



FILED-CLERK'S OFFICE
 STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
 COUNTY OF ANDERSON) 2015 APR -6 } 3:17
 Wanda Gambrell,)
 Plaintiff,)
 vs.)
 Christopher A. Smith,)
 Defendant.)

COMMON PLEAS AND
 GENERAL SESSIONS

TENTH JUDICIAL CIRCUIT

**ORDER DENYING DEFENDANT'S
 MOTION TO WITHDRAW OR AMEND**

MAY 07 2015

SC COURT OF APPEALS

Case No.: 2014-CP-04-00214

TRUE COPY

APR - 6 2015

Richard X. Kelly
 CLERK OF COURT

This matter comes before the Court pursuant to the Defendant's Motion to Alter or Amend the Court's previous Order. The defense takes exception to the Court's previous Order on three grounds.

First, the defense argues that the contract was void *ab initio* for illegality. In its role as finder of the fact in a non-jury trial, the Court reviews the evidence and makes findings of fact. The evidence in this case did not demonstrate that the business was an illegal gambling operation.

Second, the defense argues that the Court applied the wrong standard for the cause of action for breach of contract with fraudulent intent. Regardless of what standard was applied, the Defendant must prove by a preponderance of the evidence, at inception, that there was a breach of the contract. This Court finds that the defense did not demonstrate by a preponderance of the evidence that the Plaintiff breached the contract. To the contrary, the evidence clearly shows that the Defendant failed to exercise due diligence in the purchase of the business.

Third, the defense asserts that the Court erred in finding that the Defendant failed to demonstrate by a preponderance of the evidence that the Plaintiff negligently misrepresented any

material information. Again, the evidence does not demonstrate that the Plaintiff made negligent misrepresentations of material facts. As previously stated, the evidence clearly shows that the Defendant failed to exercise due diligence and is entirely to blame for any and all after-discovered information.

For those reasons enumerated above, the Defendant's Motion to Alter or Amend is respectfully denied.

AND IT IS SO ORDERED.



ROBIN B. STILWELL

April 1, 2015
Greenville, South Carolina