

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)
)
 Arthur B. Schirmer, III and)
 Joyce Schirmer,)
)
 Plaintiffs,)
)
 vs.)
)
 William Mark Adams,)
)
 Defendant.)
 _____)
 William Mark Adams,)
)
 3rd-Party Plaintiff,)
)
 vs.)
)
 Landscape Pavers, LLC and)
 JRJ Holdings, LLC,)
)
 3rd-Party Defendants.)
 _____)

IN THE COURT OF COMMON PLEAS
 FOR THE NINTH JUDICIAL CIRCUIT
 CASE NO.: 2012-CP-10-0333

FINAL JUDGMENT OR DECREE
 (Non-Jury Trial)

FILED
 2014 MAR 10 PM 1:49
 JULIE J. ARMSTRONG
 CLERK OF COURT
 BY _____
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 SC Court of Appeals

JUDGE: The Honorable William Jeffrey Young
 DATES OF TRIAL: January 28 & 31, 2014
 PLAINTIFF'S ATTORNEY: T.O. Sanders/Sanders Law Firm, LLC
 DEFENDANT'S ATTORNEY: Frank M. Cisa
 COURT REPORTER: Karen V. Andersen

This matter comes before me upon Plaintiffs Arthur B. Schirmer, III's and Joyce Schirmer's ("Plaintiffs") *Complaint for Declaratory Relief (Amended)* and upon Defendant/Third-Party Plaintiff William Mark Adams' ("Defendant Adams") counterclaims and third-party claims. All of Defendant Adams' counterclaims and third-party claims are denied, and judgment is entered in favor of Plaintiffs.

Pursuant to both SCRCP 57 and the *Uniform Declaratory Judgments Act*, S.C. Code §15-53-10, et seq., this Court has the power to declare rights, status and other legal relations between the

parties, and such declarations have the force and effect of a final judgment or decree. Further, I elect to render a declaratory judgment or decree, because it terminates the uncertainty or controversy which gives rise to this proceeding. S.C. Code §15-53-70.

I find as follows:

1. All persons or entities who have or claim any interest which would be affected by such declaration have been made a party to this action. S.C. Code §15-53-80;

AS TO LANDSCAPE PAVERS, L.L.C.

2. Landscape Pavers, L.L.C. is an At-Will, South Carolina Limited Liability Company ("the Company") formed November 6, 2002 with Plaintiffs and Defendant Adams as its organizers (Exhibit "1") which operates a construction business;

3. According to its December 27, 2002 Operating Agreement (Exhibit "2"), the Company's allocations of net profits and net losses from operations were as follows: Plaintiff Joyce Kathrine Schirmer (51%); Plaintiff Arthur Bonnell Schirmer, III (9%); and Defendant William Mark Adams (40%);

4. Although Exhibit "A" of the Company's Operating Agreement shows Defendant Adams' capital contribution of \$83,333.33, Defendant Adams admitted that he did not invest any money into the Company;

5. Plaintiff Joyce Schirmer testified that the \$83,333.33 represents Defendant Adams' outstanding share of an outstanding \$250,000.00 loan;

6. Because Defendant Adams failed to contribute to the Company, he is responsible for Plaintiffs' attorney's fees and costs in this action (see Para. 4.3(1), Exhibit "2");

7. Upon his admission, Defendant Adams invested only his time and effort into the Company for which he was paid in full;

8. The restriction on the transferability of members is not intended as a penalty, but as a method to ensure the survival of the Company (Para. 3.3, Exhibit "2");

9. Testimony was received from Plaintiff Arthur B. Schirmer, III that he was the qualifying party for the Company and that Defendant Adams harmed the Company financially by the way he mismanaged certain projects such that the Company was removed from City of Goose Creek's preferred contractor list, and by not adequately communicating with Plaintiff Arthur B.

Schirmer, III to keep him advised of the status of projects;

10. Testimony was received from Plaintiff Joyce Schirmer that the Flexi-Pave Franchise was a worthless asset, because it was not generating money and because money was still owed on the loan which purchased this franchise;

11. Expulsion of a member from the Company by unanimous vote of the other members is contemplated in the Operating Agreement (see Para. 10.1(B), Exhibit "2" and Para. 10.1(C)(2)) and in the South Carolina Code of Laws (see S.C. Code 33-44-601 and S.C. Code 33-44-701);

12. The August 31, 2011 Resolution of the Company which expelled Defendant Adams from the Company and which transferred Defendant Adams' 40% interest to Plaintiff Arthur Bonnell Schirmer, III (Exhibit "14"), and which continued the operation of the Company, was proper (although "Unanimous" is used in the title, it is understood that this action was taken by Plaintiffs who were the majority owners);

13. Plaintiffs complied with the Operating Agreement (see Para. 3.19, Exhibit "2") and with S.C. Code 33-44-701 by giving Defendant Adams prompt notice in writing (P. 5, Exhibit "17") accompanied by a written purchase offer (Exhibit "18") which was received by Defendant Adams;

14. Plaintiffs complied with the terms of their purchase offer to Defendant Adams (see Exhibit "18"), although Defendant Adams did not reciprocate but instead sought \$175,000.00 from Plaintiffs (see Exhibit "29") for which no justification was ever offered;

15. Because Defendant Adams rejected Plaintiffs' purchase offer (Exhibit "29"), Defendant Adams should not be allowed to keep the 2004 Chevrolet Silverado Truck as provided for in the purchase offer;

16. Defendant Adams is not entitled to a distribution from the Company, because it would not be able to pay its debts as they become due, and because its assets are less than the sum of its liabilities (see Para. 3.23, Exhibit "2");

17. According to the testimony of Plaintiff Joyce Schirmer, the Plaintiffs have contributed around \$96,000.00 to the Company to keep it afloat, and that the Company is operating on outstanding loans, and Defendant Adams offered no evidence to rebut this;

18. According to the testimony and the Workpaper prepared by Joseph W. Ferira, Jr., CPA (Exhibit ____), the Flexi-Pave Franchise should be removed as a worthless asset and Defendant

Adams' share of the equity in the Company is -\$107,047.00, and Defendant Adams offered no evidence to rebut this;

AS TO JRJ HOLDINGS, LLC

19. JRJ Holdings, LLC ("JRJ Holdings") is an At-Will, South Carolina Limited Liability Company ("the Company") formed April 27, 2005 with Plaintiffs and Defendant Adams as its organizers (Exhibit "17") which holds an office building and the lot on which the office building sits;

20. Although no Operating Agreement for JRJ Holdings was presented, testimony was offered by the parties that a 1/3 interest was owned by each of the following: Plaintiff Arthur B. Schirmer, III, Plaintiff Joyce Schirmer and Defendant Adams;

21. According to the testimony and the Workpaper prepared by Joseph W. Ferira, Jr., CPA (Exhibit ____), Defendant Adams' share of the equity in JRJ Holdings is \$19,997.00;

AS TO BOTH LLCs

22. According to the testimony and the Workpaper prepared by Joseph W. Ferira, Jr., CPA (Exhibit ____), Defendant Adams' net share of the equity in both the Company (-\$107,047.00) and in JRJ Holdings (\$19,997.00) is -\$87,050.00, and Defendant Adams offered no evidence to rebut this;

23. This net share calculation of Defendant Adams' interest in both LLCs is proper, because to order a payout to Defendant Adams from JRJ Holdings would jeopardize its and the Company's ability to continue operating, and Defendant Adams offered no evidence to rebut this;

24. Dale Ainsworth, CPA testified as to the LLCs' tax returns; however, the tax returns were not persuasive as to the value of the parties' interests in either LLC, because the tax returns represented tax strategies only, and Defendant Adams offered no evidence to rebut this; and

AS TO DEFENDANT ADAMS' COUNTERCLAIMS AND THIRD-PARTY CLAIMS

25. All of Defendant Adams' counterclaims and third-party claims are denied, because he failed to present any persuasive evidence to support them.

Based upon the foregoing and the items received into evidence,

IT IS ORDERED, ADJUDGED AND DECREED that this declaration has the force and effect of a final judgment or decree;

IT IS FURTHER ORDERED that Defendant Adams' share of the equity in Landscape Pavers, LLC is -\$107,047.00;

IT IS FURTHER ORDERED that Defendant Adams' share of the equity in JRJ Holdings, LLC is \$59,990.00, which is properly offset by his negative equity in Landscape Pavers, LLC;

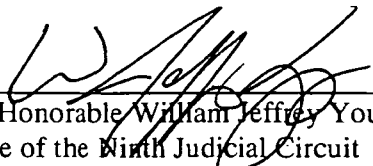
IT IS FURTHER ORDERED that Defendant Adams' net share of the equity in both Landscape Pavers, LLC and in JRJ Holdings, LLC is -\$87,050.00, and this is a proper calculation such that Plaintiffs are not required to give Defendant Adams any money;

IT IS FURTHER ORDERED that all of Defendant Adams' counterclaims and third-party claims are denied;

IT IS FURTHER ORDERED that Defendant Adams should sign the title to the 2004 Chevrolet Silverado Truck over to Landscape Pavers, L.L.C. and return the truck and its keys to Plaintiffs within 10 days from the date this Order is signed;

IT IS FURTHER ORDERED that Defendant Adams is responsible for Plaintiffs' attorney's fees and costs in the amount set forth below as verified by affidavit and that Defendant Adams will deliver this amount to Plaintiffs' Attorney T.O. Sanders/Sanders Law Firm, LLC by certified check no later than 60 days from the date this Order is signed;

AND IT IS SO ORDERED!


The Honorable William Jeffrey Young
Judge of the Ninth Judicial Circuit

28 Feb, 2014
Sumter, South Carolina

Attorney's fees:	\$11,180.50
<u>Costs:</u>	<u>\$183.22</u>
TOTAL:	\$11,363.72