

STATE OF SOUTH CAROLINA
COUNTY OF DORCHESTER

IN THE COURT OF COMMON PLEAS
FIRST JUDICIAL CIRCUIT
EQUITY DIVISION

Civil Action No.: 2011 CP 18-00508

514 JUMP Amusements, LLC,
Plaintiff,

Versus

Sarah Rangel, individually and Sarah
Rangel d/b/a/ Wild Jumps, Paisley's
LLC, and Michael Dever,
Defendants.

AMENDED ORDER

Presiding Judge: James E. Chellis
Master in Equity, Dorchester County
By SCRCP 53 Consent Order, dated July 18, 2013,
entered August 7, 2013

Appearances:

For Plaintiff:
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Order
Plaintiff 514 Jump Amusements, LLC
Defendants Sarah Rangel, et. al.
Civil Action Number: 2011 CP 18 00508

PREFACE

This case is a business dispute involving a South Carolina limited liability company. The main purpose of the suit is to address the method, means, and manner in which Defendant Rangel dissociated from Plaintiff. The Complaint alleges claims that sound in lawⁱ and in equityⁱⁱ. However, because the business form the Members of Plaintiff chose and the limitations imposed on Members and Managers, who operate primarily by default to the South Carolina Uniform Limited Liability Act of 1996 (the Act), this Court finds the main purpose of the suit sounds in equity.ⁱⁱⁱ The primary reason is the allegations of the Complaint. Consideration is also given to Defendants counterclaims which plead for an equitable resolution to Defendant Rangel's dissociation from Plaintiff. She seeks accounting, valuation, dissolution of Plaintiff. Her primary interest is to have her membership interest in Plaintiff purchased^{iv}.

PROCEDURAL STATUS FOR RULE 59 & 60(b) MOTIONS

This Court heard the case over a 4 day period. The Plaintiff appeared fully represented by his attorney, Mr. Ferrara. The Defendant Rangel appeared, in her individual capacity and as the sole member of a limited liability company, named Paisley's LLC, but doing business as the named Defendant Wild Jumps. The Defendant Michael Dever did not appear. Mr. Whitsett, who had filed a motion to be relieved as counsel to Mr. Dever admitted that the interest of Mr. Dever and Defendant Rangel were the same. For this reason, this Court ordered Mr. Whitsett to remain as Counsel for Defendant Dever. This Defendant's deposition had been taken by Plaintiff's counsel. Additionally, Plaintiff asserted he subpoenaed Defendant Dever for trial. Mr. Dever did not appear pursuant to the subpoena. Mr. Whitsett argued Plaintiff did not include a witness fee nor travel expenses. For this reason, this Court determined the subpoena defective. Thus, the case proceeded with Mr. Whitsett representing him in his absence. Defendant Dever's deposition testimony nonetheless served as his trial testimony with both Mr. Whitsett and Mr. Ferrara's consent. This Court reviewed Mr. Dever's testimony. On the whole, Mr. Dever's testimony was evasive, and confrontational. The testimony demonstrates little reliability much less credibility.

At the conclusion of the trial, the Court took all of the evidence under consideration. In order to decide the case, this Court, in addition to reviewing the elements of each cause of action

and each defense, made a considered review of the Act. Moreover, because the Defendant asserted her rights to the customer list of the Plaintiff as a defense to all claims, particularly, however, the breach of fiduciary duty, usurpation of a corporate opportunity and the conversion claims, this Court made a considered review of the South Carolina Trade Secrets Act of 1997. S.C. Code Ann. § 33-44-101, *et. seq.*

Plaintiff and Defendants moved to amend or reconsider in accord with SCRCP 59 and 60(b). Plaintiff's Motion on point one is granted. Plaintiff's motion on point two is granted, however, the substantive outcome of the case does not change. Defendants' Motion to amend or reconsider is denied.

As footnote xi explains, this Court corrected the caption of the case to include the real party in interest as to the company defendant. The company defendant is Paisley's, LLC. Paisley's, LLC, does business as Wild Jumps. However, the Court inadvertently failed to correct the caption in its Order, and failed to direct the Clerk to enter judgment against Paisley's, LLC. The Plaintiff is correct on this point. Therefore, the caption shall name Paisley's, LLC as a defendant. The monetary judgment of \$102,020.00 granted in the Court's original Order thus is amended to show Paisley's, LLC, as a joint and several judgment debtor. The Plaintiff also seeks amendment or reconsideration of the Order as it relates to the conspiracy claim. Specifically, Plaintiff request reconsideration of the court's ruling concerning the third element of the tort of conspiracy, "special damages." This Amended Order addresses Plaintiff's concerns below.

FACTUAL HISTORY

Daryl Wiggins and Sarah Rangel filed Article of Organization with the South Carolina Secretary of State on December 10, 2003 to organize Plaintiff, 514 Jump Amusements, LLC (the Company). The Company is a 50 year term company. The Articles of Organization state Daryl Wiggins and Sarah Rangel are the organizers. The record reveals Daryl Wiggins and Sarah Rangel are the Company's Members. The Articles of Organization name Daryl Wiggins and Sarah Rangel the Managers. Thus, the Company is a manager managed limited liability company under South Carolina law. S.C. Code Ann. § 33-44-404 (b). The Company's is an entertainment company that rents interactive inflatable "jump castles" of varying themes and entertainment equipment, e.g., chairs and tables, popcorn machines, cotton candy machines, and other concessions.

The Company began operations at or about the same time it was organized by Mr. Wiggins and Defendant Rangel. The business by all accounts successfully operated from its inception until the evening of December 12, 2010 when Defendant Rangel left an undated letter addressed to Daryl Wiggins at his home (Plaintiff's Exhibit 2). The letter speaks for itself; however, in general it informs Mr. Wiggins that Defendant Rangel was leaving the Company for matters relating to her personal life and her family. She further informed Mr. Wiggins she was taking one-third of the company's equipment, primarily "inflatable jump castles." Her letter also alludes to a non-specific "conflict of interest," suggesting this, too, prompts her decision to leave the Company. On this date Defendant Rangel, as a Member the Company, dissociated from the Company because she gave notice of her express will to withdraw. S.C. Code Ann. § 33-44-601(1). Her action did not create dissolution of the Company. (Comment: S.C. Code Ann. § 33-44-601 "If . . . a term company is manager-managed, only the dissociation of a member who is also a manager . . . threatens dissolution.) Court's emphasis.

The Company rented warehouse space to house its equipment. On December 13, 2010, Mr. Wiggins went to the warehouse. He discovered approximately one-half of the Company's equipment had been removed. He reported this to Dorchester County's Sheriff's Department. A deputy sheriff accompanied Mr. Wiggins to Defendants Rangel's house, which for various reasons served as the address of the Company. Discovering this was a business dispute, the testimony suggests the sheriff's deputy diffused the exchange between Mr. Wiggins and Defendant Rangel. Defendant Rangel returned to Mr. Wiggins the warehouse key, a box full of business records, and a company laptop.

On December 20, 2010, Defendant Rangel executed a formal Statement of Dissociation. She filed this, as permitted by statute, with the South Carolina Secretary of State on December 23, 2010. S.C. Code Ann. § 33-44-704.

The evidence supports a finding that Mr. Wiggins and Defendant Rangel made equal contributions to the Company. While the evidence implies Defendant Rangel sold a vehicle to buy the first jump castle, the innovation of a jump castle business came from Mr. Wiggins. In any event, the Court finds Mr. Wiggins and Defendant Rangel contributed equally to start up the Company. S.C. Code Ann. § 33-44-401.

Defendant Rangel presented an undated OPERATING AGREEMENT of 514-Jump Amusements, LLC, a South Carolina limited liability agreement that she signed. Defendants' Exhibit I. Notwithstanding, Mr. Wiggins testified he did not sign an operating agreement. The blanks in the South Carolina form for Articles of Organization are filled by hand printing. Defendant Rangel testified an attorney from a big law firm down town set up the Company. The hand written Articles of Organization and the lack of both signatures on the written operating agreement is inconsistent. Defendant Rangel's testimony is simply not credible. Hence, this Court finds the Members of the Company did not have a written operating agreement. However, the evidence supports a finding that the Members had a verbal operating agreement^{vi}. In this regard, Defendant Rangel and Mr. Wiggins regulated the affairs of the Company and the conduct of its business, and governed relations among themselves as Members, Managers, and the Company with a Verbal Operating Agreement. Specifically, Mr. Wiggins performed the physical responsibilities to deliver, set up, and recover rented inflatable jump castles. To this end, Mr. Wiggins hired and managed temporary personnel. Defendant Rangel booked parties, oversaw the books and records of the Company, and assisted in marketing the Company. Defendant Rangel also hired Defendant Dever, her husband^{vii}, to assist in party set up, and authorized him to purchase equipment on behalf of the Company. At times Defendant Rangel and Mr. Wiggins worked an event together. Mr. Wiggins and Defendant Rangel agreed to pay their household expenses and credit card expenses, including Mr. Dever's from the Company's coffers. They agreed to split the profits equally. Stated slightly differently, the evidence supports a finding the Mr. Wiggins and Defendant Rangel managed the Company as Managers. As Managers, they directed the Company to pay the costs of Company sales whether directly to vendors, or through payments to each Member's household creditors. In accord with their equal membership interest, the Members split the net profits, equally. Some payments made to Mr. Wiggin's household creditors were reported to taxing authorities as income to Mr. Wiggins. Likewise, some payments made to Defendants Rangel and Dever household creditors were reported to taxing authorities as income to Defendants Rangel and Dever, who filed tax returns as 'married, filing jointly.' These business decisions are authorized. The Verbal Operating Agreement, to the extent necessary, from inception and from time to time did not violate any statutory default provisions. (S.C. Code Ann. § 33-44-403). And, like the details of these payments being authorized, other

important provisions of the Verbal Operating Agreement are supplemented by default through the Act. (see, end note vi).

The evidence supports a finding the Company operated financially successful from inception through December 12, 2010. With this success came ordinary and customary business decisions that at times each Manager expressed a differing view. This is to be expected, and, in fact, both Members testified that from time to time disagreements on operating the company's business came up. The Members, whether acting as Managers or Members or both, nevertheless resolved their differences. The Members had discussions about one or the other party buying out the other. The evidence suggests these discussions were fleeting and never went beyond mere talk between them. In short, Manager or Member disagreements never rose to a level where either Member threatened to leave the company.

In fact the evidence supports both Members consented to amendments of the operating agreement under Section 33-44-103. Both Members authorized or ratified acts or transactions under Section 33-44-103(b)(2)(ii), which would otherwise violate the duty of loyalty. Both Members compromised obligations to make contributions under Section 33-44-402(b). Both Members compromised obligations to make contributions or return money or other property paid or distributed in violation of the Act. S.C. Code Ann. § 33-44-404(c)(1)(2)(4)(5). The means and methods of the Management decisions were simply verbal, non-formal, and fluid. Similarly, as Members of the Company, Mr. Wiggins and Defendant Rangel changed the Verbal Operating Agreement verbally, without formalities, and with an informal fluidity that authorized or otherwise ratified all acts of the Managers and the Company.

An altercation between Mr. Wiggins and Defendant Dever demonstrates the means and methods of the Managers' business decisions, and the mean and methods of the Members organizational decisions. The Managers booked an inflatable jump castle and other equipment for the 2010 Fall Steeplechase in Aiken, South Carolina. Mr. Wiggins and Defendants Rangel and Dever, and temporary personnel worked the event. Defendant Dever demanded to be made a member of the Company. Mr. Wiggins rebuffed the idea. Heated words were exchanged. Mr. Wiggins and Defendant Dever got into a fisticuff as Defendant Dever's demand escalated into a scuffle. Notwithstanding Defendant Rangel's defense of her husband's person, the altercation did not produce a disagreement on management, or membership, or operation of the Company.

The Company's business is seasonal, and a period of dormancy ensued. Nonetheless, both Mr. Wiggins and Defendant Rangel, as Members agreed Defendant Dever should not become a member in the Company. S.C. Code Ann. § 33-44-404(c)(7). Moreover, as Managers they agreed Mr. Dever would not continue to assist Defendant Rangel with her duties as a manager, or either Member with operations of the Company. Thus, when Defendant Rangel left the undated letter at Mr. Wiggins' home on December 12, 2010, her notice of dissociation, which Mr. Wiggins discovered December 13, 2010, his knowledge of her dissociation, S.C. Code Ann. § 33-44-102, Defendant Rangel's dissociation came as a complete surprise. The Steeplechase altercation physically occurred. Metaphorically, Defendant Rangel ended that fight with this sucker punch. And, because her action came without warning accompanied by the letter that Defendant Rangel unilaterally was taking "1/3 value of Jump Castles," in violation of S.C. Code Ann. § 33-44-404(c)(9)(10)(12), the Court finds Defendant Rangel failed to discharge her duties to the Company and Mr. Wiggins and failed to exercise her rights consistently with the obligation of good faith and fair dealing. S.C. Code Ann. § 33-44-409 (h), applying § 33-44-409(d). Moreover, Defendant Rangel's dissociation from the Company was wrongful because by express will she dissociated before December 9, 2053, the expiration of the Company's specified term. S.C. Code Ann. § 33-44-602(b)(1).

The evidence supports a finding Defendant Rangel telephoned Mr. Wiggins December 28, 2010. The telephone call lasted about an hour and one-half. Mr. Wiggins described the call. He said Defendant Rangel told him her husband had been arrested^{viii} and she needed to talk. She admitted she "screwed up" the business, and "should have worked things out." She told Mr. Wiggins her husband had forced her to leave the Company, and she acknowledged she had made a mistake. The call resulted in a meeting the following day. The parties differ on their recollection of the meeting December 29, 2010.

Defendant Rangel testified that at the meeting she returned some equipment to Mr. Wiggins. She testified she referred a customer's event, a fire department's party. She testified that with this Mr. Wiggins agreed her value in the Company and his value had been agreed upon, and the Company's assets distributed between them fairly. Mr. Wiggins recalled that Defendant Rangel offered to return a "Toddler Town" jump castle, and that she had to make the return before Defendant Dever got out of jail, which infers she did not intend to take it. Mr. Wiggins

did acknowledge she referred the fire department job to him but stated it was because she could not cover that event. Moreover, Mr. Wiggins denies that this meeting resulted in his agreement with Defendant Rangel to divide the Company^{ix}. The Court finds this exchange and referral does not establish an accord and satisfaction^x. Her testimony on the December 29, 2010 meeting is not credible. In fact, as the rest of the events unfolded, leading up to Plaintiff's suit, the Court finds on the whole that Defendant Rangel's testimony is not reliable. At best the Court finds Defendant Rangel met in an attempt to reconcile the emotional harm she had leveled at her former business associate, who was her lover when the Company was formed, and confidante during its financially successful run.

The Court turns now to the months of January, February and March, 2011. Plaintiff established credible and reliable evidence that Defendant Rangel, with the complicity of Defendant Dever, spent these months establishing Wild Jumps, a new company out of which Defendant Rangel would operate an identical company from which she wrongfully dissociated and admittedly "screwed up" utilizing the business records of Plaintiff and diverted the Company's web site traffic to a web site, the template of which she copied, from Plaintiff's web site. Pictures on that website were uploaded by her uncle. Many of the pictures showed the Company's name, or some other trade emblem utilized by the Company.

Plaintiff's case in chief demonstrates Defendant Rangel, individually, and as sole member of Paisley's, LLC^{xi}, operating under the name of Wild Jumps, systematically began and attempted to dismantle the business of 514 Jump Amusements, LLC. The circumstantial evidence demonstrates the events unfolded with an intention to do as much harm to Plaintiff that a competing business could do to its competitor. In fact the evidence implies, and this Court finds, Defendant Dever is the likely progenitor of the attempted destruction of 514 Jump Amusements, LLC.

To this point the Court finds the back story must be explained through additional findings. The scheme Defendants hatched began in October 2010. Defendant Dever procured the domain name www.wildjumps.com from GoDaddy^{xii} in late October. During November 2010, the record reveals Defendants Rangel and Dever received legal counsel on the proper methods to address dissociation and, if necessary, seek judicial intervention for dissolution of Plaintiff or valuation and purchase of Defendant Rangel's distributional interest. In the end, Defendant

Rangel and Dever elected a surreptitious approach. In short, they adopted the mantle of thieves in the night^{xiii}.

Defendant Rangel testified she formed Paisley's, LLC, December 7, 2010, 5 days before her dissociation, and after consulting a lawyer. Paisley's, LLC, adopted the name, "Wild Jumps" under which it conducted business. The combination of these acts supports a finding that Defendants Rangel and Dever acted in concert. Moreover, Defendants Rangel and Dever possessed the business records of Plaintiff. These records included bank statements, tax returns, computer data, and importantly Plaintiff's "514 Jump Amusements Event Rental Work Orders" (hereinafter "Party Sheets"). Each Party Sheet documents the event for which an inflatable jump castle has been rented. Each Party Sheet includes every essential bit of information for the delivery of jump castle equipment^{xiv}, the person or entity responsible for payment, and the occasion. Party occasions, e.g., a child's birthday, a day care's event, fire department's holiday celebration, a local business's marketing event, or local church's Vacation Bible School, are important because such occasions create a likely potential for repeat business opportunities.

On or about January 28, 2011, Mr. Wiggins received a letter from an attorney, Jocelyn G. Bolling (Plaintiff's Exhibit 6). This letter too speaks for itself. It references the withdrawal of Sarah Rangel from the Company. Little if any of the language reflects the author considered the Act. In sum, the letter reads like a marital property settlement, including execution of mutual releases.

The letter enclosed lists of inflatable jump castles and equipment Defendant Rangel incredulously claims as "hers," and a list of items that Defendant Dever incredulously claims as "his." These lists describe the property Defendants Rangel and Dever took from Plaintiff the night of December 12, 2010. Moreover, and with equal incredulity, the letter makes a monetary demand for the rights to 514 Jump Amusement LLC's name, web page, and telephone number. All of these assets are the property of Plaintiff. Defendants possess no right to demand payment for property they did not own (see, discussion *infra*).

Prior to this letter, the Court finds Defendant Rangel, with the complicity of Defendant Dever, redirected web use traffic from <http://514jumps.com> to Defendant Rangel's newly formed company's website, <http://www.wildjumps.com>. Mr. Wiggins did not know Defendants had taken this surreptitious action until sometime later. Plaintiff's webpage design and SEO expert

could not specifically date the re-direction, however, it is sufficient to find that it was done in early January 2011, and not inconsequential, after the December 28, 2010 meeting.

Defendant Rangel testified she, as the individual whose name the web domain name, "514jumps," was registered, owned the webpage <http://514jumps.com>. This, Defendant Rangel testified, justified redirecting the primary marketing tool of 514 Jump to Wild Jumps. The Court finds Defendant Rangel's tactic reprehensible. Plaintiff's evidence shows screen shots of the Wild Jump web page have photographs of 514 Jump's inflatable jump castles with photos dated years before Wild Jump became an entity. Defendant Rangel enjoyed the fruits of the 514 Jump domain name and its webpage for at least six (6) years, she presented no evidence that she asserted ownership to it prior to dissociation, 514 Jump did not pay her a license fee for the domain name and web page. The Court finds simply this: the domain name like all of the assets of 514 Jump were contributed to it by the Members in accord with S.C. Code Ann. § 33-44-401 and the Verbal Operating Agreement.

After the Bolling Letter, in March of 2011, Defendant Dever took possession of a Haul Mark Trailer and its contents from Mr. Wiggins' home without his consent. In fact, the record supports a finding that Defendant Dever first attempted to recover the trailer with the assistance of a sheriff's department. Mr. Wiggins, who had the original certificate of origin in a safe at his home, intervened and foiled the attempted "recovery" of the trailer. Defendant Dever ignored Mr. Wiggins' possession of the original certificate of origin (Plaintiff's Exhibit 29). It is dated April 11, 2008. On its reverse, written in hand, is "Michael Patrick Dever" and the Company's business address, the home of Sarah Rangel, 123 Ashdown, and the dealer Trailers for Less, a long number, and signature Michelle Walker. Also hand written is the lien holder GE Money Bank, and its address.

Plaintiff's Exhibits 37 and 38, dated July 17, 2009 and July 23, 2009, reveal Defendant Dever signed sale confirmation and invoices as "Manager" for 514 Jump located at 123 Ashdown Drive, Summerville, SC. Defendant Rangel's testimony did not dispute that the Company paid its creditors, and that she had control of the Company checking account and its checks. Defendant Rangel did not testify the Haul Mark had not been paid for by the Company. The inference drawn by this Court is that Defendant Dever, in taking delivery of the Haul Mark, acted as an agent for Plaintiff.

The record reveals Mr. Dever's sleight of hand. When the manufacturer originally delivered the trailer, this Court finds Defendant Dever represented Plaintiff as a general manager.⁴⁷ He had a copy of a document that showed he received the Haul Mark, individually, from the manufacturer albeit delivered to the business address of the Company. His testimony reveals he did not know whether he was married to Defendant Rangel in 2008 or 2009. Nonetheless, he testified he lived with Defendant Rangel as early as 2004. With that as his proof of ownership, he contacted the Haul Mark manufacturer to procure a duplicate certificate of origin. Using the duplicate certificate of origin, he hired a towing company to repossess the Haul Mark trailer, an asset of the Company, at a time he knew Mr. Wiggins was not at home. The towing company picked up the trailer from Mr. Wiggins' home. The trailer contained equipment owned by Plaintiff (Plaintiff's Exhibit 3, summarized on Plaintiffs' Exhibit 21, Chart 1 lines 26 through 42 Column A).

PROCEEDINGS TO DISSOLVE PLAINTIFF

On or about March 30, 2011 Plaintiff filed suit. The final answer of Defendants included a general denial of Plaintiff's causes of action, waiver, estoppel, unclean hands, reservation and non-waiver and counterclaims against Plaintiff for violation of the Act and breach of Articles of Organization. Defendants requested relief of a reasonable attorney's fee incurred in defending this action; a decree requiring the Company to be wound up and the distributional interest of Defendant Rangel to be purchased; and for such other relief as this Court deems just and proper.

Plaintiff withdrew its tortious interference with a contract claim during pretrial motions from the respective parties, and Defendants' answer resolved into a directive from the Honorable Edgar W. Dickson, as follows:

Since Defendant's cause of action for Breach of Articles of Organization is not one recognized by this state, then summary judgment is appropriate on this claim; however, Defendant has stated a valid cause of action under the South Carolina Limited Liability Act and it is acknowledge by this court that Section 33-44-801 of the South Carolina Code of Laws states that a limited liability company is dissolved, and its business must be wound up, upon the occurrence of any of the following events: (4) on application by a member or a dissociated member, upon entry of a judicial decree that:(c) another member has engaged in conduct relating

to the company's business that makes it not reasonably practicable to carry on the company's business with that member. (this Court's emphasis). It was further acknowledge [sic] by counsel for both Plaintiff and Defendant that whether or not a member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member, is a question for the finder of fact. It was also acknowledged by counsel and by this court that the Defendant Sarah Rangel was entitled, at the time of her disassociation, to her percentage of the business; therefore, summary judgment is inappropriate and is therefore denied. It was further agreed by all parties that the Defendant was entitled to an accounting and valuation under Article 7 of the South Carolina Limited Liability Act.

This Court must dissolve the Company by judicial decree, and distribute the interests of Members, which is Defendant Rangel's claim, if the facts establish Mr. Wiggins engaged in conduct relating to the Company's business that makes it not reasonably practicable to carry on the Company's business by himself, its sole remaining Member. This Court will not order dissolution of Plaintiff on Defendant Rangel's proof. The Court finds no credible evidence that Mr. Wiggins engaged in any conduct relating to the Company's business that makes it not reasonably practicable to carry on the Company's business with Mr. Wiggins. To the contrary, the record supports a finding that Mr. Wiggins capably managed the operations of Plaintiff despite the crippling acts of Defendants Rangel and Dever. The other remedies Defendant Rangel seeks, accounting and valuation, however will be addressed.

MOTION TO AMEND PLEADINGS AT CLOSE OF EVIDENCE

(South Carolina Trade Secrets Act of 1997)

At the close of all the evidence both parties moved for the pleadings to be amended to conform to the proof. Unfortunately, neither party specified to what the pleadings should be amended. However, in light of significant emphasis in the trial of Plaintiff to show Defendants wrongful use of the Party Sheets, and Defendants desire to have the Company purchase her distributional interest paying her its fair value, the Court finds each party amended the pleadings to address the two specific issues. As to Plaintiff's claim, the Court turns to S.C. Code Ann. §

33-44-104 (a) provides: "Unless displaced by particular provisions of this chapter, the principles of law and equity supplement this chapter." The Defendants Rangel and Dever took possession of assets, including information compiled on Party Sheets, of the Company without the consent of the sole remaining Member and Manager, Mr. Wiggins. As to Defendant Rangel's claim, the Court will address § 33-44-701(a)(2). The Court will then discuss the remaining claims of Plaintiff.

Given S.C. Code Ann. § 33-44-104 (a), the Court reviews the South Carolina Trade Secrets Act of 1997 (SCTSA), which "... displaces those claims that seek to protect through the common law or other state law a right "equivalent" to the exclusive rights reserved to the owner of a trade secret. See *Trandes Corp. v. Guy F. Atkinson Co.*, 996 F.2d 655, 659 (4th Cir.1993)." *Nucor Corp. v. Bell*, 482 F. Supp. 2d 714, 725 (D.S.C. 2007). The first question is whether the Party Sheets are a trade secret. The second question, if they are, is whether Defendants misappropriated the trade secret. Whether the Party Sheets, if trade secrets, were misappropriated is determined by the definition of misappropriation provided by statute. This Court finds the Party Sheets are a trade secret. The Court's analysis follows.

S.C. Code Ann. § 39-8-20 contains definitions applicable to SCTSA^{xvi}. The Court finds the Party Sheets are compilations of information that derive independent economic value and are the subject of efforts of the Managers of the Company. These compilations derive independent economic value because the data, .e.g., customer name, process or procedure performed is not generally known to, and readily ascertainable by proper means by the public or any other person who can obtain economic value from their disclosure or use. The record supports a finding Party Sheets had actual economic value through evidence Plaintiff presented that showed Defendant Rangel contacted prior customers of Plaintiff after her dissociation to inform them she was operating under Wild Jumps. As a result of these contacts, she procured customers who rented inflatable jump castles from Wild Jumps for events using the same or similar products and procedures.

Under the circumstances of running a successful inflatable jump castle business, a business like most that thrives on repeat business from former customers, the Court finds that maintaining the secrecy of the Party Sheets by the Company is reasonable. In fact, Defendant

Dever had a duty to maintain their secrecy by virtue of his administrative and operational work with Plaintiff. S.C. Code Ann. § 39-8-30 (B).

Each Party Sheet individually could be perceived as a minor or simple process. Collectively, however, the Party Sheets of several years of events where Plaintiff provided an inflatable jump castle would be the basis of a marketing strategy. The Party Sheets included simple facts, name, address, and telephone numbers, procedures, e.g., type of jump castles, other rented equipment, e.g., tables and chairs, the length of time items would be rented, and the occasion of the event. The collective effect of the information, the items and procedures create a trade secret of customers, items and procedures that existed in the records of Plaintiff. This information was not general knowledge of each individual item or procedure. In short, the Party Sheets, and the information contained on them are trade secrets of Plaintiff. The Court notes, "Trade secrets are unique creatures of the law, not property in the ordinary sense, but historically receiving protection as such. Unlike other assets, the value of a trade secret hinges on its secrecy. As more people or organizations learn the secret, the value quickly diminishes. For this reason, owners or inventors go to great lengths to protect their trade secrets from dissemination. The value of trade secret protection to a healthy economy has been widely accepted for some time. Over the last two hundred years, the law has developed mechanisms for accomplishing this end. *Bridgestone Am. Holding, Inc. v. Mayberry*, 878 N.E.2d 189, 192 (Ind.2007) (footnote omitted)." *Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 472, 674 S.E.2d 154, 161 (2009)).

Plaintiff's case demonstrated with reliable evidence that Defendant Rangel utilized 514 Jump trade secrets to develop a marketing strategy without the consent of Plaintiff for her competing company. Specifically, the evidence establishes Defendant Rangel contacted Plaintiff's customers, informed them she was operating under Wild Jumps, and providing inflatable jump castles for parties and events. S.C. Code Ann. § 39-8-20(5). Of equal importance, the record reveals Defendants procured events using this marketing strategy.

The question remains whether Defendants misappropriated the trade secret. SCTSA defines misappropriation: "'Misappropriation' means: (a) acquisition of a trade secret of another by a person by improper means," Hence, did Defendants acquire the trade secret of 514 Jump by improper means?

This Court determines the facts in this case support a finding that Defendants acquired the trade secrets by improper means. This finding requires the Court to examine Defendant Rangel's and Dever's status prior to the point in time she left the letter on the door at Mr. Wiggins' house December 12, 2010, and to examine their status after she left the letter at Mr. Wiggins' house.

Defendant Rangel gave notice of her dissociation and dissociated at the same moment. That moment occurred when she placed the letter on or about the door of Mr. Wiggins' house. Until that moment she remained a Manager and a Member of the Company. The uncontroverted evidence is that Defendant Rangel held in her possession all of the Company's Party Sheets. Defendant Rangel knew her husband acquired the domain name, www.wildjumps.com, in October 2010. Defendant Rangel formed Paisley's, LLC, December 7, 2010. These facts combine to imply Defendant Rangel knew as early as October 2010 she intended to leave the Company (note *supra*, December 12 letter's vague reference to a conflict of interest). Defendant Rangel acquired the trade secret improperly because she acquired the information by breaching her S.C. Code Ann. § 33-44-409 duty of loyalty to the Company. S.C. Code Ann. § 39-8-20 defines "Improper means" to include theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, duties imposed by the common law, statute, contract, license, protective order, or other court or administrative order, or espionage through electronic or other means (Court's emphasis).

During the trial Defendant Rangel repeatedly asserted she and her husband took only assets they "owned." Defendant Rangel's position is unfounded. Aside from contributions, *supra*, amendments to the Verbal Operating Agreement, *supra*, and the Managers' means used to pay creditors of Mr. Wiggins, individually, and the Dever household, *supra*, Defendant Rangel's position also contradicts her own contractual agreement defined by the Act. See, *Simpson v. Simpson*, 404 S.C. 563, 572, 746 S.E.2d 54, 59 (Ct. App. 2013), reh'g denied (Aug. 8, 2013), cert. denied (Sept. 25, 2014) *footnote 6*: Generally, "a limited liability company is a legal entity distinct from its members." S. C. Code Ann. § 33-44-201 (2006 & Supp.2012). "A member is not a co-owner of, and has no transferable interest in, property of a limited liability company." S. C. Code Ann. § 33-44-501(a) (2006 & Supp.2012); see also Comment to S. C. Code Ann. § 33-

44-501 ("Members have no property interest in property owned by a limited liability company.").

BREACH OF FIDUCIARY DUTY versus CONVERSION

After December 12, 2010, the Court's analysis shifts because the status of Defendants changes. In short, once Defendant Rangel dissociated, she had no statutory duty of loyalty. *A fortiori*, she had no possessory right in any assets of the Company. As demonstrated above, the Company is distinct from its Members; Members do not co-own the Company's property; Members have no transferable interest in the Company's property; Members have no property interest in the Company's property. In short, Defendant Rangel after dissociating became a mere transferee of a member's interest. As such, she did not co-own, had no transferable interest, and had no property interest in the Company's assets, including its trade secrets. By removing the assets of the Company from the warehouse, and retaining the Party Sheets, the Company's trade secrets, Defendants Rangel took unauthorized assumption and exercise of ownership rights over the goods and personal chattels belonging to the Company to her exclusion.

In *Gordon v. Busbee*, 397 S.C. 119, 135, 723 S.E.2d 822, 831 (Ct. App. 2012), the Court of Appeals recites, "[C]onversion is the 'unauthorized assumption and exercise of the right of ownership over goods or personal chattels belonging to another, to the exclusion of the owner's rights.' " *Bank of New York v. Sumter Cnty.*, 387 S.C. 147, 158, 691 S.E.2d 473, 479 (2010) (quoting *Moore v. Weinberg*, 383 S.C. 583, 589, 681 S.E.2d 875, 878 (2009)). "Conversion may arise by some illegal use or misuse, or by illegal detention of another's personal property." *Regions Bank v. Schmauch*, 354 S.C. 648, 667, 582 S.E.2d 432, 442 (Ct.App.2003). In short, once Defendant Rangel dissociated she took the unauthorized assumption and exercise of the right of ownership over the trade secrets and the goods or personal chattels (Exhibit 6, pages 4, 5, & 6) belonging to Plaintiff to the exclusion of Plaintiff's rights. She testified her husband^{xvii} assisted. Defendants theft of the Company's trade secret, together with the other goods and chattels of Plaintiff, allowed Defendants to systematically misappropriate the trade secret to develop the marketing strategy for Paisley's, LLC, doing business as Wild Jumps, and effectively dismantled Plaintiff's inventory significantly limiting Plaintiff's ability to function effectively.

This Court finds Defendants misappropriated Plaintiff's trade secrets, and converted the Exhibit 6, pages 4, 5, & 6 assets of Plaintiff. Defendants misappropriated the Company's trade secrets, the Party Sheets.^{xviii} The court will discuss damages after addressing the remaining claims of Plaintiff and Defendants claim for accounting and valuation.

USURPATION OF CORPORATE OPPORTUNITY

The Court turns to Plaintiffs claim that Defendant Rangel usurped a corporate opportunity. The seminal case on the doctrine of usurping a corporate opportunity is *Meinhard v Salmon*. In a recent South Carolina case, *Kiriakides v. Atlas Food Sys. & Servs., Inc.*, 338 S.C. 572, 588, 527 S.E.2d 371, 379 (Ct. App. 2000) *aff'd as modified and remanded*, 343 S.C. 587, 541 S.E.2d 257 (2001) our Court repeats its significance:

In *Meinhard v. Salmon*, 249 N.Y. 458, 164 N.E. 545 (1928), Chief Judge Cardozo of the New York Court of Appeals described the duty of partners as follows: partners "owe to one another, while the enterprise continues, the duty of the finest loyalty. Many forms of conduct permissible in a workaday world for those acting at arm's length, are forbidden to those bound by fiduciary ties.... Not honesty alone, but the punctilio of an honor the most sensitive, is then the standard of behavior." *Id.* at 515-516, 548.

Defendant Rangel had a fiduciary duty to Mr. Wiggins as both a Manager of Plaintiff and a Member. The legislature adopts in essence the common law duty of loyalty codified in S.C. Code Ann. § 33-44-409.^{xix} In this Court's view, however, Plaintiffs claim for Defendants' usurpation of a corporate opportunity fails. The Court makes this finding on two bases.

First, Defendant Rangel's duty of loyalty to Plaintiff and Mr. Wiggins, who is not a party, as the Court has stated, ceased to exist upon her dissociation. Since Defendant Rangel owed no duty of loyalty after dissociation, the Court must apply the statute and find Defendant Rangel could not usurp a corporate opportunity for which she owed no duty of loyalty. Thus, the actions of Defendant Rangel after dissociation fail as a matter of law because the gravamen of the claim is the duty of loyalty. This begs the question then concerning whether Defendant Rangel usurped a corporate opportunity while she remained a Member and Manager of Plaintiff.

The evidence supports a finding that through the months of October, November and 12 days in December, 2010, her actions were in conflict with her duty of loyalty to Plaintiff. However, Plaintiff offered no evidence that during this period Defendant Rangel damaged

Plaintiff.^{xx} Simply, the breach does not result in any proven damages to Plaintiff before Defendant Rangel dissociated^{xxj}. Hence, Plaintiff fails to prove its cause of action for breach of fiduciary duties. On the contrary, there is evidence, undisputed by Mr. Wiggins, Defendant Rangel continued to promote the well being of Plaintiff through her efforts to procure legal representation for a tort claim pending against the Company.

CIVIL CONSPIRACY

Plaintiff's claim of a civil conspiracy fails for a similar reason. Plaintiff fails to prove special damages. "The tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring Plaintiff, and (3) causing plaintiff special damage." Hackworth, 385 S.C. at 115, 682 S.E.2d at 874 (citing Vaught v. Waites, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct.App.1989))." *Benedict Coll. v. Nat'l Credit Sys., Inc.*, 400 S.C. 538, 545, 735 S.E.2d 518, 521 (Ct. App. 2012)^{xxii} The evidence in this case supports a finding Defendants combined for the purpose of injuring Plaintiff. Plaintiff, however, fails to establish the combination for the purpose of injuring Plaintiff resulted in special damages.

Plaintiff offered as proof of special damages an affidavit of its attorney's fees and cost in prosecuting its claims against Defendants. The affidavit makes no distinction between prosecution of the asserted causes of action and defense of Defendants counterclaims. Based on this evidence, the Court finds the attorneys fees overlap. Moreover, this Court finds these attorneys fees are merely general damages and do not establish special damages.

Judge Thomas, in *Benedict College*, notes: "While general damages 'are the immediate, direct, and proximate result of the' tortfeasor's conduct, special damages 'are the natural, but not the necessary or usual, consequence of the' tortfeasor's conduct. *Id.* at 116-17, 682 S.E.2d at 875. Moreover, dismissal of a claim for civil conspiracy is appropriate when "a plaintiff merely repeats the damages from another claim instead of specifically listing special damages as part of their civil conspiracy claim." *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 682 S.E.2d 871 (Ct. App. 2009). at 117. (Special damages must be specifically alleged in the complaint to avoid surprise to the other party) *Id.*, at 875. *Benedict Coll.*, at 546

In this case the damages under the conspiracy claim simply overlap the damages of Plaintiff's other causes of action. This Court finds Plaintiff's fees and cost are the immediate, direct, and proximate result of the conduct of Defendants Rangel, individually or as a member of

Paisley, and Dever. Hence, they are general damages. Plaintiff's attorney's fees and cost are not natural consequences of the conspiracy. Even though the Court finds Plaintiff's fees and cost are the necessary or usual, this Court finds they are not a consequence of the conspiracy.

To put this issue in perspective, the Court considers the consequence of the combination of Defendants. The combination demonstrated by the evidence is best described as "mounting a raid" on the assets of the Plaintiff. The circumstantial evidence makes a finding that Defendants combined, or planned over a period of time, to take assets of Plaintiff. These assets did not belong to them as discussed, *supra*. The Plaintiff brought five causes of action, including the claim for civil conspiracy, to address the wrongful taking of Plaintiff's assets. This Court reviewed the facts, observed witnesses, and heard testimony arising out of the conduct of the Defendants. The Court concludes Plaintiff proved only the cause of action for conversion as to each Defendant. Thus, the consequence of the plan of mounting a raid on the assets of Plaintiff resulted in the act of conversion. The claim of conspiracy merely overlaps the claim of conversion. The claim of conspiracy merely overlaps the other claims Plaintiff alleged. Since the attorneys fees and costs are immediate, direct and proximate of the conversion claim, as well as the other claims, the Plaintiff cannot also maintain its fees and costs are the natural consequence of the combination. For these reasons, the Plaintiffs conspiracy claim fails because it establishes no special damages, the third prong of the cause of action.

ACCOUNTING

An action for an accounting sounds in equity. *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 427, 673 S.E.2d 448, 453 (2009). The uncontroverted evidence reveals Defendant Rangel kept the books and records of Plaintiff. This Court finds Defendant Rangel waived her right to an accounting by refusing to effectively communicate and cooperate with Mr. Wiggins, and further failing to independently resolve the matter when she and Mr. Wiggins had access to 514 Jumps bank records. See *Janasik v. Fairway Oaks Villas Horizontal Prop. Regime*, 307 S.C. 339, 344, 415 S.E.2d 384, 387-88 (1992) (defining a waiver as a voluntary and intentional abandonment or relinquishment of a known right by a party who possessed actual or constructive knowledge of its rights, or of all the material facts upon which they depended). *Historic Charleston Holdings, LLC*, 453-4.

The Court now turns to the valuation of Defendant Rangel's membership interest and her claim that Plaintiff must purchase it. Defendant Rangel and Mr. Wiggins testified the value of 514 Jump at the time Defendant Rangel dissociated was Two hundred Thousand and no/100 (\$200,000.00). However, an examination of the statute renders a different question for this Court. S.C. Code Ann. § 33-44-701 provides, "(a) A limited liability company shall purchase a distributional interest of a: . . . (2) member of a term company for its fair value determined as of the date of the expiration of the specified term that existed on the date of the member's dissociation if the expiration of the specified term does not result in a dissolution and winding up of the company's business under Section 33-44-801." This Court's emphasis.

The Court has determined that 514 Jump shall not be judicially dissolved. Hence, the question is what is the fair value determined as of the date of the expiration of the specified term that existed on the date of Defendant Rangel's dissociation? Defendant Rangel offered no evidence of the fair value of 514 Jump determined as of December 9, 2053, nor its value as of December 9, 2053 that existed on December 12, 2010. The Court finds no reported case or law review article that discusses the proof necessary to establish the fair value as of the date of the expiration of the specified term that existed on the date of the member's dissociation. Nonetheless, the Reporter's Comments support the Court's plain reading of the statute.

Dissociation from a term company does not require an immediate purchase of the member's interest but certain types of dissociation may cause the dissolution of the company. See Section 33-44-801(b)(3). A term company must only purchase the dissociated member's distributional interest under subsection (a)(2) on the expiration of the specified term that existed on the date of the member's dissociation. The purchase price is equal to the fair value of the interest determined as of the date of the expiration of that specified term. Any damages for wrongful dissociation must be offset against the purchase price.

The valuation dates differ between subsections (a)(1) and (a)(2) purchases. The former is valued on the date of member dissociation whereas the latter is valued on the date of the expiration of the specified term that existed on the date of dissociation. A subsection (a)(2) dissociated member therefore assumes the risk of loss between the date of dissociation and the expiration of the then stated specified term. See Comments to Section 33-44-801 (dissociated

member may file application to dissolve company under Section 33-44-801(b)(6)). (This Court's emphasis).

In order for Defendant Rangel to prevail on her requests for purchase of her distributional interest, she must offer proof of the fair value of 514 Jump as of December 9, 2053, that existed on December 12, 2010. Defendant Rangel failed to offer any proof of a fair value of the Company as of December 9, 2053. Hence, her § 33-44-701 (a) (2) claim must fail as a matter of law.

DAMAGES FOR CONVERSION

The Court is left with assigning damages to the conversion claim. The conversion claim can only apply to the damages for conversion of the hard assets of the business (Plaintiffs' Exhibit 21, Chart). The SCTSA displaces the common law claim of conversion of the trade secret. Nonetheless, Plaintiff made no attempt to prove damages for the trade secret misappropriation separate from the conversion of Plaintiff's hard assets. Plaintiff seeks disgorgement of profits earned by Defendants Rangel and Paisley's, LLC, from the assets including the information on the Party Sheets and Plaintiff's web site. Plaintiff's expert economist, Dr. Oliver Wood, offered as proof of Plaintiff's damages designed to emulate ill-gained profits by use of Plaintiff's assets. The damages theory of disgorgement, an equitable remedy, is applicable only to Plaintiff's causes of action for breach of fiduciary duty of loyalty, and usurpation of a corporate opportunity.

After considered review of Dr. Wood's evaluation of the economic loss suffered by Plaintiff, this Court finds the disgorgement remedy is inapplicable to the combination of damages resulting from Defendants misappropriation of trade secrets and conversion of Plaintiff's hard assets coupled with the redirected web site for approximately eight (8) months. Dr. Wood did refer to the Party Sheets during his testimony, however, Plaintiff offered no evidence upon which the Court can make a finding of damages on the trade secrets.^{xiii} Thus, Dr. Wood's postulation of the economic loss to Plaintiff of which Defendants should be disgorged is insufficient proof of damages afforded by the SCTSA. Moreover, this Court has no basis in equity to disgorge profits from Defendant Rangel, individually, or her new company Paisley's, LLC, because this Court finds as a matter of law the usurpation of a corporate opportunity and

the breach of the fiduciary duty of loyalty cannot be sustained. The Act absolves a dissociated member of a duty of loyalty.

Plaintiff did, however, provide credible evidence of the value of the assets converted by Defendants. A summary of the evidence is set forth on Plaintiffs' Exhibit 21, Chart 1. This Court, therefore, grants judgment in the amount of \$102,020.00 against Defendants.

For the reasons heretofore stated, this Court has no basis upon which an award of attorney's fees may be granted to Plaintiff. Moreover, the Court declines to issue an award of sanctions against Defendants for alleged failure to comply with Plaintiff's discovery requests.

THE EQUITIES

The Court concludes by returning to the main purpose of the case. Courts have the inherent power to do all things reasonably necessary to ensure that just results are reached to the fullest extent possible. 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)). Both parties in their respective claims seek equity. Hence, the Court speaks to the equities in this case. In Regions Bank v. Wingard Properties, Inc., 394 S.C. 241, 254-55, 715 S.E.2d 348, 355 (Ct. App. 2011), Judge Pieper writing for the appellate panel writes:

"It is well known that equity follows the law." Smith v. Barr, 375 S.C. 157, 164, 650 S.E.2d 486, 490 (Ct.App.2007). Utilizing this maxim, courts have denied equitable relief. See Morgan v. S.C. Budget & Control Bd., 377 S.C. 313, 319-20, 659 S.E.2d 263, 267 (Ct.App.2008). However, where a substantive right exists, an equitable remedy may be fashioned to give effect to that right. E. Tenn. Natural Gas Co. v. Sage, 361 F.3d 808, 823 (4th Cir.2004). When providing an equitable remedy, the court may not ignore statutes, rules, and other precedent. Lonchar v. Thomas, 517 U.S. 314, 323, 116 S.Ct. 1293, 134 L.Ed.2d 440 (1996). "[T]he court's equitable powers must yield in the face of an unambiguously worded statute." Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989); see also Key Corporate Capital, Inc. v. Cnty. of Beaufort, 373 S.C. 55, 61, 644 S.E.2d 675, 678 (2007) (finding error in fashioning an equitable remedy). Page 254, 255. While this excerpt is particularly applicable, the Court finds Judge Pieper's opinion generally applicable to the Court's concluding findings and conclusions.

Notably, the relationship of Defendant Rangel to the Company is bottomed upon an agreement to operate a business. The relationship of Defendant Dever to the Company, similarly, is bottomed upon contractual relations (see, endnote: vx). Interestingly, our Legislature enacted statutes to address acts of parties as this Court's Order addresses. In this regard the Court must yield in the face of these unambiguously worded statutes. And, because a legal cause of action exists for the Defendants conversion the Court makes findings and conclusions based on the action as one at law.

The Court finds no basis to "fashion an equitable remedy" when adequate remedies are afforded by our Code of Laws, and the rule of common law that addresses Defendants conversion. Moreover, no doubt Defendants combined to wrongfully exit the Company; but, conspiracy requires special damages, and Plaintiff cannot prove any.

The parties chose a form of business that permits it to operate for a period of 50 years. The sole remaining member demonstrates he can continue to operate without the Dissociated Member. The informal fluidity with which the Managers of the Company chose to manage the Company, and the Members chose to operate the Company has its advantages. However, the advantages are equally susceptible uncertain, indefinite, or unclear understandings.

The evidence presented, or more precisely, the lack of evidence, supports a finding that the Company never adopted finance and accounting principles that would yield accurate income statements much less a decent balance sheet. The uncontroverted testimony was that when payment for an event was made in cash, Mr. Wiggins and Defendant Rangel split the money. The evidence reveals little, if any, accounting for these cash payments.

The Court takes judicial notice that the revenue laws of this State, and our Federal government, have significant criminal as well as civil penalties for failure to report income. If these cash payments were reported, and they may have been, the evidence in this case does not reveal it.

In short, the facts in the case taken as a whole, but especially the lack of financial record keeping, raise a strong inference that the Company, through its Managers, and ratified by its Members, comes into this Equity Court with unclean hands. (see, *Matrix Fin. Servs. Corp. v. Frazer*, 394 S.C. 134, 140, 714 S.E.2d 532, 535 (2011) a lender may not enjoy the benefit of

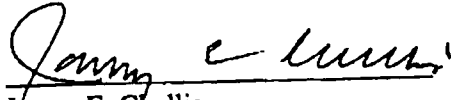
equitable remedies when that lender failed to have attorney supervision during the loan process as required by our law).

In this case, the evidence supports a finding both Members of the Company participated in lax finance and accounting principles. The Court finds the Company's means, method, and manner of operating, especially regarding cash receipts and the lack of financial statements, are inconsistent with the statutory privilege of operating a limited liability company. By failing to effectively demonstrate the accounts of the company were maintained accurately, both Members failed one another in the obligation of good faith and fair dealing. Similarly, this failure lends itself to view the Members as disrespectful of their respective duties of care and loyalty. Thus, neither the Company nor Defendant Rangel can seek the aid of the Court because each failed to follow these requirements in the Act. Conversely, the Court cannot come to the aid of either party to fashion an equitable remedy.

All things reasonably necessary to ensure that just results are reached to the fullest extent possible by this Court are to leave the parties where the Act puts them. The Members assumed the risks that one or the other may exit. Nonetheless, the Company can continue to operate. Defendant Rangel is a transferee of a membership interest in the Company. Mr. Wiggins is the sole Member and Manager of a Company that may operate another 39 years. To do this, fair warning is given Mr. Wiggins to adopt impeccable business practices. He must adopt and scrupulously maintain business records, party sheets, and provide fair and transparent financial statements as he must be aware that Defendant Rangel will now hold the Company accountable until her interest is voluntarily purchased or Defendant Rangel seeks and procures judicial dissolution at additional costs and expense.

Hence, this court makes the foregoing Findings of Fact and Conclusions of Law; each Finding of Fact shall be deemed a Conclusion of Law and each Conclusion of Law shall also be construed as a Finding of Fact; IT IS SO

ORDERED!!!



James E. Chellis

Dorchester County Master-in-Equity

St. George, South Carolina
March 24, 2015

ⁱ "An action for damages for conversion is an action at law." *Blackwell v. Blackwell*, 289 S.C. 470, 471, 346 S.E.2d 731, 732 (Ct.App.1986) (citation omitted). *Bateman v. Rouse*, 358 S.C. 667, 673, 596 S.E.2d 386, 389 (Ct. App. 2004). See, *Carjow, LLC v. Simmons*, 349 S.C. 514, 521, 563 S.E.2d 359, 363 (Ct. App. 2002) (damages for loss of rental income caused by Defendant's removal of fixtures). Civil conspiracy is an action in tort, thus an action at law (see, *Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009) The tort of civil conspiracy has three elements: (1) a combination of two or more persons, (2) for the purpose of injuring the plaintiff, and (3) causing plaintiff special damage. *Vaught v. Waites*, 300 S.C. 201, 208, 387 S.E.2d 91, 95 (Ct.App.1989)).

ⁱⁱ *Verenes v. Alvanos*, 387 S.C. 11, 17, 690 S.E.2d 771, 773 (2010) explains that a breach of fiduciary duty may sound in equity: "This Court has held that an action alleging a breach of fiduciary duty is an action at law. See *Corley v. Ott*, 326 S.C. 89, 92 n. 1, 485 S.E.2d 97, 99 n. 1 (1997). However, a breach of fiduciary duty may sound in equity if the relief sought is equitable.⁵ See *Bivens v. Watkins*, 313 S.C. 228, 230 n. 3, 437 S.E.2d 132, 133 n. 3 (Ct.App.1993). Restitution and disgorgement are equitable remedies. See *Great-West Life & Annuity Ins. Co. v. Knudson*, 534 U.S. 204, 215-16, 122 S.Ct. 708, 151 L.Ed.2d 635 (2002); see also *Key Corporate Capital, Inc. v. County of Beaufort*, 373 S.C. 55, 63, 644 S.E.2d 675, 679 (2007) (Toal, C.J. dissenting) (noting disgorgement results from the equitable remedy of restitution); *Wallace v. Milliken & Co.*, 305 S.C. 118, 120, 406 S.E.2d 358, 359 (1991) (stating restitution is an equitable remedy)." Plaintiff seeks disgorgement, an equitable remedy, and is an available remedy for usurping a corporate opportunity. Plaintiff also sets forth a cause of action for usurpation of a corporate opportunity.

ⁱⁱⁱ A corporate dissolution is an action in equity. *Jordan*, 362 S.C. at 205, 608 S.E.2d at 131. An action for shareholder oppression is also one in equity. *McDuffie v. O'Neal*, 324 S.C. 297, 303, 476 S.E.2d 702, 705 (Ct.App.1996). In addition, an action to determine the fair market value of stocks owned by a dissenting shareholder constitutes a proceeding in equity to be tried by a judge without a jury. *Defender Props., Inc., v. Doby*, 307 S.C. 336, 338, 415 S.E.2d 383, 384 (1992). *Keane v. Lowcountry Pediatrics, P.A.*, 372 S.C. 136, 142-43, 641 S.E.2d 53, 57 (Ct. App. 2007) Cf. See *Corley v. Ott*, 326 S.C. 89, 92, 485 S.E.2d 97, 99 (1997) (legal and equitable actions, when maintained in one suit, each retain their own identity for purposes of the applicable standard of review on appeal); *Future Group, II v. Nationsbank*, 324 S.C. 89, 478 S.E.2d 45 (1996). *Jordan v. Holt*, 362 S.C. 201, 205, 608 S.E.2d 129, 131 (2005)

^{iv} Characterization of an "action as equitable or legal depends on the appellant's 'main purpose' in bringing the action." *Ins. Fin. Servs., Inc. v. S.C. Ins. Co.*, 271 S.C. 289, 293, 247 S.E.2d 315, 318 (1978) (citations omitted). [Footnote 3: "[T]he 'main purpose' rule evolved from a determination that where a plaintiff has prayed for money damages in addition to equitable relief, characterization of the action as equitable or legal depends on the plaintiff's 'main purpose' in bringing the action." *Floyd v. Floyd*, 306 S.C. 376, 380, 412 S.E.2d 397, 399 (1991) (citations omitted).] "The main purpose of the action should generally be ascertained from the body of the complaint." *Id.* (citation omitted). "However, if necessary, resort may also be had to the prayer for relief and any other facts and circumstances which throw light upon the main purpose of the action." *Id.* (citation omitted). The nature of the issues raised by the pleadings and character of relief sought under them determines the character of an action as legal or equitable. *Bell v. Mackey*, 191 S.C. 105, 119-20, 3 S.E.2d 816, 822 (1939) (citations omitted). *Verenes v. Alvanos*, 387 S.C. 11, 16, 690 S.E.2d 771, 773 (2010).

Order
Plaintiff 514 Jump Amusements, LLC
Defendants Sarah Rangel, et. al.
Civil Action Number: 2011 CP 18 00508

v On December 7, 2010 Defendant Rangel filed or caused to be filed on her behalf the Articles of Organization of Paisley's, LLC, a South Carolina limited liability company (discussed, *infra*.)

vi . . . all members of a limited liability company may enter into an operating agreement, which need not be in writing, to regulate the affairs of the company and the conduct of its business, and to govern relations among the members, managers, and company. To the extent the operating agreement does not otherwise provide, this chapter governs relations among the members, managers, and company. S.C. Code Ann. § 33-44-103

vii The evidence is not clear when Defendants Rangel and Dever married. However, they married after the Company was organized. Defendant Rangel testified she and Mr. Wiggins were romantically involve when the organized the Company. Shortly thereafter she began a romantic relationship with Defendant Dever. However, Defendant Dever testified he was "living with" Defendant Rangel until 2008 or 2009.

viii Mr. Dever had violated a condition of his parole.

ix Mr. Wiggins denied the two Members of Plaintiff agreed the division Defendant Rangel unilaterally completed effectively operated as a mutual buy out of each Member's distributional interest in the Plaintiff.

x The elements of an accord and satisfaction are an agreement between the parties to settle a dispute, and the payment of the consideration which supports the agreement. *Wilson v. Builders Transp., Inc.*, 330 S.C. 287, 297, 498 S.E.2d 674, 680 (Cl.App.1998). To constitute accord and satisfaction, there must have been a meeting of the minds. *Tremont Constr. Co. Inc. v. Dunlap*, 310 S.C. 180, 182, 425 S.E.2d 792, 793 (Cl.App.1992). *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 430, 673 S.E.2d 448, 455 (2009).

xi The Court *sua sponte* corrects the Caption of the case to show Paisley's, LLC as the real party in interest.

xii The website for GoDaddy claims "[As] the world's leading domain name registrar since 2005, . . ."

xiii Defendants project as an excuse they followed a path Mr. Wiggins took in dissolving a partnership with one Kenzie Clark on a joint venture to operate an indoor jump castle park. They testify Mr. Wiggins walked away with assets from that venture without the consent, much less the knowledge, of Mr. Clark. If true, this Court adopts the logical fallacy, "two wrongs make a right," and rejects Defendants twisted excuse as a justification for their actions. This Court condones neither, *Wiggins v. Clark* or Defendants excuse here, nor will it countenance such behavior.

xiv Module Panels, Jumpers, Combo Units, Event Games, Carnival Games, and Fun Food Concessions.

xv It is well-settled that the relationship of agency between a husband and wife is governed by the same rules which apply to other agencies, and no presumption arises from the mere fact of the marital relationship that one spouse is acting as agent for the other. *Bankers Trust of South Carolina v. Bruce*, 283 S.C. 408, 423, 323 S.E.2d 523, 532 (Cl.App.1984). However, the relationship of agency need not depend upon express appointment and acceptance thereof. Rather, an agency relationship may be, and frequently is, implied or inferred from the words and conduct of the parties and the circumstances of the particular case. *Id.* The law creates the relationship of principal and agent if the parties, in the conduct of their affairs, actually place themselves in such position as requires the relationship to be inferred by the courts, and if, from the facts and circumstances of the particular case, it appears that there was at least an implied intention to create it, the relation may be held to exist, notwithstanding a denial by the alleged principal, and whether or not the parties understood it to be an agency. *Crystal Ice Co. of Columbia v. First Colonial Corp.*, 273 S.C. 306, 309, 257 S.E.2d 496, 497 (1979). *Nationwide Mut. Ins. Co. v. Prioleau*, 359 S.C. 238, 242-43, 597 S.E.2d 165, 168 (Cl. App. 2004)

^{xvi} (1) "Improper means" include theft, bribery, misrepresentation, breach or inducement of a breach of a duty to maintain secrecy, duties imposed by the common law, statute, contract, license, protective order, or other court or administrative order, or espionage through electronic or other means.

(2) "Misappropriation" means:

(a) acquisition of a trade secret of another by a person by improper means;

(b) acquisition of a trade secret of another by a person who knows or has reason to know that the trade secret was acquired by improper means; or

(c) disclosure or use of a trade secret of another without express or implied consent by a person who:

(i) used improper means to acquire knowledge of the trade secret; or

(ii) at the time of disclosure or use, knew or had reason to know that his knowledge of the trade secret was:

(A) derived from or through a person who had utilized improper means to acquire it;

(B) acquired by mistake or under circumstances giving rise to a duty to maintain its secrecy or limit its use; or

(C) derived from or through a person who owed a duty to the person seeking relief to maintain its secrecy or limit its use; or

(iii) before a material change of his position, knew or had reason to know that it was a trade secret and that knowledge of it had been acquired by accident or mistake.

(3) "Owner" means the person or entity in whom or in which rightful legal or equitable title to the trade secret is reposed.

(4) "Person" means an individual, corporation, business trust, estate, trust, partnership, association, joint venture, government, governmental subdivision or agency, or any other legal or commercial entity.

(5) "Trade secret" means:

(a) information including, but not limited to, a formula, pattern, compilation, program, device, method, technique, product, system, or process, design, prototype, procedure, or code that:

(i) derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other person who can obtain economic value from its disclosure or use, and

(ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

(b) A trade secret may consist of a simple fact, item, or procedure, or a series or sequence of items or procedures which, although individually could be perceived as relatively minor or simple, collectively can make a substantial difference in the efficiency of a process or the production of a product, or may be the basis of a marketing or commercial strategy. The collective effect of the items and procedures must be considered in any analysis of whether a trade secret exists and not the general knowledge of each individual item or procedure (Court's emphasis).

^{xvii} Every employee who is informed of or should reasonably have known from the circumstances of the existence of any employer's trade secret has a duty to refrain from using or disclosing the trade secret without the employer's permission independently of and in addition to any written contract of employment, secrecy agreement, noncompete agreement, nondisclosure agreement, or other agreement between the employer and the employee. S.C. Code Ann. § 39-8-30

^{xviii} The remedies for this misappropriation, as with the claim itself, are displaced by S.C. Code Ann. § 39-8-40:

(A) A complainant is entitled to recover actual damages for misappropriation of trade secrets. A material and prejudicial change of position before acquiring knowledge or reason to know of misappropriation may render full monetary recovery inequitable and may form the basis for reducing monetary recovery.

(B) Damages may include both the actual loss caused by misappropriation or the unjust enrichment caused by misappropriation that is not taken into account in computing actual loss. In lieu of damages measured by any other methods, the damages caused by misappropriation may be measured by imposition of liability for a reasonable royalty for a misappropriator's unauthorized disclosure or use of a trade secret.

(C) Upon a finding of wilful, wanton, or reckless disregard of the plaintiff's rights, the court may award separate exemplary damages in an amount not exceeding twice any award made under subsection (A).

xix A limited liability company, or LLC, is a hybrid business entity.¹ It has some features of corporations and some features of partnerships,² offering all of its members limited liability as if they were shareholders of a corporation³ but treating the entity and its members as a partnership for tax purposes.⁴ In other words, a limited liability company is a form of legal entity that has the attributes of both a corporation and a partnership but is not formally characterized as either one.⁵ Given that a limited liability company (LLC) has some of the attributes of a corporation and some of a partnership, an LLC should be governed by the same rules that apply to those entities, and since an LLC's articles of organization are similar to a corporation's articles of incorporation and include information similar thereto, the laws regarding corporate organization should apply.⁶ Thus, owners of membership shares or interests not represented by certificates in a limited liability company should have rights comparable to those of corporate shareholders and limited partners.⁷ Whether the relations among members of a limited liability company resemble a partnership more than a corporation, or vice-versa, is left largely to the discretion of the individual organizers.⁸ Limited liability companies are creatures of statute.⁹ However, it has also been stated that limited liability companies are creatures of contract, designed to afford the maximum amount of freedom of contract, private ordering and flexibility to the parties involved.¹⁰ *51 Am. Jur. 2d Limited Liability Companies § 1*

^{xx} (See. See 4 S.C. Jur. Action § 19, Charles E. Baker, Esq., writes ably, "[T]he phrase "injuria absque damno," or "injuria sine damno," expresses the general principle in actions at law that injury without damage does not constitute a good cause of action [footnote omitted]. The phrase applies to the class of cases, such as negligence, where actual damage is an element of the cause of action [footnote omitted]. See, INJURIA ABSQUE DAMNO, Black's Law Dictionary (9th ed. 2009): *injuria absque damno* [Latin "injury without damage"] A legal wrong that will not sustain a lawsuit because no harm resulted from it. — Also termed *injuria sine damno*).

^{xxi} See, *J.T. Baggerly v. CSX Transp., Inc.*, 370 S.C. 362, 368-69, 635 S.E.2d 97, 101 (2006): A breach of fiduciary duty is an action in tort. To establish a negligence cause of action under South Carolina law, the plaintiff must prove the following three elements: (1) a duty of care owed by defendant to plaintiff; (2) breach of that duty by a negligent act or omission; and (3) damage proximately resulting from the breach of duty. *E.g.*, *Bloom v. Ravoira*, 339 S.C. 417, 422, 529 S.E.2d 710, 712 (2000) One standing in a fiduciary relationship with another is subject to liability to the other for harm resulting from a breach of duty imposed by the relation. In a breach of fiduciary case, the plaintiff is entitled to damages for harm caused by the breach of a fiduciary duty owed to him or her. Damages in an action for breach of a fiduciary duty are those proximately resulting from the wrongful conduct of the defendant. *Moore v. Moore*, 360 S.C. 241, 253, 599 S.E.2d 467, 473 (Ct. App. 2004) *J.T. Baggerly*, p. 256

^{xxii} Briefly the Court alludes to the salient procedural posture of the case. Benedict College came to the Court on an appeal from the trial court's grant of Plaintiff's motion to dismiss a conspiracy counterclaim claim on a breach of contract claim initiated by the College. In the present case 514 Jump asserts a conspiracy claim among 5 causes of action against all Defendants. Procedurally, the cases are distinct.

^{xxiii} While equitable relief is generally available where there is no adequate remedy at law, an adequate legal remedy may be provided by statute. *Santee Cooper Resort, Inc. v. S.C. Pub. Serv. Comm'n*, 298 S.C. 179, 185, 379 S.E.2d 119, 123 (1989). Indeed, a "court's equitable powers must yield in the face of an unambiguously worded statute." *Id.* *Key Corporate Capital, Inc. v. Cnty. of Beaufort*, 373 S.C. 55, 61, 644 S.E.2d 675, 678 (2007).

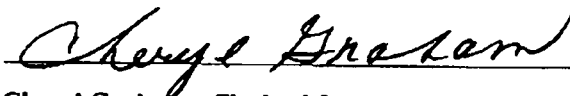
This judgment was entered on 3-31-2015, and a copy mailed first class or placed in the appropriate attorney's box on 3-31-2015, to attorneys of record or to parties (when appearing pro se) as follows:

Paul B. Ferrara III 2300 Otranto Rd. N. Charleston, SC
29406-9603

Michael Ashley Whitsitt 1476 Ben Sawyer Boulevard, Suite
3 Mount Pleasant, SC 29464

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)



Cheryl Graham - Clerk of Court

Court Reporter

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

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

(Amended)

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

JUDGMENT IN CIVIL CASE
CASE NUMBER 2011CP1800508

RECEIVED
APR 08 2015
SC COURT OF APPEALS
SC Court of Appeals

514 Jump Amusements Llc

Sarah Rangel
Wild Jumps
Michael Dever
Paisley's LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for: Plaintiff Defendant
 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; Other: _____
 Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
- 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)
514 Jump Amusements, LLC	Sarah Rangel Michael Dever Wild Jumps Paisley's LLC	\$102,020.00

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.

Master in Equity

3078
Judge Code

3/24/2015
Date