

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

SC Court of Appeals

73760

The Honorable Marvin H. Dukes, III
Beaufort County Master-in-Equity

Case No.: 2012-CP-07-01929

EWB, LLC.....Respondent

vs.

ISLAND TIRE SERVICE, INC.,
KAREN WATSON, TERRY FOWLER, TER/KAR, LLC and
BARBARA KAREN WATSON as Personal Representative
Of the Estate of Billy Lee Watson.....Defendants,

of whom

KAREN WATSON, TER/KAR, LLC and BARBARA KAREN WATSON
As Personal Representative of the Estate of Billy Lee Watson.....Appellants.

MOTION TO REMAND

The Respondent, EWB, LLC, hereby moves to Remand the Appellants dated September 9, 2014, regarding the Order of the Honorable Marvin H. Dukes, III, Special Circuit Court Judge for Beaufort County and Beaufort County Master-in-Equity, dated August 5, 2014, a copy of which is attached as **Exhibit A** (the "Order"). This Motion is made pursuant to Rule 240(a) of the South Carolina Appellant Court Rules.

The grounds for this Motion are: (i) there are other parties and other matters in controversy involved in this case which are not subjects of this Appeal or necessarily affected by it, and (ii) the Order appealed from is interlocutory and, therefore, not immediately appealable and not ripe for review.

The Order under appeal in this matter was entered against Island Tire Services, Inc., only one of the Defendants. The litigation in the lower court has not been concluded. There are unresolved issues that involve breach of contract, breach of contract accompanied by a fraudulent act, fraud and deceit, and the piercing of the corporate veil. Respondent submits this case should continue in the lower court to final judgment on all issues. See the copy of original Complaint filed in this case attached as **Exhibit B**. There is currently pending a Motion to Amend filed on August 26, 2014, a copy of which is attached as **Exhibit C**.

PROCEDURAL HISTORY

This lawsuit began in May of 2012 with allegations of breach of contract, breach of contract accompanied by a fraudulent act, fraud and deceit. The contract that was the subject of this lawsuit was an Asset Purchase Agreement dated May 13, 2011 (the "Agreement") by and between Respondent and Appellants. Respondent filed a Motion for Partial Summary Judgment seeking the disbursement of a portion of the net proceeds from the sale of real estate by one or more of the Appellants. The relief sought was for \$225,000.00 representing tax liens paid by Respondent that were the contractual obligation of one or more of the Appellants. The Motion was heard on July 30, 2014 resulting in the Order.

ARGUMENT

Rule 205 of the Rules of South Carolina Appellate Court Rules provides in part:

Upon the service of the notice of appeal, the appellate court shall have exclusive jurisdiction over the appeal . . . Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal.

Respondent submits: (i) there still are matters not affected by the appeal that should be decided by the lower court, and (ii) the Order appealed is interlocutory in nature and therefore not immediately appealable and not ripe for review.

There is a plethora of decisions of this Court distinguishing Final and Interlocutory Judgments of which the more recent are *Bone vs. U.S. Food Service*, 404 S.C. 67; 744 S.E.2d 552; 2013 S.C. LEXIS 159; 2013 WL 3200598, and 2011 S.C. App. LEXIS 10, and

As stated in *Bone* at page 75:

On its face, the statute refers to a "***final*** judgment," which is a well-established term of art in the law to which great significance is attached. See *Good v. Hartford Accident & Indem. Co.*, 201 S.C. 32, 21 S.E.2d 209 (1942) (holding if a judgment determines the applicable law while leaving open questions of fact, it is ***not a final*** judgment); see also *Charlotte-Mecklenburg Hosp. Auth. v. S.C. Dep't of Health & Env't'l Control*, 387 S.C. 265, 267, 692 S.E.2d 894, 895 (2010) ("A ***final*** judgment disposes of the whole subject matter of the action or terminates the particular proceeding or action, leaving nothing to be done but to enforce by execution what has been determined." (Emphasis is that of the court))

While *Bone* involved an appeal from an administrative hearing and a statute specific to appeals from administrative hearings, the definition cited appears to be consistent with those applied in cases heard in the Circuit Courts and by lesser tribunals.

See:

Watson v. Underwood, 407 S.C. 443, 756 S.E.2d 155, 2014 S.C. App. (2014) at 453.

The denial of a motion for summary judgment is not appealable because it does not finally determine anything about the merits or strike a defense. Ballenger, 313 S.C. at 476-77, 443 S.E.2d at 379. It "simply decides the case should proceed to trial." Id. at 477, 443 S.E.2d at 380. It "does not establish the law of the case, and the issues raised in the motion may be raised again later in the proceedings by a motion to reconsider the summary judgment motion or by a motion for a directed verdict." Id.

And

Plaza Dev. Services v. Joe Harden Builder, Inc., 296 S.C. 115, 116,370 S.E.2d 893, 894,1988 S.C. App. LEXIS 117, 1(S.C. Ct. App.1988) at 118

Plaza's appeal is not saved by Section 14-3-330(2), Code of Laws of South Carolina, 1976. That section provides for an interlocutory appeal from an order affecting a substantial right when the order "in effect determines the action and prevents a judgment from which an appeal might be taken." Neither criterion is satisfied in this case. The order granting the Rule 12(b)(6) motion did not determine the action against Fidelity. Likewise, it does not prevent a final judgment from being entered upon which an appeal might be taken.

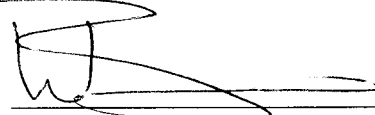
Respondent submits the Order does not dispose of the whole subject matter of the action, nor terminates the action, leaving nothing to be done ¹ and it does not provide for the time to enforce by execution.

For reasons stated above, Respondent requests this case be remanded to the Circuit Court for a final determination.

Respectfully Submitted

October 2, 2014

WILLIAM M. BOWEN, P.A.



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Attorney for Appellants

¹ The last line of the Order states "All other issues contained in the Complaint and Counterclaim remain open for determination at a later time."

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)
))
EWB, LLC,)
Plaintiff,)
))
vs.)
))
))
Island Tire Service, Inc., Karen Watson,)
Terry Fowler, TER/KAR, LLC, and)
Barbara Karen Watson as Personal)
Representative of the Estate of Billy Lee)
Watson,)
Defendants.)
_____)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-07-1929

FINDING OF FACTS
AND CONCLUSIONS OF LAW

2012-07-13
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This matter comes before me upon Motion of Plaintiff seeking Partial Summary Judgment for the disbursement of a portion of the net proceeds from the sale of real estate for the reimbursement of tax liens paid by Plaintiff which were the obligation(s) of one or more of the Defendants incident to the sale of property. Plaintiff is requesting that the Court use its equitable powers to remedy what is a clear breach of contract by the seller to an Asset Purchase Agreement dated May 13, 2011.

Plaintiff was represented by William M. Bowen, and the Defendants by Terry Finger, Esquire. The joint affidavit of Plaintiff and its attorney with attachments (the "Affidavit") was presented in support of the Motion. Berryman W. Edwards III, manager of the Plaintiff, was also present and offered to the Court and Defendants' attorney for examination.

Based upon presentation of counsel and the following facts put in evidence by the Affidavit, which were in essence undisputed, I find and conclude as follows:

FINDING OF FACTS

1. The Court has jurisdiction of the parties and subject matter of this suit.
2. In May of 2011, Island Tire, by its agents and/or shareholders Karen Watson and Terry Fowler, entered into an "Agreement for Purchase and Sale of Assets of Island Tire Service, Inc." (the "Agreement") to Plaintiff for a sales price of \$1,250,000.00
3. Paragraph 10 of the Agreement sets forth the representations and warranties of the Seller. The term "Seller's knowledge" was specifically defined to mean "the actual knowledge of Karen Watson and/or Terry Fowler." (Agreement, Page 8, Paragraph 10).
4. Section 10.3 of the Agreement provided, among other things:

- a. Seller is the owner of, and has good and marketable title to the Assets, and the Assets are not encumbered by any mortgage, lien, pledge, or obligation of any nature, whether accrued, absolute, contingent, or otherwise, and whether due or to become due, which Buyer shall or will succeed to by reason of its purchase of the Assets. Seller shall transfer all of the Assets to Buyer, free and clear of all mortgages, pledges, security interests, charges, liens or encumbrance...
5. Incident to the Agreement, Plaintiff entered into leases for two (2) locations owned by the Estate of Billy Watson and TER/KAR ("North Store" and "South Store") upon which the business purchased by Plaintiff was to be operated. TER/KAR owned the North Store, and the Estate of Billy Watson owned the South Store.
6. At the closing of the transaction contemplated by the Agreement, Defendants received the sales price and delivered a Bill of Sale which contained essentially the same representations as those of the Agreement.
7. The business was sold with the existing IRS liens unsatisfied, which constituted a misrepresentation and breach of the terms of the Agreement.
8. Plaintiff alleges Karen Watson and Terry Fowler had or should have had knowledge of the IRS tax liens against the business.
9. Barbara Karen Watson is the Personal Representative and sole beneficiary of the Estate of Billy Lee Watson, which is being administered in the Probate Court of Beaufort County, South Carolina under Case Number 2009-ES-07-00746.
10. Plaintiff alleges that at all times pertinent to the matters alleged, Defendants, individually, and/or as members, and/or shareholders, and/or Personal Representative, were acting in concert with one another, with each being the alter ego of the other.
11. At or after closing there remained Tax Liens in excess of \$225,000.00.
12. When notified of the liens Defendants repeatedly represented to Plaintiff the tax liens would be satisfied from the proceeds of an upcoming the sale of North Store.
13. The sale of North Store was concluded without objection of Plaintiff for a sales price in excess of \$2,000,000.00. The tax liens against Island Tire, Inc. were not satisfied in full. The tax liabilities of Defendants Watson and Fowler were satisfied.
14. The sales proceeds from the sale of the North Store were distributed to or for the benefit of all or some of the personal obligations of Defendants.
15. The tax liens remained unpaid until they were satisfied by Plaintiff through the payment of \$225,672.56.

16. In January 2014, Defendants entered into an Agreement of Purchase and Sale for the sale of South Store for \$1,650,000.00.
17. The sale of the South Store was concluded and a portion of the net proceeds remaining after the sale were distributed for the benefit of all or some of the Defendants.
18. As of this time, \$183,525.00 of the sales proceeds remains in escrow pending a further Order of this Court.
19. Defendants' attorney represented to Plaintiff and its attorney it would be paid from the sales proceeds of the sale of the North Store and Plaintiff relied upon such representations and had a right to do so as the representations were made by Defendants' attorney who is an officer of this court.
20. The representations of Defendants' attorney were made with the knowledge and consent of Defendants.
21. It appears efforts at settlement of this suit were attempted but never concluded.
22. Defendants' attorney fees of \$45,935.06 were earned in performing services necessary to accomplish the sale of the 2 properties.
23. Had delinquent taxes been paid from the sales proceeds of the 2 properties little if anything would have remained for distribution to Defendants.

CONCLUSIONS OF LAW

It is well established law that a Court sitting in equity has broad discretion. Such has been enunciated as "Once invoked, the scope of a district court's equitable powers is broad, for breadth and flexibility are inherent in equitable remedies." In this connection see *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 249, 715 S.E.2d 348, 352 (Ct. App. 2011) [Citing: *Brown v. Plata*, 131 S. Ct. 1910, 1944, 179 L. Ed. 2d 969 (2011), *Hutto*, 437 U.S., at 687, n. 9, 98 S.Ct. 2565 (quoting *Milliken v. Bradley*, 433 U.S. 267, 281, 97 S.Ct. 2749, 53 L.Ed.2d 745 (1977), in turn quoting *Swann v. Charlotte-Mecklenburg Bd. of Ed.*, 402 U.S. 1, 15, 91 S.Ct. 1267, 28 L.Ed.2d 554 (1971))].

Further, Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible. See *Buckley v. Shealy*, 370 S.C. 317, 323-24, 635 S.E.2d 76, 79 (2006) (citing *Ex Parte Dibble*, 279 S.C. 592, 310 S.E.2d 440 (Ct.App.1983)). *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 252, 715 S.E.2d 348, 354 (S.C. Ct. App. 2011) "[E]quity regards as done that which ought to have been done; equity applies substance over form" *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 250, 715 S.E.2d 348, 352-53 (S.C. Ct. App. 2011)

The principle "equity regards as done that which ought to be done" applies in cases where the

party seeking equitable relief establishes “a clear obligation based upon a valuable consideration that another do some act which he has failed to perform.” *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 253 715 S.E.2d 348, 354 (Ct. App. 2011) [Citing: *Wilkie v. Phila. Life Ins. Co.*, 187 S.C. 382, 393–94, 197 S.E. 375, 380 (1938)]. The obligation for payment of the tax debt is clearly established and the facts are uncontested. EWB, LLC paid a large amount of money to ensure that marketable title to the Assets was conveyed to it and that there would be no outstanding obligations, liens or otherwise attached to the Assets.

In *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 253-54, 715 S.E.2d 348, 354-55 (Ct. App. 2011) the Court sets forth as follows:

The notion “equity looks to substance rather than form” evolved out of judicial regard for that which ought to be done. *Id.* at 393, 197 S.E. at 380. This maxim applies by “dispensing with pure formalities which would otherwise defeat the equity.” *Id.*; see also *Kerr v. City of Columbia*, 232 S.C. 405, 410, 102 S.E.2d 364, 366 (1958) (finding the court must consider the controversy as though town council had issued a business permit, even though the town claimed the area was a residential zone, because town officials told the owner his property was in a commercial zone). When applying this principle, courts look to the substance and intent of the parties, and give a construction consistent with such intent. *Harpending v. Reformed Protestant Dutch Church of City of N.Y.*, 41 U.S. 455, 480, 16 Pet. 455, 10 L.Ed. 1029 (1842). **After a party establishes an equitable right, the court may dispense with pure formalities which would otherwise defeat the equity.** *Wilkie*, 187 S.C. at 393, 197 S.E. at 380. A court of equity should scrutinize the conduct of the plaintiff with the utmost care, to ascertain he has done everything which ought to have been done to secure the action requested. *Corbus v. Alaska Treadwell Gold Mining Co.*, 187 U.S. 455, 465, 23 S.Ct. 157, 47 L.Ed. 256 (1903). This maxim has at times guided a court to relieve a party from the consequences of accident, mistake, and fraud. *Camp v. Boyd*, 229 U.S. 530, 559, 33 S.Ct. 785, 57 L.Ed. 1317 (1913). **[Emphasis added]**

To allow Karen Watson and/or the Estate of Billy Watson to retain the proceeds from the sale of the South Store would amount to an unjust enrichment. Unjust enrichment is an equitable doctrine, which permits recovery of the amount that the defendant has been unjustly enriched at the expense of the plaintiff. *Regions Bank v. Wingard Properties, Inc.*, 394 S.C. 241, 256-57, 715 S.E.2d 348, 356 (Ct. App. 2011) [Citing: *Dema v. Tenet Physician Servs.–Hilton Head, Inc.*, 383 S.C. 115, 123, 678 S.E.2d 430, 434 (2009); *Ellis v. Smith Grading & Paving, Inc.*, 294 S.C. 470, 474, 366 S.E.2d 12, 15 (Ct.App.1988)].

I conclude as follows:

1. Plaintiff shall have judgment against the Defendant Island Tire Service, Inc., in the amount of \$225,672.56.
2. Escrowed funds of 183,525.00 shall be disbursed as follows

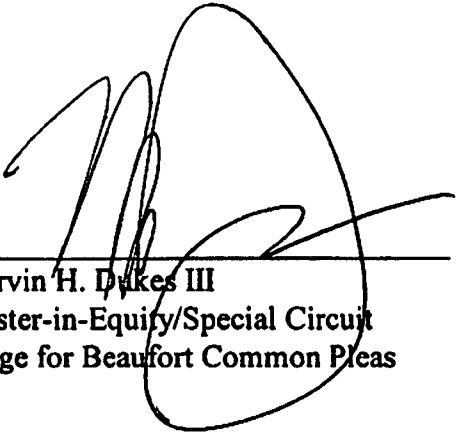
- a. To Finger and Fraser \$45,935.06.
- b. To Plaintiff \$137,590.94, this amount to be a credit towards the judgment of \$225,672.56.

3. Although there was an attempt to settle this suit it was never consummated.

4. All other issues contained in the Complaint and Counter Claim remain open for determination at a later time.

AND IT IS SO ORDERED.

July 21, 2014
Beaufort, South Carolina



Marvin H. Dukes III
Master-in-Equity/Special Circuit
Judge for Beaufort Common Pleas

STATE OF SOUTH CAROLINA)
 COUNTY OF BEAUFORT)
)
 EWB, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 Island Tire Service, Inc., Karen Watson,)
 Terry Fowler, TER/KAR, LLC, and)
 Barbara Karen Watson as Personal)
 Representative of the Estate of Billy Lee)
 Watson,)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT
 CASE NO. 2012-CP-07- 1929
 COMPLAINT

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 CLERK OF COURT
 JUDICIAL CIRCUIT
 BEAUFORT COUNTY, S.C.

Plaintiff, complaining of Defendants, would respectfully show unto this Honorable Court the following:

AVERMENTS OF FACT

1. Plaintiff is a Limited Liability Company formed pursuant to the laws of the state of South Carolina, with its principal place of business in Beaufort County on Hilton Head Island.
2. Island Tire Service, Inc. ("Island Tire") is a corporation formed pursuant to the laws of the state of South Carolina which at all times pertinent to the matters alleged herein, was doing business in Beaufort County on Hilton Head Island.
3. Karen Watson a/k/a Barbara Karen Watson and Terry Fowler are the sole members and/or shareholders of Island Tire.
4. TER/KAR, LLC ("TER/KAR") is a limited liability company formed pursuant to the laws of the state of South Carolina which, at all times pertinent to the matters alleged herein, was doing business in Beaufort County on Hilton Head Island.
5. Karen Watson a/k/a Barbara Karen Watson and Terry Fowler are the sole members of TER/KAR, LLC.
6. Karen Watson a/k/a Barbara Karen Watson ("Karen") is a citizen and resident of Bluffton, Beaufort County, South Carolina.
7. Terry Fowler ("Terry") is a resident of the state of Georgia living in the Savannah area.
8. Barbara Karen Watson is the Personal Representative of the Estate of Billy Lee Watson

(the "Estate"), which is being administered in the Probate Court of Beaufort County, South Carolina under Case Number 2009 ES 07 00746.

9. At all times pertinent to the matters alleged herein, Island Tire, TER/KAR, Karen, Terry, and the Estate (collectively the "Defendants"), individually, and/or as members, and/or shareholders, and/or Personal Representative, were acting in concert with one another, with each being the alter ego of the other.
10. On May 13, 2011, Island Tire, by its agents and/or shareholders Karen and Terry, entered into an "Agreement For Purchase and Sale of Assets of Island Tire Service, Inc. Asset Purchase Agreement" ("Sales Agreement"), to which a Schedule A was attached listing all of the personal property involved in the sale ("Assets").
11. At the closing of the transaction contemplated by the Sales Agreement, Defendants delivered a Bill of Sale to which was attached an identical list of the Assets as Exhibit A.
12. A list of the Assets attached to the Sales Agreement as Schedule A and to the Bill of Sale as Exhibit A is attached to this Complaint as Exhibit One and Exhibit Two.
13. The Sales Agreement provided, among other things, the following (the numbers and letters assigned to the paragraphs below correspond to those of the Sales Agreement):

RECITALS

A. Seller owns and operates a business consisting of two tire and automotive service businesses, one of which also sells gasoline, both operating under the trade name of Island Tire Service, Inc. ("the Business"). Buyer desires to purchase from Seller and Seller desires to sell to Buyer, on the terms and subject to the conditions of this Agreement, substantially all of the assets of the Business.

B. By two separate Real Property Lease Agreements dated prior to the Date of Closing ("Lease Agreements"), the parties intend that Buyer shall lease the properties ("Leaseholds") on which the Business operates.

THEREFORE, the parties agree as follows:

AGREEMENT

1. Purchase and Sale. Subject to the provisions and conditions set forth in this Agreement, Seller agrees to sell, convey, transfer, assign and deliver to Buyer, and Buyer agrees to purchase from Seller, all of Seller's right, title and interest in the assets of the Business set forth in Schedule A, incorporated herein by reference, (collectively, the "Assets").

3. Non-Assumption of Liabilities. Except as expressly provided by this

Agreement, Buyer shall not (i) assume or have any responsibility whatsoever with respect to any obligation or liability of Seller arising out of or relating to any of the Assets or the Business except the obligations under the Lease Agreements, regardless of amount, character or description, or whether accrued, contingent or otherwise; (ii) take the Assets of the Business subject to any existing liabilities, accounts payable or other contracts or obligations entered into or incurred by Seller in connection with its ownership of the Assets and the Business and/or the leaseholds; or (iii) be liable in any manner or way for any of the liabilities, accounts payable, contracts, obligations, claims or demands of or against Seller arising from Seller's ownership of the Assets or operation of the Business, except as otherwise set forth herein.

10. Representations and Warranties of Seller. Seller represents and warrants to Buyer as follows in this Paragraph 10. As used in this paragraph, the term "Seller's Knowledge" shall mean the actual knowledge of Karen Watson and/or Terry Fowler, without further investigation or inquiry.

10.1 Seller has full power and authority and contractual right to enter into this Agreement and to sell, convey and transfer the Assets and has taken all action necessary to authorize the execution and delivery of this Agreement, the sale of the Assets in accordance with its terms and the performance of the obligations of Seller hereunder, except as otherwise provided for herein. This Agreement has been duly executed by Karen Watson and Terry Fowler, the sole shareholders of Seller in their capacity as shareholders, and constitutes the legal, valid and binding obligation of Seller in accordance with its terms, subject to applicable bankruptcy, insolvency and other laws affecting the rights of creditors generally.

10.3 Seller is the owner of, and has good and marketable title to the Assets, and the Assets are not encumbered by any mortgage, lien, pledge, or obligation of any nature, whether accrued, absolute, contingent, or otherwise, and whether due or to become due, which Buyer shall or will succeed to by reason of its purchase of the Assets. Seller shall transfer all of the Assets to Buyer, free and clear of all mortgages, pledges, security interests, charges, liens or encumbrances. Each tangible Asset is free from patent defects, has been maintained in accordance with normal industry practice, is in good operating condition and repair (subject to normal wear and tear) and is suitable for the purposes for which it presently is used. Seller has not interfered with, infringed upon, misappropriated or otherwise come into conflict with any rights of third parties in and to any intangible Asset, and has never received any charge, complaint, claim or notice alleging any such interference, infringement, misappropriation or violation. Seller has not granted any license, agreement or other permission to any third party with respect to any of the Assets.

10.4 To Seller's Knowledge, Seller has obtained all Permits required for the conduct of the Business except where the failure to obtain a Permit would not result in a material adverse effect on the Business or the Assets. Each such permit is in full force and

effect, and Seller has not engaged in any activity which would cause or permit revocation or suspension of any such permit, and no action or proceeding looking to or contemplating the revocation or suspension of any such permit is pending or, to Seller's Knowledge, threatened except where such suspension or revocation would not have a material adverse effect, Seller shall maintain in force and effect through the Closing all Permits existing as of the Effective Date.

10.5 Except as disclosed in Schedule B, there is no suit, action, arbitration, or legal, administrative, or other proceeding, or governmental investigation pending or, to the best knowledge of Seller, threatened, against or affecting the Assets or the operation of the Business. Seller is not in default in relation to the Assets or the operation of the Business or Lease Agreements with respect to any order, writ, injunction, or decree of any federal, state, local, or foreign court, department, agency, or instrumentality.

10.6 The consummation of the transaction contemplated by this Agreement will not result in or constitute any of the following: (i) a default or an event that, with notice or lapse of time or both, would be a default, breach, or, violation of any lease, license, promissory note, conditional sales contract, commitment, indenture, mortgage, deed of trust, or other agreement, instrument, or arrangement to which Seller is a party which would prohibit, interfere, or otherwise restrict or encumber the free, unrestricted and unabated transfer of the Assets; or (ii) the creation or imposition of any lien, charge, or encumbrance on any of the Assets.

10.7 To Seller's Knowledge and except as disclosed in writing by Seller to Buyer, Seller is in compliance with all requirements of law, federal, state and local, and all requirements of all governmental bodies or agencies having jurisdiction over it, the operation of the Business and the use of the Assets or Leaseholds, except where the failure to be in such compliance would not have a material adverse effect on the Business, the Assets or Leaseholds taken as a whole. Seller and the Property are in full compliance with applicable environmental laws. To Seller's Knowledge, no past or current tenant of the Property has violated any law, including, but not limited to, any environmental laws. Seller has properly filed all reports and other documents required to be filed with federal, state, local, or foreign governments or subdivisions or agencies thereof. Seller has not received any notice, not heretofore complied with, from any federal, state or municipal authority or any insurance or inspection body that any of its properties, facilities, equipment or business procedures or practices fails to comply with any applicable law, ordinance, regulation, or requirement of any public authority or body.

10.8 To Seller's Knowledge, the Financial Records disclosed pursuant to Paragraph 1.2 above are correct and complete, and present fairly the financial condition and the results of operation of Seller. There are no additional facts relating to the Assets or to the operation of the Business that has not been disclosed to Buyer, the omission of which would be misleading or material to Seller.

10.9 Since the period covered by the most current Financial Records, there have been no material changes in the Assets, liabilities, business, or condition of Seller other than changes in the ordinary course of business, which changes have not adversely affected its business, properties, prospects, or condition.

10.11 Seller has performed all material obligations required to be performed by it to date, and is not in default under any of the Material Contracts or any other material contract, agreement, lease, commitment, indenture, mortgage, deed of trust, or other document to which it is a party.

10.12 Seller has filed all federal, state and local tax returns that are required to be filed, and has paid all taxes that have become due pursuant to such returns or pursuant to any assessment received by Seller. To the best of Seller's knowledge the amounts set up as a provision for taxes on the balance sheet are sufficient for the payment of all accrued and unpaid federal, state, county, and local taxes of Seller for the period ending on said date, and for all fiscal years prior thereto. Seller does not have any knowledge of any tax deficiency proposed or threatened against Seller.

10.13 All written representations and warranties of Seller, including any representations and warranties in any written statements or documents delivered or made available to Buyer by Seller under this Agreement or the Asset Purchase Agreement, shall be true and correct as of the Closing Date as if made on such date and shall survive the Closing Date.

16.1 Seller's Indemnity. Seller shall indemnify, defend, and hold harmless Buyer, and its successors, assigns, directors, officers, employees, attorneys and agents, against and in respect of any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, that they or any of them shall incur or suffer, including without limitation reasonable attorney's fees and costs, whether or not a lawsuit or other proceeding is filed which arise, result from, or relate to (i) the use of the Assets or the operation of the Business through the close of business on the Closing Date, (ii) any liabilities of Seller arising out of the Assets or the Business, (iii) any breach of, or failure by Seller to perform, any of its representations, warranties, covenants, or agreements contained in this Agreement, (iv) any violation of health and safety or other laws (as in effect at the Closing) arising out of the ownership or operation of the Business, and Leaseholds, based on events or circumstances occurring or conditions existing prior to the Closing, regardless of when such claim, liability or loss is asserted, claimed or sustained, (v) any brokerage, commission, or finder's fee alleged to be payable because of Seller's act, omission, or statement, or (vi) any inaccuracy of Seller's representations and warranties contained in this Agreement or in any agreement, instrument or document entered into pursuant hereto or in connection with the Closing or any such problem or defect in

the Lease Agreements or Leaseholds resulting in any liability or cost to the Buyer. Seller's indemnity regarding environmental conditions shall be provided and governed exclusively by the Asset Purchase Agreement. In the event Seller fails to promptly indemnify and defend such claims and/or pay Buyer's expenses, as provided above, Buyer shall have the right to defend itself, and in that case, Seller shall reimburse Buyer for all of its reasonable attorneys fees, costs and damages incurred in settling or defending such claims within thirty (30) days of each of Buyer's written requests.

20.13 Survival of Representations, Warranties and Agreement. The representations, warranties, obligations, covenants and agreements of the parties hereto shall in all events survive the close or termination of this Agreement where same is necessary to effectuate the intention of the parties.

20.14 Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns.

20.15 Binding Effect. This Agreement shall be binding upon and inure to the benefit of Seller and Buyer and their respective personal representatives and assigns.

21. In the event of litigation between the parties, the prevailing party shall be entitled to recover its reasonable attorney fees and costs.

12. With respect to the Lease Agreements, among other things each contained the following modified to reference the descriptions of the two Buildings, the numbers and letters assigned to the paragraphs below correspond to those of the Lease Agreements:

1.1 Premises. Terms used in defining Premises are: Lot 33 Main Street, 1.48 acres with a 7,169 sq. ft. more or less "Building", developed for the primary purpose of a Tire Store and Auto Repair with a mailing address of 271 William Hilton Parkway, Hilton Head Island, S. C. 29926,

7.3 Liability of Landlord. Except as otherwise expressly provided herein, Landlord shall not be liable to Tenant or to any person, firm, corporation, or other business association claiming by, through or under Tenant for failure to furnish or for delay in furnishing any service provided for in this Lease, and no such failure or delay by Landlord shall be an actual or constructive eviction of Tenant nor shall any such failure or delay operate to relieve Tenant from the prompt and punctual performance of each and all the covenants to be performed herein by Tenant; nor for any latent defects in the Premises or Building; nor for defects in the cooling, heating, electric, water, elevator, or other apparatus or systems or for water discharged from sprinkler systems, if any, in the Building; nor for the theft, mysterious disappearance, or loss of any property of Tenant whether from Premises or any part of the Building. Landlord shall not be liable for any interference, disturbance, or act whether caused by another tenant or tenants of

Landlord or other person, nor shall Tenant be relieved from any obligation herein because of such interference, disturbance, or act. No officer, director, shareholder, or partner of Landlord, or have any partner of Landlord, shall have any personal liability whatsoever with respect to this Lease. Further, **Landlord's obligations and liabilities under this Lease shall be limited solely to Landlord's interest in the Building, as such interest is constituted from time to time.** Emphasis added.

Recordation of Lease. A memorandum of this Lease in recordable form shall be executed upon its signing and the Tenant and Landlord agree that the Memorandum of Lease shall be recorded in the Register of Deeds Office for Beaufort County, South Carolina.

13. At the closing of the transaction, in furtherance of the Sales Agreement, Defendants delivered a Bill of Sale ("Bill of Sale"), which in part stated:

KNOW ALL MEN BY THESE PRESENTS, that Island Tire Services, Inc. for and in consideration of the sum of Ten and 00/100 (\$10.00) Dollars and other valuable consideration, to it in hand paid, at and before the sealing and delivery of these presents by EWB, LLC (the receipt whereof is hereby acknowledged), has bargained and sold, and by these presents does bargain, sell and deliver to the said EWB, LLC, its successors and assigns forever, those assets more fully described on Exhibit "A" herein.

TO HAVE AND TO HOLD the said above described personal property unto the said EWB, LLC, its successors and assigns forever.

Island Tire Services, Inc. covenants and warrants that there are no liens and/or encumbrances upon said assets listed on Exhibit "A." (Emphasis added).

14. Defendants represented to Plaintiff that it owned the Assets and that such had been maintained in accordance with the representations of Section 10.3 of the Sales Agreement.
15. Defendants did not own the Assets, nor had such been maintained in accordance with the representations of Section 10.3 of the Sales Agreement.
16. The representation of ownership by Defendants was a misrepresentation of a material fact.
17. Defendants knew, or should have known, that it did not own all of the Assets.
18. Defendants knew, or should have known, that Plaintiff would rely upon Defendants' representation.
19. Plaintiff relied upon the representation of Defendants.

20. Plaintiff did not know that the representations of Defendants were false.
21. Plaintiff relied upon the representations of Defendants.
22. Plaintiff had the right to rely upon the representations of Defendants.
23. Plaintiff's consequent and proximate injury was a result of the false representations of Defendants.
24. Subsequent to closing, Plaintiff discovered that Defendants had breached the Sales Agreement including, but not limited to, the following:

(a) Defendants did not have the ownership or the ability to convey the item 4, generally described as the ASA T-Max point of sale system, which is identified as Item #4 and Item #15 on the respective South End and North End Exhibits A to Bill of Sale. An allocation of value of \$70,000.00 was assigned to this Item.

(b) Defendants knew that Item #1 Shell Gas Equipment had not been maintained in accordance with normal industry practice or was in good operating condition and repair and suitable for the purposes for which it was being used. Defendants had actual notice from the fuel product supplier that mandatory and expensive updates were required within the year in order to remain a SHELL branded fuel retail operation. An allocation of value of \$76,000.00 was assigned to this Item.

(c) Defendants knew that the following items listed below and on Exhibit A to Bill of Sale had not been maintained in accordance with normal industry practice or were not in good operating condition and repair and suitable for the purposes for which it was being used, as required by 10.3 of the Sales Agreement:

(i) **South End Equipment:** #7 Snap-On Modus Diagnostic tool- (Software 3 years overdue for annual update), #10 Push Blower - (inoperable & beyond repair), #14 Coates 850 Tire Balancer- (worn out & beyond repair), #16 Kwik-way Tire Changing machine- (inoperable), #22 Viper AC Service Machine (inoperable), #37 TT300 Transmission flush machine - (inoperable & beyond repair).

(ii) **North End Equipment:** #5 Coates Tire Changer - (not there at the time of sale & unaccounted for), #22 Snap-On Modus Diagnostic tool- (Software 3 years overdue for annual update), #24 8 Rotary Lifts - (2 lifts inoperable, unsafe & unserviceable per Carolina Lift & Jack company).

(iii) Two modus scanner tools required software updated.

Allocations of value of \$27,850.00 were assigned to (i), (ii), and (iii).

- (d) All Assets were subject to a lien of the Internal Revenue Service for unpaid taxes. Inclusive of the above a total allocation assigned to these Assets was \$268,697.00.
25. Subsequent to closing Plaintiff has discovered that Defendants have breached the Lease Agreements by:
- (a) Failing to have the underground storage tanks owned by Defendants properly listed or licensed with the South Carolina Department of Health and Environmental Control.
- (b) Failing to deliver a memorandum of the Leases in recordable form.
26. Defendants had actual knowledge of all matters above but fraudulently, negligently, willfully and wantonly failed and refused to disclose such to Plaintiffs.

FOR A FIRST CAUSE OF ACTION

Breach of Contract

27. Plaintiff realleges each and every allegation of the Averments of Fact as fully as if repeated herein verbatim.
28. By reason of Defendants' acts as set forth in the Averments of Facts, Plaintiff is entitled to recover such amount as may be proven at the trial of this matter to include actual and consequential damages, punitive damages, attorney fees and cost.

FOR A SECOND CAUSE OF ACTION

Breach of Contract Accompanied by a Fraudulent Act

29. Plaintiff realleges each and every allegation of the Averments of Fact as fully as if repeated herein verbatim.
30. Defendants breached the contract entered into with Plaintiff for the sale as described above.
31. Defendants had fraudulent intent relating to the breaching of the contract and not merely to it's making.
32. Defendants committed fraudulent acts accompanying the breach by conveying encumbered assets to Plaintiff while at the same time representing them to be unencumbered.
33. As a direct and proximate consequence of Defendants' breach of contract accompanied by the aforesaid fraudulent acts, Plaintiff has suffered both actual and consequential damages.
34. Plaintiff is entitled to recover such amount as may be proven at the trial of this matter to include actual and consequential damages, punitive damages, attorney fees and cost.

FOR A THIRD CAUSE OF ACTION
(Negligence)

35. Plaintiff realleges each and every allegation of the Averments of Fact as fully as if repeated herein verbatim.
36. The acts of the Defendants set forth above were negligent, willful, and reckless.
37. Plaintiff has suffered damage and injury as direct and proximate results of the negligent, willful, and reckless acts of the Defendants.
38. By reason of Defendants' acts as set forth in the Averments of Facts, Plaintiff is entitled to recover such amount as may be proven at the trial of this matter to include actual and consequential damages, punitive damages, attorney fees and cost.

FOR A FOURTH CAUSE OF ACTION
(Intentional Inflicted Harm)

39. Plaintiff realleges each and every allegation of the Averments of Fact as fully as if repeated herein verbatim.
40. The acts of Defendants set forth above were intentional and malicious.
41. Plaintiff has suffered damage and injury as the direct and proximate results of the intentional and malicious acts of Defendants.
42. By reason of Defendants' acts as set forth in the Averments of Facts, Plaintiff is entitled to recover such amount as may be proven at the trial of this matter to include actual and consequential damages, punitive damages, attorney fees and cost.

FOR A FIFTH CAUSE OF ACTION
(Breach of Implied Covenant Of Good Faith And Fair Dealing)

43. Plaintiff realleges each and every allegation of the Averments of Fact as fully as if repeated herein verbatim.
44. The Sales Agreement and accompanying documents contained implied covenants of good faith and fair dealing.
45. Defendants breached such covenants as set forth above.
46. Such acts by the Defendants are the direct and proximate cause of substantial damage to Plaintiff, entitling it actual and punitive damages.

47. By reason of Defendants' acts as set forth in the Averments of Facts, Plaintiff is entitled to recover such amount as may be proven at the trial of this matter to include actual and consequential damages, punitive damages, attorney fees and cost.

**FOR A SIXTH CAUSE OF ACTION
(Equitable Indemnity)**

48. Plaintiff realleges each and every allegation of the Averments of Fact as fully as if repeated herein verbatim.
49. The wrongful acts of the Defendants have caused Plaintiff to incur expense to protect their interests.
50. By reason of Defendants' acts as set forth in the Averments of Facts, Plaintiff is entitled to recover such amount as may be proven at the trial of this matter to include actual and consequential damages, punitive damages, attorney fees and cost.

**FOR A SEVENTH CAUSE OF ACTION
(Civil Conspiracy)**

51. Plaintiff realleges each and every allegation of the Averments of Fact as fully as if repeated herein verbatim.
52. The acts of the Defendants in concert with each other have caused Plaintiff damage and injury.
53. By reason of Defendants' acts as set forth in the Averments of Facts, Plaintiff is entitled to recover such amount as may be proven at the trial of this matter to include actual and consequential damages, punitive damages, attorney fees and cost.

**FOR AN EIGHTH CAUSE OF ACTION
FRAUD AND DECIET**

54. Plaintiff realleges each and every allegation of the Averments of Fact as fully as if repeated herein verbatim.
55. Plaintiff's consequent and proximate injury was a result of the false representations.
56. By reason of Defendants' acts as set forth in the Averments of Facts, Plaintiff is entitled to recover such amount as may be proven at the trial of this matter to include actual and consequential damages, punitive damages, attorney fees and cost.

WHEREFORE, Plaintiff prays that this Honorable Court inquire into the matters raised by the pleadings and pass such Order as it deems appropriate under the attending circumstances,

including but not limited to actual and consequential damages, punitive damages, attorney fees and cost.

WILLIAM M. BOWEN, P.A.

A handwritten signature in black ink, appearing to read 'William M. Bowen', is written over a horizontal line.

By
William M. Bowen

Attorney for Plaintiff

P.O. Drawer 6128

Hilton Head, SC 29938

843-842-5000; F: 843-686-5990

Hilton Head Island, South Carolina
May 15, 2012

SCHEDULE A TO AGREEMENT FOR PURCHASE AND SALE OF ASSETS
OF ISLAND TIRE SERVICE, INC. - ASSET PURCHASE AGREEMENT - PAGE 1

<u>Item Number</u>	<u>Description</u>	<u>Purchase Date</u>	<u>Cost</u>
1	Shell Gas Equipment 4 new pumps 1 Veeder Root monitoring system 1 new computer console 8 card readers	2007	\$ 76,000
2	Misc. Furniture	2006	4,000
3	24" TV	2008	200
4	6 computers & programs, firewalls, etc	2007	35,000
5	6 filing cabinets	2005	600
6	4 desks	2006	600
7	Snap-On Modus	2008	15,300
8	AC gauges	2008	350
9	3 shop fans	2009	600
10	Push blower	2005	400
11	Coates tire balancer	2001	3,995
12	15-ton press	unknown	695
13	Kwik-way tire changer	2000	3,800
14	Coates 850 balancer	2000	4,600
15	15-ton press	unknown	600
16	Kwik-way tire changer	1999	3,800
17	Coates 1050 balancer	2000	4,600

EXHIBIT ONE - 5 PAGES

SCHEDULE A TO AGREEMENT FOR PURCHASE AND SALE OF ASSETS
OF ISLAND TIRE SERVICE, INC. - ASSET PURCHASE AGREEMENT - PAGE 3

<u>Item Number</u>	<u>Description</u>	<u>Purchase Date</u>	<u>Cost</u>
37	Transmission flush machine TT300	2004	3,800
38	Brake Lathe (AAMCO)	unknown	4,500
39	3 Heaters	unknown	300
40	Engine stand	unknown	130
41	Transmission jack	unknown	675
42	Parts washer	unknown	300
43	4 Okidata printers	unknown	1,100
44	Telephone system	unknown	9,000
45	Impact wrenches	unknown	<u>500</u>
			\$268,697

Costs listed are average cost of replacement price.

ISLAND TIRE -ASSET LIST (NORTH END) - Page 2

<u>Item Number</u>	<u>Description</u>	<u>Purchase Date</u>	<u>Cost</u>
19	Air Compressor	unknown	2,800
20	Konica Copier 7033	unknown	6,500
21	Hunter Alignment Machine & Rack	2008	43,000
22	Snap-On Modus	2008	15,300
23	Brake Lathe (AAMCO)	unknown	4,500
24	8 Rotary Lifts	unknown	<u>30,400</u>
			\$141,668

EXHIBIT A TO BILL OF SALE - PAGE 2

<u>Item Number</u>	<u>Description</u>	<u>Purchase Date</u>	<u>Cost</u>
18	Oil drain pressurized	2009	680
19	New oil pump	2009	308
20	7 Lifts	2008 3,800 ea	26,600
21	Parts washer	unknown	380
22	Viper AC Machine	2008	2,850
23	Hunter R811 Alignment Machine	2004	41,000
24	Spring Compressor	unknown	475
25	Acetylene Torch set	unknown	350
26	Robinaire AC Machine	2007	3,450
27	Alarm system	unknown	1,045
28	Cashier's booth	unknown	3,269
29	OJC Leak detector (smoke machine)	2010	1,800
30	4 work benches	2005	900
31	2 battery packs	unknown	250
32	Gas caddy	unknown	295
33	Battery charger	2009	225
34	3 floor jacks	unknown	775
35	2 air compressors	1-2009; 1-2010	4,600
36	Misc. oil equipment reels pump,etc	unknown	4,000

ISLAND TIRE -ASSET LIST (NORTH END)- Page 1

<u>Item Number</u>	<u>Description</u>	<u>Purchase Date</u>	<u>Cost</u>
1	Furniture & Fixtures (Leather Chairs, tables, high back chairs, TV cabinet)	2008	\$ 4,200
2	New flat screen TV	2010	475
3	Vacuum cleaner	2009	40
4	Coates tire changer	2008	5,800
5	Coates tire changer	2000	4,800
6	Hunter Balancer	2008	6,800
7	Extension ladder	2006	300
8	4 shop fans	2009	800
9	Impact wrenches	2010	600
10	7065 Ex Rim Clamp Changer (Tire Changer)	2008	5,900
11	Misc. oil change equipment	1995	6,000
12	Microwave & refrigerator	unknown	120
13	Roll around floor jacks	unknown	675
14	2 air tanks	unknown	120
15	4 Computers & programs	2007	35,000
16	3 Okidata Printers	2009	630
17	Phone system	unknown	5,000
18	Intell Fax Machine	unknown	100

Bowen

STATE OF SOUTH CAROLINA)
 COUNTY OF BEAUFORT)
)
 EWB, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 Island Tire Service, Inc., Karen Watson,)
 Terry Fowler, TER/KAR, LLC, and)
 Barbara Karen Watson as Personal)
 Representative of the Estate of Billy Lee)
 Watson,)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-07-1929

AFFIDAVIT OF SERVICE
OF SUMMONS AND COMPLAINT

2012 MAY 31 AM 10:43
 BEAUFORT COUNTY S.C.
 CLERK OF COURT

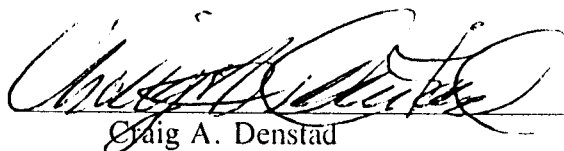
Personally appeared before me, Craig A. Denstad, the undersigned, who, first being duly sworn, deposes and says that:

The undersigned, being a sheriff or his deputy, or another duly constituted law enforcement officer, or a person designated by the Court, who is not less than 18 years of age, not an attorney or a party to the action, is qualified to effect the service of court documents.

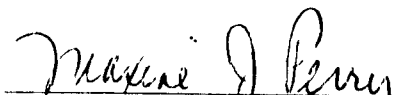
I served Karen Watson in her capacities as: (1) a named Defendant individually, (2) the registered agent of defendant Ter/Kar, LLC, and (3) the Personal Representative of the Estate of Billy Lew Watson, at her residence at 6 Hidden Lakes Court, Bluffton, South Carolina, by leaving a copy of the Summons and Complaint at her residence with a female person who appeared to be over 18 and of sound discretion on Friday, May 25, 2012 at 3:00 P.M.

Further Affiant sayeth naught.

Sworn to before me on
May 29, 2012



Craig A. Denstad

 (SEAL)
 Notary Public for the State of South Carolina
 My Commission Expires: 03/08/2014

Gregory B. Jenkins

Bowen



JASPER COUNTY SHERIFF'S OFFICE
P.O. Box 986 Ridgeland, SC 29936
Phone: 843-726-7777 Fax: 843-726-7778
2012 JUN 15 AM 10:20
CLERK OF COURT

AFFIDAVIT OF SERVICE
AFFIDAVIT OF NON-SERVICE

PLAINTIFF: EWB, LLC
-VS-
DEFENDANT: ISLAND TIRE SERVICE et al

The undersign, J. Hummel being duly sworn, says on oath that he/ she served the, Summons: Complaint in this action on the defendant CHARLES E. GAYMON by delivering same to the defendant CHARLES E. GAYMON personally a person of discretion residing at the defendant's residence, (corporation, or agent) and leaving with (him/ her) one copy at 11263 N. JACOB SMART BLVD on the 6 day of JUNE 2012 A.M. 10 P.M. 22.

This is to certify that I, _____ Deputy Sheriff for the County of Jasper on _____ 20____ tried to serve _____ did go to the address provided for the defendant, did question the persons in the vicinity of the address, but failed to effect service on the defendant for the following reason _____.

- RETURN
- UNABLE TO LOCATE
- DEFENDANT MOVED, LEFT NO FORWARDING ADDRESS
- DECEASED
- ITEMS NOT FOUND

Sworn to before me this 07th day of June 2012

J. Hummel
Deputy Sheriff

[Signature]
Notary Public for South Carolina
Commission Expires 9-7-2015

CHATHAM COUNTY SHERIFF'S OFFICE
SHERIFF AL ST LAWRENCE
P. O. BOX 10026
SAVANNAH, GEORGIA 31412
TELEPHONE (912) 652-7634

2012 JUN 15 AM 10:20


STATE OF GEORGIA

AFFIDAVIT OF SERVICE

COUNTY OF CHATHAM

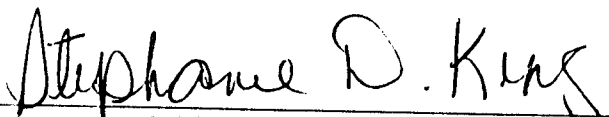
Personally appeared before the undersigned Notary Public of said State and Corporal Ruth Brown, who under oath states that she is a Corporal of Chatham County, Georgia under Sheriff Al St Lawrence. Deponent further states under oath that she served Terry Fowler, at the address of 8 Suncrest Boulevard, Savannah, Georgia.

In the Form of a: Summons and Complaint, In the case of: EWB, LLC vs Terry Fowler, on the date of: June 4, 2012.



Deputy Sheriff, Chatham County, GA

Sworn to and subscribed before me:
This 12 day of June 2012.



Notary Public, Chatham County, GA

STEPHANIE D. KING
Notary Public, Chatham County GA
My Commission Expires May 7, 2016

STEPHANIE D. KING
Notary Public, Chatham County GA
My Commission Expires May 7, 2016

STEPHANIE D. KING
Notary Public, Chatham County GA
My Commission Expires May 7, 2016

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

EWB, LLC,

2014 AUG. CASE NO. 2012-CP-07-1929

Plaintiff,

vs.

BEAUFORT COUNTY, S.C.
COURT OF COMMON PLEAS

MOTION TO AMEND COMPLAINT

Island Tire Service, Inc., Karen Watson,
Terry Fowler, TER/KAR, LLC, and
Barbara Karen Watson as Personal
Representative of the Estate of Billy Lee
Watson,

Defendants.


TO: Terry A. Finger, Esq., Attorney for Island Tire Service, Inc., Karen Watson, TER/KAR, LLC
and Barbara Karen Watson as Personal Representative of the Estate of Billy Lee Watson,
AND Terry Fowler, Pro Se

You will please take notice that the undersigned will move the Presiding Judge of the Fourteenth Judicial Circuit, at the Beaufort County Courthouse, Beaufort, South Carolina, at 10:00 AM on the tenth day after service hereof, or as soon thereafter as this matter may be set, for an Order granting Plaintiff the right to file an amendment of the Complaint previously filed in this case substantially in the form attached hereto.

The undersigned hereby certifies that he, prior to filing the within Motion, has communicated, orally or in writing, with opposing counsel and has attempted in good faith to resolve the matter contained in the motion, or that such consultation would serve no useful purpose, or could not be timely held.

WILLIAM M. BOWEN, P.A.

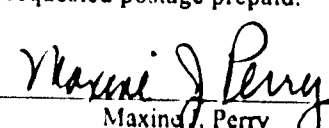
By:


William M. Bowen
Attorney for Plaintiff
P. O. Drawer 6128
Hilton Head Island, SC 29938
(843) 842-5000; F: (843) 686-5990

August 25, 2014
Hilton Head Island, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that on August 26, 2014, I served a true copy of the foregoing pleading on Defendants Island Tire Service, Inc., Karen Watson, TER/KAR, LLC and Barbara Karen Watson as Personal Representative of the Estate of Billy Lee Watson by personally depositing a copy addressed to their counsel of record by U.S. Postal Service, first class mail, postage prepaid, and to Defendant Terry Fowler at his last known address, by U.S. Postal Service, first class certified mail, return receipt requested postage prepaid.


Maxine J. Perry

STATE OF SOUTH CAROLINA)
 COUNTY OF BEAUFORT)
)
 EWB, LLC,)
)
 Plaintiff,)
)
 vs.)
)
 Island Tire Service, Inc., Karen Watson,)
 Terry Fowler, TER/KAR, LLC, and)
 Barbara Karen Watson as Personal)
 Representative of the Estate of Billy Lee)
 Watson,)
 Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOURTEENTH JUDICIAL CIRCUIT

CASE NO. 2012-CP-07-1929

FIRST AMENDED COMPLAINT

Plaintiff, complaining of Defendants, would respectfully show unto this Honorable Court the following:

AVERMENTS OF FACT

1. Plaintiff is a Limited Liability Company formed pursuant to the laws of the state of South Carolina, with its principal place of business in Beaufort County on Hilton Head Island.
2. Island Tire Service, Inc. ("Island Tire") is a corporation formed pursuant to the laws of the state of South Carolina which at all times pertinent to the matters alleged herein, was doing business in Beaufort County on Hilton Head Island.
3. Karen Watson, a/k/a Barbara Karen Watson, a/k/a Karen Fuller Watson ("Karen") and Terry Fowler ("Terry") are the sole members and/or shareholders of Island Tire.
4. TER/KAR, LLC ("TER/KAR") is a limited liability company formed pursuant to the laws of the state of South Carolina which, at all times pertinent to the matters alleged herein, was doing business in Beaufort County on Hilton Head Island, of which Karen and Terry are the sole members.
5. Karen is the Personal Representative of the Estate of Billy Lee Watson (the "Estate"), which is being administered in the Probate Court of Beaufort County, South Carolina under Case Number 2009 ES 07 00746.
6. At all times pertinent to the matters alleged herein, Island Tire, TER/KAR, Karen, Terry, and the Estate (collectively the "Defendants"), individually, and/or as members, and/or shareholders, and/or Personal Representative, were acting in concert with one another, with each being the alter ego of the other.

7. On May 13, 2011, Island Tire, by its agents and/or shareholders Karen and Terry, entered into an "Agreement For Purchase and Sale of Assets of Island Tire Service, Inc. Asset Purchase Agreement" ("Agreement"), to which a Schedule A was attached listing all of the personal property involved in the sale ("Assets").
8. Among other representations the Agreement contained the following:
- a. 10.3 Seller is the owner of, and has good and marketable title to the Assets, and the Assets are not encumbered by any mortgage, lien, pledge, or obligation of any nature, whether accrued, absolute, contingent, or otherwise, and whether due or to become due, which Buyer shall or will succeed to by reason of its purchase of the Assets. Seller shall transfer all of the Assets to Buyer, free and clear of all mortgages, pledges, security interests, charges, liens or encumbrances. Each tangible Asset is free from patent defects, has been maintained in accordance with normal industry practice, is in good operating condition and repairs (subject to normal wear and tear) and is suitable for the purposes for which it presently is used.

AND

- b. 10.12 Seller has filed all federal, state and local tax returns that are required to be filed, and has paid all taxes that have become due pursuant to such returns or pursuant to any assessment received by Seller. To the best of Seller's knowledge the amounts set up as a provision for taxes on the balance sheet are sufficient for the payment of all accrued and unpaid federal, state, county, and local taxes of Seller for the period ending on said date, and for all fiscal years prior thereto. Seller does not have any knowledge of any tax deficiency proposed or threatened against Seller.

AND

16.1 Seller's Indemnity. Seller shall indemnify, defend, and hold harmless Buyer, and its successors, assigns, directors, officers, employees, attorneys and agents, against and in respect of any and all claims, demands, losses, costs, expenses, obligations, liabilities, damages, recoveries, and deficiencies, that they or any of them shall incur or suffer, including without limitation reasonable attorney's fees and costs, whether or not a lawsuit or other proceeding is filed which arise, result from, or relate to (i) the use of the Assets or the operation of the Business through the close of business on the Closing Date, (ii) any liabilities of Seller arising out of the Assets or the Business, (iii) any breach of, or failure by Seller to perform, any of its representations, warranties, covenants, or agreements contained in this Agreement, (iv) any violation of health and safety or other laws (as in effect at the Closing) arising out of the ownership or operation of the Business, and Leaseholds, based on events or circumstances occurring or conditions existing prior to the Closing, regardless of when such claim, liability or loss is asserted, claimed or sustained. . . or

(vi) any inaccuracy of Seller's representations and warranties contained in this Agreement or in any agreement, instrument or document entered into pursuant hereto or in connection with the Closing or any such problem or defect in the Lease Agreements or Leaseholds resulting in any liability or cost to the Buyer. Seller's indemnity regarding environmental conditions shall be provided and governed exclusively by the Asset Purchase Agreement. In the event Seller fails to promptly indemnify and defend such claims and/or pay Buyer's expenses, as provided above, Buyer shall have the right to defend itself, and in that case, Seller shall reimburse Buyer for all of its reasonable attorneys fees, costs and damages incurred in settling or defending such claims within thirty (30) days of each of Buyer's written requests.

Survival of Representations, Warranties and Agreement. The representations, warranties, obligations, covenants and agreements of the parties hereto shall in all events survive the close or termination of this Agreement where same is necessary to effectuate the intention of the parties.

12. At the closing of the transaction, in furtherance of the Agreement, Defendants delivered a Bill of Sale ("Bill of Sale"), which in part stated:

Island Tire Services, Inc. covenants and warrants that there are no liens and/or encumbrances upon said assets listed on Exhibit "A." (Emphasis added).
14. Defendants represented to Plaintiff that it owned the Assets and that such had been maintained in accordance with the representations of Section 10.3 of the Sales Agreement.
15. Defendants did not own the Assets, nor had such been maintained in accordance with the representations of Section 10.3 of the Sales Agreement.
16. The representation of ownership by Defendants was a misrepresentation of a material fact.
17. Defendants knew, or should have known, that it did not own all of the Assets and that the assets were encumbered by tax liens.
18. Defendants knew, or should have known, that Plaintiff would rely upon Defendants' representation.
19. Plaintiff relied upon the representation of Defendants.
20. Plaintiff did not know that the representations of Defendants were false.
21. Plaintiff had the right to rely upon the representations of Defendants.
22. Plaintiff's consequent and proximate injury was a result of the false representations of Defendants.

23. Subsequent to closing, Plaintiff discovered that Defendants had breached the Sales Agreement including, but not limited to, the following:

(a) Defendants did not have the ownership or the ability to convey the item 4, generally described as the ASA T-Max point of sale system, which is identified as Item #4 and Item #15 on the respective South End and North End Exhibits A to Bill of Sale. An allocation of value of \$70,000.00 was assigned to this Item.

(b) Defendants knew that Item #1 Shell Gas Equipment had not been maintained in accordance with normal industry practice or was is in good operating condition and repair and suitable for the purposes for which it was being used. Defendants had actual notice from the fuel product supplier that mandatory and expensive updates were required within the year in order to remain a SHELL branded fuel retail operation. An allocation of value of \$76,000.00 was assigned to this Item.

(c) Defendants knew that the following items listed below and on Exhibit A to Bill of Sale had not been maintained in accordance with normal industry practice or were not in good operating condition and repair and suitable for the purposes for which it was being used, as required by 10.3 of the Sales Agreement:

(i) South End Equipment: #7 Snap-On Modus Diagnostic tool- (Software 3 years overdue for annual update), #10 Push Blower - (inoperable & beyond repair), #14 Coates 850 Tire Balancer- (worn out & beyond repair), #16 Kwik-way Tire Changing machine- (inoperable), #22 Viper AC Service Machine (inoperable), #37 TT300 Transmission flush machine - (inoperable & beyond repair).

(ii) North End Equipment: #5 Coates Tire Changer - (not there at the time of sale & unaccounted for), #22 Snap-On Modus Diagnostic tool- (Software 3 years overdue for annual update), #24 8 Rotary Lifts - (2 lifts inoperable, unsafe & unserviceable per Carolina Lift & Jack company).

(iii) Two modus scanner tools required software updated.

Allocations of value of \$27,850.00 were assigned to (i), (ii), and (iii).

(d) All Assets were subject to a lien of the Internal Revenue Service for unpaid taxes. Inclusive of the above a total allocation assigned to these Assets was \$268,697.00.

24. Subsequent to closing Plaintiff has discovered that Defendants have breached the Lease Agreements by:

(a) Failing to have the underground storage tanks owned by Defendants properly listed or licensed with the South Carolina Department of Health and Environmental Control.

25. Defendants knew or should have known of all matters above contained in 23 (a) through (d), but fraudulently, negligently, willfully and wantonly failed and refused to disclose such to Plaintiffs.
26. Partial Summary Judgment in this case has been entered against Island Tire in the amount of \$225,672.56 of which \$137,590.94 has been paid leaving a balance due of \$88,081.62.
27. Since its incorporation the Island Tire has:
 - a. Been the corporation was grossly undercapitalized;
 - b. Failed to observe corporate formalities;
 - c. Paid no dividends;
 - d. Been insolvent;
 - e. Had funds siphoned off by the Individual Defendants, the dominant stockholders;
 - f. Had no functioning officers or other directors;
 - g. Lacked corporate records.
 - h. Maintained inadequate corporate records; and
 - i. Was merely a facade for the operations of the Individual Defendants. Powers Co's, Inc., was dissolved by Secretary of State of South Carolina on November 19, 1998 by forfeiture.
28. There would be an element of injustice or fundamental unfairness if the acts of Island Tire were not regarded as the acts of the Individual Defendants.

FOR A FIRST CAUSE OF ACTION
Breach of Contract

27. Plaintiff realleges each and every allegation of the Averments of Fact as fully as if repeated herein verbatim.
28. By reason of Defendants' acts as set forth in the Averments of Facts, Plaintiff is entitled to recover such amount as may be proven at the trial of this matter to include actual and consequential damages, punitive damages, attorney fees and cost.

FOR A SECOND CAUSE OF ACTION
Breach of Contract Accompanied by a Fraudulent Act

29. Plaintiff realleges each and every allegation of the Averments of Fact as fully as if repeated herein verbatim.
30. Defendants breached the contract entered into with Plaintiff for the sale as described above.
31. Defendants had fraudulent intent relating to the breaching of the contract and not merely to its making.

32. Defendants committed fraudulent acts accompanying the breach by conveying encumbered assets to Plaintiff while at the same time representing them to be unencumbered.
33. As a direct and proximate consequence of Defendants' breach of contract accompanied by the aforesaid fraudulent acts, Plaintiff has suffered both actual and consequential damages.
34. Plaintiff is entitled to recover such amount as may be proven at the trial of this matter to include actual and consequential damages, punitive damages, attorney fees and cost.

FOR A THIRD CAUSE OF ACTION

Negligence

35. Plaintiff realleges each and every allegation of the Averments of Fact as fully as if repeated herein verbatim.
36. The acts of the Defendants set forth above were negligent, willful, and reckless.
37. Plaintiff has suffered damage and injury as direct and proximate results of the negligent, willful, and reckless acts of the Defendants.
38. By reason of Defendants' acts as set forth in the Averments of Facts, Plaintiff is entitled to recover such amount as may be proven at the trial of this matter to include actual and consequential damages, punitive damages, attorney fees and cost.

FOR A FOURTH CAUSE OF ACTION

Fraud And Deceit

42. Plaintiff realleges each and every allegation of the Averments of Fact as fully as if repeated herein verbatim.
43. Plaintiff's consequent and proximate injury was a result of the false representations.
44. By reason of Defendants' acts as set forth in the Averments of Facts, Plaintiff is entitled to recover such amount as may be proven at the trial of this matter to include actual and consequential damages, punitive damages, attorney fees and cost.

FOR A FIFTH CAUSE OF ACTION

Piercing The Corporate Veil

45. By reason of Defendants' acts as set forth in the Averments of Facts, Plaintiff is entitled to recover such amount as may be proven at the trial of this matter to include actual and consequential damages, punitive damages, attorney fees and cost against Karen Watson, a/k/a Barbara Karen Watson and Terry Flower for the acts of Island Tire and TER/KAR, LLC.

WHEREFORE, Plaintiff prays that this Honorable Court inquire into the matters raised by the pleadings and pass such Order as it deems appropriate under the attending circumstances, including but not limited to actual and consequential damages, punitive damages, attorney fees and cost.

WILLIAM M. BOWEN, P.A.

By: 

William M. Bowen

Attorney for Plaintiff

P.O. Drawer 6128

Hilton Head, SC 29938

843-842-5000; F: 843-686-5990

Hilton Head Island, South Carolina
August 25, 2014

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

The Honorable Marvin H. Dukes, III
Beaufort County Master-in-Equity

Case No.: 2012-CP-07-01929

RECEIVED

OCT 06 2014

SC Court of Appeals

EWB, LLC.....Respondent

vs.

ISLAND TIRE SERVICE, INC.,
KAREN WATSON, TERRY FOWLER, TER/KAR, LLC and
BARBARA KAREN WATSON as Personal Representative
Of the Estate of Billy Lee Watson.....Defendants,

of whom

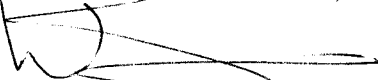
KAREN WATSON, TER/KAR, LLC and BARBARA KAREN WATSON
As Personal Representative of the Estate of Billy Lee Watson.....Appellants.

PROOF OF SERVICE

I certify that I have served a copy of the Motion to Remand Appeal by depositing a copy of it in the United States Mail, postage prepaid, on October 2, 2014, addressed to Appellants' attorney of Record, Terry A. Finger, Esquire, Finger & Fraser, P.A., P.O. Box 24005, Hilton Head Island, SC 29925-4005.

October 2, 2014

~~WILLIAM M. BOWEN, P.A.~~



William M. Bowen
52 New Orleans Road, Suite 202
Post Office Drawer 6128
Hilton Head Island, South Carolina 29938
(843) 842-50000
Attorney for Respondent

WILLIAM M. BOWEN, P. A.
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(NOT FOR CONFIDENTIAL COMMUNICATIONS)

PHYSICAL LOCATION: JADE BUILDING
52 New Orleans Road, Suite 202
Hilton Head Island, SC 29928

Telephone 843/842-5000
Facsimile 843/686-5990

October 2, 2014
File No. 14-237

Hon. Jenny Abbott Kitchings
South Carolina Court of Appeals
Post Office Box 11629
Columbia, South Carolina 29211

RE: EWB, LLC v. Island Tire Service, Inc.
Case Number 2014 001898

Dear Ms. Kitchings:

Enclosed are the following:


Original and six (6) copies of Respondent's Motion to Remand
Original and one (1) copy of the Proof of Service
Check for \$25.00 to cover cost of filing

Please file the original of the Motion and Proof of Service and return clocked copies of both to me in the self-addressed, postpaid envelope provided. In sending my prior request to you I must have harkened back to the days when Miss. Francis Smith made the rules!

By copy of this letter and its enclosures, I am providing Appellants' counsel with copies of same.

With kind regards I remain

Yours truly,


William M. Bowen
SC Bar No.: 794

WMB: mjp
Enclosures
cc: (w/enclosures)
Terry A. Finger, Esquire
EWB, LLC

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OCT 06 2014
SC Court of Appeals

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Hilton Head Island SC 299387

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SHIP TO: Hon. Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia SC 29211-1629



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