existence and authenticity of the Agreement under oath. (Amended Complaint ¶¶ 40, Ex. C).

dispensing funds on an as-needed basis, thus keeping the interest that would or could have accrued for the Corporation in her own personal accounts. Plaintiffs answer to Defendant's First Set of Interrogatories #11 ("Set forth a complete accounting of all capital contributions to Truman's Eclectic Irish Pub, Inc., and all expenditures made by Truman's Eclectic Irish Pub, Inc.") shows that Plaintiff Tirone only contributed \$50,000 the day of the execution of the loan and \$95,780 in total (Plaintiffs Answer to Defendant's First Set of Interrogatories; Ex. K). What money was left in the account at the initiation of the lawsuit has since been cleared out and the account closed, as per the Plaintiff's testimony during her July 27th deposition.

(6) non-functioning of other officers or directors & (7) absence of corporate records.

There are no corporate minutes, resolutions, bylaws, or even stock certificates from Truman's (Plaintiff's Responses to Defendant's First Request for Production; Ex. I. Plaintiff's Responses to Defendant's Second Request for Production; Ex. H). There is no record that Plaintiff Tirone has performed any of her duties as Owner, President, and CEO.

(8) the fact that the corporation was merely a facade for the operations of the dominant stockholder. The Plaintiff has acted alone and solely with the intention of acting as the embodiment of Truman's.

Injustice and Fundamental Unfairness. The second part of the Sturkie test is easily achieved when the facts of the case are considered. Plaintiff Tirone, the only acting member of Truman's, has broken a written contract with an employee, signed May 4, 2011 and provided no proof to substantiate her claims of threat or duress. She has cleared out the bar (on or about June 19, 2011) and, apparently, sublet the location to another entrepreneur (Date unknown). She has emptied and closed the Truman's business account (since the initiation of this suit). As the court in Sturkie stated, "The burden of proving fundamental unfairness requires that the plaintiff

establish (1) that the defendant was aware of the plaintiff's claim against the corporation, and (2) thereafter, the defendant acted in a self-serving manner with regard to the property of the corporation and in disregard of the plaintiff's claim in the property." (Sturkie at 320.)

Accordingly, as Defendant has more than met the "scintilla" of evidence requirement, the Defendant requests that this Court order that the Motion for Summary Judgment be denied. *In the alternative*, should the court not find that the "scintilla" of evidence requirement is met, the Defendant asks for a continuation on the motion for Summary Judgment until the transcript for the Deposition of the Plaintiff can be submitted. The deposition occurred three days prior to this hearing and the transcript is not yet available. There were numerous statements made by the Plaintiff that will support the Defendant's contention that Plaintiff Tirone is inseparable from Plaintiff Truman's Eclectic Irish Pub, Inc.

IV. Tirone's Motion for Out of State Subpoenas must be denied for her abuse of the discovery process.

For the arguments set forth in Part I, *supra*, Tirone's Motion for Out of State Subpoenas must be denied.

V. Dailey is entitled to a temporary injunction preventing Tirone from subleasing 205 West Street to another entity

A party's entitlement to an injunction requires the complaint (or counterclaim) to allege facts sufficient to constitute a cause of action for injunction while also showing an injunction must be reasonably necessary to protect the legal rights of the party pending in the litigation. Transcont'l Gas Pipe Line Corp. v. Porter, 252 S.C. 478, 480-81, 167 S.E.2d 313, 315 (1969). Generally, to obtain an injunction, a party must demonstrate: (1) irreparable harm, (2) a

likelihood of success on the merits, and (3) an inadequate remedy at law. Roach v. Combined Util. Comm'n, 290 S.C. 437, 442, 351 S.E.2d 168, 170 (Ct.App.1986).

A. Dailey has been and will be irreparably harmed by Tirone's acts.

The foundation of Truman's Eclectic Irish Pub is the location that was selected for it and that location is of such essential character as to nearly define the pub itself. Mr. Dailey personally negotiated the lease with extraordinarily generous terms (Lease; Ex. L), one he would be unlikely to achieve in the future should an injunction not prevent Ms. Tirone from allowing another pub to install itself there. The combination of the location, less than a block from Historic Bay Street, and the tremendous, unreplicable lease mean that another quality location AND highly beneficial lease are highly unlikely. Additionally, Ms. Tirone has known that possession of the location was under litigation and proceeded with clear disregard for that fact.

B. Dailey has a high likelihood of success on the merits of his action.

Breach of Contract

The elements for breach of contract are (1) the existence of the contract, (2) its breach, and (3) the damages caused by such breach. Fuller v. E. Fire & Cas. Ins. Co., 240 SC 75, 89, 124 SE2d 602, 610 (1962). Tirone admits the existence of the Agreement with Dailey. (Amended Complaint Ex. C; Ex. C). Tirone further admits failing to pay Dailey sums due under it, thus breaching its terms. (Amended Complaint Ex. C; Ex. C). Dailey has calculated the sums due under the Agreement, totaling \$261,250. (Second Amended Counterclaims ¶ 39; Ex. A).

Tirone presents no reasonable defense to this breach, other than unsubstantiated boilerplate defenses.

Breach of Contract Accompanied by a Fraudulent Act

In order to have a claim for breach of contract accompanied by a fraudulent act, the plaintiff must establish three elements: (1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent act accompanying the breach. Harper v. Ethridge, 290 S.C. 112, 348 S.E.2d 374 (Ct.App. 1986).

Breach of Contract is proven as above.

The fraudulent intent and the act that accompanied the breach is evidenced by Tirone's subsequent dismantling of the pub when it was, by all accounts, days or weeks away from opening thereby rendering it unusable without considerable time and effort to restore it. (Second Amended Counterclaims ¶ 35; Ex. A).

Violation of Payment of Wages Act

The Plaintiffs have failed and refused to pay to the Defendant the wages owed to the Defendant pursuant to the Key Employee Employment Agreement.

The Plaintiffs are in violation of § 41-10-30 of the South Carolina Payment of Wages Act. At no point did the Plaintiffs notify the Defendant in writing as to the hours and wages agreed upon, the time and place of payment of wages, and the deductions which were to be made from the wages, as required.

The Plaintiffs are in violation of § 41-10-50 of the South Carolina Payment of Wages Act. At no point after the Defendant's termination, neither forty-eight hours after time of separation or the next regular payday, did the Plaintiff/Employer pay all wages due as required.

The Plaintiffs are in violation of § 41-10-60 of the South Carolina Payment of Wages Act. While the amount of wages is clearly in dispute, what is not in dispute is that the Defendant

worked as an employee for the Plaintiffs from May 1, 2011 to May 16 or 20, 2011.

Defendant/employer never gave written notice to the Plaintiff/employee of the amount of wages she conceded to be due and did not pay them without condition as required.

The Defendant is informed and believes that he is entitled, pursuant to § 41-10-80 of the South Carolina Code of Laws, judgment against the Plaintiffs equal to three (3) times the full amount of unpaid wages, plus interest, costs, and reasonable attorneys' fees.

In the alternative, should the Defendant's Key Employee Employment Agreement not be upheld AND should the Defendant be found NOT to have been a partner in the business, then the Plaintiffs have failed and refused to pay the Defendant wages owed by virtue of his employment from January 1, 2011 until on or about May 20, 2011.

As the Defendant was working as the de-facto general manager of the pub at this time, and in fact the only employee, it would appear by the allegations in the Amended Complaint, his pay should have been set at a reasonable wage. The \$1,250 per week agreed to in the Key Employee Employment agreement is a reasonable wage for the purposes of determining the Defendant's supposed wages.

The Plaintiffs are in violation of § 41-10-60 of the South Carolina Payment of Wages Act. While the amount of wages is clearly in dispute, according to the Plaintiffs' complaint, the Defendant was employed from January 1, 2011 to May 16 or 20, 2011. Defendant/employer never gave written notice to the Plaintiff/employee of the amount of wages she conceded to be due and did not pay them without condition as required.

The Defendant is informed and believes that he is entitled, pursuant to § 41-10-80 of the South Carolina Code of Laws, judgment against the Plaintiffs equal to three (3) times the full amount of unpaid wages, plus interest, costs, and reasonable attorneys' fees.

Breach of Fiduciary Duty

The law of Fiduciary Duty of partners is excellently set forth by Judge Ralph King Anderson of the South Carolina Court of Appeals:

A fiduciary relationship is founded on the trust and confidence reposed by one person in the integrity and fidelity of another. A fiduciary relationship exists when one imposes a special confidence in another, so that the latter, in equity and good conscience, is bound to act in good faith and with due regard to the interests of the one imposing the confidence. A relationship must be more than casual to equal a fiduciary relationship.

As a general rule, a fiduciary relationship cannot be created by the unilateral action of one party. To establish the existence of a fiduciary relationship, the facts and circumstances must indicate the party reposing trust in another has some foundation for believing the one so entrusted will act not in his own behalf but in the interest of the party so reposing. The evidence must show the entrusted party actually accepted or induced the confidence placed in him.

"Parties in a fiduciary relationship must fully disclose to each other all known information that is significant and material, and when this duty to disclose is triggered, silence may constitute fraud." Partners are fiduciaries to each other and their relationship is one of mutual trust and confidence, imposing upon them requirements of loyalty, good faith and fair dealing.

The fiduciary relationship of partners is discussed in 59A Am.Jur.2d *Partnership* § 420 (1987):

The courts universally recognize the fiduciary relationship of partners and impose on them obligations of the utmost good faith and integrity in their dealings with one another in partnership affairs. It is a fundamental characteristic of partnership that the partners' relationship is one of trust and confidence when dealing with each other in partnership matters.

Partners are held to a standard stricter than the morals of the marketplace, and their fiduciary duties should be broadly construed, connoting not mere honesty but the punctilio of honor most sensitive. In all matters connected with the partnership every partner is bound to act in a manner not to obtain any advantage over his copartner in the partnership affairs by the slightest misrepresentation, concealment, threat, or adverse pressure of any kind. A partner cannot act too quickly to protect his own financial position at the expense of his partners, even in the absence of malice.

South Carolina case law recognizes the fiduciary duty owed between partners:

The law holds each member of a partnership to the *highest degree of good faith* in his dealings with reference to any matter which concerns the business of the common engagement, and each partner, being the agent of the firm, must be held to the same accountability as other trustees, in all matters which affect the common interest. The relationship of a partnership is fiduciary in character and imposes on the members the obligation of *refraining from taking any advantage of one another by the slightest misrepresentation or concealment*.

Whether a fiduciary relationship exists between two people is an equitable issue for the judge to decide. However, the determination of a breach of a fiduciary relationship can be a question for the jury.

Moore v. Moore, 360 S.C. 241, 250-53, 599 S.E.2d 467, 472-73 (Ct. App. 2004) (Anderson, J.)

(citations omitted) (emphasis in original).

By executing the Key Employee Employment Agreement, the Defendant reposed special confidence in the Plaintiff such that the Plaintiff in equity and good conscience is bound to act in good faith and with due regard of the interests of the Defendant. By virtue of its position *vis-à-vis* the Defendant, Plaintiff has duties to refrain from certain conduct and stands in a fiduciary relationship to the Defendant.

The Plaintiffs breached their fiduciary duty to the Defendant.

If there is a defect in the Key Employee Employment Agreement, then Plaintiff Tirone and Defendant Dailey revert to partners and she owed a fiduciary duty to him. If there is no defect in the Key Employee Employment Agreement and it is upheld, then he held a 50% partnership interest upon achieving profit projections that would recompense her initial investment, as per the terms of the aforementioned agreement and she owed a fiduciary duty to him.

The Plaintiff has breached her fiduciary duties in several particulars, including, but not limited to:

- a. Not mitigating or minimizing the damage caused by removing the Defendant as the sweat equity partner/ general-manager employee by hiring another to continue on with the opening of the bar which was days or weeks away.
- b. Destroying the enterprise by dismantling the business and moving out the vast majority of equipment and improvements,

As a direct and proximate result of the Plaintiffs' breach, the Defendant has suffered actual, direct, incidental, consequential, and special damages to include the reasonable valuation of 50% of the Pub, the contemplated daily revenue over the period of term of the lease, as well as such damages as might be determined at trial.

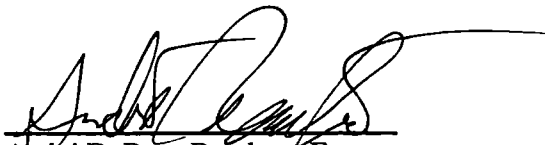
C. Dailey has no adequate remedy at law.

As the location cannot be replicated, merely assigning a dollar value to the location, as one would at law, would not be sufficient to make the Defendant whole. If the location were allowed to be sublet, the value of Truman's would be categorically destroyed and the enforcement of the contract would be meaningless in regards to Defendant's 50% ownership as there would be nothing to own or profit by. An injunction would preserve Dailey's ability to contend for a meaningful 50% ownership of Truman's and allow the possibility that the pub could venture forward.

CONCLUSION AND PRAYER FOR RELIEF

The evidence before this Court of the wrongdoing of Plaintiff, and the harm it has done to Defendant, is compelling. Plaintiff has presented this Court no credible evidence in her defense. Accordingly, the Defendant asks this Court issuing an order:

- 1) Granting Defendant's Motion for Protective Order and providing:
 - a. That Defendant's deposition be terminated;
 - b. That all of Plaintiffs' pending subpoenas be quashed;
 - c. That Plaintiffs' Third Set of Request for Production to Defendant be quashed;
- 2) Denying Plaintiffs' Motion for Protective Order;
- 3) Denying Plaintiffs' Motion for Summary Judgment;
- 4) Denying Plaintiffs' Motion for Out of State Subpoenas; and
- 5) Granting Defendant's Motion for Injunction with a bond of no more than \$50.00;
- 6) Costs and attorneys' fees
- 7) Awarding what other and further relief this Court deems just and proper.



André DuBose Rembert, Esq.
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Charleston, SC 29401
(843) 518-3232
Attorney for Defendant Thomas W. Dailey

Charleston, South Carolina
30 July 2012

Exhibit A

STATE OF SOUTH CAROLINA 2012 JUN 21 AM 11:55 IN THE COURT OF COMMON PLEAS

COUNTY OF BEAUFORT) CIVIL ACTION NO: 2011-CP-07-02216

HELENA P. TIRONE AND TRUMAN'S
ECLECTIC IRISH PUB, INC.,

Plaintiffs,

SECOND AMENDED ANSWER
AND COUNTERCLAIM

vs.

THOMAS W. DAILEY

Defendant

TO: J. ASHLEY TWOMBLEY, ESQUIRE, ATTORNEY FOR THE PLAINTIFFS:

The Defendant, Thomas W. Dailey, answering the Complaint, and by way of Counterclaim against the Plaintiffs, would respectfully show unto this Honorable Court as follows:

1. All allegations of the Complaint which are not expressly admitted are denied and strict proof demanded thereof.
2. The allegations of Paragraphs 1, 2, 3 and 4 of the Complaint are admitted.
3. With respect to the allegations of Paragraph 5 through 58 of the Complaint, it is admitted that Plaintiff Helena Tirone ("Tirone") and the Defendant Thomas W. Dailey ("Dailey") met while working for the Fluor Daniel Corporation, where Tirone continues to be employed. Tirone and Dailey became romantically involved and as a result, Dailey shared with Tirone his dream and desire of opening an Irish-themed pub. Tirone agreed to assist Dailey in this venture, for their mutual profit. Tirone and Dailey then became partners in a joint venture to open an Irish-themed pub known as Truman's Eclectic Irish Pub, named after Dailey's pet English Mastiff, Truman,

in Beaufort, South Carolina, where Dailey lives (Tirone resides in Aiken, South Carolina), and they created the corporate Plaintiff, Truman's Eclectic Irish Pub, Inc., for that purpose. Tirone and Dailey initially were equal partners with Tirone supplying most of the financial backing and Dailey supplying most of the ideas, energy, contacts, knowledge, and labor. Dailey did not misrepresent to Tirone his financial condition, but rather made known to her his lack of financial capability, which is the reason why Tirone and Dailey decided that Tirone would contribute the majority of the finances and Dailey would contribute the majority of the "sweat equity." As the pub neared completion, the parties' romantic relationship ended. Tirone no longer desired to continue the venture as business partners, and instead, desired to alter the relationship from 50/50 owners and partners to one in which she was the sole owner of the business and Dailey ran the business as her employee. The parties discussed and negotiated the change in their status from partners to employer-employee, and said negotiations in the "Key Employee Employment Agreement for Thomas W. Dailey" which is Exhibit C to the Amended Complaint. The terms of the contract speak for themselves. Dailey did not threaten Tirone in order to induce her to execute this contract, and she did not execute it under any coercion or duress. This contract, rather, was the result of her request to change the nature of their legal relationship and was the product of their mutual negotiations. After the execution of the contract, the Plaintiff continued to faithfully perform his duties as required thereunder and complied with the terms of the contract. Dailey did not misappropriate any funds or spend funds without the knowledge, approval, or consent, express or tacit, of Tirone. Any further allegations of paragraphs 5 through 58 of the Complaint not consistent with the above are denied.

4. The allegations of Paragraphs 59 through 66 of the Complaint are denied.
5. The allegations of Paragraphs 67 through 71 of the Complaint are denied.
6. The allegations of Paragraphs 72 through 76 of the Complaint are denied.
7. With respect to the allegations of Paragraph 77 of the Complaint, it is admitted that Exhibits E - N are true and accurate copies of documents they purport to represent and that said documents speak for themselves. Insofar as these allegations are not consistent with the content of these Exhibits said allegations are denied.
8. The allegations of Paragraphs 78 through 84 of the Complaint are denied.
9. The allegations of Paragraphs 85 through 90 of the Complaint are denied.
10. The allegations of Paragraphs 91 through 98 of the Complaint are denied.
11. The allegations of Paragraphs 99 through 103 of the Complaint are denied.
12. The allegations of Paragraphs 104 through 114 of the Complaint are denied.

FOR A FURTHER DEFENSE

13. The Defendant repeats and realleges their responses above as if restated fully herein.
14. The Complaint fails to set forth facts sufficient to constitute a cause of action and therefore should be dismissed pursuant to Rule 12(b)(6), SCRCPP.

FOR A FURTHER DEFENSE

15. The Defendant repeats and realleges their responses above as if restated fully herein.
16. Plaintiffs' inequitable conduct may bar its claims under the doctrine of unclean hands.

FOR A FURTHER DEFENSE

17. The Defendant repeats and realleges their responses above as if restated fully herein.

18. Plaintiffs' claims are barred by the doctrines of waiver, consent and/or estoppel.

FOR A FURTHER DEFENSE

19. The Defendant repeats and realleges their responses above as if restated fully herein.

20. Plaintiffs' claims are barred by the doctrine of misrepresentation.

FOR A SECOND DEFENSE AND BY WAY OF COUNTERCLAIM
(BREACH OF CONTRACT)

21. The Plaintiffs hired the Defendant, effective May 1, 2011, as General Manager of Truman's Eclectic Irish Pub.

22. The parties memorialized the terms of the Defendant's employment under the Plaintiffs by entering into a contract, entitled "Key Employee Employment Agreement for Thomas W. Dailey", a true and accurate copy of which is attached to the Amended Complaint as Exhibit C and incorporated herein by reference.

23. The Plaintiffs breached, in bad faith, the aforesaid Key Employee Employment Agreement by terminating the Defendant during the term of the agreement and other particulars as will be shown after a reasonable period of discovery.

24. Pursuant to the "Key Employee Employment Agreement", if the Defendant is terminated, then the Plaintiffs shall pay to the Defendant in lump sum form, all future monies yet unpaid throughout the term of the agreement.

25. The agreement had a term of forty-eight (48) months, commencing May 1, 2011 and ending April 30, 2015.

26. The Agreement provides for a weekly salary to be paid by the Plaintiffs to the Defendant of \$1,250.00.

27. As a direct and proximate result of their termination of the Defendant during the term of the agreement, in violation of the express terms of the agreement, the Plaintiffs owed to the defendant, in lump sum, all future monies yet unpaid throughout the term of the agreement, to-wit, 209 weeks (52 weeks at 7 days a week equals 364 days in a year; thus over the term of four years there would be 208 weeks; the extra week would be 5 additional days, including 2012 leap day, which would be considered a work week) of salary at \$1250 per week, or 261,250.00, together with prejudgment interest calculated as of on-or-about May 20, 2011.

28. The Key Employee Employment Agreement further provides that in addition to the aforesaid lump sum payment, in the event of termination during the term of the agreement, the Plaintiff shall immediately transfer ownership of 50% of the stock of Truman's Eclectic Irish Pub, Inc., to the Defendant.

29. In breach of aforesaid agreement, the Plaintiffs have failed and refused to transfer to the Defendant, immediately, ownership of 50% of the stock of Truman's Eclectic Irish Pub, Inc.

30. Plaintiff Tirone has subsequently irreparably harmed Defendant Dailey's 50% ownership stake due him by terms of the Key Employee Employment Agreement by virtue of dismantling the near-completed pub since the commencement of this action and

thus negated the possibility of equitable solution as the pub can no longer function in light of its present abandoned state.

31. As a direct and proximate result of the Plaintiffs' termination of the Defendant, the Defendant is entitled to judgment against Plaintiffs in the amount of \$261,250.00, together with prejudgment interest, and the reasonable valuation of 50% of the Pub prior to its dismantling.

32. The Key Employee Employment Agreement further provides that the Plaintiffs will reimburse the Defendant for all legal fees associated with the enforcement of the agreement by the Defendant.

33. The Defendant has incurred attorneys' fees in connection with the enforcement of the Key Employee Employment Agreement.

34. The Defendant is informed and believes that he is entitled to judgment against the Plaintiffs for the fair and reasonable amount of attorneys' fees and costs incurred by him in compelling the enforcement of the Key Employee Employment Agreement.

FOR A THIRD DEFENSE AND BY WAY OF COUNTERCLAIM

(BREACH OF CONTRACT ACCOMPANIED BY A FRAUDULENT ACT)

35. In addition to breach of contract, the Defendant counterclaims against the Plaintiff Tirone for Breach of Contract Accompanied by Fraudulent Act. In addition to the allegations of paragraphs 21 through 34 herein, Plaintiff Tirone has systematically dismantled the pub, which was, by all accounts, days away from opening to the point where it is at present a mostly empty, abandoned shell.

36. When Plaintiff removed items from the pub, on or about June 19, 2011, she did so with wanton disregard for ascertaining property purchased by the plaintiffs and property purchased by the defendant in furtherance of the project that she removed equipment that was purchased by the Defendant out of pocket in furtherance of the project when they considered themselves partners as opposed to employer/employee. This was a clear unlawful appropriation of another's property by design.

37. The Defendant contends that the contract was breached by the Plaintiff with the clear and convincing fraudulent intent of depriving the Defendant of his rights, benefits, and obligations due him by the terms of the Key Employee Employment Agreement with the subsequent acts of dismantling the near-completed pub in evidence of that fraudulent intent.

38. In so doing, Plaintiff Tirone has irreparably harmed Defendant Dailey's 50% ownership stake due him by terms of the Key Employee Employment Agreement and negated the possibility of equitable solution as the pub can no longer function in light of its present abandoned state.

39. The Defendant is informed and believes that he is entitled to judgment against the Plaintiffs for the full amount of the agreed-upon wages due by the terms of the agreement, \$261,250.00, punitive damages in an amount to be determined by the trier of fact, the reasonable valuation of 50% of the Pub as determined at trial, any other damages to be proven at trial, plus interest, costs, and attorneys' fees.

FOR A FOURTH DEFENSE AND BY WAY OF COUNTERCLAIM

(VIOLATION OF PAYMENT OF WAGES ACT)

40. The Plaintiffs have failed and refused to pay to the Defendant the wages owed to the Defendant pursuant to the Key Employee Employment Agreement.

41. The Plaintiffs are in violation of § 41-10-30 of the South Carolina Payment of Wages Act. At no point did the Plaintiffs notify the Defendant in writing as to the hours and wages agreed upon, the time and place of payment of wages, and the deductions which were to be made from the wages, as required.

42. The Plaintiffs are in violation of § 41-10-50 of the South Carolina Payment of Wages Act. At no point after the Defendant's termination, neither forty-eight hours after time of separation or the next regular payday, did the Plaintiff/Employer pay all wages due as required.

43. The Plaintiffs are in violation of § 41-10-60 of the South Carolina Payment of Wages Act. While the amount of wages is clearly in dispute, what is not in dispute is that the Defendant worked as an employee for the Plaintiffs from May 1, 2011 to May 16 or 20, 2011. Defendant/employer never gave written notice to the Plaintiff/employee of the amount of wages she conceded to be due and did not pay them without condition as required.

44. The Defendant is informed and believes that he is entitled, pursuant to § 41-10-80 of the South Carolina Code of Laws, judgment against the Plaintiffs equal to three (3) times the full amount of unpaid wages, plus interest, costs, and reasonable attorneys' fees.

45. In the alternative, should the Defendant's Key Employee Employment Agreement not be upheld AND should the Defendant be found NOT to have been a partner in the business, then the Plaintiffs have failed and refused to pay the Defendant wages owed by virtue of his employment from January 1, 2011 until on or about May 20, 2011.

46. As the Defendant was working as the de-facto general manager of the pub at this time, and in fact the only employee, it would appear by the allegations in the Amended Complaint, his pay should have been set at a reasonable wage.

47. The \$1,250 per week agreed to in the Key Employee Employment agreement is a reasonable wage for the purposes of determining the Defendant's supposed wages.

48. As per paragraphs 31-33 contained herein, the Plaintiff is in violation of the South Carolina Payment of Wages Act.

49. The Plaintiffs are in violation of § 41-10-60 of the South Carolina Payment of Wages Act. While the amount of wages is clearly in dispute, according to the Plaintiffs' complaint, the Defendant was employed from January 1, 2011 to May 16 or 20, 2011. Defendant/employer never gave written notice to the Plaintiff/employee of the amount of wages she conceded to be due and did not pay them without condition as required.

50. The Defendant is informed and believes that he is entitled, pursuant to § 41-10-80 of the South Carolina Code of Laws, judgment against the Plaintiffs equal to three (3) times the full amount of unpaid wages, plus interest, costs, and reasonable attorneys' fees.

FOR A FIFTH DEFENSE AND BY WAY OF A COUNTERCLAIM

(BREACH OF FIDUCIARY DUTY)

51. By executing the Key Employee Employment Agreement, the Defendant reposed special confidence in the Plaintiff such that the Plaintiff in equity and good conscience is bound to act in good faith and with due regard of the interests of the Defendant.

52. By virtue of its position *vis-à-vis* the Defendant, Plaintiff has duties to refrain from certain conduct and stands in a fiduciary relationship to the Defendant.

53. The Plaintiffs breached their fiduciary duty to the Defendant.

54. If there is a defect in the Key Employee Employment Agreement, then Plaintiff Tirone and Defendant Dailey revert to partners and she owed a fiduciary duty to him.

55. If there is no defect in the Key Employee Employment Agreement and it is upheld, then he held a 50% partnership interest upon achieving profit projections that would recompense her initial investment, as per the terms of the aforementioned agreement and she owed a fiduciary duty to him.

56. The Plaintiff has breached her fiduciary duties in several particulars, including, but not limited to:

- a. Not mitigating or minimizing the damage caused by removing the Defendant as the sweat equity partner/ general-manager employee by hiring another to continue on with the opening of the bar which was days away.

- b. Destroying the enterprise by dismantling the business and moving out the vast majority of equipment and improvements,
- c. Such other acts as will be uncovered in discovery.

57. As a direct and proximate result of the Plaintiffs' breach, the Defendant has suffered actual, direct, incidental, consequential, and special damages to include the reasonable valuation of 50% of the Pub, the contemplated daily revenue over the period of term of the lease, as well as such damages as might be determined at trial.

WHEREFORE, the Defendant prays:

- a. That the Amended Complaint be dismissed.
- b. For judgment against the Plaintiffs on the second defense and counterclaim in the amount of \$261,250.00, the reasonable valuation of 50% of the Pub, plus prejudgment interest, costs, and attorneys' fees, or alternatively, judgment against the Plaintiffs on the third defense and counterclaim in the amount of , \$261,250.00, punitive damages, the reasonable valuation of 50% of the Pub, and any other damages in an amount to be determined by the trier of fact, plus prejudgment interest, costs, and attorneys' fees.
- c. For judgment against the Plaintiffs on the fourth defense and counterclaim in the amount of three times the amount of wages owed per the South Carolina Payment of Wages Act, plus interest costs and reasonable attorneys' fees should the Key Employee Employment Agreement be upheld and the starting date of employment be May 1, 2011, or, alternatively, three times the amount of wages owed per the South Carolina Payment of Wages Act, plus interest, costs, and reasonable attorneys' fees should the Key

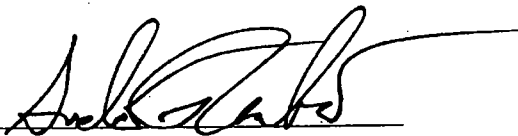
Employee Employment Agreement not be upheld and the starting date of employment be January 1, 2011.

d. For judgment against the Plaintiffs on the fifth defense and counterclaim in the amount of the reasonable valuation of 50% of the Pub, the contemplated daily revenue over the period of term of the lease, as well as such damages as might be determined at trial, plus prejudgment interest, costs and attorneys' fees.

e. Any other damages or relief awarded by the trier of fact.

f. That the Court provide such other and further relief as it may deem just and proper.

ANDRE REMBERT, ESQUIRE

By: 

André DuBose Rembert, Esq.
183 Queen Street, Ste. B
Charleston, SC 29401
(843) 518-3232

Attorney for the Defendant

Charleston, South Carolina
April 12, 2011

Exhibit B

The State of South Carolina



Office of Secretary of State Mark Hammond

Certificate of Existence

I, Mark Hammond, Secretary of State of South Carolina Hereby certify that:

TRUMAN'S ECLECTIC IRISH PUB, INC.,
a corporation duly organized under the laws of the State of South Carolina on December 29th, 2010, and having a perpetual duration unless otherwise indicated below, has as of the date hereof filed all reports due this office, paid all fees, taxes and penalties owed to the Secretary of State, that the Secretary of State has not mailed notice to the Corporation that it is subject to being dissolved by administrative action pursuant to section 33-14-210 of the South Carolina Code, and that the corporation has not filed articles of dissolution as of the date hereof.

Given under my Hand and the Great
Seal of the State of South Carolina this
6th day of January, 2011.


Mark Hammond, Secretary of State

Note: This certificate does not contain any representation concerning fees or taxes owed by the Corporation to the South Carolina Tax Commission or whether the Corporation has filed the annual reports with the Tax Commission. It is important to know whether the Corporation has paid all taxes due to the State of South Carolina, and has filed the annual reports, a certificate of compliance must be obtained from the Tax Commission.

Exhibit C

KEY EMPLOYEE EMPLOYMENT AGREEMENT
for
Thomas W. Dailey

This Employment Agreement (the "Agreement") is made effective as of May 1, 2011, by and between Truman's Eclectic Irish Pub, Inc. (the "Employer") and Thomas W. Dailey (the "Employee," and collectively, the "Parties"), and the term (the "Term") shall be for 48 months, which makes this Agreement valid and effective through April 30, 2015.

WHEREAS, Employee (*currently/desires to*) provide(s) services to Employer, and

WHEREAS, Employer wishes to recognize its appreciation of Employee's services and to set forth the terms of the employment relationship with Employee in writing;

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the Parties agree as follows:

1. **Employment.** Employer shall employ Employee in the position of General Manager of Truman's Eclectic Irish Pub. Employee's duties shall include: complete oversight, management and operational control of Truman's Eclectic Irish Pub. Typical duties also include, but are not limited to marketing & advertising concepts, interior design, interior construction & renovations, employee hiring & firing, employee training and any other duties required to ensure success of Truman's Eclectic Irish Pub.

2. **Salary and Profit Sharing.**

a. **Salary.** For the services provided, Employer will pay Employee a weekly salary of \$1,250.

b. **Profit Sharing.** Once the Employer (the sole owner of all stock in Truman's Eclectic Irish Pub, Inc.) has recouped or been repaid all initial investment monies (as delineated in the Truman's Eclectic Irish Pub Initial Investment Worksheet), ownership of 50% of Company Stock shall be transferred to Employee, or his designated recipient; at such time Employer and Employee (or his designated recipient) shall decide upon profit sharing payments.

3. **Termination, Term and Conditions.**

a. **Termination.** Employee may not be terminated by Employer during the term of this Agreement.

b. **Term.** The term of this agreement (the "Term") shall be for 48 Months.

HPT 255

c. Conditions. If Employee is terminated, Employer shall pay to Employee in lump sum form, all future monies yet unpaid throughout the term of this agreement.

1) For example, if employee is terminated after four (4) months, Employer shall immediately pay Employee 44 months of unpaid potential salary.

2) In addition to this lump sum payment, Employer shall immediately transfer ownership of 50% of Company Stock to Employee, or his designated recipient.

4. Binding Effect. The covenants and conditions contained in the Agreement shall apply to and bind the Parties and the heirs, legal representatives, successors and permitted assigns of the Parties.

5. Cumulative Rights. The Parties' rights under this Agreement are cumulative, and shall not be construed as exclusive of each other unless otherwise required by law.

6. Waiver. The failure of either party to enforce any provisions of this Agreement shall not be deemed a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

7. Severability. If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect.

8. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified in writing and must be signed by both Employee and Employer.

9. Employer agrees to pay all legal fees associated with this agreement and its enforcement.

10. Notice. Any notice required or otherwise given pursuant to this Agreement shall be in writing and mailed certified return receipt requested, postage prepaid, or delivered by overnight delivery service, addressed as follows:

Employer: Truman's Eclectic Irish Pub, Inc.
205 West Street
Beaufort, SC 29902

Employee: Thomas W. Dailey
2918 Waters Edge Ct East
Beaufort, SC 29902

Either party may change such addresses from time to time by providing notice as set forth above.

11. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

EMPLOYER:

Helena Tirone
Signature

Helena P. Tirone
Name - Please Print

Owner, President & CEO, Truman's Eclectic Irish Pub
Title

EMPLOYEE:

Signature

Thomas W. Dailey
Name - Please Print

Exhibit D

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IN THE COURT OF COMMON PLEAS

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STATE OF SOUTH CAROLINA

4

COUNTY OF BEAUFORT

5

6

HELENA P. TIRONE AND TRUMAN'S

ECLECTIC IRISH PUB, INC.,

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Plaintiffs,

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vs.

CIVIL ACTION NUMBER

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2011-CP-07-02216

12

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THOMAS W. DAILEY,

14

Defendant.

15

-----/

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17

The videotaped deposition of THOMAS W.

18

DAILEY, a witness in the above-entitled cause,

19

taken pursuant to Notice and agreement, before

20

Ceil Weser, Certified Court Reporter and Notary

21

Public, before Charles Nussbaum,

22

video-technician, at the Law Offices of Twenge &

23

Twombly PA, 311 Carteret Street, Beaufort,

24

South Carolina, on the 9th day of May, 2012,

25

commencing at or about the hour of 10:00 a.m.

1
2 APPEARANCES OF COUNSEL:

3
4 FOR THE PLAINTIFFS:

5
6 J. ASHLEY TWOMBLEY, ESQUIRE
7 TWENGE & TWOMBLEY
8 311 Carteret Street
9 Beaufort, South Carolina 29902
10 843-982-0100
11 www.twlawfirm.com

12 FOR THE DEFENDANT:

13
14 ANDRE DUBOSE REMBERT, ESQUIRE
15 183 Queen Street, Ste B
16 Charleston, South Carolina 29401
17 843-518-3232
18 andrerembert@gmail.com

19 ALSO PRESENT:

20 Helena Tirone (via telephone)

21 I N D E X

	PAGE
22 EXHIBIT INDEX -----	3
23 OPENING REMARKS AND STIPULATIONS -----	4
24 DIRECT EXAMINATION:	
25 By Mr. Twombley -----	4
CERTIFICATE -----	327

1
2
3
4
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D O C U M E N T A R Y E V I D E N C E

NUMBER	DESCRIPTION	PAGE
PX-1	Key Employee Employment Agreement	140
PX-2	Key Employee Employment Agreement	140
PX-3	Second Amended Answer and Counterclaim	154
PX-4	Affidavit of Thomas W. Dailey	158
PX-5	Account statements with BB&T	170
PX-6	bank statement for the EBJ Corporation	171
PX-7	Bank statements for Thomas William Dailey	173
PX-8A	Defendant's Answers to Plaintiff's Interrogatories	181
PX-8B	Verified Amended Complaint	250
PX-9	Uniform Residential Loan Applications	268
PX-10	E-mail to Judge Dukes from Tom Dailey	304
PX-11	E-mail from Tom Dailey to Allen Lipsitz	313
PX-12	FindLegalForms.com receipt	316
PX-13	E-mail from Tom Dailey to Helena Tirone	318

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 taken.)

3 MR. TWOMBLEY: Opposing counsel
4 and I have reached an agreement that
5 Mr. Dailey will immediately following
6 this deposition search for and produce
7 to opposing counsel a box with the
8 receipts in it.

9 And that we have agreed to
10 reconvene the deposition hopefully on
11 May 16 starting at noon or thereabouts.
12 However, and it will be reconvened for
13 the purposes of asking additional
14 questions about the bank statements,
15 the remaining bank statements and the
16 new receipts that are to be produced.

17 Mr. Dailey has a potential -- he
18 is not a hundred percent sure that he
19 can get the 16th off, but he thinks he
20 can. But in the event that he can not
21 get the 16th off, we all agree to use
22 best efforts to get the deposition
23 rescheduled as shortly after the 16th
24 as we can.

25 And of course in between the time

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 that this deposition is concluded and
3 the time that the next deposition
4 begins, we will obviously follow the
5 standard rule, which is that counsel
6 and the client are not to talk about
7 the substance of the deposition
8 testimony or the case.

9 Did I say anything improper?

10 MR. REMBERT: No, I don't believe
11 you did.

12 But we will continue on -- my
13 understanding is that we will continue
14 on today with the rest of the
15 deposition. That deposition will only
16 be related to the bank statements, and
17 as such, yeah, we will follow all rules
18 of the deposition in regards to bank
19 statements.

20 MR. TWOMBLEY: Right.

21 MR. REMBERT: And there will be no
22 discussions between him and myself
23 about the bank statements.

24 MR. TWOMBLEY: Right.

25 And what I would propose since we

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 had said earlier that he was going to
3 produce the list of things that he
4 couldn't think about today and that I
5 have given him an opportunity to
6 question him about that, if you all
7 want to try to do that before the 16th,
8 then I would go ahead and ask him
9 questions about that as well.

10 MR. REMBERT: Yes, I will produce
11 that list. I will turn it over to you.

12 (Whereupon, a short break was
13 taken.)

14 BY MR. TWOMBLEY:

15 Q Mr. Dailey, do you believe that every
16 person in every company should have to keep good
17 records and pay their fair share of taxes based
18 on the Internal Revenue Service Tax Code?

19 A Yes.

20 Q And you are not exempt from that, are
21 you?

22 A No.

23 Q I want to ask you about the Pub tables,
24 you had testified earlier that those were your
25 tables?

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 Beaufort, then she would sign them then. If she
3 didn't want to be in the Taste of Beaufort, she
4 didn't have to sign them then.

5 Q Because you told her you weren't going
6 to the Taste of Beaufort if she didn't sign
7 that?

8 A No, I wasn't going to work. I wasn't
9 going to continue with the Pub, sign the
10 application, fill out the application, I wasn't
11 going to do that unless she wanted to sign the
12 employee contract.

13 MR. TWOMBLEY: I don't have any
14 other questions for today.

15 MR. REMBERT: Just for
16 clarification's sake, again as we
17 discussed on the record earlier we will
18 be doing -- providing the receipts and
19 coming back on the 16th for that.

20 In regards to the rules for a
21 deposition, as the attorney I will be
22 having no discussions with him in
23 regards to the case, in regards to the
24 receipts. But we are limited in that
25 deposition to those matters. As far as

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 the rest of the case those are no
3 longer under the rules of deposition
4 that would prevent me from speaking
5 with my client, do you agree?

6 MR. TWOMBLEY: I don't think -- I
7 mean I think you obviously can review
8 the receipts and if there is anything
9 that is privileged about them, then I
10 think you ought to be able to have an
11 opportunity. But I don't think
12 otherwise, my opinion is that you
13 shouldn't talk to Mr. Dailey about
14 anything with respect to the case,
15 other than that issue until we
16 reconvene the deposition and have it
17 concluded. Which is why I said we need
18 to get it done sooner rather than later
19 and try to agree on the 16th.

20 MR. REMBERT: Well, I just
21 consider the 16th to be almost a
22 separate deposition specifically on
23 those matters --

24 MR. TWOMBLEY: No, I don't
25 agree --

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 MR. REMBERT: Because the
3 deposition is not open to -- the
4 deposition is not open to further
5 subjects. It is solely related, solely
6 limited to those receipts.

7 MR. TWOMBLEY: Well, I just
8 disagree with you and, you know, the
9 16th -- is that next week or the week
10 after? I mean it is not long and so
11 unless there is some pressing reason --
12 I mean if you want to try to get Judge
13 Dukes on a conference call and get
14 him --

15 MR. REMBERT: No, no.

16 All right, I will agree. We will
17 just --

18 THE WITNESS: I would kind of like
19 to talk to you before the 16th just
20 about whatever. I don't want to feel
21 like I am not allowed to talk to my
22 attorney until the 16th. So I would
23 like this resolved, because we won't
24 talk about the receipts or anything
25 involving that or some E-mail that we

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 have -- it is a couple of E-mails and
3 notes that you have taken. But I don't
4 think it is fair that I can't talk to
5 my attorney about the things that we
6 are not going to go over again.

7 MR. TWOMBLEY: Well, I mean I
8 thought we had clarified that earlier,
9 and that was what I had said, you know,
10 I would want to get it done shortly
11 thereafter because you are not going to
12 be able to talk with him; and I thought
13 we had an agreement on that, and I
14 apologize if it wasn't clear enough.

15 THE WITNESS: Actually, you
16 brought up you wanted to talk --

17 MR. TWOMBLEY: Mr. Dailey, just
18 let us handle this. If you disagree
19 with me strongly enough, I am happy to
20 try to get judge Dukes on the phone and
21 tell him the situation, and he can make
22 a determination. I mean other than
23 that, I don't know what else to do.

24 MR. REMBERT: For the same
25 convenience, assuming that everything

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 gets through on the 16th, then yes. If
3 despite our best efforts we are unable
4 to comply with being available on the
5 16th --

6 MR. TWOMBLEY: We will get Judge
7 Dukes on the phone.

8 MR. REMBERT: We will get Judge
9 Dukes on the phone.

10 MR. TWOMBLEY: Okay, that is fine.

11 And I'm sorry that there wasn't a
12 clear understanding with us on that.
13 But that was really the purpose. I
14 said let's look at our calendars and
15 see if we can get it done quickly,
16 because there will be this time period
17 where at least in my mind I anticipated
18 you all would not be able to talk.

19 MR. REMBERT: Well, I disagree,
20 but I mean it doesn't -- for one week
21 it is not an issue so --

22 MR. TWOMBLEY: All right. Thanks
23 everyone so much.

24 (Whereupon, the deposition of
25 Thomas W. Dailey was concluded at

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 approximately 6:52 p.m.)

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Exhibit E

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 appreciate it. Buy yes, she is my fiance.

3 Q Just so the record is clear, Margot is
4 your fiance?

5 A Margaret or Margie?

6 Q What is her name?

7 A Her formal name is Margaret. She goes
8 by Margie.

9 Q And Margaret, she is your fiance?

10 A Yes.

11 Q And she was the executive producer of
12 the film in El Dorado, Arkansas?

13 A El Dorado, yes.

14 Would you like to know who the
15 producers were?

16 Q No.

17 A Okay, so it is strictly this. All
18 right.

19 Q Where did you stay when you were there,
20 because I didn't see any hotel charges.

21 A I stayed in a back house.

22 Q And whose back house would that be?

23 A That would be --

24 MR. REMBERT: Objection. Outside
25 of the scope.

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 MR. TWOMBLEY: It is not.

3 MR. REMBERT: It doesn't relate
4 specifically to the -- it wasn't
5 charged and therefore it is not
6 relevant.

7 MR. TWOMBLEY? I disagree.

8 MR. REMBERT: Okay. Well, do not
9 answer.

10 MR. TWOMBLEY: You are instructing
11 him not to answer that question?

12 MR. REMBERT: That is correct. I
13 am instructing him not to answer
14 because it is outside the scope, the
15 agreed scope of this deposition.

16 MR. TWOMBLEY: I am putting you on
17 notice that I expect you to file a
18 motion for protective order under the
19 rules. I think that is totally an
20 improper objection. This is a business
21 trip that he says that he made out
22 there. He used the business's credit
23 card to charge gas out there, and I
24 want to know where he stayed while he
25 was out there and why he didn't put any

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 hotel charges on the card, and I think
3 I am 100 percent entitled to know that.

4 MR. REMBERT: Okay, I will be
5 filing a motion.

6 THE WITNESS: Well actually,
7 technically I already answered it.

8 BY MR. TWOMBLEY:

9 Q Just so the record is clear, though,
10 you did believe that was a business trip,
11 correct, for hype for Truman's bar?

12 A Yes.

13 MR. TWOMBLEY: Just so I want to
14 make sure I understand your objection
15 is that -- the reason you are
16 instructing him not to answer is
17 because of the agreement that we
18 reached as to what the scope of this
19 follow-up deposition would be.

20 MR. REMBERT: It has to do with
21 the receipts and specifically what the
22 charges are.

23 MR. TWOMBLEY: I understand. It
24 is just because you believe that it is
25 not within the scope of what we agreed

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 this follow-up would be about?

3 MR. REMBERT: Yes.

4 MR. TWOMBLEY: And nothing else?

5 MR. REMBERT: Correct.

6 MR. TWOMBLEY: I don't have any

7 other questions.

8 (Whereupon, the deposition of

9 Thomas W. Dailey was concluded at

10 11:50 a.m.)

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Exhibit F



André Rembert <andrerebert@gmail.com>

Tirone et al. v. Dailey; C/A #2011-CP-07-02216

Ashley Twombly <twombly@twlawfirm.com>

Mon, May 7, 2012 at 2:11 PM

To: André Rembert <andrerebert@gmail.com>

Cc: hptirone@charter.net, mdukes@bcgov.net, Andrea Smith <andrea@twlawfirm.com>

Everything was just emailed to Mr. Rembert so we should be all set.

From: Ashley Twombly

Sent: Monday, May 07, 2012 2:03 PM

To: 'André Rembert'

Cc: hptirone@charter.net; mdukes@bcgov.net; Andrea Smith

Subject: RE: Tirone et al. v. Dailey; C/A #2011-CP-07-02216

We will be emailing the information to you in the next 20 mins. My client just had a major surgery and has been at home in the bed for the past week so it took me a couple of hours longer than I anticipated.

From: André Rembert [<mailto:andrerebert@gmail.com>]

Sent: Monday, May 07, 2012 2:01 PM

To: Ashley Twombly

Cc: hptirone@charter.net; mdukes@bcgov.net; Andrea Smith

Subject: Re: Tirone et al. v. Dailey; C/A #2011-CP-07-02216

Judge Dukes,

I apologize for an appearance of nitpicking and at this time I am not sure what effective difference it will make, but this order is not what was proposed. Mr. Twombly was directed to provide this information by MIDDAY today. I have yet to receive it. My client is to be deposed in less than 48 hours and this information is necessary for preparation.

Sincerely,
André Rembert

On May 7, 2012 12:35 PM, "Ashley Twombly" <twombly@twlawfirm.com> wrote:

Exhibit G



André Rembert <andrerembert@gmail.com>

Consent to Amend

André Rembert <andrerembert@gmail.com>

Mon, Jun 11, 2012 at 9:10 AM

To: cmullenic@sccourts.org

Cc: Ashley Twombly <twombly@twlawfirm.com>

Ms. Coppage,

As per our phone call just now, Mr. Twombly has consented to my amending my client's counterclaim and, as such, the hearing today is no longer necessary. Please reply to confirm receipt of this message. Thank you.

Sincerely,
André

Exhibit H

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2011-CP-07-02216
HELENA P. TIRONE AND TRUMAN'S ECLECTIC IRISH PUB, INC.,	)	
Plaintiffs,	)	
vs.	)	
THOMAS W. DAILEY,	)	PLAINTIFF'S RESPONSES TO DEFENDANT'S SECOND REQUEST FOR PRODUCTION
Defendant.	)	

TO: H. FRED KUHN, JR., ESQUIRE, ATTORNEY FOR DEFENDANT:

Helena P. Tirone and Truman's Eclectic Irish Pub, Inc., (hereinafter "Plaintiffs") responding to second set of request for production propounded by Thomas W. Dailey (hereinafter "Defendant") would allege and show as follows:

PRELIMINARY STATEMENT

1. The following responses are based on information presently available to Plaintiffs, which Plaintiffs believe to be correct. Said responses are made without prejudice to Plaintiffs' right to utilize subsequently discovered facts. Plaintiffs reserve the right to supplement their responses to Defendant's Requests insofar as supplementation is allowed or required under applicable law.

2. No incidental or implied admissions of fact by Plaintiffs are made by the responses below. The only admissions are express admissions. The fact that Plaintiffs have answered any request herein may not properly be taken as an admission that it accepts the existence of any facts set forth or assumed by such request or that any documents produced in

response constitute admissible evidence. The fact that Plaintiffs have answered part or all of any request is not intended, and shall not be construed to be a waiver of all or part of any objection to any request made by Plaintiffs'.

3. The objections asserted by Plaintiffs below are asserted in good faith, based upon counsel's evaluation of Plaintiffs' discovery obligations under applicable law. Nevertheless, Plaintiffs offer and stand ready to confer with Defendant in an effort to resolve or narrow to the greatest extent possible any dispute between the parties concerning Plaintiffs' objections.

GENERAL OBJECTIONS

Plaintiffs adopt and incorporate by reference the following General Objections in each of the specific responses to Defendant's Requests.

1. Plaintiffs object to the Requests to the extent that they seek to impose upon Plaintiffs any obligations or responsibilities different from or in excess of those required by applicable law.

2. Plaintiffs object to Defendant's Requests to the extent that they request documents that (a) were prepared for or in anticipation of litigation; (b) constitute attorney work product; (c) constitute privileged attorney-client communications; or that (d) are otherwise privileged; and Defendant will withhold all such documents when it produces documents responsive to Plaintiffs' discovery. In their efforts to produce requested information expeditiously, however, Plaintiffs may inadvertently produce information which is, or arguably is, privileged or otherwise immune from discovery. The disclosure of any such information is not intended to and shall not constitute a waiver or any rights, privileges or immunities Plaintiffs may have with respect thereto, and Plaintiffs reserve the right to request or require the return of any documents or information disclosed as to which a privilege or immunity may apply.

3. Plaintiffs object to Defendant's Requests to the extent that they call for the production of any documents that are not relevant to the pending action and not reasonably calculated to lead to the discovery of admissible evidence.

4. Plaintiffs object to each Request to the extent that it is overly broad, unduly burdensome, vague, or ambiguous.

5. Plaintiffs object to each Request to the extent that it seeks documents and/or information not within Plaintiffs' possession, custody, or control.

6. Plaintiffs object to each Request to the extent that it seeks documents and/or information already within the possession, custody, or control of Defendant, their employees, agents and/or legal counsel.

7. Plaintiffs reserve all objections to the admissibility, at any hearing or proceeding, of any produced documents, including without limitation all objections on the grounds that such documents are irrelevant or immaterial.

8. Each of these General Objections shall be deemed to apply, where appropriate, to Plaintiffs' Specific Objections and Responses set forth below, notwithstanding the fact that Plaintiffs have indicated that it will produce documents in response to certain Requests.

SPECIFIC OBJECTIONS AND RESPONSES

Plaintiffs' discovery, investigation, and research are ongoing and have not been completed. Because all the documents that are possibly within the scope of Defendant's Requests may not have been fully located and identified, Plaintiffs reserve the right to amend and supplement these objections and responses as further information and documents are gathered pursuant to applicable law. Plaintiffs make these objections and responses without prejudice to such future amendment or supplementation.

**PLAINTIFFS' RESPONSES TO DEFENDANT'S SECOND REQUEST FOR
PRODUCTION**

1. Any and all documents referenced in your Answers to Interrogatories.

RESPONSE: See attached.

2. All documents evidencing the termination of Thomas Dailey's employment as alleged in the Complaint including any letter or notice of termination.

RESPONSE: See attached.

3. All documents evidencing Truman's Eclectic Irish Pub, Inc.'s, ownership of any asset, including invoices, bills of sale, titles, or purchase orders.

RESPONSE: Truman's does not own any assets.

4. All payroll records of Truman's Eclectic Irish Pub, Inc.

RESPONSE: None.

5. All minutes of all meetings of directors, officers, or stockholders of Truman's Eclectic Irish Pub, Inc.

RESPONSE: None.

6. All resolutions of Truman's Eclectic Irish Pub, Inc.

RESPONSE: None.

7. All emails between any of the parties.

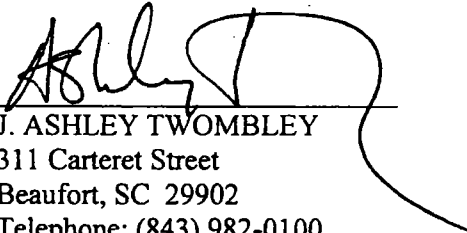
RESPONSE: See attached.

8. All contracts, agreements, letters of intent, leases, sales agreements, or purchase orders entered into by or on behalf of Truman's Eclectic Irish Pub, Inc., or entered into by or on behalf of Helena Tirone, which relate in any form or fashion to Truman's Eclectic Irish Pub, Inc., or the assets of Truman's Eclectic Irish Pub, Inc.

RESPONSE: Plaintiffs do not have any documents that they know of that are not already in the possession, custody and control of Defendant.

TWENGE + TWOMBLEY LAW FIRM

BY:


J. ASHLEY TWOMBLEY
311 Carteret Street
Beaufort, SC 29902
Telephone: (843) 982-0100
Facsimile: (843) 982-0103
www.twlawfirm.com
Attorney for Plaintiffs

Beaufort, South Carolina

October 14, 2011

CERTIFICATE OF SERVICE

The undersigned, Andrea Smith, hereby avers that she is the Paralegal to TWENGE + TWOMBLEY LAW FIRM, Attorneys for Plaintiffs, and that on the 14th day of October 2011 a true and accurate copy of the attached was placed in an envelope with first class postage thereon prepaid through the United States Postal Service, and mailed to all counsel of record as follows:

H. Fred Kuhn, Jr., Esquire
Moss, Kuhn & Fleming, P.A.
1501 North Street
P.O. Drawer 507
Beaufort, SC 29901-0507
Telephone: (843) 524-3373
Facsimile: (843) 524-1302
Attorney for Defendant

BY: _____


Andrea Smith, Paralegal to
TWENGE + TWOMBLEY LAW FIRM

Exhibit I

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2011-CP-07-02216
HELENA P. TIRONE AND TRUMAN'S ECLECTIC IRISH PUB, INC.,	)	
Plaintiffs,	)	
vs.	)	PLAINTIFF'S RESPONSES TO DEFENDANT'S FIRST REQUEST FOR PRODUCTION
THOMAS W. DAILEY,	)	
Defendant.	)	

TO: H. FRED KUHN, JR., ESQUIRE, ATTORNEY FOR DEFENDANT:

Helena P. Tirone and Truman's Eclectic Irish Pub, Inc., (hereinafter "Plaintiffs") responding to the First Set of Request for Production propounded by Thomas W. Dailey (hereinafter "Defendant") would allege and show as follows:

PRELIMINARY STATEMENT

1. The following responses are based on information presently available to Plaintiffs, which Plaintiffs believe to be correct. Said responses are made without prejudice to Plaintiffs' right to utilize subsequently discovered facts. Plaintiffs reserve the right to supplement their responses to Defendant's Requests insofar as supplementation is allowed or required under applicable law.

2. No incidental or implied admissions of fact by Plaintiffs are made by the responses below. The only admissions are express admissions. The fact that Plaintiffs have answered any request herein may not properly be taken as an admission that it accepts the existence of any facts set forth or assumed by such request or that any documents produced in

response constitute admissible evidence. The fact that Plaintiffs have answered part or all of any request is not intended, and shall not be construed to be a waiver of all or part of any objection to any request made by Plaintiffs'.

3. The objections asserted by Plaintiffs below are asserted in good faith, based upon counsel's evaluation of Plaintiffs' discovery obligations under applicable law. Nevertheless, Plaintiffs offer and stand ready to confer with Defendant in an effort to resolve or narrow to the greatest extent possible any dispute between the parties concerning Plaintiffs' objections.

GENERAL OBJECTIONS

Plaintiffs adopt and incorporate by reference the following General Objections in each of the specific responses to Defendant's Requests.

1. Plaintiffs object to the Requests to the extent that they seek to impose upon Plaintiffs any obligations or responsibilities different from or in excess of those required by applicable law.

2. Plaintiffs object to Defendant's Requests to the extent that they request documents that (a) were prepared for or in anticipation of litigation; (b) constitute attorney work product; (c) constitute privileged attorney-client communications; or that (d) are otherwise privileged; and Defendant will withhold all such documents when it produces documents responsive to Plaintiffs' discovery. In their efforts to produce requested information expeditiously, however, Plaintiffs may inadvertently produce information which is, or arguably is, privileged or otherwise immune from discovery. The disclosure of any such information is not intended to and shall not constitute a waiver or any rights, privileges or immunities Plaintiffs may have with respect thereto, and Plaintiffs reserve the right to request or require the return of any documents or information disclosed as to which a privilege or immunity may apply.

3. Plaintiffs object to Defendant's Requests to the extent that they call for the production of any documents that are not relevant to the pending action and not reasonably calculated to lead to the discovery of admissible evidence.

4. Plaintiffs object to each Request to the extent that it is overly broad, unduly burdensome, vague, or ambiguous.

5. Plaintiffs object to each Request to the extent that it seeks documents and/or information not within Plaintiffs' possession, custody, or control.

6. Plaintiffs object to each Request to the extent that it seeks documents and/or information already within the possession, custody, or control of Defendant, their employees, agents and/or legal counsel.

7. Plaintiffs reserve all objections to the admissibility, at any hearing or proceeding, of any produced documents, including without limitation all objections on the grounds that such documents are irrelevant or immaterial.

8. Each of these General Objections shall be deemed to apply, where appropriate, to Plaintiffs' Specific Objections and Responses set forth below, notwithstanding the fact that Plaintiffs have indicated that it will produce documents in response to certain Requests.

SPECIFIC OBJECTIONS AND RESPONSES

Plaintiffs' discovery, investigation, and research are ongoing and have not been completed. Because all the documents that are possibly within the scope of Defendant's Requests may not have been fully located and identified, Plaintiffs reserve the right to amend and supplement these objections and responses as further information and documents are gathered pursuant to applicable law. Plaintiffs make these objections and responses without prejudice to such future amendment or supplementation.

RESPONSES TO DEFENDANT'S FIRST REQUEST FOR PRODUCTION

1. All investigative reports in the captioned matter, in the possession of the Plaintiff or his/their counsel.

RESPONSE: Plaintiffs object to this request because they do not know what Defendant means by "investigative reports." If Defendant will further specify what he is looking for Plaintiffs will consider supplementing this response.

2. All statements made by the Plaintiff in the possession of the Plaintiff or her/their counsel.

RESPONSE: Plaintiffs have not made any written statement to anyone other than counsel which are privileged.

3. All written and recorded statements of any and all witnesses to the above entitled cause in the possession of either the Plaintiff or her/their counsel;

RESPONSE: None at this time.

4. All plats, diagrams, drawings or other information in the possession of the Plaintiff or her/their counsel;

RESPONSE: See attached.

5. All photographs which relate to this case in the possession of the Plaintiff or her/their counsel;

RESPONSE: None, other than the photos Defendant took of Plaintiff Tirone in her underwear and then threatened to publish if Tirone did not answer his demands.

6. The bylaws of Truman's Eclectic Irish Pub, Inc.

RESPONSE: None.

7. Minutes of all meetings of Truman's Eclectic Irish Pub, Inc.

RESPONSE: There are no minutes from any meeting. There was, however, a general informational meeting that took place on May 1, 2011.

8. Complete corporate record books of Truman's Eclectic Irish Pub, Inc.

RESPONSE: Plaintiffs object to this request because "corporate record books" is undefined and capable of more than one reasonable interpretation. If defendant will set forth what documents he would like Plaintiffs will consider supplementing his response to this interrogatory.

9. All stock certificates and stock transfer records of Truman's Eclectic Irish Pub, Inc.

RESPONSE: None.

10. All emails, letters, memos or other electronic or tangible items that relate to Defendant's alleged termination.

RESPONSE: See attached emails.

11. All correspondence, whether electronic or paper between Defendant, Plaintiffs or any officer, director, employee or agent of Plaintiffs.

RESPONSE: See attached emails between Tirone and Dailey.

12. All documents or other tangible items relied upon by you in terminating Defendant's employment.

RESPONSE: See attached bank statement and cancelled checks and other misc documents.

13. All bank accounts or other financial records of Truman's Eclectic Irish Pub, Inc.

RESPONSE: See attached bank statement and cancelled checks and other misc documents.

14. All contracts entered into by Truman's Eclectic Irish Pub, Inc.

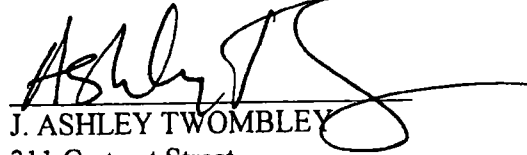
RESPONSE: See attached lease agreement for 205 West Street

15. All communications sent by Plaintiffs, concerning the Defendant to any third parties.

RESPONSE: See attached emails.

TWENGE + TWOMBLEY LAW FIRM

BY:



J. ASHLEY TWOMBLEY

311 Carteret Street

Beaufort, SC 29902

Telephone: (843) 982-0100

Facsimile: (843) 982-0103

www.twlawfirm.com

Attorney for Plaintiffs

Beaufort, South Carolina

October 14, 2011

Exhibit J

SECURITY AGREEMENT

Truman's Eclectic Irish Pub, Inc. (Debtor) and Helena Tirone (Secured Party) hereby agree that in exchange for monies loaned to Debtor (see Promissory Note) by Secured Party, Debtor hereby provides Secured Party with a full and complete security interest in all Debtor's property of any kind for which the Debtor has any rights. This includes but is in no way limited to property owned, possessed, leased, acquired, hereinafter acquired by Debtor, including but in no way limited to equipment, financial accounts, accounts receivable, profits, revenues, lease agreements, good will, electronic data, inventory, or any other property of any kind whatsoever, all of which is referred to herein below as "the Collateral."

Debtor shall have no rights in the Collateral until the Promissory Note is paid in full, including all interest, fees, cost etc. Debtor agrees that the Collateral shall be kept at the Debtor's place of business at 205 West Street in Beaufort County, South Carolina, or any other place authorized by Secured Party at her discretion. Debtor shall not sell, exchange, lease, encumber or otherwise dispose of any item of the Collateral. Secured Party may, however, dispose of the Collateral at her discretion. To the extent that Debtor acquires any other property of any kind for use in the business, the parties agree that the new property shall, upon acquisition, be and become additional Collateral covered by the terms and conditions of this agreement and the Promissory Note. Debtor shall have no ownership rights or rights of use or control in the Collateral other than those rights as may be extended by the Secured Party in her discretion. Debtor further acknowledges that Secured Party may exercise her right to take immediate possession of or otherwise dispose of the Collateral as her discretion. By signing this agreement Debtor binds itself conditions of this agreement.

IN WITNESS WHEREOF parties have executed and delivered this Agreement effective on the date set forth in the Preamble.

SECURED PARTY

By: Helena Tirone
Helena Tirone

DEBTOR

Director - Helena Tirone
Truman's Eclectic Irish Pub, Inc.


(Witness)


(Witness)


(Witness)


(Witness)

000059

PROMISSORY NOTE

In return for monies advanced to Borrower (Truman Eclectic Irish Pub, Inc.) in the form of a loan, Borrower promises to repay all monies advanced/loaned (this amount is called "Principal"), plus interest, to the order of the Helena Tirone (Lender). Borrower has currently been advanced approximately ONE HUNDRED AND TWENTY FIVE THOUSAND DOLLARS (\$125,000). Borrower will make all payments under this Note in the form of cash, check or money order. Interest will be charged on unpaid principal until the full amount of Principal has been paid. Borrower will pay interest at a yearly rate of five (5) %.

Borrower will make monthly payments in the amount of FOUR THOUSAND U.S. dollars (\$4,000) on the first day of each month beginning on June 1, 2011 until repaid in full. If the Lender has not received the full amount of any monthly payment by the end of fifteen (15) calendar days after the date it is due, Borrower will pay a late charge of 5 % of Borrower's overdue payment of principal and interest.

If Borrower does not pay the full amount of each monthly payment on the date it is due, Borrower will be in default. If Borrower is in default for more than 10 days, Lender may require Borrower to pay immediately the full amount of Principal which has not been paid and all the interest that Borrower owes on that amount. Even if, at a time when Borrower is in default, the Lender does not require me to pay immediately in full as described above, the Lender will still have the right to do so in the future. Borrower agrees to pay and expense, costs of fee Lender incurred in enforcing the terms of this Note or Security Agreement including reasonable attorneys' fees.

Borrower waives the rights of Presentment and Notice of Dishonor. "Presentment" means the right to require the Lender to demand payment of amounts due. "Notice of Dishonor" means the right to require the Lender to give notice to other persons that amounts due have not been paid.

This Note is secured by a Security Agreement which is incorporated herein by referenced. The Security Instrument is intended to fully protect Lender from all possible losses which might result if Borrower does not keep the promises which Borrower makes under this Note. The Security is also intended to give Lender the right and ability to control and direct the property of Debtor and sell property acquired by Debtor to recover monies loaned pursuant to the Note. The Security Instrument also gives Lender additional rights to all assets (both tangible and intangible) of Borrower and further restricts Borrowers rights pursuant to this Note and the Security Agreement.

WITNESS THE HAND(S) AND SEAL(S) OF THE UNDERSIGNED.

Director - Helena Tirone
(Seal)
Borrower Truman Eclectic Irish Pub, Inc.

Helena Tirone
(Seal)
Lender - Helena Tirone

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Exhibit K

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2011-CP-07-02216
	)	
HELENA P. TIRONE AND TRUMAN'S	)	
ECLECTIC IRISH PUB, INC.,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	PLAINTIFFS' ANSWERS TO
	)	DEFENDANT'S FIRST SET OF
THOMAS W. DAILEY,	)	INTERROGATORIES
	)	
Defendant.	)	
	)	

TO: H. FRED KUHN, JR., ESQUIRE, ATTORNEY FOR DEFENDANT:

Helena P. Tirone and Truman's Eclectic Irish Pub, Inc., (hereinafter "Plaintiffs") answering the First Set of Interrogatories propounded by Thomas W. Dailey (hereinafter "Defendant") would allege and state as follows:

PRELIMINARY STATEMENT

1. The following responses are based on information presently available to Plaintiffs, which Plaintiffs believe to be correct. Said responses are made without prejudice to Plaintiffs' right to utilize subsequently discovered facts. Plaintiffs reserve the right to supplement their responses to these Interrogatories insofar as supplementation is allowed or required under applicable law.

2. No incidental or implied admissions of fact by Plaintiffs is made by the responses below. The only admissions are express admissions. The fact that Plaintiffs have answered any Interrogatory herein may not properly be taken as an admission that it accepts the existence of any facts set forth or assumed by such Interrogatory or that any information or documents produced in response constitute admissible evidence. The fact that Plaintiffs have answered part

or all of any Interrogatory is not intended, and shall not be construed to be a waiver of all or part of any objection to any Interrogatory made by Plaintiffs.

3. The objections asserted by Plaintiffs below are asserted in good faith, based upon counsel's evaluation of Plaintiffs' discovery obligations under applicable law. Nevertheless, Plaintiffs offer and stand ready to confer with Defendant in an effort to resolve or narrow to the greatest extent possible any dispute between the parties concerning Plaintiffs' objections.

GENERAL OBJECTIONS

Plaintiffs adopt and incorporate by reference the following General Objections in each of its specific responses to Defendant's Interrogatories.

1. Plaintiffs object to Defendant's Interrogatories to the extent that they request information or documents that (a) were prepared for or in anticipation of litigation; (b) constitute attorney work product; (c) constitute privileged attorney-client communications; or that (d) are otherwise privileged; and Plaintiffs will withhold all such information or documents in responding to these Interrogatories. In its efforts to produce requested information expeditiously, however, Plaintiffs may inadvertently produce information which is, or arguably is, privileged or otherwise immune from discovery. The disclosure of any such information is not intended to and shall not constitute a waiver or any rights, privileges or immunities Plaintiffs' may have with respect thereto, and Plaintiffs reserve the right to request or require the return of any documents or information disclosed as to which a privilege or immunity may apply.

2. Plaintiffs object to Defendant's Interrogatories to the extent that they call for the production of any information or documents that are not relevant to the pending action and not reasonably calculated to lead to the discovery of admissible evidence.

3. Plaintiffs object to each Interrogatory to the extent that it is overly broad, unduly

burdensome, vague, or ambiguous.

4. Plaintiffs object to each Interrogatory to the extent that it seeks documents and/or information not within Plaintiffs' possession, custody, or control.

5. Plaintiffs object to each Interrogatory to the extent that it seeks documents and/or information already within the possession, custody, or control of Defendant, their agents, employees, and/or counsel.

6. Plaintiffs reserve all objections to the admissibility, at any hearing or proceeding, of any produced information or documents, including without limitation all objections on the grounds that such information or documents are irrelevant or immaterial.

7. Each of these General Objections shall be deemed to apply, where appropriate, to Plaintiffs' Specific Objections and Responses set forth below, notwithstanding the fact that Plaintiffs have responded to certain Interrogatories or made the same or similar Specific Objections within each response.

SPECIFIC OBJECTIONS AND RESPONSES

Plaintiffs' discovery, investigation, and research regarding this matter are ongoing and have not been completed. Because all the information and documents that are possibly within the scope of Defendant's Interrogatories may not have been fully located and identified, Plaintiffs reserve the right to amend and supplement these objections and responses as further information and documents are gathered pursuant to applicable law. Plaintiffs make these objections and responses without prejudice to such future amendment or supplementation.

ANSWERS TO FIRST SET OF INTERROGATORIES

1. Give the name and addresses of persons known to the Plaintiffs or Plaintiffs' counsel to be witnesses concerning the facts of the case and indicate whether or not written or

recorded statements have been taken from the witnesses and indicate who has possession of such statements.

ANSWER:

- a. **Helena Tirone**
Truman's Eclectic Irish Pub

Ms. Tirone is a named Plaintiff in this action and is expected to testify as to the matters set forth in the Complaint. No written or recorded statements have been taken from these witnesses.

- b. **Representative from Truman's Eclectic Irish Pub**

A representative of Truman's Eclectic Irish Pub will testify as to the matters in the Complaint. No written or recorded statements have been taken from these witnesses.

- c. **Thomas Dailey**

Mr. Dailey is the named Defendant in this action and is expected to testify regarding the allegations contained in Plaintiffs' Complaint, the defenses in his answer, and allegations of his counterclaim. Plaintiffs are not in possession of any written or recorded statement taken of this witness.

- d. **Martin Craft**

Mr. Craft is a friend of Ms. Tirone's and may have information related to the financials of Truman's Eclectic Irish Pub. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

- e. **Jatin Patel**

Mr. Patel is a friend of Ms. Tirone's and may have information related to the financials of Truman's Eclectic Irish Pub. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

- f. **Laurie Halter**

Ms. Halter is the ex-girlfriend of Defendant and is expected to testify as to her knowledge of the allegations contained in Plaintiffs' Complaint, Defendant's defenses in his answer, and Defendant's counterclaim. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

g. Susan Centeno

Ms. Centeno is the ex-wife of Defendant and is expected to testify as to her knowledge of the allegations contained in Plaintiffs' Complaint, Defendant's defenses in his answer, and Defendant's counterclaim. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

h. Michelle Dailey

Ms. Dailey the ex-wife of Defendant and is expected to testify as to her knowledge of the allegations contained in Plaintiffs' Complaint, Defendant's defenses in his answer, and Defendant's counterclaim. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

i. Sheila Sullivan

Ms. Sullivan is the sister of Defendant and is expected to testify as to her knowledge of the allegations contained in Plaintiffs' Complaint, Defendant's defenses in his answer, and Defendant's counterclaim. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

j. Paul Thompson

Mr. Thomson is the owner of Panini's and is expected to testify as to his knowledge of the allegations contained in Plaintiffs' Complaint, Defendant's defenses in his answer, and Defendant's counterclaim. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

k. Bev, Ron and Mike Stava

Bev, Ron & Mike are the owners of Luther's Rare & Well Done and are expected to testify as to their knowledge of the allegations contained in Plaintiffs' Complaint, Defendant's defenses in his answer, and Defendant's counterclaim. Plaintiffs are not in possession of any written or recorded statement taken from these witnesses other than statements that may have been taken by counsel and are protected work product.

l. Delk Haigler

Mr. Haigler is the manager of the Fox & Hound Smokehouse/Tavern in Charlotte, North Carolina and is expected to testify as to his knowledge of the allegations contained in Plaintiffs' Complaint, Defendant's defenses in his answer, and Defendant's counterclaim. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

m. Declan Duggan

Mr. Duggan is the Director of Sales & Marketing at Ellickson International and is expected to testify as to his knowledge of the equipment for the Pub. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

n. Margaret Merkle Niel

Ms. Neil is a friend of Defendant and may have participated in Defendant's embezzlement of funds from Plaintiffs. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

o. Alan Lipsitz

Mr. Lipsitz is a member of the family who owns 205 West Street and is expected to testify as to communications he had with the Defendant. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

p. Neil Lipsitz

Mr. Lipsitz is a member of the family who owns 205 West Street and is expected to testify as to communications he had with the Defendant. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

q. Henry Danish

Mr. Danish is a witness in this action and is expected to testify as to communications he may have had with the Defendant. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

r. Julia Sanford

Ms. Sandord is a witness in this action and is expected to testify as to communications she may have had with the Defendant. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

s. Amy Knowles

Ms. Knowles is a witness in this action and is expected to testify as to her knowledge of the security documents executed by Plaintiff. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

t. Dan Hassinger

Mr. Hassinger is expected to testify as to the matter discussed during his deposition. Plaintiffs are not in possession of any written or recorded statement taken from this witness other than the deposition transcript made in this case.

u. Stephen Kuhl

Mr. Kuhl is a witness in this action and is expected to testify as to his knowledge of the security documents executed by Plaintiff. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

v. Al Dwyer

Mr. Dwyer is a Guinness distributor and is expected to testify as to his communications with Defendant. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

w. Jim Clary

Mr. Clary is a Pepsi distributor and is expected to testify as to his communications with Defendant. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

x. Kayla Simpson

Ms. Simpson is an employee of BB&T and is expected to testify as to her communications concerning Truman's Eclectic Irish Pub bank account and other miscellaneous matters. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

y. Rodney Mahan

Mr. Mahan is an employee of Advance Lock & Key and is expected to testify about changing the locks at 205 West Street. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

z. Brian Mahoney

Mr. Mahoney is an employee or owner of Dublin Down Daniel Island Grill and is expected to testify as to his communications with Defendant. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

**aa. Employees and/or Representatives of
Beaufort County Police Department**

Employees and/or Representatives of the Beaufort County Police Department are expected to testify to the fact that they were not looking for Plaintiff Tirone at any time as well as to other matters. Plaintiff is not in possession of any written or recorded statement taken from these witnesses.

**bb. Employees and/or Representatives of
Charter Internet Service**

Employees and/or Representatives of Charter Internet Service are expected to testify as to their knowledge of email communications between the parties and other matters. Plaintiffs are not in possession of any written or recorded statement taken from these witnesses.

**cc. Employees and/or Representatives of
Kingham Insurance Company of Beaufort**

Employees and/or Representatives of Kinghorn Insurance Company of Beaufort are expected to testify as to their communications with Defendant. Plaintiffs are not in possession of any written or recorded statement taken from these witnesses.

**dd. Employees and/or Representatives of
Beaufort Jasper Water Sewer Authority**

Employees and/or Representatives of Beaufort Jasper Water Sewer Authority are expected to testify as to communications they may have had related to 205 West Street. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

**ee. Employees and/or Representatives of
MCAS Beaufort Federal Credit Union**

Employees and/or Representatives of MCAS Beaufort Federal Credit Union are expected to testify as to their communications with Defendant.. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

**ff. Employees and/or Representatives of
JWL Properties, LLC**

Employees and/or Representatives of JWL Properties, LLC are expected to testify as to their communications related to leasing 205 West Street. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

**gg. Employees and/or Representatives of
BRD Real Estate, LLC**

Employees and/or Representatives of BRD Real Estate, LLC are expected to testify as to their communications related to leasing 205 West Street.. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

**hh. Employees and/or Representatives of
HDL Family, LLC**

Employees and/or Representatives of HDL Family, LLC are expected to testify as to their communications related to leasing 205 West Street. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

**ii. Employees and/or Representatives of
CBC National Bank**

Employees and/or Representatives of CBC National Bank are expected to testify as to their communications with Defendant. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

**jj. Employees and/or Representatives of
Carolina Container Connection**

Employees and/or Representatives of Carolina Container Connection are expected to testify as to their communications with Defendant. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

**kk. Employees and/or Representatives of
Washington State Employment Security Commission**

Employees and/or Representatives of Washington State Employment Security Commission are expected to testify as to their communications with Defendant. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

**ll. Employees and/or Representatives of
ADT Security**

Employees and/or Representatives of ADT Security are expected to testify as to their communications with Defendant. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

**mm. Employees and/or Representatives of
Merchant Service Center**

Employees and/or Representatives of Merchant Service Center are expected to testify as to their communications with Defendant. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

nn. Erica Calcorzi

Erica is or was a person who worked with Mr. Dailey and is expected to testify about conversations she had with Dailey that may included admissions. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

oo. Michael Brassier

Michael is or was a friend of Dailey's and is expected to testify about conversations he had with Dailey that may included admissions. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

pp. Cheryl Marlow, Jennifer Crews, Dane Molinaro, Julius Pryor, Dwyane Warren, and Craig Gullaksen.

These witnesses are friends of Dailey and are expected to testify about conversations they had with Dailey that may included admissions. Plaintiffs are not in possession of any written or recorded statement from these witnesses other than statements that may have been obtained by counsel during the course of this litigation and are protected work product.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the Plaintiff or Plaintiffs' counsel that relate to the claim or defense in the case.

Plaintiffs object to this interrogatory because as drafted it is overly broad, unduly burdensome and unlikely to lead to the discovery of relevant or admissible evidence. Subject to these objections, Plaintiffs' general objections, and any applicable privileges, Plaintiffs identify the following documents.

ANSWER:

- a) Lease
- b) Affidavit of Helena Tirone
- c) Security Agreement
- d) Promissory Note
- e) Initial Annual Report of Corporations
- f) Invoice from Ellickson
- g) Family Court Payment History
- h) 5-20-11 Beaufort City Police Incident Report
- i) Center Star Credit Union suit papers
- j) Family Court file
- k) Deutsch Bank National Trust Company's suit papers
- l) MCAS Beaufort FCU suit papers
- m) Email exchanges between Dailey & Tirone

- n) Southwest Aviation Specialists suit papers
- o) Texts to Tirone
- p) Truman's corporation documents
- q) CBC National bank documents
- r) MCAS Beaufort FCU loan documents
- s) Truman's BB&T bank account documents
- t) Email exchanges between Dailey and Lipsitz, and
- u) Misc other documents

3. List the names and addresses of any expert witnesses whom the Plaintiffs propose to use as a witness at the trial of the case.

ANSWER: Plaintiffs have not made any decisions about trial at this time, but will supplement this answer accordingly.

4. For each person known to the Plaintiff or Plaintiffs' counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness, or provide a copy of any written or recorded statements taken from such witnesses.

ANSWER: See Answer to Interrogatory Number 1.

5. When did you terminate the Defendant's employment as General Manager?

ANSWER: There were discussions on April 27, 2011, April 28, 2011 and May 16, 2011.

6. Why did you terminate the Defendant's employment as General Manager?

ANSWER: Defendant was terminated because he was stealing money.

7. Set forth an accounting of all wages or other benefits paid to the Defendant by you.

ANSWER: Defendant was to begin receiving a formal salary when Truman's Eclectic Irish Pub opened, began making money and began repaying the money invested by Plaintiff Tirone.

8. Identify all stockholders in Truman's Eclectic Irish Pub, Inc., setting forth the amount of stock held for each stockholder.

ANSWER: Helena P. Tirone, 2000 shares.

9. Identify all officers and directors of Truman's Eclectic Irish Pub, Inc., setting forth their dates of service and positions held.

ANSWER: Helena P. Tirone – Inception through current.

10. Identify all employees of Truman's Eclectic Irish Pub, Inc., setting forth their date of hire, their date of termination, and the job description.

ANSWER: Plaintiffs object to this interrogatory because it calls for a legal conclusion. Notwithstanding this objection, Truman's Eclectic Irish Pub never opened, so Plaintiffs do not believe there were ever any formal employees.

11. Set forth a complete accounting of all capital contributions to Truman's Eclectic Irish Pub, Inc., and all expenditures made by Truman's Eclectic Irish Pub, Inc.

Plaintiffs object to this interrogatory because as drafted it is overly broad, unduly burdensome and unlikely to lead to the discovery of relevant or admissible evidence. Plaintiffs further object to providing any information on contributions or other activities that occurred after the lawsuit was filed as the same is protected by the work product doctrine and the attorney client privilege. Subject to these objections, Plaintiffs' general objections, and any applicable privileges, Plaintiffs state as follows:

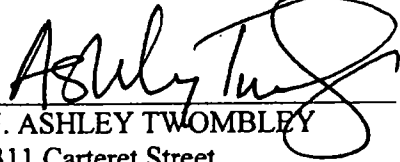
CONTRIBUTIONS:

- a) 1/19/2011 \$280.00-Deposit from USAA Checking Acct
- b) 1/21/2011 \$50,000.00-Deposit from USAA Checking Acct
- c) 3/18/2011 \$14,000.00-Deposit from USAA Checking Acct
- d) 4/7/2011 \$3,000.00-Deposit from USAA Savings Account
- e) 4/7/2011 \$26,000.00-Deposit from Personal Savings
- f) 5/17/2011 \$2,500.00-Deposit from USAA Checking
- g) Miscellaneous other contributions

With respect to expenditure, please see attached bank statements which show some limited expenses as well as embezzlement items.

TWENGE + TWOMBLEY LAW FIRM

BY:



J. ASHLEY TWOMBLEY

311 Carteret Street

Beaufort, SC 29902

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Attorney for Plaintiffs

Beaufort, South Carolina

October 14, 2011

Exhibit L

LEASE

THIS LEASE is made and entered into as of this 21st day of January, 2011, by and between JWL Properties, LLC, BRD Real Estate, LLC, Henry Danish and HDL Family, LLC (collectively, "Landlord") and Truman's Eclectic Irish Pub, Inc. ("Tenant"), whose notice address is 205 West Street, Beaufort, South Carolina 29902.

WITNESSETH:

In consideration of the covenants and agreements of the respective parties herein contained, the parties hereto do hereby agree as follows:

1. PREMISES. Landlord leases to Tenant, and Tenant leases from Landlord for the term and upon the rental, covenants and agreements herein set forth herein that certain building known as 205 West Street, Beaufort, South Carolina (the "Premises").

2. TERM AND DELIVERY OF PREMISES. TO HAVE AND TO HOLD the said Premises unto Tenant for a term commencing on the date of this Lease, and ending at midnight on the 31st day of January, 2015; provided, Tenant shall have the option to extend the term of this Lease for an additional three (3) years to January 31, 2018 by providing written notice of Tenant's exercise such option to Landlord on or before October 31, 2014. If Landlord is unable to deliver possession of the Premises to the Tenant at the commencement of the term of this Lease, then Landlord shall not be liable to Tenant for damages and this Lease shall not terminate; provided, however, that Tenant shall have no obligation to pay rent hereunder until possession of the Premises is delivered to Tenant. Notwithstanding the foregoing, so long as the Tenant has used its good faith, best efforts to obtain all licenses and permits necessary to operate the Premises as a restaurant and upscale bar, Tenant shall have the right to terminate this Lease on or before April 15, 2011 by providing written notice of Termination to Landlord. If Landlord has not received such written notice of termination on or prior to April 15, 2011, the Tenant's right to terminate this Lease shall expire. In connection with any such termination by the Tenant, Tenant shall return the Premises and Landlord in accordance with Section 29 below.

3. RENT: (a) Tenant covenants and agrees to pay as base rental to Landlord during the term of this Lease those sums as are shown on attached Exhibit A. Said sums to be in lawful money of the United States, payable in monthly installments as shown on the attached Exhibit A.

(b) If the Tenant exercises its option to extend the term of this Lease to January 31, 2018 as described in section 2 above, Tenant, in addition to base rental described in (a) above, shall pay to Landlord, as additional rent, a percentage rent computed by multiplying 0.01 by the amount by which Gross Receipts (as hereinafter defined) derived from its operation in the Premises during each Lease Year (as hereinafter defined) ending on January 31, 2016, January 31, 2017 and January 31, 2018 exceeds the amount of Base Receipts (as hereinafter defined). Percentage Rent for any partial Lease Year shall be determined by multiplying the foregoing percentage figure by the difference between the Gross Receipts for the period of the computation and the result obtained by multiplying the Base Receipts figure by the exact fraction of a calendar year represented by the period of the computation. Notwithstanding the foregoing, Percentage Rent for a Lease Year shall not exceed the \$25,000. Percentage Rent for each Lease Year shall be due and payable by Tenant to Landlord on the January 31st immediately succeeding the end of such Lease Year and thirty (30) days after termination of this Lease. Tenant shall maintain at the Premises and shall cause any permissible subtenants, concessionaires, or licensees to keep and maintain accurate books and records which shall disclose separately for each business day of the term all information required to determine Gross Receipts (including but not limited to inventories and receipts of merchandise, telephone and mail order slips, all federal, state and local sales tax returns, records of daily bank deposits of the entire receipts from transactions in, at, or from the Premises, sales slips, daily dated cash register tapes, sales books, and bank statements). On or before the last day of each February during the term of this Lease commencing on the last day of February 2014 (including the month next following the end of the term of this Lease) and the thirtieth (30th) day after termination of this Lease, Tenant shall submit to Landlord statements and records in sufficient detail, and in a form such as will permit verification thereof, together with a true copy of all monthly sales tax reports required to be submitted by governmental authorities (which information Landlord shall hold in confidence except that Gross Receipts may be revealed to any mortgagee, prospective mortgagee, encumbrancer, purchaser or prospective purchaser of all or any

part of the Landlord's property), to enable Landlord to determine to Landlord's complete satisfaction the Gross Receipts from the Premises. Tenant shall summarize its statement to Landlord and the summary shall bear the certification of an officer of Tenant to the effect that, in all respects, the figures submitted in the summary are true and correct. In the event Landlord shall elect to audit the operation of Tenant, including Tenant's licensees, concessionaires and tenants, Landlord may do so at its sole expense, subject to the condition that in the event such audit shall reveal a discrepancy of more than two percent (2%) of the amount of Gross Receipts reported to Landlord in Tenant's accounting to Landlord, the cost of the audit shall be borne by Tenant and the submission of the incorrect accounting by Tenant shall be an event of default under this Lease. In this connection, Tenant shall make such agreements with its licensees, concessionaires and tenants as will insure that the records of such parties, relative to their operations in the Premises are in such detail and in such form as will permit a thorough audit thereof by Landlord, and Tenant shall reserve to Landlord the right to make such audit in entering into its said agreements with Tenant's licensees, concessionaires and tenants.

"Base Receipts" means the aggregate of the Gross Receipts for the Lease Years ending January 31, 2014 and January 31, 2015 divided by 2.

"Gross Receipts" means all sums received by Tenant and by all licensees, concessionaires and tenants of Tenant, from all business conducted upon or from the Premises, irrespective of whether the receipts be paid at the Premises or whether the same be in cash, by check or in the form of receivables. Gross Receipts shall include, but not be limited to, all sums received from the retail or wholesale sale of any inventory of Tenant or of Tenant's licensees, concessionaires and tenants, whether the merchandise so sold is owned by Tenant, its licensees, concessionaires and tenants, or is on consignment to or warehoused by said parties, and shall include sums received for services performed, gross sales from vending machines, and orders received in the Premises for merchandise or services which are to be supplied from sources or locations away from the Premises, as well as orders for goods and merchandise received at locations away from the Premises, but to be supplied and filled from the Premises. The following items only may be omitted from the computation of Gross Receipts: any sales or Gross Receipts taxes levied directly on sales of merchandise or services to customers where a detailed record is made at the time of each sale of the amount of the tax with a separate charge therefore to the customer.

"Lease Year" means each twelve (12) month period commencing on February 1.

(b) The foregoing rental and any other sums due hereunder including additional rental shall be due and payable at the following address: 2102 Bay Street, Beaufort, S.C. 29902, Attention: Lucille B. Lipsitz. Base rent is due on the first day of each month in advance during the term of this Lease, and rental amounts shall not be withheld for any reason whatsoever. In the event Tenant shall fail to pay any rent within ten (10) days of the due date, a late charge of five percent (5%) of the rental amount then due, with a minimum of Twenty Dollars (\$20.00) per month, shall be added to the rental and paid to Landlord for each such late payment, and the same shall be treated as additional rent.

4. AS IS CONDITION OF THE PREMISES: Tenant acknowledges that it has had an opportunity to inspect the Premises and found the same suitable for its intended use. The parties acknowledge and agree that the Premises are being delivered to Tenant in its current "AS IS" condition, it being the understanding and agreement of the parties that Landlord shall not be deemed to have made, either expressly or impliedly, any representations and warranties concerning the suitability or habitability of the Premises.

5. AUTHORIZED USE: Tenant shall use the Premises only as a restaurant and upscale bar. Tenant shall not (i) abandon or vacate the Premises; (ii) use the Premises for purposes other than related to the use permitted in the preceding sentence; (iii) use or permit the Premises to be used for any offensive, noisy or dangerous trade or business, or in violation of any law, ordinance, or regulation of any governmental body or authority applicable to the Premises and (iv) use the "back door" as anything other than an emergency fire exit. Tenant further shall not do or permit any act or omission which will increase the rate of insurance on the Premises, and if such rate be increased, Tenant agrees to pay Landlord such increased cost of insurance. Tenant shall not obstruct entries and passageways so as to interfere with use thereof by Landlord or other tenants of Landlord's property.

6. PARKING: At Landlord's sole discretion, Tenant shall be entitled to use two (2) parking spaces in Landlord's parking lot as designated by Landlord from time to time and, between the hours of 6:00 P.M. and 8:00

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A.M., to use the parking space between the Premises and the Lipsitz Department Store Building. Tenant and its employees shall park their cars only in such designated areas. Landlord expressly reserves the right to terminate Tenant's use of Landlord's parking lot and the other parking space.

7. DAMAGE TO PREMISES: Tenant will repair promptly at its expense any damage to the Premises, and, upon demand, shall reimburse Landlord as additional rent for the cost of the repair of any damage to any of Landlord's property, caused by or arising from the actions of the Tenant, its guests or invitees, regardless of fault or by whom such damage shall be caused (unless caused by Landlord, its agents, employees or contractors). If Tenant shall fail to commence such repairs within five (5) days after notice to do so from Landlord, Landlord may make or cause the same to be made and Tenant agrees to pay to Landlord promptly upon Landlord's demand, as additional rent, the cost thereof with interest thereon at 10% until paid.

8. TENANT ALTERATIONS: Tenant shall not make, or suffer to be made, any alterations of the Premises, or any part thereof, without the written consent of the Landlord. Any such alterations or improvements, whether made with or without Landlord's permission, and including, but not limited to, permanent partitions, wall-to-wall carpeting, lighting, electrical systems, air conditioning units, attached shelving or other fixtures, shall, at the option of the Landlord, become the property of the Landlord (with no obligation of Landlord to pay for same) and may not be removed unless requested by the Landlord. Tenant may install at its expense and without Landlord's consent movable office partitions, furniture and equipment and other personal property, and may remove same at any time provided that Tenant is not in default of this Lease and that any damage to the Premises caused thereby shall be repaired by Tenant. Tenant shall not install or maintain any equipment, partitions, furniture, or apparatus, the weight or operation of which would tend to injure or be detrimental to the Premises or unreasonably annoy or disturb other tenants of Landlord's property. Tenant shall at all times keep the Premises free and clear of any lien or encumbrance of any kind created by Tenant's act under this paragraph or otherwise or by its omission.

9. TENANT'S MAINTENANCE AND REPAIR OF PREMISES: Tenant shall, throughout the term of this Lease and any renewals thereof, at its own expense, maintain in good order and repair the Premises, including exteriors of windows and doors and all tenant occupied space, except those repairs expressly required to be made by Landlord. Such repairs by Tenant shall include as applicable but not limited to, repairs to electrical and plumbing systems outside the Premises if such repairs are necessitated by any act or omission of Tenant, its servants, agents or invitees (excluding normal wear and tear) and air-conditioning and heating systems (as outlined herein). Tenant shall at its expense contract with a reputable firm approved by Landlord for periodic servicing of the heating, air conditioning and ventilation systems as recommended by the manufacturer of such equipment and shall keep on file with Landlord or its agent a copy of said contract or other substantial proof of such servicing. Tenant shall be responsible for all minor repairs to heating and air-conditioning equipment including parts and labor, and including repair to major components, but not replacement of major components. Tenant shall also maintain pest control inspection and treatment of the Premises as required. Tenant shall return said Premises to Landlord at the expiration or prior termination of this lease in as good condition and repair as when received, natural wear and tear, excepted. Tenant shall replace all broken glass in the Premises except when such may be covered by Landlord's normal fire and extended coverage insurance policy, and shall repair any damage, willful or otherwise, to the Premises, caused by it, its agents, invitees or clients. Tenant shall be responsible for all maintenance and repair of that equipment owned by Landlord, and which is located in the Premises, while being used by the Tenant pursuant to this Lease.

10. LANDLORD'S MAINTENANCE AND REPAIR OF PREMISES: Except for damage caused by the Tenant, Landlord shall at its own expense keep and maintain in good repair and working order the roof, latent defects in foundation, subfloor and exterior walls of the Premises. So long as Tenant maintains proper servicing and repairs of heating and air-conditioning equipment as outlined above, Landlord shall be responsible for all required replacements of major components of the said equipment including all costs of installation, except to the extent replacements are required as a result of Tenant's upfitting of the Premises. Landlord shall be under no obligation to inspect the Premises and Tenant shall be responsible for notifying Landlord in writing of any defective condition which Landlord is required to replace and failure to report such defects shall make Tenant responsible to Landlord for any liability incurred by Landlord by reason of such defect. Landlord shall have a reasonable time in which to make such repairs. Landlord shall not be held liable for any damage to Tenant for failure to make any such repair.

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11. GARBAGE: Tenant shall handle and dispose of all rubbish, garbage and waste in a timely manner and in a manner acceptable to Landlord in its discretion and not permit the accumulation (unless in sealed metal containers) or burning of any trash, rubbish, refuse, garbage or waste material in, on, or about the Premises.

12. SERVICES AND UTILITIES: All utilities and services to the Premises shall be the sole responsibility of Tenant, and Tenant shall insure that such utilities and services are separately metered.

13. PAYMENT OF TAXES AND ASSESSMENTS: Landlord shall, during each tax year, pay all real property taxes assessed against the Premises, not assessed against Tenant by the taxing authority as personal property; provided, however, upon request of Landlord, Tenant shall furnish to Landlord a list of the permanent leasehold improvements made by the Tenant to the Premises prior to or after the commencement of the term of the Lease not taxed as personal property (whether owned by the Landlord or the Tenant) together with the cost thereof, and Tenant, upon the demand of the Landlord, shall pay to Landlord, as additional rent, an amount (the "Improvement Taxes") equal to the taxes assessed against such permanent improvements, computed on the basis of the cost of such improvements (as adjusted by the equalization of valuation made by such taxing authority) multiplied by the rate of taxation against real property for such tax year. In the event that any documentary stamps tax, or tax levied on the rental, leasing or letting of the Premises whether local, state or federal, is required to be paid due to the execution hereof, the cost thereof shall be borne by the Tenant. Commencing with calendar year 2011 and for each calendar year thereafter during the term of this Lease (including any renewal term), the Tenant, upon the demand of the Landlord, shall pay to the Landlord, as additional rent, an amount (the "Increased Taxes") equal to the difference between (i) the amount of property taxes and assessments assessed against the Premises during such calendar year (as allocated by Landlord) minus (ii) the amount of the property taxes and assessments assessed against the Premises in calendar year 2010 (as allocated by Landlord).

14. SUBORDINATION OF LEASE: It is agreed that the rights of Tenant hereunder shall be and remain subordinate to the right and lien of any bona fide mortgage placed upon the Premises by Landlord during or before the term of this Lease, and if requested by mortgagee, Tenant will execute a subordination non-disturbance and attornment agreement.

15. ENTRY BY LANDLORD: Landlord shall have the right to enter the Premises at reasonable times for the purpose of inspection, posting notices or supervising any necessary repairs and maintenance required herein to be performed by Landlord. Sixty (60) days prior to expiration of Lease Landlord may post suitable notice on the Premises that same are for rent and may show same to prospective tenant at reasonable times.

16. ASSIGNMENT AND SUBLETTING: Neither this Lease nor any interest herein may be assigned by Tenant voluntarily, involuntarily, or by operation of law, and neither all nor any part of the Premises shall be sublet by Tenant without the written consent of Landlord first had and obtained which consent shall not be unreasonable withheld.

17. WAIVER OF COVENANTS: It is agreed that the waiving of any of the covenants of this Lease by either party shall be limited to the particular instance and shall not be deemed to waive any other breaches of such covenant or of any provision herein contained. No forbearance by either party to seek a remedy for any breach of this Lease agreement shall be deemed a waiver by such party of its rights or remedies with respect to such breach.

18. DEFAULT BY TENANT: This Lease is made upon the condition that Tenant shall punctually and faithfully perform all of the covenants and agreements by it to be performed as herein set forth. Any one or more of the following shall constitute an event of default (each an "Event of Default") under this Lease: (a) any installment of rent, or any other sums required to be paid by Tenant hereunder, or any part thereof, shall at any time be in arrears and unpaid for ten (10) days after written demand therefor, or (b) there be any default on the part of Tenant in the observance or performance of any of the other covenants, agreements, or conditions of this Lease on the part of Tenant to be kept and performed, and said default shall continue for a period of fifteen (15) days after written notice thereof from Landlord to Tenant (unless such default cannot reasonably be cured within fifteen (15) days and Tenant shall have commenced to cure said default within said fifteen (15) days and continues diligently to pursue the curing of the same), or (c) Tenant, or any guarantor of Tenant's obligations under the Lease, shall file a petition in bankruptcy or be adjudicated a bankrupt, or file any petition or answer seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or

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316

future federal, state or other statute, law or regulation, or make an assignment for the benefit of creditors, or (d) any trustee, receiver or liquidator of Tenant or of all or any substantial part of its properties or of the Premises shall be appointed in any action, suit or proceeding by or against Tenant and such proceeding or action shall not have been dismissed within thirty (30) days after such appointment, or (e) the leasehold estate hereby created shall be taken on execution or by the other process of law, or (f) Tenant, or any guarantor of Tenant's obligations under the Lease, shall admit in writing its inability to pay its obligations generally as they become due, or (g) Tenant shall vacate or abandon the Premises. Upon the occurrence of any Event of Default, Landlord at its option may terminate this lease and re-enter upon the Premises and take possession thereof with full right to sue for and collect all sums or amounts with respect to which Tenant may then be in default and accrued up to the time of such entry, including damages to Landlord by reason of any breach or default on the part of Tenant, or Landlord may, if it elects to do so, bring suit for the collection of such rents and damages without entering into possession of the Premises or voiding this Lease.

In addition to, but not in limitation of, any of the remedies set forth in this Lease or given to Landlord by law or in equity, Landlord shall also have the right and option, upon the occurrence of an Event of Default, to retake possession of the Premises from Tenant without process of law, by summary proceedings or otherwise, and it is agreed that the commencement and prosecution of any action by Landlord in forcible entry and detainer, ejectment or otherwise, or any execution of any judgment or decree obtained in any action to recover possession of the Premises, shall not be construed as an election to terminate this Lease unless Landlord expressly exercises its option hereinabove provided to declare the term hereof ended, whether or not such entry or re-entry be had or taken under summary proceedings or otherwise, and shall not be deemed to have absolved or discharged Tenant from any of its obligations and liabilities for the remainder of the term of this Lease, and Tenant shall, notwithstanding such entry or re-entry, continue to be liable for the payment of the rents and the performance of the other covenants and conditions hereof and shall pay to Landlord all monthly deficits after any such re-entry in monthly installments as the amounts of such deficits from time to time are ascertained and, in the event of any such ouster, Landlord rents or leases the Premises to some other person, firm or corporation (whether for a term greater, less than or equal to the unexpired portion of the term created hereunder) for an aggregate rent during the portion of such new lease co-extensive with the term created hereunder which is less than the rent and other charges which Tenant would pay hereunder for such period, Landlord may immediately upon the making of such new lease or the creation of such new tenancy sue for and recover the differences between the aggregate rental provided for in said new lease for the portion of the term co-extensive with the term created hereunder and the rent which Tenant would pay hereunder for such period, together with any expense to which Landlord may be put for brokerage commission, placing the Premises in tenantable condition or otherwise. If such new lease or tenancy is made for a shorter term than the balance of the term of this Lease, any such action brought by Landlord to collect the deficit for that period shall not bar Landlord from thereafter suing for any loss accruing during the balance of the unexpired term of this Lease.

All rights and remedies of Landlord herein enumerated shall be cumulative, and none shall exclude any other remedies allowed at law or in equity.

Tenant agrees to pay a reasonable attorney's fee and all costs if Landlord, in its sole discretion, employs an attorney to collect any rent, or any other sums payable under this Lease or to enforce any covenants, agreements, or conditions on the part of the Tenant to be kept and performed; and Tenant expressly waives all exemptions secured to the Tenant under the laws of the State of South Carolina as against the collection of any debt herein or hereby incurred or secured.

19. INJURIES AND PROPERTY DAMAGE. INSURANCE MATTERS: (a) Tenant agrees to indemnify and hold harmless Landlord of and from any and all claims of any kind or nature arising from Tenant's use of the Premises during the term hereof, and Tenant hereby waives all claims against Landlord for damage to goods, wares or merchandise or for injuries to persons in and upon the Premises from any cause whatsoever, except such as might result from the gross negligence or willfulness of Landlord or Landlord's representatives or from failure of Landlord to perform its obligation hereunder within a reasonable time after notice in writing by Tenant requiring such performance by Landlord.

(b) Landlord shall not be responsible or liable to Tenant, or to those claiming by, through or under Tenant, for any loss or damage which may be occasioned by or through the acts or omissions of persons occupying space adjoining the Premises or any part of the Premises adjacent to or connecting with the Premises or any other part of the Premises, or otherwise, or for any loss or damage resulting to Tenant, or those claiming by, through or

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317

under Tenant, or its or their property, from the breaking, bursting, stoppage or leaking of electrical cable and wires, and water, gas, sewer or steam pipes. To the maximum extent permitted by law, Tenant agrees to use and occupy the Premises, and to use such other portions of the Landlord's property as Tenant is herein given the right to use, at Tenant's own risk. Notwithstanding anything contained herein to the contrary, Landlord shall be responsible if any such damage or loss occurs due to the gross negligence of the Landlord or anyone acting on behalf of the Landlord.

(c) At all times after the execution of this Lease, Tenant will carry and maintain, at its expense a non-deductible: (i) public liability insurance policy, including, but not limited to, insurance against assumed or contractual liability under this Lease, with respect to the Premises, to afford protection with limits, for each occurrence, of One Million Dollars (\$1,000,000) with respect to personal injury and death, and One Hundred Thousand Dollars (\$100,000) with respect to property damage; (ii) all-risks property and casualty insurance, written at replacement cost value and with replacement cost endorsement, covering all of Tenant's personal property in the Premises (including, without limitation, inventory, trade fixtures, floor coverings, furniture and other property removable by Tenant under the provisions of this Lease) and all leasehold improvements installed in the Premises by or on behalf of Tenant; and (iii) if and to the extent required by law, workmen's compensation or similar insurance in form and amounts required by law.

(d) The company or companies writing any insurance which Tenant is required to carry and maintain or cause to be carried or maintained pursuant to this Lease as well as the form of such insurance shall at all times be subject to Landlord's approval and any such company or companies shall be licensed to do business in the State in which the Premises are located. Public liability and all-risks property and casualty insurance policies evidencing such insurance shall name Landlord or its designee as additional insured and shall also contain a provision by which the insurer agrees that such policy shall not be canceled except after thirty (30) days' written notice to Landlord or its designee. Each such policy, or a certificate thereof, shall be deposited with Landlord by Tenant promptly upon commencement of Tenant's obligation to procure the same. If Tenant shall fail to perform any of its obligations under this Lease, Landlord may perform the same and the cost of same shall be deemed Additional Rent and shall be payable upon Landlord's demand.

20. DAMAGE OR DESTRUCTION BY FIRE OR OTHER CASUALTY: If the Premises or any part thereof shall be substantially damaged or destroyed by fire or other casualty, Landlord, at its option, may repair all such damage and restore the Premises without expense to Tenant, subject to delays due to adjustment of insurance claims, strikes and other causes beyond Landlord's control. If such damage or destruction shall render the Premises untenantable in whole or in part, the rent shall be abated wholly or proportionately as the case may be until the damage shall be repaired and the Premises restored. If the damage or destruction shall be so extensive as to require the substantial rebuilding (i.e., expenditure of thirty-three percent (33%) or more of replacement cost) of the Premises, Landlord or Tenant may elect to terminate this Lease by written notice to the other given within thirty (30) days after the occurrence of such damage or destruction unless the Landlord has contracted for or begun reconstruction. In addition, if it is anticipated that said rebuilding will take in excess of ninety (90) days, Landlord shall notify Tenant and Tenant shall be given the option of cancelling said Lease within five (5) working days of said notification or Landlord may rebuild or contract for said rebuilding. Landlord and Tenant hereby release each other from liability for loss or damage occurring on or to the Premises of which they are a part or to the contents of either thereof, caused by fire or other hazards ordinarily covered by fire and extended coverage insurance policies and each waives all rights of recovery against the other for such loss or damage. Willful misconduct lawfully attributable to either party, whether in whole or in part a contributing cause of the casualty giving rise to the loss or damage, shall not be excused under the foregoing release and waiver. Landlord hereby agrees to keep the Premises insured against fire and other perils normally covered by fire and extended coverage. Landlord and Tenant shall obtain appropriate waivers of the insured's rights of subrogation in all policies of insurance obtained by either party related to the Premises.

21. CONDEMNATION: In the event any part of the Premises shall be taken or condemned at any time during the term hereof through the exercise of power of eminent domain, with or without litigation, and Tenant shall determine that the remaining portion of the Premises are not reasonably suitable for its use and occupation, Tenant may, by giving written notice to Landlord within sixty (60) days after the date of such taking or condemnation, terminate this Lease as of a date (to be set forth in said notice) not earlier than thirty (30) days after the date of the notice, and Landlord shall refund any unearned rent paid in advance by Tenant. If Tenant does not terminate this Lease as provided above, this Lease shall continue in force as to the remaining portion of the Premises

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and in such event the monthly rental thereafter payable by Tenant hereunder shall be adjusted and prorated in the exact ratio which the value of the Premises after such taking or condemnation bears to the value of the Premises immediately preceding the condemnation.

All compensation awarded for any taking of the Premises or any interest in either shall belong to and be the property of Landlord, Tenant hereby assigning to Landlord all rights with respect thereto; provided, however, nothing contained herein shall prevent Tenant from applying for reimbursement from the condemning authority (if permitted by law) for moving expenses, or the expense of removal of Tenant's trade fixtures, or loss of Tenant's business good will, but if and only if such action shall not reduce the amount of the award or other compensation otherwise recoverable from the condemning authority by Landlord.

In the event any part of the Premises shall be taken or condemned at any time during the term hereof through the exercise of such power of eminent domain, with or without litigation, and the remainder of the Premises shall not, in the opinion of the Landlord, constitute an economically feasible operating unit, Landlord may, by giving written notice to the Tenant within sixty (60) days after the date of such taking or condemnation, terminate this Lease as of a date (to be set forth in said notice) not earlier than thirty (30) days after the date of the notice; rent shall be apportioned as of the termination date.

22. HOLDING OVER: If Tenant remains in possession of the Premises after the end of the term herein without Landlord's consent, it shall not be construed to be a renewal or extension of this Lease but shall only operate to create a month-to-month tenancy, at a rental equal to 150% of the monthly rate of the last year of the lease term, and said tenancy may be terminated by Landlord at the end of any month upon thirty days prior written notice to Tenant.

23. DEFAULT OF LANDLORD: If at any time during the term hereof Landlord shall default in any of its obligations under this Lease, Tenant may give the written notice to Landlord of its intention to terminate the Lease, together with a statement of the nature of such default, and such termination shall become effective on the thirtieth (30th) day after the date of such notice unless (a) such default shall be cured within thirty (30) days after such notice or (b) if the default is of such a nature that it cannot be cured within such period, the necessary steps to cure such default are duly taken within such period and are thereafter diligently pursued. Termination of this Lease being the sole remedy of Tenant in the event of a Landlord default.

24. ENFORCEMENT: If any action at law or in equity shall be brought to recover any rent under this Lease, or for or on account of any breach of or to enforce or interpret any of the covenants, terms or conditions of this Lease, or for the recovery of the possession of the Premises, the prevailing party shall be entitled to recover from the other party as part of the prevailing party's cost a reasonable attorney's fee, the amount of which shall be fixed by the court and shall be made a part of any judgment rendered.

25. QUIET ENJOYMENT: Landlord agrees that Tenant, keeping and performing the covenants herein contained on the part of Tenant to be kept and performed, shall at all times during the Term of this Lease peaceably and quietly have, hold and enjoy the Premises.

26. NOTICES: Any notice, demand or other instrument or written communication required or permitted to be given, served, made or delivered hereunder may be given, served, made or delivered by mailing the same by certified mail in a sealed envelope, postage prepaid, and if to Tenant, addressed to Tenant at the notice address set forth on page 1 of this Lease, and if to Landlord, addressed to Landlord at Post Office Box 369, Beaufort, South Carolina 29901 and Alan M. Lipsitz, Nexsen Pruet, LLC, P. O. Drawer 2426 (29202), 1230 Main Street, Suite 700 (29201), Columbia, South Carolina. Any such notice, demand or other instrument or written communication mailed as above provided shall be deemed to have been given, served, made or delivered at the time that it was placed in the mail with sufficient postage attached.

27. ERECTION AND REMOVAL OF SIGNS: Tenant may place suitable signs on the Premises for the purpose of indicating the nature of the business carried on by Tenant in the Premises; provided, however, that such signs shall be in keeping with other signs in the Premises is located; and provided, further, that the location and size of such signs shall be approved by Landlord, the City of Beaufort, if required, and comply with all applicable

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319

governmental or municipal ordinances and regulations prior to their erection, and shall not damage the Premises in any manner. Any damage to the Premises caused by removal shall be promptly repaired by Tenant.

28. MECHANIC'S LIENS: No work performed by Tenant pursuant to this Lease, whether in the nature of erection, construction, alteration or repair, shall be deemed to be for the immediate use and benefit of Landlord so that no mechanic's or other lien shall be allowed against the estate of Landlord by reason of any consent given by Landlord to Tenant to improve the Premises. Tenant shall pay promptly all persons furnishing labor or materials with respect to any work performed by Tenant or its contractor on or about the Premises. In the event any mechanic's or other lien shall at any time be filed against the Premises by reason of work, labor, services or materials performed or furnished, or alleged to have been performed or furnished, to Tenant or to anyone holding the Premises through or under Tenant, Tenant shall forthwith cause the same to be discharged of record or bonded to the satisfaction of Landlord. If Tenant shall fail to cause such lien forthwith to be so discharged or bonded after being notified of the filing thereof, then, in addition to any other right or remedy of Landlord, Landlord may bond or discharge the same by paying the amount claimed to be due, and the amount so paid by Landlord including reasonable attorney's fees incurred by Landlord either defending against such lien or in procuring the discharge of such lien, together with interest thereon at a rate per annum equal to 14%, shall be due and payable by Tenant to Landlord as additional rent.

29. SURRENDER OF PREMISES: Tenant agrees to turn over all keys and to surrender the Premises at the expiration or sooner termination of this Lease or any extensions thereof, broom-clean and in the same condition as when delivered to Tenant or as altered, pursuant to the provisions of this Lease, ordinary wear and tear excepted, and Tenant shall remove all of its property. Tenant agrees to pay a reasonable cleaning charge should it be necessary for Landlord to restore or cause to be restored the Premises to the same condition as when delivered to Tenant.

30. FIXTURES/IMPROVEMENTS: All leasehold improvements (as distinguished from trade fixtures and apparatus) installed in the Premises and all fixtures, apparatus and improvements to the kitchen area of the Premises at any time, whether by or on behalf of Tenant or by or on behalf of Landlord, shall not be removable from the Premises at any time, unless such removal is consented to in advance in writing, by Landlord; and at the expiration or sooner termination of this Lease, all such leasehold improvements and fixtures, apparatus and improvements to the kitchen area of the Premises shall be deemed to be part of the Premises, shall not be removed by Tenant when it vacates the Premises, and title thereto shall vest solely in Landlord without payment of any nature to Tenant.

All trade fixtures and apparatus (but excluding all fixtures, apparatus and improvements to the kitchen area of the Premises) owned by Tenant and installed in the Premises shall remain the property of Tenant and shall be removable at any time, including upon the expiration of the Term; provided Tenant shall not at any such time be in default of any terms or covenants of this Lease; and provided further that Tenant shall repair any damage to the Premises caused by the removal of said trade fixtures and apparatus and shall restore the Premises to substantially the same conditions as existed prior to the installation of said trade fixtures and apparatus.

31. RIGHTS OF SUCCESSORS AND ASSIGNS: The covenants and agreements contained in the within Lease shall apply to, inure to the benefit of, and be binding upon the parties hereto, their heirs, distributees, executors, administrators, legal representatives, assigns and upon their respective successors in interest, except as expressly otherwise hereinabove provided.

32. ESTOPPEL CERTIFICATE: Within ten (10) days after written request from Landlord, Tenant shall deliver to Landlord a statement certifying any facts that are then true with respect to this Lease, including without limitation (if such be the case) that this Lease is in full force and effect, that there are no modifications or amendments to the Lease except as disclosed, that Tenant is in possession of the Premises, that Tenant has commenced the payment of rent, that no rent or other sums have been paid to Landlord in advance, and that Tenant claims no defenses or off-set to the due and full performance of its obligations under this Lease.

33. SUCCESSOR LANDLORD/LANDLORD LIABILITY: The term "Landlord" used in this Lease shall refer only to the owner for the time being of Landlord's estate in the Premises, with any subsequent owner succeeding to all the rights and interests of Landlord under this Lease as of the effective date of the relevant transfer.

Upon such transfer Tenant shall be notified in writing and all sums due from Tenant hereunder from and after the date of receipt of such notice shall be remitted as instructed from time to time by the successor Landlord. Landlord shall be and is hereby relieved from any breach of covenants or obligations of Landlord hereunder arising or occurring after the date of transfer of Landlord's estate in the Premises, but only if the transferee shall have assumed and agreed to carry out all covenants and obligations of Landlord hereunder during such time as said transferee shall own or hold Landlord's estate or interest in the Premises. The provisions hereof shall apply to each successive transfer of Landlord's interest or estate. The liability of Landlord under this Lease shall be and is hereby limited to Landlord's interest in the Premises and no other asset of Landlord shall be affected by reason of any liability which Landlord may have to Tenant or to any other person by reason of this Lease, the execution thereof, or the acquisition of Landlord's interest.

34. NATURE AND EXTENT OF AGREEMENT: This Lease shall be subject to the general terms and conditions as follows:

This Lease and the exhibits, and rider, if any, attached hereto and forming a part hereof, set forth all the covenants, promises, agreements, conditions and understandings between Landlord and Tenant concerning the Premises and there are no covenants, promises, agreements, conditions or understandings, either oral or written, between them other than are herein set forth. Except as herein otherwise provided, no subsequent alterations, amendment, change or addition to this Lease shall be binding upon the Landlord and the Tenant unless reduced to writing and signed by them.

No payment by Tenant or receipt by Landlord of a lesser amount than the monthly rent herein stipulated shall be deemed to be other than on account of the earliest stipulated rent, nor shall any endorsement or statement on any check or any letter accompanying any check or payment as rent be deemed an accord and satisfaction and Landlord may accept such check or payment without prejudice to Landlord's right to recover the balance of such rent or pursue any other remedy in this Lease provided.

If any provision or any part of any provision of the Lease shall be invalid or unenforceable under applicable law, such part shall be ineffective to the extent of such invalidity only without in any way affecting the remaining parts of the Lease.

Where by the terms of the Lease a day is named or a time fixed for the payment of the rent or the performance of any of the covenants, agreements, terms or provisions of the Lease, time enters into the consideration and is of the essence of the whole contract.

In its sole discretion, Landlord may apply to any portion of the rent any payments made to Landlord by or on behalf of Tenant (including amounts realized by a reletting or other disposition of the demised premises).

This Lease shall be governed by the laws of the State of South Carolina.

This Lease may be executed in several counterparts, each of which shall be an original and all collectively shall constitute but one instrument.

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321

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed the day and year first above written.

LANDLORD:

JWL PROPERTIES, LLC

By: Lucille B. Epsity
Its: Manager

BRD REAL ESTATE, LLC

By: Michael B. Danish
Its: Manager

Henry Danish
Henry Danish

HDL FAMILY, LLC

By: Alabell Epsity
Its: Manager

TENANT:

TRUMAN'S ECLECTIC IRISH PUB, INC.

By: Helene P. Trone
Its: Director

GUARANTY

The undersigned hereby unconditionally guarantees to Landlord all obligations owed by Tenant to Landlord under this Lease, without set off or defense.

Thomas W. Dailey
Thomas W. Dailey

EXHIBIT A

BASE RENT

<u>Each Calendar Month</u> <u>During the Following</u> <u>Period</u>	<u>Monthly Rent</u>
January 21, 2011 – July 30, 2011	\$0
August 1, 2011 – February 28, 2012	\$1,250
March 1, 2012 – May 30, 2012	\$1,750
June 1, 2012 – January 31, 2015	\$2,300
February 1, 2015 – January 31, 2018	\$2,400*

* Base Rent if Tenant exercise option to extend the term of the Lease.

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323

) IN THE COURT OF COMMON PLEAS
) CIVIL ACTION NO) 2011-CP-07-02216

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In its August 10th, 2012 order, the Court stated:

While there is authority to support the idea that a party is not required to affirmatively plead veil piercing as a separate cause of action (and can in some instances attempt to pierce post-judgment), a party seeking to pierce the corporate veil is still required to set forth basic facts (as well as a request for relief) to put an individual on notice that it seeks to hold the individual liable for the debts of the corporation under a veil piercing theory. Rule 8(a), SCRCP; see also Drury Dev. Corp. v. Found. Ins. Co., 380 S.C. 97, 104, 668 S.E.2d 798, 802 (2008) (finding that only when a party has "pled facts sufficient to survive a motion to dismiss as to the corporate liability claims and the alter ego claim, [should] the trial court [] move forward to determination of both matters.")

Here, Dailey has filed three (3) separate counterclaim pleadings over the course of twelve (12) months: June 3, 2011; December 5, 2011 and June 21, 2012. Dailey has never alleged any facts to support a veil piercing theory or even requested that the corporate veil be pierced. Based on the above, Plaintiffs' Motion for Summary Judgment as to the individual liability of Tirone is hereby granted.

The Defendant moves the court to reconsider based on three factors.

I. Drury Dev. Corp. v. Found. Ins. Co., 380 S.C. 97, 104, 668 S.E.2d 798, 802 (2008) does indeed hold as the court quoted, however, with all due deference and respect, alleging facts are separate from filing a claim. There is no separate cause of action in South Carolina for piercing the corporate veil. The South Carolina Supreme Court in that case quoted from 1 WILLIAM MEADE FLETCHER ET AL., FLETCHER CYCLOPEDIA OF THE LAW OF PRIVATE CORPORATIONS § 41.10 (per. ed., rev. vol. 2006) in parenthetical, "(explaining that an attempt to pierce the corporate veil is not itself a cause of action but rather a means of imposing liability on an underlying cause of

action)" *id at 801*. In the case at bar, there are definitely claims against the corporate plaintiff in the original answer and counterclaim, the amended answer and counterclaim, and the second amended answer and counterclaim.

II. The court in the case at bar seemed to hold in the hearing itself, as opposed to the subsequent order, that the petition for piercing the corporate veil was inappropriate until after judgment against the corporation had been found. The Supreme Court in Drury found, however, that

While it is undoubtedly true that the corporate veil is often pierced post-judgment, it is also true that South Carolina courts frequently consider these issues in one bifurcated action.... We therefore decline to adopt a rule which would require South Carolina's trial courts to resolve in two separate actions what they now ably determine in one. *Id at 801*

III. It was noted in the hearing that the deposition of the Plaintiff had only been conducted three days prior to the hearing so the official transcript could not be produced and referenced but that there were many statements that would support veil piercing. Defendant's counsel requested a motion to delay the hearing³ until said transcript could be produced and, alternatively, that a motion to amend the answer and counterclaim to include those additional facts be allowed. Those requests too were denied under the assertion that a veil piercing action was a separate action (see previous paragraph).

³ Defendant respectfully asserts that pursuant to Rule 56(f), the hearing should have been continued in order for him to obtain a copy of Plaintiff Tirone's deposition transcript, which clearly supports his claim of veil piercing.

However, the Drury court, following Sturkie v. Sifly, 280 S.C. 453, 457, 313 S.E.2d 316, 318 (Ct.App.1984) stated,

If any general rule can be laid down, it is that a corporation will be looked upon as a legal entity until sufficient reason to the contrary appears; but when the notion of legal entity is used to protect fraud, justify wrong, or defeat public policy, the law will regard the corporation as an association of persons." *Id.* The party seeking to pierce the corporate veil has the burden of proving that the doctrine should be applied. *Id.*

[380 S.C. 102] In *Sturkie*, the court of appeals adopted a two prong test for piercing the corporate veil. The first prong analyzes the shareholder's relationship to the corporation by evaluating eight factors. The second prong requires the plaintiff to demonstrate that "fundamental unfairness" would result from recognition of the corporate entity. "The essence of the fairness test is simply that an individual businessman cannot be allowed to hide from the normal consequences of carefree entrepreneuring by doing so through a corporate shell."

During the deposition of the Plaintiff, again, three days prior to the motion hearing, she was asked various questions regarding *Sturkie* 8-prong test requirements (the court in *Sturkie* forgot one of the prongs but it was later endorsed by the SC Supreme Court in Multimedia Publishing of S.C., Inc. v. Mullins, 314 S.C. 551, 431 S.E.2d 569 (1993)). Her answers and documents turned over in discovery show the following:

- (1) whether the corporation was grossly undercapitalized;

The Plaintiff acknowledged that outside of her signed loan agreement to the corporation, she did not disburse the amount of the agreement on the date signed but "...I put the first \$50,000 in. I guess he would tell me things are running low or something like that I guess." (Tirone Depo. 53: 9-11) The original loan disbursement

was not made in full, neither by her testimony nor in documentation provided during discovery.

(2) failure to observe corporate formalities;

a. No financial statement was prepared. (Question: "Has an annual financial statement ever been executed for Truman's?" Answer: "Martin did do some balance sheet, something else. I don't recall exactly what it is. It was never signed by a CPA or anything. I don't know if it is valid or not." (Tirone Depo. 116: 25, 117: 1-5))

b. No officers were elected. (Question: "Were board members ever elected or assigned positions?" Answer: "No, there's only one board member, and that would be me.") (Tirone Depo. 100: 6-9)

c. No records were kept, other than some receipts that she or an accountant friend of hers or her attorney may have in their possession. (Question: "What records did you keep of Truman's other than bank records? Were there any?" Answer: "There were receipts." Question: "What kind of receipts?" Answer: "From things Mr. Dailey bought." Question: "So he would buy things, and then where did the receipts go to? Did he give them to you? Did he mail them?" Answer: "He sent some to Martin, and he gave some to me." Question: "These are debit card receipts and ATM receipts and the like?" Answer: I don't recall what all they are. All I know is I have receipts." Question: "And you have them?" Answer: "Mr. Twombly has them.") (Tirone Depo. 115: 2-18)

d. No bylaws were ever executed. (Question: "There were never any by-laws or any paperwork having to do with the running of the company that were ever written?" Answer: "No." (Tirone Depo 115: 19-22)

(3) non-payment of dividends;

No dividends were paid.

(4) insolvency of the debtor corporation at the time;

No cash flow model had been prepared (Question: "What was the expected cash flow of the bar?" Answer: "There was never a cash model made.") (Tirone Depo. 114:11-13) and she disbursed money solely upon request by the Defendant, whom she claims was not even an employee.

(5) siphoning of funds of the corporation by the dominant stockholder;

The Plaintiff admittedly closed the corporate account and returned the funds to herself outside of the arrangements of the loan agreement she had signed. (Question: "How much is currently in the BB&T business account for Truman's?" Answer: "There is no current BB&T business account." Question: "When did you close the account?" Answer: "I don't remember exactly." Question: "What did you do with the funds when you removed them from the account?" Answer: "There weren't any funds in the account. There might've been-- I take that back. There might have been, like, 200 bucks." (Tirone Depo. 117:6-15)

(6) non-functioning of other officers or other directors;

The Plaintiff stated repeatedly that she was the sole owner and specifically the sole officer. (Question: "No officers were ever selected? You're the sole officer of the corporation?" Answer: "Yes.") (Tirone Depo. 116:18-21)

(7) absence of corporate records; and

No records were kept. (Question: "What records did you keep of Truman's other than bank records? Were there any?" Answer: "There were receipts." Question: "What kind of receipts?" Answer: "From things Mr. Dailey bought." Question: "So he would buy things, and then where did the receipts go to? Did he give them to you? Did he mail them?" Answer: "He sent some to Martin, and he gave some to me." Question: "These are debit card receipts and ATM receipts and the like?" Answer: I don't recall what all they are. All I know is I have receipts." Question: "And you have them?" Answer: "Mr. Twombly has them." Question: There were never any by-laws or any paperwork having to do with the running of the company that were ever written?" Answer: No.") (Tirone Depo. 115: 2-22)

(8) the fact the corporation was merely a facade for the operations of the dominant stockholder.

The Plaintiff repeatedly made clear that the corporation had no employees and that she was the sole owner, and, ipso facto, the corporate entity herself in all but name. (Question: "Did you ever ask Mr. Dailey to be a part of the corporation?" Answer: "No, it was capitalized with my money. I was the sole owner of the bar." (Tirone Depo 43:3-6) ("I capitalized the pub. I owned 100 percent.") (Tirone Depo. 51: 15) ("I was 100 percent ownership of the project. It was all my money. I capitalized everything.") (Tirone Depo. 71:16-18)

Additionally, in regards to where the Plaintiff was a co-director of another corporation, she initiated action to repossess a van leased to the Plaintiff, without regard to the co-director because in her words "It was my van. I paid for it." (Tirone Depo.

97:19-20) As she has spoken that way about Truman's repeatedly throughout her deposition, that sheds light on her absolute refusal to participate in the corporate form in anything but name and has repeatedly acted at her personal discretion at all times, (Tirone Depo. 96:22-25, 97:1-25, 98:1-15)

The second prong of Sturkie test simply states that after a sufficient number of the first prong have been shown that "The second part requires that there be an element of injustice or fundamental unfairness if the acts of the corporation be [280 S.C. 458] not regarded as the acts of the individuals." *Id at 318*. Sturkie also states that "The burden of proving fundamental unfairness requires that the plaintiff establish (1) that the defendant was aware of the plaintiff's claim against the corporation, and (2) thereafter, the defendant acted in a self-serving manner with regard to the property of the corporation and in disregard of the plaintiff's claim in the property." *Sturkie at 319*.

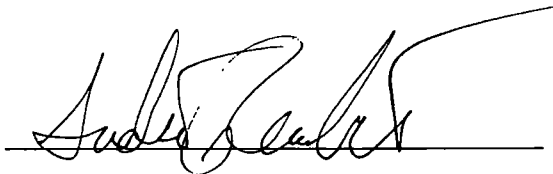
Plaintiff Tirone, in July 2011, well after the original answer and counterclaim of the Defendant, did knowingly and admittedly dismantled the business, hiring movers to empty the bar, thereby effectively destroying it, (Question: "Did you, in fact empty the bar?" Answer: "A U-Haul company emptied the bar." Question: "After the U-Haul company emptied the bar, what was left inside?" Answer: "Miscellaneous items. I can't really recall what." Question: "Was it mostly an empty shell? You took most of the property out?" Answer: "The things that I recovered under my security agreement were taken out." Question: "You signed a multi-year lease on the property. What was your plan?" Answer: "To open up a pub." Question: "After you emptied the pub, what was your plan moving forward?" Answer: "I had no plan.") (Tirone Depo.104:9-24) She also well as closed out the corporate accounts, in

full knowledge of the claims against herself and the corporation, by the Defendant.

(Question: "You would say that you definitely shut down the Truman's business account after the initiation of this lawsuit?" Answer: "Yes.") (Tirone Depo.118:4-7)

In light of these and other factors, the Defendant believes that the court erroneously disallowed the Defendant's argument to pierce the corporate veil and, if the court so requires, the Defendant requests permission to amend the answer and counterclaim again to include such facts necessary to permit piercing the corporate veil which were only verified under oath three days prior to the hearing.

This motion is supported by the statutory and common law of South Carolina, the record of this case, and any memorandum of law and/or affidavits to be filed by this party. Defendant reserves the right to amend or supplement this motion.



André DuBose Rembert, Esq.
Attorney for Defendant

2302 Mount Pleasant Street
Charleston, SC
29403
Telephone Number
843-518-3232
Email Address
andrerembert@gmail.com

Charleston, SC
_____, 2012

EXHIBIT A

FULL TRANSCRIPT OMITTED

RELEVANT PORTIONS INCLUDED
SEPARATELY IN APPELLATE RECORD

EXHIBIT B



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ORD: 894177/CAFE2511

SHIP DATE: 16AUG12
ACTN61: 3.0 LB WFN
ORD: 894177/CAFE2511

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UNIT: 101 G55

BILL: 51622

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IN THE COURT OF COMMON PLEAS
STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

HELENA P. TIRONE, and TRUMAN'S ECLECTIC
IRISH PUB, INC.

Plaintiffs,

vs.

CIVIL ACTION NUMBER
2011-CP-07-02216

THOMAS W. DAILEY,

Defendant.

-----/

The Proceeding taken pursuant to Notice and agreement, before Shannon Casper, Certified Court Reporter and a Notary Public, held before The Honorable Marvin H. Dukes, III, at the Beaufort County Courthouse, Master and Equity Office, Room 212, Beaufort, South Carolina, on the 30th day of July 2012, commencing at or about the hour of 9:15 a.m.

	Page 2
1	
2	APPEARANCES OF COUNSEL:
3	
4	FOR THE PLAINTIFF:
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19	---
20	I N D E X
21	
22	PAGE
23	OPENING REMARKS AND STIPULATIONS ----- 3
24	
25	CERTIFICATE ----- 12

Page 3

1

2 **THE COURT:** All right; thank you.

3 Happy to hear from you.

4 **MR. REMBERT:** All right, Your

5 Honor.

6 The motion by the Plaintiff lists

7 no grounds for basis, other than the no

8 genuine dispute, didn't include an

9 affidavit with it. That doesn't seem to

10 meet the necessity particularly required

11 by Rule 7. However, outside of that,

12 Daily need only prove a scintilla of

13 evidence that would create a genuine

14 issue of material fact for trial, which

15 we will, and therefore, it must be

16 denied.

17 Of course summary judgment is

18 appropriate, if there's no genuine

19 issue of material fact, and it's clear

20 the moving parties are entitled to

21 judgments as a matter of law -- excuse

22 me -- in determining whether any

23 triable issues of fact exists the

24 exhibit from the evidence and all the

25 inferences which can be reasonably

Page 4

1

2 drawn from the evidence must be viewed

3 in the light most favorable to the

4 nonmoving party. In cases applying the

5 preponderance of the evidence, burden

6 of proof, the nonmoving party is only

7 required to submit a mere scintilla of

8 evidence in order to withstand the

9 motion for summary judgment.

10 South Carolina courts outline a

11 two-prong test to determine whether the

12 corporate veil could be pierced. The

13 first part of this test is an eight

14 factor analysis in which many

15 observance and corporate formalities by

16 the balanced shareholders. That was in

17 *Sturkie versus Sifly*.

18 The second part requires to the

19 annulment of injustice or fundamental

20 unfairness that the acts of the

21 corporation not be found with regard to

22 the acting individuals. And I'll run

23 down the first prong -- the eight of

24 the first prong in listing.

25 **THE COURT:** That's two different

Page 5

1

2 things; isn't it? I mean, he -- as I

3 understand the motion for summary

4 judgment, which I glanced at here, I

5 guess this is the one filed

6 June 25th -- seeks an order granting

7 summary judgment in her favor as to her

8 individual liability under the

9 employment contract at issue in this

10 litigation is the way that's defined.

11 And so the question is not whether

12 or not if there's a judgment against the

13 corporation the corporate veil can be

14 pierced. I believe that this summary

15 judgment motion -- and correct me if I'm

16 wrong --

17 **MR. TWOMBLEY:** You're right, Your

18 Honor. And if you go through the

19 second amended complaint there are no

20 allegations whatsoever about veil

21 piercing, and there's no facts plead

22 that would support a veil piercing, so

23 that's not even part of the complaint,

24 it's certainly not a part of the

25 motion.

2 (Pages 2 to 5)

1
2 **THE COURT:** Yes. And, again, I'm
3 happy to hear whatever you want to tell
4 me, but I think that those arguments
5 might be saved for another day. And I
6 think the issue really would be here --

7 **MR. TWOMBLEY:** Well --

8 **THE COURT:** -- or maybe not, I
9 mean, I don't know.

10 **MR. TWOMBLEY:** Excuse me. I'm
11 sorry. I didn't mean to interrupt you.

12 **THE COURT:** No, go ahead.

13 **MR. TWOMBLEY:** Well, I was just
14 going to say they're not part of the
15 complaint. There's no facts alleged in
16 the complaint that the corporate veil
17 should be pierced. There's no facts
18 alleged in the complaint that she was
19 the alter ego of the corporation.
20 There's no facts alleged in the
21 complaint that would support an amount
22 or raise interest theory. There's no
23 facts alleged in the complaint that
24 would support any of those.

25 And under the recent Supreme Court

1 case of Jury Develop Corporation versus
2 Foundation Insurance Company the court
3 concluded saying we hold as long as the
4 plaintiff has plead facts sufficient to
5 survive a motion to dismiss the summary
6 judgment as to the corporate liability
7 claims and the alter ego claims, the
8 trial court can move forward with the
9 termination of both of those. And here
10 there's no facts alleged whatsoever to
11 support an alter ego theory. And
12 here's that case if you'd like to see
13 it.

14 So you are correct in that our
15 motion moves for the only -- it's just
16 for the only claims that are alleged in
17 the complaint that can possibly hold my
18 client individually responsible.

19 **THE COURT:** Okay. But anyway I
20 just didn't -- go ahead.

21 **MR. REMBERT:** Aside from the fact
22 that a party doesn't need to plead veil
23 piercing in a separate cause of action,
24 to the extent that these allegations

1 are not properly incumbent in the
2 second amended counterclaims, the
3 Defense moves to amend the second
4 counterclaims consistent with those
5 allegations.

6 In regards to the signing of the
7 contract, previous documented signatures
8 by the Plaintiff have -- if you'll note
9 on the actual contract she signed as
10 herself, Helena J. Tirone, whereas other
11 signings, specifically a loan agreement
12 and security agreement to and from
13 herself, in one way is the director of
14 the company and the other is private
15 citizen making the loan. She documented
16 when she was signing for the company and
17 when she was not. And that would tend
18 to show that she did not sign -- that
19 she did not sign the employment
20 agreement as the director.

21 These documents are on file.

22 **MR. TWOMBLEY:** Where are these
23 documents on file?

24 **MR. REMBERT:** I mean, I bought the
25

1 entire memorandum this morning that's
2 on file.

3 **MR. TWOMBLEY:** Oh.

4 **THE COURT:** Do you have a copy of
5 the complaint? I'm sure I can find
6 it -- never mind.

7 Okay; I'm sorry, didn't mean to --
8 go ahead.

9 **MR. REMBERT:** Outside the
10 signature issue where again she has
11 signed previously annotating when she's
12 signing for the corporation and then
13 very clearly did not do that on the
14 employment agreement I believe that
15 brings a scintilla of evidence that
16 should be left to the trier of fact.

17 Additionally, or in the alternative,
18 should the court find -- not find that
19 the scintilla of evidence requires it in
20 that way, the Defendant asks for a
21 continuation on the motion of summary
22 judgment until the transcript for the
23 deposition of Plaintiff can be
24 submitted. The deposition was heard
25

Page 10

1 three days prior to this hearing and the
2 transcript is not yet available. There
3 were numerous statements made by the
4 Plaintiff that will support that the
5 Defendant's contention that Plaintiff
6 Tirone is inseparable from Plaintiff
7 Truman's Eclectic Irish Pub,
8 Incorporated.
9
10 **THE COURT:** So the sworn testimony
11 associated with the motion is the
12 transcript -- the deposition
13 transcript; is that right or is there
14 more?
15 **MR. TWOMBLEY:** I thought it was
16 the deposition transcript and the
17 employment agreement that was an
18 exhibit to the deposition that we filed
19 a couple of weeks ago.
20 **THE COURT:** All right.
21 I mean, the first paragraph sort of
22 summarizes who this agreement is
23 between.
24 **MR. TWOMBLEY:** And, again, we
25 asked Mr. Daily on page 141 of his --

Page 11

1
2 **THE COURT:** Yes, I saw that.
3 Anything else on this issue?
4 **MR. TWOMBLEY:** No, your honor.
5 **THE COURT:** Okay.
6 I mean, I'm inclined to grant
7 summary judgment motion. I'll be happy
8 to hear the balance of these motions for
9 upholding or if there's is anything else
10 that is pertinent to hearing.
11 What else do we have?
12 (Whereupon, the Court Proceeding
13 was concluded at
14 approximately 10:23 a.m.)
15
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24
25

Page 12

1
2 **CERTIFICATE**
3
4 **STATE OF SOUTH CAROLINA:**
5 **BEAUFORT COUNTY:**
6
7 I, Shannon Casper, Court Reporter and Notary
8 Public in and for the above county and state, do
9 hereby certify that the foregoing testimony was taken
10 before me at the time and place hereinbefore set
11 forth; that the witness was by me first duly sworn to
12 testify to the truth, the whole truth, and nothing
13 but the truth, that there upon the foregoing
14 testimony was later reduced by computer
15 transcription; and I certify that this is a true and
16 correct transcript of my stenographic notes so taken.
17 I further certify that I am not of counsel
18 to either party, nor interested in the event of this
19 cause.
20
21
22
23 Shannon Casper, CR
24 Notary Public
25 Beaufort, South Carolina

4 (Pages 10 to 12)

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 seven months and then we came back for five or
3 six months, and then we went back for six or
4 seven months.

5 Q Okay.

6 A So I don't recall the exact --

7 Q And I am not --

8 A If I went for six or seven, but we went
9 over. They told us it was going to be a year.

10 Everyone was quite upset and then they said all
11 right, we are not going to stay for a year, but
12 we are going to keep everyone for two years and
13 we are going to do two deployments instead of
14 one year and a six month deployment.

15 Q When you say you came back, was that
16 back to the United States?

17 A Yes.

18 Q Did you go back to Jacksonville?

19 A Well, I went back to -- we were
20 still -- we belonged to our squadron and the
21 squadron was based out of Johnstown,
22 Pennsylvania. So when we returned we returned
23 to Johnstown, Pennsylvania.

24 Q Got you.

25 A And then from there --

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 country like the first or second week of
3 November. I arrived in Afghanistan and I left
4 Afghanistan November of 2010.

5 Q Has there been any point in time in
6 your work career where you have gone longer than
7 three months without any job?

8 A I don't know.

9 Q What about six months or a year?

10 A In my total career?

11 Q Yeah.

12 A Like my life?

13 Q Yeah.

14 A Well, as a job job per se? I did
15 collect unemployment in 2000 -- I think it
16 started in 2010.

17 Q Is that the first time you ever
18 collected unemployment?

19 A Yes.

20 Q So prior to that? Prior to 2010 --

21 A No, wait. Did I say January of 2010?
22 I was in Afghanistan then.

23 Q I think you said January 2011?

24 A So January of 2011 is the first time I
25 collected unemployment.

344
~~344~~

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 A Yes, I believe so. Unless she has done
3 something she hasn't told me about.

4 Q To the best of your knowledge did the
5 Creamer Hill Group ever do anything else other
6 than -- well, I mean what did the Creamer Hill
7 Group do?

8 A The Creamer Hill Group was actually
9 going to own Truman's Pub or half of Truman's
10 Pub or something we had not determined yet.

11 Q And why was that?

12 A The original plan was that on paper
13 until everyone had made their money back, be it
14 Helen, be it my sister, ownership, original
15 ownership intent of Truman's was Creamer Hill
16 Group, Helen, and my sister. That was the
17 original intent.

18 Q Say that again, please.

19 A The original intent of ownership of
20 Truman's Eclectic Irish Pub was to be Creamer
21 Hill Group, Tirone and Sullivan.

22 Q And so the original intent was not for
23 you to have any ownership interest in it?

24 A Not until all moneys that were
25 reimbursed were paid.

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 accounts receivables for money coming ing into

3 EBJ, has it made any money?

4 A I don't know.

5 Q Does EBJ file tax returns?

6 A They haven't yet.

7 Q Never?

8 A They haven't yet.

9 Q Any particular reason why?

10 A No.

11 Q Have you applied for extensions or --

12 A No.

13 Q Who was responsible for forming the
14 corporation, Truman's Eclectic Irish Pub, Inc.?

15 A Who was responsible or who did it?

16 Q Who did it and who was responsible?

17 A I can't really say if someone was
18 designated as you are responsible for it. But
19 Helen and I sat down in have her kitchen and we
20 did it on-line through Bizfilings.com.

21 Q Whose idea was it?

22 A It was mine.

23 Q Had you ever used Bizfilings before?

24 A Yes.

25 Q Is that what you used for EBJ

346

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 Corporation?

3 A Yes.

4 Q What was the purpose of forming that
5 company?

6 A Forming Truman's?

7 Q Yes.

8 A To open the Pub.

9 Q And why not just open it as a sole
10 proprietorship?

11 A Why would you open as a sole
12 proprietorship?

13 Q Well, the question -- I am asking you
14 the question?

15 A Now, what is the question -- why didn't
16 we open it?

17 Q Why did you form a corporation to open
18 the Pub?

19 A It just seemed the smart thing to do.

20 Q Why?

21 A Because it seemed the smart thing to
22 do. I don't understand how to answer that
23 question why. It was the smart thing to do.

24 Q Was it for tax reasons, liability
25 reasons? Some of the same reasons you testified

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 you opened EBJ Corporation?

3 A I think it would be -- for one it would
4 be easier to delineate ownership and the
5 advantages, the big thing was it just wouldn't
6 make sense to open it as a self proprietorship.

7 Q Why? Why would it not make sense in
8 your mind?

9 A That is too much personal liability.

10 Q I understand you take a position that
11 your -- that Truman's, the Pub, the corporation
12 was your idea based on in part on your dog that
13 was named Truman, right?

14 A Yes.

15 Q And you went to the website you had
16 used before to order the paperwork to form the
17 corporation, right?

18 A Yes.

19 Q And did you make the decision as to
20 where the Pub would be located?

21 A You mean in a town or in the street?

22 Q Both?

23 A In the street, yes.

24 Q Yes to both?

25 A I mean yes, we -- yes.

348

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 Q And it was your idea as to what to open
3 as far as a Pub versus some other type of
4 restaurant or facility?

5 A It was my only idea from the beginning
6 without even Helen involved.

7 Q Okay.

8 Was it your idea to form the
9 corporation?

10 A Yes. Well, actually to form the
11 corporation -- yeah, it had to have been mine.

12 Q Okay.

13 A I can't see where -- go ahead. I am
14 just confused by this because it -- well, just
15 confused by it.

16 Q Well, what are you confused about? I
17 am just asking you whose idea it was to start
18 the Pub, form a corporation, locate it in
19 Beaufort, open a Pub?

20 A Yeah.

21 Q You testified all those were your
22 ideas?

23 A Yeah, they were.

24 Q Do you have any question about those
25 questions?

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 Q Well, does E have any type of
3 insurance?

4 A No.

5 Q How was Truman's initially capitalized?
6 In other words where did the money come from to
7 conduct the business of Truman's?

8 A As in Bizfilings?

9 Q No, not with Bizfilings. I mean
10 Bizfilings presumably was just some small fee
11 you paid for the paperwork.

12 A Yeah.

13 Q But I am talking about when it comes
14 time to, you know, purchase equipment and pay
15 for leases and pay for other things, where did
16 that money come from?

17 A That is from Helen. Most of it.

18 Q And do you know how much money she
19 contributed?

20 A Not exactly, no. As I sit here, no, I
21 don't know exactly.

22 Q Do you believe that she contributed a
23 sufficient amount of money in order to conduct
24 the business of Truman's?

25 A Yes.

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 Q Did Truman's ever purchase insurance?

3 A Yes, they did.

4 Q And what type of insurance was that?

5 A Everything a business would need.

6 Q Who made the decision about what type
7 of insurance was needed? Did you make those and
8 arrange for that insurance?

9 A I spoke with Benji Hill and took his
10 advice on what we needed.

11 Q But you would have instigated those
12 conversations?

13 A Yes.

14 Q And taken all of the actions to obtain
15 whatever insurance you felt was needed?

16 A Yes.

17 Q What about -- I understand that
18 Truman's had its own bank account, correct?

19 A Yes.

20 Q That it held meetings?

21 A Did Truman's bank account --

22 Q The Truman Corporation?

23 A The Truman Corporation, yes.

24 Do you mean board meetings, or do you
25 mean just like entities got together and had

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 phone conferences, because yes to both.

3 Q I mean all of the things that a
4 corporation needed to do Truman's did as far as
5 having meetings?

6 A Well, it was brand new and we did have
7 a corporate meeting or we did have a board
8 meeting.

9 Q Okay.

10 A But we also had just standard okay, how
11 is the business tracking meetings, and what do
12 we need to do to get the liquor license, or how
13 do we move forward with -- who is going to be
14 our accountant. And that is I believe how she
15 originally found you, because I don't know who
16 it was because someone said well, he might be a
17 good business attorney.

18 Q But all of the corporate formalities as
19 far as having meetings, having a separate
20 checking account, going to talk to an
21 accountant, all of the things that needed to be
22 done to have a real functioning corporation were
23 done?

24 A I believe so.

25 Q So that would be a yes?

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 A Well, I mean that is a broad question,
3 because I don't have a checklist in front of me
4 that says these are the things that you have to
5 do.

6 Q No, I understand --

7 A I can't state that all those boxes were
8 checked off the top of my head right now. But I
9 do know that first we talked about insurance,
10 and yes, we got insurance. Did we have
11 meetings? Yes, we had meetings. Did we have a
12 board meeting? Yes, we did have a board
13 meeting.

14 Q I think that is a fair point. I know
15 you don't have a set list in front of you, but
16 in your mind, in Tom Dailey's mind?

17 A From where we were in the progress --
18 there may have been things that haven't been --
19 that weren't done yet, but they may have been
20 coming up or there may have been an open box
21 that needed to be checked that we needed to do.

22 Q But in your mind all of the corporate
23 formalities that needed to take place were
24 either done or in the process of being done and
25 this was a real --

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 A We were on our way. I am not going to
3 say they were almost done, but I am going to say
4 that we were on our way to getting things done.
5 I mean because, you know -- no, that is all I
6 will say.

7 And I would like to add that sometime
8 in the next five minutes if I could go to the
9 bathroom I would appreciate it.

10 MR. TWOMBLEY: We will go off the
11 record.

12 (Whereupon, an off-the-record
13 discussion was held.)

14 THE WITNESS: Also let me
15 apologize for my appearance. I came
16 off of a 12 shower shift and drove two
17 and a half hours to be here this
18 morning.

19 BY MR. TWOMBLEY:

20 Q Well, I'm sorry you had to do that, but
21 as you know we tried for eight months or so to
22 get your deposition scheduled. And this was --

23 A You know we could argue about that.

24 Q Well, you know --

25 A It is not quite eight months, but that

34

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 to make decisions about the corporation, right?

3 A Yes.

4 Q And they were functioning officers and
5 directors of the corporation?

6 A Yes.

7 Q And there were corporate records,
8 minutes were taken of meetings, et cetera, and
9 so on?

10 A Yes.

11 Q Do you have any evidence that Helena
12 Tirone ever siphoned any funds away from the
13 corporation?

14 A I don't understand the question or why
15 I am being asked it.

16 Q Let me ask you differently, do you have
17 any evidence that Helena misappropriated any
18 money from Truman's?

19 A No.

20 Let me ask you this --

21 Q I can't answer your questions.

22 A I am asking for verification of the
23 question, I guess.

24 Q I am not going to be able to answer it,
25 but if you want to make a statement you can.

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 A Can I ask a question about myself if
3 that would be considered siphoning? If I was to
4 rent a hotel room, would that be considered
5 siphoning?

6 Q My question to you is do you have any
7 evidence that Helena inappropriately siphoned
8 away, embezzled, or mismanaged money of the
9 corporation for her own personal interest?

10 A No.

11 Q And you don't take the position that
12 this corporation was merely a facade for Helena
13 Tirone? It was an actual functioning
14 corporation, right?

15 A Yes.

16 Q We had talked about observing corporate
17 formalities and you said you didn't have a list
18 of all the -- actually strike that question.

19 In your most recent counterclaim you
20 have alleged that there were various items in
21 the Pub that you purchased that you are entitled
22 to have returned to you, are you aware of that?

23 A I purchased and that were previously
24 mine from the beginning.

25 Q And you believe you are entitled to get

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 could have asked for because it wouldn't make
3 sense for her to destroy all the efforts of the
4 Pub and for me to sit back and say oh, well --
5 so that was my only recourse. I mean the
6 verbiage, the inference the word I don't know.
7 I mean the words in there, it was really the
8 only way to say it.

9 It is not because oh, I paid for have.
10 Them give them back to me. Well, we didn't open
11 the Pub so here is your glass washer back. That
12 is not really the intent. But it is the only
13 reaction I can do. That is all I can say is
14 hey, if you are going to shut everything down,
15 then at least give me my personal items back.
16 And she still has contractor items in there.
17 People that were working for us that don't
18 belong to me.

19 So your question, if I am getting it
20 right, you just want to know yes or no do you
21 feel because I paid for them I deserve them
22 back?

23 Q Yeah?

24 A Is that the question?

25 Q Well, I believe you have already said

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 Q Do you know when you downloaded that
3 agreement?

4 A It would have been just a few days
5 before. She signed it a few days earlier.
6 Within a week of when she signed it.

7 Q But from the time it was downloaded to
8 when it was sent to Helena, she and you had time
9 to discuss the agreement?

10 A Yeah.

11 Q And you think that was about a week?

12 A A week or within a week. I don't think
13 it was much longer than a week. If it was
14 longer than a week. I know we had time to
15 discuss it and I know we discussed the need for
16 it.

17 Q But just so we are clear, you are the
18 one who drafted it, though, right?

19 A Yes. Well, modified it.

20 Q Right.

21 A Or downloaded it.

22 Q Downloaded and it and then made all the
23 modifications to it?

24 A Well, yes. It was not the form that
25 she signed was not the exact download because it

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 actually -- the download actually said insert
3 here and that type of thing.

4 Q All I am trying to establish is that
5 you were the one that were inserting here?

6 A Yes.

7 Q There was no one else who was inserting
8 information into the document?

9 A No.

10 Q Or taking stuff out? And adding other
11 stuff? All that was done by you?

12 A Yes.

13 Q So to the extent that means you drafted
14 it, then you drafted it?

15 A I used a download. I didn't draft it.
16 Draft it means created it.

17 Q Okay.

18 On the form the way it was downloaded
19 did you have the ability to take out anything
20 you wanted to?

21 A I don't remember.

22 Q But to the extent things were inserted
23 into it, you were the one who actually did that
24 mechanically and typed it in?

25 A Yes.

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 changed when she asked me a personal question
3 and I gave her a personal answer that turned it
4 into strictly a business relationship. From
5 then on it just got -- that is when everything
6 went downhill.

7 Q Again, focusing solely on the business
8 relationship, how did the relationship in your
9 opinion, the business relationship change from a
10 partnership to what?

11 A When did it change from a -- say that
12 again?

13 Q When did it change from a partnership
14 and what did it change to?

15 A It changed from a partnership,
16 unwritten, undocumented, but intent a
17 partnership, to mistrust, to the employee
18 contract.

19 Q So I just want to make sure I
20 understand that from January of 2011 until May
21 the 4th of 2011 your understanding was that you
22 were partners with Helena Tirone in Truman's
23 Eclectic Irish Pub, Inc.?

24 A Actually right up until all this
25 started getting more in depth, we were always

368

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 partners; but I now had paperwork stating
3 somewhere in existence that I was going to be
4 half partner and all the family side of it, my
5 sister being involved, Creamer Hill being
6 involved with the employee contract was just
7 something that said -- even though I am not
8 technically a partner right now, I am going to
9 be 50 percent owner of the company.

10 Q But prior to the execution of that
11 document which was executed on May 4 of 2011,
12 prior to that you believed that you and Helena
13 were partners?

14 A Yes.

15 Q And you believed that that partnership
16 relationship changed when the employee -- the
17 key employee agreement was executed, which
18 changed it from a partnership to an
19 employee/employer relationship?

20 A That is not what I said.

21 Q Where did I go wrong? Explain that to
22 the ladies and gentlemen of the jury.

23 A It changed when she asked me if I still
24 loved her as much as I did before, and that is
25 when everything went screwy.

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 Q So your testimony is that when Helena
3 asked you that question, that that changed the
4 legal relationship between you and her?

5 A No, that is when I believe --

6 Q Well, let us start over again so we are
7 clear and make sure. I am not interested in the
8 emotional stuff, how that may have, you know,
9 affected different things. I am just focused on
10 what you believe the legal relationship was
11 between you and Helena as it related to the Pub,
12 and the legal rights that you believed that you
13 all had with one another with respect to the
14 Pub, okay?

15 A Okay.

16 Q So tell me what your understanding of
17 that legal relationship was and when it may or
18 may not have changed?

19 A The legal relationship, the documented
20 relationship -- as for the legalese and when it
21 was -- when whatever precedent was set or
22 whatever one of the truly legal, that is up to
23 the attorneys. In my belief it more than
24 likely -- well, not more than likely. In my
25 belief once there is a signed document, then it

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 has gone beyond a family, it is a legal process,
3 and it is something official.

4 So I would have to say on May 4 that is
5 when we went from unwritten to written, and that
6 is when it became at least documented.

7 Q But did you believe you were partners
8 before the contract was executed?

9 A I believe we were partners before and
10 after.

11 Q And after?

12 A Yes, I mean that was the intent and the
13 feeling I had.

14 Q And always partners?

15 A Yes. That was the spirit and the
16 intent behind it, yes. Even when it was going
17 to just be Helen, my sister and the Creamer Hill
18 Group, I wasn't technically, but I was really a
19 partner in it. That is how it started.

20 Q So it is your testimony that from
21 January of 2011 through June of 2011 that you
22 and Helena Tirone were partners in the Pub in
23 Truman's Eclectic Irish Pub, correct?

24 A Yes, I believe so.

25 Q And that that partnership relationship

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 never changed from January to June?

3 A I mean figuratively no, but on paper we
4 had to do the contract. I needed --

5 Q Explain?

6 A The contract protected me, where before
7 I wasn't protected at all. And when I learned
8 that she basically had devised a plan to get rid
9 of me once the Pub was open, that is when I felt
10 the need that I needed some type of protection.
11 And the only form of protection I could really
12 get was in an employee contract, and that is why
13 the employee contract was written the way it
14 was; and that is why it mentions 50 percent
15 ownership once she has been reimbursed
16 everything.

17 Q Is it your testimony that you believed
18 that you and Helena Tirone were partners in the
19 Pub and in Truman's Eclectic Irish Pub from
20 January 2011 through June of 2011?

21 A Here again, I don't want to seem like I
22 am trying to evade anything, but when you use
23 exact dates like that, okay, I am cautious.
24 Because all I can tell you is -- I mean I even
25 thought possibly she would come to her senses

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 I am going to overnight this to you, please
3 review it and send it back to me if you want to
4 get in the Taste of Beaufort. Otherwise I am
5 not doing anything else for the Pub. If I am
6 just there as free labor at that point, because
7 she was threatening me with just shutting
8 everything down --

9 Q I thought you were a partner?

10 A We are here to discuss that, to dispute
11 that. I was a partner in my heart, in my eyes I
12 was a partner. But you also --

13 Q Well, weren't you free labor --

14 A I don't know how to answer that. It
15 sounds like from your facial and your body
16 language you are trying to be tricky, and I am
17 not trying to give you a tricky answer. All I
18 know is that --

19 Q Why don't you just explain to the
20 ladies and gentlemen of the jury what you
21 believed your status was prior to the execution
22 of the contract? Were you a partner as you
23 testified earlier, or were you free labor as you
24 just testified?

25 A I never testified I was free labor.

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 Q Just so we are clear, just to make sure
3 that the jury understands is that it is your
4 testimony here today that you don't know why you
5 drafted two key employment agreements, one that
6 began May 1 and the other that was June 1?

7 A If you are looking for a solid
8 rationale behind the duplicate --

9 Q I am just asking for your rationale.

10 A Yes, you are looking for my solid
11 rationale?

12 Q Any rationale? I am just asking you to
13 explain why they were there? Why you did two?

14 A I don't know.

15 Q Would you agree with me, Mr. Dailey,
16 that both of these agreements as stated in
17 paragraph 1 of both agreements are between
18 Truman's Eclectic Irish Pub, Inc., employer, and
19 Thomas W. Dailey, employee?

20 A Yes.

21 Q Do you remember what terms that you
22 were able to add into the document where there
23 were blanks that you could insert?

24 A No, I don't.

25 Q Presumably the date would have been

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 A Within the next few minutes can I use
3 the restroom?

4 Q You can go now. Any time.

5 (Whereupon, a short break was
6 taken.)

7 BY MR. TWOMBLEY:

8 Q Now, we have gone through some of these
9 provisions.

10 The contract sounds pretty favorable to
11 you, would you agree with me on that?

12 A Yes.

13 Q Let me ask you this, let's assume that
14 you did something wrong, and deserved to be
15 fired, just assume for me that is the case, what
16 was Helena's, or what was Truman's Eclectic
17 Irish Pub, Inc., the employer's recourse against
18 you?

19 A Well, as we talked about before we were
20 actually partners.

21 Q Assume that you did something improper
22 or illegal and Truman's Eclectic Irish Pub,
23 Inc., the employer --

24 MR. REMBERT: Objection to the
25 form. Assumption. Assumptions for the

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 contend you are entitled to 50 percent ownership
3 of the company as well, is that correct?

4 A Yes.

5 Q And pursuant to the terms of this
6 contract, even if you did something improper and
7 deserved to be fired, you would get a quarter of
8 a million dollars and half ownership interest of
9 this company, right?

10 A If that is what the contract says, yes.

11 Q I am asking you if that is what it
12 says? That is what I think it says?

13 A I don't like the term, if I was doing
14 something improper, because I wouldn't do
15 something improper; so I can't answer a question
16 that involves me stating if I would do something
17 improper.

18 Q You don't think it is possible that
19 someone could do something improper?

20 A Someone could.

21 Q Okay.

22 A But I would not do anything improper or
23 illegal that would potentially hurt this Pub.

24 Q But if you did you would agree with me
25 that what happens -- if that happens you get

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 \$261,000 and half ownership interest of the
3 company pursuant to the terms of the contract?

4 A I'm sorry, unless my lawyer tells me to
5 answer that, I am not going to answer a question
6 that involves me doing something improper.

7 MR. TWOMBLEY: Tell him he has got
8 to answer.

9 MR. REMBERT: You are required to
10 answer questions truthfully as you
11 personally know them to be true.

12 THE WITNESS: Then please -- then
13 I'm sorry to ask you this again, but
14 just give me the question one more
15 time.

16 MR. TWOMBLEY: Would you read the
17 question back, Madam Court Reporter?

18 (Whereupon, the record was read
19 back.)

20 THE WITNESS: Pursuant to the
21 terms of the contract, yes.

22 BY MR. TWOMBLEY:

23 Q Mr. Dailey, isn't it true that after a
24 dispute arose between you and Truman's that you
25 changed the locks at the Pub?

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 penalty of perjury when you executed the
3 affidavit?

4 A I certainly did.

5 Q Did you type the affidavit up?

6 A I don't know if I typed it up or not.

7 Q You had ample opportunity to review it
8 before it was submitted to the Court?

9 A I must have, yes.

10 Q And I am handing you a copy of the
11 affidavit of Tom Dailey marked as Plaintiff's
12 Exhibit 4. Is that your affidavit?

13 A Yes, it is. So I am guessing in here
14 somewhere I said I knew she was doing it or she
15 was doing it?

16 Q Just wait. All you need to do is
17 answer the questions.

18 A Okay.

19 Q Would you please turn to page 12.

20 Page 12, paragraph 26 at the bottom of
21 the paragraph: During this inspection Helena
22 arrived. She appeared to be in a very unstable
23 condition. When we spoke about the inspection
24 she was yelling and emotional. Quote: "She
25 said she was going to change the locks and we

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 needed a cooling off period," end quote.

3 A Okay.

4 Q Is that what this says?

5 A Yes.

6 Q And this is your affidavit?

7 A It is.

8 Q And you swore to tell the truth? And
9 you executed this under oath?

10 A I did.

11 Q And she did tell you she was going to
12 change the locks, right?

13 A Yes, according to this. I remember
14 now, yes, she did.

15 Q And she said because you all needed a
16 cooling off period?

17 A Okay, yes.

18 Q Well, not okay. I mean that is what
19 happened?

20 A Yes, I agree. But when you just asked
21 me that question --

22 Q You don't have to comment --

23 A I didn't remember.

24 Q You don't have to comment.

25 And so when the locks were changed by

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 the premises, correct?

3 A Not initially, no. I was told I could
4 stay because I had the documentation that
5 allowed me to stay.

6 Q But answer my question, ultimately you
7 were required to leave the Pub, correct?

8 A Ultimately, yes.

9 Q And a restraining order was entered
10 against you barring you from going to the Pub?

11 A Yes.

12 Q When did you tell the Washington State
13 Unemployment Office about your employee
14 contract?

15 A I think it may have even been before we
16 had it signed, because I talked to them about
17 the real estate job also.

18 Q Who is your point of contact out there?

19 A I have no idea. You have got to
20 believe me, it is hard enough to get a person on
21 the phone.

22 Q What is your Social Security Number?

23 A 092-62-2664.

24 Q Do you have a driver's license with
25 you?

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 company, because when I needed things -- like
3 here is an example, Diplomatic Group, I needed
4 airline tickets, so I used this as a business
5 expense.

6 Q And is it your testimony that all of
7 the expenses on these bank statements are
8 ordinary and necessary business expenses in your
9 furtherance of the EBJ Corporation?

10 A I can't say all of them are, because I
11 have not gone through this.

12 Q In fact, you haven't even filed tax
13 returns since this company has been in
14 existence, have you?

15 A Since the first one was owed was -- no,
16 I have not to answer your question.

17 (Whereupon, Plaintiff's Exhibit
18 Number 7 was marked for
19 identification.)

20 BY MR. TWOMBLEY:

21 Q I am going to hand you what has been
22 marked as Plaintiff's Exhibit 7 now.

23 This is a copy of your personal bank
24 statements, correct?

25 A Yes.

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 that that would be the reason.

3 So you asked me and I told you.

4 Now, I am giving you an opportunity to
5 say that is not true, and you tell us why it was
6 moved over every month?

7 A Well, I can tell you one. Only until
8 recently did I have a debit card with my
9 personal name on it.

10 Q And why was that?

11 A Because it was too difficult to get
12 another one while I was overseas, and I happened
13 to have an EBJ card. And the only -- well, that
14 is it.

15 So as for your comment about trying to
16 avoid child support, that is just not
17 applicable.

18 Q Well, you have been held in contempt
19 several times for not paying child support,
20 haven't you?

21 A Yes.

22 Q And there has been several orders
23 issuing requiring you to pay, correct?

24 A Yes.

25 Q And we can go through this each month

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 Q Why were you paying her out of EBJ?

3 A Just called her an independent
4 contractor. She wasn't an employee. She didn't
5 have a W-2 or anything.

6 Q Was she doing work for EBJ?

7 A Yes.

8 Q What kind of work?

9 A Like paying things, and she also worked
10 for me personally. She helped me pay -- well, a
11 lot of times what Cheryl would do for me was go
12 pay cash for my child support.

13 Q Isn't it true, Mr. Dailey, that you
14 wrote checks to Cheryl made out to cash,
15 instructed her to take part of that cash -- let
16 me start over.

17 Isn't it true that you wrote checks to
18 Cheryl Marlowe out of the Truman's Eclectic
19 Irish Pub checking account, instructed her to go
20 cash those checks, instructed her to take part
21 of the cash and pay your child support payments,
22 and then take the other part of the cash to pay
23 her for services that she was individually
24 performing for you?

25 A I am not going to quote that with yes,

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 but that sounds familiar that she would help me

3 --

4 (Whereupon, a short break was

5 taken.)

6 (Whereupon, Plaintiff's Exhibit

7 Number 8A was marked for

8 identification.)

9 BY MR. TWOMBLEY:

10 Q Mr. Dailey, I am going to give you what

11 we marked as --

12 A Actually, I was still answering about

13 Cheryl.

14 Q We can get back to that.

15 A Okay.

16 Q Actually, go ahead.

17 You had said you had something else to

18 say about --

19 A No, we were in the middle of talking

20 about Cheryl, and we got cut off.

21 Q I think what you just said was I wasn't

22 finished answering the question about Cheryl.

23 A Yes.

24 Q And so did you just say that?

25 A Yeah. So what I was getting at was

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 even though I don't recall the exact words that
3 I said to Cheryl. And actually I don't recall
4 giving her a check, but it would have been more
5 convenient to give her a check from Truman's Pub
6 to deposit, and I don't deny that.

7 But I will say that Helen was in total
8 knowledge of everything that we did between
9 Truman's and EBJ checking account.

10 Q So it is your -- well, first of all
11 let's just make sure we got the facts down, that
12 you don't deny them.

13 You don't deny the fact that you would
14 write a check out to cash, give it to Cheryl
15 Marlowe who you testified was not working for
16 the Pub, you would then instruct her to cash the
17 check, take part of the money to pay your
18 personal child support obligations and take the
19 other part of the money for performing the
20 services that she performed for you or EBJ
21 Corporation, correct?

22 A I couldn't follow exactly everything
23 you said, but yes, in a nutshell Cheryl would
24 help me and EBJ take care of things like that.
25 And Helen knew it and she not only knew it, she

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 Q Did you ever represent to her that you
3 were a fiscally responsible person?

4 A I don't know in what way that would
5 be --

6 Q Just did you ever represent to her that
7 you were a fiscally responsible person?

8 A Yes, I have.

9 Q Did you ever represent to her that you
10 possessed business acumen?

11 A Yes.

12 Q Did you ever represent to her that you
13 were otherwise capable and able with opening a
14 bar or restaurant in Beaufort?

15 A Yes, I did.

16 Q Is it fair to say that while there was
17 no written agreement that you and Miss Tirone
18 had discussed the possibility that in the future
19 that you would be employed to manage the Pub and
20 that potentially in the future you would be
21 given opportunities to participate in ownership?

22 A No, it was always it would be
23 ownership. We were always a partner.

24 Q Now, as a partner would you agree with
25 me that not only would you be a partner with

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 Q March 9, \$2,000, what was that for?

3 A That would have been \$1100 for the
4 storage and \$900 went to the EBJ. Or that is
5 where Cheryl helped me pay child support, or
6 that is where she went and did that check that I
7 am assuming that is what you are referencing.
8 And all beknownst to Helen, I mean right or
9 wrong that was a way to get a deduction for the
10 company and --

11 Q So she was just willing to take \$900
12 and give it to you for you to pay your child
13 support so you all could get a deduction from
14 the company?

15 A No, not so we could, but we hadn't done
16 anything yet. So we were -- that is what we
17 did. I was not doing that by myself.

18 Q And in April 14, 2011?

19 A I don't remember, honestly. I know I
20 looked at these three charges. Andre had me
21 look at them before like a week ago or something
22 or months ago, and give me a minute and it will
23 come to me.

24 Q Okay.

25 It says renovations walls/bathrooms on

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 Q Have you ever filed for bankruptcy?

3 A Yes, I have.

4 Q When did you do that?

5 A Either 1999 or 2000.

6 Q Do you know when that bankruptcy

7 terminated? When it was over?

8 A No.

9 Q Do you know what the end result was?

10 A You mean Chapter 7 or Chapter 13?

11 Q What happened at the end of it? Did

12 you come out of it? Did you repay your debts?

13 A No.

14 Q You didn't? They were wiped clean?

15 A Yes.

16 Q Would that have been filed -- where was

17 it filed?

18 A Jacksonville, North Carolina.

19 Q And you would have filed it in '99 or

20 2000?

21 A Yes.

22 Q Did you ever tell Helena that?

23 A Yes.

24 Q So your testimony is that Helena knew

25 that you had filed for bankruptcy?

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 understand you correctly the only money that has
3 come out of your pocket to date is \$2,000 that
4 you paid Fred Kuhn, otherwise you have not
5 incurred any attorneys' fees?

6 A Not to date, no.

7 Q When you had the locks changed at
8 Truman's, Helena had already had the locks
9 changed so you didn't have a key, correct?

10 A Yes.

11 Q What did you tell the locksmith? How
12 did you all get into the building?

13 A I told him that I was part owner.

14 Q And tell me everything you can remember
15 that you told the locksmith?

16 A That is all I remember, I mean that we
17 had a conversation. But the only thing of
18 importance was I need to get in there to
19 continue opening the Pub, and I am part owner.
20 That is the same thing that I told anyone that
21 mattered.

22 Q Did you ever tell people that you were
23 the only person that had a financial interest in
24 the Pub?

25 A I don't think I told anyone anything

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 about whose financial interest was whose,
3 because I was trying to raise an excitement
4 about it and really we never even talked about
5 ownership. All I would say is I am helping open
6 up a Pub for friends and family. That was my
7 response to anyone who talked about the Pub and
8 that created an excitement about it, because I
9 just think it did. Because there was no -- why
10 are you working there, what were you doing
11 there? Well, I am helping friends and family
12 open up a Pub, and that is all they needed to
13 know.

14 So depending on who you talk to I
15 mean --

16 Q So if we subpoena all these people for
17 depositions, the people down at Luther's and the
18 Sanford's and all of them and we ask them, that
19 is what they would all say that you told them
20 about the Pub was that you were helping open it
21 for friends and family?

22 A No, I don't know what I told the
23 Sanford's or Julia, but all I know is all they
24 knew or -- you know, I was helping open up a
25 Pub. And I did not say to people, oh, I am the

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 only financial thing here. I am the only
3 financial entity, excuse me.

4 Q Can we turn to page 8 of the complaint,
5 please.

6 Isn't it true that over the past
7 several years you have failed to make child
8 support payments as ordered by the Family Court?

9 A That is correct.

10 Q Is it true that as of May of 2011 you
11 were currently in arrears in child support in
12 the amount of \$4,377.08?

13 A That is correct.

14 Q Is it true that you defaulted on a
15 \$354,000 construction loan with the Marine Corps
16 Air Station Beaufort Federal Credit Union and
17 that that financial institution had a deficiency
18 judgment against you in the amount of
19 \$392,690.12?

20 A No, I can't attest to the dollar
21 figure, but yes, there was a foreclosure.

22 Q And there was a large deficiency
23 judgment against you? If you would like to look
24 at Exhibit G which is attached that is where I
25 got that number from in the official court

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 document?

3 A If it is there, yes. But as we sit
4 here now I did not know that dollar figure.

5 Q But you knew you had defaulted on this
6 loan, right?

7 A I knew the house had gotten foreclosed
8 on.

9 Q Right. And you knew that there was a
10 deficiency --

11 A Or the properties got foreclosed on.

12 Q Right?

13 A Okay.

14 Q You knew that you had a deficiency
15 judgment against you?

16 A Actually I didn't.

17 Q Did you know that you had defaulted, or
18 isn't it true that you had defaulted on \$130,500
19 balloon note with MCAS Beaufort Federal Credit
20 Union and that they had a deficiency judgment
21 against you with respect to that loan in the
22 amount of \$150,519.88?

23 A Yes.

24 Q Is it true that you had defaulted on a
25 \$270,000 note with Deutsche Bank National Trust

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 Company and that they had a deficiency judgment
3 against you in the amount of \$327,942.29?

4 A Yes.

5 Q Isn't it true that you had defaulted on
6 a \$5,000 contract with the Central Star Credit
7 Union for the purchase of a 1998 Jeep Wrangler
8 and that they had a judgment against you for
9 \$3,051.71?

10 A I didn't know that, but yes.

11 Q Isn't it true that you had another
12 contract with the Central Star Credit Union for
13 the purchase of a 2007 Honda Element and that
14 they had a collection action against you in the
15 amount of \$27,493.90?

16 A All right, yes. Yes, to the issue.
17 But I don't know -- I didn't have the numbers
18 known off the top of my head.

19 Q Is it true that you had defaulted on a
20 contract with the Central Star Credit Union for
21 the purchase of a 1987 Pace Arrow and that a
22 collection action was being maintained against
23 you in the amount of \$10,820.63?

24 A Yes.

25 Q Is it true that you had defaulted on a

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 \$5,000 loan, advanced contract with Central Star
3 Credit Union and that they had a collection
4 action against you in the amount of \$4,0 87.53?

5 A Yes.

6 Q Is it true that you had defaulted on a
7 \$3,000 overdraft protection line of credit with
8 the Central Star Credit Union and they had a
9 collection action against you for \$4,161.84?

10 A Again yes, to the defaults; but I can't
11 say yes to the numbers just because I am not
12 familiar with --

13 Q Okay.

14 (Whereupon, a short break was
15 taken.)

16 THE WITNESS: Is that okay to do?

17 I was just texting my sister.

18 BY MR. TWOMBLEY:

19 Q And Mr. Dailey, it is your testimony
20 that even though you had all these judgments,
21 child support, default judgments, and credit
22 actions pending against you that you are a
23 fiscally responsible person?

24 A Yes.

25 Q Including the bankruptcy?

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 that.

3 Mr. Dailey, isn't it true that you
4 threatened to send some compromising pictures of
5 Miss Tirone out on the internet?

6 A No.

7 Q You didn't send her a text message that
8 said you had some pictures that you were going
9 to send to some folks?

10 A No, I don't believe I sent her an
11 E-mail. What I told her was that if she didn't
12 remove that thing off the Pub window and she set
13 out to embarrass me in that way in my hometown
14 that I would embarrass her. And after thinking
15 about it I wrote her back and said, you know
16 what, I am not going to stoop to your level, so
17 do whatever you want with on the wall.

18 Q And you were going to embarrass her by
19 sending these pictures out?

20 A I wasn't really going to, but it was an
21 idle threat that I realized that I wasn't going
22 to stoop to her level.

23 Q And I am not commenting on whether or
24 not you are actually going to do it, but you did
25 make the threat?

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 A I made that comment after I saw what
3 she did, yes.

4 Q And you threaten to send some naked
5 pictures of her out?

6 A Well, I don't know if I just said
7 embarrassing pictures. She is the one that took
8 them.

9 Q And you threatened to send them out to
10 some folks to embarrass her?

11 A I said I would embarrass her if she
12 continues to embarrass me. That is all I said.
13 I didn't give her any strategies. All I said
14 was why are -- you know, you are trying to
15 embarrass me and that is you are really -- I
16 don't know. I really don't remember exactly
17 what I said, but it is somewhere documented, and
18 that is what I said.

19 Q And you were going to send some
20 embarrassing pictures out of her, right?

21 A No, I wasn't going to.

22 Q Well, you threatened to do that?

23 A I told her I would do that, yes. No,
24 not send out. I told her I would embarrass her.
25 And then just shortly thereafter I said no, I

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 tired. I'm sorry if I am making faces.

3 MR. REMBERT: Can we go off the
4 record for one split second?

5 (Whereupon, an off-the-record
6 discussion was held.)

7 THE WITNESS: And for the record I
8 don't authenticize this, if that is
9 such a word, because we need a copy of
10 that or a certified copy or something,
11 because the Major thing makes no sense.

12 BY MR. TWOMBLEY:

13 Q Why did you file for bankruptcy? Did
14 you have a lot of judgments against you at that
15 point?

16 A I didn't have any judgments against me
17 at that point. I just had a lot of debt.

18 Q What was the debt that you had?

19 A Well, at the time I had an aviation
20 leasing business and the limousine business, and
21 I lost an engine on an aircraft and couldn't
22 afford to pay it off. So everything was in
23 balance with each other, and then when the
24 airplane lost an engine everything crumbled.

25 Q So you had some debts where some folks

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 were coming after you with respect to that
3 business?

4 A The leasing companies -- and yes.

5 Q And what was the name of that leasing
6 business?

7 A Daily Aviation.

8 Q Was that a North Carolina company?

9 A I believe so.

10 Q What about the limo business, what was
11 the name of that?

12 A SFAX Limousine Service -- SFAX East
13 Limousine Service.

14 Q You may have already told me this, a
15 North Carolina company as well?

16 A Yes, sir, I believe so.

17 Q Any other debts that you had other than
18 the debts with Aviation leasing and the limo
19 business?

20 A I am sure there is bankruptcy paperwork
21 that I can provide if you don't already have it.
22 I am sure somewhere. It is on file. It lists
23 all the creditors and debtors, and I have no
24 idea who they all are.

25 Q Okay, but you know that there is more

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 than these?

3 A Yes.

4 Q Ever file for bankruptcy prior to that?

5 A Well, it was sort of first I filed one
6 chapter, then I filed another chapter. I filed
7 the first chapter where I would make payments to
8 satisfy debt, and then I had to change it to the
9 other kind. I don't remember what it was, 7 or
10 13 or 13 to 7, I don't remember.

11 Q When did you file the first one and the
12 second one, regardless of what the number was?

13 A I kind of clump them in all together
14 because it was a pretty short period of time
15 where it changed from one to the other, but so
16 it would have been like '99 or 2000 time frame.

17 Q That is when you filed the first one or
18 the second one?

19 A That is why I say both of them were
20 probably within six months to a year of each
21 other.

22 Q Within six months of each other?

23 A No, it wasn't a double filing. It was
24 just a -- I don't know what it is called -- but
25 going from one to another.

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 Q But you believed that that transition
3 was made, whatever it is called, whatever it was
4 from or to was done within about a six-month
5 time frame?

6 A Six months to a year, approximately,
7 yes.

8 Q Ever file for bankruptcy prior to that?

9 A No.

10 Q Never filed for bankruptcy prior to
11 that?

12 A Not prior to that, no.

13 Q Did you ever file for bankruptcy since
14 then?

15 A No.

16 Q Only two bankruptcies you have ever
17 been involved in in your life are the two we
18 just talked about?

19 A Yes, unless there is some legal anomaly
20 out there that I am not aware of but --

21 Q All right, we have talked about the
22 lawsuits related to the debts that you had that
23 were set forth in the complaint and that we
24 attached.

25 And we talked about a prior deposition

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 that you had given.

3 Have you ever been involved in any
4 other lawsuits other than the ones we have set
5 forth in our complaint and of course this one?

6 A I don't know. I mean like in the past
7 year?

8 Q No, ever?

9 A I know you are not going to like this
10 answer, but I don't know.

11 Q There was one you talked about which
12 was the one over a \$600 judgment?

13 A To me that wasn't a lawsuit. When I
14 went and checked the paperwork they said I was
15 served something, but I was not served. That
16 was not my signature. So that is why my
17 attorney said let's -- that is not even you --
18 and I agreed, but it is on my -- it pertained to
19 me, but it wasn't my signature and I was not in
20 court; so I don't know how that happened.

21 Q But the judgment is against you in your
22 name, so it is a lawsuit?

23 A Yes -- well, is that a lawsuit? Is
24 that considered a lawsuit?

25 Q Let me rephrase it a different way.

1 TWOMBLEY - DAILEY (DIRECT EXAMINATION)

2 system?

3 A I don't know.

4 Q What were those creditors for?

5 A They could be anything from cell phone
6 bill to -- I don't know -- credit card.

7 Q Several, though?

8 A I don't know about several but -- I
9 don't know the answer to your question honestly.

10 Q What is your credit score? Do you know
11 what it is?

12 A No.

13 Q What is the last time you applied for
14 credit anywhere?

15 A I don't know. I don't know. It must
16 have been recently because I got something in
17 the mail about why I was denied, and I honestly
18 couldn't remember what I applied for, why I was
19 denied for something.

20 Q So do you not know, or it must have
21 been recently?

22 A I don't know the last time I applied.

23 Q Within the past year have you applied
24 for credit?

25 A I must have because this mail wouldn't

1 THE WITNESS: I'm not really sure.

2 BY MR. REMBERT:

3 Q. Did you ever ask Mr. Dailey to be a part
4 of the corporation?

5 A. No, it was capitalized with my money. I
6 was the sole owner of the pub.

7 Q. In your mind it's your pub?

8 A. Yes.

9 Q. Did you help coordinate the lease for the
10 pub?

11 A. No.

12 Q. Was there alteration done to the premises
13 in furtherance of getting the pub ready?

14 A. Yes.

15 Q. What sorts of things were done?

16 A. The kitchen was rearranged. The bathrooms
17 were redone. The floor was refinished. And the bar
18 back was built.

19 Q. Bar back was built. When you were coming
20 down on the weekends or when you come visit, were you
21 helping to participate in getting those things done?

22 A. Yes.

23 Q. What sort of things were you doing when
24 you were coming down?

25 A. Putting Varathane on the B-board, making

1 he's also putting his meals on that, does that also
2 mean he's allowed to put meals on that? Does he have
3 your permission to put meals on it?

4 A. When I'm with him or not with him?

5 Q. When you're not with him.

6 A. I'd have to look at what the IRS rules
7 allow.

8 Q. Not with IRS.

9 A. I will look at what the IRS rules allow.
10 I'm not qualified to answer that question.

11 Q. It's your money, as you've said.

12 A. It was capitalized money for the pub. It
13 was the pub's money.

14 Q. You put it in. You're the owner.

15 A. I capitalized the pub. I own 100 percent.

16 MR. TWOMBLEY: Let him finish the question
17 so you'll know how to answer.

18 BY MR. REMBERT:

19 Q. Do you know what happens if there's an
20 expense that the IRS doesn't allow?

21 A. It's called an unallowable. You can't
22 write it off as a business expense.

23 Q. It's not criminal. It isn't allowed to be
24 written off as a business expense?

25 A. I don't know if it's criminal or not. I

1 discussions prior to starting the business over how
2 much you thought it would take to open a pub?

3 A. No, not that I recall.

4 Q. Did you put in \$125,000 at the start or
5 incrementally?

6 A. Incrementally.

7 Q. How did that work? He would just call you
8 and say that he needed more money in the account?

9 A. No, I put the first \$50,000 in. I guess
10 he would tell me things are running low or something
11 like that, I guess.

12 Q. But you relied on him to let you know --

13 A. Yeah.

14 Q. -- when more money needed to be put in.

15 Do you know how often you would put in
16 funds?

17 A. I'd have to look at the checking account.

18 Q. Basically at his request?

19 A. Not his request as much as I think we are
20 going to need to put more money in. He had things he
21 had in play. I don't know if he actually ever knew
22 when it needed it or not either. I can't say for a
23 fact he did or didn't.

24 Q. You didn't question him when he said --

25 A. No.

1 Q. Or put in the amount that he had said?

2 A. He never said an amount, that I recall.

3 Q. The break-up happened in April of 2011 at
4 which point y'all were dating since January 2010.

5 Had y'all discussed marriage or anything like that?

6 A. I don't believe so.

7 Q. In your opinion, what caused the break-up?

8 A. I didn't trust him anymore.

9 Q. So you broke it off with him?

10 You initiated the break-up?

11 A. He had a conversation that he -- how did
12 it go? He lost the spark is what he told me.

13 Q. Based on him saying he lost the spark, you
14 broke it off with him?

15 A. I couldn't see the point of staying with
16 someone who says they lost the spark.

17 Q. Was it solely because he said he lost the
18 spark that you didn't trust him?

19 A. No.

20 Q. What made you not trust him?

21 A. When Martin Craft began reviewing the BB&T
22 account.

23 Q. Go ahead and tell me about that. What did
24 Martin find? What did Martin tell you?

25 MR. TWOMBLEY: Object to form.

1 THE WITNESS: He was questioning the
2 costs.

3 BY MR. REMBERT:

4 Q. Martin was -- this is in April at some
5 point -- reviewing the bank records, which you
6 personally hadn't looked over. And did he raise
7 doubts, or did he just show you?

8 A. He was questioning the costs.

9 Q. Did Martin put any of his concerns in
10 writing?

11 A. He sent an e-mail questioning certain
12 items he found in there.

13 Q. Off the top of your head, do you recall
14 what items he was questioning?

15 A. No.

16 Q. Did you express concern about these
17 questionable expenses with Mr. Dailey?

18 A. He was sent an e-mail to answer Martin
19 what these costs were.

20 Q. You sent Mr. Dailey an e-mail to answer
21 the other e-mail from Mr. Craft?

22 A. Yes.

23 Q. Did you say you don't recall what the
24 e-mail said?

25 A. Not at this time.

1 Q. From there, what happened after you sent
2 that e-mail to Tom? How did he respond to it?

3 A. I don't exactly remember how he responded,
4 but he did respond.

5 Q. Did he allay your concerns? Do you
6 remember if he gave you adequate responses?

7 A. He didn't either confirm or deny my
8 concerns. It was sent to Martin. Martin and I then
9 discussed it.

10 Q. Just discussed over the phone?

11 A. Yes.

12 Q. When did you make a determination they
13 were questionable? They were improper?

14 A. When Martin Craft said this guy is on
15 crack.

16 Q. That was during the phone calls?

17 A. Yes.

18 Q. Did Mr. Craft ever put in writing these
19 were improper expenses?

20 A. I don't believe so.

21 Q. Did Mr. Craft give you advice on how to
22 proceed?

23 A. To go to a CPA.

24 Q. Mr. Craft told you to go to a CPA.

25 Did you ever tell Mr. Dailey that those

yes

1 expenses went from being questionable to improper?

2 A. I don't believe so.

3 Q. The gist of it is that your friend or
4 business acquaintance, Mr. Craft, who was doing you a
5 favor had said something is not right about this;
6 correct?

7 A. This guy is on crack is what he said.

8 Q. You trust Mr. Craft's professional opinion
9 in regards to accounting?

10 A. I trust his professional opinion. He's
11 not a CPA. He realizes he's not a CPA. He suggested
12 that I go see a CPA.

13 Q. Did you go see a CPA?

14 A. Yes.

15 Q. Were you and Mr. Dailey still in a
16 romantic relationship at the time you went to the
17 CPA?

18 A. No.

19 Q. You went to the CPA after the romantic
20 break-up?

21 A. Yes.

22 Q. What was the CPA's name?

23 A. Jatim Patel, J-A-T-I-M-P-A-T-E-L.

24 Q. Did you just have discussions with
25 Mr. Patel, or did he perform work for you?

1 Q. Did you put any of it in writing?

2 A. I want to think I did.

3 Q. Possibly.

4 In your mind, was Mr. Dailey stealing from
5 you?

6 A. Yes.

7 Q. You came to that conclusion after the
8 break-up?

9 A. Came to that conclusion when Mr. Craft
10 told me this guy is on crack.

11 Q. I'm just trying to get the timeline right.
12 My understanding from what you said before, you went
13 to Mr. Craft outside of the break-up, prior to the
14 break-up. Mr. Dailey said he was on crack. Then you
15 said you spoke with Mr. Patel after the break-up.

16 A. I said I spoke to Jatim in April. I
17 didn't say it was before or after any break-up.
18 That's all I can recall right now.

19 Q. I'm asking for clarification.

20 Did you ever consider going to the police?

21 A. No.

22 Q. Why not?

23 A. I don't know.

24 Q. You told Mr. Dailey he was not authorized
25 to take money out of the checkbook.

1 employment agreement?

2 A. Yes.

3 Q. What did you say in response?

4 A. It wasn't exactly what he said. He said
5 he was going to do whatever he needed to do to
6 protect his job or employment or whatever he said. I
7 don't quite recall.

8 Q. Did he say anything else?

9 A. Yes, that he was going to send an
10 employment agreement to me. If he was going to lose
11 his job, that I was going to lose my job. I don't
12 recall if he said he was going to FedEx it or e-mail
13 it. I don't recall how he said he was going to get
14 it to me.

15 Q. He was under the belief he already had a
16 job from what it sounds like?

17 A. That's how I took it, yes.

18 Q. Did he make specific threats as to how he
19 was going to get you fired?

20 A. Not at that time.

21 Q. He just said: I'm not going to lose my
22 job. If I do, you're going to lose your job?

23 A. Yes.

24 Q. Shorthand, you better sign it is what he
25 said?

1 A. That's how I understood it.

2 Q. This was after Mr. Craft had already
3 reviewed the bank statements and said he would have
4 to be on crack. This was after you guys had broken
5 up.

6 Was there anything else that precipitated
7 Mr. Dailey sending this agreement that you know of?

8 A. You would have to ask Mr. Dailey.

9 Q. You had stated previously, in April, you
10 no longer trusted Mr. Dailey?

11 A. Yes.

12 Q. Why did you sign the agreement that he
13 sent you?

14 A. He told me, if he lost his job, I would
15 lose my job.

16 Q. So solely on the threat, you signed and
17 executed the agreement?

18 A. Yes.

19 Q. Did you review the agreement, or did you
20 just sign it without looking at it?

21 A. I had to go to the local place next to
22 Publix. I don't know what it is. I had to ask to
23 borrow their laptop in the back of their office area
24 to print it out when I got off work that day. I
25 glanced over it, and I put it in UPS thing to send to

1 MR. TWOMBLEY: How much longer do you
2 think you have?

3 MR. REMBERT: Hour or two.

4 MR. TWOMBLEY: Let's take lunch, come back
5 about 12:45.

6 (A luncheon recess transpired from 12:00
7 p.m. until 12:49 p.m.)

8 BY MR. REMBERT:

9 Q. I apologize if some of the questions are
10 redundant; it's a matter of making sure I have
11 everything framed properly. Please bear with me.

12 You contend that you and Mr. Dailey were
13 not partners. I don't mean that in legal
14 terminology. In your words, what was your agreement
15 with Mr. Dailey?

16 A. I was 100 percent ownership of the
17 project. It was all my money. I capitalized
18 everything. He was working there for free so as not
19 to jeopardize his unemployment.

20 Q. Outside of that, was there an
21 understanding what would happen after the pub opened?

22 A. After some period of time, yes, there was
23 understanding, verbal discussion about his
24 participation of some percentage of ownership of the
25 pub.

1 He was always planning to go back to Denver.

2 Q. In your understanding, Dane left Colorado,
3 came to help out his uncle and was not going to
4 become an employee?

5 A. You would have to ask Mr. Dailey or
6 Mr. Molinaro. I believe that was their -- I don't
7 know what their discussions were.

8 Q. He actually did come to Beaufort to help
9 set up?

10 A. He came to help his uncle.

11 Q. That you know of, did he actually do work
12 in helping set up the pub?

13 A. Yes.

14 Q. Did he ever receive payment for doing
15 that?

16 A. I believe Mr. Dailey paid him something.
17 I'm not sure.

18 Q. Do you know if Mr. Dailey used Truman
19 funds to pay him, or did he pay out of his own
20 pocket?

21 A. I don't know.

22 Q. There's been a van that's been part of
23 this litigation. Was the van owned by you or by
24 Truman's?

25 MR. TWOMBLEY: Object to the form of the

1 question.

2 BY MR. REMBERT:

3 Q. Please answer it.

4 A. The van was titled to Kramer Hill Group.

5 Q. It was titled to Kramer Hill Group. What
6 was the van being used for?

7 A. Mr. Dailey drove it.

8 Q. He was using the van down here while you
9 were in Greenville?

10 A. To cart his dog around.

11 Q. When did you re-secure possession of the
12 van?

13 A. Sometime in June of 2011.

14 Q. You were a co-director of Kramer Hill
15 Group. Is that how you had the authorization to
16 repossess the van?

17 MR. TWOMBLEY: Object to the form of the
18 question.

19 THE WITNESS: It was my van. I paid for
20 it.

21 BY MR. REMBERT:

22 Q. It was not in your name; it was in the
23 Kramer Hill Group?

24 A. Correct.

25 Q. Did you coordinate with Sheila Sullivan at

1 any point to re-secure the van?

2 A. No.

3 Q. You were in Kramer Hill Group with Sheila
4 Sullivan, but you didn't know much of anything about
5 it. The one thing you know about it, there was a van
6 that you paid for?

7 A. Yes.

8 Q. Mr. Dailey had been using that van in
9 furtherance of the pub?

10 A. No.

11 Q. No. Mr. Dailey was just using the van?

12 A. To ride his dog around.

13 Q. When it came time, you repossessed the
14 van?

15 A. Yes.

16 Q. Did Mr. Dailey put you on his phone plan?

17 MR. TWOMBLEY: Object to the form.

18 THE WITNESS: Yes.

19 BY MR. REMBERT:

20 Q. Specifically, did you have a phone from
21 Sprint that Mr. Dailey sent to you?

22 A. He didn't send it to me. He handed it to
23 me. That was in May.

24 Q. Was this before or after the employee
25 agreement had been signed?

1 Q. In your opinion, was that a board meeting?

2 A. I don't know how to answer that.

3 MR. TWOMBLEY: Object to the form of the
4 question.

5 BY MR. REMBERT:

6 Q. Were board members ever elected or
7 assigned positions?

8 A. No, there's only one board member, and
9 that would be me.

10 Q. Sheila Sullivan never had a position?

11 A. Not as a board member, if that's your
12 question.

13 Q. When you say it that way, did she have
14 another position outside of a board member that was
15 assigned to her?

16 A. From my recollection, I believe her name
17 was on some of his papers she wrote. I don't recall
18 unless it's in front of me what it is.

19 Q. You didn't make any determination that she
20 had any position?

21 A. As I just said, until it's in front of me.

22 MR. TWOMBLEY: Object to the form.

23 Helena, let me interrupt one second. When
24 he asks a question, I want to be able to object
25 before you answer.

1 her. That's attorney-client privilege.

2 MR. REMBERT: I'm not asking --

3 MR. TWOMBLEY: I'm instructing her not to
4 answer that question.

5 MR. REMBERT: Not even the reason? Just
6 the date behind it.

7 MR. TWOMBLEY: That's right.

8 BY MR. REMBERT:

9 Q. Did you, in fact, empty the bar?

10 A. A U-Haul company emptied the bar.

11 Q. After the U-Haul company emptied the bar,
12 what was left inside?

13 A. Miscellaneous items. I can't really
14 recall what.

15 Q. Was it mostly an empty shell? You took
16 most of the property out?

17 A. The things that I recovered under my
18 security agreement were taken out.

19 Q. You had signed a multi-year lease on the
20 property. What was your plan?

21 A. To open up a pub.

22 Q. After you emptied the pub, what was your
23 plan moving forward?

24 A. I had no plan.

25 Q. What's the state of that lease in regards

1 with the house on Water's Edge?

2 A. Probably March or April of 2010.

3 Q. That was about the same time that you
4 learned about the plane issue?

5 A. I can't say that for a fact. Somewhere in
6 there, I suppose.

7 Q. You were aware he had bankruptcy and that
8 he had something with a plane prior to beginning the
9 pub?

10 A. Correct.

11 Q. What was the expected cash flow of the
12 bar?

13 A. There was never a cash model made.

14 Q. Was there ever liability insurance?

15 A. There was -- I have subsequently learned
16 there were two insurance policies. I don't know what
17 they were for.

18 Q. Mr. Dailey had those executed. You didn't
19 sign them?

20 A. No.

21 Q. Do you have any idea what amount they're
22 in?

23 A. No.

24 Q. Do you know if you had dram shop coverage
25 included?

1 A. I don't even know what that is.

2 Q. What records did you keep of Truman's
3 other than the bank records? Were there any?

4 A. There were receipts.

5 Q. What kind of receipts?

6 A. From things Mr. Dailey bought.

7 Q. So he would buy things, and then where did
8 the receipts go to?

9 Did he give them to you? Did he mail
10 them?

11 A. He sent some to Martin, and he gave some
12 to me.

13 Q. These are debit card receipts and ATM
14 receipts and the like?

15 A. I don't recall what all they are. All I
16 know is I have receipts.

17 Q. And you have them?

18 A. Mr. Twombly has them.

19 Q. There were never any by-laws or any
20 paperwork having to do with the running of the
21 company that were ever written?

22 A. No.

23 Q. Just Secretary of State gave you
24 authorization to have a corporation. Do you know
25 what kind of corporation it was?

1 A. I believe it's a C-corp, but I would have
2 to look at the paperwork to verify.

3 Q. What do you consider to be the status of
4 Truman's Eclectic Irish Pub right now?

5 MR. TWOMBLEY: Object to the form of the
6 question.

7 THE WITNESS: Not operating.

8 BY MR. REMBERT:

9 Q. Do you think it will ever operate?

10 A. I do not know.

11 Q. Would you classify the money you put in
12 Truman's as a loan or investment equity?

13 MR. TWOMBLEY: Object to the form of the
14 question.

15 THE WITNESS: I believe my attorney
16 executed a document that portrays it as a loan.

17 BY MR. REMBERT:

18 Q. Again, I hate to reiterate. I have to go
19 through my things. No officers were ever selected?
20 You're the sole officer of the corporation?

21 A. Yes.

22 MR. TWOMBLEY: Object to the form of the
23 question.

24 BY MR. REMBERT:

25 Q. Has an annual financial statement ever

1 been executed for Truman's?

2 A. Martin did do some balance sheet,
3 something else. I don't recall exactly what it is.
4 It was never signed by a CPA or anything. I don't
5 know if it is valid or not.

6 Q. How much is currently in the BB&T business
7 account for Truman's?

8 A. There is no current BB&T business account.

9 Q. When did you close the account?

10 A. I don't remember exactly.

11 Q. What did you do with the funds when you
12 removed them from the account?

13 A. There weren't any funds in the account.
14 There might've been -- I take that back. There might
15 have been, like, 200 bucks.

16 Q. Whenever you shut down the account for
17 Mr. Dailey in May, whatever was left was a minimal
18 amount of money. And you closed down the account?

19 A. I did not close down the account in May.
20 I don't recall when I closed down the account. It
21 was not May. I froze it is what it's called.

22 Q. I just need to say that, after Mr. Dailey
23 was removed in mid May from the ability to do
24 anything with the account in mid May, there was no
25 addition or subtraction from the account until you

1 closed it, whenever that was?

2 A. There were business requirements that I
3 did use the account, for business purposes.

4 Q. You would say that you definitely shut
5 down the Truman's business account after the
6 initiation of this lawsuit?

7 A. Yes.

8 Q. Was that after you understood he was going
9 to be counterfiling?

10 A. I don't recall I understood anything like
11 that. I don't even recall when I did it.

12 Q. Mr. Dailey was working for you, correct,
13 or working for Truman's?

14 A. Mr. Dailey was performing efforts to open
15 up the pub.

16 Q. Was Mr. Dailey -- again, I know you've
17 already said this. I need to ask them. Was
18 Mr. Dailey ever paid wages?

19 A. Mr. Dailey was performing efforts to open
20 up a pub that he was doing for free so as not to
21 jeopardize his Washington state unemployment.

22 Q. Did Truman's ever have any employees?

23 A. Not to my knowledge.

24 Q. Once you signed the employment agreement,
25 did you notify Mr. Dailey of the hours he was

1 the lease for the pub?

2 A. I guess not. You're asking me the
3 question.

4 Q. I'm just asking you: Do you know if it's
5 been sublet, or do you know what the specific legal
6 relationship is between you and the folks who are
7 occupying the pub now?

8 A. All I know is --

9 Q. My question to you is: Do you know the
10 specific legal relationship?

11 A. No.

12 Q. When you said that it was sublet, do you
13 know whether or not it's been sublet?

14 A. No.

15 Q. With respect to Defendant's Exhibit 1, you
16 played no part in drafting this agreement; correct?

17 A. Correct.

18 Q. This agreement, as it states, was between
19 Truman Eclectic Irish Pub, Inc., the employer, and
20 Thomas W. Dailey, the employee; correct?

21 A. Yeah.

22 Q. When you signed this agreement, you were
23 signing it on behalf of who?

24 A. Truman's Eclectic Irish Pub.

25 Q. If you had not been scared of what

1 Mr. Dailey was going to say to your employer,
2 truthfully or untruthfully, if you had not been
3 scared of what he was going to do, would you have
4 ever signed this agreement?

5 A. No.

6 Q. Did you enter into this or did you, on
7 behalf of Truman's, enter into this agreement freely
8 and voluntarily and of your own free will and accord?

9 A. No.

10 Q. You were asked many questions about
11 whether or not there had been a threat about
12 contacting your employer and when those took place.
13 Specifically, you were asked about whether or not a
14 threat had been made before you signed this
15 agreement. And I think at one point you testified
16 that there was a threat and that's why you signed it.

17 At one point in a series of questions, I
18 think you said there had not been a threat at the
19 time you signed this agreement. Can you please
20 clarify that.

21 A. The threat was: If I lose my job, you'll
22 lose your job. It was before the employment
23 agreement was signed.

24 Q. That's, as you just testified a moment
25 ago, the only reason you signed this; right?

1 A. Yes.

2 Q. You were asked if you told people that you
3 and Tom were business partners. And I believe you
4 testified yes. Did you mean anything specifically
5 about a business partner or what terminology did you
6 use when you told folks that?

7 A. It was one gentleman. And I believe I
8 used the term partner meaning he's doing stuff and
9 I'm doing stuff.

10 Q. You didn't mean anything else by that?

11 A. No.

12 Q. You didn't tell anybody else that?

13 A. No.

14 Q. Again, long day; lots of questions. At
15 one point in time you testified that the
16 understanding between you and Mr. Dailey was that
17 y'all would discuss ownership possibilities. At one
18 point in time you testified that was open. At
19 another point, you testified y'all were going to
20 discuss those after you made your money back that you
21 had invested in the pub. I think that's what
22 Mr. Dailey testified.

23 Can you clarify your testimony on when in
24 the future you and Mr. Dailey were going to talk
25 about ownership possibilities? Was it the day that

1 the pub opened, or was it at some point in time in
2 the future after you made your money?

3 A. After I made my money back.

4 MR. REMBERT: Objection; leading.

5 BY MR. TWOMBLEY:

6 Q. Explain to us when you and Mr. Dailey had
7 an understanding of when you would talk about him
8 having potential ownership interest in the business
9 in the future. When was that supposed to take place?

10 A. When I got fully compensated for the
11 capital investment I made, then we would talk about
12 potential ownership.

13 MR. REMBERT: Object to the form.

14 BY MR. TWOMBLEY:

15 Q. You testified that Mr. Craft told you that
16 Mr. Dailey was on crack. What was your understanding
17 of what that meant?

18 A. After Martin's review of everything, no
19 prudent business person would have made those -- used
20 a business checkbook for nonbusiness-related things
21 that he was -- he strongly believed were
22 nonbusiness-related expenses. That they were
23 personal expenses.

24 Q. Another way to say that, what Mr. Dailey
25 had been using the checking account for, these things

1 weren't even close to being proper?

2 MR. REMBERT: Objection.

3 THE WITNESS: That's what Mr. Craft said.
4 Maybe I didn't say it as clear as I should have. He
5 looked at that checkbook and crack was word he used
6 because they were so outrageous. Anybody with any
7 amount of sense couldn't conceivably believe those
8 personal expenses would be valid, allowable expenses
9 under IRS rules. That's what Martin does for a
10 living. He's an accountant.

11 BY MR. TWOMBLEY:

12 Q. Under IRS rules or anybody's rules?

13 A. Normal prudent business person.

14 Q. Prior to December of 2010 or in December
15 of 2010, when you and Mr. Dailey were having the
16 initial discussions about opening a pub, did
17 Mr. Dailey represent to you that he was a fiscally
18 responsible person?

19 A. Yes.

20 Q. Is that part and parcel of why you entered
21 into this business relationship with him?

22 A. Yes.

23 Q. Was Mr. Dailey an authorized agent for you
24 personally, Helena Tirone, or was he an authorized
25 agent for Truman's Eclectic Irish Pub, Inc?

420



IN THE STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

HELENA P. TIRONE AND TRUMAN'S
ECLECTIC IRISH PUB, INC.,

Plaintiff,

vs.

THOMAS W. DAILEY,

Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO. 2011-CP-07-02216

2011 JUN 22 PM 3:01

AFFIDAVIT OF THOMAS W. DAILEY

Personally appeared before me, Thomas W. Dailey who, being duly sworn,
deposes and states as follows:

1. I am over eighteen years of age and competent to give this affidavit.
Unless expressly noted otherwise, all matters stated herein are of my own personal
knowledge.

2. Helena Tirone and I met in Afghanistan. Helena was the Director of
Government Contracts for Fluor Government Group, and she was responsible for the
company as well as the Government abiding by the contract. While in Afghanistan we
started an intimate personal relationship. The relationship grew to a point that I thought I
had met the woman with whom I would spend the rest of my life. We were in love, and
I welcomed her into my family. She accompanied my children and I when we went to
Europe for 10 days last summer, because I thought she would be around the children for
years to come. This means a lot, because it was not until seven years after my divorce
that my children ever met another woman that I was dating.

3. While in Dublin, we were having lunch at a pub. The table we had at a pub was draft (or pub) table, in which you can pour your beer. My son commented said, "Dad, if you ever open a pub you need to have one of these tables." That was the catalyst behind the pub tables that are currently in the pub.

4. Before returning home from Afghanistan, I contacted Harry Chakides regarding his property that used to be the John Cross Tavern. I told him I was interested in it again, but he told me to look him up when I returned. Years prior I had talked with Harry about this property, and had spent hours with him sitting at the bar discussing my ideas for his place. Life got in the way, and I was not able to pursue opening a bar.

5. Upon returning to Beaufort I met with Harry on many occasions to inspect the property and discuss plans. I was ready to reopen the upstairs tavern, because it would have been very inexpensive; although it would have involved a lot of work cleaning the place and getting it ready. However, Harry did not want to offer a lease past one year, and he said he didn't know what the place was worth. My plan was to restore the tavern, and create a little place in a simple and minimalist fashion. The cost would have been minimal, the plan would have been simple, but Helena would not have been involved with it. Upon realizing that I was not going to talk Harry into a longer lease I began to look elsewhere in Beaufort for a place to open a pub, but it needed to be affordable; with the real estate market still in a slump I was certain I could find a place. It was at that time, Helena asked me if she could join me in opening a bar or a pub, because she had a lot of money and she wanted to invest in something. I agreed, and although I still wanted to keep the plan as simple as possible, with more investment

money we could open a larger place and possibly an actual Irish Pub. That was the catalyst behind finding a larger place and the Pub theme, and that is when Helena became involved.

6. After looking at a few places I began negotiating with the owners of 205 West Street (previous location of Breakwater). I was able to obtain a lease where the first six months are rent free, and then the following year the rent will be discounted nearly 75%. This would help our costs in opening, as well as operating costs for eighteen months. This was a major savings I was able to secure for the pub.

7. Initially, pub ownership was to be by Corporation alone until I learned the SLED licensing procedures. Creamer Hill Group, Inc. is a corporation now owned by my sister Sheila. Although Sheila, Helena and myself never sat down to discuss an ownership plan for the pub, the original intent was for Creamer Hill Group to own a portion along with Helena and my sister. However, as I researched the process to obtain the right to sell alcohol I realized the more names on the application as owner the more complicated it would become in obtaining our alcohol license. Therefore, I myself made the decision to list Helena as the sole owner of Truman's Eclectic Irish Pub, Inc., in order to expedite the SLED application. At the time, Truman's Eclectic Irish Pub stock was still not physically issued, and actually still might not be issued.

8. Although Helena was the source of the vast majority of the funds, there was never a question of ownership rights, because we always considered ourselves and agreed that we would be equal partners. She even told me that she was going to speak with an attorney to ensure I was protected in case "something happened to her." She did

not want her oldest son John Dix to have anything to do with pub, because she said he would certain do something, which would mean my interests would be threatened. This only became a concern after I decided to list her as the sole owner of the corporation. I listed her as the sole owner, because I trusted her.

9. Although my primary goal was to open a successful pub in Beaufort and have a place that I can work along beside my children this summer (and for the next few years), I was very confident that a by-product of the pub was going to be a very high profit margin business, which would quickly lower Helena's financial risk and her investment funds would be reimbursed sooner than later. During the initial board meeting we all discussed, and both our bookkeeper and accountant agreed, that the \$27,000 that I spent to take Helena and my children to Europe, and the \$5,000 that I spent on one year's rent for 511 Hamar Street could and would be reimbursed to me. The plan was then for me to give Helena that money; this plan would reimburse Helena's investment quicker. Martin Craft, the bookkeeper and Secretary/Treasurer agreed that if we did that, I would not have to pay taxes on an expense, the pub would have two large deductions from its profit, and also, Helena would be able to receive the money without claiming it on her taxes.

10. Both Helena and I were very confident regarding the Pub's profitability. We had many plans and ideas on how to offset pub profitability, but the main idea was to create useful expenses; one idea from Martin was for the pub to lease a vehicle, and for housing - 511 Hamar was to be Helena, and 92 Dolphin Point would be other employee housing, cell phone usage for Helena, myself, Dane & Sheila , (last month we transferred

over Helena's Verizon number to my account in order to consolidate all of the numbers), gasoline, as well as other items and services.

11. Before signing the lease, my personal relationship between Helena hit some obstacles, due to either her excessive drinking or lack of honesty. On one evening she literally walked off and walked into some potentially unfriendly areas downtown. I had to get a cab to drive around looking for her, because I needed to cover ground quickly. When I found her she was walking down a dark street while staggering back and forth. When I reached her she lashed out at me and was saying she was too old for me, she wasn't attractive enough me, and that I wasn't going to forgive her for lying to me. The next morning I suggested that we needed to end the relationship and forget about opening a pub. Helena literally begged me to give her another chance, and to continue with the pub. We reconciled and I agreed to work on the relationship and continue with plans for the pub.

12. In February, my nephew Dane moved from Denver to Beaufort to help with the pub. He worked 12 to 16 hours per day nearly every day for an entire month in the pub. Most nights we were getting home between 10pm and midnight, and we would get up early the next day and get started right again. In March, he returned to Denver until returning to Beaufort with his mother, Sheila Sullivan, in April. Like Dane, Sheila relocated to Beaufort in reliance on the promise of employment with the pub.

13. In the following months, I worked constantly in an effort to get the pub open. The only time I can remember not working to get the pub open was during the filming of a short independent film in Arkansas and to run the Boston Marathon.

14. Another reason for opening the pub was to create my own employment. Currently I am collecting unemployment insurance from Washington State based on my previous employment. I have told the Washington State Unemployment Office about my employee contract. They told me that if funds are later received that can be associated for an effort during a specific period of time; an average of the funds will be reimbursed for that specific timeframe. Due to the fact that I am unsure if I will be receiving payment for my effort since the May 1st, I will continue to claim unemployment. If I receive payment for my effort in the pub since my contract period, I will notify the Washington State Unemployment Office in order to start the reimbursement process.

15. Helena came to Beaufort during the weekend of 23 April. I do not remember exactly which night this happened, and it could have been during the week, but I do remember one night that Helena began a self-deprecating and defeatist attitude towards our relationship, in addition to having a cold demeanor all evening, which made it a daunting and tireless evening. Finally I had had enough, so when she asked me the next morning if everything was okay, I decided to be honest with her. This time I had to tell her that I did not have the same feelings for her as I once had. I told her that I loved her, and that I cared for her, but the relationship was not as passionate and something was just not right. I also added that I was merely being honest, and that I wasn't trying to hurt her or end the relationship. This feeling was not sudden, because it was something that began to weigh on me over the course of time, and it was solely due to Helena's actions. This conversation was not a break-up, but I needed to tell her what I was feeling in hopes that possibly her actions might be hopeful and productive. However, the opposite held to be true in that, when I returned from the school (I started a weight conditioning program

for BA high school students in the morning) I was driving home down Bay Street when I saw Helena and Ron outside of Luther's embracing. By the time I parked Helen was walking away saying she was done with our relationship. She was over reacting, as she has done numerous times in the past in which I have always talked her down to a rationale state. I told her this time that I was not going to chase her, and if she drove away, it would be end of our relationship. It is not possible to convey on a statement everything that led to feelings of the heart, and how a situation evolves, but what I can say, is that I have had to endure months of irrational behavior since coming home from Afghanistan. Verbally, I can recount endless situations and actions on Helena's part that led me to this decision, but I am not going to write it in a statement for its tone would be lost. Basically, that morning was the catalyst behind the demise of our relationship as well as the pub. If asked, Helena will probably admit the same thing and that she over reacted and ultimately ended up truly regretting her actions that morning. Normally a paragraph such as this should have no relevance in a business setting, but in this situation, this business path was started with a relationship, and due to the fact that I placed total ownership with Helena, everything balanced with her.

16. The next few days Helena was on a roller coaster of emotions that put the pub in jeopardy. I had to treat her and communicate with her very delicately. However, I still cared for her and didn't want her to get hurt, but I also needed to protect my investment. The day after Helena drove off she told me on the phone that she could no longer be in business with me. She told me that she would throw the business away before allowing me to have anything to do with it. Martin and Cassie Craft were coming to Beaufort on the following Friday, April 29th. Fortunately, a few days later, Martin

convinced Helena that she should not throw everything away and that the pub should continue; at least that is what Helena told me.

17. Due to the fact that Helena and I had agreed to continue with the pub as partners, Sheila and Dane continued their journey to Beaufort. However, Sheila still contacted both Helena and I to confirm that she and Dane should continue their move to Beaufort. Based on the fact that both of us assured her that we were going to open the pub, and that Helena and I were going to continue as friends, Sheila felt confident to continue with her move.

18. Martin and Cassie came to Beaufort on April 30th with Helena, and it was the same weekend that my Sister and Dane arrived. I was busy driving around that evening taking prom pictures of my boys, but I eventually caught up with Helena, Martin and Casey at Luther's. Martin was acting very friendly towards me, but Cassie was acting very hostile. They told me of their previous evening, and how they went to a bar in Anderson, SC to learn about a new POS system. The next day they joked about that once back at Helena's house in Greenville, Helena was found naked in the bathroom and had to be carried back to her bedroom. The next day the three of them drove to Beaufort.

19. After Luther's we went to Emily's to eat, and then back to Luther's. Around midnight Sheila and Dane arrived. After a tour of the pub, the entire group went back to the waterfront for drinks; except for Sheila because she does not drink. It was obvious that Helena was beginning to show signs of drinking too much. She kept asking me to talk and to go on a walk. I was fearful of this in her current condition, for when she does not get what she wants she becomes irrational and almost hostile. After Helena

made a comment about a former girlfriend, I agreed to take a walk with Helena so we could talk; we walked to the pub parking lot. She would not comment any more about my former girlfriend other than to say she had a good idea. At this point she quickly changed the subject and asks if we can spend the night together. When I declined the asking became begging and her personality changed to something that I have never seen before. Her mannerism's and tones were an attempt to seduce me into staying with her. She asks to hug me without warning and begins to grind herself against me. I got her to stop, but she continues an aggressive attempt at sexual activity. She told me that I didn't have to do anything and that she could do it all, and then she tells me that I can do anything I want to her. She says she wants me to use her, but would I at least kiss her. After convincing her we couldn't kiss, I convinced her to get dressed. I then asked her not to drive, but she tells me that she is staying at the Best Western. I then met back up with Sheila and Dane and went back to the Shack.

20. The next day we had the Corporation's first Board Meeting. At the meeting Board members were elected, my position as the General Manager was made official, deductions were authorized, operations were discussed, and the plan for opening the pub within two to three weeks was stated. A copy of the minutes of this meeting is attached. Later that day Helena, Martin and Cassie left Beaufort.

21. I was comfortable as the General Manager, because throughout everything at this point, I still trusted Helena and did not think she was an irrational business person. However, Helena and I were talking on the phone a day or so later when she told me that she received a resume from a man who was running a restaurant in Charlotte. She said

that this man had parents in Beaufort and was moving here in September, and that he would make a good manager. I asked Helena how did this guy from Charlotte know to email her, and how did he get her email address. Her first answer was that she did know how he found her, which did not make sense to me. When I asked her again, she said that she had "her suspicions" how he found her, but she was not sure. This raised my interest, so asked Helena about her "suspicions," and said to her that this was a business and we were partners, and we cannot have suspicions. I then asked her what was going on, and asked her again about this guy. She then said that it "was a secret" and she wasn't going to tell me.

22. The fact that Helena now had secrets greatly disturbed me, and made me begin to question her motives. The next time we talked I told her that I was upset about her secret, and that I did not trust her. I reminded her that I created this pub, albeit with most of her money, but it would not be what it is if not for me. I asked her if her plan was to get rid of me once the pub was open, and was she going to let me get the pub open and replace me with her secret guy from Charlotte? She kept avoiding the question and would not answer it, but I kept asking. Finally she said that "someone" suggested that might be a good idea. Now I was convinced that I could not trust her, so I told her that I needed an iron clad contract in order to protect my rights, investment, and ownership in the pub. I told her I would send her an employment contract and if she did not sign it and immediately return it to me via overnight mail that I would stop my efforts. I stated that until I received the employment contract, I could no longer continue my efforts towards opening the pub. I told her that I could not trust her, and I was disappointed in her.

23. Upon verbal confirmation from Helena that she had sent the employment contract, I continued my efforts with the pub. A copy of the executed employment contract is attached. The Taste of Beaufort was in a few days, so I established our presence in it, along with continuing the progress of the pub's interior.

24. Helena arrived early on the Friday before the Taste of Beaufort so she and Sheila could prepare the Irish stew. She told me that she would be getting into town late, but when I called her Friday afternoon, she told me she was already in town. Helena and Sheila worked at 92 Dolphin Point Road on Cat Island that night. The "Cat House" was a place that Helena and I talked about keeping as either an employee house, or a place for the pub to rent for me. We also were considering a two story house on King Street that was very close to the downtown. The Shack at 511 Hamar Street was going to be Helena's Beaufort home. The business was to supply these residences as an employment benefit.

25. Helena and Sheila cut lots of lamb, potatoes and onions the night before the Taste of Beaufort. Sheila commented to me afterwards that Helena was drinking heavily and each pot of stew was prepared differently.

26. The next week Helena mentioned that she was coming down to Beaufort that weekend, but she did not tell me when. I told her that I was taking the weekend off, because the progress at the pub was at a standstill until our preliminary safety inspection from the City on Monday. Also, I asked Helena to give me some warning before coming down, and not to just show up and expect my attendance. However, per the times on my phone, she ended up sending me a text message Saturday night (May 14th) at 5:24pm that

she would be in Beaufort around 6pm. I did not see any of her text messages until the following (Sunday) evening, when she sent new text messages that were completely emotional and irrational. My response to her was that we talk when she was not drinking. I then received another text message from her at 01:42am Monday morning, which again was emotional and irrational. At 11:00am that Monday (May 16th) I met with the City's Safety Inspector. During the inspection Helena arrived. She appeared to be in a very unstable condition. When we spoke after the inspection, she was yelling and very emotional. She said she was going to change the locks, and we needed a cooling off period.

27. I asked what a cooling off period meant, because we were a less than a week from opening. Literally, with no delays to our progress, we could have been open for business on that upcoming Friday. I was responsible for getting the pub open, and had to make decisions in order to accomplish that task. I made choices and decisions as the working partner (owner) in which I did not include Helena; however, if there were decisions outside the norm, I always consulted her. Therefore, her declaring we needed a cooling off period was unacceptable to me and would cost us money. It appeared that she intentionally did not want the pub to open.

28. Therefore, I had the locks rekeyed and continued to work on the pub. Over the next few days I finished staining and sealing the bar, finished the bathrooms, almost finished installing the interior kitchen doors and finished the emergency lighting installation, and set up all of the tables and new barstools. We were almost complete

with all of the required checklists for both the City's Safety Inspection as well as the State DHEC Inspection.

29. On Friday morning, as we were making final corrections in preparation of the City's final Safety Inspection later that afternoon, a Beaufort Police Officer entered the pub and stated that a burglary in progress had been reported at this location. He escorted me outside so I could show him my identification. I also showed him a copy of the lease, in which I signed as the guarantor and I showed him my employee contract which stated I have total operational control of the premises. Based on these documents the Policemen allowed me to continue to work. At that point Ashley Twombly arrived and declared that everyone must leave the building now. The Officers told him that they did not appreciate his tone or directions. He also could not prove that he was representing Helena. Based on the advice of the Officers, I left the building until the Safety Inspector called me. At that time I returned and we began his inspection. During the inspection, Mr. Twombly showed back up with another Officer and said I had to leave. He would not give me a copy of the paperwork, nor would he even let me look at it, but supposedly he had restraining orders on him. I left the pub, and have not been back in it since.

30. I still have never received any type of notification of my termination. I continue to receive emotional and irrational text messages and emails from Helena. I have been contacted by people who have told me that Helena is "bashing" me around town by talking about me in a very derogatory manner. I believe her actions are motivated by anger and alcohol. She has also posted derogatory comments about myself,

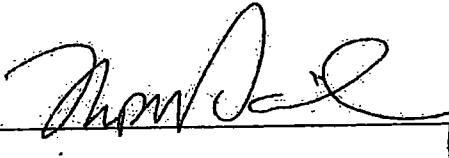
my sister, and a friend on Facebook, and her daughter has also emailed me in an unfriendly manner.

31. She is also trying to find fault in my work in the pub by hiring people to disagree with my work. I know this because the owner of the Dublin Down and Daniel Island Grill, Brian Mahoney, who is successful restaurant and bar owner / consultant, told me that she visited him and said that I was doing things wrong. However, he conveyed to me that I was doing things correctly, and he told her the same thing. He also told her that whoever was giving her advice, was giving her bad advice.

32. The pub was going to have a "party van" associated with it. The vehicle was parked at 92 Dolphin Point and she could have asked for it at any time, but instead, Helena hired a repo man to come to the Cat House at midnight and take the vehicle. Also, true ownership of the van is still in question, because it is believed that the van was titled to the Creamer Hill Group. The next morning she made a special effort to bring only some of my belongings to Luther's Restaurant the next morning and gave them to the owner and told him that she had to repossess the van the night before. She still has my all of my personal files and paperwork that was in the van.

33. I am ready, willing and able to perform my duties as General Manager pursuant to the terms of my employment contract, but have been prevented from doing so by the restraining order. The pub should have opened on or about Friday, May 20th. For some reason, Helena has not opened the pub. She has removed nearly everything from the pub, and it appears that she has no intention of ever opening it. I personally guaranteed the lease, but have been prevented from entering on the premises and have

been prevented from opening the pub. My employment contract also guarantees me a 50% ownership in the business, yet the restraining order has removed me from the business. It is clear to me that Helena lied to the Court in order to get the restraining order, representing that I was a terminated trespassing employee, rather than a still-employed General Manager who was simply doing my job to get the pub ready to open that weekend. I have never been notified that I was terminated, and any purported termination would be contrary to the terms of my employment contract. All I was doing at the time the restraining order was issued was accompanying the City Inspector on his inspection so we could open for business. I have not been paid. I personally have invested significant money into the business, as well as months of work. I am losing my share of the profits and investment. Since this is a new business, my share of the profits cannot be calculated with exactitude. I am being irreparably harmed and am suffering significant financial loss.


Thomas W. Dailey

Sworn to before me this

22nd day of June, 2011



Notary Public for South Carolina

My Commission Expires: 8/28/12

KEY EMPLOYEE EMPLOYMENT AGREEMENT

for

Thomas W. Dailey

This Employment Agreement (the "Agreement") is made effective as of May 1, 2011, by and between Truman's Eclectic Irish Pub, Inc. (the "Employer") and Thomas W. Dailey (the "Employee," and collectively, the "Parties"), and the term (the "Term") shall be for 48 months, which makes this Agreement valid and effective through April 30, 2015.

WHEREAS, Employee (*currently/desires to*) provide(s) services to Employer; and

WHEREAS, Employer wishes to recognize its appreciation of Employee's services and to set forth the terms of the employment relationship with Employee in writing;

NOW THEREFORE, in consideration of the mutual promises and covenants set forth below, the Parties agree as follows:

1. **Employment.** Employer shall employ Employee in the position of General Manager of Truman's Eclectic Irish Pub. Employee's duties shall include: complete oversight, management and operational control of Truman's Eclectic Irish Pub. Typical duties also include, but are not limited to marketing & advertising concepts, interior design, interior construction & renovations, employee hiring & firing, employee training and any other duties required to ensure success of Truman's Eclectic Irish Pub.

2. **Salary and Profit Sharing.**

a. **Salary.** For the services provided, Employer will pay Employee a weekly salary of \$1,250.

b. **Profit Sharing.** Once the Employer (the sole owner of all stock in Truman's Eclectic Irish Pub, Inc.) has recouped or been repaid all initial investment monies (as delineated in the Truman's Eclectic Irish Pub Initial Investment Worksheet), ownership of 50% of Company Stock shall be transferred to Employee, or his designated recipient; at such time Employer and Employee (or his designated recipient) shall decide upon profit sharing payments.

3. **Termination, Term and Conditions.**

a. **Termination.** Employee may not be terminated by Employer during the term of this Agreement.

b. **Term.** The term of this agreement (the "Term") shall be for 48 Months.

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c. Conditions. If Employee is terminated, Employer shall pay to Employee in lump sum form, all future monies yet unpaid throughout the term of this agreement.

1) For example, if employee is terminated after four (4) months, Employer shall immediately pay Employee 44 months of unpaid potential salary.

2) In addition to this lump sum payment, Employer shall immediately transfer ownership of 50% of Company Stock to Employee, or his designated recipient.

4. Binding Effect. The covenants and conditions contained in the Agreement shall apply to and bind the Parties and the heirs, legal representatives, successors and permitted assigns of the Parties.

5. Cumulative Rights. The Parties' rights under this Agreement are cumulative, and shall not be construed as exclusive of each other unless otherwise required by law.

6. Waiver. The failure of either party to enforce any provisions of this Agreement shall not be deemed a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

7. Severability. If any part or parts of this Agreement shall be held unenforceable for any reason, the remainder of this Agreement shall continue in full force and effect.

8. Entire Agreement. This Agreement constitutes the entire agreement between the Parties and supersedes any prior understanding or representation of any kind preceding the date of this Agreement. There are no other promises, conditions, understandings or other agreements, whether oral or written, relating to the subject matter of this Agreement. This Agreement may be modified in writing and must be signed by both Employee and Employer.

9. Employer agrees to pay all legal fees associated with this agreement and its enforcement.

10. Notice. Any notice required or otherwise given pursuant to this Agreement shall be in writing and mailed certified return receipt requested, postage prepaid, or delivered by overnight delivery service, addressed as follows:

Employer: Truman's Eclectic Irish Pub, Inc.
205 West Street
Beaufort, SC 29902

Employee: Thomas W. Dailey
2918 Waters Edge Ct East
Beaufort, SC 29902

Either party may change such addresses from time to time by providing notice as set forth above.

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11. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of South Carolina.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed the day and year first above written.

EMPLOYER:

Helena P. Tirone
Signature

4 May 11

Helena P. Tirone
Name - Please Print

Owner, President & CEO, Truman's Eclectic Irish Pub
Title

EMPLOYEE:

Thomas W. Dailey
Signature

4 May 11

Thomas W. Dailey
Name - Please Print

Initial meeting of Truman's Eclectic Irish Pub Board Members

Date: May 1, 2011

Time: 1100

Location: 511 Hamar Street (The Shack), Beaufort, SC 29902

Attendees

1. Tom Dailey
2. Helena Tirone
3. Martin Craft
4. Cassie Craft
5. Dane Molinaro
6. Sheila Sullivan

Agenda

1. To hold initial Corporate Meeting
2. To elect and approve Board Members
3. To determine individual roles and functions
4. To discuss future goals and actions

Meeting

Decision to hold Annual Meeting May 1, 2011: Approved

Board Members Election: Approved

1. Helena Tirone is the President and Chairman of the Board.
2. Sheila Sullivan is the Vice President.
3. Sheila Sullivan, although not the Secretary, will keep the notes and publish the minutes of the meeting.
4. Martin Craft is the Secretary and Treasurer.
5. Tom Dailey is the General Manager.

Operations

1. Martin discussed meeting with Jatin Patel, who will be the CPA for the Corporation.
2. Deductions for expenses such as 511 Hamar for Helena, for paid employee housing, the trip to Ireland for research, and payments to contractors were discussed.
3. The plan is to get more information on deductions allowed, and the process regarding the documentation of such deductions.
4. Anticipated timeline for opening of Pub is to be within two to three weeks.
5. Sheila to be reimbursed for travel expenses from California to South Carolina per Martin.
6. Discussed the Company stock, and the option for Tom to accept Company stock or select a designated representative, when it is time to transfer stock.

Closure

Discussed time and place for next meeting. Plan is to meet annually. Next Board Meeting is TBD at a later date.

Meeting adjourned at 1200

Respectfully submitted by Sheila Sullivan

nn. Erica Calcorzi

Erica is or was a person who worked with Mr. Dailey and is expected to testify about conversations she had with Dailey that may included admissions. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

oo. Michael Brasser

Michael is or was a friend of Dailey's and is expected to testify about conversations he had with Dailey that may included admissions. Plaintiffs are not in possession of any written or recorded statement taken from this witness.

pp. Cheryl Marlow, Jennifer Crews, Dane Molinaro, Julius Pryor, Dwyane Warren, and Craig Gullaksen.

These witnesses are friends of Dailey and are expected to testify about conversations they had with Dailey that may included admissions. Plaintiffs are not in possession of any written or recorded statement from these witnesses other than statements that may have been obtained by counsel during the course of this litigation and are protected work product.

SUPPLEMENTAL RESPONSE

**Chris Morrison
36 Westminster Place
Lady's Island, SC 29907**

Mr. Morrison may testify as to what needed to be done to 205 West Street before it could have opened.

Bev Stavec

Plaintiff is in possession of a statement from Bev Stavec that states as follows:

1. My name is Beverly Stavec, I am above the age of eighteen and competent to make this affidavit, which is made from my personal knowledge.
2. I am one of the owners of Luther's Rare & Well Done in Beaufort, South Carolina.
3. During the winter and spring of 2011, I spoke to Thomas W. Dailey on various occasions while he was at Luther's.
4. Mr. Dailey told me that he was opening an Irish pub at 205 West Street in Beaufort, South Carolina.
5. Mr. Dailey also told me that he was the owner with respect to the pub.

6. At some point in time during May of 2011, I learned that Mr. Dailey was not the owner of the pub, and that a dispute had arisen between Mr. Dailey and Ms. Tirone with respect to the pub.
7. Thereafter, Mr. Dailey approached me at Luther's and offered to sale me three circle pub/keg tables that he planned to be use in the pub.
8. To the best of my recollection, Mr. Dailey offered a price of \$1,000 each.
9. Mr. Dailey suggested that I could use the tables at Luther's and that they would fit nicely at the front of the restaurant.
10. Mr. Dailey told that he owned the tables and that he wanted to sell them.
11. This affidavit way not physically typed by me but it is my affidavit.
12. I have had an adequate opportunity to review each word and sentence in this affidavit and I hereby accept everything contained herein as my on.
13. I am executing this affidavit on my on free will and accord and under no pressure or improper influence.
14. I further understand that I do not have to execute this affidavit and am choosing to execute it voluntarily.
15. If I am called to testify at a trial, I will testify truthfully and honestly just as I have in providing and executing this affidavit.

Cheryl Marlow

Plaintiff is in possession of a statement from Ms. Marlow as follows:

1. During the winter and spring of 2011, I performed miscellaneous odd jobs for Mr. Thomas W. Dailey.
2. For example, I would move personal items from his personal residence to another personal residence.
3. I would also run miscellaneous personal errands for Mr. Dailey.
4. On at least 3-4 occasions, Mr. Dailey wrote checks to me that were made out to me and drawn upon a BB&T checking account in the name of Truman's Eclectic Irish Pub, Inc.
5. The amount of the checks varied but would range from approximately \$700 - \$1,000.
6. Mr. Dailey instructed me to cash the checks and take a portion of the cash as payment for the services I was performing for him.
7. The remaining funds were to be used to pay his child support payments.
8. Usually, I was allowed to retain \$50 - \$100 as payment for the services I provided with the remaining amount used for child support payments.
9. Mr. Dailey had me personally take the extra cash to the Beaufort County Courthouse.
10. I found it odd that Mr. Dailey was paying me for performing his personal errands with funds that belonged to Truman's Eclectic Irish Pub, Inc.
11. I also found it odd that Mr. Dailey was using Truman's Eclectic Irish Pub, Inc. money to pay his child support.
12. However, Mr. Dailey led me to believe that Truman's Eclectic Irish Pub, Inc. was his company and that all of the money in the checking account belonged exclusively to him.

13. Mr. Dailey told me that the transactions had to be handled this way for "tax purposes."

14. I never performed any work whatsoever for Truman's Eclectic Irish Pub, Inc. or at 205 West Street.

15. All of the work I did for Mr. Dailey was for his personal affairs.

16. This affidavit was not physically typed by me but it is my affidavit.

17. I have had an adequate opportunity to review each word and sentence in this affidavit and I hereby accept everything contained herein as my own.

18. I am executing this affidavit on my own free will and accord and under no pressure or improper influence.

19. I further understand that I do not have to execute this affidavit and am choosing to execute it voluntarily.

2. Set forth a list of photographs, plats, sketches or other prepared documents in possession of the Plaintiff or Plaintiffs' counsel that relate to the claim or defense in the case.

Plaintiffs object to this interrogatory because as drafted it is overly broad, unduly burdensome and unlikely to lead to the discovery of relevant or admissible evidence. Subject to these objections, Plaintiffs' general objections, and any applicable privileges, Plaintiffs identify the following documents.

ANSWER:

- a) Lease
- b) Affidavit of Helena Tirone
- c) Security Agreement
- d) Promissory Note
- e) Initial Annual Report of Corporations
- f) Invoice from Ellickson
- g) Family Court Payment History
- h) 5-20-11 Beaufort City Police Incident Report
- i) Center Star Credit Union suit papers
- j) Family Court file
- k) Deutsch Bank National Trust Company's suit papers
- l) MCAS Beaufort FCU suit papers
- m) Email exchanges between Dailey & Tirone
- n) Southwest Aviation Specialists suit papers
- o) Texts to Tirone
- p) Truman's corporation documents
- q) CBC National bank documents
- r) MCAS Beaufort FCU loan documents
- s) Truman's BB&T bank account documents
- t) Email exchanges between Dailey and Lipsitz, and
- u) Misc other documents

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF BEAUFORT	)	CIVIL ACTION NO: 2011-CP-07-02216
HELENA P. TIRONE AND TRUMAN'S ECLECTIC IRISH PUB, INC.,	)	
Plaintiffs,	)	
vs.	)	
THOMAS W. DAILEY,	)	PLAINTIFFS' ANSWERS TO
Defendant.	)	DEFENDANT'S SECOND SET OF
	)	INTERROGATORIES

TO: H. FRED KUHN, JR., ESQUIRE, ATTORNEY FOR DEFENDANT:

Helena P. Tirone and Truman's Eclectic Irish Pub, Inc., (hereinafter "Plaintiffs") responding to the Second Set of Interrogatories propounded by Thomas W. Dailey (hereinafter "Defendant") would allege and states as follows:

PRELIMINARY STATEMENT

1. The following responses are based on information presently available to Plaintiffs, which Plaintiffs believe to be correct. Said responses are made without prejudice to Plaintiffs' right to utilize subsequently discovered facts. Plaintiffs reserve the right to supplement their responses to these Interrogatories insofar as supplementation is allowed or required under applicable law.

2. No incidental or implied admissions of fact by Plaintiffs is made by the responses below. The only admissions are express admissions. The fact that Plaintiffs have answered any Interrogatory herein may not properly be taken as an admission that it accepts the existence of any facts set forth or assumed by such Interrogatory or that any information or documents

produced in response constitute admissible evidence. The fact that Plaintiffs have answered part or all of any Interrogatory is not intended, and shall not be construed to be a waiver of all or part of any objection to any Interrogatory made by Plaintiffs.

3. The objections asserted by Plaintiffs below are asserted in good faith, based upon counsel's evaluation of Plaintiffs' discovery obligations under applicable law. Nevertheless, Plaintiffs offer and stand ready to confer with Defendant in an effort to resolve or narrow to the greatest extent possible any dispute between the parties concerning Plaintiffs' objections.

GENERAL OBJECTIONS

Plaintiffs adopt and incorporate by reference the following General Objections in each of its specific responses to Defendant's Interrogatories.

1. Plaintiffs object to Defendant's Interrogatories to the extent that they request information or documents that (a) were prepared for or in anticipation of litigation; (b) constitute attorney work product; (c) constitute privileged attorney-client communications; or that (d) are otherwise privileged; and Plaintiffs will withhold all such information or documents in responding to these Interrogatories. In its efforts to produce requested information expeditiously, however, Plaintiffs may inadvertently produce information which is, or arguably is, privileged or otherwise immune from discovery. The disclosure of any such information is not intended to and shall not constitute a waiver or any rights, privileges or immunities Plaintiffs' may have with respect thereto, and Plaintiffs reserve the right to request or require the return of any documents or information disclosed as to which a privilege or immunity may apply.

2. Plaintiffs object to Defendant's Interrogatories to the extent that they call for the production of any information or documents that are not relevant to the pending action and not reasonably calculated to lead to the discovery of admissible evidence.

3. Plaintiffs object to each Interrogatory to the extent that it is overly broad, unduly burdensome, vague, or ambiguous.

4. Plaintiffs object to each Interrogatory to the extent that it seeks documents and/or information not within Plaintiffs' possession, custody, or control.

5. Plaintiffs object to each Interrogatory to the extent that it seeks documents and/or information already within the possession, custody, or control of Defendant, their agents, employees, and/or counsel.

6. Plaintiffs reserve all objections to the admissibility, at any hearing or proceeding, of any produced information or documents, including without limitation all objections on the grounds that such information or documents are irrelevant or immaterial.

7. Each of these General Objections shall be deemed to apply, where appropriate, to Plaintiffs' Specific Objections and Responses set forth below, notwithstanding the fact that Plaintiffs have responded to certain Interrogatories or made the same or similar Specific Objections within each response.

SPECIFIC OBJECTIONS AND RESPONSES

Plaintiffs' discovery, investigation, and research regarding this matter are ongoing and have not been completed. Because all the information and documents that are possibly within the scope of Defendant's Interrogatories may not have been fully located and identified, Plaintiffs reserve the right to amend and supplement these objections and responses as further information and documents are gathered pursuant to applicable law. Plaintiffs make these objections and responses without prejudice to such future amendment or supplementation.

ANSWERS TO DEFENDANT'S SECOND SET OF INTERROGATORIES

1. Itemize all allegedly embezzled, misappropriated, or wrongfully spent funds, and

as to each incident, set forth the date, the amount of funds, describe the misappropriation of wrongful spending took place, explain why you contend that said expenditure was improper, and state when you first learned about the expenditure, how you learned about the expenditure, and what explanation, if any, you have received for said expenditure.

ANSWER: See attached Truman's Eclectic Irish Pub's BB&T bank account records.

2. Itemize all items removed from the Pub premises and as to each item, state its current location, whether it is being utilized for any purpose, who is the owner of said item, what was the cost of this item, and your estimation of this item's current fair market value.

ANSWER: a) Everything was removed to various locations including Plaintiff's home and a storage unit;

b) Items are currently being used as collateral and security;

c) Helena P. Tirone;

d) See answer to Defendant's First Set of Interrogatories Number 11;

e) Unknown.

3. Itemize all funds invested or spent by either Plaintiff in the venture which is the subject of the Complaint, setting forth the source of the funds, the amount spent, the date on which each expenditure was made, and the purpose of each expenditure.

ANSWER: Plaintiffs object to this request because as drafted it is overly broad, unduly burdensome and unlikely to lead to the discovery of relevant or admissible evidence. Plaintiffs further object to providing any information on contributions or other activities that occurred after the lawsuit was filed as the same is protected by the work product doctrine and the attorney client privilege. Subject to these objections, Plaintiffs' general objections, and any applicable privileges, Plaintiffs state as follows:

- a. 1/19/2011 \$280.00-Deposit from USAA Checking Acct
- b. 1/21/2011 \$50,000.00-Deposit from USAA Checking Acct
- c. 3/18/2011 \$14,000.00-Deposit from USAA Checking Acct
- d. 4/7/2011 \$3,000.00-Deposit from USAA Savings Account
- e. 4/7/2011 \$26,000.00-Deposit from Personal Savings
- f. 5/17/2011 \$2,500.00-Deposit from USAA Checking
- g. Miscellaneous other contributions

Plaintiffs would also refer Defendant to the BB&T bank statements.

4. Who is the custodian of Truman's Eclectic Irish Pub, Inc., corporate records, where is the location of these corporate records, and list all items which comprise said corporate record.

ANSWER: Plaintiffs object to this interrogatory as "corporate records" is not defined and is capable of more than one reasonable interpretation. If Defendant will set forth a list of the records he would like a copy of Plaintiffs will consider supplementing this response.

5. Has any stock in Truman's Eclectic Irish Pub, Inc., been issued, and if so, how many shares, to whom, when, and what was the consideration paid.

ANSWER: 2000 shares of Truman's Eclectic Irish Pub, Inc. have been issued to the sole Director of the company, Helena P. Tirone.

6. Describe when and how Thomas Dailey was terminated as alleged in the Complaint.

ANSWER: There were discussions on April 27, 2011, April 28, 2011 and May 16, 2011. Defendant was terminated by telephone.

7. Who was present when Thomas Dailey was terminated as alleged in the Complaint.

ANSWER: Plaintiff Tirone and Defendant.

8. As specifically as possible, set forth what was told to Thomas Dailey regarding his termination of employment, and identify who conveyed this information to him.

ANSWER: Defendant was told that the Pub was being shut down, the locks were being changed and that his gravy train was over.

9. Who made the decision to terminate Thomas Dailey's employment as alleged in the Complaint and set forth in detail why the decision to terminate him was made.

ANSWER: Helena P. Tirone due to Defendant's acts of embezzlement and misappropriation of funds.

10. When was the alleged Note and Security Agreement which was shown to Judge Dukes during the hearing in this matter created, who drafted these documents, when were these documents signed, and who was present during the signing.

ANSWER: May 26, 2011; Twenge + Twombly Law Firm; May 27, 2011; Helena P. Tirone, Amy Knowles and Stephen Kuhl.

11. Provide the details on every asset of Truman's Eclectic Irish Pub, Inc., that is sold, leased, encumbered or otherwise transferred or disposed of in any form or fashion.

ANSWER: Plaintiffs object to answering this Interrogatory on the grounds that the Interrogatory as written is confusing. If Defendant will reword the Interrogatory, Plaintiffs will reconsider supplementing this response.

12. Provide the details of every transaction entered into by Truman's Eclectic Irish Pub, Inc.

ANSWER: Plaintiffs object to this Interrogatory on the grounds that the information requested is overly broad and unduly burdensome. If Defendant will identify a specific timeframe or transaction, Plaintiffs will consider supplementing this answer.

13. What is your intention regarding the disposition of the assets of Truman's Eclectic Irish Pub, Inc., including the lease.

ANSWER: Unknown at this time.

14. Identify all individuals who have performed bookkeeping, accounting, auditing, tax or financial services for Truman's Eclectic Iris Pub, Inc., including dates of service, a description of the services performed, the rate of pay or amount paid, and identify the product produced as a result of said services.

ANSWER: To be supplemented.

15. Do you have possession of a 1999 Dodge Van (VIN #2B7KB31Z1XK544615), and if so, explain how you acquired possession of this van, where is this van currently located or customarily garaged, for what purpose is this van currently being utilized and who is utilizing it,

whose name is currently on the title to the vehicle, and if this vehicle is currently titled in the name of either Plaintiff, describe how this occurred.

ANSWER: No.

16. As to each item listed below which was last known to be located within the premises of Truman's Eclectic Irish Pub, Inc., state whether or not you have possession of the said item, the location of said item, do you admit that Thomas Dailey is the owner of said item, and if you contend that you are the owner of said item, explain why and describe any document which supports your claim of ownership.

ANSWER: Plaintiffs are unable to answer this Interrogatory as there are no items listed below.

17. Identify all individuals or entities with whom you have entered into discussions or negotiations concerning the purchase of Truman's Eclectic Irish Pub, Inc., taking over the business of Truman's Eclectic Irish Pub, Inc., acquiring any of the assets of Truman's Eclectic Irish Pub, Inc., serving as a manager or employee in the business of Truman's Eclectic Irish Pub, Inc., taking over the lease held by Truman's Eclectic Irish Pub, Inc., or running a business in the premises leased by Truman's Eclectic Irish Pub, Inc. and describe the nature and status of said discussions or negotiations.

ANSWER: To be supplemented.

18. Identify the individual or individuals with Fluor Daniel whom you were concerned would fire you if they heard from Thomas Dailey.

ANSWER: Defendant has mentioned Mr. Bruce Stanski (President of Fluor's Federal Government Group) and Mr. David Seaton (CEO of Fluor).

19. Set forth, as specifically as you can recall, exactly the Substance of the conversation or conversations wherein you contend that Thomas Dailey threatened or coerced you into executing the Key Employee Employment Contract.

ANSWER: Shortly before executing the Key Employee Employment Contract Defendant said if he got fired from Truman's he would make sure Plaintiff got fired from Flour.

20. Identify all individuals with whom you discussed the Key Employee Employment Contract prior to its execution.

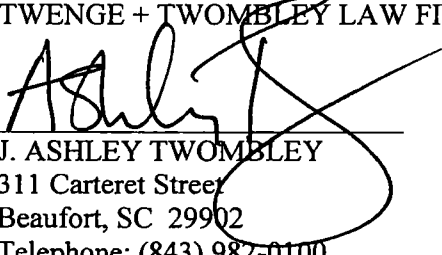
ANSWER: Defendant.

21. Set forth exactly what you were concerned that Thomas Dailey would say, or what information he would relay, to your employer that would result in your being fired.

ANSWER: It is unknown what Defendant planned to say to get Helena Tirone fired, but it is believed his plans were to say whatever it would take to get her fired.

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Beaufort, South Carolina

October 14, 2011

STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

) IN THE COURT OF COMMON PLEAS
)
)

) CIVIL ACTION NO: 2011-CP-07-2216
)
)

HELENA P. TIRONE AND TRUMAN'S
ECLECTIC IRISH PUB, INC.,

Plaintiffs,

vs.

THOMAS W. DAILEY,

Defendant.

**AFFIDAVIT OF
J. ASHLEY TWOMBLEY**

PERSONALLY APPEARED before me, J. Ashley Twombley, who, being duly sworn
deposes and states as follows:

1. My name is J. Ashley Twombley, I am above the age of eighteen and competent
to make this affidavit, which is made from my personal knowledge.

2. Defendant Dailey should not be allowed to Amend his Second Amended Counter-
Claim (2) days before trial for the following reasons:

- a. Dailey has amended his pleadings on three (3) separate occasions over the
course of the past eighteen (18) months and has never alleged any facts to
even suggest that he was pursuing a veil piercing argument;
- b. this Court has already ruled that "Dailey has never alleged any facts to
support a veil piercing theory or even requested that the corporate veil be
pierced. Based on the above, Plaintiff's Motion for Summary Judgment as
to the individual liability of Tirone is granted;"
- c. the trial of this has already been postponed twice and is now on the trial
roster for the third time;
- d. When Tirone attempted to amend her pleadings to add additional factual

492

allegations only, this Court made clear that the amendment was being allowed because it did "not add any additional parties, does not add any additional causes of action, and does not add any additional theories of liability. In other words, the proposed amendment will not create any additional discovery or otherwise delay the trial of this case. Because the amendment will not prejudice Defendant in any way and will not delay the trial of this case, I find that the amended pleading is due to be and is hereby allowed pursuant to Rule 15(a), SCRCP and Foggie v. CSX

Transportation, Inc., 431 S.E.2d 5887 (S.C. 1993)."

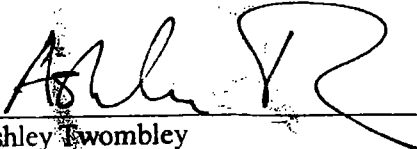
e. Allowing Dailey to raise a veil piercing argument now would materially prejudice Tirone because Tirone has not prepared to defend a veil piercing case;

f. Specifically, Tirone has not conducted any veil piercing discovery, has not retained a veil piercing expert witness, and most importantly has not asserted any veil piercing defenses in her reply to Dailey's counter-claims or developed said defenses; and

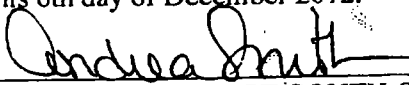
g. Allowing such an amendment now would require Tirone to introduce additional or different evidence than she is currently able to introduce and she has not had an opportunity to develop the same.

3. Dailey should not be allowed to amend his pleading (2) days before trial as such an amendment would be materially prejudicial to Tirone.

THE AFFIANT FURTHER SAYETH NAUGHT!


J. Ashley Twombly

Sworn to and Subscribed before me
This 6th day of December 2012.


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: _____

