

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2008-CP-40-3687

RECEIVED
DEC 22 2014

SC Court of Appeals

Debra B. Croft, a/k/a Debra C. Morris,

Kirby Croft Florist & Greenhouse, Inc.

Denyse Nodden and Ward Croft

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Kirby Darr Shealy, III, Esq.

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. See Page 2 for additional information.
- 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: _____

ORDER INFORMATION

This order ends does not end the case.
Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT 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: Master

Judge Code: 2097

Date: Dec. 3, 2013

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Debra B. Croft, a/k/a Debra C. Morris,)
)
 Plaintiff,)
)
 v.)
)
 Kirby Croft Florist & Greenhouse, Inc.,)
 Denyse Nodden and Ward Croft,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 CIVIL ACTION NO. 2008-CP-40-03687

ORDER
RECEIVED
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 JEANETTE W. LEONIDE
 C.C.P. & G.S.
 RICHLAND COUNTY

The above-captioned action came before the Court for trial on April 8-11, 2013. The parties were ably represented by their respective counsel. This is a dispute among three siblings, each of whom owns 33% of the shares in the corporate defendant.¹ As originally commenced, plaintiff sought access to corporate records that she alleged were being wrongfully withheld from her by defendants. Defendants counterclaimed, alleging breaches of fiduciary duty by plaintiff. Plaintiff amended her complaint in 2010, alleging causes of action for dissolution of the corporation, for the return of distributions and for a judgment against the individual defendants for the loss in value of the corporation during the time when the individual defendants were in control of the corporation. Defendants continued to maintain their counterclaims as to these new causes of action.

¹ During trial, the Court was informed that the parties' mother owned a 1% share in the corporate defendant. The parties' mother died while this action was pending, and the Court received an affidavit from the personal representative of the mother's estate in which he agreed to be bound by the outcome of the trial notwithstanding his not being named as a party to the case. The parties consented to the inclusion of the personal representative's affidavit within the factual record before the Court.

In view of the evidence introduced by the parties, the Court makes the following findings of fact and conclusions of law in consonance with Rule 52(a) of the *South Carolina Rules of Civil Procedure*.

Findings of Fact

1. Kirby Croft Florist & Greenhouse, Inc. was incorporated in the early 1990s after being run as a sole proprietorship by the parties' parents since the mid-1940s. The parties' parents gave each sibling an equal share in the business. From the date of its incorporation until August 2007, it was managed by Plaintiff. One of the conditions of the gift of their parents' interest in the florist was that it would pay the parties' mother a weekly stipend and cover the cost of her health insurance premiums.

2. Defendants Nodden and Croft elected to terminate Plaintiff from her position as the corporation's manager after learning that she had stopped paying the stipend and health insurance to their mother.

3. For several years prior to Plaintiff's termination, the florist had struggled financially. It reported a net loss on its tax returns of over \$50,000 for three out of four years from 2002-05. During this period, the shop made no distributions to the shareholders, even in the year that the shop reported a net profit.

4. The parties' family relationships have been strained for many years. Plaintiff fired Defendant Croft from the business in 2005 at Defendant Nodden's request after his girlfriend made unauthorized purchases with a company credit card. Defendant Nodden left the business in 2005 or 2006, shortly after the florist closed its shop on Harbison Boulevard, citing an inability to work with Plaintiff. Plaintiff had actually initiated another lawsuit against Defendant Nodden during this period concerning the purchase of property immediately adjacent

to the florist. The testimony of Stephen Bledsoe, who worked for the shop for over 12 years, further illustrated the contemptuous attitude that Plaintiff had for her siblings.

5. At the time of her termination, Plaintiff reported to the defendants that the florist had no cash reserves, had incurred debt financed on personal credit cards at an interest rate of 30%, and had no access to credit, among other problems.

6. After terminating Plaintiff, the defendants decided to hire a bookkeeper named Martina Simpson and to promote Stephen Bledsoe to the position of store manager. The individual defendants were otherwise employed and did not take on active managerial roles in the company or draw any kind of salary or compensation from the florist from that point until the florist ceased operations, except for the "draw" described in paragraph eight (8) hereinbelow.

7. Shortly after she was terminated, Plaintiff called for a special meeting of the florist's shareholders that was held on August 29, 2007. At that meeting, the parties agreed that they would take out a mortgage against the corporation's real property to pay off: (1) two personal credit cards owned by Plaintiff; (2) one credit card owned by Defendant Nodden; and (3) a loan allegedly made to the corporation by Plaintiff in the amount of \$40,000. Plaintiff had attempted to take such action a year earlier using a different lender. At that time, she noted that the loan she made to corporation was in the amount of \$50,000. A business consultant hired by defendants after Plaintiff's termination testified that she found no documentation of this loan among the corporation's records.

8. The parties followed through with the plan to take out a mortgage and the corporation received loan proceeds of \$84,435.02 in the fall of 2007 in exchange for a mortgage on the corporation's real property. From these proceeds, three credit card balances were satisfied, \$40,000 was paid to Plaintiff, and each shareholder received a "draw" of \$3,000.

9. The parties also agreed at the August 29, 2007 meeting that the corporation would furnish the shareholders with monthly statements of business activity, as well as monthly distributions of income to the shareholders. The defendants admit that monthly statements and distributions were not provided as agreed, although they point out that the florist sustained a loss of its computers on which its financial records were stored on two separate occasions in December 2007, which led to a lengthy effort to rebuild its financial records, as there was no digital back-up of these files. Plaintiff admitted that after her termination, she had removed several credit card statements and receipts for purchases she alleged to have made for company purposes in 2006 and 2007 from the florist. This activity further complicated the rebuild of the corporation's financial picture.

10. Defendants were not personally involved in the creation of any corporate financial documents. Knowing that neither of them had the requisite financial background to do so, they reasonably relied upon employees who purported to have the ability to generate accurate financial records. Plaintiff pointed out that there were several inconsistencies and/or inaccuracies in these records, just as Defendants pointed out that there were errors in the 2006 tax return and other financial records that had been maintained by Plaintiff during her tenure as the florist's manager.

11. Plaintiff offered the testimony of Marlene Spurgin, the business consultant hired by Defendants to assist in the rebuilding of the company's financial records. Ms. Spurgin testified that she found certain company checks that Plaintiff had issued to herself for which there was no documentation among the corporate records. She further testified that Plaintiff had made a satisfactory explanation of those checks, but this testimony was inconsistent with the email threads between Plaintiff and Ms. Spurgin that were introduced into evidence. Defendants

further introduced some 13 checks issued by Plaintiff to herself in the period from fall 2006 to the summer of 2007 for which Plaintiff had little to no explanation. Defendants also offered evidence that Plaintiff had issued several checks to vendors who had performed repairs to her personal vehicle. Some financial statements were provided to plaintiff in the summer and fall of 2008, and defendants maintain that they furnished plaintiff with the same financial information that they were able to obtain from the corporation's employees at the same time that they received it.

12. In December 2007, Plaintiff removed a delivery van from the florist, claiming it was her personal property. The van was indeed titled in Plaintiff's name, but the florist had made the payments to the company that had financed its purchase and paid for the insurance on the vehicle and all other associated repairs and costs of operation. The van had the florist's name painted on the side and had served as the florist's primary delivery vehicle for several years prior to that time. The Court finds that the van was company property. *See, e.g., Pennell v. Foster*, 338 S.C. 9, 524 S.E.2d 630 (Ct. App. 1999); *Tollison v. Reaves*, 277 S.C. 443, 289 S.E.2d 163 (1982); *Grain Dealers Mut. Ins. Co. v. Julian*, 247 S.C. 89, 145 S.E.2d 685 (1965) (certificate of title is prima facie evidence of ownership, which can be rebutted by other evidence).

13. After this lawsuit was commenced in May 2008, the parties held another special meeting of the shareholders on October 13, 2008. The majority shareholders voted to rescind the previous decisions to distribute profits and provide monthly financial statements.

14. The corporation continued to lose money in 2007 and 2008. It ceased operations in the fall of 2009. At that point, the corporation was heavily in debt to its suppliers, and Defendant Nodden subsequently negotiated the sale of certain corporate assets to satisfy those debts and to pay the corporation's accountant and attorney. Stephen Bledsoe continued working

for several months to collect enough accounts receivable to pay his last few payroll checks. Once he accomplished that, he ceased working for the company altogether. The corporation lost its real property to foreclosure in January 2012. From the time that it ceased operations until the property was lost altogether, the corporation received rental income from a tenant occupying the second floor of the florist as well as a billboard company. The defendants testified that some of this income was used to satisfy tax liens on the property and other company debts, but they were not able to provide a clear accounting of this income or any associated expenses.

15. Plaintiff offered evidence that at least one potential buyer had been recruited to the business by Ms. Spurgin. Defendants recalled two such buyers, one of whom merely wanted to purchase the corporation's customer list and the other who curtailed negotiations after learning that the business was subject to this lawsuit. The Court finds that Defendants had the same, if not more, financial incentive to sell the business if at all possible and that Plaintiff's claims that Defendants torpedoed any efforts to sell the business to spite Plaintiff are not credible.

Conclusions of Law

1. The parties agree that Defendant Kirby Croft Florist & Greenhouse, Inc. should be dissolved. The Court finds that dissolution is appropriate and further believes that an accounting, to be performed by a certified public accountant and paid for by the individual parties, may assist with that process and hereby orders same. With respect to Plaintiff's allegations that dissolution of the corporation is appropriate because Defendants acted "in a manner that is illegal, fraudulent, oppressive, or unfairly prejudicial," the Court finds no evidence of such behavior by Defendants. *Kiriakides v. Atlas Food Systems & Services, Inc.*, 343 S.C. 587, 541 S.E.2d 257 (2001) (court is accorded broad discretion in determining whether majority shareholders have acted to oppress or unfairly prejudice minority shareholder). Rather,

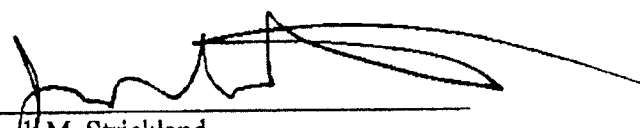
judicial dissolution is appropriate here pursuant to S.C. Code Ann. § 33-14-300(1)(v) because the corporation ceased operations in 2009 and has not wound up its affairs as of this date. If the accounting reveals that any corporate assets remain in existence, they are to be paid out to the three living shareholders in equal amounts. If the parties mutually agree to dispense with an accounting, then they are to notify the Court and this action will be dismissed with prejudice at that time.

2. Plaintiff has failed to carry her burden of proof as to her second cause of action for return of distributions. Plaintiff offered no proof that the individual defendants made distributions to themselves during the period when they controlled the corporation, with the exception of the “draws” made from the loan proceeds that went to all three siblings in equal amounts. The Court notes that Plaintiff alleged that Defendants Croft and Nodden looted money, furniture, inventory, fixtures and equipment from the florist and that they also allowed the florist’s creditors to do likewise. To the extent that the defendants sold corporate assets to satisfy company debts, these actions do not meet the statutory definition of a “distribution.” See S.C. Code Ann. § 33-1-400 (Rev. ed. 2006). The Court finds no evidence in the record that any shareholder, other than Plaintiff, removed corporate assets from the business and grants judgment to Defendants as to Plaintiff’s second cause of action.

3. As to Plaintiff’s third cause of action, Plaintiff has again failed to carry her burden of proof. Defendants showed that the corporation was in financial trouble in August 2007, as evidenced by Plaintiff’s own statements at that time and the corporate tax returns from prior years. Plaintiff offered no proof of her allegation that the defendants “pilfered and looted” the company, causing it to become insolvent. Rather, all the evidence points to the conclusion that the company continued along the same trajectory from August 2007 until it ceased operations

5. The Court finds that Defendants are entitled to an award of \$3,616.09 from Plaintiff. The Court further finds that Plaintiff acted arbitrarily in issuing herself payments of corporate assets, particularly with respect to the interest charged on the alleged loan that she made to the company, along with the removal of the corporate delivery van in December 2007. The Court therefore believes that it is appropriate to award Defendants their attorney's fees pursuant to S.C. Code Ann. § 33-18-410 and invites Defendants to supplement the record with an affidavit of attorney's fees before the Court enters its judgment in this matter.

AND IT IS SO ORDERED.



Joseph M. Strickland
Presiding Judge

~~Dec.~~
April 3 2013

Columbia, South Carolina.

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

JUDGMENT IN A CIVIL CASE

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Kirby Croft Florist & Greenhouse

SC Court of Appeals

PLAINTIFF(S)

Denyse Nodden and Ward Croft,

DEFENDANT(S)

Attorney for : Plaintiff Defendant

or

Self-Represented Litigant

Submitted by: Judge Joseph M. Strickland

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IT IS ORDERED AND ADJUDGED: See attached order (formal order to follow) Statement of Judgment

by the Court: PLAINTIFF'S MOTION TO RECONSIDER IS DENIED.

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Circuit Court Judge master

2097
Judge Code

Nov. 17, 2014
Date

