

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

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Certiorari to the Court of Appeals
APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Honorable J. Cordell Maddox, Jr., Tenth Judicial Circuit

Case Number: 2014-000139

Shou Y. Martin, ... Petitioner,

vs

Wilmer (John) Rife and Barbara Ann Doomey, ... Responden.

APPENDIX

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RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	)	IN THE TENTH JUDICIAL CIRCUIT
COUNTY OF ANDERSON	)	THE COURT OF GENERAL SESSIONS
	)	2010-CP-04-04554
SHOU MARTIN,	)	
	)	
PLAINTIFF,	)	
	)	
VERSUS	)	
	)	
WILMER JOHN RIFE,	)	
	)	DATE: SEPTEMBER 6-7, 2012
DEFENDANT.	)	ANDERSON, SOUTH CAROLINA

TRIAL TRANSCRIPT

B E F O R E:

THE HONORABLE J. CORDELL MADDOX, JR.

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1 THE COURT: Any motions we need to take up before we
2 start?

3 MR. WISE: None from the Plaintiff.

4 MR. MULLINAX: None from the Defendant.

5 THE COURT: Can one of y'all just give me a brief
6 overview so I know what this is about?

7 MR. WISE: Breach of contract.

8 THE COURT: Over Simons?

9 MR. WISE: My client sold the business. They made
10 some payments, said they were misrepresented about how good
11 the business was and think they've paid enough.

12 THE COURT: And what's your position?

13 MR. MULLINAX: We say fraudulent enrichment. She gave
14 a profit and loss statement that showed things that weren't
15 true, said she owned things that she didn't own and we deny
16 that we owe her any more than what we've paid her and,
17 actually, we'd like to get some money back.

18 THE COURT: Okay. So, you've got a claim and a
19 counterclaim.

20 MR. WISE: A counterclaim?

21 MR. MULLINAX: The elements of one, Your Honor.

22 THE COURT: All right. Sorry for the delay and I'll
23 explain it's my fault. Are y'all ready?

24 MR. MULLINAX: Yes, sir.

25 MR. WISE: We're ready.

SHOU MARTIN VERSUS WILMER RIFE AND BARBARA ANN DOOMEY

1 THE COURT: You can bring them in. Jennifer, are you
2 going to swear them?

3 THE CLERK: Yes, sir.

4 (Jury in at 10:52 a.m.)

5 THE COURT: Thank you for your patience. We had some
6 matters we had to take up outside your presence. What
7 we're going to do now is, Jennifer's going to swear you in.
8 I'm going to give you a brief synopsis of how this trial
9 will proceed, give you a couple of ground rules, and then
10 we'll begin the case. As I told you yesterday, and I can
11 promise you I don't say this every week, you have two good
12 lawyers here who've practiced for a long time. They know
13 their cases. They know each other. They're going to
14 represent their clients to the best of their ability. But,
15 in the past couple of weeks, I've had to actually apologize
16 to two juries after the case was over because of the
17 conduct of the lawyers. I can tell you, I won't have to do
18 that when this is over. So, we'll move through this case
19 as quickly as possible and I hope that you at least get
20 some education from it, okay? All right. You can swear
21 them in.

22 (WHEREUPON, the Clerk of Court administers the oath to
23 the jury)

24 THE COURT: Thank you, Jennifer. All right. Ladies
25 and gentlemen, I want to give you a short overview of what

SHOU MARTIN VERSUS WILMER RIFE AND BARBARA ANN DOOMEY

1 we're going to do today. The first thing I want to tell
2 you is that I've been a judge for eleven years and one of
3 the biggest concerns I have, as I think I mentioned the
4 other day, is the influence of television on jurors. I
5 don't watch legal shows. My mother loves legal shows and
6 is always calling me and telling me how exciting my job
7 must be because everything on TV is so exciting. The
8 concern I have is that I've watched jurors over the last
9 five or six years get frustrated at the pace of a trial.
10 Because I can promise you, we're not going to finish this
11 case in one hour with twenty-two minutes worth of
12 commercials. It's not going to happen that way. It may
13 not be very exciting. It is going to go slow at times. It
14 will be deliberate. There are going to be times when
15 you'll have to leave the courtroom and sit back there for
16 ten or fifteen minutes, not knowing why. And I tell you
17 that the concern is that television is television. What
18 we're here today to do is to determine the truth. We're
19 going to try to determine what the facts are and determine
20 what the truth is and then at the end of this case, you're
21 going to have to deliberate and reach a verdict. So,
22 please don't get frustrated at the pace. There is a
23 reason. This is an honored place. This system works and
24 it is sometimes very slow. Please understand that.

25 I also want to tell you that you and I have very

SHOU MARTIN VERSUS WILMER RIFE AND BARBARA ANN DOOMEY

1 different roles during the course of this trial. You're
2 the judge of the facts. You'll need to listen to the
3 testimony from this witness stand. Any evidence that's
4 admitted -- have y'all pre-marked evidence? Again, they're
5 good lawyers. They've pre-marked and agreed on certain
6 pieces of evidence. So, anything that's admitted into
7 evidence, you'll have the opportunity to see, but you need
8 to listen to the witnesses, review the documents that are
9 introduced into evidence, and then you'll determine what
10 the facts are in this case.

11 One of the jobs you have to do is determine the
12 credibility of witnesses. Witnesses will be here under
13 oath testifying and you'll have to watch them.
14 Credibility, under the law in South Carolina, simply means
15 believability. You have to determine whether you believe
16 the witnesses. You can believe everything that a witness
17 tells you or you can believe nothing that they tell you.
18 You can take a portion of what they say and believe it and
19 disregard the remainder of that testimony. I can't tell
20 you how to determine the credibility of witnesses, but
21 that's one of your big jobs that you're going to have to
22 do.

23 So, you're the judge of the facts. I'm the Judge of
24 the law and what I'm going to have to do during the course
25 of this trial with my law clerk, we'll be emailing back and

SHOU MARTIN VERSUS WILMER RIFE AND BARBARA ANN DOOMEY

1 forth, we'll put together the law that applies to the facts
2 in this case and at the very end after all the testimony
3 and after all the arguments of the lawyers, I'll have to
4 bring you in here and literally read to you the law in this
5 case and it may be twenty or thirty pages worth. I'm
6 required to read it to you. I hate to do that. Juries
7 hate to be read to, but I will tell you what the law is in
8 this case and you'll take the law as I give it to you,
9 apply it to the facts as you determine them to be, and
10 that's how you reach your verdict.

11 Now, our roles never cross. If, for some reason
12 during the course of the trial, you think that I believe a
13 witness or don't believe a witness, if I turn red, if I
14 yell, if I get angry, disregard that. My opinion about
15 whether or not a witness is telling the truth shouldn't be
16 discussed by you because I'm not the judge of the facts,
17 you are. And I am, as I said, the judge of the law, so,
18 I'll have to rule on objections. Anytime a lawyer stands
19 up and makes an objection, I'm going to have to send you
20 out of the room. I can promise you that in the course of a
21 one-day trial or a day-and-a-half trial, at least once or
22 twice there's going to be an objection. You'll leave the
23 room, we'll argue the objection, you'll file back in here,
24 sit for two or three minutes, there'll be another
25 objection, I'll have to send you out. The other thing I've

SHOU MARTIN VERSUS WILMER RIFE AND BARBARA ANN DOOMEY

1 seen during the course of eleven years is, I've watched
2 jurors get mad at lawyers because they object and because
3 they have to keep leaving the room. That's their job. I
4 mean, the reason they're objecting is because they believe
5 there's an issue at law that would prevent a piece of
6 evidence or some testimony from coming in. If they don't
7 object, they're not doing their job. So, please don't get
8 mad at the lawyers if you sit back there while we argue the
9 case outside your presence.

10 The last job that I have, other than being the judge
11 of the law is, I have to manage this trial. So, I have to
12 manage the time. If you sit back there longer than you
13 think you should be sitting and you get frustrated and
14 you're back there because the lawyers made an objection,
15 don't get mad at the lawyer. Get mad at me, because if
16 you're sitting back there too long and I'm listening to
17 arguments and it takes longer than you want, it's my fault,
18 not theirs. So, if you have any anger during the course of
19 this trial, direct it at me and at the end of this trial,
20 as I think I mentioned yesterday, after you've reached your
21 verdict, I'll come back there, sit down with you, off the
22 record, and you can criticize me, tell me what you think,
23 ask me any questions and I'll answer them. But please
24 understand that objections are the lawyer's jobs and
25 managing the trial is my job. So, direct that anger at me.

SHOU MARTIN VERSUS WILMER RIFE AND BARBARA ANN DOOMEY

1 In just a minute, the lawyers are going to give you
2 their opening statements. Opening statements are not
3 evidence. They shouldn't be considered evidence by you.
4 The only evidence in this courtroom will come from this
5 witness stand but the lawyers have an opportunity to tell
6 you a little bit about their case. After the opening
7 statements, we'll move right into taking testimony. After
8 the testimony from the witness stand and after both sides
9 have called all the witnesses that they're going to call,
10 the lawyers will have an opportunity to give you their
11 closing statement. A closing statement, again, is not
12 evidence and you should not consider it evidence. It's an
13 opportunity for the lawyers to try to convince you of their
14 position. After the closing statement, that is the point
15 at which I will read to you the law in this case and then,
16 at that point, we'll send you back to the jury room with
17 all the evidence and with a verdict form and with my
18 direction that you can begin talking about this case.

19 Now, I told you yesterday that every time you leave
20 this courtroom I'm going to tell you, don't talk about this
21 case. Jurors sometimes start laughing because they've
22 heard it so many times. Please don't talk about this case
23 at all until you've heard all the evidence and until you've
24 heard the law in the case and you're back there and you
25 begin your deliberations. You can talk about anything else

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1 you want, but don't talk about this case, for obvious
2 reasons.

3 I don't think there's going to be any publicity. If
4 there is, please don't read anything in the paper, listen
5 to anything on the radio or watch anything on television
6 about this case. I also know it's hard to go home and not
7 explain what you're doing to your family, but if your
8 family asks you what the case is about, tell them you can
9 tell them tomorrow, that you can't talk to them about it.
10 The reason for that is, they can say something innocuous
11 that might influence you, and like I said yesterday, also,
12 we spent a long time yesterday picking twelve of you that
13 we all in this courtroom believe will reach a fair verdict,
14 and we don't want any outside influence. Okay?

15 Now, ladies and gentlemen, the last thing I'm going to
16 tell you is that this is a civil case and in a civil case,
17 the burden is on the plaintiff to prove their case. Now,
18 in this case, you have the Plaintiff suing the Defendant
19 with a complaint. You have the Defendant counterclaiming
20 against the Plaintiff for another complaint. So, each side
21 has made a claim against the other. Each side has to prove
22 their case by a preponderance of the evidence. And just --
23 I'll explain the preponderance of the evidence to you in
24 much greater detail at the end of the case, but the brief
25 definition is; a preponderance of the evidence is evidence

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1 which, as a whole, shows you that the facts sought to be
2 proved are more likely true than not true. Now, you've
3 heard about criminal cases where you have to prove a case
4 beyond a reasonable doubt. That is not this type of case.
5 Each side has to prove their case by a preponderance of the
6 evidence.

7 If you imagine the scales of justice, they're even
8 right now. Each side has to prove their case. If you
9 weigh the evidence of each person's claim, each side's
10 claim, and the scales of justice tilt ever so slightly in
11 favor of that person making the claim, then they've met
12 their burden of proof. That's a preponderance of the
13 evidence. If, after you've heard all the evidence the
14 scales of justice are still even or if they tilt ever so
15 slightly in favor of the Defendant, they've failed to make
16 that burden of proof. It is a much low threshold than in a
17 criminal case, which is beyond a reasonable doubt.

18 Now, Mr. Foreman, you did as I said and I came back in
19 and put on the record that I'd talked to you. You did
20 exactly right this morning by sending me that note. If you
21 have any problems, whatsoever, in the jury room, if it's
22 too hot, if the crackers that Buck brings you aren't
23 satisfactory, you send a note out, sign it, and they'll
24 bring it to me and I'll deal with it. You have some added
25 requirements at the end of this case, but basically, from

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1 this point until you reach your verdict, the only way I'll
2 communicate with you as jurors is through you. So, if any
3 issue comes up, sign the note, knock on the door, Buck will
4 bring it to me. Okay?

5 As I said, we'll take a break every hour to an hour-
6 and-a-half. Because of some matters this morning, we're
7 starting a little late. So, we're going to push it a
8 little bit this morning. If you need a break at any time
9 for any reason, just raise your hand, get my attention, get
10 Buck's attention, and we'll take a break without any
11 questions, okay? Don't be embarrassed to do that. It
12 happens all the time. So, again, I thank you for your
13 patience and I thank you for, especially, your patience
14 sitting back there for an hour-and-a-half this morning. It
15 was unavoidable and I apologize for it. All right. Are
16 y'all ready?

17 MR. WISE: Yes, sir.

18 THE COURT: All right. Yes, sir.

19 OPENING STATEMENT - MR. WISE

20 Mr. Foreman, ladies and gentlemen of the jury, I think
21 you'll find this case is going to move pretty fast.
22 There's a good possibility, a high probability, we'll get
23 through all the testimony today, maybe even get to your
24 decision later this afternoon. At the worst, at the worst,
25 it'll be first thing in the morning. That's the worst case

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1 scenario. So, you can take some comfort in that.

2 What this suit is about, it's a breach of contract
3 suit in which my client, Shou Martin, had a son who ran a
4 business here in Anderson. It was called "Simon's" out on
5 the Clemson Highway. He tragically was killed in June in a
6 motorcycle wreck. She came up for a couple of months,
7 tried to run the business that she'd helped him set up,
8 realized this just wasn't going to work, then thought about
9 selling it. Mr. John Rife, over here, had been a customer
10 in the bar and he got to know her son and Ms. Martin and in
11 the course of meeting with him after her son's death, a
12 discussion ensued about buying the business. She was
13 trying to sell it and he thought he would like to buy it.

14 So, they ultimately reached an agreement to sell the
15 business for \$70,000.00 and actually, what they were
16 selling was not so much the business as the contents in the
17 building and so forth and what they agreed on was
18 whatever's in there, that Ms. Martin had put in there for
19 her son that she had purchased, she would sell them all of
20 that.

21 There were questions, I'm sure, that arose in the
22 discussions; How do you know you own this and that, how do
23 you know you own what's in there. And Ms. Martin took care
24 of that by putting a provision in the contract that said,
25 "Look, if any third party ever comes in and says they own

SHOU MARTIN VERSUS WILMER RIFE AND BARBARA ANN DOOMEY

1 something, I'll hold you harmless on that and reimburse
2 you." So, he was, Mr. Rife, was covered. He and his wife
3 were covered for virtually any contingencies.

4 Well, they came in and took over the business and
5 you'll find out in the testimony that there were some
6 problems with the ABC license in the sense that there were
7 some violations that needed to be cleared up. Ms. Martin
8 let Mr. Rife and his wife operate on her license for a
9 while until they got one. They finally got theirs the
10 first of November, but they operated under her license and,
11 yes, there were some problems because there had been some
12 violations on it, not that it was revoked, but there had
13 been some violations on it and there was some money owed on
14 the violations and Ms. Martin took care of all of those so
15 they could continue to operate on her license until they
16 could get theirs, which they did.

17 After they took over the business, they started
18 complaining about; Well, the equipment is not as good as
19 we thought it was. The help isn't as good as we thought it
20 was. The business is not as good as we thought it was.
21 Well, you know, those were things that they had plenty of
22 opportunity to negotiate or to look at ahead of time. So,
23 they continued to complain and did some stuff and
24 ultimately stopped paying Ms. Martin.

25 And to let you know why I think that a lot of what

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1 they talk about is just trying to get out of the contract,
2 is because of the fact that when they complain about the
3 help not being what they thought it was, the business not
4 being what they thought it was, the equipment not being as
5 good as they thought it was, all of that was known to them
6 or probably should have been known to them before they even
7 went into business, clearly known to them after they'd been
8 operating for a few months, and what you're going to find
9 is, notwithstanding the fact that they made all of these
10 claims, you'll find that in August of 2008, roughly ten
11 months after they'd been into the business, they made a
12 payment to Ms. Martin on the contract. Unfortunately, that
13 was the last payment they made, but they continued to make
14 payments on the contract even after they say they had all
15 these problems that they now say are reasons to get out of
16 the contract or be excused from paying or whatever. They
17 made payments up until August and had virtually no expenses
18 after that.

19 So, I think what you'll find is that what's happened
20 here is that they have just created an excuse not to have
21 to pay. You'll find that when they entered into the
22 contract for \$70,000.00, you'll find that they paid ten
23 thousand on that day, and actually another check for three
24 hundred and fifty and that over the, up until August 31st
25 of 2008, they paid roughly \$21,000.00 and some change and

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1 what we contend is that the verdict in this case should be
2 for Ms. Martin in the amount due on the contract, which is
3 \$48,274.21, and that would be the proper verdict in this
4 case. Thank you.

5 MR. MULLINAX: May it please the Court?

6 THE COURT: Yes, sir.

7 OPENING STATEMENT - MR. MULLINAX

8 Good morning. As Paul Harvey used to say, now I'm
9 going to tell you the rest of the story. In October of
10 2007, Ms. Shou Martin entered into a contract with my
11 client, John Rife and his wife, Barbara Doomey. This case
12 is about somebody selling somebody "a bill of goods". We
13 all have heard that expression as we grew up, but a bill of
14 goods means telling somebody something that's not true and
15 causing them to do something that they otherwise would not
16 have done if that person, in this case Ms. Martin, had not
17 given them false information that lead them into signing a
18 contract which was based on falsehoods, based on things
19 that weren't true and that's what the evidence in this case
20 that we will present to you, will show you that what she
21 said was not true. Therefore, she breached the contract and
22 my client shouldn't actually owe her anything, and as a
23 matter of fact, she should be required to pay them back for
24 having fraudulently induced them into this contract.

25 What she did was, John and Barbara had never run a

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1 private club in South Carolina. A private club in South
2 Carolina has to be a non-profit corporation. It has to be
3 organized under state law as a non-profit corporation, get
4 a license to sell beverages from the ABC Commission, or
5 what we used to call the ABC Commission, as a corporation
6 and the corporation then owns the business and if that
7 corporation then sells the business, any profit that is
8 made has to be turned over to another non-profit
9 corporation, not to Ms. Martin as an individual. The law
10 does not allow her to do that.

11 John and Barbara didn't know that. Ms. Martin gave
12 them a profit and loss statement for the year 2006, the
13 entire year. She gave them a profit and loss statement
14 from January of 2007 until August of 2007, that showed
15 them, and she told them, that their business netted
16 \$50,000.00 a year in 2006 and up until August of the year
17 of the sale, it netted almost \$40,000.00. So, it looked
18 like, based on this statement that she gave to them, that
19 caused them to sign this contract, that it was a going
20 concern and it was making money and that that would be able
21 to make a profit if they bought this business from her.

22 She also said, look, let's -- they started talking in
23 September. They signed this contract in October. You'll
24 have a copy of the contract in evidence to look at. She
25 also said, "Look, y'all have got to do something. I've

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1 given you a profit and loss statement." After they asked
2 for it, she didn't give it to them at first, but then she
3 did. She said, "You've got to do something, because I've
4 got some more folks that are interested in this business.
5 So, if y'all are going to do something, you need to go
6 ahead and act."

7 So John, who had had a prior relationship with Ms.
8 Martin by virtue of the business that he ran in Greenwood,
9 South Carolina, and who had had a prior relationship with
10 Ms. Martin's son, because he had been a patron of the
11 private non-profit club here in Anderson which was called,
12 at that time, Simon's of Anderson, and had known them for
13 two or three years beforehand, had done business with them
14 two to three years beforehand, had given credit to Ms.
15 Martin and she had always paid him, had performed work for
16 Ms. Martin and her son without money being paid up front
17 and after he did the work, she had paid him, John had
18 developed a relationship that he felt gave him the ability
19 to trust whatever she said and to trust whatever she gave
20 him.

21 And, as a result of looking at that profit and loss
22 statement and the trust that had been built up over the
23 years, he talked to his wife and said, "Honey, this is
24 something we can do. This is something we can do to make a
25 living in addition to what we have now for our retirement.

1 Because John was still working at Community Supply in
2 Greenwood, Barbara was still working at the Sears and as a
3 result of what Ms. Martin had additionally told them, look,
4 you folks, this business runs itself. I've got good help.
5 I have to come up here a couple of times a week to check on
6 it. That's about it. That's all you'll have to do. You
7 don't really have to worry about it. It'll run itself.
8 You can keep your jobs, is what Ms. Martin told John and
9 Barbara. Well, it didn't turn out that way, but they
10 didn't know that at the time based on what John believed,
11 based on the profit and loss statement, and what Ms. Martin
12 had told them.

13 "So, me and Barbara said, okay. We'll do it." And
14 they did sign the contract. Once they signed the contract
15 and applied for a temporary license, they found out that
16 not only did they have to incorporate, but they really
17 didn't know or have any idea what a non-profit club was.
18 They found out during the next three months that they had
19 to incorporate under the laws of South Carolina, which the
20 Judge will charge you about. They had to be a non-profit
21 corporation, they had to elect a board of directors, they
22 had to do all of the things the law required of them to do
23 in order to operate that club in order to get a license, to
24 be a non-profit, and to sell alcohol to members who had to
25 become members of that organization in order to be able to

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1 come in and enjoy the facilities.

2 Well, in addition to the business that promulgated to
3 be a fifty thousand dollar-a-year profit, it was supposed
4 to be new equipment. It was supposed to be new coolers.
5 It was supposed to be tables. There was supposed to be a
6 security system that they owned and was in place. There
7 was supposed to be a lease that was in place that they
8 could assume that cost one price.

9 But once they got into and began operating the
10 business, they found out the equipment was old, the
11 equipment was dirty, the equipment didn't work. They
12 didn't own the security system, they didn't own the pool
13 tables, they didn't own the ability to operate the club as
14 they had been told they could. They had numerous repairs
15 they had to make. The landlord would not allow them to
16 assume the lease. He went up \$250.00 a month on the lease
17 and Ms. Martin had told them that they could assume the
18 lease, which cost them an additional \$3000.00 over the term
19 that she said they could operate under the old lease. They
20 had to install a complete new security system at an
21 additional cost, which she had told them they would not
22 have to do. The coolers and refrigeration equipment kept
23 breaking down. They had to keep paying to fix that. All-
24 in-all, during the first three months of operation, and
25 they'll testify to this and you'll see their profit and

1 loss statement, they lost \$42,000.00, which they had to
2 take out in loans and from their 401-K plans in order to
3 make it work or try to make it work and they did pay in
4 cash to Ms. Martin over, almost \$22,000.00. And when she
5 brought this suit in 2010, December of 2010, she said they
6 owed her \$60,000.00. We got involved in the case and
7 showed her we had written checks and today she comes in
8 here and tells you, well, they did pay me \$22,000.00,
9 roughly. But that's the first time she's admitted to that
10 and I don't understand that and I don't believe if she had
11 come in here with clean hands she'd be saying that at this
12 time.

13 So, based upon what had occurred, based upon the
14 profit and loss statement, which she gave them, based upon
15 what she told them the building was, based upon how she
16 told them the building was to operate, we don't believe
17 that there is anymore -- John and Barbara don't believe
18 that there is any more that they are entitled to be
19 required to pay her because of the falsities and falsehoods
20 that she used to get them to enter into this contract.

21 In addition, and a very important point is, she's
22 brought this suit as herself, an individual. The law says,
23 which you will see, that this club and everything that it
24 is has to be a non-profit corporation, not an individual.
25 The profits cannot go back to an individual. It has to be

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1 to another non-profit. If you sell it or you dissolve it,
2 it can't go to a person. The evidence will show that she
3 owned nothing. She didn't own the equipment. She didn't
4 own the inventory. Her corporation owned it. She can't
5 now come in here and ask you to give her money when the
6 corporation, by law, is the only one, and by what you will
7 see are her admissions, is the only entity that owned
8 anything, because she didn't have anything to sell. And we
9 keep, Barbara and John kept trying to talk with her all
10 year in 2008 and even after, to talk with her, to explain
11 it to her, but she never would come up here and sit down
12 with them and look at the paperwork and look at what they
13 had to do and answer their questions about why she had not
14 told them the truth about the lease, about the pool tables,
15 about the equipment, about the profits and about the fact
16 that you had to be a non-profit corporation to organize and
17 operate this business. She never would. They kept
18 calling. And finally in late 2008 she comes up, comes in
19 the business and Barbara says, let's go outside and talk
20 because there's people in here and I'll show you and she
21 runs out the door and refuses to talk to her. That's what
22 the evidence in this case will show.

23 The payment made in August of 2008, they believe was
24 adequate for everything and anything that they have
25 obtained. And at that time, they didn't even know that she

1 didn't own anything. Once we got involved in the lawsuit,
2 we found out she didn't own anything, the corporation did.

3 So, in a nutshell, that's what we believe to be the
4 facts in this case. The Judge has given you a small
5 charge, which he will expand on at the end of this case,
6 but basically, the facts are that you are the judges of the
7 facts. You are judges of credibility, believability of
8 each and every witness that you see on that witness stand.
9 Not the Judge, not myself and Mr. Wise, just you. You
10 control the destiny of these two people who come into this
11 courtroom today asking that you review their evidence and
12 bring back a verdict that speaks the truth. The jury
13 system is the last, best system that we have in our country
14 to protect individuals in suits such as this, in civil
15 suits, to protect you against the government, to protect
16 you against big corporations, and that's why we still have
17 a jury system. And it's an imposition on each of you to
18 take you out of your daily lives, to come up here and take
19 you away from your families and your jobs and we all know
20 it, but we appreciate it, and it's one of the greatest
21 services that you can render for this country and everyone
22 in this courtroom, myself and Mr. Wise and the Judge
23 appreciates you doing this. Thank you for your attention.

24 And one last thing, if you can't hear something as
25 this trial goes on, please let the Judge know. The

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1 acoustics in this courtroom are horrible. Sometimes when
2 the air comes on you can't hear. I'm getting a little
3 older now and I can't hear as well as I once could either,
4 so don't be embarrassed. Please, if you can't hear, you
5 are the judges of the facts, so I want you to be able to
6 hear. Thank you.

7 THE COURT: All right. You can call your first
8 witness.

9 MR. WISE: I call Ms. Martin.

10 (After being duly sworn by the Clerk of Court,
11 **SHOU MARTIN**, testified as follows:)

12 CLERK OF COURT: And once you are seated, if you would
13 please state your full name for the record.

14 MS. MARTIN: My name is Shou Martin.

15 MR. WISE: Do you want her to spell her first name?

16 THE COURT: Yes. Spell your name, if you would,
17 please.

18 MS. MARTIN: S-H-O-U M-A-R-T-I-N.

19 DIRECT EXAMINATION

20 BY MR. WISE:

21 Q Ms. Martin, where do you presently live?

22 A Greenwood, South Carolina.

23 Q And how long you been living in Greenwood?

24 A Over thirty, about thirty-five years.

25 Q Okay. Where are you from, originally?

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- 1 A Taiwan.
- 2 Q And when did you come to the United States?
- 3 A Nineteen seventy-three.
- 4 Q And I believe you were married at the time?
- 5 A Yes, I was married at the time.
- 6 Q Did you meet your husband in Taiwan?
- 7 A Yes.
- 8 Q And he was in the ---
- 9 A In the service.
- 10 Q In the service?
- 11 A Yes.
- 12 Q And y'all ultimately settled in Greenwood?
- 13 A Yeah.
- 14 Q All right. What kind of business did you do after you
- 15 came to Greenwood?
- 16 A Restaurant.
- 17 Q Is that what you've primarily done over your life?
- 18 A Yes.
- 19 Q And you run several restaurants in the Greenwood area?
- 20 A Yes.
- 21 Q And you also have a son who was involved in a business
- 22 here in Anderson?
- 23 A Yes.
- 24 Q And how did that business come about starting?
- 25 A He was working at Anderson. He had a job at Anderson

1 and he wanted this place called Simon's in Anderson.

2 Q And at that time, were you operating a business in
3 Greenwood?

4 A Greenwood, yeah.

5 Q What was the name of the business in Greenwood?

6 A Simon of Greenwood.

7 Q Simon's of Greenwood?

8 A Yes.

9 Q And where was it located at that time?

10 A It was 807, 72-Bypass.

11 Q And what building was it located in?

12 A Located in the west side of town.

13 Q All right. So, was your son in the bar business in
14 Anderson, originally?

15 A No. In Anderson?

16 Q What business was he in in Anderson to start with?

17 A No, he don't start with Anderson. He start working
18 and then he started working in Anderson and he find
19 out this place for sale.

20 Q He found out it was available?

21 A Yeah.

22 Q All right.

23 A And then the landlord come see me, Ingolf.

24 Q All right. He's German, isn't he?

25 A Yeah. He come see me. He come see my business. He

1 told me I'm a very intelligent lady.

2 Q All right. Don't go into great detail about what he
3 said.

4 A Okay.

5 Q But you, ultimately, leased the building from this
6 gentleman?

7 A Mr. Ingolf.

8 Q Okay. And what corporate name did you use here in
9 Anderson?

10 A Simon of Anderson.

11 Q Now, was your son married at the time?

12 A Yes.

13 Q And was his wife involved in it?

14 A Yes.

15 Q Okay. Now, did you buy some stuff for him to use in
16 this business?

17 A A bunch of stuff.

18 Q And what was that?

19 A Equipment. Had to hire Mr. Martin come remodel the
20 place.

21 Q The what?

22 A Remodeled inside the place.

23 Q Well, don't go into remodeling yet. We're going into
24 the equipment.

25 A Okay.

1 Q You paid for some equipment?

2 A Equipment. Yeah.

3 Q All right. And the equipment consisted of what
4 particular items?

5 A A drink box, three big drink box, beer cooler, deep
6 fryer, refrigeration, freezer, table, chair, the
7 equipment inside.

8 Q Restaurant-type equipment?

9 A Restaurant-type of equipment. Yes.

10 Q All right. And what was the purpose in your buying
11 this as opposed to your son buying it?

12 A Because my son just working -- for him to work for
13 somebody he say, he told me he cannot work like that
14 because of his back. He wanted something where he can
15 live a comfortable living, draw a salary.

16 Q Did he have the funds to buy any of this equipment?

17 MR. MULLINAX: Your Honor, I would just object to
18 hearsay about what her son did or told her or anything like
19 that.

20 THE COURT: Yeah. Ask her if she knows. If she
21 knows or ---

22 Q Do you know of your son's financial condition?

23 A Yeah.

24 Q Okay. Did he have the funds to buy this equipment?

25 A No.

1 Q All right. Now, about when did the Simon's of
2 Anderson open?

3 A That was so long ago.

4 Q Roughly.

5 A They had it about five years. I had it about four,
6 three-and-a-half years. That's about nine years?

7 Q All right. So, it was open for a number of years.

8 A Yeah.

9 MR. MULLINAX: I couldn't hear her.

10 Q It was open for a number of years?

11 A Open -- yeah.

12 Q All right. Did you help keep the books for Simon's of
13 Anderson?

14 A No.

15 Q Who did?

16 A I have bookkeeping and I had Mr. Reardon.

17 Q Danny Reardon?

18 A Danny Reardon.

19 Q All right. And I believe he died a few months ago.

20 A He died. Yeah. He died.

21 Q So, they would primarily do the bookkeeping for you?

22 A Yeah.

23 Q All right. Now, in June of 2007, what happened to
24 your son?

25 A My son got killed.

1 Q In a motorcycle wreck?

2 A Yeah.

3 Q After that, did you continue to come up to Anderson to
4 try to run the business?

5 A Yeah.

6 Q And was it something that you wanted to continue
7 doing?

8 A No.

9 Q Okay. Did you ever make a decision to sell the
10 business or to sell the -- to get out of the business,
11 I guess, is more accurate.

12 A Yeah.

13 Q Is that correct?

14 A Yeah.

15 Q Okay. How did you come to talk to Mr. Rife about this
16 business?

17 A John?

18 Q Yes.

19 A John. I knew John. He come in pretty regulars.
20 Every time I would go see my son, go to Simon of
21 Anderson, he was there. He come in just about every
22 day and I become to know him. He seemed like a real
23 nice guy, super nice guy.

24 Q How long had he been coming into the business?

25 A A long time, pretty regular. A long time. Every day.

1 Q Had he done any work for the business?

2 A My son told me he do some work. He build a fence. He
3 do some work and try to help out.

4 Q Was he paid for that?

5 A I'm pretty sure he does get paid.

6 Q Okay. You didn't pay him?

7 A I don't pay him. He did.

8 Q Okay. All right. So, how did the discussion come out
9 about selling the business?

10 A Me and John talking. I was down there one day. Me and
11 John was talking. To John, I said, "I think I sell
12 this business, sell all the stuff in here, because I
13 couldn't ---

14 Q All the what?

15 A All the equipment, everything in here. And I put a
16 lot of money in this place. I said, I told him I put
17 over a \$150,000.00 in this place, and I don't get
18 money out of it.

19 Q So, you'd put some money in ---

20 A Yeah.

21 Q --- making improvements, in addition to the equipment.

22 A Yeah. And I don't think I can get money out of it. I
23 think about selling it. And I say this guy, he's ex-
24 cop, interested. His name's Cory Wright. He's
25 interested, but he still don't come up with the money

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1 yet. And John told me, said, "I'm interested. Let me
2 go home and talk to my wife." And he brought his wife
3 come up.

4 Q So, his wife came back later?

5 A Yeah. We met him. We met her. We met at the Chili's
6 Restaurant. We talked all the everything. She ask me
7 any question, I give her answer. I took her to the
8 Simon, show her everything in there, show her what's
9 everything in here.

10 Q You showed them around?

11 A Yeah. And I showed office. Showed her the sales
12 slip, show her the safe, what it look like. Show her
13 bank's, everything in there.

14 Q All right. Now, did you discuss with them the lease
15 on the building?

16 A Yes, I do.

17 Q And how much more time did the lease have to run?

18 A I think it's one year. It's been so long ago. I
19 think one year, but John told me he'd like, both of
20 them told me they'd like a lease of five years.

21 Q Would like what?

22 A A lease, lease five years.

23 Q Lease it for five years?

24 A Yeah.

25 Q But you didn't have five years left on your lease?

DIRECT EXAMINATION OF SHOU MARTIN BY MR. WISE

1 A No, no, no, no.

2 Q You had about how long?

3 A I say maybe year.

4 Q Okay.

5 A And we talked. I said, well, we can go to Ingolf, se
6 what he say. So we talked to Ingolf. Ingolf say, I
7 give her five years.

8 MR. MULLINAX: Objection.

9 Q No, don't go into what he said.

10 THE COURT: Yeah. All right. Thank you.

11 Q You and Mr. Rife and his wife met with the landlord?
12 A Yeah.

13 Q And did y'all meet with the landlord before you signed
14 the agreement?

15 A Yeah. Oh, yeah.

16 Q Okay. So they had met with the landlbrd before the
17 agreement was signed?

18 A Yes.

19 Q Okay. And they discussed the lease with him.
20 Correct?

21 A Yes.

22 Q Okay. So, then how did you arrive at the purchase
23 price?

24 A Well, I told you I would never get that money, what I
25 put in there. I said, "I'm going to have to, I said

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1 \$70,000.00." I say, "I cannot take less." He said,
2 "Can you take less?" I said, "To be honest with you,
3 I can take no less than \$70,000.00."

4 Q And did he agree to that?

5 A Yes.

6 Q All right. And were you selling the corporation,
7 Simon's of Anderson?

8 A No, I no sell corporation.

9 Q What were you selling?

10 A I was selling all the equipment, all the stuff I put
11 in there.

12 Q Did you finally enter into an agreement with Mr. Rife
13 and his wife?

14 A Yeah.

15 Q And I'll hand you Plaintiff's Exhibit #1 and this is,
16 I'll show you the second page. Is that your signature
17 on there?

18 A That's my signature, yeah.

19 Q Okay. All right. And under the terms and conditions
20 of the lease, they were to do what? Pay you how much
21 down?

22 A What?

23 Q How much did they pay you down?

24 A Ten thousand dollars.

25 Q Okay. And they paid you that that day?

1 A Yeah.

2 Q All right. And then they took over the operation of
3 the business?

4 A That same day.

5 Q All right. Were there some problems with the liquor
6 license that you had to help clear up for them?

7 A They don't have no license, so they had to run on my
8 license.

9 Q They had to run on your license?

10 A Yes.

11 Q All right.

12 A And until they get a license, until we got, my son got
13 a violation, a few violation in there and I didn't
14 know. So, Barbara called me one day and say, "We
15 can't get a license. There's a violation over here."
16 I said, "Well, what is, what kind of violation is?
17 So, me and Danny Reardon went to Internal Revenue and
18 we pay everything.

19 Q You paid all of it?

20 A All the fine, everything.

21 Q And these were violations that occurred while your son
22 was operating the business?

23 A Yeah. Include they had one violation of their own.

24 Q Okay. All right. And did that clear everything up?

25 A I paid that, too.

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1 Q Did they have a problem operating under your license
2 after that?

3 A No, they got their license.

4 Q And they ultimately got a license on their own?

5 A Yeah.

6 Q I believe they asked you, too, about giving some
7 profit and loss statements about the business for the
8 previous months?

9 A Whatever print out of the computer, that's what it
10 say, because I didn't know how to read and write. I
11 didn't write this stuff that went into the computer.
12 That's what it come out.

13 Q I want you to look at Defendant's Exhibit #1. And is
14 that a copy of that and the back portion? I've looked
15 at the back portion, too. That was the profit and
16 loss that you gave them?

17 A Yeah.

18 Q All right. And who prepared this computer printout?

19 A Danny Reardon and, I guess, my son. My son's gone
20 away.

21 Q Right. But it was information ---

22 A Yeah.

23 Q --- you had available to you?

24 A Yeah. He had it all.

25 Q And as far as you knew, that was an accurate statement

1 of what the profit and loss was?

2 A Yeah.

3 Q Now, over a period of months, did they make some
4 payments to you?

5 A Yeah. They supposed to pay in ninety days, but they
6 did not pay all in ninety days.

7 Q Okay. Now, I'll hand you Defendant's Exhibit #2 and
8 does this accurately reflect payments that were made
9 to you by Mr. Rife and his wife?

10 A Yeah. Yeah. They all in there.

11 Q All right. And so they owe you today about
12 \$48,274.21?

13 A Yeah. Plus interest.

14 Q All right. Now, did you ever deprive Mr. Rife and his
15 wife of any opportunity to look at anything in that
16 building?

17 A I don't understand.

18 Q Did you ever keep them from looking at something?

19 A No.

20 Q All right. Did they come look at the building?

21 A Oh, yes.

22 Q And they looked all around it?

23 A Yes.

24 Q Did they ever write you and say anything was wrong
25 with the building?

1 A No.

2 Q Did you ever have any discussions with them during the
3 period of time they were trying to pay you?

4 A No.

5 Q Did you ever have to go up to Anderson to see them on
6 one occasion?

7 A I see him to try to get money from him.

8 Q All right. And did he, did he ever tell you of any
9 complaints he really had about it?

10 A No. They tried working upstairs.

11 Q They what?

12 A They tried working upstairs, open another business.

13 Q Oh. Open up a business upstairs?

14 A Yeah.

15 Q Did you ever misrepresent anything to them? Did you
16 ever misrepresent anything?

17 A No. No.

18 Q What you sold them was what?

19 A What I sold them, all the equipment in there.

20 Q All the equipment.

21 A Beer, food.

22 Q And who had put the equipment in there?

23 A I'm.

24 Q You had?

25 A Yes.

1 Q Thank you. Answer any questions Mr. Mullinax may have
2 for you.

3 MR. MULLINAX: May it please the Court?

4 THE COURT: Yes, sir.

5 CROSS EXAMINATION

6 BY MR. MULLINAX

7 Q Good morning, Ms. Martin. You've operated a number of
8 businesses over the past thirty years. Have you not?

9 A Yes.

10 Q And they've all been restaurants or grills or private
11 clubs. Correct?

12 A Yes.

13 Q And Simon's of Anderson was a non-profit corporation.

14 A Yes.

15 Q And you incorporated Simon's of Anderson in October of
16 2003.

17 A Yes.

18 Q You incorporated Simon's of Greenwood in October of
19 2002?

20 A Yes.

21 Q You have always been familiar with the requirements of
22 South Carolina law to operate a non-profit
23 corporation.

24 A Yes.

25 Q And in order to operate a private club, you've got to

1 be a non-profit corporation.

2 A Yes.

3 Q And as part of the rules and regulations of the State
4 of South Carolina, when a non-profit corporation sells
5 or dissolves, it has to give all of its profits to
6 another non-profit corporation. Doesn't it?

7 A I don't understand what you're saying about that.

8 Q When a non-profit corporation, under South Carolina
9 law, sells its assets, it has to give its profit to
10 another non-profit corporation. Right?

11 A Yeah. But, okay -- go ahead.

12 Q You were the owner of Simon's of Anderson and
13 Greenwood.

14 A Yes.

15 Q In order to stay in business, you're obviously a good
16 business woman.

17 A I think so.

18 Q Okay. You are an officer and shareholder in all your
19 companies?

20 A I'm officer and share ---

21 Q You are an officer and shareholder in all of your
22 corporations?

23 A Not all of them.

24 Q Some of them you aren't, but you're still in business.

25 A Yeah. I work. I draw a salary.

1 Q You told your attorney that you bought inventory and
2 put it into Simon's of Anderson.

3 A Yes.

4 Q You haven't provided us any list or invoices or
5 anything to show that you actually did own anything.
6 Have you?

7 A I do provide the what?

8 Q Have you provided me any invoices to show that you own
9 any equipment?

10 A I own it.

11 Q Have you provided me any bills to show that you paid
12 for any of the equipment that was in Simon's?

13 A I got some. Yes, I can.

14 Q But you didn't provide them to me when I asked for
15 them. Did you?

16 A Danny's working on that.

17 Q You didn't provide me ---

18 A I cannot read. Danny's working on that.

19 MR. MULLINAX: Your Honor, I would just ask that she
20 answer my question.

21 THE COURT: Yes, ma'am. Just make sure you answer the
22 questions.

23 MS. MARTIN: Okay.

24 THE COURT: Answer yes or no. I'll let you explain
25 the answer.

1 MS. MARTIN: Yeah. Okay. Okay.

2 Q You have provided me no evidence, no documentary
3 evidence, that you purchased and owned anything. Have
4 you?

5 A No.

6 Q You provided to John and Barbara, before they signed
7 that lease, the profit and loss statement that Mr.
8 Wise just asked you about?

9 A Yeah.

10 Q And you were aware that it showed that you made
11 \$50,000.00 in 2006. Right?

12 A That's what it say in the paper.

13 Q And you were aware that it said that you had earned
14 \$32,000.00 up through August of 2007. Right?

15 A That's what it say in the paper.

16 Q And you gave that to them because they asked for it.

17 A Yes.

18 Q And you intended that they rely on it to sign that
19 contract.

20 A I'm not intending anything.

21 Q Okay. You just gave it to them out of the blue
22 because they wanted to see it before they signed the
23 contract and you provided it to them?

24 A I give it to them and they sign the contract.

25 Q And it's reasonable for them to have relied on what

1 you gave them as being true, wasn't it? Is it not
2 reasonable for them to have relied on what you gave
3 them as being truthful?

4 A Everything in there, show it to them, that's what it
5 say and they sign the contract.

6 Q And you believed that they would rely on it when they
7 agreed to sign the contract.

8 A Rely? Rely? What's that mean, rely?

9 Q Do you -- you furnished them the document.

10 A Uh-huh.

11 Q Which provided information to them.

12 A Yes.

13 Q And you wanted them to use that information to sign
14 that contract with you.

15 A No, they wanted to look at it. I give it to him. If
16 they want to sign contract, they can. They don't have
17 to sign contract, but I did give it.

18 Q And before they signed the contract, you gave them
19 that profit and loss statement.

20 A They asked for it. I give it to them.

21 Q Okay. You admitted, on direct testimony, that the
22 lease that you had, they could not assume and they had
23 to sign a new lease.

24 A I'm not make that.

25 Q But they did have to sign a new lease?

1 A They do.

2 Q And they had to pay more than they you told them they
3 would have to pay.

4 A They did.

5 Q Okay.

6 A They agreed. They had made, reached agreement with
7 Mr. Ingolf.

8 Q You told them that the security system in the business
9 with Carolina Burglar Alarm was owned by the
10 corporation.

11 A No.

12 Q You deny that?

13 A No. I didn't told them that. That's -- every
14 security system, got to make a payment every month. I
15 tell them the monthly premium got to pay because they
16 have to, what do you call that, monitor. They have to
17 monitor, so they got to pay the service they monitor.
18 Any security company you got, you got to pay service
19 every month.

20 Q You told them that you owned all the pool tables?

21 A No. Sure don't.

22 Q You never specified you didn't though. Did you?

23 A Nope. They lease. They owned by company.

24 Q You also acknowledge that you had a prior relationship
25 with John for the past couple of years before October

1 of 2007.

2 A Good relationship you talking about?

3 Q With John.

4 A - Yeah. John's good man.

5 Q You didn't know Barbara, but you knew John very well.

6 A I don't know her.

7 Q You did business with John.

8 A John is a good customer.

9 Q And you also did, or your businesses in Greenwood did
10 business with John at Community Supply. Right?

11 A That's after.

12 Q Before and after?

13 A I think it's after because he got transferred. That's
14 the only thing I know. I can't keep up with
15 everybody's.

16 Q You do acknowledge that in order for them to begin
17 doing business, it was required by the South Carolina
18 Department of Revenue that you pay fines that your
19 corporation had accumulated over the years?

20 A My son did it. I find out about it. Barbara told me,
21 call me about it. I go pay.

22 Q And it was fines and penalties imposed on Simon's of
23 Anderson because you hadn't paid your taxes and you
24 had liquor violation penalties.

25 A Yeah. But see, that's Barbara call me. That's how I

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1 find out. Say she can't get her license. The law say
2 you don't pay -- the previous -- if they're not paid
3 for in full, they can't get the, the next person come
4 in, they cannot get a license and I go in there and
5 pay. Me and Danny went, because I don't know nothing
6 about -- I don't know how to read and write, okay? He
7 had to help me out to go pay for everything. He told
8 me how much we had to pay. I say okay. And a lady
9 come and say, "Ms. Martin, you got to pay this. You
10 got to pay this." I say, "okay," and we left. He
11 call me back and say, "You got to pay this." I said
12 we got to go back and pay. We pay everything so she
13 could get a license.

14 Q It was your obligation to pay it.

15 A I don't have a problem.

16 Q Because you violated the law. Right?

17 A I didn't. My son did, but I pay it. It no problem.
18 I don't have a problem with pay.

19 Q And your business, Simon's of Anderson, sold liquor
20 and beer and you were regulated by SLED and from
21 time-to-time your business broke the law. Is that
22 right?

23 A Huh?

24 Q From time-to-time, the business that you operated
25 broke the law and SLED got on to you. Didn't they?

1 A I don't understand what you say.

2 Q From time-to-time you broke the law.

3 A I broke the law. A couple time, not time-to-time.

4 Q And you didn't have a very good relationship with the
5 South Carolina Law Enforcement Division. Did you?

6 A I don't know if we have good relationship or not. I
7 don't know. But, you know, they spank my hand, I pay
8 the fine.

9 Q Do you remember when I took your deposition?

10 A What? Yeah. Okay.

11 Q And what did you tell me about SLED?

12 A What about SLED?

13 Q That you broke the law and ---

14 A They spank my hand and I pay.

15 Q And although I've been asking for you to provide me
16 documentation of proof that you owned anything in the
17 bar, for over ten months, you still have not provided
18 me any documents to prove you owned anything. Have
19 you?

20 A Okay. Danny working on that.

21 Q Have you ---

22 A I tell you that. I don't ---

23 Q No, ma'am. Have ---

24 THE COURT: Hold on. Hold on.

25 MS. MARTIN: Okay, I ---

1 THE COURT: Wait, wait, wait. Stop.

2 THE WITNESS: Okay.

3 THE COURT: She can only take one person down. Let
4 him finish his question and then you answer.

5 MS. MARTIN: Okay.

6 THE COURT: All right. Go ahead.

7 Q You have not provided me any documents to prove that
8 you, individually, owned anything. Have you?

9 A I guess you say, no. I say, no.

10 Q Ms. Martin, your attorney did provide me, on Tuesday,
11 with a copy of the tax return of Simon's of Anderson
12 for 2005. (Hands witness document)

13 A Yeah.

14 Q Do you recognize that document?

15 A Yeah.

16 Q And you gave it to your attorney.

17 A Yeah.

18 Q And that is, even though it's not signed, that is the
19 corporate tax return for 2005.

20 A Yeah.

21 Q For Simon's of Anderson.

22 A Yeah.

23 Q And there's no question about that. Is there?

24 A Yeah.

25 Q And it's not for 2006 or '07, but it's the only one

1 you told me you could find.

2 A That's what I go ask for. That's why ---

3 Q And you acknowledge that that document is ---

4 A They got it. I got it, yeah.

5 MR. MULLINAX: I'd ask that this be marked and
6 entered.

7 MR. WISE: No objection.

8 THE COURT: Any objection? Without objection.

9 (WHEREUPON, a 2005 tax return is entered into evidence
10 as Defense Exhibit #4, without objection)

11 Q Do you recall the time in 2008 when you went to
12 Simon's to meet with John and Barbara and they tried
13 to talk with you about the situation and you ran out
14 the door?

15 A I don't run.

16 Q You just walked out?

17 A No. I talked with them.

18 Q Why didn't you talk with them?

19 A Huh? I did talk with them. She show me -- I don't
20 even know what she told me. She show me all kind of
21 paperwork. She show me this, this. I say, "Look like
22 you not going to pay me." Every time I come before
23 then, I go down and see them, they say, see John, go
24 see John. I go see him again and see Barbara. And
25 they never give me any kind of answer. They don't got

1 no money. She say I got to pay beer bill. I got to
2 pay liquor bill. And then one time I go down there
3 she say, "this, this". I say, "Look like you not
4 going to pay me. Look like I'm going to see my lawyer
5 to take care of this."

6 Q Do you still own a non-profit corporation in
7 Greenwood?

8 A No.

9 Q Simon's of Greenwood, Inc., you don't own it any more?

10 A No. No.

11 Q Who was the non-profit corporation of Simon's of
12 Anderson that was to receive any profit? Did you
13 designate one?

14 A Ain't no profit. The non-profit the making, they pay,
15 what I pay help and my son do the charity. My son do
16 the charity. I don't know nothing about that, okay?

17 Q So, you've been in businesses over the past thirty
18 years?

19 A Yes.

20 Q Owned more than one?

21 A Yes.

22 Q Operated more than one?

23 A Yes.

24 Q Filed tax returns for more than one?

25 A Yes.

1 Q You've got no proof that you owned a thing. Do you?

2 A Now, you tell me to bring that?

3 Q You've got no proof in this courtroom today ---

4 A Today.

5 Q --- that you own anything.

6 A I didn't show it to you. I guess not. I know in my
7 heart it does.

8 MR. MULLINAX: Okay. Thank you, ma'am.

9 THE COURT: Anything on redirect?

10 MR. WISE: Just a few things.

11 REDIRECT EXAMINATION - MR. WISE

12 Q Ms. Martin, in your agreement with Mr. Rife and his
13 wife, did you agree to hold them harmless if somebody
14 else made a claim to this equipment?

15 A Yes.

16 Q All right. And had they ever notified you prior to
17 filing the lawsuit that someone else claimed they
18 owned the equipment?

19 A No.

20 Q Okay. Thank you.

21 THE COURT: All right. Thank you, ma'am. You can
22 step down.

23 MS. MARTIN: Thank you.

24 MR. WISE: With that, the Plaintiff rests, Your Honor.

25 THE COURT: Pardon?

1 MR. WISE: The Plaintiff rests.

2 THE COURT: All right. Ladies and gentlemen, I need
3 to send you out at this point in the trial. It's going to
4 take us about twenty minutes to take up some matters that
5 we have to at this point in the trial outside your
6 presence. Do we have smokers? Okay. Buck, can you
7 arrange it for them? I don't want you climbing the walls.
8 Please don't discuss the case.

9 (Jury out at 12:02 p.m.)

10 MOTION FOR DIRECTED VERDICT

11 THE COURT: Any motions?

12 MR. MULLINAX: For the record, Your Honor, I would
13 move to dismiss for non-suit on the basis that Plaintiff is
14 not the real party of interest. The Defendant's Exhibit #4
15 is a corporation federal tax return for Simon's of
16 Anderson, Inc. She testified that she owned all of the
17 equipment and inventory on the premises. The tax return
18 shows on the depreciation schedule that all of the
19 equipment is owned by the corporation, the non-profit
20 corporation, and I would ask the Court to take judicial
21 notice of the South Carolina law, South Carolina Code
22 Regulation 7.41, which provides that non-profit
23 corporations, in the event of dissolution or sale, would
24 have to give any profits to another designated non-profit
25 corporation. Ms. Martin is an individual and is not the

1 real party interest and not qualified and I'd ask that the
2 suit be dismissed.

3 THE COURT: All right. Yes, sir.

4 MR. WISE: Your Honor, I think it's a credibility
5 question, Your Honor. A second ground is that that would
6 be more properly addressed by the Attorney General's office
7 and not by any litigant in this particular suit. It's a
8 jury question as to whether or not the equipment is the
9 same as what she's talking about, because this is, you
10 know...

11 THE COURT: Well, I'm a little worried that it is a
12 corporation and she sued individually.

13 MR. WISE: Well, I understand. But she didn't -- she
14 wasn't selling the corporation. It went defunct.

15 THE COURT: All right. What I'm going to do so that
16 we don't make them sit, I'm going to take that under
17 advisement. I mean, I am a little concerned about it,
18 obviously, but we'll let you present your testimony and
19 then -- how many witnesses -- it's already fifteen 'till
20 one, so what do you want to do? Do you want to break now?

21 MR. MULLINAX: I've got two, Your Honor. It would
22 probably be best to break now and then we could go straight
23 through, maybe, instead of...

24 THE COURT: Yeah. Let's do that. And I'm going to
25 explain to them that I had to deal with a matter outside

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1 the courtroom. Again, I'll take the heat, because it's my
2 fault. All right. You can bring them back in.

3 (Jury in at 12:47 p.m.)

4 THE COURT: All right. Ladies and gentlemen, at each
5 part of the trial there are certain motions that have to be
6 taken up outside your presence. That's what we've been
7 doing. It took a little bit longer than normal. Normally,
8 we would break for lunch at one. We're going to go ahead
9 and break now. The next two witnesses, we can finish this
10 afternoon. You've heard all the testimony that you're
11 going to hear from the Plaintiff. They've rested. And
12 then at that point, the motions were made and we've ruled
13 on them. I'm going to ask that you -- rather than take the
14 normal fairly long lunch break that we give jurors, if
15 you'll be back in the jury room at two fifteen, that'll
16 give us time to continue to do what we're doing and then
17 when we come back, we'll probably go straight through,
18 quite frankly. Because of the length of the motions, et
19 cetera, we may not take as many breaks this afternoon. I
20 would urge you, and I'm not teasing, I wouldn't eat a huge
21 lunch, because you are going to have to sit there for three
22 or four hours this afternoon with maybe one break and you
23 need to listen because we may finish all the testimony
24 today so that we can argue and charge tomorrow. So, don't
25 talk about the case. Have a good lunch. I'll see you at

1 two-fifteen and we'll get started right at two-fifteen.

2 Thank you.

3 (Jury out at 12:48 p.m.)

4 THE COURT: You do think you can finish the testimony
5 today?

6 MR. MULLINAX: Yes, sir.

7 THE COURT: We probably -- and you've got maybe one
8 rebuttal?

9 MR. WISE: Maybe one or two reply witnesses, but no
10 question we can finish today.

11 THE COURT: All right. Most likely we'll argue and
12 charge tomorrow, just so you'll know.

13 MR. WISE: We were discussing that and we would
14 anticipate that we'll finish up somewhere around three-
15 thirty, or quarter 'till four and that's with rebuttal and
16 there's somewhere I have to be at seven in Greenwood, if
17 possible.

18 THE COURT: Well, I'll let y'all go and then we'll
19 argue and charge tomorrow, because it's just going to take
20 us a little longer.

21 (Lunch Break)

22 SEPTEMBER 6, 2012 - AFTERNOON

23 THE COURT: Okay. Y'all ready?

24 MR. WISE: Ready.

25 MR. MULLINAX: Your Honor, I would just ask that any

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1 witnesses who are going to testify as third parties be
2 sequestered.

3 THE COURT: Any objection? I would normally do that,
4 but if you want to put an objection on the record, you can.

5 MR. WISE: Your Honor, my only objection would be that
6 it's a little late in the game to do it. You know, he's
7 had...

8 MR. MULLINAX: He never really said for sure who he
9 was going to name. There's only one that he named.

10 THE COURT: Okay. Yeah. Let's do that. I understand
11 your problem and you're protected on the record.

12 MR. WISE: That's fine.

13 THE COURT: Okay. You can bring them in. We'll go
14 until about four. That's what you need? Okay.

15 MR. WISE: We should be through by then.

16 THE COURT: Y'all approach a minute. I want to tell
17 you something.

18 (Brief Bench Conference Off the Record)

19 (Jury in at 2:39 p.m.)

20 THE COURT: All right. Ladies and gentlemen, as I
21 said, you've heard the Plaintiff's case. We'll now begin
22 with the Defense's case. You can call your first witness.

23 MR. MULLINAX: May it please the Court. We call Mr.
24 Wilmer John Rife.

25 (After being duly sworn by the Clerk of Court,

1 **WILMER JOHN RIFE**, testified as follows:)

2 CLERK OF COURT: Please have a seat on the witness
3 stand. If you would please give us your full name for the
4 record.

5 MR. RIFE: Wilmer John Rife.

6 CLERK OF COURT: Spell your last name, please, sir.

7 MR. RIFE: R-I-F-E.

8 CLERK OF COURT: Thank you, sir.

9 DIRECT EXAMINATION

10 BY MR. MULLINAX:

11 Q Okay. John, I'm going to stand back here and
12 hopefully, if I can hear you, the folks on the jury
13 can also. Try to speak up. I know it's an
14 uncomfortable position for you to be in up there.
15 Tell me where you're from, originally.

16 A I was born in Oregon City, Oregon.

17 Q And how long have you lived in South Carolina?

18 A Twelve years.

19 Q And you're married to Barbara Ann Doomey who's seated
20 at the table over there? (Indicating)

21 A That's correct.

22 Q How long have y'all been married?

23 A Eleven years.

24 Q Tell me a little bit about your educational background
25 and what you've done in your lifetime.

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1 A A high school graduate, one year of college at Oregon
2 State in business. I drove a truck over-the-road for
3 approximately twenty-two years. I got -- early in
4 life took a five-year apprenticeship as a piano tuner.
5 Didn't much like doing that. I decided truck driving
6 was more my style. I took a couple of breaks from
7 that over the years, worked as a bartender and night
8 manager at a bar.

9 Q Okay. When you came to South Carolina, what did you
10 do?

11 A I went to work for Home Depot selling plumbing
12 supplies and building materials.

13 Q And whereabouts in South Carolina have you lived?

14 A At Lake Succession and in Anderson.

15 Q Other than Home Depot, what other businesses have you
16 worked at, other than New Simon's?

17 A Community Supply, a plumbing wholesaler. At the time,
18 they had a store here in Anderson and another in
19 Greenwood.

20 Q And which store did you work at?

21 A I actually worked in both. First here in Anderson and
22 then went to Greenwood to manage the store there.

23 Q Okay. Before October of 2007 when the contract, which
24 is a part of the controversy in this case, was signed
25 with Ms. Martin, did you know Ms. Martin?

1 A Yes, I did.

2 Q And tell the jury how you came to know her.

3 A I first met her son by going into the bar at Simon's
4 here in Anderson. I'd go in there after work, usually
5 for happy hour. I met Tommy. We struck up a bit of a
6 friendship and it was some time during that time with
7 her coming and going with the business that I met her.

8 Q Okay. And that relationship continued over a period
9 of how many years?

10 A Just a little over -- up until we bought the bar, it
11 would have been, approximately, three years.

12 Q Okay. Did you have business dealings with her or her
13 businesses in Greenwood, South Carolina?

14 A Yes, I did.

15 Q And what was the nature of that relationship?

16 A She had just bought a restaurant and was remodeling
17 it. I was managing a plumbing supply house. They
18 needed plumbing materials. We supplied those, quite a
19 bit of them.

20 Q Did you supply those to her on credit or cash?

21 A Mostly credit.

22 Q And did she pay you?

23 A Yes.

24 Q And what did that create in your mind as far as you
25 were concerned about her?

1 A I always respected her as a very competent business
2 woman. I never seen any glitches in the way they
3 conducted their business. And I was confident that
4 my, the owner of the company there wouldn't object to
5 them having credit at the store.

6 Q Okay. Was there ever any difficulty between you and
7 her and her understanding what you were saying or
8 writing or anything?

9 A No, there never was.

10 Q Okay. And you also had a relationship with her son in
11 the club here in Anderson and with her. Is that
12 correct?

13 A Yes.

14 Q And did you do any work for her in the club here in
15 Anderson?

16 A I did.

17 Q What kind of work did you do?

18 A Routine maintenance. If something was broken;
19 railing, fence. I constructed the fence around the
20 patio. It was kind of an on-call. If something was
21 broken, Tommy would tend to call me and see if we
22 could work out a time to have it fixed.

23 Q Okay. So, you did numerous repair jobs for them over
24 the two or three-year period?

25 A That's correct.

1 Q Did they pay you for your work?

2 A Yes, they did.

3 Q Was there ever a problem with any of that?

4 A Never.

5 Q Tell us, if you would, how it came about that you were
6 approached, or did you approach, Ms. Martin about the
7 bar. Tell us how that happened.

8 A As a matter of fact, I was at, I believe, the Brick
9 House, with her in Greenwood. They had purchased some
10 plumbing materials. I needed to look, I believe, at
11 the bathroom where it was going and take care of some
12 measurements.

13 Q The Brick House was a restaurant and bar in Greenwood,
14 South Carolina?

15 A That's correct.

16 Q That she operated and owned?

17 A Right.

18 Q All right. Go ahead.

19 A The subject came up about the bar. She mentioned that
20 she was having trouble running it from a distance. It
21 was doing well, but after Tommy's death, it was just
22 too much for her to handle all of her businesses.

23 Q And why did she say it was too much for her to handle?

24 A That was what she told me.

25 Q Did she give you any reason why it was too much for

1 her to handle?

2 A It was difficult to be there with the memory of her
3 son. I'm sure of that. It was also a distance,
4 forty-five, fifty miles, which I knew very well from
5 commuting everyday.

6 Q Was the problem she expressed to you the operations of
7 the bar or was it more logistical, going back and
8 forth?

9 A It was more logistical.

10 Q What did she tell you about the possible sale of the
11 restaurant and bar?

12 A That she'd like to sell it. She had a price in mind.
13 It was, as I said, a spur of the moment. We hadn't
14 been planning to -- we weren't actively shopping for a
15 bar, or a business for that matter.

16 Q And after she expressed that interest to you, what did
17 you do? Was Barbara present when the first
18 conversation took place?

19 A No, she wasn't. I phoned Barbara on my way home from
20 Greenwood and said that I had had a conversation with
21 Ms. Martin, she was interested in selling the bar,
22 which I had had prior to that no idea that she would
23 give it up. I asked Barbara if she might be
24 interested. I was a little surprised when she said
25 that we might be and let's look at some paperwork and

1 see what the asking price would be.

2 Q And so after your conversation with Barbara, deciding
3 you wanted to look at some paperwork to see what the
4 price was, did you then go back and talk with Ms.
5 Martin?

6 A I did.

7 Q And what was that conversation?

8 A She told us the price. At some point, I can't
9 remember exactly, she produced a profit and loss
10 statement. We looked that over. We discussed the
11 business. We were a little bit concerned with the
12 time involved in taking care of the business. We were
13 assured that the business, fundamentally, ran itself.
14 She had a staff in place. All she needed to do was
15 visit once or twice a week, collect money, take care
16 of the banking and go back to Greenwood.

17 Q Okay. And did she know at the time that both you and
18 Barbara had other jobs?

19 A Yes.

20 Q What did she say about your other jobs?

21 A She said there wouldn't be any problem, she felt, for
22 us to keep our other jobs. Again, the business was
23 well run. It was being run by an absentee owner at
24 the time and there was no reason we couldn't continue
25 to work our day jobs.

1 Q The profit and loss statement that she provided to you
2 has been marked as Defendant's Exhibit #1. (Hands
3 document to witness) When she gave that to you, what
4 did she say to you about the operation of the bar?

5 A That it was successful. That it did make money. That
6 it was a good opportunity.

7 Q Okay. The first page of that exhibit shows that from
8 January through August of '07, they had a net income
9 after paying taxes and expenses and everything of
10 \$32,374.00. Is that right?

11 A That's correct.

12 Q What did you think about that?

13 A It looked good to me.

14 Q The second page of Defendant's Exhibit #1, is a profit
15 and loss statement that was provided to you by Ms.
16 Martin for January through December of '06, which is
17 the entire previous twelve months and that showed a
18 net income of \$50,709.00. Is that right?

19 A That's correct.

20 Q And that's after paying all expenses.

21 A Yes.

22 Q All taxes.

23 A Everything that's listed here.

24 Q This document appears to have been printed on
25 September 18th, 2007, which was before you signed

1 the contract.

2 A That's correct.

3 Q Did this document have any influence on your buying
4 and entering into this contract? (Portraying on large
5 screen in front of jury)

6 A Absolutely. It made it look like a profitable
7 business that was worth purchasing.

8 Q Okay. Did Barbara concur with what you saw?

9 A Yes.

10 Q And believed it?

11 A Yes, she did.

12 Q Without this document, what would you have done with
13 this contract?

14 A We wouldn't have entered into the contract.

15 Q Why not?

16 A Well, we're not going to buy a business unless we see
17 a profit and loss statement. And then we're not going
18 to buy a business unless it shows a decent profit and
19 loss. There would have been no reason to buy it.

20 Q Having the prior, really, twenty months worth of
21 figures, did you believe this to be a fair and
22 accurate representation of what the bar was doing?

23 A Yes, we did.

24 Q Why did you believe that?

25 A I had a good history with Ms. Martin. I had no reason

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1 to doubt her. I have seen her run successful
2 businesses, that business looked successful. There was
3 no reason to doubt her.

4 Q Were you aware at the time that she had more than one
5 business that she owned and operated?

6 A Yes.

7 Q Had she told you that?

8 A Yes.

9 Q In addition to the profit and loss statement and the
10 history that you had with her, what else did she tell
11 you about the business?

12 A We were told in the contract that the equipment was
13 owned, that the equipment was in good repair, that the
14 staff was extremely knowledgeable and loyal and was
15 going to stay.

16 Q Okay. And, in addition to what you saw as you walked
17 into this place, or including what you saw, what did
18 you believe that you were buying in that contract in
19 addition to an operating business that was making
20 \$50,000.00 a year?

21 MR. WISE: I'm going to object to what he believed he
22 was buying. The contract, I think, speaks for itself and
23 what he believed would go beyond the wording of the
24 contract itself.

25 THE COURT: All right. I'll sustain that. You can

1 ask him what he expected.

2 Q What did you expect to receive when you signed the
3 contract, based on what Ms. Martin told you you would
4 receive?

5 A Everything that was in the contract; a business that
6 was running well and a business that was going to be
7 profitable and in good repair.

8 Q What tangible items of property did she tell you she
9 owned and was selling to you?

10 A The kitchen equipment, the refrigeration equipment,
11 the pool tables, the security system, the computers,
12 bar stools, tables, chairs, glassware, and then the
13 obvious inventory, liquor, beer.

14 Q Did she tell you she owned each and every bit of
15 equipment?

16 A Yes.

17 Q Did she tell you that this business was being operated
18 as a not-for-profit corporation?

19 A Yes.

20 Q Did she tell you that a not-for-profit corporation
21 owned the equipment?

22 A My understanding was that the business was being sold
23 as one piece.

24 Q How about the lease on the building, because she
25 didn't own the property?

1 A We were told that the lease was assumable, that it had
2 a year, I believe, a year and three more months and it
3 would run through the end of '08, and that there
4 shouldn't be any problems with us just taking over the
5 lease.

6 Q And at that time, the lease was with a Mr. Stuggs, who
7 was mentioned in her testimony?

8 A Yes.

9 Q And were you able to assume that lease?

10 A No, we were not.

11 Q And as a result of not being able to assume it, were
12 you required to pay more monies than the existing
13 lease required?

14 A It went up by \$250.00 a month.

15 Q Over a period of how many months?

16 A Sixty -- We had a four-year lease. Forty-eight months.

17 Q And that was unexpected?

18 A Completely.

19 Q Tell me about the security system.

20 A Can I correct something I just said? It was a sixty-
21 month lease. It was five years.

22 Q Okay. But you knew that it would only extend for
23 another eighteen months, anyway?

24 A Correct.

25 Q Tell me about the pool tables.

1 A Probably within a month after, definitely within the
2 first month, the people that owned the pool tables
3 came in and informed us that they were either going to
4 take the pool tables ---

5 MR. WISE: Objection, Your Honor. Hearsay.

6 THE COURT: Sustained.

7 Q You can't say what somebody told you. Did Ms. Martin
8 own the pool tables?

9 MR. WISE: Objection, Your Honor. That would call for
10 a hearsay conclusion.

11 THE COURT: You can ask him if he knows of his own
12 will.

13 Q Do you know who owned the pool tables?

14 A Yes.

15 MR. WISE: Your Honor, the only way he would know
16 would be through a hearsay statement.

17 THE COURT: All right. Ladies and gentlemen, I'm
18 going to send you out of the room for about two minutes.
19 Please don't discuss the case.

20 (Jury out at 2:57 p.m.)

21 THE COURT: All right. Yes, sir. He says that the
22 only way he could know -- is there any other way he could
23 know?

24 MR. MULLINAX: I could ask him if he was required to
25 pay additional monies over and above the lease price for

SHOU MARTIN VERSUS WILMER RIFE AND BARBARA ANN DOOMEY

1 the pool tables.

2 THE COURT: As long as you don't ask him -- I mean, I
3 think he's right. He's getting the information ---

4 MR. WISE: I think that would still be hearsay, you
5 know, why he was paying it.

6 THE COURT: Well, if he paid it, it would just be
7 factual. I just don't want him to say ---

8 MR. WISE: Sir?

9 THE COURT: If he had to actually pay it. The question
10 is, did you have to pay more. I think that's okay, but
11 just don't ask him who told him.

12 MR. MULLINAX: Yes, sir.

13 MR. WISE: Well, I think -- I guess, I don't want to
14 tell Mr. Mullinax how to ask his question, but I guess he
15 could say he paid some money to somebody to keep the pool
16 tables from being removed.

17 THE COURT: Yeah. I think those are the kind of,
18 yeah, it's form over substance. But, yeah, I'll sustain
19 your objection and allow you to ask that question. All
20 right. Buck, you can ask them to come back in.

21 (Jury in at 2:59 p.m.)

22 THE COURT: All right. Yes, sir.

23 CONTINUED DIRECT EXAMINATION OF JOHN RIFE BY MR. MULLINAX

24 Q John, were you required to pay more monies to someone,
25 other than Ms. Martin, in order to keep your pool

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1 tables or keep them from being removed?

2 A Yes, we were.

3 Q How much did you have to pay?

4 A Fifteen hundred dollars.

5 Q And were you required to purchase a new security
6 system?

7 A Yes, we were.

8 Q Did she tell you that the security system was included
9 in the purchase price of that contract?

10 A Yes.

11 Q Tell me about the condition of the walk-in coolers.

12 A The walk-in cooler was the first one that broke down
13 on us. The outdoor unit behind the cooler hadn't been
14 cleaned for quite some time. I couldn't say for
15 exactly how long. And the cooler was basically
16 maintaining what the outside temperature was.

17 Q Did Ms. Martin, before you signed or at the time you
18 signed the contract, tell you that all the equipment
19 was new or in good working ---

20 MR. WISE: Judge, I'm going to object to that, also,
21 on the grounds that that would be contrary to what the face
22 of the contract says.

23 THE COURT: Do you have a copy of the contract?

24 MR. MULLINAX: Yes, sir.

25 THE COURT: Y'all approach over here. Let me ask you

1 a question.

2 (Brief Bench Conference Off the Record)

3 THE COURT: All right. That objection is overruled.
4 You can ask the question.

5 Q Did Ms. Martin represent to you that all the equipment
6 was in good working order?

7 A Yes, she did.

8 Q What else did you have to have repaired?

9 A In the way of refrigeration or...

10 Q Anything else.

11 A The air conditioning units hadn't been maintained.
12 They were barely working. We, in order to keep the
13 landlord happy in negotiating a new lease, we had to
14 have a licensed electrician come in, inspect the
15 wiring and make some repairs at our expense.

16 Q And once you began working in the business, did you
17 find that other items, such as the plumbing, needed to
18 be repaired?

19 A The plumbing behind the bar was, basically, not
20 working, except for one sink. It's been awhile. The
21 kitchen sink wasn't operating, the dishwashing sink.
22 All faucets had to be replaced. Bathroom sink faucets
23 were all dripping and it was cheaper to replace them
24 than it was to try to repair them.

25 Q This contract was signed October 1st, 2007.

1 A Correct.

2 Q Do you recall that?

3 A Yes.

4 Q And who drew the contract?

5 A I believe Mr. Wise did.

6 Q Did your attorney draw the contract?

7 A No.

8 Q Whose attorney drew the contract?

9 A Ms. Martin's attorney.

10 Q When you signed the contract, did you have a lawyer?
11 Did you have a lawyer when you signed the contract?

12 A No, we did not.

13 Q Where was the contract signed?

14 A In Mr. Wise's office in Greenwood.

15 Q And who was present when the contract was signed?

16 A Ms. Martin, Barbara, myself, and two employees at the
17 law office.

18 Q Okay. No one else?

19 A No.

20 Q Had you seen the contract before the day you went to
21 sign it?

22 A No.

23 Q Did you read it at that time?

24 A Yes.

25 Q Did Ms. Martin appear to read hers at that time?

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1 A Yes.

2 Q She express any questions to you about not being able
3 to read the contract?

4 A No.

5 Q You signed it and you left?

6 A Correct.

7 Q You gave her \$10,000.00?

8 A Yes.

9 Q If you had not seen that profit and loss statement,
10 would you have signed that contract?

11 A No.

12 Q After this was signed, you and Barbara commenced
13 operating the restaurant that you called New Simon's?

14 A That's correct.

15 Q Once you began operating, did you find out that you
16 had to create a non-profit corporation?

17 A Yes, we did.

18 Q What else did you find out about that non-profit
19 corporation?

20 A Well, we found out for one thing that we actually
21 owned nothing except whatever equipment we had
22 purchased, that it had to be basically in the hands of
23 a charitable organization. If it was dissolved, sold,
24 any profits had to go to another non-profit
25 corporation or organization. We designated Habitat

1 for Humanity in our bylaws when we did that. We went
2 ahead and applied for the liquor license in the same
3 manner that it had been provided, as a private club.

4 Q. And did Ms. Martin have to pay some fines to SLED
5 and the ABC Commission, or the Department of Revenue,
6 before you could continue with that application
7 process?

8 A That's correct.

9 Q But that was done.

10 A It was.

11 Q Then, for the next three months you and Barbara began
12 operating the business?

13 A Yes.

14 Q What did you find out about the finely tuned and
15 operating business that you had been told?

16 A Well, that it wasn't being run well, that laws were
17 being ignored, the staff wasn't paying attention to
18 the rules and the place was in complete disrepair.

19 Q Okay. I'm going to show you a document that's been
20 marked as Defendant's Exhibit #3 and ask you if you
21 recognize that.

22 A Yes, I do.

23 Q Tell the jury what this is.

24 A The first page is a profit and loss statement for
25 October through December 2007.

1 Q And does this represent a period of time, right after
2 you purchased it, that you and Barbara then operated
3 the business?

4 A That's correct.

5 Q And during those three months, what did you earn as
6 the operator of a bar in the same location, with the
7 same equipment and some of the same staff?

8 A Nothing. Personally, there was no income to us. The
9 business itself showed a loss of forty-one thousand
10 dollars.

11 Q And where did you get the monies to fund that much of
12 a loss within that short period of time?

13 A I cashed in my 401(k), our retirement fund, and we
14 made, I believe, three loans.

15 Q Were you surprised at this?

16 A We were more than surprised. It was, actually, almost
17 devastating to us. I mean, Barbara had to quit her
18 job within -- I'm going to say the first two weeks
19 that we had the place because it needed day-to-day
20 hands-on management.

21 Q Was there -- you had been into this location a number
22 of times during the past couple of years. Is that
23 true?

24 A That's true.

25 Q During the time that you and Barbara began operating

1 it, from October, November, December, was there any
2 decrease in patronage that you were able to observe to
3 compare with what you had seen before?

4 A No.

5 Q Why didn't you call her and complain?

6 A Well, I was still working in Greenwood. I was up at
7 five o'clock every morning, driving down there, got
8 home about seven, went to the bar and Barbara was
9 basically overrun with the liquor application and the
10 renegotiation of the lease and it wasn't until we saw
11 these totals that we really realized how deep in debt
12 we were and all the problems. Not being there
13 everyday really kept me out of the loop of a lot of
14 things.

15 Q Had you been sold "a bill of goods"?

16 A That's how I feel. Yes.

17 Q You made payments to Ms. Martin in actual cash
18 payments of over twenty-one thousand dollars?

19 A That's correct.

20 Q October 1, ten thousand; October 1, three-fifty;
21 December 21, forty-nine eighty-three seventy-nine;
22 February 26, 2008, thirty-two fifty; August 31, 2008,
23 thirty-one forty-two, for the total of \$21,000.00 and
24 some-odd dollars. Is that correct?

25 A That's correct.

1 Q During that period of time, did you try to talk with
2 Ms. Martin about what you found out once you took
3 over?

4 A On several occasions.

5 Q And what happened?

6 A She wasn't willing to discuss it. She wanted the
7 money that was listed in the contract, no discussion.

8 Q Would she meet with you and talk with you about it?

9 A No.

10 Q Do you remember how many times you tried to meet with
11 her?

12 A I'm going to say, three.

13 Q Did she finally, at some time, come to Anderson to
14 meet with you and Barbara?

15 A She did.

16 Q And when was that?

17 A I believe that was in September of '08.

18 Q Was it right after, right around the time you paid her
19 the thirty-one forty-two?

20 A Shortly thereafter, I believe.

21 Q And what occurred as a result of that meeting?

22 A Well, she came in, wanted to talk to us. It was
23 unannounced. Barbara's fairly busy at the time.
24 Barbara says, lets' go out to the patio where it's
25 quiet and go over some things. I was taking care of a

1 little bit of business inside and I was going to go
2 out and meet with them, and sit out there. Before I
3 had a chance to finish, probably within five minutes,
4 Ms. Martin came back out and left abruptly. And I
5 went to Barbara and said, "So, what happened?" And
6 Barbara just informed me that she wasn't willing to
7 discuss anything.

8 Q After that occasion, did you have any further contact
9 with her, whatsoever, until she brought a lawsuit
10 against you?

11 A No, we did not.

12 Q Why did you pay her that last amount, \$3142.00 in
13 August of '08?

14 A We believed -- I mean, the bar had some value. And
15 with those payments accumulating the way they had, we
16 reached a point where we felt that we had paid as much
17 as we should for that business in that condition and
18 we were done, or at least needed some discussion.

19 Q All right. Do you believe you owe her or do you,
20 under that contract, do you owe her any more money?

21 A No.

22 Q I'm going to show you a document and ask you if you
23 can identify that. (Hands document to witness)

24 A This is a list of the payments that we made to Ms.
25 Martin. The expenses for basic maintenance for the

1 heating and air units, the purchase of three pool
2 tables, refrigeration and appliance repair, plumbing
3 repair, tables, materials.

4 Q All right. Did you prepare this list based upon
5 expenses that you incurred during the operation of the
6 business?

7 A Yes.

8 Q Repairs that you made?

9 A Yes.

10 Q And what does it total up to be?

11 A Forty-three thousand twenty-seven dollars and eighty-
12 nine cents. (\$43,027.89)

13 MR. MULLINAX: I'd ask that this be marked and
14 entered.

15 THE COURT: Without objection?

16 MR. WISE: No objection.

17 THE COURT: All right. Without objection.

18 (WHEREUPON, an expense list made out by John Rife is
19 entered into evidence as Defense Exhibit #5, without
20 objection)

21 Q If everything had been as told to you by Ms. Martin,
22 would any of this have been required of you and
23 Barbara?

24 A No, it would not have.

25 Q Why did you think you could trust her?

1 A Our previous relationship, the business we had done,
2 my relationship with her son. I had no doubt that
3 what I was being told was the truth.

4 Q And in addition to your list of expenses, Exhibit #2
5 is also an actual list of some checks that you wrote
6 to pay Ms. Martin and also to pay for the repairs and
7 expenses. Is that correct?

8 A That's correct.

9 MR. MULLINAX: It's already in evidence, Your Honor.
10 That's Defense #2.

11 THE COURT: All right.

12 Q At the time you signed this contract, were you aware
13 of the requirements of South Carolina law about the
14 operation of a non-profit corporation?

15 A No, we were not.

16 Q You had no way of knowing about the requirements of
17 the law ---

18 MR. WISE: Your Honor, I object to the question as
19 being leading. He had no way of knowing, obviously ---

20 MR. MULLINAX: I apologize.

21 THE COURT: Sustained.

22 Q What was the main incentive for you and Barbara to
23 sign that contract?

24 A The profit and loss statement was the number one. It
25 looked like a very profitable business. It looked

1 like something that we could take, operate, keep our
2 jobs and make money on.

3 Q Did you keep your jobs?

4 A No.

5 Q How soon did you have to give them up?

6 A Barbara within, in less than a month. As I said, that
7 place needed hands-on supervision. I quit my job in
8 Greenwood June of '08. It was too much for Barbara to
9 handle by herself and we had so much money tied up in
10 it, economically, it was better to apply my energy
11 there than to continue working in Greenwood.

12 Q So, why couldn't you get out during the first three
13 months?

14 A Within the first three months, we already had
15 \$27,000.00 tied up in it and we needed to protect our
16 investment. We already had loans to pay and I had
17 already cashed in a 401(k).

18 Q Had you already signed the new lease?

19 A We had already signed a new lease by that time, yes.

20 Q Were you obligated under that lease?

21 A Yes.

22 Q How many years?

23 A For five years.

24 Q Unfortunately, you were in and couldn't get out.

25 A That's a good way to put it.

1 Q Answer any questions Mr. Wise may have.

2 CROSS EXAMINATION - MR. WISE

3 Q Mr. Rife, when did you first speak to the landlord
4 about the lease on this property?

5 A Actually my wife, Barbara, handled the negotiations on
6 the lease. I was working in Greenwood.

7 Q Okay. And that was actually done before y'all ever
8 signed the contract.

9 A No.

10 Q You don't think it was?

11 A No.

12 Q You knew there was a year and something left on the
13 lease.

14 A That's what we were told.

15 Q Correct? Isn't that correct?

16 A Yes.

17 Q And you then wanted to go and spend \$70,000.00 on
18 something that you didn't know if you were going to be
19 able to renew the lease?

20 A Well, the contract stated the lease was assumable and
21 we believed it.

22 Q The contract does not state that, sir. I'll hand you
23 the contract, Plaintiff's Exhibit #1, and show me in
24 there where it says anything about the lease.

25 A "In the event the purchasers renegotiate the lease

1 with the landlord." It sounds like that would be an
2 option.

3 Q "In the event the purchasers renegotiate the lease."
4 Correct? That's all it says.

5 A Correct.

6 Q All right. It doesn't say it's guaranteed to be
7 assumable. Does it?

8 A Evidently, I was just told that.

9 Q Okay. So, you knew it had a year and a few months to
10 go on the lease. Correct?

11 A Correct.

12 Q You knew you were going to have to renegotiate the
13 lease.

14 A Correct.

15 Q Because that's in the agreement. Correct? Is that
16 correct?

17 A Yes.

18 Q All right. And you knew you were going to spend about
19 \$70,000.00. Correct?

20 A Yes.

21 Q And you're telling us that you were going to spend
22 \$70,000.00 not knowing for sure if you could even
23 renew the lease after a year and a few months?

24 A Again, we were given the impression that the lease was
25 assumable and could be renewed.

1 Q Did you even ask to look at the lease?

2 A I don't recall that I did.

3 Q So, you don't know what the lease said. Correct?

4 A Correct.

5 Q Now, did you meet with the landlord or with Ms. Martin
6 or your wife did?

7 A Barbara did.

8 Q So, you never met the landlord before this?

9 A Not to negotiate the lease. No.

10 Q All right. When did you finally meet with the
11 landlord?

12 A During the renegotiation of the lease, we were told --
13 we got a list of requirements that had to be fulfilled
14 or he would not renew the lease.

15 Q All right.

16 A Electrical work, some panic bars had to be put on
17 doors and that was probably the first time I would
18 have had a conversation with him.

19 Q Now, you had been going in and out of this bar for a
20 year-and-a-half, two years?

21 A Approximately.

22 Q Correct?

23 A Uh-huh.

24 Q And you had gotten to know her son pretty well?

25 A Yes.

1 Q Was he there on a regular basis?

2 A Yes.

3 Q Okay. And he was the day-to-day manager of it?

4 A Yes.

5 Q All right. And it wouldn't operate without his being
6 there?

7 A It did at times.

8 Q At times, but basically, he had to be there most of
9 the time to make it operate properly?

10 A Two instances, I think, when he was away for several
11 months.

12 Q Correct. But most of the time he had to be there.
13 Correct?

14 A Yes.

15 Q And he, after he died, you knew he wasn't going to be
16 there.

17 A Correct.

18 Q All right. Who were you going to get to do the day-
19 to-day operations that he did?

20 A The same staff that she had had in place for the last
21 four months that were managing it.

22 Q But they weren't doing it when he was there.

23 A They were doing quite a bit.

24 Q They were doing a lot, but not all of it.

25 A Right.

1 Q Someone was there to manage them.

2 A Yes.

3 Q Who were you going to get to manage them?

4 A The staff that was there that had been running the
5 operation for the previous four months without Ms.
6 Martin having to be on site. We were told they were
7 doing a good job and that we were not going to have to
8 worry with it.

9 Q Ms. Martin had her son there to run it on the day-to-
10 day basis.

11 A Until his death, yes.

12 Q Correct. And you know that.

13 A Yes.

14 Q And you knew that before you entered this contract.
15 Right?

16 A Yes.

17 Q And you knew that her son was necessary to be there to
18 properly manage people, even regardless of how well
19 qualified they are.

20 A I don't know that he had to be there.

21 Q You didn't know that? All right. Did you sit down
22 and talk to the staff before you signed this contract
23 and find out if they could run it without your having
24 to be there?

25 A We had two conversations, I believe, with the woman

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1 that was the main...

2 Q And who was that?

3 A Bradley Broome.

4 Q All right. Now, before you bought this, signed this
5 contract, you knew this building was being leased, was
6 not owned by her. Correct?

7 A Correct.

8 Q Did you walk through the building and look at it?

9 A Briefly, yes.

10 Q All right. Did you walk into the coolers?

11 A I did not walk into the walk-in cooler. No.

12 Q Did you check the plumbing?

13 A Looked it over.

14 Q All right. Did you see if the plumbing worked?

15 A Not all of it, no.

16 Q Did you, at all -- when you say you checked the
17 cooler, did you walk into the walk-in coolers?

18 A I did not.

19 Q Did you check the temperature of the walk-in coolers?

20 A No.

21 Q Anyone prevent you from looking at the coolers?

22 A No.

23 Q Anyone prevent you from doing any inspection of this
24 building?

25 A No.

- 1 Q In fact, y'all met there and looked at the different
2 items that were there. Correct?
- 3 A Uh-huh.
- 4 Q Isn't that correct?
- 5 A Yes, sir.
- 6 Q All right. And, in fact, the pool tables aren't
7 mentioned in the lease either. Are they?
- 8 A It says tables and it was, again, told to me that the
9 pool tables would be a part of the deal.
- 10 Q All right. Pool tables are not mentioned in the
11 written lease. Are they?
- 12 A No.
- 13 Q Just tables. Correct?
- 14 A Correct.
- 15 Q All right. So, no one ever prevented you from looking
16 at anything in that property?
- 17 A No.
- 18 Q You had plenty of time to look at it?
- 19 A We didn't have much time. It was two weeks from the
20 profit and loss until the time we signed the contract.
- 21 Q So, it was two weeks from the time of the profit and
22 loss, that you got those statements, until the time
23 you signed it.
- 24 A Uh-huh.
- 25 Q Correct?

1 A Yes.

2 Q So, you had two weeks to look at them as much as you
3 wanted to. Correct?

4 A As much as was possible.

5 Q And you could have said, "I can't sign the lease now.
6 I need to look at the property further." Couldn't you?

7 A I suppose.

8 Q And either she would have said, "I'm not going to sell
9 it to you," or "You can look at it," one of the two.
10 Correct?

11 A Yes.

12 Q Now, if you look at the profit and loss statements for
13 Simon's of Anderson, which were given to you on the
14 18th of September, 2007. All right? They show a
15 gross income of about how much per month for the first
16 eight months of 2007?

17 A Gross per month?

18 Q For the first eight months, what's the total gross?

19 A Eighty-five thousand ---

20 Q Eighty-five thousand.

21 A --- one hundred seven.

22 Q So, a little over \$10,000.00 a month?

23 A That's correct.

24 Q Correct. And what did you gross in the first three
25 months you opened?

1 A I believe around thirty thousand thirty-two.

2 Q Excuse me. Is that correct?

3 A Thirty thousand two hundred and twenty-three.

4 Q So, the gross was about the same for the last three -
5 months of the year as they were for the first three
6 months of the year.

7 A That's correct.

8 Q So, she didn't misrepresent to you any of the gross
9 income.

10 A No.

11 Q All right. You had some additional expenses because
12 it was a new business.

13 A We, obviously, were going to have some incidentals.
14 We knew we were going to be buying a new liquor
15 license. We knew we would be putting an ad in the
16 paper to certify that we were buying a liquor license.
17 There was always going to be some expense.

18 Q So, Ms. Martin did not misrepresent to you the gross
19 income of that business?

20 A No.

21 Q Okay. That was ---

22 A Just the net.

23 Q Just the net. And did she -- well, what expenses did
24 she not put on there that she incurred?

25 A She shows for an entire year paying rent of

1 \$16,800.00, which is approximately fifteen hundred a
2 month. The actual lease was \$2300.00 and some
3 dollars.

4 Q When did you see that? When did you know what the
5 lease was?

6 A When we were in the first meeting, I believe, with the
7 landlord.

8 Q All right. Did you ask her before you signed the
9 contract, "How much is the monthly rent"?

10 A I don't recall. But I know I looked at this and came
11 to the conclusion it was fifteen hundred a month.

12 Q Okay. Now, what you bought in the agreement was,
13 basically, the equipment. Correct?

14 A Sure.

15 Q Isn't that correct?

16 A Yes.

17 Q And did you have any concern as to whether or not Ms.
18 Martin owned the equipment when you signed the
19 agreement?

20 A No.

21 Q All right. And one of the reasons you didn't have any
22 concern is that she agreed, in that agreement, to hold
23 you harmless if any third person came in and claimed
24 that property.

25 A That's true.

1 Q Correct?

2 A Yes.

3 Q So, if any supplier came in and said, this is mine and
4 she couldn't come in and prove it's hers, you'd get a
5 discount for that or get that money back?

6 A Correct.

7 Q And that was part of the agreement?

8 A Right.

9 Q All right. Now, you say that someone came in and
10 claimed the pool tables.

11 A Uh-huh.

12 Q And you had to pay \$1500.00 to keep them in the place?

13 A Right.

14 Q All right. Have you got any written statement from
15 that person that would prove that they own those pool
16 tables?

17 A You would probably have to -- Barbara's the one that
18 dealt with them both times they came in. I was in
19 Greenwood.

20 Q So, you don't know of any document they've got or they
21 came in and said, "Here's our, here's where we bought
22 the tables. They're ours."

23 A I believe there were stickers, state licenses on them
24 and they had their name on them.

25 Q Okay. But you could observe that before you bought

1 them?

2 A Yes.

3 Q Okay. Now ---

4 A May I just say it was kind of a non-issue, because the
5 pool tables didn't have their coin mechanisms in them.

6 Q Didn't have what?

7 A They didn't have the coin mechanisms.

8 Q So, you had to get a new pool table?

9 A So actually a -- pardon?

10 Q You had to get a new pool table?

11 A No. I'm just saying there's no reason to have a
12 license on the machines, so I wasn't really looking
13 for one.

14 Q Okay. And the other item you said that someone came
15 in and claimed was Carolina Fire and Burglar Alarm
16 Company?

17 A Yes.

18 Q All right. And in the process of looking through
19 items, I believe you found this from Carolina Burglar
20 and Fire Alarm Company where Thomas Kleinheimer -- and
21 that's her son, ---

22 A Kleinmeir.

23 Q --- had purchased that.

24 A This was not a purchase. This was a fee for
25 installation.

1 Q What does it say on the...

2 MR. WISE: Let me introduce it. I'd like to introduce
3 this as a Plaintiff's exhibit.

4 THE COURT: Any objection?

5 MR. MULLINAX: No objection.

6 THE COURT: Without objection.

7 (WHEREUPON, a Carolina Burglar and Fire Alarm
8 invoice is entered into evidence as Plaintiff's Exhibit #4,
9 without objection)

10 Q On the lower lefthand corner, what does it say? Right
11 at fifty-two hundred dollars?

12 A That's correct.

13 Q Cash purchase price?

14 A Correct.

15 Q All right. Did you have any written documentation
16 from the burglar alarm company that this was, in fact,
17 not purchased? Did they ever write you and tell you
18 that that was in error, that it was a lease agreement?

19 A We got a bill from there every month or every three
20 months for the lease.

21 Q Well, they also do monitoring. Don't they?

22 A But that's not a lease. That's a service.

23 Q They also do monitoring. Don't they?

24 A Yes.

25 Q And you get a bill for that. Correct?

1 A They do not monitor the security cameras. We did.

2 Q All right.

3 A They monitored -- what they monitor is the alarm, the
4 fire alarm and the burglar alarm. Totally separate.

5 Q And where is the copy of the lease, then, that you say
6 you got, as opposed to a monitoring bill?

7 A I'm not sure I understand your question.

8 Q That document in front of you has written down on it,
9 purchased for \$5200.00. Correct?

10 A Yes.

11 Q You say that it wasn't purchased. Correct?

12 A That's correct.

13 Q You say you got a notice of a lease agreement.
14 Correct?

15 A That's what he told us. Yes. We've got bills.

16 Q All right. And have you got a copy of a bill from the
17 burglar alarm company that says this was a lease
18 agreement and not a monitoring agreement?

19 A I'm sure we do and we have checks that we wrote to
20 them as well.

21 Q Okay. But you're sure you've got one somewhere?

22 A Yes.

23 Q Now, in the years since you've had this equipment that
24 you purchased from Ms. Martin, outside of those two
25 items, no one has ever come in and claimed any of the

1 property. Correct?

2 A Correct. The neon signs, we knew in advance, belonged
3 to the beer companies and that's...

4 Q - And that's specifically mentioned in the agreement.

5 A That's correct.

6 Q All right. But no one has come in to claim the
7 property?

8 A No.

9 Q All right. And, in fact, you have no reason to
10 believe -- to not believe Ms. Martin when she says
11 that she paid for that equipment and put it in there?

12 A I took her word for it, yes.

13 Q Correct. All right. And no one else has come in and
14 said, "No, you're wrong. It's mine."

15 A No.

16 Q Okay. So, you don't dispute if or whether or not she
17 had the right to sell it?

18 A Pardon?

19 Q Your dispute is not whether or not she had the right
20 to sell it?

21 A My main dispute is the condition.

22 Q Correct. Your real problem is the condition of the
23 building. Correct?

24 A Yes, sir.

25 Q Not so much -- Well, and the condition of some of the

1 items she sold you, such as the cooler. Correct?

2 A Correct.

3 Q And all of those conditions were readily discoverable
4 by you before you signed the contract?

5 A I wouldn't have had any reason to remove compressors,
6 to remove coils, to pull -- nor am I certified to do
7 that.

8 Q Right. Well, but you would have had a reason to turn
9 them on to see if they worked well. Correct?

10 A Because the -- Yes.

11 Q And you could have turned on the cooler to see if it
12 works well.

13 A Yes.

14 Q Correct?

15 A Sure.

16 Q All right. Now, you did some work around there. In
17 fact, you built a fence, I believe, around a patio
18 area?

19 A Uh-huh.

20 Q And out on that patio area, when was that fence built?

21 A I believe it would have been the summer of '06.

22 Q The summer of '06. All right. And one of the reasons
23 he had a fence put around the patio area was because
24 he was going to put a cooler out there.

25 A The cooler was already there.

- 1 Q It was already there?
- 2 A Yeah.
- 3 Q But you put a fence around it?
- 4 A Yeah. There had already been a fence. It had just
5 been...
- 6 Q All right. Had the cooler recently been put there?
- 7 A I don't know.
- 8 Q You don't know how long it had been there?
- 9 A It had been there as long as I came to the bar.
- 10 Q All right. Now, you had had no experience operating a
11 bar before. Correct?
- 12 A That's not correct.
- 13 Q. Well, very little experience?
- 14 A I owned a bar in Oregon.
- 15 Q In Oregon?
- 16 A Yes, sir.
- 17 Q That you managed yourself?
- 18 A I did.
- 19 Q And you were there full-time?
- 20 A Yes.
- 21 Q Okay. So, the only experience you had in running a
22 bar was as someone who's actually there doing a hands-
23 on job. Correct?
- 24 A Yes.
- 25 Q All right. And you knew that her son had to be there

1 at least a good part of the time to manage the bar?

2 A I knew that he was there.

3 Q And I assume you observed him doing chores that would
4 include managing the bar?

5 A Sure.

6 Q And you did not plan on hiring anybody to take his
7 place?

8 A No.

9 Q All right. Now, the times you were in the bar, you
10 would come in kind of early and then leave about seven
11 o'clock or so, normally?

12 A I usually got off work at four and I would usually be
13 gone by the end of happy hour. It kind of coincided
14 with Barbara's schedule.

15 Q And is it true that a younger crowd came in later?

16 A We later learned, yes, that that was the case.

17 Q And in your experience in running a bar, in Oregon,
18 was it?

19 A Uh-huh.

20 Q Who manages the bar makes a lot of difference in the
21 patrons, too. Doesn't it?

22 A Sure.

23 Q Because if he's a personable, likeable guy, the
24 patrons tend to come in because they like him and
25 Tommy had a lot of friends in Anderson. Didn't he?

- 1 A He did.
- 2 Q Who came in.
- 3 A Uh-huh.
- 4 Q Correct?
- 5 A That's correct.
- 6 Q And did those -- I mean, did you expect any drop-off
- 7 in patronage after he died because he wouldn't be
- 8 there and people who knew him wouldn't come back?
- 9 A That's normal to expect, I guess.
- 10 Q That was something you expected?
- 11 A Yeah.
- 12 Q And in some respect, in fact, you've kind of changed
- 13 the format of the bar since then. Haven't you?
- 14 A Yes.
- 15 Q It's an older crowd?
- 16 A It is.
- 17 Q Which is not bad, by the way.
- 18 A Yeah. One of the things we noticed right off the bat
- 19 was that it was a predominately early to mid-twenties,
- 20 late-night, younger-working clientele.
- 21 Q And that was Tommy's age group.
- 22 A Yes.
- 23 Q So it kind of made sense.
- 24 A Uh-huh.
- 25 Q All right. So, you've now changed over to an older

1 crowd.

2 A A little older but...

3 Q Correct?

4 A Correct.

5 Q All right. And you don't bring in the same bands that
6 he had.

7 A We don't bring in bands at all.

8 Q All right. And he had bands when he was there?

9 A He did.

10 Q All right. So, you stopped the bands?

11 A We did.

12 Q All right. He served more food than you do.

13 A I don't think that's true.

14 Q All right. You don't know one way or the other?

15 A Huh?

16 Q You don't think that's true?

17 A I don't.

18 Q You leased the food out to a third person?

19 A We did up until two months ago.

20 Q And you're operating it now?

21 A We are.

22 Q And you're still operating this bar?

23 A Yes.

24 Q In fact, I believe you leased an area upstairs for a
25 party shop?

1 A Not a party shop. We leased it for an event room.

2 Q Beg your pardon?

3 A An event room so if somebody was having, say, a
4 birthday party.

5 Q All right. If somebody wanted to have a birthday
6 party, class reunion, stuff like that?

7 A Right.

8 Q You use your bar downstairs to advertise or promote
9 the area you rented upstairs?

10 A Yes.

11 Q In an effort to increase business and so forth.

12 A Sure.

13 Q So. you've been profitable enough, at least lately, to
14 expand a little bit.

15 A Can I tell you the history of that?

16 Q You may.

17 A Okay. The landlord approached us. The room upstairs
18 had been a massage parlor that was closed by the
19 Sheriff's office. They had been unable to rent it for
20 at least three years, that I knew of, at the time.
21 They asked us if we would be willing to do a
22 renovation and exchange that renovation for rent. We
23 did that. We operated the bar. The room up there was
24 under a very friendly rental agreement that started at
25 zero. It was not making any money or showing any

1 signs of making any money, so we have now cancelled
2 that lease. It was a month-to-month rental.

3 Q So, you've cancelled it now?

4 A We cancelled it. It's been gone for months.

5 Q It's gone now? All right. All right. I'll hand you
6 Defendant's #5. If you would, please, look at the
7 second page. And there on the second page about
8 half-way down, there's a list of initial cleanup,
9 repair and labor, painting, repairs. You see those
10 items?

11 A Uh-huh.

12 Q From 2007?

13 A Yes, sir.

14 Q What exactly were those for?

15 A I would have to look at the receipts. And these
16 numbers coincide with copies of checks that are in a
17 different folder. I believe you have a copy of them.

18 Q No, I don't, of those. That's why I was asking the
19 question.

20 A Okay.

21 Q But when were those done?

22 A Within the first three months.

23 Q Okay. And that was some of the -- when you said it
24 was in -- the words you used were, "It was in complete
25 disrepair".

1 A Yes.

2 Q And that was some of the stuff you did to bring it up
3 to snuff?

4 A Correct.

5 Q But none of those repairs were hidden in any way by
6 Ms. Martin. Were they?

7 A No.

8 Q They were observable if somebody went and looked at
9 them?

10 A Every time we took down any advertising on a metal
11 sign, we found a hole in the wall behind it. Almost
12 every sign up there, when it came down, we had to
13 repair drywall and paint it.

14 Q All right.

15 A So, it wasn't ---

16 Q Well, I mean, you could have moved the signs and
17 looked if you wanted to?

18 A I could have taken a screwdriver when I walked through
19 and taken the signs down and looked at it. Sure.

20 Q And so that was discoverable within the first -- you
21 discovered those within the first three months?

22 A If you consider that discoverable.

23 Q Right. I do.

24 A I don't.

25 Q Well, let me re-phrase my question then so we'll

1 agree. You did those repairs within the first three
2 months?

3 A Yes, we did.

4 Q Okay. All right. And you say all of that totaled
5 about \$43,027.00?

6 A I'm not sure. What was the number again?

7 Q The total you have for all those repairs is
8 \$43,027.89.

9 A That also includes the amount paid to Ms. Martin?

10 Q Correct.

11 A Okay.

12 Q So, if all those repairs had been made at the time you
13 signed the contract, you would have gotten what you
14 thought you bargained for?

15 A I, again, would have to refer back to the checks and
16 what ---

17 Q Well, but all these repairs that you say you made
18 would have -- you wouldn't have had to make them and
19 it would have been in pristine condition. Correct?

20 A Correct.

21 Q The equipment would have been pristine. Correct?

22 A It would have been in working order.

23 Q It would have been in good working order, not
24 necessarily pristine. The walls and stuff would have
25 been pristine and the plumbing would have been

1 pristine and the coolers and stuff would have been in
2 good working order?

3 A It wouldn't have all had to be repaired or replaced.

4 -Q And you would have thought then that this is pretty
5 well what you had bargained for?

6 A After we spent \$45,000.00, ---

7 Q Right.

8 A --- yeah.

9 -Q I mean, it would have brought it up to what you
10 expected to buy or what you were expecting to get.
11 Correct?

12 A Yes.

13 Q And you were not -- You were expecting, I assume, to
14 have increased rent after the first year-and-a-half,
15 year and a few months?

16 Q I wasn't sure but what we might get a better deal
17 given the condition of the property.

18 Q But he turned out to be pretty hard to work with.
19 Correct?

20 A He was a good negotiator.

21 Q Okay. But it was a hope that you'd get a better deal,
22 but you figured you'd have to pay a little more?

23 A It was possible.

24 Q It didn't surprise you?

25 A No.

1 Q Okay. So, was the vast majority of these done on this
2 \$43,000.00 list within the first six months of your
3 taking over the business?

4 A Yes.

5 Q And on August the 31st, after you had done all these
6 repairs, you paid her an additional three thousand,
7 you paid her an additional \$3,142.00?

8 A Most of the repairs were done and, yes, we did.

9 Q All right. And that was after you'd run across
10 everything that you thought in the world could be
11 wrong with this deal?

12 A I'm sure there were some things after that, that we
13 were still discovering.

14 Q Well, what were they?

15 A I can't think off-hand, just ---

16 Q But pretty well, ninety percent of everything you
17 thought was wrong with this deal was done, you noticed
18 before August the 31st of 2008?

19 A The majority.

20 Q Well, let me see an exhibit here. Exhibit #2 is a
21 bunch of checks that have been written to Ms. Martin
22 and for repairs.

23 A Uh-huh.

24 Q Correct?

25 A That's correct. That's what I was referring to a few

1 minutes ago.

2 Q Okay. Could you tell us, if you look through them
3 please, how many of those checks were written after
4 you made the payment of \$3142.00 to Ms. Martin?

5 A It looks like two.

6 Q Two. And they total about \$200.00 to \$300.00?

7 A Stewart Refrigeration, one eighty; Stewart
8 Refrigeration, four hundred thirty.

9 Q All right. That's correct, about three hundred and
10 something, a little over \$300.00?

11 A It would be just a little over six hundred; four
12 hundred thirty and one hundred seventy-nine.

13 Q Okay. Yeah. My math is bad. Thank you. Certainly
14 less than ten percent of the total amount that you
15 expended on repairs?

16 A (Nods head)

17 Q Okay. Now, you noticed that it was in a complete
18 state of disrepair pretty quickly when you went into
19 it?

20 A Yes, sir.

21 Q Within the first sixty days?

22 A Sixty to ninety days.

23 Q All right. You knew ---

24 A Well, I wasn't there everyday. Barbara was there
25 everyday. I was still working in Greenwood. There

1 were a lot of things that I was only told by her over
2 the phone. My usual advice was, you have to get it
3 fixed.

4 Q And you had not -- and as you recall it, you didn't
5 renegotiate the lease until toward the end of the
6 year?

7 A I believe that's correct. Barbara, I'm sure, can tell
8 you.

9 Q Okay. Barbara can tell us more on that. But at the
10 time you discovered that this business was in a
11 complete state of disrepair, you had only paid Ms.
12 Martin \$10,350.00. Is that correct?

13 A Correct.

14 Q And, yet, you chose at that point to continue to pay
15 her and not notify her that you were going to, that
16 the contract's no good, that you needed to
17 re-negotiate it?

18 A We were certainly hoping to negotiate and have a
19 discussion with her.

20 Q Did you ever write her?

21 A No.

22 Q Never wrote her. Never wrote her and listed your
23 concerns with the deal.

24 A With our previous relationship, I really thought we
25 could sit down and talk and come to an understanding.

1 Q Well, when you found that you were not able to talk
2 and sit down and come to an understanding, did you
3 ever write her?

4 A No.

5 Q You just didn't do anything?

6 A Correct.

7 Q All right.

8 MR. WISE: Thank you.

9 THE COURT: Anything on redirect?

10 REDIRECT EXAMINATION - MR. MULLINAX

11 Q In addition to the tangible property that was in the
12 building, what was the most important part of why you
13 and Barbara wanted to buy this business?

14 A The potential on the profit and loss statements, the
15 income statement from them that showed that we could
16 actually make a living off of this business.

17 Q Okay. And it showed you that it was making \$50,000.00
18 a year.

19 A Correct.

20 Q And up until the month before you bought it, it had
21 made \$38,000.00 up to that point in net profit. Is
22 that correct?

23 A That's correct.

24 MR. MULLINAX: That's all I have.

25 THE COURT: All right. Thank you, sir. You can step

1 down. Do you have one more witness?

2 MR. MULLINAX: Yes, sir.

3 THE COURT: How long do you think that witness will
4 take?

5 MR. MULLINAX: She'll take about 20 minutes, maybe.

6 THE COURT: Ladies and gentlemen, I'm going to give
7 you about five minutes to stand up and go to the restroom.
8 We'll come back in and we'll listen to one more witness for
9 twenty minutes and then we'll break for the day.

10 (Jury out at 3:50 p.m.)

11 THE COURT: All right. Y'all take a quick break.

12 (Brief Break)

13 THE COURT: You can bring them back in.

14 (Jury in at 4:06 p.m.)

15 THE COURT: You can call your next witness.

16 MR. MULLINAX: I call Barbara Ann Doomey.

17 (After being duly sworn by the Clerk of Court,

18 **BARBARA ANN DOOMEY**, testified as follows:)

19 CLERK OF COURT: Ms. Doomey, if you would give us your
20 full name and spell your last name for the record.

21 MS. DOOMEY: Barbara Ann Doomey. D-O-O-M-E-Y.

22 CLERK OF COURT: Thank you, ma'am.

23 THE COURT: Yes, sir.

24 MR. MULLINAX: May it please the Court.

25 THE COURT: Yes, sir.

DIRECT EXAMINATION

BY MR. MULLINAX:

Q Ms. Doomey, as I said to John, I'm going to try to speak up so you can hear me and I want you to try to speak up so I can hear you.

A Okay.

Q Are you comfortable?

A Uh-huh.

Q That microphone's on. It will reflect your voice.

A You want me to speak in that or...

Q If you would.

A Okay.

Q You're married to John.

A Yes.

Q And you live in Anderson.

A Yes.

Q Can you tell us a little bit about your educational background and where you're originally from.

A I'm from California, originally, and I graduated from high school, had a couple of years of college, a lot of business classes. I never got a degree, though.

Q In 2007, were you employed?

A Yes.

Q Where were you employed?

A At Sears.

SHOU MARTIN VERSUS WILMER RIFE AND BARBARA ANN DOOMEY

1 Q And what did you do?

2 A I had been in commission sales for probably fifteen
3 years. I was selling appliances at Sears.

4 Q And before this contract was signed in October of
5 2007, did you have any prior dealings or relationship
6 with Ms. Martin or her son, Tommy?

7 A I really didn't. I met Tommy one time and I never met
8 his mother.

9 Q Okay. And your husband came home one day, some time
10 in September of 2007 and said, "Hey, I've got a
11 proposition about buying a bar in Anderson."

12 A Correct.

13 Q What did you say?

14 A Well, actually, we met as bartenders at a Dinner Club
15 in San Diego, California. So, we bartended and we
16 liked the bartending business. We had looked just a
17 little bit around town to see, because several places
18 came up for sale in the time that we've been there,
19 but we really weren't in any position. And then when
20 he called about Simon's, he asked what I thought and I
21 said, "Well, let's think about it." Because it is
22 something that we thought we'd like to do.

23 Q Okay. And as a result of that, did you ask him to get
24 any more information for you?

25 A I believe when he came home that night we talked about

1 it a little bit so he could give me a little more
 2 insight about it, because I wasn't -- I didn't go to
 3 Simon's but maybe once or twice. So, he told me what
 4 he thought about it and how he felt. I knew he liked
 5 Tommy and he was really saddened by his death and I
 6 think we had heard that the bar might go up for sale
 7 because it was very difficult, I think, to come from
 8 Greenwood to check on the operations on a regular
 9 basis and then I believe with his dealings with Ms.
 10 Martin is when he found out that she was, in fact,
 11 going to sell the bar and that's when he mentioned it
 12 to me. It was a lot for us to think about because it
 13 hadn't been a definite plan. It was, owning a bar was
 14 something we thought we might like to do.

15 Q And were you interested in the finances of the bar?

16 A We definitely wanted to see a profit and loss.

17 Q And did you ask John to get you one?

18 A Yes, and he did.

19 Q That's Defendant's Exhibit #1, which is the profit and
 20 loss that we've already talked about.

21 A I've got it.

22 Q You have a copy.

23 A Yes.

24 Q After you saw that, how did that impact on your
 25 decision to enter into that contract?

1 A Well, I felt that eventually I could probably work
2 there and make as much money as I was making at Sears,
3 showing how much the profit and loss was saying it
4 made and that made it very possible for us to do that.
5 We didn't know how soon I would be doing that, but we
6 thought that was something I could do eventually,
7 because of how much money it showed it made.

8 Q And after you saw that then, did you and John meet
9 with Ms. Martin?

10 A I'm trying to think, because we talked about it off-
11 and-on for probably several different occasions and we
12 might have even gone over to walk around the bar and
13 look at it, because I had not been there that often,
14 and see what kind of equipment was in there, and we
15 did. We walked around and saw the pool tables, we saw
16 a shuffle board, we saw the coolers. The girls were
17 serving beer from the coolers. So, we really had no
18 reason to think nothing wasn't working very well, but
19 we just did a walk-around and looked as best as you
20 can look as just, you know, observing a place and then
21 I think we made the decision that it was something we
22 could do.

23 Q Did you talk with Ms. Martin about the operation of
24 the bar?

25 A I believe she came to Anderson one time and we met and

1 went to Chili's and that's when she assured us that
 2 the business had been running very well, even after
 3 Tommy was gone with her just checking on it, because
 4 she had two co-managers that kind of ran everything
 5 and they did a really good job and she encouraged us
 6 to keep them, because, actually, to keep the staff
 7 because they were so good. So, that was very
 8 reassuring, too, because I knew I had a lot to learn,
 9 plus keep my job and John keep his job. So, we
 10 thought that would even make it more desirable, that
 11 we had somebody that was running it really well
 12 already, that I could learn from.

13 Q And that information was given to you by Ms. Martin?

14 A It was. She said it was -- we knew that she would
 15 come to town several times a week. I can't remember
 16 if it was because John had gone in there. No, because
 17 he wasn't going there. He was coming up from
 18 Greenwood. Maybe it was the day that we went in
 19 there. I can't remember.

20 Q You didn't have a relationship with Ms. Martin or her
 21 son, but John did.

22 A Right. I didn't know them. I just met Tommy one
 23 time.

24 Q Did you get a lawyer to help you with the contract
 25 that you signed?

1 A We didn't.

2 Q When you went to sign the contract, you went to
3 Greenwood?

4 A John was working in Greenwood and I drove out there
5 and we met, I think, on his lunch break.

6 Q Okay. Who was present at the time the contract was
7 signed?

8 A I can just remember John and Shou, Ms. Martin, and
9 myself and two ladies, I think they were his
10 secretaries, sitting across from us. I never met Mr.
11 Wise until this, at this time.

12 Q Do you have a copy of the contract that's marked as
13 Plaintiff's Exhibit #1?

14 A I do.

15 Q The first paragraph of that contract -- is that the
16 contract you signed?

17 A This is the contract that we signed. Uh-huh.

18 Q And you and John and Ms. Martin were present when it
19 was signed?

20 A Yes, we were.

21 Q Anybody ask anybody any questions at that time?

22 A I believe the ladies kind of slid the contracts over
23 to us.

24 Q Did Ms. Martin or you or John talk to each other about
25 anything?

1 A I don't remember talking about anything.

2 Q But you read the contract over?

3 A Yes, we did.

4 Q Did Ms. Martin appear to read the contract over?

5 A Yes, she did.

6 Q Had you ever seen it before that day?

7 A No.

8 Q The first paragraph says, "Seller agrees to sell to
9 purchasers all the contents, all the contents, and
10 property of the club known as Simon's of Anderson."

11 A Correct.

12 Q Is that correct?

13 A Yes.

14 Q All right. You had been in the club. What did the
15 contents consist of that you had seen?

16 A We saw tables and chairs, bar stools. The bars are
17 permanent fixtures, they're not removable or anything.
18 A draft beer cooler, a canned beer cooler and a glass
19 door cooler, three pool tables, shuffle board and in
20 the kitchen there was a household freezer, a household
21 refrigerator, a commercial stove, three fryers, two
22 that didn't work, and kind of a long counter of
23 freezer and refrigerator that we had a lot of problems
24 with, and that was commercial.

25 Q What else was in the building that consisted of the

1 contents? How about a security system, was that in
2 the building?

3 A There was computers. There was two computers -- well,
4 there was three computers because one was a security
5 system and a monitor and lots of cameras. And two
6 cash registers, some patio furniture. There was an
7 overhead camera that would project TVs and that light
8 bulb was like a three hundred dollar light bulb. It
9 went out shortly after we made the purchase. The --
10 and everything looked like it was functioning. We
11 went into the office. We saw the cameras for the
12 security. We thought that was a really good idea, and
13 when we were there, which I think we went there on two
14 different occasions, everything appeared to be working
15 because the girls were using the registers, the
16 coolers. There wasn't any reason for us to think they
17 weren't.

18 Q The pool tables were in the building?

19 A The pool tables were there. They didn't have the --
20 there's a big wooden thing that money goes in. None
21 of those were in there. So, apparently with pool
22 tables, if you're charging for them, they have to be
23 licensed and I guess they weren't charging for them
24 because there wasn't any place to put coins. So, I
25 don't think there was a licensing issue with those.

1 We figured they were hers.

2 Q "All the contents" meant all the contents?

3 A Everything that was there. We weren't told anything
4 that was, anything else. The only thing that might
5 not have been, and she clearly said that there was
6 signs by Budweiser and Miller, neon signs, those signs
7 didn't belong, they still belonged to those people,
8 the distributors.

9 Q They just give you those for advertising?

10 A Right.

11 Q Paragraph four says, "The seller represents to the
12 purchasers that she is the rightful owner of all of
13 the inventory set forth in the agreement and agrees to
14 hold the purchaser harmless, et cetera." So, you
15 understood she owned it all?

16 A We thought she owned it all.

17 Q At that time, you didn't know what a non-profit
18 corporation was. Did you?

19 A Coming from California, I'd never heard of any such
20 thing in a bar, so it was pretty much news to me.

21 Q And in addition to the tangible property, paragraph
22 three provides purchaser agrees to pay the seller the
23 sum of \$10,000.00 down, which you paid that the day
24 that you signed it. Is that correct?

25 A Yes, we did.

1 Q And she says that she's selling all the inventory --
2 or the contract says, together with any good will for
3 Simon's of Anderson, Inc. That was a separate thing
4 you were getting for value. Is that correct?

5 A Right.

6 Q And did you relate that to the profit and loss
7 statement, Exhibit #1?

8 A What do you mean?

9 Q Was that a part of what you thought you were getting
10 instead of just the inventory?

11 A Yes. We figured part of what we were getting was what
12 business was already happening there.

13 Q You didn't have to start the business up from scratch.
14 Did you?

15 A No, we didn't.

16 Q Did that appeal to you?

17 A It did, yes.

18 Q Without knowing what you saw on that profit and loss
19 statement, would you have entered into that contract?

20 A The profit and loss statement looked really good to
21 us. Like I said, we thought I could probably do this
22 job, be a bartender and manager and make a decent
23 living. Is that what you mean?

24 Q Well, from what Ms. Martin told you, you didn't have
25 to quit your job. Did you?

1 A No. She said we could both keep our jobs because it
2 was doing that well.

3 Q Did you find out differently?

4 A Pretty quick we did. Yes.

5 Q When did you end up having to quit your job at Sears?

6 A Because of a couple of incidences in the first ten
7 days by personnel, I felt that I really needed to be
8 there on a regular basis and I think that was ten
9 days, maybe two weeks into it and that's based on my
10 experience as a bartender. I just saw things that I
11 didn't think was acceptable.

12 Q I'm sorry. I didn't hear you.

13 A I said, just from my experience as a bartender, I just
14 saw things I didn't feel were acceptable behavior by
15 people working or managing the place.

16 Q Once you signed this contract and began operating the
17 bar, did you then find out that you had to form a
18 non-profit corporation?

19 A Yes.

20 Q Be incorporated and operate the business in that
21 fashion?

22 A Well, what happened right after we paid \$10,000.00 and
23 signed this, I applied for a temporary license and
24 that's what you get when you first -- When you buy a
25 bar that is already up and running, you buy a

1 temporary license, which gives you time to have your
2 application approved, have your background checks
3 done, get your bylaws and who you're going to --
4 that's when I found out how the nonprofit works.
5 There's bylaws and then you have to name another
6 organization to receive any monies over and above what
7 you might make as profit in a private bar and then
8 there's got to be a newspaper article saying that
9 you're going to be doing this business and it runs for
10 three weeks. And then there's a sign put on the
11 outside of the building by South Carolina Law
12 Enforcement. That has to be up there fifteen days so
13 that if anybody objects to a business serving or
14 selling any kind of alcohol, which that already was
15 there so we didn't really think that would be a
16 problem, and it wasn't. And then at the end of that
17 fifteen days a SLED officer, who was Justin Cheeks at
18 the time, come to take the sign down and see if we had
19 any questions and I did have a lot of questions by
20 then because there was a lot of things that weren't
21 running well.

22 Q Were any of those things told to you by Ms. Martin
23 before you signed the contract?

24 A No.

25 Q On the lease that was, according to the contract, you

1 were to assume, paragraph two says, "Purchaser agrees
2 to assume the lease agreement with Tornado
3 Enterprises, LLP." What did Ms. Martin tell you about
4 that existing lease?

5 A She said she had a five-year lease and so she still
6 had a year and three months left and that she was
7 certain that we would be able to take that over
8 without any problem.

9 Q Did you understand how much the lease was, per month,
10 at that time?

11 A No, we didn't.

12 Q Did you later find out what it was?

13 A Yes.

14 Q And how much was it?

15 A It was twenty-eight twenty-five or twenty-eight
16 seventy-five, I think.

17 Q And when you went to assume that lease, were you able
18 to do that?

19 A He let us pay that until the end of the year and then
20 he wanted a new lease from us that went up \$250.00.

21 Q So, were you able to assume that lease at the same
22 price?

23 A No.

24 Q Beginning with January of '09, you had to pay how much
25 more per month?

1 A In '08 we started paying \$250.00 more a month and I
2 remember I met with Shou and Ingolf ---

3 Q I'm sorry. Who is Shou?

4 A I'm sorry. Ms. Martin. I've just known her as Shou.
5 And she got upset with him because he said that he was
6 going to increase it in January. And she said,
7 "You've got good tenants here. You shouldn't be doing
8 that." That was kind of out of ---

9 Q There was some testimony that John, or was asked of
10 John, some questions concerning the security system.

11 A Yes.

12 Q Did Shou own the security system?

13 A She told us she owned the security system.

14 Q Once you entered into operation of the business,
15 Plaintiff's Exhibit #3, do you have a copy of that?

16 A I don't.

17 Q Which is the Carolina Burglar Alarm Security System
18 Agreement. Did she, in fact, or did you, in fact, own
19 that security system?

20 A She told us we did, but we had to pay, it was actually
21 three months for \$270.00. And that was for the lease.
22 They didn't monitor anything. It wasn't like an
23 outside service that monitored those cameras. Just,
24 we did, and they recorded it.

25 Q Did Carolina Burglar Alarm come in and take out their

1 system?

2 A We told them we did not want to pay the lease because
3 she said we owned it. And they said, no, we own it.
4 And if you won't pay, we're taking it out and they
5 came in and got it.

6 Q All right. If you'll look at this exhibit, down on
7 the lower side. It says, cash purchase price,
8 \$5200.00. Per month for monitoring, zero.

9 A Correct.

10 Q On the right side it says, installation charge and it
11 has a figure written in, \$2400.00. Per month for
12 service and lease, \$900.00 -- I mean, \$90.00.

13 A Correct.

14 Q And that's what you were required to pay?

15 A That's correct.

16 Q So, it was a lease, no question.

17 A It was a lease. The service part is if something
18 broke down we could call them and they would take care
19 of it, because we were leasing. So, I did have to
20 call them a couple of times if a camera went out or
21 something, but that's the service that they provided.
22 They did not monitor anything.

23 Q So, they took out their system and you had to replace
24 it and you had to pay how much to do that?

25 A I can't remember. I know the price of the cameras

1 came down so we didn't pay \$5200.00, but we did spend
2 a couple thousand on cameras and John had to do all
3 the installation and pay somebody to help him install
4 them.

5 Q Now, I'm not going to go back over all of the
6 testimony about repairs and everything that had to be
7 done, but you heard John testify and everything was
8 put into evidence about what you paid Ms. Martin and
9 what you had to pay to operate the business. Tell me
10 how often you tried to contact and speak with her
11 about the fact that what she had told you in the
12 beginning was not true?

13 A I can't say for sure how many times. I know she
14 called us quite often and we would say we really need
15 to get together and talk. And a couple of times, she
16 came by, but I didn't have my paperwork ready. That
17 last time when she came by -- because I am now working
18 seven days a week, no less than ten hours a day.
19 Together, John and I are both working seven days a
20 week, to this day and just keeping the place running
21 well took all my energy. So, when I finally had a
22 chance to sit down and put the papers together -- I
23 knew I needed to put papers together, because I wanted
24 to show her the things that were not as she said they
25 were. So, I did have them all together one day and

1 she showed up, unannounced, and I said, good. I said,
 2 "Shou, let's go out on the patio. I really would like
 3 to sit and talk with you." And we did go out there.
 4 And we sat down for a few minutes and then I set the
 5 papers out in front of her and she said, "I don't want
 6 to talk about this." I said, "We have to talk about
 7 this. This is a real problem." She jumped up and
 8 said, "I do not want to talk about this." Before -- I
 9 think John was just coming through the outside patio
 10 doors and she bolted past him. He said, "What
 11 happened?" And I said, "She will not talk about the
 12 things she told us that were incorrect." And I had
 13 the documentation in front of me ready to sit and talk
 14 with her, because we thought we could. John had such
 15 a good relationship with her as a business person, we
 16 really thought this was something we could talk about
 17 and maybe re-negotiate, but she wasn't going to do it
 18 at all.

19 Q And was that encounter along or about August 31st of
 20 2008?

21 A It was around August. I don't remember the exact day.
 22 August or September.

23 Q You all made a cash payment to her of \$3142.00 on
 24 August the 31st and that's the last cash payment you
 25 made to her.

1 A That was.

2 Q Do you owe her any more money?

3 A We don't believe we owe her anything else.

4 Q And why did you pay her that last payment?

5 A We wanted to be -- we wanted to deal with this
6 honestly and we didn't want to take advantage of
7 anybody. So this is the last amount that we could
8 scrape together and we gave that to her and we still
9 wanted to talk, but she wouldn't talk and we never
10 heard from her again. We figured, maybe she realizes
11 that she did not sell us what she, what we thought we
12 were getting.

13 Q So, from August of 2008 when you tried to talk to her
14 and tried to explain things until she served you with
15 this lawsuit over two years later, you didn't hear a
16 word from her?

17 A Not a word.

18 Q And your take on that was what?

19 A We thought that she realized that we did not get what
20 we were told we were going to get and we had paperwork
21 to show it.

22 Q That's all I have. Answer any questions Mr. Wise may
23 have.

24 CROSS-EXAMINATION

25 BY MR. WISE

1 Q Ms. Doomey, you ran a bar for a while in California?

2 A I worked in a bar in California.

3 Q And you were kind of the manager or bartender or what?

4 A A bartender.

5 Q Okay. And y'all had coolers in that bar?

6 A We had -- pardon me. What?

7 Q You had coolers where you cool beer and stuff.

8 Correct?

9 A Yes.

10 Q And I assume you had some walk-in coolers, also?

11 A Yes, they were more involved with the kitchen, which
12 is upstairs.

13 Q But did you serve food in that bar?

14 A Yes.

15 Q So you knew from your bar experience that coolers are
16 an important part of a bar?

17 A Absolutely.

18 Q Is that correct?

19 A Yes.

20 Q And that if you're going to buy a bar, checking out
21 the coolers is a prudent thing to do.

22 A When you go into a bar and everything is operating and
23 working properly, to the eye, I think we were safe to
24 assume that everything was working. I mean, they had
25 beer in glass coolers that we could see was cool.

1 They were bringing beer from outside that was cool. I
2 don't know that we -- I don't feel like we needed to
3 go out and make sure that the beer cooler was cool.

4 Q So, you're saying that you -- I mean, the beer was
5 cold. Wasn't it?

6 A Yes.

7 Q Did you check the beer to see if it was cold?

8 A Did I touch it as I walked by? No.

9 Q No. What I'm saying is, you realize that if the
10 coolers aren't working in a bar, the bar's going to
11 have some problems. You knew that before you bought
12 it. Right?

13 A Yes.

14 Q Thank you. So, one of the things you'd want to check
15 is the coolers. Wouldn't you?

16 A If a business ---

17 Q If you're going to make a major purchase?

18 A If a business is up and running and they were serving
19 beer out of all the coolers, I didn't really feel like
20 they were something that we had to check.

21 Q Okay.

22 A Like is that beer really cold? I mean, was I supposed
23 to ask customers that?

24 Q And you didn't check the walk-in cooler either?

25 A No.

1 Q And yet you knew a walk-in cooler was important to
2 keep food cool?

3 A Right.

4 Q And without a good walk-in cooler, you're going to
5 have problems with the food. Correct?

6 A Correct.

7 Q All right. But you didn't check the walk-in cooler?

8 A Well, to tell you the truth, because we felt that Ms.
9 Martin needed to sell this business, we really felt
10 she would not mislead us, because it would not be in
11 her best interests for us not to make a good living at
12 this bar in order to pay her.

13 Q Now, you knew that she had not been up in Anderson
14 involved in the day-to-day activities of this bar.

15 A No, we didn't know that. We knew she came up on a
16 regular basis from what the girls told us that worked
17 there.

18 Q You didn't know Ms. Martin.

19 A But John knew her.

20 Q John knew her?

21 A Correct.

22 Q And John saw Tommy on a day-to-day basis?

23 A John didn't go to the bar every day. He went maybe
24 two or three times a week.

25 Q Right

1 A And Tommy might have been there and Tommy might not or
2 a manager was there. A lot of times I think it was a
3 manager, though.

4 Q Now, you knew you were not buying the non-profit
5 corporation, Simon's of Anderson, Inc.?

6 A I'm sorry. We knew what?

7 Q You knew you were not buying the corporation, Simon's
8 of Anderson, Inc.?

9 A I don't understand what you're saying.

10 Q When you bought this thing, she did not give you a
11 stock assignment for Simon's, Inc. Correct? She
12 didn't sell you any stock in the corporation, Simon's
13 of Anderson, Inc.?

14 A No, she didn't.

15 Q All right. And she wasn't going to use the name,
16 Simon's of Anderson, and it basically gave you the
17 right to use it in good will. Correct?

18 A I guess I don't understand your question.

19 Q Well, this was primarily a deal for the purchase of
20 the equipment. Correct? And y'all were going to take
21 over whatever was left on her lease.

22 A Right.

23 Q And that was basically the deal. Correct?

24 A We thought we were buying her business, taking over
25 her equipment and her inventory, paying for it, and

1 applying for a new license under our name.

2 Q Right. And the only advantage of being a private,
3 not-for-profit club is that you can stay open later on
4 Saturday and open Sunday afternoon. Did you know
5 that?

6 A I may have known it. I can't say for sure.

7 Q As you operate it today, do you operate on Sunday
8 afternoon?

9 A Yes, we do.

10 Q Okay. And the reason you can operate on Sunday
11 afternoon is you're a private not-for-profit.

12 A Right.

13 Q Correct. And prior to this, as you said, you didn't
14 have a clue what a private not-for-profit was.

15 A We knew that this was a private club. We didn't know
16 all the rules to a private club.

17 Q And you didn't go to anybody and find out what they
18 were?

19 A No, we didn't. We trusted Shou to tell us the
20 operations.

21 Q She told you how to operate the bar?

22 A She told us -- we trusted -- everything we learned
23 about the bar, we learned from her.

24 Q And you had to go to the Department of Revenue to
25 apply for a license?

1 A Right.

2 Q And did you apply for a license as a private not-for-
3 profit?

4 A Yes.

5 Q And did they tell you -- when did you go apply for the
6 license?

7 A I can't remember if it was October 1st or the next
8 day, because I think she came up and we did inventory
9 on October 1st. And she said, you can work on my
10 license until you get your license. It takes a little
11 while to -- you get a temporary. So, I went there and
12 I got a temporary and then they gave me the paperwork
13 I needed to fill out for everything else for our
14 permanent license and there was an application that
15 had to be approved. There was the background checks
16 that we had to get done by SLED. There was the
17 corporation bylaws and the SLED investigation.

18 Q Now, you had a meeting with the landlord, Mr. --
19 what's his name again?

20 A Stugg. Mr. Stugg.

21 Q Stubb?

22 A Stugg.

23 Q Stugg. Correct?

24 A Yes.

25 Q And have you got a copy of your lease with him?

1 A We do. I don't think I have it up here. I don't.

2 Q When you talked about renting or taking over this
3 business or doing this business, Ms. Martin said that
4 you basically could have her lease?

5 A Yes.

6 Q All right. And did you know how much time was left on
7 the lease?

8 A She told us she had a five-year lease and she had a
9 year and three months left on it.

10 Q A year and three months. And you weren't going to
11 spend \$70,000.00 if you could not renew that lease.
12 Were you?

13 A We really didn't think there would be a problem
14 renewing the lease. It had been a bar for fifteen,
15 twenty years. So we didn't think that was going to be
16 a problem.

17 Q But you didn't know the landlord, ---

18 A No.

19 Q --- at that point.

20 A No.

21 Q But you weren't going to spend \$70,000.00 without some
22 assurance you were going to be able to renew the
23 lease.

24 A Shou assured us it would not be a problem.

25 Q I understand that, but she's not the landlord, is she?

1 A Right.

2 Q She can't tell you what the landlord's going to do.

3 A Well, because she was a business person for, you know,
4 as many years as she had been, we felt we could trust
5 what she had told us about being able to renew the
6 lease and to take it over.

7 Q But you knew that she could make you all the promises
8 in the world about renewing the lease, but if the
9 landlord said, it's not going to be renewed, it's not
10 going to be renewed.

11 A Well, like I said, it would not be in her best
12 interests to try to sell us something for \$70,000.00
13 that we weren't going to be able to operate.

14 Q Well ---

15 A Right?

16 Q The point is she has no control over what the landlord
17 would do when the renewal time came up. Did she?

18 A No, she didn't.

19 Q And you knew that.

20 A Like I said, she assured us there would not be a
21 problem and we trusted what she said.

22 Q You knew that she had no control over what the
23 landlord would do when the renewal time came up.

24 A Sure.

25 Q Right? And therefore, you went and met with the

1 landlord.

2 A Right.

3 Q Right. You and Ms. Martin and he sat down?

4 A Yes, we did.

5 Q Right?

6 A Yes.

7 Q And what did y'all discuss?

8 A He said he would let the lease go to the end of the
9 year at the rate that she had it at, but then he
10 wanted it to be re-done and an increase and then he
11 also had a cover page of all the things he wanted done
12 before he would even do that.

13 Q And what were those things?

14 A That was having all of the electrical checked. There
15 was about three or four things. Oh, he wanted
16 emergency devices on the doors to be correct. He
17 needed -- if we changed all the keys, he wanted new
18 keys for all the doors.

19 Q And do you recall about when you met with the
20 landlord?

21 A I don't remember.

22 Q It was about right before you signed the agreement
23 with her?

24 A I don't remember if it was before or after, to tell
25 you the truth.

1 Q You don't remember?

2 A No.

3 Q All right. But you knew the rent she was -- you
4 looked at her lease when you were there with the
5 landlord. Correct?

6 A Correct.

7 Q And you knew the rent she was paying about two
8 thousand something dollars?

9 A And two hundred twenty-five dollars.

10 Q Is that correct?

11 A Yes.

12 Q All right. You didn't say anything to Ms. Martin
13 about the rent at that point. Did you?

14 A No.

15 Q All right. You didn't think that was too much.

16 A I think we were a little surprised at how much it was,
17 but we had already spent a lot of money at that point.
18 So, I think it was after the 1st.

19 Q But you didn't say anything to Ms. Martin at that
20 point about the rent being not right or anything?

21 A Like I said, I remember her and Ingoff kind of
22 battling back and forth. It was very difficult for me
23 because she has a very strong Asian accent and he has
24 a very strong German accent and they talked back and
25 forth, more to each other and she was arguing about,

1 don't increase the rent, you're going to have good
2 tenants in here and why would you want to do that.

3 Q So, she was going to bat for you?

4 A She was.

5 Q Okay. All right. And you ultimately agreed at that
6 point to just sign a new lease with him and get your
7 five years on it.

8 A Yes.

9 Q Figuring that in five years you could recoup, that you
10 would have enough time to recoup the investment.

11 A That's what we thought.

12 Q Now, your husband mentioned that you discovered a lot
13 of problems with the building shortly after you moved
14 in.

15 A Yes.

16 Q And you knew those early on.

17 A No. The building -- because smoking is allowed in
18 there, the building we found was very dirty and needed
19 to be freshened up and then it was done as Bourbon
20 Street at one time before they had it and it was
21 actually very cute. It has wrought iron railings and
22 brick walkways. And then there was -- in the pool
23 table area, there was windows. I mean, it looked very
24 much like maybe it was Bourbon Street. We didn't go
25 into the pool table area, just looked at it and there

1 was a lot of writing on the windows. We thought it
2 was probably just customers putting their names up
3 there. It was kind of cute, actually, until I looked
4 at it closer and there was some really bad stuff up
5 there that had to come down.

6 Q People who got a little carried away ---

7 A Yes, they did.

8 Q --- with their language?

9 A Yes.

10 Q But that was something you noticed when you walked
11 into the building and looked at it.

12 A I didn't notice it because I didn't go to the pool
13 table area.

14 Q Well ---

15 A I saw the cute windows. I didn't see what was written
16 on them.

17 Q But you elected not to go look at it?

18 A Well, I didn't elect. I could see cute windows. I
19 didn't realize people were going to be putting ---

20 Q And a lot of what you spent the money on, it was just
21 general cleanup.

22 A It's a five thousand square foot building with about
23 ten foot walls, and we painted the whole place.
24 Cleaned and painted the whole place.

25 Q But you looked at the building before you bought it.

1 A Yes.

2 Q You looked at the walls before you bought it.

3 A Yes, we did.

4 Q You looked at the windows and saw some writing on them
5 before you bought it.

6 A Yes, we did.

7 Q And you knew there was going to be some painting and
8 improvement you'd have to do.

9 A Cleanup. We thought we'd have to cleanup.

10 Q So none of that really surprised you.

11 A The extent of cleaning up it shocked me, actually.

12 There were metal signs. There are Jack Daniel signs
13 and probably forty signs up in the place and they're
14 pretty neat signs. In fact, I put them all on one
15 wall at one time. When I took them down, every sign
16 had a hole behind it and that's not exaggerating.
17 Every sign I took down. So, I not only had to have
18 people paint, I had to have them do major repair.

19 Q But you expected to have to do some.

20 A Not to that extent.

21 Q Maybe not to that extent, but from looking at it, you
22 expected to have to do some painting and maintenance
23 and some ---

24 A Cleaning, yes.

25 Q Clean it up.

1 A To freshen it up and give it a new look for us.

2 Q Now, you -- how many times did you go to that bar when
3 her son was operating it?

4 A Probably only twice.

5 Q Twice, okay. And y'all operate it now with a
6 different clientele?

7 A No.

8 Q It's not different?

9 A No. We probably have a little better happy hour of
10 older people. But at night, we have a good young
11 crowd, but we don't have any underage drinkers, which
12 there was quite a problem with that when we first took
13 over. We had to kick them all out.

14 Q He had the really young ---

15 A Yeah. Under twenty-one is really young.

16 Q Twenty-one, twenty-two, twenty-three ---

17 A No. Underaged.

18 Q Excuse me. What I'm saying is the primary clientele
19 was the really young, early twenties, which tends to
20 bring with them sometimes, the underaged.

21 A Actually, there's about shifts throughout a day at a
22 bar and the early shift is old people, like John. And
23 then you have like a mid-crowd of anywhere from thirty
24 to fifty-year-olds. Then you have -- the late night
25 is more the thirty-year-old crowd, which is what we

1 have. We don't have any underage, at all. We do not
2 allow it. We check everybody at the door because we
3 didn't like the consequences that the young people
4 brought in.

5 Q Did Ms. Martin ever prevent you from looking at
6 anything in that building that you needed to look at?

7 A No.

8 Q Did she ever prevent you from looking at anything in
9 her books that you wanted to look at?

10 A She never showed us any books.

11 Q That's not my question.

12 A She didn't prevent us, but she never offered any,
13 either.

14 Q Did you ever ask?

15 A We asked for a profit and loss.

16 Q And you got that?

17 A We did.

18 Q Did you ask for anything beyond that?

19 A No, we didn't.

20 Q Okay. So, she never prevented you from looking at
21 anything beyond that?

22 A No, she didn't.

23 Q All right. Thank you.

24 THE COURT: Anything on redirect?

25 MR. MULLINAX: Thank you, Your Honor.

REDIRECT EXAMINATION

BY MR. MULLINAX

Q Who told you that this business would make you and your husband \$50,000.00 a year?

A Ms. Martin.

Q Who told you that all the contents and all the property and all the tangible items in that place belonged to her?

A Ms. Martin did.

Q What caused you to sign that contract?

A A very impressive profit and loss, which showed a good gross income but very deceptive costs.

Q Do you owe Ms. Martin any money?

A No.

MR. MULLINAX: That's all I have.

THE COURT: All right.

MR. WISE: Just one question, briefly.

THE COURT: Yeah, briefly. You've got a few. And then I'll let you re-redirect. Go ahead.

RE-CROSS EXAMINATION

BY MR. WISE

Q To eliminate any confusion on the ownership of the equipment, she agreed that if any third-person made a claim for this equipment, that she would pay you back.

A That's what it says.

1 Q Is that correct?

2 A Yes.

3 Q All right. And except for those two items your
4 husband made reference to, no third person's ever made
5 a claim for any of this equipment?

6 A The security system and the pool tables?

7 Q Except for the pool tables and security system.

8 A I believe that's all.

9 Q No third person's ever made a claim for this
10 equipment?

11 A Not that I can recall.

12 THE COURT: All right. Anything on re-redirect?

13 MR. MULLINAX: I just want to check the exhibits, Your
14 Honor, before she comes down.

15 THE COURT: Okay.

16 MR. MULLINAX: Nothing further, Your Honor.

17 THE COURT: All right. If y'all approach over here.
18 Let me talk to you about tomorrow.

19 (Brief Bench Conference Off the Record)

20 THE COURT: Thank you for your patience today. We
21 will finish this case -- I am told we'll have one short
22 witness tomorrow morning. After that witness has
23 testified, the attorneys will give their closing arguments
24 and then we'll, again, have to take an extended break
25 because there are motions that have to take place again at

SHOU MARTIN VERSUS WILMER RIFE AND BARBARA ANN DOOMEY

1 each part of a trial, and then I will have to charge you
2 the law. Unfortunately, because of the schedule tomorrow,
3 we can't start until ten-thirty. I promise you normally,
4 during the week, we don't start at ten and ten-thirty, but
5 there are other things that take precedence. I'm the only
6 judge here this week. So, I've got some other things to
7 do. So, you can sleep late and come on in here at ten-
8 thirty. You'll be out of here mid-afternoon tomorrow, but
9 I do appreciate your patience today. Please don't talk
10 about the case and if anybody contacts you about it, let me
11 know. See you at ten-thirty.

12 (Jury out at 4:51 p.m.)

13 MORNING - SEPTEMBER 7, 2012

14 CHARGE CONFERENCE

15 THE COURT: All right. Let me briefly, before we
16 start -- now, you've rested, right?

17 MR. MULLINAX: Yes, sir.

18 THE COURT: Okay. And we'll do this a little bit in
19 greater detail, but let me go through your defenses and
20 tell me which ones you still ---

21 MR. MULLINAX: Yes, sir.

22 THE COURT: --- want. Statute of limitations?

23 MR. MULLINAX: No, sir.

24 THE COURT: Okay. Statute of frauds?

25 MR. MULLINAX: No, sir. That's before we knew we had

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1 a contract.

2 THE COURT: Okay. We'll get back to unfair trade
3 practices because I know you want to argue that, unless
4 you're going to waive it now.

5 MR. MULLINAX: I don't.

6 THE COURT: You don't want to waive it?

7 MR. MULLINAX: No, sir.

8 THE COURT: Okay. We'll talk about that one. And
9 then the counterclaim for fraud. That, of course, is in
10 there and, again, we're going to argue about this. I just
11 wanted to give her some idea so she can do it. Failure of
12 consideration, since it was a ---

13 MR. MULLINAX: Your Honor, well, basically it goes to
14 the fact that there was nothing that she had to sell. The
15 evidence, we believe, has shown that she didn't own
16 anything, didn't have a right to sell it.

17 THE COURT: Okay. What I might do, and again, like I
18 said, we'll do this in greater detail after we finish. I
19 may just charge the elements of the contract and let you
20 argue failure of consideration. Estoppel?

21 MR. MULLINAX: Waive that.

22 THE COURT: All right. I assume you want covenant of
23 good faith and fair dealing in there?

24 MR. MULLINAX: Yes, sir.

25 MR. WISE: Which one was that?

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1 THE COURT: Covenant of good faith and fair dealing.

2 MR. WISE: Okay.

3 THE COURT: Yeah. Okay. I just wanted to give her --
4 we'd already gone through and I think with the exception of
5 unfair trade practices, we are all right on schedule.

6 MR. MULLINAX: I do want a charge on the law as to a
7 non-profit corporation, generally.

8 MR. WISE: I don't know if that really is relevant.

9 THE COURT: All right. Well, we'll do that in a
10 minute. Yeah. I just wanted to give her -- she's trying
11 to put this together and we've gone through the defenses.
12 So, I didn't think statute of limitations and all applied,
13 the statute of frauds. All right. I'll tell them you've
14 rested and you've got one more witness. Then, I'm going to
15 explain to them that we have to have, basically, a charge
16 conference that's going to take a little while and we'll go
17 from there. You can bring them in.

18 (Jury in at 11:15 a.m.)

19 MR. WISE: I would call Katy Swinyer.

20 (After being duly sworn by the Clerk of Court,

21 **KATY SWINYER**, testified as follows:)

22 THE COURT: And before you give your name, ladies and
23 gentlemen, let me tell you that the Defense has rested in
24 this case. They're calling no more witnesses. This
25 witness is being called in rebuttal and this will be our

1 last witness, as I understand it. All right. Thank you.

2 CLERK OF COURT: If you would please state your name
3 and spell your last name for the record.

4 MS. SWINYER: Katy Ailene Swinyer and that's
5 S-W-I-N-Y-E-R.

6 CLERK OF COURT: Thank you.

7 REBUTTAL - DIRECT EXAMINATION - MR. WISE

8 Q Ms. Swinyer, where are you presently employed?

9 A Cracker Barrel Old Country Store in Powdersville.

10 Q And do you have any other thing you're doing right
11 now?

12 A I'm working on my Praxis II exam for my teacher's
13 certification to teach middle and high school English
14 right now.

15 Q You graduated college?

16 A Yes.

17 Q Where did you graduate from?

18 A The University of South Carolina, but I'm not a
19 Gamecock, so don't hold it against me.

20 Q All right. Did you work for a while at Simon's of
21 Anderson?

22 A Yes.

23 Q And were you going to school while you were working
24 there?

25 A Yes.

1 Q And how long did you work there?

2 A Two years, probably, total.

3 Q And did you work for Ms. Martin's son?

4 A Yes.

5 Q What were your primary responsibilities at the Simon's
6 of Anderson?

7 A When I first started out, it was just cocktail
8 waitressing and then it moved on to bartending, to bar
9 management, and it remained that in his passing.

10 Q Okay. When Ms. Martin's son was tragically killed,
11 what were you doing at that time for that business?

12 A I took care of all the ordering of the food, the beer,
13 the liquor, picking up the liquor, doing any shopping,
14 like at Sam's and then one of the other bartenders,
15 she took care of, like, the banks for the registers,
16 counting down money and making employee schedules.

17 Q Were you, ultimately, authorized to sign checks for
18 Ms. Martin's son?

19 A Uh-huh.

20 Q Excuse me. You've got to speak up.

21 A Yes.

22 Q And so you signed checks from the checking account to
23 pay the bills?

24 A Yes.

25 Q And her son, was he in there on practically a daily

1 basis?

2 A Every other day, yes.

3 Q All right. But the basic day-to-day operations were
4 up to you?

5 A Yes. Not just me but one other, you know -- we were
6 in school so we worked together to get everything
7 done.

8 Q And Tommy would come in and give you advice on how to
9 do things or tell you to order things that maybe you
10 didn't think about, stuff like that?

11 A Let us know about upcoming events and bands that he
12 wanted us to schedule for certain times, because we
13 took care of getting the bands in there for the
14 weekend.

15 Q You were in charge of ---

16 MR. MULLINAX: Your Honor, I'm just going to object to
17 the hearsay testimony. I let it go one -- but if this is
18 in reply, I'm not certain what it's in reply to.

19 MR. WISE: Well, I'm getting ready to get to the reply
20 portion in a minute. I just need her to give her
21 background and certain familiarity with the business.

22 THE COURT: All right. I'll give you a little leeway,
23 but no hearsay. You can't testify as to what someone told
24 you.

25 Q Were you in charge of booking bands?

1 A Yes, sir.

2 Q Now, when you were there in 2006, do you remember when
3 Mr. Rife built a fence in the back?

4 A Yes.

5 Q And what was done after the fence was built?

6 A The cooler was brought in, a new beer cooler.

7 Q And that was 2006? .

8 A Yes.

9 Q And before that, the cooler wasn't there?

10 A No. The fence got built in order to make sure that
11 the cooler was safe.

12 Q All right. And you didn't want to put the cooler out
13 in the open, I guess?

14 A Well, yeah. It's Anderson, still.

15 Q Okay. Now, after -- did you know John Rife before he
16 bought the business?

17 A Yes.

18 Q Did you have any conversations with him about buying
19 the business?

20 A Yes.

21 Q And what were those basic conversations?

22 A Can I say that we talked? Is that considered hearsay?

23 Q Yeah.

24 THE COURT: Yeah. You can't say -- You can say
25 you talked, but you can't say what someone else told you.

- 1 A Yes, I had conversations with him on how we would feel
2 about him running the business.
- 3 Q Okay. Lengthy? Short?
- 4 A They were lengthy and they were more fatherly, as in
5 wanted to make sure we were comfortable.
- 6 Q With him?
- 7 A Yes.
- 8 Q Did you meet his wife before they bought the business?
- 9 A No.
- 10 Q Okay. And you knew Mr. Rife from being a customer?
- 11 A Customer/handyman.
- 12 Q Okay. Because he'd done some work there, too.
- 13 A He was the on-call guy if any of the bartenders were
14 in need of immediate help.
- 15 Q And what type of work did he do?
- 16 A Like plumbing, when plumbing got backed up. A hot
17 water heater needed to be replaced and he brought a
18 new one in and put it in for us. When the fryer
19 system came in, he helped Shou's son with the gas and
20 helping that get hooked up.
- 21 Q And stuff like that?
- 22 A Odds and ends stuff.
- 23 Q Did you continue to work there after the business was
24 sold?
- 25 A Yes.

1 Q Were you allowed to do what you had been doing
2 previously for Tommy after the business was sold?

3 A No.

4 Q And what were you not allowed to do after that?

5 A Pretty much anything that Tommy had entrusted in me
6 went to Barbara, her duties.

7 Q Were you ever allowed to -- you said when Tommy was
8 there, you basically managed the bar.

9 A Yes.

10 Q Did you manage the bar when she was there?

11 A No.

12 Q Were you ever given the opportunity to?

13 A I thought I was going to, but it was very quick to the
14 draw. She just wanted me to introduce her to the
15 suppliers and the food guys and the beer guys and all
16 my important phone numbers, she needed those important
17 phone numbers and contacts.

18 Q And did you write any checks for Mr. Rife and his
19 wife?

20 A No.

21 Q Were you in charge of any bills for Mr. Rife and his
22 wife?

23 A No.

24 Q Did they change the format of the bar any?

25 A Yes.

1 Q In what way?

2 A To an older clientele.

3 Q Did they have bands anymore after that?

4 A No.

5 Q Thank you. Answer any questions Mr. Mullinax may
6 have.

7 CROSS EXAMINATION - MR. MULLINAX

8 Q Ms. Swinyer, the facts are, that you only worked one
9 week after John and Barbara took over. Isn't that
10 correct?

11 A No.

12 Q Seven days, eight days? How many days?

13 A It was like two weeks.

14 Q During that period of time, you sold and were cited by
15 SLED for selling to some or allowing somebody in the
16 bar who wasn't a member. Weren't you?

17 A They call it a pre-arranged. The meeting was pre-
18 arranged for them to be in the bar.

19 Q Okay. And you allowed them in and SLED issued a
20 violation. Didn't they?

21 A Yes.

22 Q Okay. You weren't present during any of their
23 negotiations on the contract. Were you?

24 A No, sir.

25 Q And you didn't see the profit and loss statement that

1 Ms. Martin gave to them before they signed the
2 contract. Did you?

3 A To my knowledge, she didn't even give them a profit
4 and loss statement.

5 Q She's testified she gave them a profit and loss
6 statement.

7 A Okay. I just said I did not see any of that.

8 Q So, my question was, you don't know, you weren't there
9 and you don't know anything about what went on before
10 the contract was signed. Do you?

11 A As far as ---

12 Q As far as the conversations between John and Barbara
13 and Ms. Martin.

14 A No.

15 Q Okay.

16 MR. MULLINAX: That's all I have.

17 THE COURT: Anything on Redirect?

18 MR. WISE: Plaintiff rests, Your Honor.

19 THE COURT: All right. You can step down. Thank you.

20 All right. Nothing further from the Plaintiff or
21 Defendant?

22 MR. WISE: Nothing further.

23 MR. MULLINAX: Except motions, Your Honor.

24 THE COURT: Okay. Ladies and gentlemen, as I told you
25 a couple of days ago, this is not television. It's not

1 exciting and there are going to be times when you have to
2 sit in the back and you may not understand why. At this
3 point in the trial, I have to entertain motions from both
4 sides. That's a requirement by statute. We also -- I
5 usually give the lawyers an opportunity to look at my
6 charge that I'm getting ready to read to you. That's going
7 to take us twenty minutes, and I apologize for having you
8 sit back in that small room. If some of you just are going
9 crazy sitting back there -- how many deputies do y'all have
10 up here? Or how many bailiff's?

11 BAILIFF: We've got enough bailiffs to watch them.

12 THE COURT: If some of you want to walk around the
13 building and stretch or if some of you want to smoke,
14 that's fine, because the next step in this process is, I'm
15 going to bring you in, the lawyers are going to give you
16 their closing statements and then I have to read to you
17 about thirty-five pages of the law in this case and then,
18 at that point, we'll send you out with the evidence and
19 you'll begin deliberating. So, I apologize for bringing
20 you in here for this short period of time, but there's
21 nothing I can do about it. So, what I'm going to do is
22 send you back, ask you not to talk about this case. For
23 those of you that might want to just walk around the block
24 for ten minutes, I'm going to have to send a bailiff with
25 you, but that's fine. We'll send somebody with you. If

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1 you just want to sit back there and relax, that's fine,
2 too. But please don't talk about the case and I promise
3 you I'll get you back in here the minute I can get you back
4 in here and we will get this case to you most likely by
5 twelve-thirty today. So, please don't talk about the case
6 and I'll bring you back in in a minute.

7 (Jury out at 11:25 a.m.)

8 MOTIONS

9 THE COURT: Okay. Any motions?

10 MR. MULLINAX: Your Honor, I would like to move at
11 this time for a directed verdict against the Plaintiff and
12 for dismissal of the claim on the basis that Ms. Martin is
13 not the real party in interest. The law in South Carolina
14 as to non-profit clubs, which she admitted that this was at
15 the time, Simon's of Anderson, Inc., provides specifically
16 in the regulations that the Court has seen, and Mr. Wise
17 has seen, 7-401.1,2,4(a)(b)(c)(d)(e)(f) and so forth,
18 provides that no single person can profit from the sale or
19 dissolution of a non-profit club.

20 In addition, thereto, Your Honor, she provided,
21 finally, one document that is in evidence that is the 2005
22 U.S. Corporation Income Tax Return for Simon's of Anderson,
23 Inc., which was, she admitted, their tax return. In that,
24 all the inventory and equipment as set forth that's owned
25 by Simon's or New Simon's of Anderson, Inc., was contained

1 in there. She's taken depreciation for it. Simon's was
2 the owner. Simon's had the right to profit. The law
3 provides that any profits on a sale or dissolution have to
4 go to another non-profit corporation. For that reason, we
5 would ask for a complete dismissal as to the claim made in
6 the case.

7 THE COURT: All right. And I'm assuming you're
8 specifically referring to 7-401.4, the first paragraph
9 where it says, "no part of the net earnings of which inures
10 to the direct benefit of any member or shareholder...",
11 and also, (e), which says, upon dissolution, liquidation or
12 final termination of the operations of the organization,
13 its residual assets must not inure to the direct benefit of
14 any member, but must be turned over to one or more non-
15 profit organizations. Is that right?

16 MR. MULLINAX: Yes, Your Honor.

17 THE COURT: Those are the two? All right. Yes, sir,
18 as you know, I've got some concerns about that just because
19 I listened to see what was actually being transferred. But
20 I'm going to hear you on it. So, yes, sir. Just on that
21 issue. And you may, if you've got other motions.

22 MR. WISE: The testimony in the case from Ms. Martin
23 was that she bought a lot of the equipment and gave it to
24 her son to run the business with. Mr. Rife testified he
25 had no reason to doubt Ms. Martin about her saying she

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1 owned the property. So at the very, very least it's a jury
2 question as to who owned it, whether the corporation owned
3 it or she owned it individually. So, I think it's clearly
4 a factual question on that issue. I don't think the non-
5 profits have any bearing on this. If the attorney general
6 was sitting over there at that third table, then they may
7 have been able to raise their hand and have a dog in that
8 fight because they are there to protect non-profits in this
9 state or charitable organizations in this state, but
10 they're not over there to raise their hand.

11 I don't think he can defend this civil suit for breach
12 of contract by saying that the money isn't going to the
13 right person, it should go to a charity. That's not a
14 valid defense because he agreed to pay it to her and what
15 she does with it is, can be her problem, but it's certainly
16 not a defense of his actions.

17 THE COURT: Well, my concern is, that that would make
18 the contract void, ab initio, if the statute says that
19 profits can't inure to her.

20 MR. WISE: Well, it's not a case of profits. Her
21 testimony was that she spent more than this on the
22 equipment she gave her son.

23 THE COURT: Right.

24 MR. WISE: So, there's no profit involved in it. If
25 there's a claim of profit, though, the only person that

1 would have a right to object to that would be the Attorney
2 General's office. The Attorney General is there to protect
3 the charitable organizations.

4 THE COURT: Right.

5 MR. WISE: But her testimony was, all she did was,
6 basically, get back the money or sell the equipment that
7 she gave her son to use in the business.

8 THE COURT: All right. What I'm going to do on that,
9 and I thought about it last night and took a good bit ---

10 MR. MULLINAX: Your Honor, may I say one thing?

11 THE COURT: Yeah. Yeah.

12 MR. MULLINAX: His argument might hold water, except
13 it doesn't. Number one, the South Carolina Code of Laws is
14 a part of every contract. The facts are that paragraph (e)
15 says upon dissolution, liquidation, or final termination,
16 its residual assets, not just profits.

17 THE COURT: Right.

18 MR. MULLINAX: So, it includes profits and residual
19 assets. There is absolutely no evidence in the record of
20 any property she owned. And there is absolute evidence in
21 the record that the corporation owned property that had
22 been put into place at the beginning of its operation,
23 according to the depreciation schedule in 2003. And for
24 those reasons, Your Honor, we believe that this law does
25 apply. It creates a cause of action solely within New

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1 Simon's. She sold, sort of like Jack and the Beanstalk,
2 some beans that really weren't beans.

3 THE COURT: Okay. What I'm going to do, and obviously
4 this is a safe way for me to do it, I'm going to deny your
5 motion to dismiss, deny your directed verdict. But I am
6 going to charge, so that you both can argue, so you need to
7 know, I'm going to charge that sentence that no part of the
8 net earnings, et cetera, and then I'm going to charge (e),
9 which is upon dissolution, liquidation, final
10 termination... I think that, at least, is a jury question
11 and I'm going to give you the right to argue that. Okay?

12 MR. MULLINAX: All right, sir.

13 THE COURT: And I understand that's splitting the baby
14 a little bit, but it's unclear to me exactly what was sold
15 after reading through everything and listening to it.
16 Okay. Yes, sir. Any other motions?

17 MR. MULLINAX: No, sir.

18 THE COURT: Okay.

19 MR. WISE: I've got one on the unfair trade practice.
20 I move for a directed verdict on that on the grounds
21 there's been no proof in this case, whatsoever, that any
22 alleged unfair trade practice had any impact beyond the
23 immediate parties. In order to have an unfair trade
24 practice, the party asserting the unfair trade practice has
25 to go prove there is a potential for being repeated or has

1 been repeated and that it has an impact beyond the
2 immediate parties. This is simply a breach of contract
3 with the immediate parties. There's been no testimony at
4 all in this case that Ms. Martin had sold any other
5 business, had done anything similar to it. There's,
6 obviously, no potential for it being repeated because the
7 business is now sold and it is not an on-going situation.

8 Most unfair trade practice cases involve people
9 involved in a dealership, dealing with the public on a
10 regular, on-going basis, so that what they do to one
11 customer could be impacted, could be done to another
12 customer and those are the ones that the unfair trade
13 practice is designed to prevent.

14 As the Fourth Circuit said in the case of Omni Outdoor
15 Advertising versus Columbia Outdoor Advertising, the South
16 Carolina Courts have left no doubt that an unfair or
17 deceptive act or practice that affects only the parties to
18 a trade or commercial transaction, is beyond the acts
19 embraced. That's exactly what we have here. I would also
20 cite to the Court another case. I can't put my hands on it
21 right now. But it is ---

22 THE COURT: Yeah. And I've read them. I've had five
23 weeks in a row of unfair trade practice cases. Trust me.
24 I -- yes, sir.

25 MR. MULLINAX: Your Honor, as to that, in reply, I

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1 would say that she testified that she owns two more
2 businesses and that would have an adverse impact on the
3 public. She has the potential to do that, the potential to
4 do the same thing she did in this case, is to present them
5 with a falsified document in order to get them to go into a
6 deal with her.

7 THE COURT: Okay. .

8 MR. WISE: Well, she actually testified as to one.
9 However, in her deposition she owned two, but it's long
10 since closed, not sold. The testimony in this was she
11 owned the Brick House, which is not a non-profit
12 organization.

13 THE COURT: Okay. Yeah. Look, I would have alleged
14 unfair trade practices too, but I am going to grant your
15 motion. I think that that's a great statute, but it's been
16 narrowed so much by the Supreme Court, mainly because
17 people like the three of us claimed that every time that
18 there was a business transaction, but I am going to grant
19 your motion to knock out the unfair trade practices.

20 All right. She's finishing this up. I'm going to let
21 her finish it up, then I'm going to give y'all a few
22 minutes to look at it. Just look for glaring errors,
23 because after I charge them, I'll let you go back and
24 nitpick me to death.

25 The verdict form, just to make sure, and I'll let

1 y'all look at it, but I've got, "We, the jury, find for the
2 Plaintiff in the amount of "blank" actual damages and I
3 know you're going to argue forty-eight thousand, or
4 whatever, but... And then I've got, and/or, because I
5 believe they can find for both. We, the jury, find for the
6 Defendants and you've asked for no monetary... You just --
7 if they find for the Defendants, that would abrogate the
8 contract.

9 MR. MULLINAX: Yes, sir.

10 THE COURT: So, it will just be "or". We've ordered
11 them lunch so I'm going to send them back and let them
12 start deliberating and then they're going to get a
13 Chick-fil-A sandwich at some point. You can bring them in.

14 (Jury in at 11:58 a.m.)

15 THE COURT: All right. Ladies and gentlemen, you've
16 heard all the testimony that you're going to hear in this
17 case. It's now time for the lawyers to give you their
18 closing arguments. As I told you at the beginning, the
19 closing arguments are not evidence. It is an opportunity,
20 though, for the lawyers to argue their position, try to
21 convince you of their position. Once they finish their
22 closing arguments, I'm going to go directly into reading
23 you the law. After I have charged you on the law, I'll
24 send you out for a few minutes and give the lawyers an
25 opportunity to ask me to change my charge on the law. If

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1 I'm going to make a change or if I've read something
2 inadvertently wrong, I'll bring you back in and correct it.
3 If not, we'll send you all the evidence that's admitted
4 over here with the stickers, along with the verdict form,
5 and let you begin your deliberations. Because of the hour,
6 the clerk's office has ordered you lunch. So, I hope you
7 like Chick-fil-A. I think that's what they always get. So,
8 they'll deliver that to you while you're deliberating.

9 Now, as I told you, if you need a break at any time,
10 even once I start my jury charge, raise your hand and I'll
11 give you a break. It's best if we not break while I'm
12 doing the charge, but I'll be happy to do that. All right.
13 If you'll give the lawyers, one last time, your attention
14 and then give your attention to me, we'll get this over
15 with. Yes, sir.

16 CLOSING ARGUMENT - MR. WISE

17 Mr. Foreman, ladies and gentlemen of the jury, I will
18 speak to you for a while, hopefully not too long, and then
19 Mr. Mullinax will have a chance to come and speak to you
20 for a while about his position and then I'll have a chance
21 to reply, briefly, to issues he raises during his argument
22 and then we'll be through and hopefully, this will not take
23 too long.

24 In analyzing the facts in this case, it's important to
25 break the facts up into a couple of pieces, or not

1 necessarily pieces, but types, one of which I call, "facts
2 beyond dispute." These are facts that I don't think Mr.
3 Mullinax is going to argue in this case. They are the true
4 facts of this case and then you have facts that are in
5 dispute.

6 The first fact that is beyond dispute is, the parties
7 entered into a contract for \$70,000.00 to sell this
8 equipment and stuff to Mr. Rife and Ms. Doomey for
9 \$70,000.00. That's a fact beyond dispute. The written
10 contract is there to prove it.

11 The other fact that I think is beyond dispute is that
12 Mr. Rife and Ms. Doomey had every opportunity to take as
13 much time as they wanted to look at anything in that
14 business, to test any piece of equipment in that business
15 or do anything like that. They had the opportunity to go
16 look at it until their heart's content. They also had the
17 opportunity, if they wanted to, to go beyond the financial
18 statement that they were given. So, those facts are beyond
19 dispute. They had all the opportunity in the world to do
20 that.

21 The dispute then becomes, what happened after the
22 contract was signed. They say that they found out the
23 equipment was bad, that some of the equipment needed
24 cleaning, it needed fixing, it needed a lot of repairs.
25 They said, and a fact that is in dispute is exactly when

1 did they find out what the lease amount was. Ms. Martin
2 testified that before they signed the agreement, they met
3 with the landlord to see about re-doing the lease and so
4 forth and what it would be. Ms. Doomey testified that
5 she's not sure if it was before or right after, but it was
6 early on in the process, that's for sure, as to what the
7 rent would be.

8 But we do know this: Their testimony was also that
9 within, well within ninety days, they had discovered
10 everything that they could discover, for all practical
11 purposes, that they claim is wrong with this contract.
12 They have said they discovered it was in a total state of
13 disrepair, even though they had an opportunity to look at
14 it. They had discovered by then that the rent was going up
15 to \$3000.00. The rent wasn't going to be as they said they
16 thought it was going to be from the financial declaration,
17 but they knew all of that clearly within ninety days and
18 that's pretty much a fact beyond dispute, too.

19 So, the question then becomes what did they do when
20 they had this knowledge that Ms. Martin had allegedly
21 defrauded them as to the profitability of this business.
22 And remember, they had operated it for October and
23 November, two months, and they said they had a loss for
24 those two months. So, they'd operated a business for two
25 months at a loss, according to their financial data, which

1 I'll show you in a minute, which is what they claim. At
2 that point they said, we've been cheated on what the rent
3 was going to be, we've been cheated on how profitable it
4 is, and we've been cheated on how bad the equipment is, and
5 how bad the building is.

6 So, what did they do? What they did is very simple.
7 If you look at that exhibit, which is Defendant's Exhibit
8 #2, on December the 21st of 2007, knowing, according to
9 their testimony, that the rent was wrong, knowing that the
10 equipment was bad, knowing that the place was in a horrible
11 condition, knowing they were losing money running it, they
12 paid Ms. Martin \$4983.79, claiming at that point that they
13 were defrauded.

14 Then what did they do? In February, which they didn't
15 acquire a whole lot more knowledge by February 26th, but
16 they knew the same things for sure, they paid her another
17 \$3250.00 and they are claiming in this courtroom today; we
18 were defrauded, cheated, and hoodwinked in the first sixty
19 to ninety days that we owned the business.

20 Well, then, what did they do? Back in August, they
21 pay her another \$3142.00, again claiming at that point they
22 knew everything they needed to know. The testimony was,
23 after August, the repairs are only about \$400.00. So, that
24 just says, commonsensical, that if you put \$10,000.00 down
25 and found out you had been defrauded, you have been

1 hoodwinked and cheated, you're certainly not going to write
2 another check for \$4983.79, and another one for \$3250.00
3 and another one for \$3142.00 before you say anything about,
4 wait a second here, something's wrong. Because it wasn't
5 until after they wrote the last check that they decided
6 they wanted to sit down and talk to Ms. Martin, according
7 to that testimony, about what was wrong with it. So,
8 that's three acts they've done that is totally contrary to
9 the position they've taken in this courtroom today. All
10 right?

11 Now, they say they were out there losing a lot of
12 money. All right. There are some things here, on this
13 sheet, that don't make a lot of sense either. All right?

14 Let's look at some of their, what they claim their
15 expenses are. Now, this is for October. They claim they
16 lost, and you'll get it in the jury room, but for October
17 they claim they lost \$8000.00. All right? Now, remember
18 they paid Ms. Martin in December. They claim they lost
19 eight thousand in October. Let's analyze those figures a
20 little bit to just see if these are true and accurate
21 figures. All right. We have food sales in October of
22 \$974.00. We have food purchases in October of \$1927.00.
23 They didn't quite sell all the food they ordered. So, what
24 is the prudent thing to do the next month if you don't sell
25 all the food that you bought the first month? I guess the

1 prudent thing is to just about double your food sales, but
2 look at the food purchases for November, \$3910.38. If you
3 do \$1000.00 worth of food sales a month and then you go
4 purchase more food, then that is why you haven't got a
5 profit on your food sales. You purchased food for \$3900.00
6 and then you had food sales of \$1927.00. And then, after
7 two months of that, the prudent thing to do is then,
8 obviously, cut your food sales back or food purchases back.
9 They cut it back to \$2700.00. That doesn't make a lot of
10 sense. So, those figures don't add up. They just simply
11 don't. They defy all common sense, to be frank with you.
12 They just defy all common sense.

13 And then you look at the liquor sales on there. Now,
14 theirs are broken down better than Ms. Martin's were, but
15 on liquor sales, on theirs, they're about giving it away.
16 There's virtually no profit in their liquor and beer if you
17 believe those figures, but that tells you something's
18 strange. Something's very strange. So, can you accept at
19 face value that those are accurate figures? There ought to
20 be an explanation, but we haven't heard it. Now, that's
21 Exhibit #3, Defendant's Exhibit #3.

22 And then, interestingly, and if you look down that
23 entire list of expenses, I don't know about these items.
24 They testified they had no bands and yet they have an item
25 up there called music and entertainment, about half-way

1 down, of \$1500.00 one month, sixteen the next, fourteen the
2 next for music and entertainment, but we don't have bands.
3 I don't know.

4 I guess they have no employees either, because if you
5 look at that, there are no wages, there are no salaries for
6 people that they were paying. So, they say they lost
7 money. They have produced this as reasons they lost money.
8 I say there's reason to be suspicious of that financial
9 statement because of those, what I call, pretty obvious
10 glaring errors.

11 Now, it seems obvious to me in this case that Mr. Rife
12 and Ms. Doomey didn't do their due diligence or whatever
13 you want to call it. They hadn't had a lot of experience
14 about it. They didn't even know anything about running a
15 non-profit. Ms. Martin is not their advisor on non-profit.
16 They needed to go to somebody to find out how to do it.
17 They chose not to do it.

18 And I think there is something else interesting when
19 you talk about this business that they had. I won't put
20 these up on the screen, but if you look at Exhibit #2, the
21 checks, I find it interesting that they claim to be running
22 this business so well, yet all the checks are on a personal
23 account for their checks, until you get over to -- let me
24 get to the month -- until you get over to September of '08.
25 And then after operating this business from October of '07

1 to September of '08, they, for the first time, start having
2 a New Simon's, Incorporated, checking account. I guess you
3 can do the profit and loss statements if you go through
4 your personal account and select out your checks and so
5 forth, but New Simon's didn't even open up a checking
6 account until late 2007. So, those are some things that
7 you can consider.

8 Now, I think what this case boils down to, quite
9 frankly, is maybe they didn't make as much money as they
10 thought they were going to make. I don't know what, but I
11 know this much, they did not, when they first discovered
12 problems that they claimed to have, they did not take any
13 steps that any prudent, reasonable business person would
14 take to say to the person you bought this from, "I've been
15 defrauded, I've been cheated, I've been hoodwinked." They
16 did nothing. All they did was pay, pay again, and pay
17 again and then stopped paying and then when the suit is
18 filed, they say, "We've been cheated". But that just
19 doesn't make sense. No question they paid about
20 \$21,000.00. We contend they owe \$48,274.21.

21 Now, they're going to argue that Ms. Martin doesn't
22 own this equipment. Doesn't own this equipment. Ms.
23 Martin testified that she bought the equipment, gave it to,
24 let her son use it and Mr. Rife testified he had no reason
25 to doubt Ms. Martin on that. At the time they bought the

1 equipment, they didn't have any reason to doubt her on
2 that. Now, when someone says, "Well, pay up," they then
3 come in and say, "Oh, no, you may not own this." Well, Ms.
4 Martin took care of that in this agreement. She put in the
5 agreement, paragraph four, a very, very clear statement
6 that says she's representing she's the owner, but to
7 protect you if anybody comes and claims that this property
8 belongs to them and they can prove it, "I'll hold you
9 harmless. I'll pay you back. You don't have to pay when
10 the claim's made." Well, this was in 2007 and except for
11 two, two instances, Mr. Rife said not a single person has
12 come forward and claimed ownership of that property, not a
13 single person. She protected them if someone did, was
14 willing to abide by it, and now they come in and say,
15 "Well, we don't even think that's worth anything." She
16 guaranteed it. That was part of their agreement. "I own
17 this. If someone says, proves that I don't own it, I'll
18 hold you harmless." And now they come in and say, "We
19 don't have to pay".

20 Well, the only two pieces that they've come in and
21 talked about being owned by a third party was some security
22 equipment and two pool tables. Now, the pool tables, they
23 have not produced a scintilla of evidence that they were
24 owned by Good Times. They paid Good Times some money.
25 There was no question about that. They paid them \$1500.00

1 and they claim, I think, about \$2000.00 or something for
2 the security equipment they had to give up. If you deem
3 that to be reasonable, if you deem that to be credible,
4 then you're entitled to deduct that from the \$48,274.21
5 that we claim is due and owing because that's part of the
6 agreement that they had. In y'all's good judgment, if you
7 determine those were claimed by a third party, that she's
8 responsible for them, then so be it. There was some
9 testimony about it. If you think that we didn't meet our
10 burden on that, then you should deduct it. There was some
11 testimony about it. That's one of those disputed facts.

12 I think when you analyze all the facts in this case
13 and you look at it, their profit and loss, you'll find
14 that, I think, Mr. Rife and Ms. Doomey, for whatever
15 reason, decided to stop payments thinking that Ms. Martin
16 would walk away from it, or whatever. They didn't write
17 her and tell her, "We're not going to pay you any more
18 because of all of these problems." They didn't send her a
19 letter saying, "We don't think we owe you any more money
20 and this is it." They didn't send her the last check with
21 a letter saying that with all the situations we've had, all
22 the problems we claim we've had, we've deemed this to be
23 sufficient for what we got. They didn't say that. It
24 wasn't until we got the lawsuit filed and we came into cou
25 We were cheated." They made three payments to Ms. Martin

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1 after they knew every fact they needed to know about that
2 business and about that contract and you certainly don't do
3 that if you've been defrauded and we think the proper
4 verdict in this case will be for Ms. Martin for \$48,274.21.
5 Thank you.

6 MR. MULLINAX: May it please the Court?

7 THE COURT: Yes, sir.

8 CLOSING ARGUMENT - MR. MULLINAX

9 You all have been mighty patient and we're coming to
10 the end of the case, as the Judge told you. I like to
11 think of this -- as Mr. Wise said and as the Judge told
12 you, he gets the first argument, I get the second, and he
13 gets to come back up here and have the last word with you.
14 I sort of like to think of what I'm going to say to you,
15 and I hope you think of it that way, as the meat in the
16 sandwich. Is it fair for Ms. Martin to come in here and
17 ask you to award her money damages when she didn't bring
18 you a single shred of evidence to show that she was
19 entitled to anything? She has a number of hurdles to jump
20 over to prove to you by the preponderance of the evidence
21 and make it more likely so than not, that she's entitled to
22 anything.

23 Number one, she's got to prove to each and every one
24 of you that she even owns or owned anything to sell at that
25 time when she entered into the contract. She has to prove

1 that it was hers. This action wasn't brought by Simon's of
2 Anderson, Inc. It was brought by her in an individual
3 capacity. She has to prove that she owned the inventory.
4 She has to prove that that contract, which contained a sale
5 of inventory and a sale of goodwill was hers to sell and
6 she can't do that.

7 The only document that you have that is related to her
8 is a Federal Income Tax Return, which was entered into
9 evidence. She admitted that it was hers and it states that
10 under penalties of perjury, the same thing when she took
11 her oath and testified in this courtroom. The Federal
12 Income Tax Return is for Simon's of Anderson, Inc. The
13 Federal Income Tax Return contains a block called
14 "Depreciation". Depreciation is the ability to deduct on
15 your tax return things that you buy in order to get a
16 deduction from your income. It shows a deduction in 2005,
17 and on the last part of the tax return, which you will have
18 and has been entered into evidence, it shows that this
19 equipment and everything in that building that she
20 supposedly sold under that contract was owned by the
21 restaurant and nightclub, Simon's of Anderson, was put into
22 operation October 2003 and they continued to deduct on it
23 according to the rules, the corporation did. She didn't
24 own it. It wasn't hers. So, that first hurdle, I don't
25 think she has proven to you.

1 Can she then come in here and say, "Well, I still own
2 it. I signed the contract and they signed the contract."
3 Mr. Wise's classic argument that's always made, he wants
4 you all to blame the victims for the fraud. He wants you
5 to blame John and Barbara for what happened. Well, they
6 didn't know when they signed this contract that she didn't
7 own anything.

8 The Judge is going to charge you with the law as to
9 private non-profit corporations and what he is going to
10 tell you, which is what is at play in this case, it's
11 admitted, New Simon's of Anderson was a private non-profit
12 corporation. It ran this business, it owned the assets and
13 the law says upon dissolution and liquidation or
14 termination of the operations, its residual assets must not
15 inure -- which means, can't pass to, they can't receive any
16 benefit from. That's what the word means, and some
17 legislator put that in there, but it just means you can't
18 get any direct benefit from anything that the non-profit
19 corporation has when its sold or its assets are terminated.
20 The law is in every contract in this state. It's a part of
21 every contract in this state. The Judge, at the conclusion
22 of these arguments will tell you that. She can't get
23 around that. She cannot receive, under the law, profits
24 from assets or for any other thing that this corporation
25 owned or was entitled to and as you saw from the tax

1 return, it owned it all.

2 Now, it is clear, we believe, that as a result of --
3 and the testimony indicated this, that John and Barbara
4 would not have signed this agreement were it not for the
5 fact that they were shown a profit and loss statement by
6 Ms. Martin. They were given that profit and loss statement
7 from Ms. Martin that showed that up until August of 2007
8 they had made a profit of \$32,374.00 and then to further
9 buttress her sales pitch, she showed them the prior year's
10 profit and loss statement that showed that the business had
11 made \$50,000.00. She gave it to them. She meant for them
12 to look at it. She meant for them to rely on it in order
13 to convince them to buy "a bill of goods". She
14 misrepresented the facts.

15 Mr. Wise said, well, if you look at the sales per
16 month, they're about the same as the sales that they had
17 per month, but what's not the same is the expenses. On the
18 expenses, they misstated the expenses by more than two-and-
19 a-half to three times. And how do you know that they
20 intentionally did that? Well, when you look at their
21 Federal Tax Return, line 28, the prior year they showed an
22 \$8000.00 loss. We don't have the 2006 Federal Tax Returns,
23 because they wouldn't produce it. They're the only ones
24 that had control of it. They didn't bring it. They didn't
25 show us the 2007 return, they wouldn't produce it, just

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1 like they wouldn't produce for you any bills of sale, any
2 purchase agreements for any of the inventory that she says
3 that she owned, because she didn't own it. She didn't
4 bring anything into this room to give to you to prove what
5 she said. We had to fight to get what we got and it proves
6 the misinformation that she intended for them to rely on.
7 And this is not just any document. This is something you
8 sign under oath, just like the oath you take when you
9 testify at the witness stand before you.

10 With the profit and loss, John and Barbara begin
11 operations. They begin operations with almost nothing.
12 The inventory alone was like \$4900.00. They had to
13 purchase their inventory, they had to purchase their food
14 stocks, they had to purchase mixers and all the things that
15 you have when you run a restaurant and bar and their
16 purchases were valid purchases. They lost money October,
17 November, and December.

18 He makes reference to music and entertainment. Well,
19 they had Karoke, they had a D.J. and that costs money.
20 They didn't have bands, but they had music and
21 entertainment. So, that's a simple answer to a concern
22 that was raised.

23 But without that profit and loss statement, there
24 wouldn't be, we wouldn't be here because they wouldn't have
25 bought it. They wanted an on-going business. Barbara and

1 John both told you. They had jobs. Ms. Martin said, "Hey,
2 don't worry about it. I've got a good staff. The club runs
3 itself. I check on it twice a week. You don't have to
4 worry about anything." That didn't turn out to be true.
5 That profit and loss statement didn't turn out to be true.
6 The fact that she owned anything turns out now not to be
7 true. The documents prove it. You don't have to rely on
8 anybody's testimony. You've got a Federal Income Tax
9 Return that shows you, unequivocally, that everything she
10 told you was not true.

11 The South Carolina Code of Laws, which the Judge will
12 charge you, that you have to take as the law in this case,
13 says that she, as an individual, cannot gain from any sale
14 or dissolution of this private club and that's what she's
15 asking you to do, to give her money. But the law says she
16 can't have it and by virtue of the law, your verdict should
17 be for the Defendants.

18 This contract should be declared void from the
19 beginning because it's based on a falsehood. It's "a bill
20 of goods". Something was used against John and Barbara to
21 cause them to do something they otherwise would not have
22 done. However, Mr. Wise wants to penalize John and Barbara
23 for trying to do the right thing. He wants to jump on them
24 for not running and hollering and screaming and getting a
25 lawyer. Well, by the time they figured out they had been

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1 took, they were so deep in the hole, \$41,000.00 worth in
2 the first three months, that they were just working every
3 day, ten hours a day, to try and get out of that hole.
4 It's sort of like if you're paddling a boat across the lake
5 and you get halfway across, what are you going to do? Are
6 you going to call a lawyer or are you going to keep
7 paddling and try to get to the other side, try to make
8 something out of nothing? They got nothing and through
9 hard work they were trying to make a living. They didn't
10 worry about running to a lawyer and hollering and screaming
11 and jumping up and down.

12 Two years later, after -- they were trying to do the
13 right thing. They paid her what they testified that they
14 believed to be fair money for what they got: the tables
15 that were there, the coolers that wouldn't work and weren't
16 new as she said, the monies that they paid, some
17 \$22,000.00. John said, "I was trying to do the right
18 thing. We thought that was enough, the last payment."
19 John and Barbara said, "We wanted to do that to be fair.
20 We were trying to be fair." And both of them said, because
21 initially when we signed this agreement, we trusted her,
22 but we did get some stuff. The stuff was there. We didn't
23 know it didn't belong to her. We didn't know the South
24 Carolina law at the time.

25 Once she sued them, they came in to see me, and the

1 law is the law. It's there, but they were trying to do the
2 right thing, but now Ms. Martin and her attorney want to
3 penalize them because they made some payments. They paid
4 her over \$22,000.00. Is that fair? It's unfair of her to
5 ask for money and not bring you anything to base your
6 judgment on.

7 As a result of the misrepresentations, including the
8 fact that she didn't own anything, in addition to the
9 monies that were paid, John and Barbara ended up spending a
10 bunch of money they otherwise did not think they had to
11 spend on refrigeration, on plumbing supplies, painting and
12 security systems, an increase in the lease price and so on.
13 In actuality, they have spent over, including monies
14 they've paid her, \$43,000.00 trying to right the wrong that
15 they have been done.

16 But we're not asking that you give us any money at
17 this time. We're asking that you do the right thing and
18 void this contract that never should have been entered into
19 in the first place. It wasn't fair and it was based on a
20 falsehood. It was based on a misrepresentation of the
21 facts. It was based on lies.

22 In every contract that's entered into, every agreement
23 that's entered into in this state, there's a covenant of
24 good faith and fair dealing. Good faith and fair dealing.
25 If you look at the evidence and you look at the testimony,

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1 from the very beginning, Ms. Martin did not display good
2 faith and there wasn't any fair dealing.

3 The law as to fraud requires nine elements.

4 (Projecting on large screen) The Judge will charge you
5 those elements and you are to apply the evidence that you
6 heard from the witness stand and the documents that you
7 will have in order to see whether or not that burden has
8 been met. The representation in this case was the fact
9 that she told them the bar will run itself, she owned
10 everything, including the goodwill. That's in the
11 contract, paragraph four, I think it is. She also said
12 that the business was an operating business making
13 \$50,000.00 a year. You don't have to worry about it.
14 Check on it every now and then. It runs itself. I just
15 don't want to have to ride up here from Greenwood every day
16 to look at it. She gave them that profit and loss
17 statement, which wasn't true. She told them those oral
18 facts that she didn't deny that wasn't true. That's the
19 representation. They were false. They were material.
20 Without those representations and without that profit and
21 loss statement, there would have been no contract. We
22 wouldn't be here. They didn't -- she knew because she
23 filed the Federal Income Tax Returns. She knew that that
24 was false. She knew the business lost money and yet she
25 she tricked them into signing the contract by showing them

1 something that said otherwise, that wasn't true. She
2 intended for them to go by that or why else would she give
3 them that profit and loss statement? She wanted them to
4 believe that knowing that she, under penalties of perjury,
5 told the Federal Government otherwise. They had no idea
6 that what she gave them was false. They relied on it
7 because John had a three-year relationship with Ms. Martin,
8 with Ms. Martin's son. He had come to trust them. He had
9 come to believe their word. He had no reason not to
10 believe them based upon his past experiences with them.
11 They had a right to do that because of that relationship,
12 because of those years that they had together. There's no
13 question now she got a \$70,000.00 contract signed based
14 upon falsehoods.

15 Now she wants you to give her money, but she doesn't
16 want to prove to you anything. "I just want my money."
17 That's about how it works, not how it should work. John
18 and Barbara were sold "a bill of goods". It's up to you to
19 analyze the evidence and to come back with a verdict that
20 speaks the truth.

21 All of you come from our community. You live in
22 Anderson County. You work in various professions; you're
23 managers, you're engineers, you're writers, you're truck
24 drivers, you're housewives, you're in the medical field.
25 You, collectively, represent a cross-section of our

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1 community. You are our community's conscience. You are
2 the judges of the facts. You have as much power as anyone
3 in this country today in a system that was established by
4 the Constitution of the United States back in 1776, 1782,
5 that has existed for over two hundred years, the jury
6 system. You have the power to right the wrongs, you have
7 the power to correct injustice and you have the power to
8 stand against governments or anybody that tries to oppress
9 an individual. You have more power than the Judge. You
10 have more power than any of these attorneys or any of these
11 people in this courtroom.

12 You've listened to the evidence, you've listened to
13 us, you've been very attentive, and you now have the power
14 to right the wrong, to void the contract, to make sure that
15 someone who tried to mislead someone and sold them "a bill
16 of goods" is not going to get away with it.

17 Now, Mr. Wise has the last word, but he can't do
18 anything about the fraud. He can't do anything about the
19 Federal Income Tax Return. He can't do anything about the
20 false profit and loss statement. He can't do anything
21 about the law that says that Ms. Martin owns nothing and
22 had no right to sell anything. Thank you.

23 CLOSING ARGUMENT - MR. WISE

24 Mr. Foreman, ladies and gentlemen of the jury, the
25 statement was made that not a single shred of evidence

1 shows she is entitled to anything. Not a single shred of
2 evidence shows she's entitled to anything. Plaintiff's
3 Exhibit #1 shows that she's entitled to \$70,000.00 under
4 this contract. That is the evidence. That is evidence to
5 which Mr. Rife and Ms. Doomey agreed. That is a document
6 that at the time they signed it, after inspecting the
7 equipment, after looking at the business, they believed
8 that what they were getting was worth \$70,000.00. That's
9 the evidence on that.

10 Now, at the time they signed the agreement and from
11 their testimony, they had no problem with Ms. Martin saying
12 she owned the property. The testimony here was she owned
13 the property. So, there is testimony she owned the
14 property.

15 And contrary to what he said in conclusion, the law
16 does not say she owns nothing. That is a factual question
17 that you have to resolve. She testified, and basically Mr.
18 Rife agreed, that she bought equipment for her son's
19 business and put it in there. So, the law doesn't say she
20 owns nothing. What the law says is this; if you dissolve a
21 non-profit, any profit from that has to go to another
22 charity. If you dissolve a non-profit and basically pay
23 your debts, liquidate your assets and you have no profit,
24 then there's no profit to give to somebody. And what Ms.
25 Martin was saying, or her testimony was, in helping her son

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1 out, she gave equipment or let him use equipment. When he
2 tragically died -- I'm sure at the time they entered into
3 it they had no formal agreement. I'd be shocked if they
4 did with a mother/son relationship like that, but when she
5 sold it, she wanted her money back. She testified it was
6 worth more than that. She testified, talking about the
7 depreciation on the tax returns, she testified that they
8 actually went in and made some improvements in that
9 building that would have to be depreciated out over time
10 while the son owned it. Yes, it wasn't as formal as it
11 should have been. But, you know, no one anticipates these
12 tragedies, and people make different decisions.

13 Now, he says Ms. Martin mis-stated expenses by two-
14 and-a-half times. The only evidence of any mis-statement,
15 and that's questionable, is the rent. It was the rent.
16 Everybody agrees this business is going to gross about, at
17 the time in 2007 and 2006, 2006 was a little more, but the
18 recession came in, in 2007. In 2007, it grossed, under her
19 son's management, about ten or twelve thousand a month.
20 They were grossing about ten thousand a month, so the gross
21 is the same. So, I don't know what the problem is. Their
22 expenses are grossly out of proportion to Ms. Martin's
23 expenses.

24 He got up and he pointed out the income tax return and
25 talked about how important it is. I want to show you

1 something here at the very top. (Projecting on large
2 screen) This is very consistent with all the things Ms.
3 Martin produced to them. If you look at the gross income.
4 Now, 2005 was a bad year. It only grossed about \$6700.00 a
5 month, 80-something thousand dollars, but look at the cost
6 of goods. That's where you buy your beer and buy your
7 food. Their gross was roughly twice what the costs of
8 goods were. That same ratio is present on the profit and
9 loss statement they gave Mr. Rife that's on that tax
10 return. They're the ones that don't have that two-to-one
11 profit and loss ratio. They're the ones that don't explain
12 those issues.

13 And then he says that, "Well, we thought we could let
14 the staff run the business, and that's why we did it."
15 Well, the testimony from the staff was, from day one, they
16 weren't running the business anymore. They didn't sign the
17 checks, they didn't make the orders. They were doing
18 nothing except showing up, waiting on tables and doing,
19 basically, a cocktail waitress' work. The testimony from
20 the young lady was that from day one, she was out of it.
21 She was not running the business. So, they never let them
22 try. It's not like they came in here and said "Well, we
23 let the staff run it for two months and then gosh, realized
24 they didn't know what they were doing." They never let
25 them try. They didn't give them a chance. So, I find it

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1 interesting that there was no response to why such
2 substantial food purchases were made on their profit and
3 loss statement when there were no substantial food sales.

4 As I tell people, or you've heard the saying before,
5 you know, when the clock strikes thirteen, that brings into
6 question what has all gone before. Well, when they come in
7 here now and saying we're buying all this food and our food
8 sales are practically nothing, I think that calls into
9 question the validity of the entire document and whether or
10 not its reliable.

11 I think what this case boils down to in a nutshell, is
12 the fact that, it's like two boys go out after a rain storm
13 and you know, after a rain, you have mud puddles around and
14 after the rain's passed and it's settled down, the water is
15 relatively clear. Two boys go out and one of them looks in
16 a mud puddle and says, "I see a quarter in that mud
17 puddle," and before the boy can get there, the other one
18 picks up a stick and stirs up that mud and says, "Quarter?
19 What quarter? I don't see a quarter in here." But if you
20 just wait and let it settle down, that quarter will shine
21 through. Well, that's what this case is about. They've
22 come in here and said she hoodwinked them, cheated them and
23 defrauded them, yet they still made the payments.
24 Hoodwinked them, cheated them and defrauded them, and
25 they're still running the business. I think when you let

1 the water settle, what's going to shine through is, they
2 owe Ms. Martin the money they owe Ms. Martin and they
3 should be required to pay it. Thank you.

4 CHARGE ON THE LAW

5 THE COURT: All right. Ladies and gentlemen, before I
6 charge you on the law, which is going to take twenty-five
7 minutes or so, does anyone need a break? (Jurors shake
8 heads) Okay. I want to thank you for your patience and I
9 appreciate the fact that you've waited very patiently in
10 the back.

11 We've now reached a point in the trial where it's my
12 duty to charge you on the law in this case. As I said,
13 during the course of my life, I have only read to two types
14 of people: One, my children when I wanted them to go to
15 sleep and the other to a jury when I wanted them to stay
16 awake. So, I need you to listen very carefully, because as
17 I told you earlier, the law that I'm giving you now is the
18 law that you'll apply to the facts in this case to reach
19 your verdict.

20 I want to remind you and charge you that you and I
21 have very different roles during the course of this trial.
22 You're the judge of the law -- excuse me -- the judge of
23 the facts. You heard all the testimony, you'll have all
24 the exhibits with you in the deliberation room. You have
25 to determine what the facts are in this case. If I've

1 given you any impression during the course of this trial
2 that I had an opinion about a fact, an opinion as to
3 whether a witness was telling the truth, please disregard
4 that. It was unintentional. I didn't mean to do it and it
5 should have no relevance on your decision.

6 Likewise, we will accept your judgment of the facts in
7 this case and you must accept the law as I give it to you
8 now. You can't wish the law was different, hope the law
9 was different or think that the law is different. I am
10 giving you the law in South Carolina as it applies to these
11 facts.

12 Ladies and gentlemen, I charge you that the burden on
13 this case is by a preponderance of the evidence. A
14 preponderance of the evidence simply means the greater
15 weight of the evidence. It is evidence which, as a whole,
16 shows that the facts sought to be proved are more likely
17 true than not true and as I said earlier, each party in
18 this case has made a claim against the other. You'll have
19 to weigh them separately. Since I've been practicing law,
20 and probably for a hundred and fifty years prior to that,
21 judges have explained the preponderance of the evidence
22 using the judicial scales, the scales of justice, and I
23 think that's the best way to think about it. When you look
24 at each claim, imagine the scales. If, as I said earlier,
25 the scales are still even, if you weigh the evidence and

1 the scales haven't moved or if they tilt ever so slightly
2 in favor of the party not making the claim, then the party
3 making the claim has failed to meet their burden of proof.
4 But if the scales tilt ever so slightly in favor of the
5 party making the claim, they've met their burden of proof.
6 That, basically, is the preponderance of the evidence. I
7 charge you that the preponderance of the evidence is not
8 determined by the number of witnesses. Instead, it must be
9 determined by the greater weight of all the evidence
10 presented in the courtroom.

11 Now, ladies and gentlemen, I also charge you that
12 there are two types of evidence which are generally
13 presented during a trial. There's direct evidence and
14 circumstantial evidence. Direct evidence is the testimony
15 of a person who claims to have actual knowledge of a fact,
16 such as an eyewitness. It is evidence which immediately
17 establishes the main fact to be proved. Circumstantial
18 evidence is proof of a chain of facts and circumstances
19 indicating the existence of fact. It is evidence which
20 immediately establishes collateral facts from which the
21 main fact may be inferred.

22 Circumstantial evidence is based on inference and not
23 on personal knowledge or observation. It is proof that
24 does not actually establish the fact in question, but that
25 asserts or describes something else from which you may

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1 either reasonably infer the truth of the fact or at least
2 reasonably infer an increase in the probability that that
3 fact might be true. For circumstantial evidence to be
4 sufficient to warrant the finding of the facts, the
5 circumstances must lead to that fact with reasonable
6 certainty. The facts and circumstances should be
7 considered in light of ordinary experience and common
8 sense. The existence of a fact cannot be based on
9 speculation, surmise, or conjecture. I charge you that the
10 law makes absolutely no distinction between the weight or
11 value to be given either direct or circumstantial evidence,
12 nor is a greater of certainty required of circumstantial
13 evidence than of direct evidence.

14 Now, ladies and gentlemen, I charge you that
15 necessarily, as I said two days ago, you must determine the
16 credibility of the witnesses who've testified in this case.
17 In South Carolina, as I've told you, credibility simply
18 means believability. You have to determine, based upon
19 your observations of the witnesses, who you believe. And
20 that, as I said, is something that I cannot tell you how to
21 do. You can believe everything that a witness said from
22 this witness stand or you can disregard everything they
23 said. You can take a portion of one witness' testimony and
24 believe it and you can disregard the remainder of that.
25 You may believe all of the witnesses or you may believe

1 none of the witnesses. That's your job and you have to
2 make that determination. You may consider whether the
3 witness has an interest in the result of the trial. You
4 may consider whether the witness is prejudiced toward
5 either the Plaintiff or the Defendant and the opportunity
6 for the witness to have seen the matters or things about
7 which the witnesses may testify and you may determine
8 credibility by the way of the witnesses acted or presented
9 themselves on the witness stand.

10 Now, ladies and gentlemen, I charge you that in this
11 case, Ms. Martin claims that Wilmer Rife and Barbara Ann
12 Doomey breached a contract that existed between the
13 parties. In order to recover for a breach of contract,
14 Ms. Martin must prove the claim by a preponderance or
15 greater weight of the evidence. Ms. Martin claims that she
16 entered into a contract of sale by which Mr. Rife and Ms.
17 Doomey would purchase from Ms. Martin all the contents of
18 the business located in Anderson County, South Carolina,
19 known as Simon's of Anderson. Upon signing the contract,
20 Mr. Rife and Ms. Doomey paid Ms. Martin \$10,000.00. Under
21 the terms of the agreement, Ms. Martin alleges that Mr.
22 Rife and Ms. Doomey were to pay her an additional
23 \$60,000.00 within ninety days from the date of the
24 purchase. Ms. Martin alleges that Mr. Rife and Ms. Doomey
25 have failed to pay any of the sums set forth in the

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1 agreement, other than the initial \$10,000.00.

2 I charge you that a contract is an agreement entered
3 into by two or more parties in which each party agrees to
4 perform or not to perform certain acts. It may be shown by
5 words, written or oral, or by conduct. However, a contract
6 is more than the mere exchange of promises. For the
7 agreement to be considered a contract, Ms. Martin and Mr.
8 Rife and Ms. Doomey must have intended to enter into a
9 contract and must have reached a mutual understanding of
10 the terms of that contract. This is sometimes called a
11 meeting of the minds. The parties must intend to be
12 mutually bound by the agreement they entered into.

13 The first thing that Ms. Martin must prove, by a
14 preponderance or a greater weight of the evidence, is that
15 the parties entered into a binding contract. Next, Ms.
16 Martin must show by a preponderance or greater weight of
17 the evidence, that the Defendants unjustly breached the
18 contract. The word breach means a failure without legal
19 excuse to perform any promise that forms the whole or part
20 of the contract. This includes the refusal of a party to
21 recognize the existence of the contract or the doing of
22 something inconsistent with the existence of the contract.
23 A party breaches a contract when that party does not
24 perform as agreed under the contract by failing to carry
25 out a term, promise or condition of the contract.

1 Now, ladies and gentlemen, I charge you that Mr. Rife
2 and Ms. Doomey have answered the Plaintiff, Ms. Martin's,
3 complaint with a general denial. This means that they have
4 denied each and every claim that would make them
5 responsible for Ms. Martin's injuries. Because of this
6 general denial, Ms. Martin has the burden of proving each
7 and every element of the cause of action of the breach of
8 contract.

9 Now, ladies and gentlemen, I charge you that the
10 Defendants, Mr. Rife and Ms. Doomey, have brought four
11 counterclaims against the Plaintiff, Ms. Martin. This
12 means that Mr. Rife and Ms. Doomey not only have denied the
13 claims made by Ms. Martin, but they also made claims
14 against Ms. Martin. Mr. Rife and Ms. Doomey have the
15 burden of proving their counterclaims by a preponderance or
16 greater weight of the evidence. If you decide that Mr.
17 Rife and Ms. Doomey have not met the burden of proving
18 their claims against Ms. Martin, but that Ms. Martin has
19 proven that Mr. Rife and Ms. Doomey have breached the
20 contract, you should return a verdict for Ms. Martin. If
21 you find that Mr. Rife and Ms. Doomey have met the burden
22 of proving their claims against Ms. Martin, you should
23 return a verdict for Mr. Rife and Ms. Doomey. If you find
24 that neither party has met the burden of proving their
25 claim against the other party, you should return a verdict

1 for neither party.

2 Ladies and gentlemen, I also charge you that Wilmer
3 Rife and Barbara Ann Doomey claim that Ms. Martin committed
4 fraud in making misrepresentations as to the ownership of
5 certain property situated in the premises being operated as
6 Simon's of Anderson, including but not limited to,
7 representation as to the lease payments, the ownership of
8 tangible property, and an ability to transfer certain
9 licenses to operate the business.

10 Wilmer Rife and Barbara Ann Doomey must prove each and
11 every element of fraud by clear and convincing evidence,
12 which is different than the preponderance of the evidence.
13 Fraud cannot be presumed. Clear and convincing evidence is
14 that degree of proof which leaves you a firm belief as to
15 the facts sought to be proved. This is more than a mere
16 preponderance of the evidence, but is less than that of
17 reasonable doubt in a criminal case. Fraud means bad faith
18 and dishonesty as opposed to mistake or neglect or
19 negligence.

20 In order to prevail on an action for fraud, Wilmer
21 Rife and Barbara Ann Doomey must prove all of the following
22 nine elements by clear and convincing evidence: First, Mr.
23 Rife and Ms. Doomey must prove that a representation was
24 made by Ms. Martin. Representations may be made in South
25 Carolina either orally, in writing, by acts and conduct, or

1 by acts meant to deceive. It is not necessary for Ms.
2 Martin to have made the representations directly. A false
3 impression made by words or act may constitute fraud.

4 Secondly, Wilmer Rife and Barbara Ann Doomey must
5 prove that the representations made by Ms. Martin are
6 false.

7 Third, Wilmer Rife and Barbara Ann Doomey must prove
8 that the representations made by Ms. Martin was material.
9 A representation is material if it influenced Wilmer Rife
10 and Barbara Ann Doomey in making the decision to enter into
11 the agreement with her.

12 Fourth, Wilmer Rife and Barbara Ann Doomey must prove
13 that Ms. Martin knew that the representations were false or
14 that she made the representation with a reckless disregard
15 of its truth or falsity. The representation must relate to
16 a present or pre-existing fact and cannot usually be based
17 on an unfilled promise or statement as to a future event.
18 However, if Ms. Martin promised to do something with no
19 intention of keeping that promise at the time the promise
20 was made, she has committed a fraud. A mere breach of
21 contract, however, is not fraud. The fact that a promise
22 is made but never fulfilled is not in and of itself fraud.

23 Fifth, Wilmer Rife and Barbara Ann Doomey must also
24 prove that Ms. Martin intended for them to act on her
25 representations.

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1 Sixth, Wilmer Rife and Barbara Ann Doomey must prove
2 that they did not know that Ms. Martin's representations
3 were false, if the representations were made.

4 Seventh, Wilmer Rife and Barbara Ann Doomey must also
5 prove that they relied upon Ms. Martin's representation.

6 Eighth, Wilmer Rife and Barbara Ann Doomey must prove
7 that they had the right to rely on the truth of Ms.
8 Martin's representation.

9 Wilmer Rife and Ms. Doomey must have used reasonable
10 care and diligence to protect themselves. If you find that
11 Wilmer Rife and Barbara Ann Doomey relied on Ms. Martin's
12 representations, you must then decide whether Wilmer Rife
13 and Barbara Ann Doomey should have done so, should have
14 relied on the representation. In making this decision, you
15 may consider all the circumstances involved including the
16 form and materiality of the representation, the respective
17 intelligence, experience, age, and mental and physical
18 condition of all parties, the relation and respective
19 knowledge and means of knowledge of the parties and any
20 other factors which have been shown during the trial, which
21 you feel are relevant.

22 Even if Ms. Martin made a false representation, if you
23 find that Wilmer Rife and Barbara Ann Doomey failed to use
24 reasonable, ordinary care and diligence in protecting
25 themselves, then you should return a verdict for Ms.

1 Martin.

2 Lastly, Wilmer Rife and Barbara Ann Doomey must prove
3 that they suffered damages, which were proximately caused
4 by Ms. Martin's representation. If you find that Wilmer
5 Rife and Barbara Ann Doomey, the Defendants in this case,
6 have proven the above nine elements of fraud, then they'll
7 be entitled to a verdict for fraud.

8 Additionally, I charge you that each party to a
9 contract must give some valuable consideration to the
10 other. This means that there must be something that
11 benefits each party. Consideration may be some right,
12 interest or benefit given to a party. It may also be the
13 failure to do an act, a loss or a responsibility which is
14 undertaken by a party. Consideration may be money, an act,
15 a service or a promise to do something or not to do
16 something in the future. Mutual promises to each other may
17 constitute consideration. For example, if I buy a loaf of
18 bread from a grocery store, the consideration that the
19 grocery store gives to me is the bread. The consideration
20 that I give the grocery store is the money for the bread.
21 That's consideration. In making your decision as to
22 whether a valid contract exist, you should only be
23 concerned with whether there was any consideration, not the
24 value of the consideration. You should not weigh the value
25 of the consideration given by one party against the value

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1 of the other party's consideration. You are to decide on
2 whether there was consideration to support the agreement,
3 not whether the agreement was a good one for either party.

4 Additionally, I charge you that there is a
5 counterclaim alleging a breach of covenant of good faith
6 and fair dealing. Ladies and gentlemen, I charge you that
7 there exists in every contract entered into in the State of
8 South Carolina an unspoken but legally enforceable promise
9 of good faith and fair dealing. If you find that Wilmer
10 Rife and Barbara Ann Doomey have proven that Ms. Martin has
11 breached the covenant of good faith and fair dealing by a
12 preponderance of the evidence, then they'll be entitled to
13 a verdict.

14 Finally, I charge you that every initial and/or
15 renewal application for a sale and consumption of alcohol
16 license to a bonafide non-profit organization shall be an
17 association organization or a non-profit organization
18 organized and existing under the laws of the State of South
19 Carolina and operated solely and exclusively for social,
20 benevolent, patriotic, recreational or fraternal purposes,
21 but not for the pecuniary gain or profit. No part of the
22 net earnings of which inures to the direct benefit of any
23 member or shareholder of the non-profit corporation or
24 organization. It being the intent of the section of law
25 which this charge comes from, that a license shall not be

1 granted or held by any organization which has or is
2 organized and operated primarily to obtain or hold a
3 license to sell alcoholic beverages, but only to a bonafide
4 non-profit organization with limited membership, to which
5 the sale of alcoholic beverages is incidental to the main
6 purpose of the organization.

7 I charge you that the law states that upon
8 dissolution, liquidation or a final termination of the
9 operation of a non-profit organization, its residual assets
10 must not inure to the direct benefit of any member or
11 shareholder, but must be turned over to one or more non-
12 profit organizations which are organized and operated for
13 charitable purposes. If you find that Wilmer Rife and
14 Barbara Ann Doomey have proven that, by a preponderance of
15 the evidence, Ms. Martin has retained assets rather than
16 distributed them to another non-profit organization, then
17 they may be entitled to a verdict.

18 Now, ladies and gentlemen, if you find that either
19 party in this case is entitled to a verdict, your next step
20 would be to decide how much money they're entitled to. I
21 charge you that actual damages in South Carolina are to
22 compensate the Plaintiff, in this case, Ms. Martin, for the
23 Plaintiff's injuries or loss and to put the Plaintiff as
24 near as possible in the same position that the Plaintiff
25 was in before the incident occurred. In other words,

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1 actual damages would be the actual losses and expenses,
2 which Ms. Martin has suffered because of Wilmer Rife and
3 Barbara Ann Doomey's breach of contract. In this case, I
4 believe Ms. Martin claims the amount of \$48,274.21 in
5 actual damages.

6 Now, ladies and gentlemen, your verdict in this case
7 has to be unanimous. In just a minute, I'm going to send
8 you back. As I told you before, I understand how people
9 who don't spend all their time in a courtroom might be
10 confused by some of that charge. It is not a simple legal
11 charge. I'm going to give the lawyers the opportunity to
12 ask me to correct or further explain this charge. In the
13 event that I do not make any changes in the charge, I'm
14 going to send the verdict form back along with the exhibits
15 and once Buck delivers the verdict form and the exhibits,
16 at that point, you can begin your deliberations.

17 Now, Mr. Foreman, your job at this point is, you'll
18 have to manage the deliberations and you'll also have to
19 sign the verdict form.

20 Just so you know, the verdict form basically says,
21 "We, the jury, find for the Plaintiff, Shou Martin, in the
22 amount of blank, in actual damages or "We, the jury, find
23 for the Defendants, Wilmer John Rife and Barbara Ann
24 Doomey. I think it will be clear to you. You've got to
25 find one or the other. I need you to write in, if you find

1 for the Plaintiff, and because there's no claim for damages
2 on the part of the Defendant, there won't be any amount put
3 in there if you find for the Defendant. But if you find
4 for the Plaintiff, you need to write in whatever amount you
5 determine are the correct actual damages. Write it in
6 numerically and also write it in with words underneath so
7 it's very clear and then you sign your name and knock on
8 the door and we'll bring you back. I'm going to ask you to
9 go back and ask you for the last time not to discuss this
10 case until I see if the lawyers ask me to make any changes.
11 If I'm going to make a change, I'll bring you back in very
12 quickly and make that change and then we'll send you back.
13 Like I said, if I'm not going to, in about two minutes
14 you're going to have the exhibits delivered to you and you
15 can start your deliberations.

16 I don't know if lunch is here yet. I'm sorry that we
17 didn't give you a menu. Quite frankly, we weren't able to
18 give you a menu and let you order from it because of the
19 late hour and some of the delays earlier this morning and
20 so we just had to go with the Chick-fil-A. So, I apologize
21 for that.

22 All right. Go back and don't discuss the case yet.

23 (Jury out at 1:49 p.m.)

24 THE COURT: Y'all come look at the verdict form. Any
25 objections to the charge?

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1 MR. WISE: I'm going to object to the entire charge of
2 non-profit, but then you added something that wasn't in my
3 charge when you said, "If you find Ms. Martin retained any
4 assets." Well, I mean, she retained the assets, but she
5 contends they're hers.

6 THE COURT: Well, hold on a minute. Let me find that
7 because I didn't -- where, I don't ---

8 MR. MULLINAX: I didn't hear you say that. You just
9 said, if you find that ---

10 MR. WISE: I think I heard it. "If you find Ms.
11 Martin has retained assets" is what I wrote down.

12 THE COURT: I put it, "Upon dissolution, liquidation
13 or final termination, its residual assets must not inure to
14 the direct benefit of any member or shareholder. I don't
15 think I said, Ms. Martin. This is sort of a backwards kind
16 of charge, to be honest with you, but that's the way this
17 -- I mean, you're welcome to listen, but I think the only
18 thing I said is that last paragraph. Can you get back to
19 that last -- it would have been literally ---

20 MR. WISE: That's just the only thing that concerned
21 me. I wrote it down as soon as I heard it.

22 MADAM COURT REPORTER: It would be when?

23 MR. WISE: Not too far from the end.

24 THE COURT: It was the very last portion, right before
25 I went into actual damages.

1 MR. WISE: Yeah.

2 THE COURT: There was a mistake put in about if you
3 find neither party ---

4 MR. WISE: Yeah, I ---

5 THE COURT: I tried to just catch that on the run, and
6 just say then don't ---

7 MR. MULLINAX: I think that was fine.

8 MR. WISE: I don't think it's going to be a problem.

9 THE COURT: Other than this, any objections you have
10 to the charge?

11 MR. MULLINAX: No, sir.

12 THE COURT: Okay. Yeah, if I said that ---

13 (WHEREUPON, Lines 8-18 of page 206 are played back
14 for Mr. Wise.)

15 (Jury in at 1:56 p.m.)

16 THE COURT: Ladies and gentlemen, I have one very
17 quick change. I want to make sure that you understand.
18 When I charged you on the distribution of assets of a non-
19 profit corporation, I may have left out a word. So, I'm
20 going to recharge what must be proven in order to render a
21 verdict for Mr. Rife and Ms. Doomey in regard to the
22 distribution of assets once a charitable organization ends.

23 If you find that Wilmer Rife and Barbara Ann Doomey
24 have proven, by a preponderance of the evidence, that Ms.
25 Martin has retained assets and/or profits that lawfully

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1 belonged to the corporation rather than distributing them
2 to another non-profit corporation, then they'll be entitled
3 to a verdict. The difference there is that she would have
4 to retain profits and/or assets that lawfully belonged to
5 the corporation, rather than something that might not
6 belong to the corporation or be personal. Okay? All
7 right. That's the only change I'm making. You'll have the
8 verdict form and your exhibits -- how many exhibits do we
9 have, Jo?

10 MADAM COURT REPORTER: Altogether?

11 THE COURT: Yes, ma'am.

12 MADAM COURT REPORTER: Eight.

13 THE COURT: We have eight exhibits. You can begin
14 your deliberations as soon as we deliver this to you.
15 Since we don't have an alternate, all twelve of you can go
16 at it. As I said, your verdict has to be unanimous. If
17 you have any problems while you're back there deliberating
18 or any questions, Mr. Foreman, write it out on a piece of
19 paper, your question or problem sign it, put the time on
20 it, knock on the door and they'll bring it to me. If you
21 need me to recharge any of that rather complicated law,
22 I'll be happy to recharge a portion of it or all of it. If
23 you ask me a question that I can answer by law, I'll bring
24 you back in and answer it. If you ask me a question that
25 the law prevents me from responding or answering, I'm going

1 to bring you back in and tell you I can't answer it. But
2 any communication from this point forward with me about any
3 issue should be between you, Mr. Foreman, and me, by note.

4 Okay? Were the sandwiches back there?

5 THE BAILIFF: Yes, sir.

6 THE COURT: Well, I hope they brought some extras
7 because we're hungry. All right. Go ahead and go back
8 there. This will be delivered to you in thirty seconds and
9 you can begin your deliberations.

10 (Jury out at 2:00 p.m.)

11 THE COURT: All right. Y'all have looked at this and
12 okayed it?

13 MR. WISE: Yes, sir.

14 MR. MULLINAX: Yes, sir.

15 THE COURT: Y'all did a good job on a complicated
16 case.

17 (WHEREUPON, the verdict forms and exhibits were
18 delivered to the jury at 2:01 p.m., after which court stood
19 at recess awaiting the verdict of the jury.)

20 THE COURT: Okay. They've got a verdict. What I'll
21 normally do is bring them in, let Jennifer hand me the
22 verdict, then she'll read it. Do y'all want ten days to
23 make any motions, just assuming, since it's Friday
24 afternoon. I won't force you to come up with any thought
25 processes today.

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1 MR. MULLINAX: Yes, sir.

2 MR. WISE: That's fine.

3 THE COURT: And then I'll go back and talk to them
4 privately. What I normally do is, if they tell me
5 something -- they always tell me something interesting and
6 ask me interesting questions. If it's something that I
7 think you ought to know, I'll tell you. I'll let you know.
8 I don't expect that, because the only time they ever said
9 something that I thought a lawyer needed to know was
10 something they said that was really ugly about him and I
11 called him and said, I was going to just give him some
12 advice. I wouldn't do that again, what you did. Okay.

13 (Jury in at 3:37 p.m.)

14 VERDICT

15 THE COURT: All right. Mr. Foreman, I understand you
16 have a verdict.

17 THE JUROR: Yes, sir.

18 THE COURT: If you'd hand it to Buck, please. All
19 right. You can publish it.

20 (Hands document to Clerk of Court)

21 CLERK OF COURT: In the matter of Shou Martin versus
22 Wilmer Rife and Barbara Ann Doomey, Civil Action Number
23 2010-CP-04-4554. We, the jury, find for the Plaintiff,
24 Shou Martin, in the amount of \$46,774.21 in actual damages.
25 Signed on September 7th by Mr. Marvin D. Smith, Foreperson.

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1 THE COURT: All right. Ladies and gentlemen, if
2 that's each of your verdicts, please raise your right hand.

3 (WHEREUPON, all jurors' hands were raised.)

4 THE COURT: All right. I have to send you back one
5 last time to the jury room. I'll be back to speak with you
6 in just a second.

7 (Jury out at 3:39 p.m.)

8 THE COURT: Okay. Ten days. And if you need longer,
9 let me know. Look, I'll say this to the clients because I
10 did practice for twenty-one years, believe it or not.
11 These are hard cases for juries to understand and they're
12 hard for them to decide. So, I thought both of y'all did a
13 great job. I can't think of anything else I would have
14 done on either side. All right. Thank y'all very much.

15 [END OF REQUESTED TRANSCRIPT OF RECORD]

CERTIFICATE

I, THE UNDERSIGNED JO RICE, OFFICIAL COURT REPORTER FOR THE TENTH JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO HEREBY CERTIFY THAT THE FOREGOING TRANSCRIPT IS A TRUE, ACCURATE, AND COMPLETE TRANSCRIPT OF RECORD OF THE HEARING IN THE CAPTIONED CASE, IN THE COURT OF COMMON PLEAS FOR ANDERSON COUNTY, SOUTH CAROLINA ON SEPTEMBER 6-7, 2012, AT THE ANDERSON COUNTY COURTHOUSE, TO THE BEST OF MY SKILL AND ABILITIES.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN, COUNSEL, NOR INTEREST TO ANY PARTY HERETO.

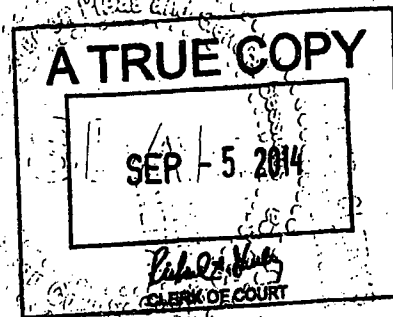
AUGUST 24, 2013


JO RICE

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

AGREEMENT

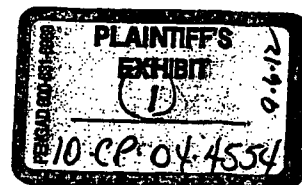


For and in consideration of the mutual promises hereinafter made, Shon Martin hereinafter for convenience referred to as SELLER and Wilmer (John) Rife and Barbara Ann Doomey, hereinafter for convenience referred to as PURCHASERS, hereby agree for the sell and purchase of Simons of Anderson under the following conditions:

1. SELLER agrees to sell to PURCHASERS all the contents and property of a club known as Simons of Anderson. This sale shall consist of all coolers, tables, chairs, signs, which are not the property of any distributor, electronic equipment including computers and security cameras, all glassware and inventory.

2. PURCHASERS agree to assume the lease agreement with Tornado Enterprises, LLP. The PURCHASERS agree to hold the SELLER harmless for any liability or obligations under this lease agreement. The PURCHASERS further agree to maintain adequate liability insurance on the premises and shall name the SELLER as an insured on the policy as long as the current lease is in existence. In the event that the PURCHASERS renegotiate the lease with the landowner, then the SELLER need not be named as an insured.

3. PURCHASERS agree to pay to the SELLER the sum of Ten Thousand (\$10,000) Dollars as a down payment on October 1, 2007, with the remaining balance of Sixty Thousand (\$60,000.00) Dollars being paid to the SELLER within ninety (90) days from the date of the closing for the inventory listed above together with any goodwill for Simons of Anderson. The stock inventory will be taken on October 1, 2007, and will be paid to the SELLER within



(90) days.

4. SELLER represents to the PURCHASERS that she is the rightful owner of all of the inventory set forth in this agreement and agrees to hold the PURCHASERS harmless for any claims by any third party to the equipment set forth above.

5. PURCHASERS agree within thirty (30) days of the signing of this agreement to place all utilities seclusively in the name of the PURCHASERS.

WITNESS our hands and seals this 1 day of October, 2007

WITNESSES:

Sandy Traynham

Nancy Jane Harter

Wilmer John Rife
WILMER JOHN RIFE

Barbara Ann Doomey
BARBARA ANN DOOMEY

Sandy Traynham

Nancy Jane Harter

Shou Martin
SHOU MARTIN

For calendar year 2005 or tax year beginning _____, 2005, end, _____, 20

2005

Department of the Treasury
Internal Revenue Service

See separate instructions.

A Check if: 1 Consolidated return (attach Form 990) 2 Personal holding co. (attach Sch. PH) 3 Personal ser. corp. (see instructions) 4 Sch. M-3 required (attach Sch. M-3)		Use IRS label. Otherwise, print or type.	Name Number, street, room/suite no. City/town, state, & ZIP code SHOU MARTIN SIMONS OF ANDERSON INC 3907 CLEMSON BLVD ANDERSON SC 29621	B Employer identification number 57-1182286
			C Date incorporated 10/06/2003	
			D Total assets (see instructions) \$ 23,345.	

E Check if: (1) ☒ Initial return (2) ☐ Final return (3) ☐ Name change (4) ☐ Address change			
Income	1a Gross receipts or sales	81,905.	1c 81,905.
	2 Cost of goods sold (Schedule A, line 8)		2 39,878.
	3 Gross profit. Subtract line 2 from line 1c		3 42,027.
	4 Dividends (Schedule C, line 19)		4
	5 Interest		5
	6 Gross rents		6
	7 Gross royalties		7
	8 Capital gain net income (attach Schedule D (Form 1120))		8
	9 Net gain or (loss) from Form 4797, Part II, line 17 (attach Form 4797)		9
	10 Other income (see instructions-attach schedule)		10
	11 Total income. Add lines 3 through 10		11 42,027.
Deductions (See instructions for limitations on deductions.)	12 Compensation of officers (Schedule E, line 4)		12 15,200.
	13 Salaries and wages (less employment credits)		13
	14 Repairs and maintenance		14
	15 Bad debts		15
	16 Rents		16 13,200.
	17 Taxes and licenses		17 1,274.
	18 Interest		18
	19 Charitable contributions (see instructions for 10% limitation)		19
	20a Depreciation (attach Form 4562)	20a 4,560.	20c 4,560.
	b Less depreciation claimed on Schedule A and elsewhere on return	20b	20d
	21 Depletion		21
	22 Advertising		22 534.
	23 Pension, profit-sharing, etc., plans		23
	24 Employee benefit programs		24
	25 Domestic production activities deduction (attach Form 8903)		25
	26 Other deductions (attach schedule)		26 15,547.
	27 Total deductions. Add lines 12 through 26		27 50,315.
28 Taxable income before net operating loss deduction and special deductions. Subtract line 27 from line 11		28 (8,288.)	
29 Less: a Net operating loss deduction (see instructions)	29a	29c	
b Special deductions (Schedule C, line 20)	29b	29d	
30 Taxable income. Subtract line 29c from line 28 (see instructions if Schedule C, line 12, was completed)		30 (8,288.)	
Tax and Payments	31 Total tax (Schedule J, line 11)		31
	32 Payments: a 2004 overpayment credited to 2005	32a	32d
	b 2005 estimated tax payments	32b	32e
	c Less 2005 refund applied for on Form 4466	32c	32f
	d Tax deposited with Form 7004		32g
	e Credit from (1) Form 2439 (2) Form 4138		32h
	33 Estimated tax penalty (see instructions). Check if Form 2220 is attached		33
	34 Tax due. If line 32g is smaller than the total of lines 31 and 33, enter amount owed		34
35 Overpayment. If line 32g is larger than the total of lines 31 and 33, enter amount overpaid		35	
36 Enter amount of line 35 you want: Credited to 2006 estimated tax Refunded		36	

Sign Here

Under penalties of perjury, I declare that I have examined this return, including accompanying schedules and statements, and to the best of my knowledge and belief, it is true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Signature of officer

Date

Title

May the IRS discuss this return with the preparer shown below (see instructions)? ☒ Yes ☐ No

Paid Preparer's

Preparer's signature

Date

10/10/2006

Check if self-employed ☒Preparer's SSN or PTIN
S00056657

Use Only

Firm's name (or yours)

THE TAX SHOP

if self-employed, address, and ZIP code

1816 MONTAGUE AVE

GREENWOOD SC 29649

EIN

Phone no. 864-229-3156

Schedule A Cost of Goods Sold (see instructions)

1	Inventory at beginning of year	1	10,500.
2	Purchases	2	45,883.
3	Cost of labor	3	
4	Additional section 263A costs (attach schedule)	4	
5	Other costs (attach schedule)	5	
6	Total. Add lines 1 through 5	6	56,383.
7	Inventory at end of year	7	16,505.
8	Cost of goods sold. Subtract line 7 from line 6. Enter here and on page 1, line 2	8	39,878.

9a Check all methods used for valuing closing inventory:

- (i) ☒ Cost
(ii) ☐ Lower of cost or market
(iii) ☐ Other (Specify method used and attach explanation.) ▶

b Check if there was a writedown of subnormal goods ▶ ☐c Check if the LIFO inventory method was adopted this tax year for any goods (if checked, attach Form 970) ▶ ☐

d If the LIFO inventory method was used for this tax year, enter percentage (or amounts) of closing inventory computed under LIFO

9d

e If property is produced or acquired for resale, do the rules of section 263A apply to the corporation? ☐ Yes ☒ Nof Was there any change in determining quantities, cost, or valuations between opening and closing inventory? If "Yes," attach explanation ☐ Yes ☒ No**Schedule C Dividends and Special Deductions** (see instructions)

	(a) Dividends received	(b) %	(c) Special deductions (a) x (b)
1 Dividends from less-than-20%-owned domestic corporations (other than debt-financed stock)		70	
2 Dividends from 20%-or-more-owned domestic corporations (other than debt-financed stock)		80	
3 Dividends on debt-financed stock of domestic and foreign corporations		see instr.	
4 Dividends on certain preferred stock of less-than-20%-owned public utilities		42	
5 Dividends on certain preferred stock of 20%-or-more-owned public utilities		48	
6 Dividends from less-than-20%-owned foreign corporations and certain FSCs		70	
7 Dividends from 20%-or-more-owned foreign corporations and certain FSCs		80	
8 Dividends from wholly owned foreign subsidiaries		100	
9 Total. Add lines 1 through 8. See instructions for limitation			
10 Dividends from domestic corporations received by a small business investment company operating under the Small Business Investment Act of 1958		100	
11 Dividends from affiliated group members and certain FSCs		100	
12 Dividends from controlled foreign corporations (attach Form 8895)		85	
13 Dividends from foreign corporations not included on lines 3, 6, 7, 8, 11 or 12			
14 Income from controlled foreign corporations under subpart F (attach Form(s) 5471)			
15 Foreign dividend gross-up			
16 IC-DISC and former DISC dividends not included on lines 1, 2, or 3			
17 Other dividends			
18 Deduction for dividends paid on certain preferred stock of public utilities			
19 Total dividends. Add lines 1 through 17. Enter here and on page 1, line 4			
20 Total special deductions. Add lines 9, 10, 11, 12, and 18. Enter here and on page 1, line 29b			

Schedule E Compensation of Officers (see instructions for page 1, line 12)

Note: Complete Schedule E only if total receipts (line 1a plus lines 4 through 10 on page 1) are \$500,000 or more.

1	(a) Name of officer	(b) Social security number	(c) Percent of time devoted to business	Percent of corporation stock owned		(f) Amount of compensation
				(d) Common	(e) Preferred	
			0.0 %	0.0 %	0.0 %	
			0.0 %	0.0 %	0.0 %	
			0.0 %	0.0 %	0.0 %	
			0.0 %	0.0 %	0.0 %	
			0.0 %	0.0 %	0.0 %	
2	Total compensation of officers					
3	Compensation of officers claimed on Schedule A and elsewhere on return					
4	Subtract line 3 from line 2. Enter the result here and on page 1, line 12					

Schedule J Tax Computation (see instructions)

1	Check if the corporation is a member of a controlled group ☐		
Important: Members of a controlled group, see instructions.			
2 a	If the box on line 1 is checked, enter the corporation's share of the \$50,000, \$25,000, and \$9,925,000 taxable income brackets (in that order):		
	(1) \$	(2) \$	(3) \$
b	Enter the corporation's share of:		
	(1) Additional 5% tax (not more than \$11,750)	\$	
	(2) Additional 3% tax (not more than \$100,000)	\$	
3	Income tax. Check if a qualified personal service corporation (see instructions) ☐		3
4	Alternative minimum tax (attach Form 4626) ☐		4
5	Add lines 3 and 4		5
6 a	Foreign tax credit (attach Form 1118)	6a	
b	Possessions tax credit (attach Form 5735)	6b	
c	Credits from: ☐ Form 8834 ☐ Form 8907, line 23	6c	
d	General business credit. Check box(es) and indicate which forms are attached: ☐ Form 3800 ☐ Form(s) (specify) ▶	6d	
e	Credit for prior year minimum tax (attach Form 8827)	6e	
f	Bond credits from: ☐ Form 8860 ☐ Form 8912	6f	
7	Total credits. Add lines 6a through 6f	7	
8	Subtract line 7 from line 5	8	0
9	Personal holding company tax (attach Schedule PH (Form 1120))	9	
10	Other taxes. Check if from: ☐ Form 4255 ☐ Form 8611 ☐ Form 8697 ☐ Form 8866 ☐ Form 8902 ☐ Other (attach schedule)	10	
11	Total tax. Add lines 8 through 10. Enter here and on page 1, line 31	11	

Schedule K Other Information (see instructions)

1	Check accounting method: a ☒ Cash b ☐ Accrual c ☐ Other (specify) ▶	Yes	No	
2	See the instructions and enter the:			
a	Business activity code no. ▶ 722110			
b	Business activity ▶ RESTAURANT			
c	Product or service ▶ RESTAURANT			
3	At the end of the tax year, did the corp. own, directly or indirectly, 50% or more of the voting stock of a domestic corporation? (For rules of attribution, see section 267(c).) ☒ If "Yes," attach a schedule showing: (a) name and employer identification number (EIN), (b) percentage owned, and (c) taxable income or (loss) before NOL and special deductions of such corporation for the tax year ending with or within your tax year.			
4	Is the corporation a subsidiary in an affiliated group or a parent-subsidiary controlled group? ☒ If "Yes," enter name and EIN of the parent corporation ▶			
5	At the end of the tax year, did any individual, partnership, corporation, estate, or trust own, directly or indirectly, 50% or more of the corporation's voting stock? (For rules of attribution, see section 267(c).) ☒ If "Yes," attach a schedule showing name and identifying number. (Do not include any information already entered in 4 above.) Enter percentage owned ▶ 0.0			
6	During this tax year, did the corporation pay dividends (other than stock dividends and distributions in exchange for stock) in excess of the corporation's current and accumulated earnings and profits? (See sections 301 and 316.) ☒ If "Yes," file Form 5452, Corporate Report of Non-dividend Distributions. If this is a consolidated return, answer here for the parent corporation and on Form 851, Affiliations Schedule, for each subsidiary.			
7	At any time during the tax year, did one foreign person own, directly or indirectly, at least 25% of (a) the total voting power of all classes of stock of the corporation entitled to vote or (b) the total value of all classes of stock of the corp.? If "Yes," enter: (a) Percentage owned ▶ 0.0 and (b) Owner's country ▶	Yes	No	☒
c	The corporation may have to file Form 5472, Information Return of a 25% Foreign-Owned U.S. Corporation or a Foreign Corporation Engaged in a U.S. Trade or Business. Enter number of Forms 5472 attached ▶			
8	Check this box if the corporation issued publicly offered debt instruments with original issue discount ☐ If checked, the corporation may have to file Form 8281, Information Return for Publicly Offered Original Issue Discount Instruments.			
9	Enter the amount of tax-exempt interest received or accrued during the tax year ▶ \$			
10	Enter the number of shareholders at the end of the tax year (if 100 or fewer) ▶			
11	If the corporation has an NOL for the tax year and is electing to forego the carryback period, check here ☐ If the corporation is filing a consolidated return, the statement required by Temporary Regulations section 1.1502-21T(b)(3) must be attached or the election will not be valid.			
12	Enter the available NOL carryover from prior tax years (Do not reduce it by any deduction on line 28a.) ▶ \$			
13	Are the corporation's total receipts (line 1a plus lines 4 through 10 on page 1) for the tax year and its total assets at the end of the tax year less than \$250,000? ☒ If "Yes," the corporation is not required to complete Sch. L, M-1, and M-2 on page 4. Instead, enter the total amount of cash distributions and the book value of property distributions (other than cash) made during the tax year. ▶ \$			

Note: If the corporation, at any time during the tax year, had assets or operated a business in a foreign country or U.S. possession, it may be required to attach Schedule N (Form 1120), Foreign Operations of U.S. Corporations, to this return. See Schedule N for details.

Name: SHOU MARTIN

EIN: 57-1182286

Type:

Accounting		1,500.
Amortization.....		
Answering service		
Auto and truck expenses		
Bank charges		
Commissions		
Computer expense		
Delivery and freight		
Dues and subscriptions		
Entertainment and promotion.....		
Gifts		
Insurance		1,728.
Janitorial		
Laundry and cleaning		
Legal and professional fees.....		
Licenses and permits		
Meals:		
_____ at 50%		
_____ at 70% - DOT hours of service		
_____ at 100% - See instructions		
Miscellaneous		
Office expense		
Outside service		
Parking fees and tolls		
Postage.....		
Printing		
Sales expense.....		
Security		2,160.
Supplies		
Telephone.....		2,289.
Temporary help		
Tools		
Trade show expense		
Training and seminars		
Travel.....		
Uniforms		558.
Utilities		7,312.
.....		
.....		
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.....		
.....		
Total		15,547.

Depreciation and Amortization
(Including Information on Listed Property)

▶ See separate instructions. ▶ Attach to your tax return.

OMB No. 1545-0172

2005

Attachment
Sequence No. **67**

Name(s) shown on return
SHOU MARTIN

Business or activity to which this form relates
RESTAURANT & NITE CLUB

Identifying number
57-1182286

Part I Election To Expense Certain Property Under Section 179

Note: If you have any listed property, complete Part V before you complete Part I.

- | | | |
|--|---|----------|
| 1 Maximum amount. See the instructions for a higher limit for certain businesses | 1 | 105,000. |
| 2 Total cost of section 179 property placed in service (see instructions) | 2 | |
| 3 Threshold cost of section 179 property before reduction in limitation | 3 | 420,000. |
| 4 Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0- | 4 | |
| 5 Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married
filing separately, see instructions | 5 | |

(a) Description of property	(b) Cost (business use only)	(c) Elected cost
6		
7 Listed property. Enter the amount from line 29	7	
8 Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	
9 Tentative deduction. Enter the smaller of line 5 or line 8	9	
10 Carryover of disallowed deduction from line 13 of your 2004 Form 4562	10	
11 Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instructions) ..	11	
12 Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12	
13 Carryover of disallowed deduction to 2006. Add lines 9 and 10, less line 12	13	

Note: Do not use Part II or Part III below for listed property. Instead, use Part V.

Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property.) (See instructions.)

- | | | |
|---|----|--|
| 14 Special allowance for certain aircraft, certain property with a long production period, and qualified NYL or GO
Zone property (other than listed property) placed in service during the tax year (see instructions) | 14 | |
| 15 Property subject to section 168(f)(1) election | 15 | |
| 16 Other depreciation (including ACRS) | 16 | |

Part III MACRS Depreciation (Do not include listed property.) (See instructions.)

Section A

- | | | |
|---|----|--------|
| 17 MACRS deductions for assets placed in service in tax years beginning before 2005 | 17 | 4,560. |
| 18 If you are electing to group any assets placed in service during the tax year
into one or more general asset accounts, check here | | |

Section B-Assets Placed in Service During 2005 Tax Year Using the General Depreciation System

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depr. (business/investment use only - see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
19a 3-year property						
b 5-year property						
c 7-year property						
d 10-year property						
e 15-year property						
f 20-year property						
g 25-year property			25 yrs.		S/L	
h Residential rental property			27.5 yrs.	MM	S/L	
i Nonresidential real property			39 yrs. 0.0	MM	S/L	

Section C-Assets Placed in Service During 2005 Tax Year Using the Alternative Depreciation System

20a Class life					S/L	
b 12-year			12 yrs.		S/L	
c 40-year			40 yrs.	MM	S/L	

Part IV Summary (see instructions)

- | | | |
|---|----|--------|
| 21 Listed property. Enter amount from line 28 | 21 | |
| 22 Total. Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21.
Enter here and on the appropriate lines of your return. Partnerships and S corporations - see instr. | 22 | 4,560. |
| 23 For assets shown above and placed in service during the current year, enter the
portion of the basis attributable to section 263A costs | 23 | |

2005 ASSET DETAIL REPORT

Description	Date Acqd	Cost	Bus. Use	179+ Spec.	Basis	Method	Rec. Per.	Cv	Prior Depr.	Current Depr.	Next Year	Prior AMT	Current AMT	Gain/Price	Sales Price	Date Sold
Form: RESTAURANT & NITE CLUB Personal Property: N/A Depreciation Class: N/A In Service Year: 2003																
EQUIPMENT	10/03	20000	100		20000	MACRS	5.0	MQ	8600	4560	2736	6526	4042			
Form Totals:		20000			20000				8600	4560	2736	6526	4042			

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

SHOU MARTIN,

Plaintiff(s)

vs.

WILMER (JOHN) RIFE AND BARBARA ANN
DOOMEY,

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2010-CP - 04- 4554

A TRUE COPY

DEC 3 1 2010

Richard A. Shirley
Clerk of Courts

(Please Print)

Submitted By: C. Rauch Wise

Address: 305 Main Street

Greewood, SC 29646

SC Bar #: 06188

Telephone #: 864-229-5010

Fax #: 864-229-2665

Other:

E-mail: rauch@simplepc.net

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☒ **JURY TRIAL** demanded in complaint. ☐ **NON-JURY TRIAL** demanded in complaint.
☐ This case is subject to **ARBITRATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to **MEDIATION** pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|---|
| Contracts
☐ Constructions (100)
☐ Debt Collection (110)
☐ Employment (120)
☐ General (130)
☒ Breach of Contract (140)
☐ Other (199) | Torts - Professional Malpractice
☐ Dental Malpractice (200)
☐ Legal Malpractice (210)
☐ Medical Malpractice (220)
Previous Notice of Intent Case #
20____-CP-_____
☐ Notice/ File Med Mal (230)
☐ Other (299) | Torts - Personal Injury
☐ Assault/Slander/Libel (300)
☐ Conversion (310)
☐ Motor Vehicle Accident (320)
☐ Premises Liability (330)
☐ Products Liability (340)
☐ Personal Injury (350)
☐ Wrongful Death (360)
☐ Other (399) | Real Property
☐ Claim & Delivery (400)
☐ Condemnation (410)
☐ Foreclosure (420)
☐ Mechanic's Lien (430)
☐ Partition (440)
☐ Possession (450)
☐ Building Code Violation (460)
☐ Other (499) |
| Inmate Petitions
☐ PCR (500)
☐ Mandamus (520)
☐ Habeas Corpus (530)
☐ Other (599) | Judgments/Settlements
☐ Death Settlement (700)
☐ Foreign Judgment (710)
☐ Magistrate's Judgment (720)
☐ Minor Settlement (730)
☐ Transcript Judgment (740)
☐ Lis Pendens (750)
☐ Transfer of Structured Settlement Payment Rights
☐ Other (799) | Administrative Law/Relief
☐ Reinstate Driver's License (800)
☐ Judicial Review (810)
☐ Relief (820)
☐ Permanent Injunction (830)
☐ Forfeiture-Petition (840)
☐ Forfeiture-Consent Order (850)
☐ Other (899) | Appeals
☐ Arbitration (900)
☐ Magistrate-Civil (910)
☐ Magistrate-Criminal (920)
☐ Municipal (930)
☐ Probate Court (940)
☐ SCDOT (950)
☐ Worker's Comp (960)
☐ Zoning Board (970)
☐ Public Service Commission (990)
☐ Employment Security Comm (991)
☐ Other (999) |
| Special/Complex /Other
☐ Environmental (600)
☐ Automobile Arb. (610)
☐ Medical (620)
☐ Other (699) | ☐ Pharmaceuticals (630)
☐ Unfair Trade Practices (640)
☐ Out-of State Depositions (650)
☐ Motion to Quash Subpoena in an Out-of-County Action (660)
☐ Sexual Predator (510) | | |

Submitting Party Signature: _____

Date: 12-13-2010

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCF, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville, Hampton, Horry,
Jasper, Lexington, Pickens (Family Court Only), Richland, Union and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

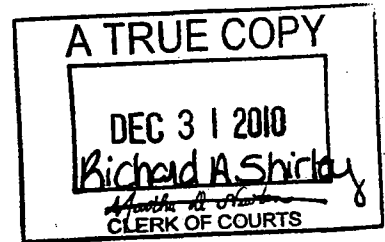
IN THE COMMON PLEAS COURT

Shou Martin,)
Plaintiff,)

Vs.)

Wilmer (John) Rife and)
Barbara Ann Doomey,)
Defendant.)

SUMMONS
2010-CP-04-4554



TO: THE DEFENDANT ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED TO answer the Complaint in the within action, a copy of which is hereby served upon you, and to serve a copy of your Answer to said Complaint on the subscriber hereto at his office, 305 Main Street, Greenwood, South Carolina, within Thirty (30) Days after the service hereof, exclusive of the day of service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

Greenwood, South Carolina

December 7, 2010

C. RAUCH WISE
Attorney at Law
305 Main St.
Greenwood, SC 29646
(864) 229-5010

Attorney for Plaintiff

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

Shou Martin,)

Plaintiff,)

Vs.)

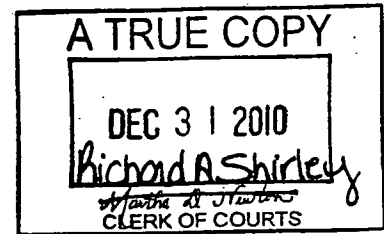
Wilmer (John) Rife and)
Barbara Ann Doomey,)

Defendants.)

IN THE COURT OF COMMON PLEAS

COMPLAINT

2010-CP-04- 4554



Plaintiff, complaining of the Defendant alleges and would show to the Court as follows:

1. The Plaintiff is a citizen and resident of the County of Greenwood, State of South Carolina.
2. The Defendants are citizens and residents of the County of Anderson, State of South Carolina.
3. On or about October 1, 2007, the Plaintiff and Defendants entered into a Contract of Sale by which the Defendants would purchase from the Plaintiff all of the contents of the business located in the County of Anderson, State of South Carolina, known as Simons of Anderson. This sale consisted of all coolers, tables, chairs, signs, electronic equipment, including computers, security cameras, and all glassware and inventory.
4. The Defendants paid the Plaintiff upon the signing of the Purchase Agreement in the sum of Ten Thousand (\$10,000.00) Dollars. Under the terms of the Agreement, the Defendants were to pay the Plaintiff Sixty Thousand (\$60,000.00) Dollars within 90 days from

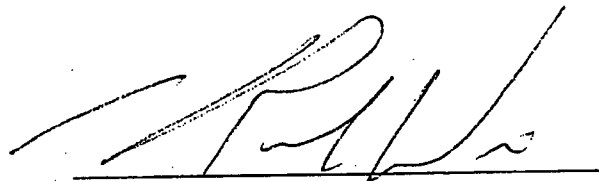
the date of the purchase. The purchase further included any goodwill of Simons of Anderson.

5. The Defendants have failed and refused to pay any of the sums setforth in the Agreement other than the initial Ten Thousand (\$10,000.00) Dollars. The Plaintiff is informed and believes that she is entitled to judgment against the Defendants in the amount of Sixty Thousand (\$60,000.00) Dollars plus interest at the legal rate since January 1, 2008.

WHEREFORE, Plaintiff prays for judgment against the Defendants in the amount of Sixty Thousand (\$60,000.00) Dollars plus interest at the legal rate and for such other and further relief as the Court may deem just and proper.

Greenwood, South Carolina

12-7, 2010



C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010

Attorney for Plaintiff

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF ANDERSON	)	2010-CP-04-4554
	)	
SHOU MARTIN	)	
	)	
Plaintiff	)	<u>ANSWER AND COUNTERCLAIM</u>
	)	
vs.	)	
	)	
WILMER (JOHN) RIFE AND	)	
BARBARA ANN DOOMEY,	)	
	)	
Defendants	)	
_____	)	

The Defendants Wilmer (John) Rife and Barbara Ann Doomey, hereinafter known as "Defendants" by this Answer and Counterclaim, would respectfully show unto the Court:

FOR A FIRST DEFENSE

1.

The Defendants deny each and every allegation contained in the Complaint except as to those specifically admitted, modified or explained.

2.

Paragraphs 1 and 2 are admitted.

3.

The remaining allegations of the Complaint are denied except the allegation that the Defendants paid to the Plaintiff the sum of \$10,000.00.

FOR A SECOND DEFENSE STATUTE OF LIMITATIONS

The preceding allegations are re-alleged.

4.

Defendants would deny that any enforceable agreement was entered into by the parties, but would show unto the Court that if any agreement was made and entered into by the parties, the same is null and void and the Defendants plead the statute of limitations as a complete bar to any cause of action which may be raised by the Plaintiff.

FOR A THIRD DEFENSE STATUTE OF FRAUDS

The preceding allegations are re-alleged.

5.

The Defendants would show unto the Court that the Statute of Frauds provides a complete defense to any cause of action which the Plaintiff may have.

FOR A FOURTH DEFENSE
VIOLATION OF S.C. FAIR TRADE PRACTICE ACT
S.C. CODE §39-5-10 et seq.

The Defendants repeat and re-allege each and every allegation above, as if set forth herein verbatim.

6.

On information and belief, Plaintiffs misrepresentations as to ownership of property and furnishing false profit and loss statements to the Defendants, constitute malicious, wilful and fraudulent acts done with the intention that the same be acted upon by the Defendants to their detriment.

7.

That the actions on the part of the Plaintiffs constitute unfair and deceptive acts, which acts were and are a wilful and knowing violation of the South Carolina Unfair Trade Practices Act.

8.

As a direct and proximate result of Plaintiff's action, the Defendants have suffered an ascertainable loss of money or property and the acts so perpetrated by the Plaintiffs adversely affect members of the public, or are likely to do so in that such acts have potential for repetition such that it affects the public, entitling Defendants to actual and punitive damages and for attorney's fees and costs.

FOR A FIFTH DEFENSE AND BY WAY OF COUNTERCLAIM
FRAUD

The preceding allegations are re-alleged.

9.

The Defendants would show unto the Court that the Plaintiff made material representations to the Defendants as to the ownership of certain property situate in the premises being operated as a bar in Anderson County, South Carolina, including but not limited to, representations as to lease payments, ownership of tangible property and ability to transfer certain licenses to operate the business.

10.

That the representations of Plaintiff were false. That the representations were material and were made to induce the Defendants to sign any documents which were signed.

11.

That the Plaintiff knew of the falsity of the representations which she made, or made them in reckless disregard of whether they were true or false and such representations were made so that the Defendants would act on them and sign any documents that were placed before them by Plaintiff.

12.

That the Defendants were ignorant of the falsity of the representations made by the Plaintiff and relied on them due to the previous and prior relationship between the parties including the Plaintiff's deceased son.

13.

That by virtue of such relationship, the Defendants had a right to rely thereon, and as a result of such misplaced reliance, Defendants have been damaged, suffered loss and damages, resulting in attorney's fees, court costs, mental anguish, pain, humiliation and suffering and are entitled to damages both actual and punitive against the Plaintiff.

FOR A SIXTH DEFENSE AND BY WAY OF COUNTERCLAIM
FAILURE OF CONSIDERATION.

The preceding allegations are re-alleged.

14.

The Defendants would further show unto the Court that there was no consideration; no valid legal consideration which passed between the Plaintiff and Defendants, in return for the execution of documents which are or may be the basis of this lawsuit and therefore, said documents are null and void and are of no force and effect against these Defendants.

FOR A SEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM
ESTOPPEL

The preceding allegations are re-alleged.

15.

The claims and allegations asserted in the Complaint are barred by the Doctrine of Estoppel.

FOR AN EIGHTH DEFENSE AND BY WAY OF COUNTERCLAIM
BREACH OF COVENANT OF GOOD FAITH AND FAIR DEALING

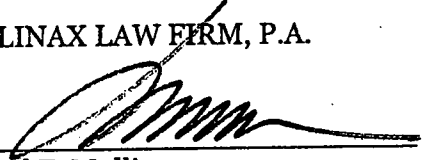
The preceding allegations are re-alleged.

16.

That the Plaintiff, by her actions and failures to inform the Defendants of her lack of ownership in the tangible property situate in the business of her misrepresentations as to the

amount of the monthly lease payments and her fraudulent misrepresentations as to the profit and loss of the business, all constitute unfair acts and practices in violation of the normal covenants of good faith and fair dealing.

MULLINAX LAW FIRM, P.A.



Michael F. Mullinax
Post Office Box 2665
Anderson, SC 29622
(864) 261-6242

ATTORNEY FOR THE DEFENDANTS

Anderson, South Carolina

February 3, 2011

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON)

CASE NO.: 2011-CP-04-4554

SHOU MARTIN)

Plaintiff)

vs.)

INTERROGATORIES

WILMER (JOHN) RIFE AND)

BARBARA ANN DOOMEY)

Defendant)

TO: MR. C. RAUCH WISE, ATTORNEY FOR THE PLAINTIFF:

Pursuant to Rule 33(b) of the Circuit Court Rules, you are hereby required to answer the following Interrogatories within thirty (30) days from the date of service:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

2. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness or provide a copy of any written or recorded statements taken from such witnesses.

3. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or the defense in this case.

4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim, and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

5. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

6. As to each person the Plaintiff expects to call as an expert witness at trial, please also state:

(a) Expert's educational background;

(b) The subject matter of the area on which each such person is to testify;

(c) A list of books, treatises, journal articles or other works with which each such person regards as authoritative on the subject matter on which such person is expected to testify.

7. Identify all exhibits you plan to use at trial.

These interrogatories shall be deemed continuing so as to require supplemental answers if further information is obtained between the time answers are served and the time of trial.

MULLINAX LAW FIRM, P.A.

Anderson, South Carolina
October 3, 2011

MICHAEL F. MULLINAX
ATTORNEY FOR DEFENDANTS
POST OFFICE BOX 2665
ANDERSON, S.C. 29622
864/ 261-6242

STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON	)	
Shou Martin,	)	
	)	
Plaintiff,	)	
	)	
vs	)	ANSWERS TO INTERROGATORIES
	)	11-CP-04-4554
Wilmer (John) Rife, and	)	
Barbara Ann Doomey,	)	
	)	
Defendants.	)	

TO: Michael F. Mullinax, Attorney for Defendants:

Plaintiff, answering the interrogatories of the Defendant, would show as follows:

1. Give the names and addresses of persons known to the parties or counsel to be witnesses concerning the facts of the case and indicate whether or not written or recorded statements have been taken from the witnesses and indicate who has possession of such statements.

Answer: Shou Martin
204 Ferncliff Rd.
Greenwood, SC 29649

Danny Rearden
215 Swallow Rd.
Ninety Six, SC 29666

Katie Swinyer
1009 Roundabout Trail
Anderson, SC 29625

Jason Brown
313 E. Willow St.
Apt. 316
Syracuse, NY 13203
No written statements.

2. For each person known to the parties or counsel to be a witness concerning the facts of the case, set forth either a summary sufficient to inform the other party of the important facts known to or observed by such witness or provide a copy of any written or recorded

statements taken from such witnesses.

Answer: Shou Martin and Danny Rearden will testify as to the conversations between plaintiff and defendant leading up to the purchase and the agreement between herself and the defendants.

Katie Swinyer and Jason Brown will testify as to the fact that Plaintiff was a regular customer at Simon's of Anderson prior to purchasing the bar and should have had personal knowledge as to the amount of business the bar did at the time of the purchase.

3. Set forth a list of photographs, plats, sketches, or other prepared documents in possession of the party that relate to the claim or the defense in this case.

Answer: None

4. Set forth the names and addresses of all insurance companies which have liability insurance coverage relating to the claim, and set forth the number or numbers of the policies involved and the amount or amounts of liability coverage provided in each policy.

Answer: Agency: John Roberts Agency
Anderson, South Carolina

Insurance Company: Colonia Insurance
9201 Forest Hill Ave.
Suite 200
Richmond, VA 23235
Policy #: MP3523262
Limits: \$1,000,000.00

5. List the names and addresses of any expert witnesses whom the party proposes to use as a witness at the trial of the case.

Answer: None

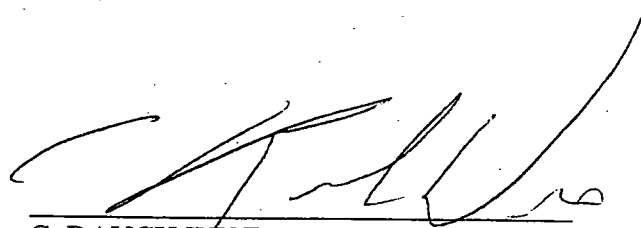
6. As to each person the Plaintiff expects to call as an expert witness a trial, please also state:

Answer: None

7. Identify all exhibits you plan to use at trial.

Answer: Signed agreement between Plaintiff and Defendant.

Dec 6th, 2011



C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010

Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS
CASE NO.: 2011-CP-04-4554

SHOU MARTIN)

Plaintiff)

vs.)

WILMER (JOHN) RIFE AND)
BARBARA ANN DOOMEY)

Defendant)

REQUESTS FOR PRODUCTION,
INSPECTION AND COPYING
OF DOCUMENTS

TO: MR. C. RAUCH WISE, ATTORNEY FOR THE PLAINTIFF:

Pursuant to Rule 34 of the South Carolina Rules of Civil Procedure, the Defendant requests that the Plaintiff permit the Defendant to inspect and copy the following documents in the office of the Defendant's attorney at 10:00 a.m. on the 30th day after service of this request, or, if that day is a Saturday or Sunday or legal holiday, at 10:00 a.m. on the following business day.

1. All photographs, plats, sketches or other prepared documents in the possession of the Plaintiff or their counsel concerning any of the incidents which are the subject of this action.
2. All statements whether written or recorded, summarized or otherwise reproduced, taken from any witness concerning any matter relating to the incidents which are the subject of this action.
3. Any and all documents identified in response to Defendant's First Interrogatories to Plaintiff, numbered one through seven.
4. Any and all documents which support or tend to support any of the allegations contained in Plaintiff's Complaint.
5. Any and all other documents of photographs of any type, nature of description whatsoever not produced in response to any of the preceding requests that the Plaintiff will rely upon at trial, either for the proof of their case or for impeachment purposes.

The request herein shall be deemed to continue from the time of service to the time of trial in this action, such that information and objects which come to the knowledge of the Defendants and/or their attorneys after original responses to this request have been submitted, shall be promptly transmitted to the attorney for the Defendant.

MULLINAX LAW FIRM, P.A.

MICHAEL F. MULLINAX
Post Office Box 2665
Anderson, SC 29622
(864) 261-6242
ATTORNEY FOR THE DEFENDANTS

Anderson, South Carolina
October, 3, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Shou Martin,)
)
Plaintiff,)

vs)

ANSWERS TO REQUEST TO PRODUCE
11-CP-04-4554

Wilmer (john) Rife, and)
Barbara Ann Doomey,)
)
Defendants.)

Plaintiff, answering the Request to Produce of Defendant, would respectfully allege and show unto the Court as follows:

1. All photographs, plats, sketches or other prepared documents in the possession of the Plaintiff or their counsel concerning any of the incidents which are the subject of this action.

Answer: None

2. All statement whether written or recorded, summarized or otherwise reproduced, taken from any witness concerning any matter relating to the incidents which are the subject of this action.

Answer: None

3. Any and all documents identified in response to Defendant's First Interrogatories to Plaintiff, numbered one through seven.

Answer: See attached copy of signed agreement

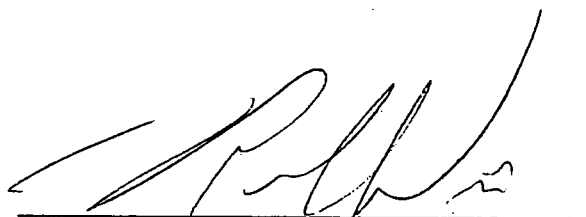
4. Any and all documents which support or tend to support any of the allegations contained in Plaintiff's Complaint.

Answer: None

5. Any and all other documents or photographs of any type, nature or description whatsoever not produced in response to any of the preceding requests that the Plaintiff will rely upon at trial, either for the proof of their case or for impeachment purposes.

Answer: None

Dea Bth, 2011

A handwritten signature in black ink, appearing to read 'C. Rauch Wise', written over a horizontal line.

C. RAUCH WISE
Attorney at Law
305 Main Street
Greenwood, SC 29646
(864) 229-5010

Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Shou Y. Martin,)
Plaintiff,)

MOTION TO ASSESS PREJUDGMENT INTEREST

Vs.)

Wilmer (John) Rife and)
Barbara Ann Doomey,)
Defendant.)

2010 - CP - 04 - 4554

The Plaintiff, Shou Y. Martin, through her undersigned counsel, hereby moves the Court to add prejudgment interest pursuant to South Carolina Code §34-31-20. This motion is based upon the fact that the judgment of the jury showed that the sum of money was ascertained and prejudgment interest is proper under the law.

Sept 10th, 2012



C. RAUCH WISE
Attorney at Law
305 Main St.
Greenwood, SC 29646
(864) 229-5010

Attorney for Plaintiff

STATE OF SOUTH CAROLINA)
)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

Shou martin,)

Plaintiff,)

-vs-)

Wilmer (John) Rife and)
Barbara Ann Doomey,)

Defendants.)

Brief in Support of Motion for Interest

2010-CP-04-4554

Under South Carolina Code § 34-31-20 Shou Martin is entitle to prejudgment interest at a rate of 8.75% since January 1, 2008. Mrs. Martin requested interest since January 1, 2008. *See* Complaint ¶ 5. The amount Mrs. Martin file suit for was a fixed amount or at least ascertainable by the facts that existed at the time of the contract. At trial, Mrs. Martin claimed that \$48,274.21 was due and owing. The defendants contended that they were entitled to numerous offsets including the monies they paid to Good Times Games for the pool tables. The jury rejected all of the arguments of the defendants except for the payment to Good Times in the amount of \$1,500. The resulting verdict for the plaintiff was for \$46,774.21.

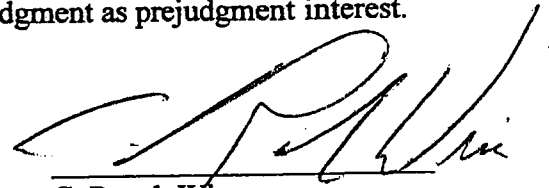
In *Smith-Hunter Construction Co. v. Hopson*, 365 S.C. 125, 616 S.E.2d 419 (2005) the South Carolina Supreme Court said "The fact that the sum due is disputed does not render the claim unliquidated." *Id.* at 128, 616 S.E.2d at 421. The Court further held "The proper test for determining whether prejudgment interest may be awarded is whether or not the measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the

claim arose." *Id.*

The holding of that case applies to the facts of this case. As Mrs. Martin had agreed to hold the defendants harmless for any claim by a third party, the amount due under the contract would be less any claim by a third party. The defendants convinced the jury there was a valid claim by a third party. Thus, the amount due to Mrs. Martin was ascertainable by the facts as they existed at the time the contract was signed.

The original debt was due on January 1, 2008. The prejudgment interest at 8.75% totals \$19,172.21. The Court should add this amount to the judgment as prejudgment interest.

September 10, 2012



C. Rauch Wise
305 Main Street
Greenwood, SC 29646
864 229-5010
S. C. Bar No 6188

Attorney for Shou Martin

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON)

2010-CP-04-4554

SHOU MARTIN)

Plaintiff)

vs.)

WILMER (JOHN) RIFE AND)
BARBARA ANN DOOMEY,)

Defendants)

**DEFENDANT'S RETURN TO PLAINTIFF'S
MOTION FOR PRE-JUDGEMENT INTEREST**

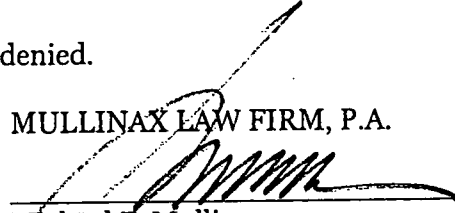
The Plaintiff is not entitled to pre-judgement interest based upon the fact that this debt was disputed in its entirety from the beginning, based on the failure of the Plaintiff to be the proper party to bring this action. It was not merely the amount of the debt, but the fact of the debt and therefore, the Plaintiff had to prove the right to maintain an action for a contractual breach, making the claim itself uncertain, and any recovery thereon unliquidated. The Defendants would deny any entitlement by the Plaintiff to pre-judgement interest for the reason set forth in its Motion for Judgement NOV previously filed with the Court.

1. The Smith- Hunter Construction Company v. Hobson case cited by the Plaintiff is not applicable.

2. The Plaintiff brought this claim alleging a liquidated sum of \$60,000.00 which proved to be a fabrication and not true. Obviously the claim was not liquidated and the validity of the claim as well as the amount was in dispute which prevents the Plaintiff from claiming pre-judgement interest.

The Defendants request that the Motion be denied.

MULLINAX LAW FIRM, P.A.


Michael F. Mullinax

Post Office Box 2665

Anderson, SC 29622

(864) 261-6242

ATTORNEY FOR THE DEFENDANTS

Anderson, South Carolina
September 13, 2012

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

SHOU MARTIN)

Plaintiff)

vs.)

WILMER (JOHN) RIFE AND)
BARBARA ANN DOOMEY,)

Defendants)

IN THE COURT OF COMMON PLEAS

2010-CP-04-4554

MOTION FEE PAID

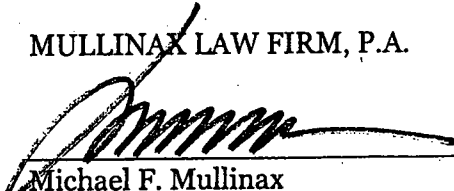
MOTION FOR JUDGEMENT NOT
WITHSTANDING THE VERDICT (JNOV)

YOU WILL PLEASE TAKE NOTICE that the undersigned hereby moves the Court pursuant to Rule 50(e) SCRCP for a Judgement Not Withstanding the Verdict on the basis that the Contract on which the action was based, was an illegal contract and the Plaintiff had no standing to maintain the cause of action, based upon the laws of the State of South Carolina. Specifically, the evidence and testimony revealed that the business being operated was a not-for-profit corporation, organized in order to maintain a private club, and pursuant to the provisions of SC Code Regulations R.7-401.3401.4 (a) through (f) and specifically (e) and (f), provides specifically that "no residual assets must enure to the direct benefit of any member or shareholder, but must be turned over to one or more non-profit organizations". Further, that "no member, officer, agent or employee of such non-profit corporation shall be paid or directly or indirectly receive compensation from the profit, sale or distribution of alcoholic beverages beyond the amount of their salary".

The testimony and evidence in the case indicate that the contract related to all assets of the business being operated as a non-profit corporation to wit: Simons of Anderson, Inc.; the tax return introduced into evidence showed that the business was operated as a non-profit corporation and that the assets were depreciated by the corporation on its Federal Income Tax Return. The contract also purported to sell the good will as part of the consideration for the contract, indicating that there was an intent of the individual owner to profit from the sale of the business.

The undersigned moves for judgement not withstanding the verdict in that to allow the verdict to stand would be in direct violation of and in contravention of South Carolina statutory law.

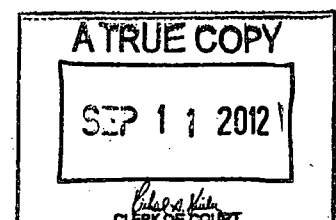
MULLINAX LAW FIRM, P.A.


Michael F. Mullinax
Post Office Box 2665
Anderson, SC 29622
(864) 261-6242

ATTORNEY FOR THE DEFENDANTS

Anderson, South Carolina

September 11, 2012



MULLINAX LAW FIRM, P.A.

MICHAEL F. MULLINAX, Attorney and Counselor at Law

Phone: (864) 261-6242
Fax: (864) 261-6680

509 North McDuffie Street
Post Office Box 2665
Anderson, South Carolina 29622

mikemullinax@charter.net
www.mullinaxlaw.com

June 21, 2013

The Honorable J. Cordell Maddox, Jr.
Anderson County Circuit Court Judge
Anderson County Courthouse
Post Office Box 8002
Anderson, SC 29621

Re: Shou Martin v. Wilmer (John) Rife and Barbara Ann Doomey
Case No.: 2011-CP-04-4554

Dear Judge Maddox:

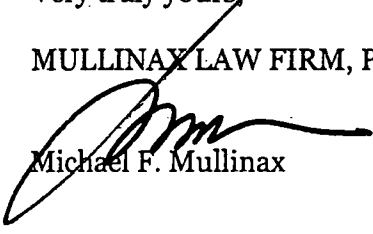
Enclosed for service upon you, please find Defendant's Motion to Vacate or Reconsider Pursuant to S.C.R.C.P. Rule 59(E) in regard to the above matter. By copy of this letter I am also serving the Plaintiff's attorney, Mr. C. Rauch Wise.

Also enclosed is my Certificate of Service.

With kindest regards, I am

Very truly yours,

MULLINAX LAW FIRM, P.A.


Michael F. Mullinax

MFM/lcm

Enclosures

cc: Mr. C. Rauch Wise
Mr. John Rife
Ms. Barbara Doomey

STATE OF SOUTH CAROLINA)
COUNTY OF ANDERSON)

IN THE COURT OF COMMON PLEAS

2010-CP-04-4554

SHOU MARTIN)

Plaintiff)

vs.)

WILMER (JOHN) RIFE AND)
BARBARA ANN DOOMEY,)

Defendants)

MOTION TO VACATE OR RECONSIDER
PURSUANT TO S.C. RULES OF CIVIL PROCEDURE
RULE 59(E)

A TRUE COPY

JUN 21 2013

Robert A. Harty
CLERK OF COURT

It is respectfully submitted that the Order of the Trial Judge, dated June 13, 2013, received by the undersigned on June 16, 2013, should be modified and/or vacated, pursuant to the provisions of S.C.R.C.P. 59(e) on the following grounds:

- 1) That the Court erred in not granting a Judgement Notwithstanding the Verdict, or a new trial, pursuant to S.C.R.C.P. 50(e) on the basis that the Judge failed to consider the fact and law specifically that the Plaintiff had no standing to maintain the action before the Court based upon the undisputed fact that the entity being sold was being operated as a not for profit corporation, organized and existing, pursuant to S.C. Code of Laws §61-6-1600, and in particular, S.C. Code Regulations R.7-401.3401.4(A - F) and specifically (E) and (F) which provided that "no residual assets must enure to the benefit of any member of the shareholder but must be turned over to one or more non-profit organizations." See Brock v. Bennett 313 SC, 443 SE 2d 409 (Ct. App 1994)
- 2) That the Court erred in failing to award a Judgement Notwithstanding the Verdict, on the basis that the Court that the S.C. Code Regulations provide that "no member, officer, agent, or employee of such non-profit corporation shall be paid or directly or indirectly receive compensation from the profit, sale or distribution of alcoholic beverages beyond the amount of their salary."
- 3) It is respectfully submitted that the Judge erred in failing to grant a Judgement Notwithstanding the Verdict in that the Court failed to consider that the Plaintiff had the burden of proof to prove that the contract related to assets which were not connected with the operation of the non profit business, Simon's of Anderson, Inc., when in fact and based upon the evidence produced at trial, all of the assets were in fact related to the operation of the non-profit corporation, Simon's of Anderson, Inc. and not to the Plaintiff in her individual capacity.
- 4) It is respectfully submitted that the Trial Judge erred in failing to grant Judgement Not Withstanding the Verdict by failing to consider that all of the evidence and testimony in the case indicated that the contract represented profits of a non-profit corporation and in particular, the fact that the contract related to the good will of the business which was in truth and in fact and based upon all of the evidence and testimony in the case, a non-profit corporation.

- 5) It is respectfully submitted that the Trial Judge erred in failing to enter a judgement not withstanding the verdict, by failing to consider that the Plaintiff's evidence related solely to the non-profit corporation.

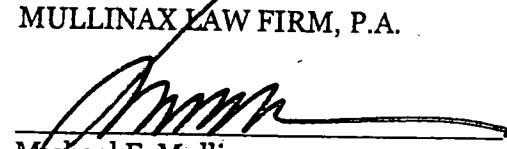
"Before the evidence is left to the jury, there is a preliminary question for the Judge not whether there is literally no evidence, but whether a jury could properly proceed to find a verdict for the party producing it upon whom the onus of proof is imposed." 477 U.S. 251

The Plaintiff's burden of proof required that she demonstrate that the contract related to something other than the business of the non-profit and she did not.

6. That the Court's Order should be reconsidered and judgement granted for the Defendant based upon the "13th Juror Doctrine" on the basis that the evidence produced does not justify the verdict rendered by the jury in this case. See Youmans, Ex Rel. Elmore v. South Carolina Department of Transportation 380 S.C. 263, 670 S.E. 2d 1 (Ct. App. 2008).

This Motion is based upon the statutory and case law of the State of South Carolina, together with the evidence and testimony produced at trial and is further based upon a Memorandum of Law to be hereafter filed with the Court in support of this Motion.

MULLINAX LAW FIRM, P.A.



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(864) 261-6242

ATTORNEY FOR THE DEFENDANTS

Anderson, South Carolina

June 21, 2013

STATE OF SOUTH CAROLINA)

COUNTY OF ANDERSON)

SHOU MARTIN)

Plaintiff)

vs.)

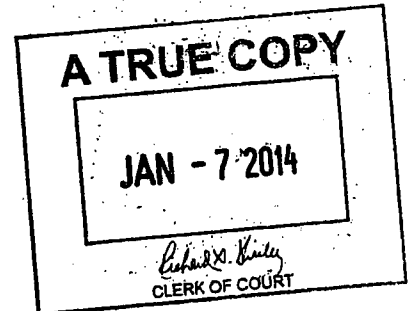
WILMER (JOHN) RIFE AND)
BARBARA ANN DOOMEY,)

Defendants)

IN THE COURT OF COMMON PLEAS

2010-CP-04-4554

ORDER



This matter is before the Court pursuant to the Defendant's Motion to Vacate or Reconsider this Court's prior Order, dated June 13, 2013. This matter involved a written agreement for the purchase of contents and property and all inventory and good will of a non-profit corporation named Simon's of Anderson, Inc. The action was brought by Shou Martin in her individual capacity and not by the corporation. The Corporation was organized under the provisions of S.C. Code §61-6-1600 *et seq* pertaining to non-profit corporations being able to operate a private club and sell alcoholic beverages.

The case was tried to a jury verdict in favor of the individual Plaintiff, Shou Martin, and the Defendants, during the course of the trial, had made appropriate motions for non-suit, directed verdict and motion to vacate and reconsider the award of the jury verdict. The Motion to Reconsider was timely filed on June 21, 2013 and submits that the Court should reconsider its decision refusing the vacate the judgement on the basis that the Plaintiff, Shou Martin, had no standing to maintain the action before the Court. This Motion was based upon the fact that it was undisputed that Simon's of Anderson, Inc. was organized and operated as a not for profit corporation pursuant to S.C. Code of Laws §61-6-1600; and that the provisions of S.C. Code Reg. R 7-401-3401-4(a-f) and specifically (e) and (f) provides that "no residual assets must enure to the benefit of any member or shareholder but must be turned over to one or more non-

profit organizations”.

FINDINGS OF FACT

1. Shou Martin is an individual and was the owner of stock in Simon's of Anderson, Inc.
2. Simon's of Anderson, Inc. was organized and existing under the regulations provided for non-profit corporations organized to sell alcoholic beverages, S.C. Code of Laws §61-6-1600.
3. I find that the provisions of S.C. Code Regulations R.7-401.3401-4 (a-4) apply to Simon's of Anderson, Inc.
4. I find that the Complaint in this matter consists of a single cause of action based upon an agreement between Shou Martin individually as Seller and John Rife and Barbara Ann Doomey as Purchasers (written agreement dated October 1, 2007).
5. I find that Shou Martin did not produce any evidence at the trial of this case that she was the owner of the contents and assets of the corporation, the property of the corporation, the inventory of the corporation, or had the right to sell the good will of the business in her individual capacity, or these items pursuant to the agreement on which she based her cause of action. The following testimony of Shou Martin from the transcript of record is set forth as the basis for this Finding of Fact:

Transcript, p. 40, Mullinax cross-examination:

Q: And Simon's of Anderson, Inc. was a non-profit corporation?

A: Yes.

Q: And you incorporated Simon's of Anderson in October of 2003?

A: Yes.

Q: You have always been familiar with the requirements of South Carolina Law to operate a non-profit corporation?

A: Yes.

Transcript, p. 41, continued:

Q: And in order to operate a private club you've got to be a non-profit corporation:

A: Yes.

Q. And as part of the rules and regulations of the State of South Carolina, when a non-profit corporation sells or dissolves, it has to give all of its profits to another non-profit corporation, doesn't it?

A: I don't understand what you're saying about that.

Q: When a non-profit corporation, under South Carolina Law, sells its assets, it has to give its profit to another non-profit corporation. Right?

A: Yeah. But, ok – go ahead.

Cross-examination continued, p. 42:

Q. You haven't provided us any list of invoices or anything to show that you actually did own anything, have you?

A. I don't provide the.. what?

Q. Have you provided me any bills to show that you paid for any of the equipment that was in Simon's?

A. I got some. Yes, I can.

Q. But you didn't provide them to me when I asked for them. Did you?

Mr. Mullinax: Your Honor, I would just ask that she answer my question.

The Court: Yes ma'am, just make sure you answer the questions.

Ms. Martin: Ok.

The Court: Answer yes or no, I'll let you explain the answer.

Ms. Martin: Yeah, ok, ok.

Q. You have provided me no evidence, no documentary evidence, that you purchased or owned anything, have you?

A. No.

Cross-examination continued, p. 48

Q. And although I've been asking you to provide me documentation of proof that you owned anything in the bar, for over 10 months, you still have not provided me any documents to prove that you owned anything, have you?

A. Ok. Danny working on that.

Page 49:

Q. You have not provided me any documents to proof that you individually, owned anything. Have you?

A. I guess you say, no. I say, no.

Page 52:

Q. You've got no proof that you owned a thing. Do you?

A. Now, you tell me to bring that.

Q. You've got no proof in this Courtroom today, that you owned anything?

A. I didn't show it to you. I guess not.... I know it my heart it does.

6. I find as a fact that the corporate tax return indicates that Simon's of Anderson, Inc. owned all assets and equipment and inventory.

7. The Defendants in their Request to Produce had required the Plaintiff to produce any and all evidence of ownership which she may have of the property described in the sales Agreement and also required the Plaintiff to produce the corporate income tax returns of Simons of Anderson, Inc. I find that the Plaintiff failed to produce any documentary evidence of ownership of assets in her individual capacity, and further only produced one income tax return; that being the income tax return dated 2005 for Simons of Anderson, Inc. This tax return showed conclusively that the corporation claimed depreciation on the equipment, furniture and furnishings and under penalty of perjury in the filing of a tax return, asserted

ownership of this property.

CONCLUSIONS OF LAW

1. S.C. Code Reg. R.7-41.3401.4 (a - f), and specifically (e) and (f) provide that "no residual assets must enure to the benefit of any member or shareholder, but must be turned over to one or more non-profit organizations.... Paragraph (f) further provides that no member or shareholder of such non-profit organization shall be paid or directly or indirectly receive in the form of compensation any of the profit from the sale or distribution other than a salary.

2. Plaintiff's Motion questions the jurisdiction and standing of the Plaintiff Shou Martin to prosecute this lawsuit. The Court has reviewed carefully the transcript of the testimony presented at trial and concludes that Shou Martin did not have standing to maintain the action. She is an individual and brought this action on her behalf and not on behalf of the corporation, Simon's of Anderson, Inc.

3. I conclude as a matter of law that no justiciable controversy was put forth in this matter, and that Shou Martin having no standing to prosecute, that the verdict must be vacated and the case dismissed. See Brock v. Bennett 313 S.C. 443, SE 2d 409 (Ct. App. 1994) where the Court stated as follows:

"Standing is a fundamental requirement for instituting an action... No justiciable controversy is presented unless the Plaintiff has standing to maintain the action... Once it is determined a Plaintiff has no standing to prosecute, the Court must dismiss the action."

The Court concludes that Shou Martin, as an individual, presented no evidence of ownership of any of the assets she purported to sell in the written agreement. The evidence showed, contrary to her assertions, that the assets, inventory and equipment was owned by the corporation, which is an entity in its own right, and is the only one which had standing to maintain the within action. "Good will" is also an asset of the corporation.

NOW THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED:

1. That the Judgement in this matter is hereby vacated and the matter is dismissed ^{without} ~~with~~ prejudice.

AND IT IS SO ORDERED.



THE HONORABLE J. CORDELL MADDOX
JUDGE, TENTH JUDICIAL CIRCUIT

Anderson, South Carolina

December ~~2013~~

January 6, 2014

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FROM PLEAS AND
GENERAL SESSIONS

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

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ANDERSON SC

IN THE COURT OF COMMON PLEAS

2013 JUN 14 A 10:22

Shou martin,

Plaintiff,

-vs-

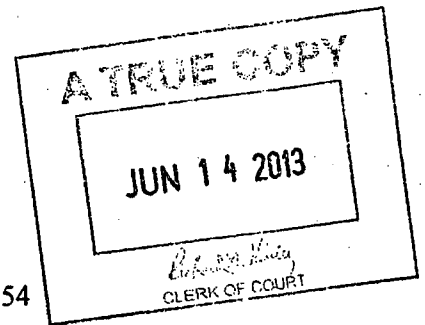
Wilmer (John) Rife and
Barbara Ann Doomey,

Defendants.

COMMON PLEAS AND
GENERAL SESSIONS

ORDER

2010-CP-04-4554



Under South Carolina Code § 34-31-20 the Plaintiff, Shou Martin, is entitled to prejudgment interest at a rate of 8.75% since January 1, 2008. Mrs. Martin requested interest since January 1, 2008. *See* Complaint ¶ 5. The amount Mrs. Martin filed suit for a fixed amount or at least an ascertainable amount from the facts that existed at the time of the contract. At trial, Mrs. Martin claimed that \$48,274.21 was due and owing. The Defendants, Wilmer (John) Rife and Barbara Ann Doomey, contended that they were entitled to numerous offsets including the monies they paid to Good Times Games for the pool tables. The jury rejected all of the arguments of the defendants except for the payment to Good Times in the amount of \$1,500. The resulting verdict for the plaintiff was for \$46,774.21.

In *Smith-Hunter Construction Co. v. Hopson*, 365 S.C. 125, 616 S.E.2d 419 (2005) the South Carolina Supreme Court said "The fact that the sum due is disputed does not render the claim unliquidated." *Id.* at 128, 616 S.E.2d at 421. The Court further held "The proper test for determining whether prejudgment interest may be awarded is whether or not the

measure of recovery, not necessarily the amount of damages, is fixed by conditions existing at the time the claim arose." *Id.*

The holding of that case applies to the facts of this case. As Mrs. Martin had agreed to hold the defendants harmless for any claim by a third party, the amount due under the contract would be less any claim by a third party. The defendants convinced the jury there was a valid claim by a third party for \$1,500. Thus, the amount due to Mrs. Martin was ascertainable by the facts as they existed at the time the contract was signed.

The original debt was due on January 1, 2008. The prejudgment interest at 8.75% totals \$19,172.21. The Court adds this amount to the judgment as prejudgment interest.

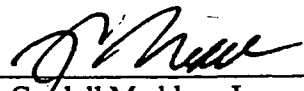
The Defendants, Wilmer (John) Rife and Barbara Ann Doomey, in their post-trial motion contend that the plaintiff is not the owner of the equipment and therefore they should be granted either a new trial or a judgment notwithstanding the verdict. The jury was presented with evidence that the plaintiff owned the equipment in question and resolved that issue against the defendants. In addition, the contract between the parties provided that if any third claimed the property, then the plaintiff would hold the defendants harmless for any loss. The defendants, at the time of the contract was signed, accepted the Mrs. Martin representation that she owned the property. The defendants have not shown that the property is owned by any third party who has asserted a claim. The defendants motion for a new trial or judgment notwithstanding the verdict is hereby denied.

Therefore, it is hereby ordered adjudged and decreed that:

1. The Motion of the defendant for a new trial or judgment notwithstanding the verdict is denied.

2. The Motion of the Plaintiff is add prejudgment interest in the amount of
Nineteen Thousand One-hundred Seventy-Two and 21/100 (\$19,172.21) us hereby granted.

June 13, 2013


J. Cordell Maddox, Jr.
Presiding Judge

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COMMON PLEAS AND
GENERAL SESSIONS

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Honorable J. Cordell Maddox, Jr., Tenth Judicial Circuit

Case Number: 2014-000139

Shou Y. Martin

Appellant

VS.

Wilmer (John) Rife and Barbara Ann Doomey,

Respondent

FINAL BRIEF OF APPELLANT

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(864) 229-5010
SC Bar # 006188

Attorney for the Appellant

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Statement of Issues on Appeal

Did the trial judge err in granting a judgment notwithstanding the verdict on the ground that Shou Martin did not own the property when the record contained evidence that Shou Martin owned the property sold to Wilmer John Rife and Barbara Doomey?

Statement of the Case

Procedural History

Shou Martin filed her suit for breach of contract against Wilmer John Rife and Barbara Doomey on December 31, 2010. The Defendant filed and answer on February 3, 2011 denying the allegations of the complaint and numerous counterclaims.

The case was tried before the Honorable J. Cordell Maddox, Jr. on September 6-7 2012. The jury returned a verdict in favor of Mrs. Martin in the amount of \$46, 774.21. Upon the motion of Mrs. Martin, the trial court on June 13, 2013 added prejudgment interest at the statutory rate in the amount of \$19,172.21. Mr. Rife and Mrs. Doomey then filed a motion for a new trial and judgment notwithstanding the verdict on January 6, 2014.

On January, Judge Maddox granted the motion of the defendants without prejudice. Mrs. Martin filed her notice of appeal on January 17, 2014.

Factual History

Shou Martin, with her son being primarily responsible, opened a private club in Anderson, South Carolina known as Simons' of Anderson, Inc.. Rec. on App. at 26, ll 24-25 to 29, ll 1-15. Mrs. Martin bought the equipment for the business in Anderson due to the fact that her son did not have the funds to start the business. Rec. on App. at 29, ll 1-15. Her son operated the business for about three and a half to four years. Rec. on App. at 30, ll 5-6.

In June of 2007 her son was killed in a motorcycle accident. Rec. on App. at 30, ll 23-25 to 31, ll 1-2. Mrs. Martin then started running the business but soon realized that she needed to sell the business. Rec. on App. at 31, ll 3-14. She then began discussion with John Rife whom she knew from his being employed in Greenwood, South Carolina and his being a

regular customer at Simons' of Anderson. Rec. on App. at 31, ll 15-25 to 31, ll 1-18. The idea of Mr. Rife buying the business originated with Mr. Rife. Rec. on App. at 32, ll 22-25 to 33, ll 1-13.

The parties ultimately signed an agreement to sell the equipment for Seventy Thousand (\$70, 000) Dollars. Plaintiff's Exhibit 1. The agreement provided that in the event any third party made a claim to any of the equipment, then Mrs. Martin would hold them harmless. Mr. Rife testified that he was purchasing the equipment and he was not concerned with who actually owned the equipment as long as Mrs. Martin would hold him harmless for any claim by a third party. Rec. on App. at 93, ll 12-25. He further said he had no reason to doubt that Mrs. Martin owned the equipment and he had no dispute with her right to sell the equipment. His main concern was the condition of the equipment. Rec. on App. at 98, ll 9-25 to 99, ll 1-2.

Mr. Rife testified that shortly after he purchased the business he began to have trouble with some of the equipment. He noticed some of the alleged problems within 60 days of opening the business. Rec. on App. at 110, 17-22. He made some repairs to the equipment within the first three months of owning the business. Rec. on App. at 105, ll 5-22. In August of 2008, after he had completed the repairs, he made a payment to Mrs. Martin in the amount of \$3,142.00. When making the payment he did not mention that the equipment was not satisfactory nor did he subsequently write her and complain about the equipment. Rec. on App. at 111, 9-25 to 112, 1-6.

Both Mr. Rife and Mrs. Doomey testified they had the opportunity to inspect the building and the equipment before they purchased the equipment. Rec. on App. at 89, ll 4-25; 90, ll 15-25 to 91, ll 1-11; Rec. on App. at 132, ll 15-25 to 134, ll 1-12. 143, ll 10-25 to 144, ll 1-

25. They did contend that they had to pay for the pool tables. Pursuant to the guarantee provision of the contract, the jury decided that issue in their favor and gave them a credit for the \$1,500 they paid for the pool tables.

ARGUMENT

Question I

Did the trial judge err in granting a judgment notwithstanding the verdict when the record contained evidence that Shou Martin owned the property sold to Wilmer John Rife and Barbara Doomey?

The appellate courts in South Carolina have long recognized the rule that a case must be submitted to the jury if there is a scintilla of evidence to support the verdict. The same rule applies when a trial judge grants a judgment notwithstanding the verdict. *See, Burns v. Universal Health Services, Inc.*, 361 S.C. 221, 603 S.E.2d 605 (2004); *Smalls v. South Carolina Dept. of Educ.*, 339 S.C. 208, 528 S.E.2d 682 (2000); *Shupe v. Settle*, 315 S.C. 510, 445 S.E.2d 651 (1994); *Smith v. Safeco Life Ins. Co.*, 303 S.C. 131, 399 S.E.2d 427 (1990); *Copeland v. Southern Ry. Co.*, 76 S.C. 476, 57 S.E. 535 (1907).

This Court has said "A motion for JNOV may be granted only if no reasonable jury could have reached the challenged verdict." *Burns v. Universal Health Servs., Inc.*, 361 S.C. 221, 232, 603 S.E.2d 605, 611 (Ct. App. 2004). Here the jury heard the testimony that Mrs. Martin had purchased the equipment for her son. They also heard the testimony of Mr. Rife that he had no reason to doubt Mrs. Martin owned the property. Rec. on App. at 98, , 11 9-12.

The trial judge granted a judgment notwithstanding the verdict based upon his

conclusion that Mrs. Martin did not prove she owned the assets she sold.¹ Mrs. Martin testified she paid for the equipment. Rec. on App. at 29, ll 2-25. She testified that she sold the equipment she owned to the defendants. Rec. on App. at 39, ll 18-25. The defendants even testified that who owned the equipment was not so much of a concern to them if Mrs. Martin would protect them from any third party claim. Mr. Rife testified as follows:

Q. [By Mr. Wise] And did you have any concern as to whether or not Ms. Martin owned the equipment when you signed the agreement?

A. No

Q. All right. And one of the reasons you didn't have any concern is that she agreed, in that agreement, to hold you harmless if any third person came in and claimed that property.

A. That's true.

Rec. on App. at 93, ll 17-25.

Q. All right. And, in fact, you have no reason to believe -- to not believe Ms. Martin when she says that she paid for the equipment and put it in there?

A. I took her word for it, yes.

Q. Correct. All right. And no one else has come in and said "No, your're wrong. It's mine."

A. No

Q. Okay. So, you don't dispute if or whether or not she had the right to sell it?

A. Pardon?

Q. Your dispute is not whether or not she had the right to sell it?

A. My main dispute is the condition.

Rec. on App. at 98, ll 9-21.

Thus, the trial judge granted a judgment notwithstanding the verdict on an issue that was not seriously contested by the defendants. Their argument was the condition of the equipment and their claim that the business was not as profitable as they had been lead to

¹ The order of the trial court says "this matter is hereby vacated and the matter is dismissed without prejudice." He did not clarify exactly what the dismissal without prejudice entailed.

believe. The jury resolved those issues against the defendants. The defendants have not contended that the jury erred in that determination.

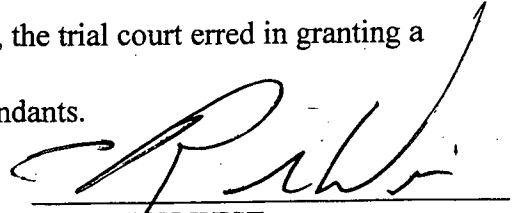
While counsel for the defendant argued to the jury that Mrs. Martin did not own the equipment, that factual issue was resolved against the defendants. The defendants now contend that the property is owned by Simons' of Anderson, Inc. Aside from some depreciation, the defendants offered no testimony that Simons' of Anderson, Inc. was the rightful owner of the equipment Mrs. Martin sold. The defendants wanted the equipment. They were not concerned who it belonged to as long as Mrs. Martin would protect them from any third party claim. The defendants have not met their burden of proving Simons' of Anderson, Inc. owned the property.

The defendants signed an agreement with Mrs. Martin that they would pay her for the equipment. They have for over six years had the use of that property to further their business. They never offered to return the property because they contended that Mrs. Martin did not have title to the property. They simply want to keep the equipment and not pay for it. They have not offered to tender the amount of the judgment to Simons' of Anderson, Inc. and Mrs. Martin so as to eliminate any question of title. They simply do not want to pay according to the contract they signed. The jury found all factual issues against them.

CONCLUSION

As the issue of the ownership of the property was resolved against the defendants and testimony at trial created a jury issue as to ownership, the trial court erred in granting a judgment notwithstanding the verdict in favor of the defendants.

June 10, 2014



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ISSUE ON APPEAL

- I. **Did the Trial Judge rule correctly that the Plaintiff did not have standing to bring an action on contract for the sale of property and good will of Simon's of Anderson, Inc., a South Carolina non-profit corporation?**

STATEMENT OF THE CASE

Shou Martin, the named Plaintiff, filed a suit for breach of contract against Wilmer John Rife and Barbara Ann Doomey, the Defendants, on December 31, 2010. The Defendants filed their Answer and a number of Counterclaims on February 3, 2011, denying the allegations of the Complaint.

The case was tried before the Honorable J. Cordell Maddox, Jr. on September 6 - 7, 2012. At the close of the Plaintiff's case, the Defendants made the appropriate motions for a directed verdict and renewed the Motion at the conclusion of the trial. A jury verdict was returned in favor of Shou Martin individually in the amount of \$46,774.21. The Defendants filed a JNOV Motion on September 11, 2012. The Order denying the JNOV Motion was filed June 14, 2013. The Defendants filed a Motion to vacate or reconsider on June 21, 2013. The Honorable J. Cordell Maddox vacated the Judgement on January 6, 2014. Martin filed a Notice of Appeal on January 17, 2014.

STATEMENT OF FACTS

In the case before the Court, Shou Martin, the Plaintiff, in the agreement, [Plaintiff's Exhibit 1] [R. p. 216] which was drawn by her attorney, failed to disclose, that Simon's of Anderson, Inc. was a not for profit corporation organized pursuant to S.C. Code §61-6-1600. The Plaintiff refused to provide any documentary evidence to substantiate the claim to compensation during discovery and at Trial. [R. p. 218]. The Corporation was the owner and operator of the Bar, not Shou Martin. [Defendant's Trial Exhibit 4] [R. pp. 40 - 41] Shou Martin failed to disclose to the Defendants that she had no individual right to sell

anything which belonged to Simon's of Anderson, Inc., a non-profit corporation. The Agreement, in and of itself was false and fraudulent.

The Defendants filed their Interrogatories and Requests for Production on or about October 3, 2011 and waited for over two years for the Plaintiff to furnish any documentation of proof that she owned any interest in the business operated as New Simon's of Anderson, Inc. [R. p. 52]. The Plaintiff failed to furnish answers to the discovery; failed to provide answers when her deposition was taken, and failed to provide answers at Court when asked specifically as to any evidence of ownership of any of the corporate assets [R. p. 52].

ARGUMENT

I. Did the Trial Judge rule correctly that the Plaintiff did not have standing to bring an action on contract for the sale of property and good will of Simon's of Anderson, Inc., a South Carolina non-profit corporation?

The Plaintiff made no motion to amend her pleadings at any time, and the Defendants tried the case on the basis that Shou Martin as an individual, had no interest in and could not recover in her individual capacity. The private club (Simon's of Anderson, Inc.), its contents and its good will was operated as a non-profit corporation, pursuant to the provisions of S.C. Code Ann. §61-6-1600 and was subject to the regulations R.7-401-3401.4 (a - f).

The 2005 corporate tax return for Simon's of Anderson, Inc. shows indisputably that the assets and inventory of the corporation were treated as being owned by the corporation and not by Shou Martin (Defendant's Trial Ex. 4) [R. p. 218]. All actions must be prosecuted by the real party in interest and Shou

Martin was not the real party in interest. Shou Martin as an individual [in the context of this case], had no standing to prosecute this action. Having no standing as an individual, deprives the Court of jurisdiction and presents no justiciable controversy as was set forth in the Brock v. Bennett case *infra*.

The trial judge ruled correctly when he granted judgement notwithstanding the verdict and vacated the jury verdict, on the basis that Shou Martin as an individual, had no standing to bring the lawsuit; the Court had no jurisdiction in that there was no justiciable controversy before the Court and further, the fact that Shou Martin was not the real part in interest. If the Court had allowed the judgement to stand, then the provisions of S.C. Reg. R:7-401.4 (E), would be rendered meaningless.

As a matter of law, pursuant to S.C. Reg. R. 7-401.4 (E), Shou Martin, individually, is not allowed to profit in any manner from the assets and/goodwill of Simon's of Anderson, Inc.

S.C. Reg. R. 7-401.4 E. Upon dissolution, liquidation or final termination of the operations of the organization, its residual assets must not inure to the direct benefit of any member or shareholder but must be turned over to one or more nonprofit organizations which are organized and operated for charitable purposes or for such other purposes as are authorized under Section 61-6-1600.

The Court, in Brock v. Bennett 313 S.C. 513, 443 S.E. 2d 409 (Ct. App. 1994) stated:

"Standing is a fundamental requirement for instituting an action... No justiciable controversy is presented unless the Plaintiff has standing to maintain the action... Once it is determined a Plaintiff has no standing to prosecute, the Court must dismiss the action."

Standing refers to the fundamental requirement for instituting an action.
Bank of America, N.A. v Draper 401 S.C. 214, 746 S.E. 2d 478 (Ct. App. 2013).

Shou Martin was given every opportunity to produce evidence from the discovery request; to the deposition; and by her testimony at trial to provide evidence of ownership apart from the corporation. She admitted in her testimony that Simon's of Anderson, Inc. was operated as a non-profit corporation and she further could not produce and did not produce any documentary evidence of any right to maintain suit in her individual capacity for anything. See the following Transcript excerpts:

[R. p. 40, lines 13 -24], Mullinax cross-examination of Shou Martin:

Q: And Simon's of Anderson, Inc. was a non-profit corporation?

A: Yes.

Q: And you incorporated Simon's of Anderson in October of 2003?

A: Yes.

Q: You have always been familiar with the requirements of South Carolina Law to operate a non-profit corporation?

A: Yes.

[R. p. 40, line 25, and R. p. 41, lines 1 - 11] continued:

Q: And in order to operate a private club you've got to be a non-profit corporation:

A: Yes.

Q. And as part of the rules and regulations of the State of South Carolina, when a non-profit corporation sells or dissolves, it has to give all of its profits to another non-profit corporation, doesn't it?

A: I don't understand what you're saying about that.

Q: When a non-profit corporation, under South Carolina Law, sells its assets, it has to give its profit to another non-profit corporation. Right?

A: Yeah. But, ok – go ahead.

[R. p. 42, lines 4 - 15; lines 19 - 25]. Cross-examination continued:

Q. You haven't provided us any list of invoices or anything to show that you actually did own anything, have you?

A. I do provide the.. what?

Q. Have you provided me any bills to show that you paid for any of the equipment that was in Simon's?

A. I got some. Yes, I can.

Q. But you didn't provide them to me when I asked for them. Did you?

Mr. Mullinax: Your Honor, I would just ask that she answer my question.

The Court: Yes ma'am, just make sure you answer the questions.

Ms. Martin: Ok.

The Court: Answer yes or no, I'll let you explain the answer.

[R. p. 43, lines 1 - 5] Ms. Martin: Yeah, ok, ok.

Q. You have provided me no evidence, no documentary evidence, that you purchased or owned anything, have you?

A. No.

[R. p. 48, lines 15 - 20] Cross-examination continued:

Q. And although I've been asking you to provide me documentation of proof that you owned anything in the bar, for over 10 months, you still have not provided me any documents to prove that you owned anything, have you?

A. Ok. Danny working on that.

[R. p. 49, lines 7 - 9]:

Q. You have not provided me any documents to proof that you individually, owned anything. Have you?

A. I guess you say, no. I say, no.

[R. p. 52, lines 1 - 7]:

Q. You've got no proof that you owned a thing. Do you?

A. Now, you tell me to bring that.

Q. You've got no proof in this Courtroom today, that you owned anything?

A. I didn't show it to you. I guess not.... I know it my heart it does.

The standard of review for a trial judge where a Motion for JNOV has been made, is to view the evidence in the light most favorable to the non-moving party.

The Trial Court must grant the Motion when the evidence yields only one inference... An Appellate Court may not overturn the decision of the Trial Court under the State standard, if there is any evidence to support the Trial Court's ruling. Rogers v. Norfolk Southern Corporation 356 S.C. 85, 588 S.E. 2d 87 (2003).

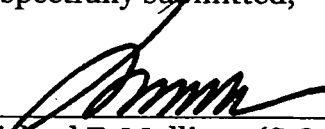
As the Trial Court stated in its Order, there is no evidence in the record to establish ownership by Shou Martin. The only evidence in the record is that of the corporate tax return showing ownership in New Simon's of Anderson, Inc., a non-profit corporation.

Contrary to the argument of the Plaintiff, as to the evidence required to support the granting of a Motion for JNOV, the scintilla reference has no bearing on this Court's review.

CONCLUSION

It is respectfully requested that the Order of J. Cordell Maddox, Jr. be upheld in its entirety and this appeal be dismissed with costs.

Respectfully submitted,



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IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Honorable J. Cordell Maddox, Jr., Tenth Judicial Circuit Judge

C.A. No.: 2010-CP-04-0554

Appellate Case No. 2014-000139

Shou Martin, ... Appellant

vs.

Wilmer (John) Rife and Barbara Ann Doomey, ... Respondents

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b),
SCACR.

September 18, 2014



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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM ANDERSON COUNTY
Court of Common Pleas

Honorable J. Cordell Maddox, Jr., Tenth Judicial Circuit

Case Number 2014-000139

Shou Y. Martin,

Appellant

VS.

Wilmer (John) Rife and Barbara Ann Doomey,

Respondent

FINAL REPLY BRIEF OF APPELLANT

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Question I

Did the trial judge err in granting a judgment notwithstanding the judgment when the record contained evidence that Shou Martin owned the property sold to Wilmer John Rife and Barbara Doomey?

Shou Martin has standing to litigate her ownership of any and all property she personally furnished to her son to operate his business. The issue in this case is was Mrs. Martin the owner of the property. The jury resolved that question against Wilmer Rife and Barbara Ann Doomey.

When Mr. Rife and Ms. Doomey state "An Appellate Court may not overturn the decision of the Trial Court under the State standard, if there is any evidence to support the Trial Court's ruling." Br. of Resp. at 7. This statement confuses the standard of review. This Court does not, as suggested, review this record to determine if there is any evidence of no evidence. The standard is the same for the trial judge as this court - if there is a scintilla of evidence the case should be submitted to the jury. As the South Carolina Supreme Court has said "under the Scintilla rule which prevails in South Carolina, if there is a scintilla of evidence, which is any material evidence that if true would tend to establish the issue in the mind of a reasonable juror the case should be submitted to the jury for its determination." *Woodle v. Brown*, 223 S.C. 204, 210, 74 S.E.2d 914, 917 (1953). This Court must look not to see if there is any evidence to sustain the JNOV granted by the trial judge, but whether there is a scintilla of evidence to sustain the verdict of the jury.

The Respondent has argued "Contrary to the argument of the Planitff, as to the evidence required to support the granting of a Motion for JNOV, the scintilla reference has no

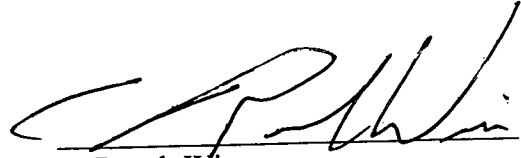
bearing on this Court's review." Br. of Resp. at 7. This conclusion is incorrect. As this Court has said "Our scope of review requires us to examine the record to determine whether the trial judge viewed the motion for judgment n.o.v. in a light most favorable to [plaintiff]" *Smith v. Safeco Life Ins. Co.*, 303 S.C. 131, 135, 399 S.E.2d 427, 429 (Ct. App. 1990). Thus, this Court reviews the transcript in the light most favorable to Mrs. Martin with all reasonable inferences being against Mr. Rife and Mrs. Doomey. *See, also, Watkins v. Mobil Oil Corp.*, 291 S.C. 62, 64, 352 S.E.2d 284, 285 (Ct. App. 1986)(a judgment must be affirmed on appeal where there is any evidence to support the factual findings implicit in the jury's verdict and that the party opposing the motions for directed verdict and judgment notwithstanding the verdict is entitled to all favorable inferences where the evidence is conflicting. Because a JNOV was granted, this Court does not review the evidence in the light most favorable to the Respondents.

The Respondent appears to argue that the testimony of Mrs. Martin is not evidence for only under such a conclusion can the JNOV of the trial judge be sustained. Certainly the testimony of the plaintiff that she owned the property she sold is material evidence of the fact that she owned the property. If Mrs. Martin did not own the property, to whom should the Respondent have paid the money they, by contract, owe. They appear to argue they are not required to pay for the equipment they purchased.

CONCLUSION.

As the evidence at trial established material evidence that Shou Martin owned the property she sold, the granting of the Judgment Notwithstanding the Verdict should be reversed and the verdict of the jury re-instated.

September 24, 2014



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**THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE
CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING
EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.**

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Shou Martin, Appellant,

v.

Wilmer (John) Rife and Barbara Ann Doomey,
Respondents.

Appellate Case No. 2014-000139

Appeal From Anderson County
J. Cordell Maddox, Jr., Circuit Court Judge

Unpublished Opinion No. 2015-UP-223
Submitted April 1, 2015 – Filed May 6, 2015

AFFIRMED

C. Rauch Wise, of Greenwood, for Appellant.

Michael F. Mullinax, of Mullinax Law Firm, P.A., of
Anderson, for Respondents.

PER CURIAM: Affirmed pursuant to Rule 220(b), SCACR, and the following authorities: *Town of Hollywood v. Floyd*, 403 S.C. 466, 480, 744 S.E.2d 161, 168 (2013) ("[A reviewing court] will reverse the trial [court's grant of a judgment notwithstanding the verdict] only when there is no evidence to support the ruling or

it is controlled by an error of law."); *Brock v. Bennett*, 313 S.C. 513, 519, 443 S.E.2d 409, 412 (Ct. App. 1994) ("Standing is a fundamental requirement for instituting an action."); *Powell ex rel. Kelley v. Bank of Am.*, 379 S.C. 437, 444, 665 S.E.2d 237, 241 (Ct. App. 2008) (explaining standing is comprised of three elements: (1) injury in fact, (2) a causal connection between the injury and the conduct complained of, and (3) a likelihood the injury will be redressed by a favorable decision); *id.* ("The party seeking to establish standing carries the burden of demonstrating each of the three elements." (internal quotation marks omitted)); *Bank of Am., N.A. v. Draper*, 405 S.C. 214, 220, 746 S.E.2d 478, 481 (Ct. App. 2013) ("Generally, a party must be a real party in interest to the litigation to have standing." (internal quotation marks omitted)); *id.* ("A real party in interest for purposes of standing is a party with a real, material, or substantial interest in the outcome of the litigation." (internal quotation marks omitted)); *id.* ("The South Carolina rule with respect to the real party in interest requirement . . . has been regarded as embodying the concept that an action shall be prosecuted in the name of the party who, by the substantive law, has the right sought to be enforced." (internal quotation marks omitted)); *Brock*, 313 S.C. at 519, 443 S.E.2d at 413 ("Once it is determined a plaintiff has no standing to prosecute, the court *must* dismiss the action." (emphasis added)).

AFFIRMED.¹

THOMAS, KONDUROS, and GEATHERS, JJ., concur.

¹ We decide this case without oral argument pursuant to Rule 215, SCACR.

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Anderson County
J. Cordell Maddox, Jr., Circuit Court Judge

Appellate Case N° 2014-000139

Unpublished Opinion N° 2015-UP-223
Submitted April 1, 2015 - Filed May 6, 2015

Shou Martin..... Appellant

vs.

Wilmer (John) Rife and Barbara Ann Doomey Respondents.

Petition for Rehearing

Pursuant to Rule 221 of the South Carolina Appellate Court Rules, Shou Martin, the Appellant above, hereby Petitions this Court to Rehear this matter based upon the following:

1. This Court failed to consider that the Defendants signed a written contract with the Plaintiff to obtain from her any and all interest she had in the property located in the business together with a guarantee from the Plaintiff that she would protect the Defendants from any claim by a third party. This Court failed to consider that the ruling by the court gave the Defendants the benefit of their bargain but did not give the Plaintiff the benefit of the bargain she made. In essence the Defendant received all of the equipment to which no third party had filed a claim and paid only a nominal fee for the equipment.

2. This Court failed to consider that the trial court specifically instructed the jury that if they believed the Plaintiff did not own the property, then they were to return a verdict in favor of the Defendants. (Rec. on App. at 201, ll 2-9). The testimony at trial established that the Defendants did not question the fact that Mrs. Martin had the right to sell the property. As Mr. Rife testified:

Q. All right. And, in fact, you have no reason to believe - - to not believe Ms. Martin when she says that she paid for the equipment and put it in there?

A. I took her word for it, ye.

Q. Correct. All right. And no one else has come in and said "No, you're wrong. It's mine."

A. No

Q. Okay. So, you don't dispute if or whether or not she had the right to sell it?

A. Pardon?

Q. Your dispute is not whether or not she had the right to sell it?

A. My main dispute is the condition.

Rec. on App. at 98, ll 9-21. See, also Rec. on App. at 93, ll 17-25

The testimony at the trial contained evidence sufficient to go to the jury that Mrs. Martin had purchased the property use in her son's business. Rec. on App. at 29, ll 2-25. This testimony as to the ownership was sufficient to create a jury question as to the ownership of the equipment, even if the ownership was a valid issue. Mrs. Martin's testimony was at the very least a scintilla of evidence that would permit the jury to find the facts in her favor.

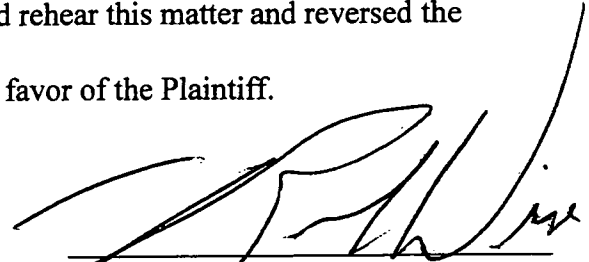
3. This Court erred in finding that Mrs. Martin lacked standing when she was a party to the written contract and her testimony was that she purchased the equipment for the business her son operated. Again, the issue of the ownership was a jury question which was resolved in favor of Mrs. Martin and against the Defendants.

4. This Court erred in finding that Mrs. Martin was not the real party in interest when her testimony was she owned the equipment that was sold and she was a party to the contract signed by the Defendants. The Defendants claimed that Mrs. Martin did not own the

property, and as such, they bore the burden of proving that fact. They introduced no evidence that the property was owned by a third party except for one pool table for which the jury gave them proper credit.

Based upon the above, this Court should rehear this matter and reversed the decision of the lower court dismissing the judgment in favor of the Plaintiff.

May 18, 2015

A handwritten signature in black ink, appearing to read 'C. Rauch Wise', is written over a horizontal line.

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The South Carolina Court of Appeals

Shou Martin, Appellant,

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Respondents.

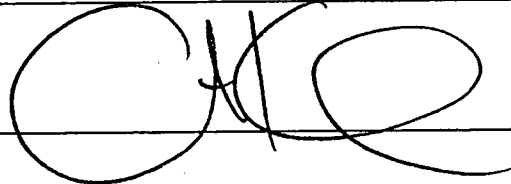
Appellate Case No. 2014-000139

ORDER

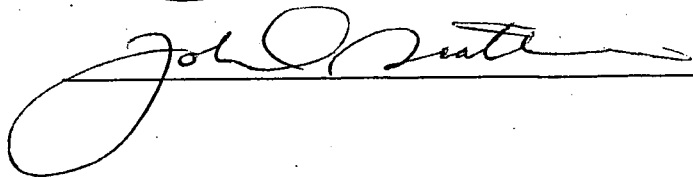
After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.


Paul D. Thomas

J.



J.



J.

Columbia, South Carolina

FILED

cc: C. Rauch Wise, Esquire
Michael F. Mullinax, Esquire

June 22, 2015