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Spencer Wilson and CDI of Seneca, LLC

JUN 4 PM 5 02

Brian Mize

JUL 02 2015

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

SC Court of Appeals

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)
Brian Mize	Spencer Wilson	\$37,718.50
Brian Mize	CDI of Seneca, LLC	\$37,718.50
		\$

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.

B. Mize
 Circuit Court Judge

TRUE COPY
 Judge Code
 JUN - 5 2015
 CLERK OF COURT - OCONEE COUNTY

6/4/15
 Date

STATE OF SOUTH CAROLINA)
)
 COUNTY OF OCONEE)
)
 Brian Mize,)
)
 Plaintiff,)
 vs.)
)
 Spencer Wilson and CDI of Seneca, LLC,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS

ORDER OF JUDGMENT

Case No. 2011-CP-37-1202

2015 JUN 4 PM 5 02
 BEVERLY H. WILSON
 CLERK OF COURT

The Plaintiff, Brian Mize ("Mize"), brought this action against the Defendants, Spencer Wilson ("Wilson") and CDI of Seneca, LLC ("CDI of Seneca"), a South Carolina Limited Liability Company, pursuant to S.C. Code Ann. §§ 33-44-801 (1976) seeking a dissolution of the Defendant CDI and damages against the Defendants, Mize and CDI of Seneca, in the form of payment of his share of the value of his forty-nine percent (49%) interest in CDI of Seneca, LLC.

The case was tried non-jury with the proceeding taking a full day. At trial, the Plaintiff, Mize, was represented by Ben G. Leaphart, Esquire, and the Defendants, Wilson and CDI of Seneca, were represented by E. Delane Rosemond, Esquire. During the trial, documentary evidence was introduced and extensive testimony was presented. After careful consideration of all evidence presented, and the entire record, the Court makes the following Findings of Fact and Conclusions of Law, from which it concludes that CDI of Seneca, LLC, should be dissolved and that the Plaintiff, Mize, is entitled to judgment against the Defendants, Wilson and CDI of Seneca, in the amount of \$37,718.50 for payment of his forty-nine percent (49%) interest in CDI of Seneca, LLC.

FINDINGS OF FACTS

In the spring of 2010 the Plaintiff Mize and the Defendant Wilson agreed to go into the renovation construction business together. Defendant Wilson was to provide capital and in-house management. The Plaintiff contributed working job contracts and the use of his contractor licenses necessary for the operation of the business. Defendant Wilson was to own fifty-one percent (51%) and the Plaintiff would own forty-nine percent (49%) of the business. Initially the two operated under Wilson's then existing company, Contracting Decors, Inc.

In September, 2010, upon advice of the company's accountant, the Plaintiff and Wilson formed CDI of Seneca, LLC to operate as a general contracting firm, with the Plaintiff owning forty-nine percent (49%) and Spencer Wilson owning fifty-one percent (51%) of the business.

The financial statements and tax return for CDI of Seneca, LLC, show that the company operated and was taxed as a partnership. For this reason it maintained capital accounts for each member and issued a form K-1 to each of them.

The income tax return for CDI of Seneca, LLC, for year ending December 31, 2010, showed a net operating profit of \$81,598.00. (Plaintiff's Exhibit 3). The schedule K-1 issued to the Plaintiff showed that his share of the income for 2010 was \$39,983.00 and his capital account balance was \$39,276.00. (Plaintiff's Exhibit 4).

During 2010 CDI of Seneca, LLC acquired two houses with the intent to up-fit them for resale. One house situated on two lots in Seneca, "Evelyn Drive," was purchased for \$68,000.00. The other house in Anderson County, "Sienna Drive," was purchased for \$75,000.00. Records of CDI of Seneca indicate that the company spent \$79,214.16 in up-fitting costs on Evelyn Drive and \$48,243.48 in up-fitting costs on Sienna Drive. (Plaintiff's Exhibit 11).

In early May, 2011, because of disagreements in management, cash and profit distributions and the use of cash receipts, the Plaintiff and Defendant Wilson agreed that the Plaintiff would disassociate himself from the CDI of Seneca. Spencer Wilson continued to operate CDI of Seneca. Upon his disassociation, the Plaintiff requested payment for his interest, but the Defendants refused to pay him. On May 27, 2011 the Sienna Drive property sold for \$220,000.00. (Defendant's Exhibit 3). On August 30, 2011 the Evelyn Drive property sold for \$180,900.00. (Defendant's Exhibit 2).

At trial the Plaintiff introduced an email he received from Jason White, the CPA for CDI of Seneca, dated September 2, 2011. Mr. White was responding to the Plaintiff's request for his capital account balance in CDI of Seneca, LLC as of April 30, 2011. Mr. White's email indicated that, as of April 30, 2011, the Plaintiff's capital account balance would be equal to \$65,272.35. (Plaintiff's Exhibit 9).

The Plaintiff also introduced job cost statements and HUD Settlement Statements for the Evelyn Drive property and the Sienna Drive property from which the following net profit payable to CDI of Seneca, LLC, was determined:

Evelyn Drive:	
Purchase Price of Project Home	-\$ 68,000.00*
Costs Incurred in Project (Labor and Materials for Improvements)	- <u>79,214.46*</u>
Total Cost of Project	-\$147,214.46
Sales Price	\$180,900.00**
Closing costs	- <u>16,699.83**</u>
Net Profits	<u>\$ 16,985.71</u>

Sienna Drive:	
Purchase Price of Project Home	-\$75,000.00
Costs Incurred in Project (Labor and Materials for Improvements)	- <u>48,243.48</u>
Total Cost of Project	-\$123,243.48
Sales Price	\$220,000.00***
Closing costs	- <u>1,356.81***</u>
Net Profits	<u>\$ 95,399.71</u>

Net Profits from Two Properties

\$112,385.42

*(Plaintiff's Exhibit 11); ** (Defendant's Exhibit 2); ***(Defendant's Exhibit 3).

The Defendant introduced evidence indicating that the Plaintiff had been paid a total of \$47,895.20 in salary during his time with the company and asserted that this amount should be offset against any amount due the Plaintiff. (Defendant's Exhibit 4-"Paycheck" notations). Finally, the Defendant Wilson also presented testimony that he had loaned the company \$69,455.00, which had not been repaid. Documentary evidence presented during the trial supported this testimony of the parties (Plaintiff's Exhibit 2).

Finally, as to the Operating Agreement, the Court finds that due to the parties failure to comply and conform to the requirements therein, said Operating Agreement is not controlling with regard to the dissolution of the company. Accordingly, the dissolution is controlled by S.C. Code Ann. §§ 33-44-801, *et seq.*

CONCLUSIONS OF LAW

Pursuant to S.C. Code Ann. § 33-44-801(4), it is provided 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:

(a) the economic purpose of the company is likely to be unreasonably frustrated;

(b) 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;



(c) it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement;

(d) the company failed to purchase the petitioner's distributional interest after giving effect to provisions of the operating agreement modifying or superseding the provisions of Section 33-44-701; or

(e) the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner; ...

Section 33-44-806 of the Code provides the procedure for distribution of assets in winding up a limited liability company's business.

(a) In winding up a limited liability company's business, the assets of the company must be applied to discharge its obligations to creditors, including members who are creditors. Any surplus must be applied to pay in money the net amount distributable to members in accordance with their right to distributions under subsection (b).

(b) After application of subsection (a), and if the company is required to maintain capital accounts for its members as contemplated by the Internal Revenue Code, as defined in Chapter 6 of Title 12 and applicable treasury regulations, all remaining cash and other assets must be distributed to the members in accordance with their positive capital account balances, determined after taking into account all capital account adjustments for the taxable year of the company during which the distribution occurs, including adjustments for distributions made pursuant to this section.

The evidence presented at trial clearly shows that the Plaintiff is entitled to a judicial dissolution of CDI of Seneca, LLC, under subsections (c), (d) or (e) of Section 33-44-801(4) of the Code. Moreover, there was sufficient evidence presented to establish the fact that at the time the Plaintiff disassociated himself from the company it was in sound financial condition, with sufficient liquidity to pay its debts and distribute to the Plaintiff his capital account balance.

At the time of his leaving the Plaintiff had a capital account balance of \$65,272.35, resulting from profits of CDI of Seneca, LLC, through April 30, 2011. Within four months after the Plaintiff's leaving, the company sold both the Evelyn Drive property and the Sienna Drive

property for a combined net profit of \$112,385.42. Inasmuch as the profits in these transactions had been earned, although not yet realized through the sale of the subject properties, the Court finds that the Plaintiff is entitled to his *pro rata* share of the profits, forty-nine percent (49%).

The Court finds, therefore, that the net value of the Plaintiff's interest in CDI of Seneca totaled \$120,341.21 at the time of his disassociation.¹ The Court further finds, however, that this amount should be offset by the \$47,895.20 the Plaintiff received in salary during his time with CDI of Seneca, LLC. (Defendant's Exhibit 4). Furthermore, the Court finds the Plaintiff is responsible for forty-nine percent (49%) of the \$69,455.00 loan repayment due to member Defendant Wilson, amounting to \$34,727.50.

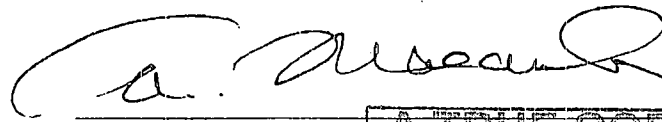
JUDGMENT

Accordingly, the Court concludes that the amount which should have been distributed to the Plaintiff by the Defendants, pursuant to Section 33-44-806 of the Code, is \$37,718.50, for which the Plaintiff shall have judgment against the Defendants.²

IT IS, THEREFORE,

ORDERED, ADJUDGED AND DECREED, that the Plaintiff, Brian Mize, is granted judgment against the Defendants, Spencer Wilson and CDI of Seneca, LLC, in the total amount of Thirty-five Thousand Six Hundred Seventeen and seven/one hundredths Dollars (\$37,718.50).

June 4, 2015
Walhalla, South Carolina


ALEXANDER S. MACAULAY, Judge
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CLERK OF COURT - OCONEE COUNTY
2015 JUN 4 PM 5 02
DEPARTMENT OF PROBATION
CLERK OF COURT

¹ Plaintiff's capital account balance of \$65,272.35 plus his forty-nine (49%) share of the net profits from the sale of the two properties totaling \$55,068.86, equals \$120,341.21.

² \$120,341.21 - \$47,895.20 - \$34,727.50 = \$37,718.50