

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM ANDERSON COUNTY
COURT OF COMMON PLEAS

Robin B. Stilwell, Circuit Court Judge

Case No.: 2014-CP-04-00214

RECEIVED

APR 22 2016

SC Court of Appeals

Wanda Gambrell.....Respondent,

v.

Christopher A. Smith.....Appellant.

RECORD ON APPEAL

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Attorney for Respondent

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Attorney for Respondent

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STATE OF SOUTH CAROLINA 2015 MAR -2 } PM 3:11 IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON

COMMON PLEAS AND
GENERAL SESSIONS

C.A. File No. 2014-CP-04-214

WANDA GAMBRELL, Individually

Plaintiff,

v.

ORDER GRANTING RELIEF

CHRISTOPHER A. SMITH, A South
Carolina individual

Defendant.

A TRUE COPY

MAR - 2 2015

Richard M. Kelly
CLERK OF COURT

This matter came before this Court on February 11, 2015 at 9:30 am for a bench trial. The Plaintiff was represented by Stephen Welch of the Anderson Bar, and the Defendant/Counter Claimant was represented by William N. Epps of Epps Nelson & Epps, also of the Anderson Bar.

After listening to the testimony of the parties and the witnesses called by each side, review of the documentary evidence submitted and review of the relevant case law, I find as follows:

Findings of Fact

1. The parties entered into a contract drafted by the Defendant for the purchase by the Defendant of the business and its assets owned by the Plaintiff known as Ma's Bingo. A copy of the contract is attached hereto as Exhibit "A."
2. Under the terms of that contract, the Defendant was to pay \$100,000.00 for the business and its assets, with the first payment of \$10,000.00 due on February 22, 2013. A payment of \$65,000.00 was due when Defendant received his bingo license from the State of South Carolina, with the remaining \$25,000.00 to be paid over ten (10) months at \$2500.00 per month. The first payment was due 30 days from the date that Plaintiff received proof that Defendant had received his South Carolina bingo license.
3. The Plaintiff received the down payment of \$10,000.00, and continued to run the business as agreed from February 22, 2013 until June of 2013, when Defendant received his bingo license and furnished proof of the same to Plaintiff. Defendant made the agreed \$65,000.00 payment to Plaintiff and took over control of the assets and bingo business. Defendant negotiated with officers of the Greenwood Shrine Club charity and entered into new contracts with the Shrine Club to become the Sponsor and Promoter of the bingo games at the same McGee Road location in Anderson.

4. Defendant did pay the first two payments of \$2500.00 per month due in August and September of 2013 following the receipt of his bingo license, but made no payments after that time, leaving eight (8) payments owed under the terms of the contract for a total of \$20,000.00. The parties agree that the eight (8) payments unpaid total \$20,000.00.

5. Sometime in early 2014, the Defendant closed the business and sold the assets he had at that time for \$50,000.00. Plaintiff made demand for the remaining payments, and then filed suit for breach of contract and anticipatory breach of contract on February 4, 2014. Defendant filed an Answer and Counterclaim on March 17, 2014 denying the allegations of Plaintiff's Complaint, and asserting claims for conversion, breach of contract with fraudulent intent and negligent misrepresentation, as well as several affirmative defenses. Plaintiff timely filed an Answer to the Counterclaim denying the allegations of the Counterclaim.

6. At the call of the case the Plaintiff announced that since all time for payments had passed, the Plaintiff was dropping the claim for anticipatory breach and would proceed on the claim for breach of contract claiming the \$20,000.00 in damages, with no objection by the defense.

Conclusions of Law

1. The Plaintiff has met her burden of proof with respect to her cause of action for breach of contract. The contract was drafted by the Defendant and was clear and unambiguous. It provided for a sum certain price for the business and its assets. The business and its assets were conveyed, and the purchase price is due and payable. Therefore, this Court awards judgment in favor of the Plaintiff and against the Defendant for the amount requested of \$20,000.00.

2. The Defendant's cause of action for breach of contract with fraudulent intent is denied. The Defendant has failed to prove by a preponderance of the evidence the elements of fraud. Quite simply, the Defendant presented no credible evidence of a material fraudulent representation by the Plaintiff. The Defendant admittedly elected to perform little or no due diligence in anticipation of the consummation of the agreement. There was no suggestion or indication that any and all documentation or information was not available for inspection and review before execution of the contract. The Defendant acknowledged that he knew little or nothing about the business and did not know how to run the same. Any damages, shortcomings or deficiencies realized by the Defendant were a direct consequence of his own failings.

3. The Defendant's counterclaim for conversion is denied. The evidence demonstrates clearly that the Defendant received what he contracted for. Furthermore, the evidence established that the Defendant disposed of the purchased assets in a subsequent transaction wherein he transferred what he felt was good title to the assets for \$50,000.00 to a third party.

4. The Defendant has also failed to demonstrate by a preponderance of the evidence that the Plaintiff negligently misrepresented any material information. Therefore, the counterclaim for negligent misrepresentation is denied.

2/35

Wherefore, Plaintiff is awarded judgment against the Defendant in the sum of \$20,000.00. Defendant's counterclaims are denied.

IT IS SO ORDERED.


Honorable Robin B. Stilwell
Judge, Thirteenth Judicial Circuit

2158

February 25, 2013
Greenville, South Carolina

FILED-CLERK'S OFFICE
ANDERSON SC
2015 MAR -2 PM 3:11
COMMON PLEAS AND
GENERAL SESSIONS

FILED-CLERK'S OFFICE
STATE OF SOUTH CAROLINA ANDERSON CO. IN THE COURT OF COMMON PLEAS
COUNTY OF ANDERSON 2015 APR -6 P 3:17 TENTH JUDICIAL CIRCUIT

Wanda Gambrell,

Plaintiff,

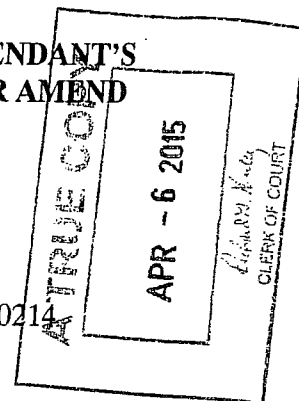
vs.

Christopher A. Smith,

Defendant.

ORDER DENYING DEFENDANT'S
MOTION TO ALTER OR AMEND

Case No.: 2014-CP-04-00214



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

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

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

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

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

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

AND IT IS SO ORDERED.



ROBIN B. STILWELL

April 1, 2015
Greenville, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

WANDA GAMBRELL

vs.

CHRISTOPHER A. SMITH

Submitted By: J. Stephen Welch

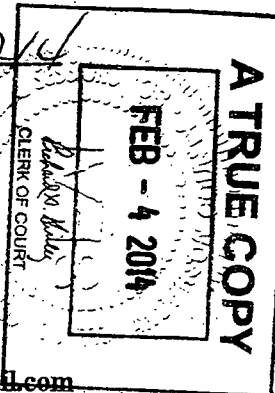
Address:

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP - 04-

00246



SC Bar #: 13153

Telephone #: 864-377-0703

Fax #: 864-225-7928

Other:

E-mail: jstephenw3@gmail.com

NOTE: The coversheet 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 coversheet 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 | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☒ Breach of Contract (140) | 20 -CP- | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Notice/ File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
| Inmate Petitions | Administrative Law/Relief | Judgments/Settlements | Appeals |
| ☐ PCR (500) | ☐ Reinstate Drv. License (800) | ☐ Death Settlement (700) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Judicial Review (810) | ☐ Foreign Judgment (710) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Relief (820) | ☐ Magistrate's Judgment (720) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Permanent Injunction (830) | ☐ Minor Settlement (730) | ☐ Municipal (930) |
| | ☐ Forfeiture-Petition (840) | ☐ Transcript Judgment (740) | ☐ Probate Court (940) |
| | ☐ Forfeiture-Consent Order (850) | ☐ Lis Pendens (750) | ☐ SCDOT (950) |
| | ☐ Other (899) | ☐ Transfer of Structured Settlement Payment Rights Application (760) | ☐ Worker's Comp (960) |
| Special/Complex /Other | ☐ Pharmaceuticals (630) | ☐ Confession of Judgment (770) | ☐ Zoning Board (970) |
| ☐ Environmental (600) | ☐ Unfair Trade Practices (640) | ☐ Petition for Workers Compensation Settlement Approval (780) | ☐ Public Service Comm. (990) |
| ☐ Automobile Arb. (610) | ☐ Out-of State Depositions (650) | ☐ Other (799) | ☐ Employment Security Comm (991) |
| ☐ Medical (620) | ☐ Motion to Quash Subpoena in an Out-of-Country Action (660) | | ☐ Other (999) |
| ☐ Other (699) | ☐ Sexual Predator (510) | | |

Submitting Party Signature: _____

Date: February 4, 2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, 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

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, 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

WANDA GAMBRELL, Individually

Plaintiff,

v.

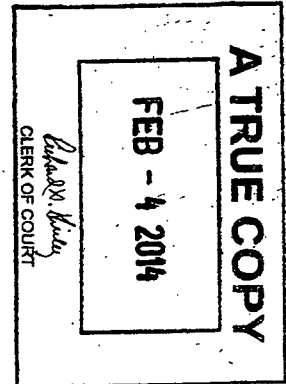
CHRISTOPHER A. SMITH, A South
Carolina individual

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. File No. 2014-CP-04-00214

SUMMONS



TO THE DEFENDANT, CHRISTOPHER SMITH, ABOVE-NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your Answer to said Complaint on J. Stephen Welch, J. Stephen Welch PC, P.O. Drawer 188, Piedmont, SC 29673 within thirty (30) days after the service hereof, exclusive of the date of such service; and if you fail to answer the Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.

J. Stephen Welch, PC

J. Stephen Welch
P.O. Drawer 188
Piedmont, South Carolina 29673
(864) 377-0703
(864) 225-7928 facsimile
swelch@mcgowanhood.com

Anderson, South Carolina
February 4, 2014

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON)

C.A. File No. 2014-CP-04-00214

WANDA GAMBRELL, Individually)

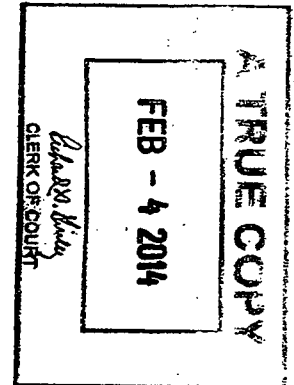
Plaintiff,)

v.)

COMPLAINT

CHRISTOPHER A. SMITH, A South)
Carolina individual)

Defendant.)



The Plaintiff, above named, complaining of the Defendant herein, would respectfully show unto the Court:

GENERAL ALLEGATIONS

1. The Plaintiff, Wanda Gambrell, is a citizen and resident of Anderson County, South Carolina.
2. The Defendant, Christopher Smith, upon information and belief, is a resident Anderson County, South Carolina residing at 201 Sapphire Valley, Anderson, SC.

FACTUAL ALLEGATIONS

3. Plaintiff, Wanda Gambrell (hereinafter "Gambrell"), was the owner of a bingo parlor known as Ma's Bingo located on McGee Road in Anderson, SC.
4. Defendant Christopher Smith (hereinafter "Smith") desired to purchase the assets of said business. On February 22, 2013, Smith signed the attached agreement (Exhibit "A" incorporated herein by reference) agreeing to purchase said assets to include any and all fixtures and equipment located within the business on that date. The sale included caller equipment,

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

WANDA GAMBRELL, Individually

Plaintiff,

v.

CHRISTOPHER A. SMITH, A South
Carolina individual

Defendant.

IN THE COURT OF COMMON PLEAS

C.A. File No. 2014-CP-04-

COMPLAINT

The Plaintiff, above named, complaining of the Defendant herein, would respectfully show
unto the Court:

GENERAL ALLEGATIONS

1. The Plaintiff, Wanda Gambrell, is a citizen and resident of Anderson County, South Carolina.
2. The Defendant, Christopher Smith, upon information and belief, is a resident Anderson County, South Carolina residing at 201 Sapphire Valley, Anderson, SC.

FACTUAL ALLEGATIONS

3. Plaintiff, Wanda Gambrell (hereinafter "Gambrell"), was the owner of a bingo parlor known as Ma's Bingo located on McGee Road in Anderson, SC.
4. Defendant Christopher Smith (hereinafter "Smith") desired to purchase the assets of said business. On February 2, 2013, Smith signed the attached agreement (Exhibit "A" incorporated herein by reference) agreeing to purchase said assets to include any and all fixtures and equipment located within the business on that date. The sale included caller equipment, bingo

board, all tables and chairs, télévisions, desks, stands, counter area counters, ATM machine and other equipment at the location.

5. The purchase price was agreed to be \$100,000.00. Payment was to be \$10,000.00 at closing, \$65,000.00 upon Smith receiving his bingo license, then the payment of \$2500.00 per month for 10 months to pay the remaining balance of \$25,000.00. The first \$2500.00 per month was due 30 days after the securing of a bingo license by Smith.

6. On February 22, 2013, Smith did pay the down payment, and take possession of all the fixtures and equipment as outlined above. Further, Smith did eventually secure possession of a bingo license and pay the \$65,000.00 as agreed in the Exhibit A attached hereto.

7. Smith did pay the first two payments of \$2500.00 per month due in August and September of 2013 following the receipt of his bingo license, but has made no payments since that time. Smith currently owes for October, November and December of 2013, plus January and February of 2014 (\$12,500.00). It is also anticipated that Smith will not make the remaining payments owed in 2014 (\$7500.00). The total owed by Smith is \$20,000.00.

**FOR A FIRST CAUSE OF ACTION
BREACH OF CONTRACT AS TO DEFENDANT SMITH**

8. The Plaintiff re-alleges each and every allegation contained in the Paragraphs 1 to 7 herein as if fully set forth verbatim herein.

9. Defendant, Smith, by signing the attached agreement, bound himself personally and contractually to pay the sums due under the contract. As of this date, Smith is in breach of that contract in the sum of \$12,500.00 at a minimum, and due to his anticipatory breach of contract, the entire sum of \$20,000.00 is now due.

**FOR A SECOND CAUSE OF ACTION
ANTICIPATORY BRACH OF CONTRACT AS TO SMITH**

10. The Plaintiff re-alleges each and every allegation contained in Paragraphs 1 to 9 herein as if fully set forth verbatim herein.

11. Defendant, Smith, by signing the attached agreement, bound himself personally and contractually to pay the sums due under the contract. As of this date, Smith is in breach of that contract in the sum of \$12,500.00 past due payments due from October, 2013 to February, 2014. In addition, from his failure to pay the last five payments when due, it is anticipated that Smith will not make the payments due in March, April or May 2014. Plaintiff asks for damages from this anticipatory breach and to declare the entire sum of \$20,000.00 now due.

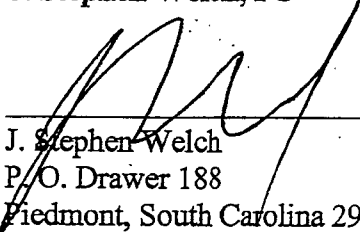
**FOR A THIRD CAUSE OF ACTION
REPOSSESSION OF PROPERTY AS TO SMITH**

12. Plaintiff incorporates by reference the allegations contained in paragraphs 1 to 11 as if fully set forth herein.

13. Plaintiff requests that she be allowed to enter the premises and repossess the equipment and property sold to Smith described on the attached Exhibit A in order to recoup the sums owed under the contract and to prevent Smith from benefitting wrongfully from the use or possession of equipment and property not paid for.

WHEREFORE, Plaintiff prays for judgment against the Defendant as to each Cause of Action alleged above in an amount to be made more definite and certain by trial, but for a minimum of \$20,000.00, for actual and punitive damages, for repossession of the equipment not fully paid for, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

J. Stephen Welch, PC



J. Stephen Welch
P.O. Drawer 188
Fiedmont, South Carolina 29673
(864) 377-0703
Jstephenw3@gmail.com

Anderson, South Carolina
February 4, 2014

CONTRACT FOR PURCHASE

This offer to purchase shall be binding under South Carolina law. This offer is made this 22nd Day of February, 2013 between seller Wanda Gambrell aka Ma's Bingo and buyer Christopher A. Smith aka Cas Smith.

This sale is for a business know as Ma's Bingo located at McGee Rd, Anderson SC. This transaction does not include the passing of any real estate. This sale does include any and all fixtures and equipment locate within the business as of today 2-22-2013. The sale shall include caller station, bingo board, all tables and chairs, tv's, atm machine, desk, stands, counter areas, and any and all other items not addressed here.

Purchase price shall be \$100,000 us dollars and shall be paid as follows. Seller shall receive \$10,000 today 2-22-2013 (check #1059, being made payable to William Gambrell). In the case that the buyer is unable to receive his license, either in his name or the name of a respective family member then the deposit of said \$10,000 shall be non-refundable and retained by seller. The remaining balance shall be paid at the rate of \$65,000 upon buyer receiving his Bingo License (aprox time frame 30-60 days from date of this execution). Upon receipt of said \$65,000 seller shall finance the balance of \$25,000 in the amount of \$2500 per month for ten (10) months, with the first payment due thirty (30) days from the date in which the seller has received proof that buyer has a valid South Carolina Bingo License.

Wanda Gambrell

2-22-13

Seller

Date

Chris A. Smith

2-22-13

Buyer

Date

Exhibit A

MOTION/EE P-3

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

WANDA GAMBRELL,

PLAINTIFF,

-VS-

CHRISTOPHER A. SMITH,

DEFENDANT.

IN THE COURT OF COMMON PLEAS

**DEFENDANT CHRISTOPHER A.
SMITH'S MOTION TO DISMISS**

CASE NO.: 2014-CP-04-00214

TO: WANDA GAMBRELL, THE ABOVE NAMED PLAINTIFF BY AND THROUGH HER ATTORNEY, J. STEPHEN WELCH:

PLEASE TAKE NOTICE that the undersigned attorney will move before the Presiding Circuit Court Judge of Anderson County within ten (10) days after service of this Motion, or as soon thereafter as counsel may be heard, for an Order pursuant to South Carolina Rules of Civil Procedure Rule 12 (b)(6) dismissing the Complaint in this matter as to the Defendant, Christopher A. Smith on the grounds that the allegations of the Plaintiff's Complaint fail to state a cause of action against the Defendant for which relief can be granted.

EPPS, NELSON & EPPS

WILLIAM N. EPPS, III

P. O. Box 2167

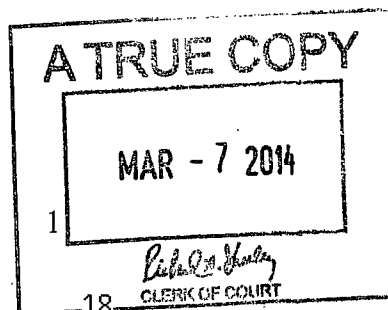
Anderson, SC 29622

(864) 224-2111; (864) 224-3536 - fax

ATTORNEY FOR DEFENDANT

March 7, 2014

Anderson, South Carolina



STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

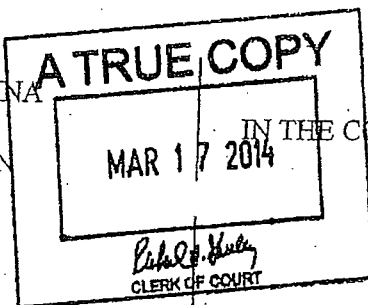
WANDA GAMBRELL,

PLAINTIFF,

-VS-

CHRISTOPHER A. SMITH,

DEFENDANT.



IN THE COURT OF COMMON PLEAS

ANSWER AND COUNTERCLAIM

CASE NO.: 2014-CP-04-00214

TO: WANDA GAMBRELL, THE ABOVE NAMED PLAINTIFF BY AND THROUGH
HER ATTORNEY, J. STEPHEN WELCH:

COMES NOW Defendant, Christopher A. Smith, answering Plaintiff's complaint would
respectfully show unto this Court as follows:

FOR A FIRST DEFENSE AND BY WAY OF MOTION TO DISMISS

1. Except as otherwise admitted, explained, or modified herein, Defendant denies each allegation of Plaintiff's Complaint and demands strict proof thereof.
2. The Complaint fails to state a claim against the Defendant upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure. Your Defendants would show that the Plaintiff did not have any ownership interest in said property or have the authority or right to sale the business known as Ma's Bingo.
3. Further, the Defendant is informed and believe that the contract for purchase was void from its inception or *void ab initio* and illegal pursuant to S.C. Code Ann. § 12-21-3910, et seq.

FOR A SECOND DEFENSE AND BY WAY OF ANSWER

4. All prior defenses and allegations are incorporated herein by reference. Your Defendant admits the allegations contained in paragraph 1 and 2 of the Plaintiff's Complaint.
5. Your Defendant denies upon information and belief the allegation contained in paragraph 3 of the Plaintiff's Complaint and demand strict proof thereof.

6. Your Defendant admits the allegations contained in paragraphs 4, 5, 6 and 7 of the Complaint. However your Defendant would show that the contract was for the bingo business and that the Plaintiff did not have any ownership interest in said property of the business or have the authority or right to sale the business known as Ma's Bingo.
7. Your Defendant denies the allegations contained in paragraphs 8, 9, 10 and 11 of the Plaintiff's Complaint and demands strict proof thereof.
8. Your Defendant denies the allegations contained in paragraphs 12 and 13 of the Plaintiff's Complaint and demands strict proof thereof. Further Defendant requests that paragraph 13 of Plaintiff's Complaint be stricken from the record as the Plaintiff has not set forth a claim for which relief may be granted and is not entitled to repossession of the property.

FOR A THIRD DEFENSE
(Unjust Enrichment)

9. The Plaintiff's claim is barred by the defense of unjust enrichment to the extent that if the Plaintiff recovers under this alleged contract it would receive recovery for property to which she had no ownership interest nor have the authority or right to sale the business known as Ma's Bingo.

FOR AN FOURTH DEFENSE
(Unclean hands)

10. The Plaintiff's claim is barred, upon information and belief, by the doctrine of unclean hands.

FOR A FIFTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Breach of Contract Accompanied by Fraudulent Act)

11. The Defendant reiterates and incorporates the allegations of the first, second, third, and fourth defenses and make them a part herein by reference.
12. If the Court finds that the contract for purchase is not void from its inception or *void ab initio*, then the Plaintiff breached the contract by engaging in fraudulent acts with fraudulent intent by inducing the Defendant into performing under the terms of the contract for purchase, allowing the Defendant to perform, accepting the Defendant's consideration, and subsequently demanding that the Defendant perform under the terms of the contract for purchase when the Plaintiff did not have any ownership interest in said property or have the authority or right to sale the business known as Ma's Bingo.
13. The Defendant has incurred actual and punitive damages directly and proximately caused as a natural consequence of the Plaintiff's fraudulent breach of the contract for purchase.

FOR A SIXTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Conversion)

14. The Defendant reiterates and incorporates the allegations of the first, second, third, fourth, and fifth defenses and make them a part herein by reference.
15. In accordance with the parties contract for purchase, the Defendant would show that the Plaintiff did receive a benefit and money from the Defendant which he supplied to the Plaintiff.
16. That the Plaintiff did not have any ownership interest in said property or have the authority or right to sale the business known as Ma's Bingo as set forth in the contract for purchase. As such, the Defendant was deprived of ownership rights to said monies in the amount of \$80,000.00 by the intentional act of the Plaintiff in securing the monies illegally, tortiously, by fraud and/or wrongful conduct.
17. That the Defendant is informed and believes that the Plaintiff did receive the benefit of the monies and converted the money to her own use.
18. That the Defendant would show that the Plaintiff's unauthorized detention of the Defendant's money was without the Defendant's consent.
19. That the Defendant as a result of the Plaintiff's illegal conversion of its monies, has been damaged in the amount of Eighty Thousand and 00/100 (\$80,000.00) Dollars, plus the legal rate of interest since the date of conversion and both actual and punitive damages.

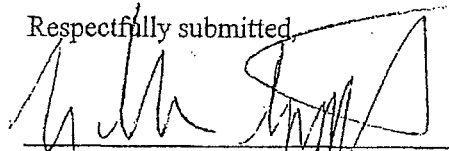
FOR A SEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM
(Negligent Misrepresentation)

20. The Defendants reiterate and incorporate the allegations of the first, second, third, fourth, fifth, sixth, seventh, eighth, ninth, and tenth defenses and make them a part herein by reference.
21. The Plaintiff negligently misrepresented the terms of the contract for purchase by making certain promises to perform for consideration. The Plaintiff entered into the contract for purchase in the course of the Plaintiff's business and failed to exercise the degree of care owed to the Defendant to ensure that truthful information was communicated to the Defendant. The Defendant justifiably relied on the information by performing under the terms of the contract for purchase and engaging in other actions in reliance on the Plaintiff's misrepresentations, resulting in pecuniary loss as a direct and proximate result of the Defendant's reliance on the Plaintiff's misrepresentations.

WHEREFORE, your Defendant pray:

- A. For the Plaintiff's action to be dismissed with prejudice and that the Court award Defendants the recovery of their costs;
- B. Judgment on all Counterclaims for Defendant against the Plaintiff in an amount deemed just and proper including, but not limited to, actual, compensatory, special, consequential, and punitive damages in a sum to be determined at the trial of this case, plus costs and interest; and
- C. For other and further relief as to this Court may deem just and proper.

Respectfully submitted,



W. N. Epps, III
EPPS, NELSON & EPPS
P.O. Box 2167
230 W. Whitner Street
Anderson, SC 29622
(864) 224-2111
(864) 224-3536 facsimile
Attorney for Defendant

March 17, 2014
Anderson, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF ANDERSON)

C.A. File No. 2014-CP-04-00214

WANDA GAMBRELL, Individually)

Plaintiff,)

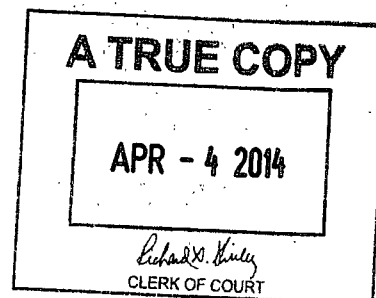
v.)

PLAINTIFF'S ANSWER TO
COUNTERCLAIM

CHRISTOPHER A. SMITH, A South)

Carolina individual)

Defendant.)



The Plaintiff, above named, in answer to the counterclaim of the Defendant herein, would respectfully show unto the Court:

GENERAL ALLEGATIONS

1. The Plaintiff, Wanda Gambrell, is a citizen and resident of Anderson County, South Carolina.
2. The Defendant, Christopher Smith, upon information and belief, is a resident Anderson County, South Carolina residing at 201 Sapphire Valley, Anderson, SC.

MOTION TO DISMISS

3. The Counterclaim fails to state a claim against the Plaintiff upon which relief can be granted and should be dismissed under SCRPC 12 (b)(6).

SCRPC RULE 11 VIOLATION

4. Said counterclaim has no basis in fact or law and has been filed simply to harass the Plaintiff. Plaintiff moves for attorney fees and sanctions under SCRPC 11.

ANSWER TO COUNTERCLAIM

5. Except as admitted, explained or modified herein, Plaintiff denies each and every allegation of Defendant's counterclaim and demand strict proof thereof.

6. Plaintiff specifically denies paragraphs 1, 2 and 3.

7. Plaintiff specifically denies paragraphs 4, 5, 6, 7 and 8 (SECOND DEFENSE AND BY WAY OF ANSWER), except for those provisions of those paragraphs consistent with the allegations of the complaint.

8. Plaintiff specifically denies paragraph 9 (THIRD DEFENSE-Unjust Enrichment), except for those provisions of those paragraphs consistent with the allegations of the complaint.

10. Plaintiff specifically denies paragraph 10 (FOURTH DEFENSE-Unclean Hands), except for those provisions of those paragraphs consistent with the allegations of the complaint.

11. Plaintiff specifically denies paragraphs 11, 12 and 13 (FIFTH DEFENSE AND BY WAY OF COUNTERCLAIM-Breach of Contract Accompanied by Fraudulent Act), except for those provisions of those paragraphs consistent with the allegations of the complaint.

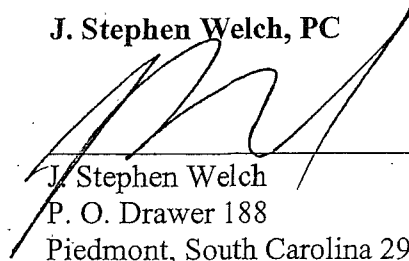
12. Plaintiff specifically denies paragraphs 14, 15, 16, 17, 18 and 19 (SIXTH DEFENSE AND BY WAY OF COUNTERCLAIM-Conversion), except for those provisions of those paragraphs consistent with the allegations of the complaint.

13. Plaintiff specifically denies paragraphs 20 and 21 (SEVENTH DEFENSE AND BY WAY OF COUNTERCLAIM- Negligent Misrepresentation), except for those provisions of those paragraphs consistent with the allegations of the complaint.

WHEREFORE, Plaintiff prays for judgment against the Defendant as to each Cause of Action alleged in the Complaint in an amount to be made more definite and certain by trial, but for a minimum of \$20,000.00, for actual and punitive damages, for dismissal of the frivolous

counterclaims of the defendant, attorney fees, costs and sanctions under SCRCP 11, for the costs of this action, and for such other and further relief as the Court may deem just and proper.

J. Stephen Welch, PC



J. Stephen Welch
P. O. Drawer 188
Piedmont, South Carolina 29673
(864) 377-0703
Jstephenw3@gmail.com

Anderson, South Carolina
April 3, 2014

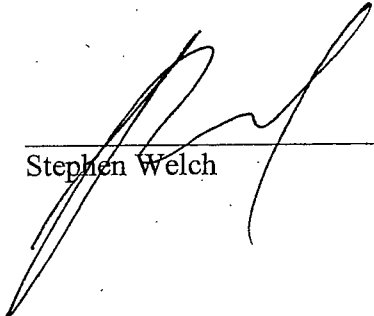
Certificate of Service

I, Stephen Welch, attorney for the Plaintiff, do hereby certify that I have served all counsel in this action with a copy of the documents herein specified by mailing a copy of the same by U.S. Mail at Anderson, South Carolina, with first class postage paid as follows:

DOCUMENTS: **Plaintiff's Answer to Counterclaim**

COUNSEL SERVED: William N. Epps III
 Epps, Nelson & Epps
 PO Box 2167
 Anderson, SC 29622

April 3, 2014



Stephen Welch

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

WANDA GAMBRELL,

PLAINTIFF,

-VS-

CHRISTOPHER A. SMITH,

DEFENDANT.

IN THE COURT OF COMMON PLEAS
TENTH JUDICIAL CIRCUIT

CASE NO: 2014-CP-04-00214

**DEFENDANT'S WITHDRAWAL OF
MOTION TO DISMISS**

This action is one for suit on a Contract in Anderson County, South Carolina. The Defendant filed a Motion to Dismiss on March 7, 2014 and a hearing is scheduled April 15, 2014 at 2:30 pm. The Defendant subsequently filed an Answer and Counterclaim on March 17, 2014. The Defendant now wishes to withdraw the Motion to Dismiss scheduled for April 15, 2014 at 2:30 pm., without Prejudice.

EPPS, NELSON & EPPS

WILLIAM N. EPPS, III

P. O. Box 2167

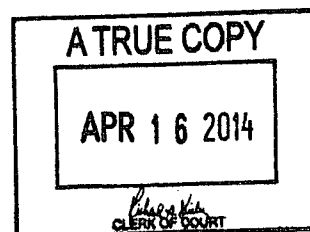
Anderson, SC 29622

(864) 224-2111; (864) 224-3536 - fax

ATTORNEY FOR DEFENDANT

April 14, 2014

Anderson, South Carolina



STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

WANDA GAMBRELL,

PLAINTIFF,

-VS-

CHRISTOPHER A. SMITH,

DEFENDANT.

A TRUE COPY

IN THE COURT OF COMMON PLEAS

MAY -2 2014

Richard S. Kiley
CLERK OF COURT

REPLY

CASE NO.: 2014-CP-04-00214

Your Defendant herein, replying to the Plaintiff's Answer to Counterclaim in the above-stated cause of action, would respectfully show unto the Court and allege:

I.

That your Defendant generally and specifically denies each and every allegation of the Answer to Counterclaim in its entirety, and demands strict proof thereof.

II.

That the Defendant denies the allegations in paragraph three (3) of the Plaintiff's Answer to Counterclaim and demands strict proof thereof.

III.

That the Defendant denies the Plaintiff's claim that the Defendant filed his counterclaims in violation of the Rule 11 of the South Carolina Rules of Civil Procedure, and demands strict proof thereof.

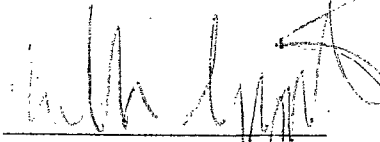
WHEREFORE, having fully replied to the Answer to Counterclaim of the Plaintiff herein, your Defendant prays as follows:

1. That the Answer to Counterclaim of the Plaintiff herein be dismissed with costs, and

that the relief prayed for in the Defendant's counterclaims be granted.

2. For such other and further relief as to this Court deems just and proper.

EPPS, NELSON & EPPS

A handwritten signature in dark ink, appearing to read 'William N. Epps III', is written over a horizontal line.

William N. Epps III

EPPS, NELSON & EPPS

Post Office Box 2167

Anderson, SC 29622

(864)224-2111

ATTORNEYS FOR THE DEFENDANT

May 2, 2014

MOTION FEE PAID

STATE OF SOUTH CAROLINA

COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

WANDA GAMBRELL,

PLAINTIFF,

MOTION TO ALTER OR AMEND

-VS-

CHRISTOPHER A. SMITH,

CASE NO.: 2014-CP-04-00214

DEFENDANT.

TO: THE HONORABLE ROBIN B. STILWELL AND J. STEPHEN WELCH, ATTORNEY
FOR THE PLAINTIFF:

PLEASE TAKE NOTICE that the undersigned attorney for the Defendant, Christopher A. Smith will move before the Honorable Robin B. Stilwell within ten (10) days after service of this Motion or as soon thereafter as counsel may be heard, for an Order pursuant to Rule 52(b) and 59(e) of the South Carolina Rules of Civil Procedure to alter or amend the Order Granting Relief from a trial on the merits held on February 11, 2015 and filed with the Anderson County Court of Common Pleas Clerk of Court on March 2, 2015 and received by the Defendant, Christopher A. Smith on March 4, 2015 on the following grounds:

1. That the contract for purchase was void from its inception or *void ab initio* and illegal pursuant to this State's constitutional provisions, statutory law and judicial decisions. The Court found as a fact that the parties entered into a contract drafted by the Defendant for the purchase by the Defendant of the business and its assets owned by the Plaintiff known as Ma's Bingo.

The business known as Ma's Bingo which is the subject matter of the contract for purchase was an illegal gambling operation in violation of S.C. Const. Art. XVII, § 7 "Lotteries",

A TRUE COPY

MAR 16 2015

Richard D. Kiley
CLERK OF COURT

S.C. Code Ann. § 12-21-3910, et seq., "Bingo Tax Act of 1996", including S.C. Code Ann. § 12-21-3935, S.C. Code Ann. § 12-21-3990, S.C. Code Ann. § 12-21-4000, S.C. Code Ann. § 12-21-4005, S.C. Code Ann. § 12-21-4009, S.C. Code Ann. § 12-21-4020, S.C. Code Ann. § 12-21-4030, S.C. Code Ann. § 12-21-4090, S.C. Code Ann. § 12-21-4100, S.C. Code Ann. § 12-21-4150 "Posing as a Bingo Player" and S.C. Code Ann. § 12-21-2710, as amended.

The evidence showed without a doubt that Ma's Bingo was an illegal gambling operation and Plaintiff had no authority or right to sell an actual bingo business, which in this case was the province of the Greenwood Shrine Club. The Plaintiff's own testimony was that the contract for purchase was solely for the equipment located at McGee Road, not the business itself.

The Plaintiff admitted that she had house players who played for free and divided winnings with her. She admitted to holding late games that exceeded the daily limit. She admitted to allowing individuals to play on credit. She admitted to erasing portions of or deleting required daily documentation that is required to be kept in accordance with the Bingo Tax Act. She admitted to profiting off of illegal video games of chance that were being operated out of Ma's Bingo. She admitted to what was basically a sham contract with the Greenwood Shrine Club, who engaged in absolutely no oversight, that allowed Plaintiff to operate an illegal lottery/gambling operation with impunity. Ray Dorn testified that if he had known of the Plaintiff's illegal activities at Ma's Bingo, he would have shut it down.

What the Plaintiff negotiated and offered to sell was an illegal gambling operation, with inaccurate and fraudulent financial records, sham contracts with the Greenwood Shrine Club, and representations of income that were actually derived from illegal bingo games and illegal video games of chance.

Our South Carolina State Supreme Court held in *Ward v. West Oil Co.*, 387 S.C. 268, 692 S.E.2d 516 (S.C., 2010):

Although R & B correctly references our appellate court rules regarding error preservation, we find these rules are inapplicable as this Court will not “lend its assistance” to carry out the terms of a contract that violates statutory law or public policy. See *McMullen v. Hoffman*, 174 U.S. 639, 654, 19 S.Ct. 839, 43 L.Ed. 1117 (1899) (“The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract. In case any action is brought in which it is necessary to prove the illegal contract in order to maintain the action, courts will not enforce it, nor will they enforce any alleged rights directly springing from such contract.”); *White v. J.M. Brown Amusement Co.*, 360 S.C. 366, 371, 601 S.E.2d 342, 345 (2004) (“The general rule, well established in South Carolina, is that courts will not enforce a contract when the subject matter of the contract or an act required for performance violates public policy as expressed in constitutional provisions, statutory law, or judicial decisions.”); *Beach Co. v. Twillman, Ltd.*, 351 S.C. 56, 64, 566 S.E.2d 863, 866 (Ct.App.2002) (holding that illegal contracts are void and unenforceable, such that actions for its breach may not be maintained).

Because this Court will not enforce an illegal contract, we find the question regarding the legality of the “pull-tab” cards and machines is appropriate for this Court's review. See *Hyta v. Finley*, 137 Idaho 755, 53 P.3d 338, 340-41 (2002) (holding, in a partnership dissolution action involving a bar that primarily profited from illegal gaming machines, appellate court could sua sponte raise issue of whether underlying contract was illegal); *Parente v. Pirozzoli*, 87 Conn. App. 235, 866 A.2d 629, 635 (2005) (“ ‘It is generally true that illegality of a contract, if of a serious nature, need not be pleaded, as a court will generally of its own motion take notice of anything contrary to public policy if it appears from the pleadings or in evidence, and the plaintiff will be denied relief, for to hold otherwise would be to enforce inappropriately an illegal agreement.’ ” (quoting 6 Richard A. Lord, *Williston on Contracts* § 12:5 at 56-64 (4th ed.1995))); see also 17A Am. Jur.2d *Contracts* § 323 (2004) (“[I]f a question of illegality develops during the course of the trial, a court must consider that question, whether pleaded or not.”). *Id.* at 692 S.E.2d at 520.

Further the contract for purchase is wholly inoperative under governing law of South Carolina because the Plaintiff's admitted course of conduct during the course of her performance

of the contract was illegal. The Plaintiff engaged in fraudulent acts with fraudulent intent by inducing the Defendant to enter into fictitious contracts with the Greenwood Shrine Club, when Plaintiff knew that was a condition precedent and that said amounts listed in the fictitious contracts were not going to be paid by the Greenwood Shrine Club to Defendant. The actions of the Plaintiff as set forth herein are inseparable from her alleged damages.

Our South Carolina Court of Appeals held in *Jackson v. Bi-Lo Stores, Inc.*, 313 S.C. 272, 437 S.E.2d 168 (S.C. App., 1993):

Respondents maintain that the Bi-Lo contract is wholly inoperative under the governing law of South Carolina because the partner's admitted course of conduct during the course of their performance of the contract was illegal. They further maintain that because partners' alleged damages consists solely of lost profits from this illegal contract, they are barred from any recovery. We agree.

It is a well founded policy of law that no person be permitted to acquire a right of action from their own unlawful act and one who participates in an unlawful act cannot recover damages for the consequence of that act. 86 C.J.S. Torts § 12 (1954). This rule applies at both law and in equity and whether the cause of action is in contract or in tort. 1A C.J.S. *Actions* § 29 (1985). See also *Graham v. Graham*, 276 S.C. 341, 278 S.E.2d 345 (1981); *Nelson v. Bryant*, 265 S.C. 558, 220 S.E.2d 647 (1975); *Roundtree v. Ingle*, 94 S.C. 231, 77 S.E. 931 (1913); Restatement (Second) of Torts § 774 (1977).

The illegality doctrine has also been recognized by the United States Supreme Court which, in *McMullen v. Hoffman*, 174 U.S. 639, 19 S.Ct. 839, 43 L.Ed. 1117 (1899), held illegality is a defense to a contract action:

The authorities from the earliest time to the present unanimously hold that no court will lend its assistance in any way towards carrying out the terms of an illegal contract. In case any action is brought which it is necessary to prove the illegal contract in order to maintain the action, courts will not enforce it, nor will they enforce any alleged rights directly springing from such contract.

Id. at 654, 19 S.Ct. at 845 (emphasis added). South Carolina courts have reached similar conclusions refusing to aid plaintiffs who are themselves guilty of an illegal act. In *Roundtree*, the court concluded that "[his] whole transaction is without the pale of the law, and [he] cannot invoke the aid of the courts in

enforcement of any claim depending on it." *Id.* 77 [313 S.C. 277] S.E. at 932. *See also, Berkebile v. Outen*, --- S.C. ----, ----, 426 S.E.2d 760, 762 (1993) ("an illegal contract has always been unenforceable ... South Carolina courts will not enforce a contract which is violative of public policy, statutory law or provisions of the Constitution."). *Id.* at 437 S.E.2d at 170.

The Plaintiff's actions and conduct as set forth herein, tainted the entire endeavor and she should be barred from recovery. The illegality of the contract developed over the course of the trial, and the Court must consider that question. Therefore the Defendant respectfully requests that the Court alter or amend its findings in the Order Granting Relief and find that the underlying contract is *void ab initio* and unenforceable, as it violates the South Carolina Constitution, our statutory law and public policy.

2. If the Court makes a finding that the contract for purchase is not void from its inception or *void ab initio*, then the Defendant respectfully requests that the Court alter or amend its finding regarding the Defendant's cause of action for breach of contract with fraudulent intent.

The Court found that the Defendant has failed to prove by a preponderance of the evidence the elements of fraud. It is not necessary to allege elements of common law fraud and deceit. Fraud and breach of contract with fraudulent intent are not based on the same elements. *See Harper v. Ethridge*, 290 S.C. 112, 348 S.E.2d 374 (S.C. App., 1986) (The action for breach of contract accompanied by a fraudulent act is not based on the same elements as the action in tort for fraud and deceit. *McCullough v. The American Workmen*, 200 S.C. 84, 20 S.E.2d 640 [290 S.C. 119] (1942). In order to state a claim for breach of contract accompanied by a fraudulent act, the plaintiff must plead facts establishing three elements: (1) a breach of contract; (2) fraudulent intent relating to the breaching of the contract and not merely to its making; and (3) a fraudulent

act accompanying the breach. *Floyd v. Country Squire Mobile Homes, Inc.*, 287 S.C. 51, 336 S.E.2d 502 (Ct.App.1985). It is not necessary to allege the elements of common law fraud and deceit. See *Welborn v. Dixon*, 70 S.C. 108, 49 S.E. 232 (1904); *Sullivan v. Calhoun*, 117 S.C. 137, 108 S.E. 189 (1921). The fraudulent act is any act characterized by dishonesty in fact, unfair dealing, or the unlawful appropriation of another's property by design).

Further, the Defendant did present evidence of Plaintiff's fraudulent intent and a fraudulent act by the Plaintiff. As set forth herein, the Plaintiff engaged in fraudulent acts with fraudulent intent by inducing the Defendant to enter into fictitious contracts with the Greenwood Shrine Club, when Plaintiff knew that was a condition precedent and that said amounts listed in the fictitious contracts were not going to be paid by the Greenwood Shrine Club to Defendant. The Plaintiff's conduct was characterized by dishonesty in fact, unfair dealing, or the unlawful appropriation of another's property by design. Here she wrongfully appropriated \$80,000.00 from the Defendant.

Therefore, Defendant respectfully asks that the Court alter and amend its Order Granting Relief and find for the Defendant on his cause of action for breach of contract accompanied by a fraudulent act.

3. The Court found that Defendant failed to demonstrate by a preponderance of the evidence that the Plaintiff negligently misrepresented any material information. This is error, the testimony and evidence clearly showed the Plaintiff negotiated and offered to sale an illegal gambling operation, with inaccurate and fraudulent financial records, sham contracts with the Greenwood Shrine Club, and representations of income that would actually derived from illegal bingo games and illegal video games of chance. She induced the Defendant to enter into

fictitious contracts with the Greenwood Shrine Club, knowing full well that said amounts in the fictitious contracts were not going to be paid. The above is certainly false representations of material fact.

The case of *Harrington v. Mikell*, 469 S.E.2d 627, 321 S.C. 518 (S.C. App., 1996) holds:

One may bring a common law action in tort for negligent misrepresentation. *Gilliland v. Elmwood Properties*, 301 S.C. 295, 391 S.E.2d 577 (1990); *Winburn v. Insurance Co. of North America*, 287 S.C. 435, 339 S.E.2d 142 (Ct. App. 1985). If the damage alleged is a pecuniary loss, the plaintiff [321 S.C. 522] must allege and prove the following essential elements to establish liability for negligent misrepresentation: (1) the defendant made a false representation to the plaintiff; (2) the defendant had a pecuniary interest in making the statement; (3) the defendant owed a duty of care to see that he communicated truthful information to the plaintiff; (4) the defendant breached that duty by failing to exercise due care; (5) the plaintiff justifiably relied on the representation; and (6) the plaintiff suffered a pecuniary loss as the proximate result of his reliance upon this representation. *AMA Management Corp. v. Strasburger*, 309 S.C. 213, 420 S.E.2d 868 (Ct. App. 1992). As part of his case, the plaintiff must show that his reliance on the misrepresentation was reasonable. *Id.* at 223, 420 S.E.2d at 874. "There is no liability for casual statements, representations as to matters of law, or matters which plaintiff could ascertain on his own in the exercise of due diligence." *Id.* Reliance can be justified only if the relationship of the parties is such that the defendant occupies a superior position to the plaintiff with respect to knowledge of the truth of the statement made. *O.C. Gruber v. Santee Frozen Foods, Inc.*, 309 S.C. 13, 419 S.E.2d 795 (Ct. App. 1992). *Id.* at 469 S.E.2d at 629.

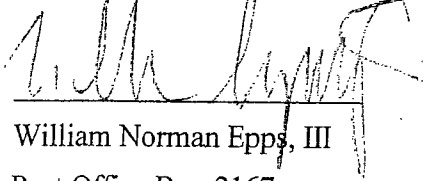
As set forth above, the Plaintiff made false representations to the Defendant. The Plaintiff had a pecuniary interest in making the statement, it was in the course of the Plaintiff's business. The Plaintiff owed a duty of care to see that she communicated truthful information to the Defendant, where as here she possessed expertise in the bingo business, and the Defendant relied on the Plaintiff who was in a superior position, and has a pecuniary interest in the transaction. The Plaintiff breached that duty by failing to exercise due care as set forth above, and the Defendant justifiably relied on the representations. The Defendant suffered a pecuniary loss as

the proximate result of his reliance upon this representation in the amount of \$30,000.00.

Therefore based on the above arguments and authorities, the Defendant respectfully asks that the Court alter or amend the judgment and find that the contract for purchase was void from its inception or *void ab initio* and illegal, as it violates the South Carolina State Constitution, our statutory law and public policy or find for the Defendant on his causes of action for breach of contract accompanied by fraudulent act and negligent misrepresentation.

Respectfully submitted,

EPPS, NELSON, EPPS & PERKINS

A handwritten signature in dark ink, appearing to read 'William Norman Epps, III', is written over a horizontal line.

William Norman Epps, III

Post Office Box 2167

Anderson, South Carolina 29622

(864) 224-2111

ATTORNEY FOR THE DEFENDANT

March 16, 2015

State of South Carolina

County of Anderson

In the Court of Common Pleas

Wanda Gambrell,

Plaintiff,

-vs-

Christopher A. Smith,

Defendant.

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2014-CP-04-214

February 11, 2015

Transcript of Record

BEFORE:

The Honorable Robin Stilwell, Judge

APPEARANCES:

Steven Welch, Esquire
Attorney for the Plaintiff

William Norman Epps III, Esquire
Attorney for the Defendant

Renee H. Tollison
Circuit Court Reporter

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1 **FEBRUARY 11, 2015**

2 (WHEREUPON, court convened with all parties present
3 and the following proceedings were had commencing at
4 approximately 10:06 a.m.)

5 (WHEREUPON, Plaintiff's Exhibit Numbers 1 through 12
6 were marked for identification.)

7 THE COURT: All right. Let's see. Let's go
8 ahead and call to court the case of Wanda Gambrell versus
9 Christopher Smith, case number 2014-CP-04-214. This is a
10 case that has come before the Court on a non-jury trial
11 on a cause of action of breach of contract in addition to
12 various other counterclaims and causes of action. And
13 I'm happy to hear from you, gentlemen.

14 MR. WELCH: Judge, we've been able to stipulate
15 to -- what was the last exhibit number, Ms. Court
16 Reporter?

17 MADAM COURT REPORTER: Number 12.

18 MR. WELCH: We stipulate Exhibits 1 through 12.

19 THE COURT: Okay.

20 MR. WELCH: And so I think by agreement they
21 could be entered into evidence at this time with your
22 approval.

23 THE COURT: Sure. Yeah. And as you go through
24 the evidence, if you'll just lay the foundation and then
25 you can let me know that that's, you know, agreed to by

1 stipulation, and we'll admit it into evidence. Or we can
2 do it now all at one time.

3 MR. WELCH: I believe it'll be easier, Judge, I
4 think, for everybody if we just admit it now.

5 THE COURT: Okay.

6 You good with that?

7 MR. EPPS: Yes, sir, Your Honor.

8 THE COURT: Okay. So we're going to admit by
9 stipulation Plaintiff's Exhibits 1 through 12.

10 MR. WELCH: Yes, sir.

11 (WHEREUPON, Plaintiff's Exhibit Numbers 1 through 12
12 were admitted into evidence.)

13 MR. WELCH: And Judge, if I could approach.

14 THE COURT: Yes, sir.

15 MR. WELCH: I have a copy of 1 through 8.

16 THE COURT: Okay.

17 MR. WELCH: So the Court can follow those.

18 THE COURT: Okay. Sure.

19 MR. WELCH: Judge, I also will tell the Court
20 that looking at Exhibit Number 1, the contract to
21 purchase ...

22 THE COURT: Yes, sir.

23 MR. WELCH: ... the parties are in agreement.
24 And I can probably save some time -- that the contract
25 was signed. It was drafted by the defendant, signed on

1 the date shown there. And they don't dispute any of
2 that.

3 THE COURT: Okay.

4 MR. WELCH: Am I correct?

5 MR. EPPS: As far as the contract?

6 MR. WELCH: Yeah. Just that it was signed.

7 There was no dispute as to the date of signature. That's
8 his signature and all that.

9 MR. EPPS: No, there's no dispute that the
10 parties signed this on the date in -- February 22nd,
11 2013.

12 THE COURT: Okay.

13 MR. WELCH: And for purposes of the record,
14 Judge, I would tell you that we are only moving forward
15 on the first cause of action. The second cause of action
16 in our complaint was anticipatory breach, and those dates
17 have passed. And the third was for an action to -- but
18 the property's been sold. So we're only moving on the
19 breach of contract cause of action.

20 THE COURT: Okay. Good enough.

21 MR. WELCH: Now, I will also tell the Court
22 that the parties are not in dispute that seventy-five
23 thousand dollars was paid under this contract and that
24 the remaining twenty-five thousand dollars that was to be
25 paid over ten months at twenty-five hundred dollars a

1 month. There were two payments made which meant there's
2 twenty thousand owed. We're not in dispute over that
3 either.

4 THE COURT: Okay.

5 MR. EPPS: We agree that twenty thousand
6 dollars was paid to the plaintiff, Wanda Gambrell.

7 MR. WELCH: That ---

8 MR. EPPS: Eighty thousand dollars was paid to
9 the plaintiff.

10 THE COURT: Okay. So you agree that twenty
11 thousand is remaining, but whether it's due and payable
12 is the issue?

13 MR. WELCH: Right.

14 MR. EPPS: That's the issue.

15 MR. WELCH: Yes, sir.

16 THE COURT: Okay. And what's the counterclaim?

17 MR. EPPS: The counterclaim, Your Honor, is we
18 filed and included a motion to dismiss. We have
19 allegation -- we believe that this contract is illegal or
20 has an illegal aspect regarding the business known as
21 Ma's Bingo. So we have asked that -- we have moved -- we
22 have raised the allegation that it's void ab initio or
23 illegal from the inception, it's void, which would
24 essentially leave the parties where they're at. So we
25 have raised that, and we have also denied these

1 allegations. We have, you know, defenses as unjust
2 enrichment, unclean hands. We have a counterclaim of
3 breach of contract accompanied by a fraudulent act.
4 There's a counterclaim for conversion and a counterclaim
5 for negligent misrepresentation.

6 THE COURT: Okay. Breach of contract,
7 fraudulent intent, negligent misrepresentation and you
8 say conversion?

9 MR. EPPS: Yes, sir.

10 THE COURT: All right. Okay. Good enough.

11 Mr. Welch, anything additionally you need to put on
12 the record?

13 MR. WELCH: I think that's all, Judge.

14 THE COURT: Okay. Well, if y'all are ready to
15 present testimony, I'm ready to proceed.

16 MR. WELCH: We'd call Mr. Darrell Patterson to
17 the stand.

18 (WHEREUPON, the witness was duly sworn.)

19 MR. WELCH: Judge, if I could approach ---

20 THE COURT: Yes, sir. Absolutely. Yeah, y'all
21 ---

22 MR. WELCH: I'm fighting a sinus infection.

23 THE COURT: You're okay. I tell you, just move
24 forward. Y'all have got free reign. Okay? If y'all do
25 something that I don't like, I'll let you know. But

1 otherwise you can assume that you can wander and mosey
2 all around the courtroom.

3 MR. WELCH: Judge ...

4 (WHEREUPON, Plaintiff's Exhibit Number 13 was marked
5 for identification only.)

6 MR. WELCH: Judge, Exhibit Number 13 is a W-2
7 that I thought I'd get her to mark. They've got a copy,
8 and we stipulate that will be in evidence as well.

9 THE COURT: This is which one?

10 MR. WELCH: It's Exhibit Number 13.

11 THE COURT: Okay. So by stipulation, we're
12 admitting that as well?

13 MR. EPPS: Yes, sir.

14 THE COURT: Okay. Good enough.

15 (WHEREUPON, Plaintiff's Exhibit Number 13 was
16 admitted into evidence.)

17 **DARRELL PATTERSON,**

18 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

19 DIRECT EXAMINATION

20 BY MR. WELCH:

21 Q. Sir, state your full name for the record.

22 A. (No verbal response)

23 Q. State your name.

24 A. Darrell Patterson.

25 Q. And what do you do, Mr. Patterson?

- 1 A. I am an accountant.
- 2 Q. And where do you practice your accounting work?
- 3 A. 204 West Highland Avenue.
- 4 Q. How long you been there?
- 5 A. Seven years.
- 6 Q. And do you ---
- 7 A. Almost eight years.
- 8 Q. Have you done work for Wanda Gambrell in any of her
- 9 businesses?
- 10 A. Yes, sir.
- 11 Q. What businesses have you done work for her?
- 12 A. For the Greenwood Shrine Club and Ma's Bingo.
- 13 Q. Okay. Explain to the Court what work you've done
- 14 for the Greenwood Shrine Club and Ma's Bingo?
- 15 A. I did the bookkeeping, the payroll taxes, sales tax
- 16 and Wanda's personal tax returns.
- 17 Q. And when you were keeping those books, would you
- 18 actually get the check register and the actual records
- 19 ---
- 20 A. Oh, yeah. I had the bank statements and check stubs
- 21 every single month. I had to balance that out to the
- 22 penny every month.
- 23 Q. And you do know that a lot of that information is
- 24 going to be used by the State of South Carolina for
- 25 quarterly reports and returns?

1 A. Absolutely.

2 Q. Now, sir, I want you to look at the exhibit that
3 you've got. It's the profit and loss from business, form
4 211. I think it's Exhibit Number 5. I think maybe 6.
5 What's that exhibit number?

6 A. That is the Schedule C of her tax return showing the
7 profit or loss of Ma's Bingo.

8 Q. And what is the exhibit number at the bottom? It's
9 the yellow sticker at the very bottom.

10 A. Number 12. What number are you looking for?

11 Q. The year 2011.

12 A. Oh, 2011. That is Exhibit Number 5.

13 Q. Okay. And 2012, what is that exhibit number?

14 A. Number 6.

15 Q. And 2013, what's that exhibit number?

16 A. Number 7.

17 Q. And then I think Exhibit Number 13 is the W-2; is
18 that correct?

19 A. Yes.

20 Q. And did you prepare that as well for her?

21 A. Yes, I did.

22 Q. Now, based upon your review of the books and
23 records, the business known as Ma's Bingo, was it
24 profitable in the years that we have before us here?

25 A. Yes, it was.

1 Q. Okay. Explain to the Court how you arrived at that
2 conclusion by using those tax returns, please.

3 A. It's pretty self-explanatory. This is what goes to
4 the I.R.S., and the bottom line number is the profit of
5 the business each year. And in 2011, you've got a three
6 thousand dollar profit. 2012, you've got a sixteen
7 thousand dollar profit. 2013, you had a fourteen
8 thousand dollar profit, which was only for the first part
9 of the year. So it was actually growing each year.

10 Q. And basically, if we look at the W-2, that shows the
11 wages and tips, that type thing, that she received at the
12 shrine club?

13 A. Yes. That was her salary for the first part of the
14 year.

15 Q. Of 2013?

16 A. Yes, sir.

17 Q. Now, would that be in addition to what's shown as a
18 business profit?

19 A. Yes.

20 Q. Okay. So basically, she received a salary for
21 working there. That's shown on Exhibit Number 13; is
22 that correct?

23 A. Yes.

24 Q. And then the profits and loss for the business
25 itself is shown on the returns?

1 A. Yes.

2 Q. I don't have any further questions. Answer any
3 questions they may have, please.

4 CROSS-EXAMINATION

5 BY MR. EPPS:

6 Q. Mr. Patterson, how are you?

7 A. Good. How about yourself?

8 Q. Good. You were the accountant for Ma's Bingo and
9 Fun City Bingo?

10 A. Yes, that's correct.

11 Q. And you prepared -- and tell me -- you had access to
12 the bank accounts and documentation and memoranda and
13 paperwork that was generated from Ma's Bingo and Fun City
14 Bingo; correct?

15 A. Yeah. Those was brought to me once a month to do
16 the monthly bookkeeping and payroll taxes and such as
17 that.

18 Q. Okay. That was brought to you once a month. Who
19 brought that to you?

20 A. Wanda brought it to me while she was the owner. And
21 then once Cass was the owner, then Lori brought it to me.

22 Q. Okay. You didn't forward this information to the
23 Department of Revenue or anything, did you?

24 A. No, I did not.

25 Q. Okay. Did the Greenwood Shrine Club or anybody from

1 the Greenwood Shrine Club bring this information, this
2 documentation, to you?

3 A. Well, this particular -- the monthly stuff?

4 Q. Yes.

5 A. No. No, they did not.

6 Q. Okay. They never -- nobody from the Greenwood
7 Shrine Club or a member from the Greenwood Shrine Club
8 brought that information to you; right?

9 A. No, they didn't.

10 Q. How long was Ma's Bingo in business?

11 A. Four and a half years. I mean, it's hard for me to
12 remember right now.

13 Q. Okay.

14 A. I don't know exactly.

15 Q. And Fun City Bingo, Cass Smith Bingo, that was in
16 business for about eleven months?

17 A. As far as I know. Now, I will say this. I haven't
18 completed the very end of the Fun City Bingo stuff. That
19 information still has not been brought to me. I think
20 I've done through February or March -- I can't remember
21 exactly -- of 2014. But I had -- now, the Greenwood
22 Shrine Club stuff, Laurie brought that to me so that I
23 could complete the W-2s for their employees for last
24 year. But the Fun City side of it, I still -- Cass and
25 what was -- as far as I know is still going to bring me

1 the 2014 stuff so that I can complete that.

2 Q. Okay. And you don't know anything about the
3 operation of bingo; is that correct?

4 A. No. I call tell you what they wrote checks for,
5 everything that went through the bank statement.

6 Q. Did you ever go out to -- did you ever go out to
7 Ma's Bingo or Fun City Bingo?

8 A. No, sir.

9 Q. So you've never played. You don't know anything
10 about the rules and regulations regarding those --
11 regarding the conducts of bingo; is that correct?

12 A. Well, I have played a time or two in the past, but,
13 you know, I think twice in my whole life. So, no, I
14 really don't know a whole lot about it.

15 Q. Now, signing these checks -- and you had access to
16 the bank accounts and who signed the checks and ---

17 A. I had access to the bank statements. I didn't have
18 access to the bank accounts.

19 Q. Now, who would sign the checks? Wanda for Ma's
20 Bingo and Cass for Fun City Bingo?

21 A. As far as I know, yes.

22 Q. Okay. Nobody from Greenwood Shrine Club or anybody
23 cosigned or signed those checks?

24 A. No, they did not.

25 Q. Okay. Let me ask you something. You also did tax

1 -- and I want to show you what's been entered as
2 Plaintiff's 2, 3, and 4. Have you had a chance to --
3 have you ever seen that documentation or the contract
4 from the Greenwood Shrine Club and Cass Smith? Have you
5 ever seen those documents?

6 A. Not that I'm aware of, but I can't swear to it.
7 It's been so long ago, I can't -- I can't remember for
8 sure, but ...

9 Q. But you handled all of the -- you were the
10 accountant both for Ma's Bingo and for Fun City Bingo;
11 right?

12 A. Correct.

13 Q. I want to show you specifically Number 2. That was
14 the contract where the Greenwood Shrine Club would lease
15 the equipment from Fun City Bingo for five thousand
16 dollars a month.

17 A. Well, I don't know that the Greenwood Shrine Club
18 owned the equipment. Wanda herself owned the equipment.

19 Q. I understand. But because you had access to the --
20 you're the accountant. You had access to the records.
21 That payment was never paid to Cass Smith; is that
22 correct?

23 A. That, I don't know.

24 Q. Well, was there ever five thousand dollars worth of
25 payments from the Greenwood Shrine Club ever deposited

1 into any account regarding either Fun City Bingo or Cass'
2 account?

3 A. I can't answer that. Honestly, I do not know.

4 Q. Okay. You don't know?

5 A. I mean, this stuff has been so long ago. Honestly,
6 I could do some research and maybe find out. Now, the
7 way it worked, the Greenwood Shrine Club -- there was an
8 account opened specifically for the payroll and the
9 expenses -- you know, the bingo income and the payroll
10 account. But the actual Greenwood Shrine Club didn't
11 have control over this account. So I don't understand
12 what they were leasing to them.

13 Q. I understand. So are you saying the Ma's Bingo
14 account and the Greenwood Shrine Club did not have
15 control over that account?

16 A. Yes. Ma's Bingo had the account called the
17 Greenwood Shrine Club. Because I do know that the way
18 the bingo works is you have to have a charitable
19 organization that this money's going through through the
20 State of South Carolina. So that's why that account was
21 set up separately. But Cass and Wanda both had control
22 of that bank account. Ray Dorn didn't have control of
23 that bank account.

24 Q. And Ray Dorn is with Greenwood Shrine Club?

25 A. He is with the Greenwood Shrine Club.

1 Q. He did not have control over ---

2 A. Over those particular accounts.

3 Q. And those particular accounts that were Ma's Bingo
4 and Fun City Bingo; is that correct?

5 A. Yes.

6 Q. Okay. All right. So let me ask you this. Say, for
7 instance -- say, well, definitely if there was a lease
8 agreement between the Greenwood Shrine Club and Cass
9 Smith and that payment was being made, that would
10 certainly be information that you would have that would
11 be ---

12 A. If payments from the actual Greenwood Shrine Club --
13 now, you guys tell me this. Which Greenwood Shrine Club
14 are you talking about? The Greenwood Shrine Club bank
15 account that was for payroll purposes, or are you talking
16 about the actual Greenwood Shrine Club in Greenwood?

17 Q. Well, there should be a -- there should be a ---

18 A. I mean, that's ---

19 Q. There should be a bingo checking account or a bingo
20 account or maybe a savings account, and it's the
21 Greenwood Shrine Club. They're the ones that -- they're
22 the ones that conduct the bingo? Or the bingo was going
23 through them?

24 A. Yes. But they got their money through the State of
25 South Carolina.

1 Q. That's right. I understand. To be clear -- but
2 you're saying that there was a Ma's Bingo and a Fun City
3 Bingo that Ray Dorn -- Ray Dorn is with the Greenwood
4 Shrine Club. And Ray Dorn's signature and name is on
5 this lease. Okay?

6 A. Now, what exactly was Ray Dorn leasing? That's what
7 I don't understand.

8 Q. Well, pursuant to that contract was the equipment in
9 that building was Fun City Bingo.

10 A. Well, Ray Dorn and Fun City Bingo did not own that
11 equipment. Ma Cat's Bingo and Wanda owned that
12 equipment.

13 Q. Okay. It was my understanding that I -- you know,
14 that nobody -- it was my understanding that if that same
15 agreement was between Wanda and the Greenwood Shrine
16 Club, that would be something that would be on the tax
17 returns that you did for Wanda's ---

18 A. Not if it was between Ray Dorn and Cass. I had -- I
19 was doing the bookkeeping for those two checking
20 accounts. And the Greenwood Shrine Club, as far as I
21 know, did not own that equipment. Wanda and Ma Cat's
22 Bingo owned that equipment. So I don't understand what
23 Cass would have been leasing from the Greenwood Shrine
24 Club who was buying the equipment from Wanda.

25 Q. I understand. But you've never seen that?

1 A. Not to my knowledge.

2 Q. Okay. But let me ask you -- all right. Let me just
3 be clear. You said there's two accounts. And what were
4 the -- were those two accounts -- what names were on
5 those two accounts?

6 A. On the two accounts, it was Ma's Bingo when she
7 owned Ma Cat's Bingo. And it was the Greenwood Shrine
8 Club was the payroll account. But the other account was
9 Fun City Bingo once Cass took over.

10 Q. Okay. And the Ma's Bingo, Ray Dorn with the
11 Greenville Shrine Club had no control over that?

12 A. No, they did not.

13 Q. Okay. Nor did they have any control over Fun City?

14 A. No, they did not.

15 Q. And the information you got as far as to do the
16 books and to be the accountant and look through the bank
17 accounts, who brought you -- you said they brought you
18 information and brought you documentation at the end of
19 the month?

20 A. Uh-huh (affirmative).

21 Q. And that wasn't electronically generated; that was
22 handwritten?

23 A. Other than bank statements, it was written based on
24 ---

25 Q. Okay. And I'm going to show you -- I'm going to

1 hand you a document. Can you identify this? And I want
2 you -- can you identify this -- can you identify that
3 document?

4 A. From my knowledge, this is documentation that they
5 kept themselves. I never did any of the accounting work
6 for these documents.

7 Q. But these documents -- were copies of these
8 documents provided to you in the course of doing -- in
9 the course of Fun City Bingo doing business?

10 A. I had seen them, but I didn't take care of keeping
11 up with any of this.

12 Q. Okay. But a lot of that dealt with -- a lot of that
13 dealt with how much paper was sold to customers and
14 things of that nature; is that right?

15 A. Right. They handled that themselves.

16 Q. Okay. They handled that. But you didn't get a copy
17 of that?

18 A. They probably brought it to me once a month, but
19 since I didn't handle it, I didn't keep copies of it.
20 And I can't promise you -- you know, months they would
21 bring me envelopes this big. And, you know, they weren't
22 paying me to do that part of it.

23 Q. I understand. But based on the financial
24 information, the income that was coming in the door, I
25 mean, that's generated from the numbers that you got from

1 the documents that Wanda gave you and Cass gave you.

2 That's how you do -- that's how you do the income taxes?

3 A. No. That's basically done from check stubs and bank
4 statements. The money that would actually go through the
5 bank, what got deposited and what got paid out.

6 Q. But is that similar to Wanda Gambrell -- did she
7 generate handwritten paperwork regarding ---

8 A. I think she had to do that to keep up with what she
9 had to provide to the State of South Carolina for the
10 bingo tax.

11 Q. But it was handwritten; it wasn't electronic?

12 A. As far as I know, yes, sir.

13 Q. Okay. And you -- and doing -- and being the
14 accountant and you're relying on the bank statements and
15 you were relying on the information, the financial
16 information, given to you by both Wanda Gambrell and Cass
17 Smith in doing your duties as an accountant for both?

18 A. Yes, sir.

19 Q. And so you took what they gave you, and that's what
20 you go on?

21 A. That's correct.

22 Q. As well as the bank statements and the checks. Did
23 you also -- let me ask you this. Did you also note the
24 checks going out for expenses?

25 A. Yeah, absolutely. I had to reconcile that to the

1 penny.

2 Q. I understand that. Now, did the Greenwood -- and
3 the Greenwood Shrine Club never cosigned and never had
4 any communication -- or you didn't see anywhere where
5 Greenwood Shrine Club signed or cosigned any checks going
6 out for expenses?

7 A. No. Wanda and Cass had full control over the
8 accounts that I had.

9 Q. Did you have any contact with the Greenwood Shrine
10 Club regarding Ma's Bingo or Fun City?

11 A. Every once in a while, I would talk to Ray Dorn. He
12 would call me to see what was going on and, you know,
13 just find out how the business was doing.

14 Q. Okay. But he called you. You didn't -- okay. All
15 right.

16 A. A couple of times. Not very often. But, yeah, he
17 would call, you know, a couple of times a year.

18 Q. A couple of times a year? Okay.

19 A. Probably.

20 Q. All right. And he didn't have access to those two
21 accounts?

22 A. No, he didn't.

23 Q. And basically the information that you did -- that
24 went to provide your accounting services was given to you
25 -- you had to rely on what you were given?

1 A. Yes, sir.

2 Q. From Wanda and Cass Smith?

3 A. Yes, sir.

4 Q. All right.

5 MR. EPPS: Your Honor, I have no further
6 questions.

7 MR. WELCH: Judge, may he please be excused?
8 He's under subpoena, and it's tax season.

9 THE COURT: Yes, sir.

10 MR. EPPS: And there's no objection, Your
11 Honor.

12 THE COURT: Thank you for being here. I
13 appreciate it. Have a great day.

14 MR. WELCH: We'd call Wanda Gambrell to the
15 stand.

16 **WANDA GAMBRELL,**

17 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION

19 BY MR. WELCH:

20 Q. Ms. Gambrell, you're the plaintiff in this action?

21 A. Yes.

22 Q. And which contract -- because of the counterclaims,
23 let me ask you some questions with some exhibits about
24 how the system operated. First of all, ma'am, look at
25 Exhibit Number 1, which is the contract at issue in this

- 1 case.
- 2 A. Yes.
- 3 Q. And tell the Court, if you could, how it came about
4 that you entered into this contract? In other words,
5 what led up to it?
- 6 A. Oh, okay. Mr. Smith had sent a lady by the name of
7 Cathy Browder asking am I interested in selling the
8 Bingo. At which point, I wasn't. And I said, no. I had
9 worked hard about building this bingo up and got it where
10 I'd wanted it. And I said, no. So a few weeks later,
11 she came back by and wanted to talk about it again. And
12 I said, "No, I don't think so." Well, a month or so goes
13 on. And by then I had talked to my husband. And I was
14 -- the following year, I was going to become sixty-two
15 years old. And I said, well, I could go ahead and sell
16 and just go ahead and retire. So when she approached me
17 again, I said, "Have him come by and talk to me, and
18 we'll see." So he came by, and we talked about it. And
19 I told him I'd sell it for how much.
- 20 Q. And exactly what were you selling him, ma'am?
- 21 A. The equipment.
- 22 Q. And did you explain to him that all that was being
23 sold was the equipment. That's all you owned?
- 24 A. I'm not sure that we ever discussed that that's just
25 what it was. But that's what it was, the equipment. And

- 1 the like where I had built the canteen in and the ---
- 2 Q. So the fixtures that were there?
- 3 A. Yeah. Yeah.
- 4 Q. And if you look at that contract for purchase, it
- 5 specifically talks about bingo board stations, TV, ATM
- 6 machines, those type things?
- 7 A. Yes. Yes.
- 8 Q. And so did he ever ask you any questions about
- 9 anything other than those physical items?
- 10 A. No.
- 11 Q. And did you ever make any representations that you
- 12 were selling him people, participants, anything of that
- 13 nature?
- 14 A. I told him that I would include my mailing list.
- 15 Q. Okay. Other than the mailing list?
- 16 A. Uh-uh (negative).
- 17 Q. Okay. Now, tell the Court who typed up this
- 18 agreement?
- 19 A. Mr. Smith.
- 20 Q. And the agreed price, you've been paid the eighty
- 21 thousand dollars of that?
- 22 A. Yes, sir.
- 23 Q. And I think over 2012 -- excuse me -- 2013, when he
- 24 stopped making the payments, did you contact him?
- 25 A. Yes.

1 Q. And at that point in time, did he accuse you of any
2 type of fraud or anything of that nature?

3 A. No. No.

4 Q. In fact, prior to the time you filed this lawsuit,
5 did he ever accuse you of any type of fraud or anything
6 of that nature?

7 A. No.

8 Q. Now, ma'am, look at Exhibit Number 2, please.

9 A. Okay.

10 Q. That's a lease?

11 A. Uh-huh (affirmative).

12 Q. And then Exhibit Number 3, what is that?

13 A. That's a lease too.

14 Q. That says -- and that's between the Shrine club ---

15 A. One is between -- the 3 is between the promoter and
16 the sponsor. And then the Number 2 is a lease agreement.

17 Q. Okay. Tell the Court do you have to have a license
18 to do this.

19 A. Yes. You have to file for a license through the
20 State of South Carolina.

21 Q. And under the contract that he signed, basically he
22 had a payment due once he got -- he had a big payment due
23 once he got his license?

24 A. -Yes, sir.

25 Q. And did you agree to help him get a license?

1 A. Yeah, I agreed to help him to -- you know, if he
2 needed any help filling out the forms and whatever for
3 the state, yes.

4 Q. And did you explain to him how the business ran in
5 terms of the relationship to the Shrine club?

6 A. Yes.

7 Q. If you could, look at Number 2, Number 3, and Number
8 4. And explain to the Court Number 2, "This lease made
9 this 26th day of March between Shrine club and
10 Christopher Smith." Now, his actual license didn't come
11 in until June; is that correct?

12 A. Right.

13 Q. But you continued to run the business out of Ma's
14 Bingo to assist him?

15 A. I did, yes.

16 Q. Okay. Now, tell the Court, did you have a similar
17 agreement with the Shrine club?

18 A. Yes.

19 Q. Tell the Court how that worked.

20 A. In order to apply for the license, you have to have
21 a lease agreement for the building and the equipment to
22 lease the equipment.

23 Q. And it says there that that is in the amount of five
24 thousand dollars per month?

25 A. Yes, twenty-five hundred being equipment and the

1 other twenty-five hundred being the lease of the
2 building.

3 Q. Okay. Now, tell the Court how did you receive that
4 money? Did the Shrine club cut you a check?

5 A. Well, yes. It was written out of the Shrine club
6 account, yes. The bingo account.

7 Q. When you say bingo account, was it actually an
8 operating account for the Shrine club separate, or was it
9 paid out of the income money of the bingo?

10 A. It was paid out of the Shrine club bingo account.

11 Q. Okay. And if you did not receive enough income for
12 the month, would you still get that five thousand
13 dollars?

14 A. No, I would not take it, no.

15 Q. But in other words, the Shrine club understood, you
16 understood that that came from the income from the
17 business; right?

18 A. Exactly.

19 Q. And did you explain that to Mr. Smith?

20 A. I did.

21 Q. Okay. If you look at Number 3, that calls for
22 compensation of, I think, five dollars per person per
23 bingo session plus five percent of gross revenues; is
24 that correct?

25 A. Yes.

- 1 Q. How would you receive that money?
- 2 A. (No verbal response)
- 3 Q. Now, this is Fun City. Did you have a similar
- 4 contract?
- 5 A. Yeah. It's basically the same.
- 6 Q. How did you receive that money?
- 7 A. Weekly.
- 8 Q. And did, again, that come out of the revenues -- out
- 9 of that Shrine ---.
- 10 A. The bingo revenues, yes.
- 11 Q. --- Shrine club account?
- 12 A. Yes.
- 13 Q. Now, ma'am, if you would look under promoter's
- 14 responsibilities in Exhibit Number 3.
- 15 A. Yes, sir.
- 16 Q. Oka. And tell us about hiring and firing employees,
- 17 making deposits, filing bingo tax, filing withholdings,
- 18 all those things there, did you do that when you had the
- 19 business as Ma's Bingo?
- 20 A. Yes, sir.
- 21 Q. And did you explain that to Mr. Smith what would be
- 22 required of him?
- 23 A. Yes, sir.
- 24 Q. And did he have questions about it?
- 25 A. No.

1 Q. Okay. Would you look at Number 4, please?

2 A. Okay.

3 Q. Number 4 being the ---

4 MR. EPPS: Which one?

5 Q. --- Fun City Bingo, solicitor and charity contract.

6 A. Yes, sir.

7 Q. And, again, was there any -- did that call for

8 payment of two and a half ---

9 MR. EPPS: Your Honor, may I -- I want to be on
10 the same page. What number are you on?

11 MR. WELCH: Four is the solicitor and charity
12 contract.

13 MR. EPPS: My only copy you gave me ---

14 MR. WELCH: No, that's not -- that's just an
15 exhibit from a deposition.

16 (Off record discussion)

17 THE COURT: It's dated March 26, 2013.

18 MR. WELCH: That's it.

19 THE COURT: I got it.

20 Q. And, ma'am, it says that net revenue of bingo of the
21 Shrine club will be paid two and a half percent of taxes
22 on bingo pay to purchase would be issued from the South
23 Carolina Department of Revenue. How did that work?

24 A. We paid the State ten percent on each dollar amount
25 in paper we bought. And two and a half percent of that

1 went to the charity.

2 Q. And explain to the Court what it means to buy paper?

3 A. You have to buy bingo paper. Do you know?

4 Q. No, he doesn't know. Explain it to the Court.

5 A. Okay. Anyway, you buy bingo paper from a company.

6 And you have to pay ten cent on a dollar for each dollar
7 amount that you purchase.

8 Q. But that's sort of a tax to the state?

9 A. Yes.

10 Q. And then what ---

11 THE COURT: And just as an editorial aside, I
12 represented a bingo operator, so ---

13 MR. WELCH: Okay. Very good.

14 THE COURT: Otherwise, I probably would be
15 lost. But I'm following you. I'm trying.

16 Q. And you explained that to Mr. Smith?

17 A. Yes, sir.

18 Q. Did he have any questions, say he didn't understand?

19 A. No.

20 Q. Okay. Now, ma'am, I want you to -- if you can go to
21 ...

22 MR. WELCH: And the Court will not have copies
23 of these.

24 Q. But I gave you the quarterly accounting forms that
25 you filed, this bingo report RD9, for the quarters of the

1 year 2012 and the first two quarters of 2013?

2 A. You want 8 through 12?

3 Q. Yes, ma'am. Explain to the Court what those are.

4 A. These are the quarterly reports that you have to
5 send in each quarter to the South Carolina Department of
6 Revenue for the bingo.

7 Q. And the Shrine club is compensated in part off of
8 some of that information?

9 A. Yes, they benefitted. Well, they don't get it until
10 after it's finished.

11 Q. Right.

12 A. Yes.

13 Q. And you file those; correct?

14 A. At the end of the quarter, yes.

15 Q. And each of those that are in there, you filed
16 those. To the best of your knowledge and ability, were
17 you fair and accurate with what you gave to the State of
18 South Carolina?

19 A. Yes. It basically had to be fair and accurate, or
20 you get shut down.

21 Q. Well, let me ask you, ma'am, the -- I think Exhibit
22 Number 9 -- is 9 the first one?

23 A. Nine?

24 Q. Yes. Tell the Court that first quarter in '12, what
25 was the gross revenues?

1 A. Forty-two thousand, five hundred eighty-five
2 dollars.

3 Q. Okay. And what was the total -- the total amount of
4 money that you took in from bingo?

5 A. Six hundred and fifty-two thousand, three hundred
6 seventy-three dollars.

7 Q. Okay. And that went through the accounts?

8 A. Yes.

9 Q. Correct?

10 A. Yes.

11 Q. And Mr. -- excuse me -- your C.P.A. testified that
12 he looked at those bank accounts. That's what he
13 reconciled; correct?

14 A. He didn't actually keep up with this part of the
15 gross sales.

16 Q. I understand that. But he ---

17 A. Just the deposits.

18 Q. That's right. He made sure those deposits were
19 made, and he reconciled those?

20 A. Right.

21 Q. And that was done quarterly for each of those
22 quarters?

23 A. Yes.

24 MR. WELCH: Judge, I'm going to hand these up
25 to you so you can see the gross revenue amounts and what

1 was recorded.

2 THE COURT: All right.

3 Q. Now, ma'am, in terms of giving your assistance to
4 Mr. Smith, you did continue to run that bingo until he
5 got his license?

6 A. Yes.

7 Q. And when he got his license, did you turn the
8 operation over to him?

9 A. Immediately.

10 Q. And did you have any participation in running his
11 business after that?

12 A. No.

13 Q. Did you go in there?

14 A. Yes. I played.

15 Q. When you say you played, would you actually buy
16 bingo forms yourself from there?

17 A. Yes.

18 Q. You played just like a normal customer?

19 A. Yes.

20 Q. And would you see the defendant in there?

21 A. Never. After the first two weeks, he never walked
22 in the door.

23 Q. You didn't see him there?

24 A. Never.

25 Q. Okay. How frequently were you there?

1 A. Basically every night they opened.

2 Q. Okay. And did that go on for a period of months?

3 A. I think it was in June. I quit going in January of
4 the following year, 2014.

5 Q. So you went from June through the end of the year.

6 In January 2014 you stopped?

7 A. Yes, sir.

8 Q. Now, ma'am, prior to filing this lawsuit, even
9 though you were there and had opportunity to talk to him
10 and anybody else, did anybody that worked for Fun City
11 make any allegations that's come up in this lawsuit about
12 fraud or inducing him wrongfully or anything of that
13 nature?

14 A. No, there was no problem.

15 Q. And the twenty thousand that was owed to you, you
16 received none of that; correct?

17 A. No.

18 Q. Those last ten payments?

19 A. No.

20 Q. Okay. And did he ever give you a reason as to why
21 he wasn't making the payments?

22 A. No. He didn't talk to me.

23 Q. Did you try to contact him?

24 A. I did. And he wouldn't answer my calls.

25 Q. Okay. He never would talk to you?

1 A. No.

2 Q. I don't have any further questions. Answer any
3 questions they may have.

4 CROSS-EXAMINATION

5 BY MR. EPPS:

6 Q. Ms. Gambrell ...

7 A. Yes, sir.

8 Q. ... when did you -- prior to -- prior to you
9 entering in this agreement or this contract with Cass
10 Smith, you operated Wanda's -- Ma's Bingo; right?

11 A. Ma Cat's Bingo.

12 Q. Ma Cat's Bingo. And how many years was that? When
13 did you start, and how many years did you ...

14 A. From February 2010 until June of 2013.

15 Q. Okay. February 2010 to June of 2013. And I'll
16 discuss this in a moment. But that's the contract that
17 you and Mr. Smith signed; is that correct ---

18 A. Yes.

19 Q. --- on February 22nd, 2013. All right. And then
20 attached to Plaintiff's 2, 3, and 4 are the solicitor and
21 charity contracts, the contract between sponsor and
22 promoter, Greenwood Shrine Club, and this lease agreement
23 between the Greenwood Shrine Club and Cass Smith; right?

24 A. Yes.

25 Q. Okay. And were these -- these were the same

1 agreements that you had or signed with the Greenwood
2 Shrine Club when you were running Ma Cat's Bingo; right?

3 A. Pretty much. I remember the state having sent them
4 back to him once to change some wording. Just minor.
5 But basically they're the same contract.

6 Q. They're basically a carbon copy. You had the exact
7 same agreements with the Greenwood Shrine Club ---

8 A. Yes. Yes.

9 Q. --- that Cass had or Mr. Smith had ---

10 A. Yes.

11 Q. --- with those agreements; right?

12 A. Yes.

13 Q. Okay. And you understand in bingo that the
14 Greenwood Shrine Club is the one -- they're the ones who
15 conduct the bingo in the State of South Carolina?

16 A. The owner conducts -- promoter conducts -- the
17 Shrine club is the charity that is required to run a
18 bingo.

19 Q. That's right. You've got to go through -- if you
20 don't go through that charity, then it is essentially
21 illegal?

22 A. Then you don't have a bingo.

23 Q. Right. Again, would you agree with that?

24 A. Do I agree that it's ...

25 Q. If it doesn't go through a charity and you're

1 running a bingo -- if someone other than the bingo -- if
2 it's not going through the charity, then the operation of
3 bingo is illegal in the State of South Carolina?

4 A. Exactly.

5 Q. You agree with that?

6 A I agree with that.

7 Q. Okay. All right. And you understand -- well, let
8 me back up. And your responsibilities -- were your
9 responsibilities the same as the promoter's
10 responsibilities that are listed in these contracts
11 between Greenwood Shrine Club and Cass Smith?

12 A. Yes.

13 Q. Okay. And you promoted -- you conducted your
14 business, Ma Cat's Bingo -- you promoted bingo games and
15 you were to abide by the rules and all as outlined by the
16 State of South Carolina; correct?

17 A. Yes.

18 Q. Okay. Because you had to hire -- you hired and
19 fired employees; right?

20 A. Yes.

21 Q. And you made deposits into the bingo checking
22 account; is that correct?

23 A. Yes.

24 Q. And you filed and paid -- and you filed and paid
25 bingo taxes; is that right?

1 A. Yes, sir.

2 Q. Also, you were responsible for filing and paying
3 payroll withholding; is that correct?

4 A. Yes.

5 Q. All right. You also -- you were responsible for
6 filing monthly and quarterly reports?

7 A. Yes, sir.

8 Q. Paying promoter's salary and license fees?

9 A. Yes.

10 Q. And you paid the salaries of all employees and all
11 maintenance persons?

12 A. Yes.

13 Q. And you paid the building maintenance and repairs as
14 well as paid for the building, leasing equipment?

15 A. Yes.

16 Q. Did you pay utilities?

17 A. Yes.

18 Q. And you paid all the supply costs, bingo paper,
19 bingo balls, advertising, mailing supplies, office
20 supplies?

21 A. Yes.

22 Q. Okay.

23 A. All from the bingo checking account.

24 Q. You made those quarterly reports to the Department
25 of Revenue; right?

1 A. Yes.

2 Q. Okay. All right. Greenwood Shrine Club did none of
3 this; is that right?

4 A. Correct.

5 Q. Greenwood Shrine Club never made quarterly reports
6 to the Department of Revenue; is that right?

7 A. No, but they had to sign.

8 Q. They didn't make the reports -- they did not make
9 the reports to the Department of Revenue?

10 A. You talking about fill out the report?

11 Q. I'm talking about submitting the quarterly reports
12 ---

13 A. They didn't submit quarterly report. I submitted
14 them.

15 Q. Okay. All right. Now, also, I think you heard Mr.
16 Patterson testify that the Greenwood Shrine Club didn't
17 have access, didn't have control over the bingo accounts?

18 A. I don't know what he's talking about.

19 Q. You don't know what he's talking about?

20 A. Well, what I'm saying is, I don't think he ever
21 looked at the bottom of the checks where there was two
22 signatures, Ray Dorn and Wanda Gambrell.

23 Q. Okay. Well, let me ask you this. All right. How
24 did you -- in the course of doing Ma Cat's Bingo, did you
25 have a site system or electronic data?

- 1 A. No.
- 2 Q. You didn't?
- 3 A. No.
- 4 Q. It was all handwritten; right?
- 5 A. You talking about paperwork?
- 6 Q. Paperwork?
- 7 A. For daily paperwork?
- 8 Q. Yes. And you had ---
- 9 A. Handwritten.
- 10 Q. It was handwritten; right?
- 11 A. Uh-huh (affirmative).
- 12 Q. But you had to have paperwork for each session of
- 13 bingo?
- 14 A. Yes.
- 15 Q. Of bingo. And you -- and how many days were you
- 16 open a week?
- 17 A. Five, unless it was summertime. From May 'till
- 18 September, I'd go four days because I enjoyed doing lawn
- 19 work.
- 20 Q. Okay. All right. There was no site system or
- 21 electronic dabber -- is that how you say it? Dabber?
- 22 Electronic dabber?
- 23 A. Electronic dabber is a machine that you play bingo
- 24 on, so you're getting them confused.
- 25 Q. Well, there's sites -- if you have an electronic

1 dabber or a site system, it's generally -- all the
2 information as far as the number of people that come in,
3 the proceeds, things of that nature that you've got to
4 write down ---

5 A. That is handwritten.

6 Q. Okay. But you -- okay. You handwrote it; right?

7 A. Yes.

8 Q. And you handwrote it in pencil; is that correct?

9 A. Always.

10 Q. Okay. All right. Did you -- well, let me just go
11 back to this contract. That's the contract that you and
12 Cass signed?

13 A. Uh-huh (affirmative).

14 Q. And beginning at the -- on the second paragraph, you
15 used -- your position is that this contract only included
16 the fixtures and equipment located within the business;
17 is that correct?

18 A. Yes.

19 Q. Okay. Well, the first line of that contract says --
20 or the second paragraph says, "The sale is for a business
21 known as Ma's Bingo located at McGee Road, Anderson,
22 South Carolina." Right?

23 A. Yes.

24 Q. It's your testimony that you didn't have or
25 communicate or represent or tell Cass Smith that he was

1 getting your customer list, customer base for the
2 business, things of that nature; is that correct?

3 A. He was the one that wrote the contract.

4 Q. All right. Did you represent -- tell Mr. Smith that
5 not only was he getting -- he was getting your business?

6 He was getting Ma Cat's Bingo? He was getting your
7 customers, your customer list?

8 A. No, I don't remember telling him that. I just told
9 him I would give him my customer list.

10 Q. Okay. But you say your customer list. You said
11 mailing list; is that correct?

12 A. Mailing list.

13 Q. Okay. All right. And you agree that the purchase
14 price was a hundred thousand dollars?

15 A. Yes.

16 Q. All right. And you said that you were the seller,
17 that you would receive ten thousand dollars on February
18 22nd, 2013. Which you received that money on that day;
19 is that right?

20 A. On February 22nd?

21 Q. Yes.

22 A. The ten thousand, yes.

23 Q. Yes, you did. And that was made out to your
24 husband?

25 A. Yes.

1 Q. Why did you request that it be made to your husband?

2 A. So he could go take it to the bank for me.

3 Q. Okay. All right. And then the remaining part of
4 that contract stated, "In the case that the buyer is
5 unable to receive his license either in his name or the
6 name of a respective family member, then the deposited
7 ten thousand dollars should be non-refundable and
8 retained by seller." Is that right?

9 A. Yes.

10 Q. Okay. And the remaining balance shall be paid at
11 the rate of sixty-five thousand dollars upon buyer
12 receiving his bingo license within the approximate time
13 frame of thirty to sixty days from the date of execution;
14 is that right?

15 A. Yes.

16 Q. Okay. Now, in order to get his license, he had to
17 enter into contracts where he had to be the promoter or
18 the solicitor for the Greenwood Shrine Club?

19 A. Yes, that's correct.

20 Q. And you understood and told Cass -- and you said
21 you'd help him get his license, but you understood and
22 told Cass that he would be entering into these agreements
23 with the Greenwood Shrine Club; correct?

24 A. Yes.

25 Q. And you told him that basically you had the same

1 kind of agreements and contracts written up and signed
2 with the Greenwood Shrine Club regarding the operation of
3 your bingo -- of Ma Cat's Bingo; correct?

4 A. That's right.

5 Q. Okay. And isn't it true that y'all went down --
6 isn't it true that on Plaintiff's Number 4 you actually
7 notarized Ray Dorn's signature and Cass' signature on
8 March 26th of 2013; is that right?

9 A. Yes. It took that long to get it filled out.

10 Q. You were there; right?

11 A. Yes.

12 Q. Okay. And were you there when Ray signed the lease
13 where the Greenwood Shrine Club agreed to lease the
14 premises including all the fixtures and equipment located
15 at 621 McGee Road with the exception of the concession
16 from Cass Smith for the purposes of bingo in the amount
17 of five thousand dollars a month per month on behalf of
18 the Greenwood Shrine Club?

19 A. Yes.

20 Q. Okay. You were there?

21 A. Yes.

22 Q. Okay. And you told him -- did you not tell Cass
23 that even if you had -- and you represented -- did you
24 tell Cass Smith that even though -- if you get into this
25 business, even if you have a slow, slow week or slow

1 month that you would have -- at least you would have the
2 five thousand dollars coming in for the lease of the
3 equipment from the Greenwood Shrine Club as well as the
4 five dollars per person as well as five percent of the
5 gross revenues to be paid quarterly? Did you not
6 represent that to him?

7 A. That's in the contract. As far as me representing,
8 that's something the state requires, what your pay will
9 be. But as far as representing that to him, no. I just
10 told him that was my contracts and that's the pay I got.

11 Q. That was the contract that he was getting, and you
12 told him that you were going to -- you told him that he
13 was going to have these contracts, that he would -- in
14 order to get his license he would enter into these
15 contracts with Greenwood Shrine Club?

16 A. Exactly. That's what happened.

17 Q. Okay. But you're saying based on those contracts,
18 Cass Smith and Fun City Bingo would at least get five
19 thousand dollars a month from the Greenwood Shrine Club
20 as well as five dollars a person and five percent of the
21 gross revenue?

22 A. I showed him the contracts that I had with the
23 Greenwood Shrine Club. But as far as that, I told him
24 this is what is required by the law to open up bingo.
25 Now, if he was under the assumption he was going to get

1 it if they wasn't making no money, he didn't question me
2 on that.

3 Q. You're saying he didn't question you on that?

4 A. No.

5 Q. And you're saying he never came back to you and
6 addressed this issue with you?

7 A. No, he never came back and addressed those issues
8 with me.

9 Q. Okay. All right. And you agree that these
10 contracts had to be filed -- they had to be filed with
11 the Department of Revenue?

12 A. Yes.

13 Q. Okay. And you agree that when you -- when Ma Cat's
14 Bingo changed over to Fun City Bingo, that was a change
15 in operation; right?

16 A. It was.

17 Q. Okay. Do you know if the Greenwood Shrine Club
18 renewed their application with the Department of Revenue?

19 A. The year that he bought it, uh-huh (affirmative).
20 Yes, they did.

21 Q. Okay. All right. And these contracts was filed
22 with the Department of Revenue. I think you know that
23 none of these amounts were paid to Cass Smith.

24 A. I can't help that.

25 Q. Were these amounts paid to you?

- 1 A. They were paid to me.
- 2 Q. They were paid to you?
- 3 A. Yes. But I earned it. I didn't stay out of the
- 4 bingo and not earn it.
- 5 Q. You're saying those amounts were paid to you; right?
- 6 A. Yes.
- 7 Q. Okay. Did you have any ---
- 8 A. Wait a minute. Yeah. If the bingo wasn't
- 9 profitable for that month, I didn't draw any. That was
- 10 my doing.
- 11 Q. Okay. Now, let me ask you this. Did you have --
- 12 you had a canteen in there?
- 13 A. Right.
- 14 Q. You had a canteen in there?
- 15 A. I did.
- 16 Q. Okay. And did you receive six hundred dollars a
- 17 month rent from that canteen?
- 18 A. I did.
- 19 Q. Okay. And you also had video games of chance in
- 20 your Ma Cat's Bingo; is that right?
- 21 A. There was for a while. And I called John Clark at
- 22 the South Carolina Department of Revenue and asked him
- 23 because I wasn't the actual one putting them in. His
- 24 name was Nathan. I forget what his last name is. But he
- 25 was the one wanted them. And I said, no, you can't have

1 any other sort of gambling devices in a bingo. So he
2 called John Clark first. And just to make sure he wasn't
3 telling me a story, I called John Clark and asked him was
4 it okay to put those machines in there.

5 Q. I didn't ask you what -- you can't tell me what
6 somebody -- I'm not asking what somebody else said. I'm
7 asking you did you have video games of chance in Ma Cat's
8 Bingo?

9 A. And I did.

10 Q. You did? Okay. Now, you also profited off Ma Cat's
11 -- these video games of chance in your -- in Ma Cat's
12 Bingo; is that correct?

13 A. Yeah, a little. There was a little profit.

14 Q. Okay. You received monies from these machines;
15 right?

16 A. Right.

17 Q. And, in fact, you knew that those machines should
18 not be in your place of business?

19 A. Actually, no. What I was told was through the State
20 -- told me that ---

21 Q. I'm not asking what you were told.

22 A. I'm just giving you ---

23 MR. WELCH: Your Honor, she can -- in terms of
24 her frame of mind and the research she did, she's allowed
25 to testify.

1 THE COURT: I agree. You may answer.

2 A. Now I forgot what the question was.

3 THE COURT: And I'll ask you, Mr. Epps, is the
4 purpose of the question to impeach her credibility?

5 MR. EPPS: Yes, sir, Your Honor. We ---

6 THE COURT: Okay. Now I understand where
7 you're going with that.

8 MR. EPPS: We -- yes, sir.

9 THE COURT: Okay.

10 Q. Now, Hope McCullough worked in the canteen; is that
11 right?

12 A. That's correct.

13 Q. Okay. Did you ever tell Hope McCullough that if the
14 law came into your place of business, to tell them that
15 the machines or the video games were theirs?

16 A. No.

17 Q. You never said that?

18 A. No.

19 Q. Okay. Did you also -- Ms. Gambrell, did you also
20 have house players?

21 A. House players?

22 Q. Uh-huh (affirmative).

23 A. No.

24 Q. Okay. Did you ever -- you had a Class B license; is
25 that right?

1 A. Class B.

2 Q. Okay. You had a Class B. So your daily limit or
3 limit for each session or the session per day -- you had
4 one session per day; is that right?

5 A. That's correct.

6 Q. And your limit was eight thousand dollars?

7 A. That's correct.

8 Q. Okay. Did you ever have -- did you ever go --
9 exceed eight thousand dollars in a session?

10 A. There was an occasional time. And I put the
11 paperwork over on the next days because you've got to
12 claim every dollar that goes through. So I put it over
13 on the next day. That happened maybe three times.

14 Q. But did you ever erase some of your paperwork and
15 then copy it on another piece of paperwork to make up for
16 that?

17 A. Only if I had gone over the eight thousand by a few
18 dollars.

19 Q. Okay. By a few dollars?

20 A. A few dollars. A few.

21 Q. So you agree you had late games and you went over
22 the limit during sessions?

23 A. There would be an occasional time or two it was
24 really crowded.

25 Q. Have you ever allowed people to play games on

1 credit?

2 A. Yes, I did.

3 Q. You did? And you had a book -- you ever give
4 somebody bingo paper and they not give you money for that
5 bingo paper?

6 A. When they wanted to charge it at the end of the
7 month if they were a good customer that comes all the
8 time. And they'd call and ask if I would charge it to
9 them until the first of the month. And I would.

10 Q. And you had a book, didn't you?

11 A. I did.

12 Q. And you kept a handwritten list of these individuals
13 that would essentially get the paper at that time and
14 they got it from you for free; is that correct?

15 A. They wouldn't get it for free.

16 Q. There was no money exchanged for the paper?

17 A. No. They had a charge account.

18 Q. Were there any -- did you have any players that you
19 had agreements with that if they hit or if they won bingo
20 that you would divide the winnings with them?

21 A. Only on a few occasions where somebody would say --
22 call and say, "Would you pay my way tonight and I'll
23 split it with you?"

24 Q. And you did that?

25 A. Yeah, because they were special customers, come in

1 all the time. There would be an occasional time I did
2 that.

3 Q. So you would ---

4 A. And I would just try to do special things for
5 customers. You want to keep them, so we did little
6 things.

7 Q. So you would allow a customer to play and then they
8 would split ---

9 A. And I would pay for it.

10 Q. And they would split the winnings with you?

11 A. Yes.

12 Q. And let's ---

13 A. If they won, but they never won.

14 Q. And, also, you agree you ran all aspects of Ma Cat's
15 Bingo?

16 A. Yes.

17 Q. And you agree that the Shrine, Greenwood Shrine
18 Club, had very little to do with Ma Cat's Bingo?

19 A. Very little. They didn't never show up. I think
20 they were required to show up. They just didn't.

21 Q. They never showed up to McGee Road to see what was
22 going on?

23 A. Not to see what was going on. They would come and
24 sign the checks.

25 Q. Did you ever tell them about the machines in the

1 building?

2 A. They never asked.

3 Q. Okay.

4 A. They were sitting in the wide open.

5 Q. And, in fact, when Cass took over, he took those
6 machines out?

7 A. It's my understanding he did.

8 Q. He took them out and he brought it up to your
9 attention; is that correct?

10 A. I asked him why he took them out. He said, "I just
11 feel better." I thought maybe it was because he'd been
12 charged so many times with having illegal gambling
13 machines, he figured he'd better get them out. I don't
14 know.

15 Q. Well, let me ask you. And, also, some of those
16 people that were house players or were playing on credit
17 or they came and they asked to do the same thing with
18 Cass; is that right?

19 A. I don't know what they did.

20 Q. Okay. But you were there every night?

21 A. I don't know what they did behind the counter. I
22 was a player.

23 Q. Well, let me ask you this. You played and you had a
24 group of people that you played with every night; is that
25 right? That were your friends?

1 A. A group of people. Yeah, I usually had a friend up
2 there.

3 Q. And did you -- well, let me ask you. You played
4 every night from, I think you said, June of 2013 to
5 January 2014. That's a good bit.

6 A. When I say every night, it's every night that I
7 could be there.

8 Q. Did you ever badmouth or poor-mouth Cass or any of
9 the employees or anything of that -- or anybody there at
10 the bingo club?

11 A. As far as badmouthing, no.

12 Q. Did you ever cause any problems or downgrade their
13 essentially the running of the business or running ---

14 A. No. The last night I was in there, I said, "Well, I
15 can see now why business is falling off."

16 Q. Okay. And, in fact, you did not leave; you were
17 asked to leave?

18 A. No, that's not true. That's what they're saying.

19 Q. Okay. Well, your son worked there; is that right?

20 A. Yes, he did.

21 Q. Did you ever have anybody work at bingo that had a
22 criminal background?

23 A. No.

24 Q. Okay.

25 A. Well, we sent the information in for the background.

1 It wasn't found.

2 Q. Okay. And your son worked for the bingo; is that
3 right?

4 A. He did.

5 Q. He did. And he was -- was he fired? He was
6 terminated; is that right?

7 A. By Cass, I think, yes.

8 Q. Okay. And he was fired because he started a fight
9 or he threw a chair?

10 MR. WELCH: Your Honor, I object to the
11 relevancy. I mean, I've given him a lot of leeway. We
12 getting so far afield now.

13 THE COURT: What's the relevancy there?

14 MR. EPPS: I'll move on, Your Honor.

15 A. But no, that wasn't why he was fired.

16 Q. And, in fact, isn't it true that you wanted to come
17 back in and take back the equipment?

18 A. So that I could resell it.

19 Q. So you could resell it?

20 A. So I could sell it and get the rest of the money
21 that I was owed.

22 Q. And you wanted to come back in -- did you have
23 designs on that before you were -- between June of 2013
24 and January 2014?

25 A. Did I have what?

1 Q. Designs on that? Did you think about how ---

2 A. No. I was just thinking after he wasn't making his
3 payments, well, maybe -- because I had heard that they
4 supposedly wasn't making any money. So I just thought
5 I'd give him a way out and get the equipment back and I'd
6 sell it.

7 Q. Okay. But you never asked. You filed this lawsuit
8 after your son got fired; is that correct?

9 A. I filed this lawsuit after about six months of not
10 getting payment.

11 Q. But that was after you left or no longer had any --
12 no longer played or no longer went to Fun City Bingo;
13 right?

14 A. It was after that, yes.

15 Q. It was right after that?

16 A. Yeah. Like February, and I quit playing in January.

17 Q. And you moved -- you opened up in Greenwood a
18 Greenwood bingo place; is that right?

19 A. That was after he closed in May. I went to work in
20 Greenwood just to get him -- help him get his bingo
21 going. I think that was in June, and I worked three
22 months.

23 Q. Worked three months? And you no longer work there;
24 is that right?

25 A. No.

1 Q. Were you let go or were you no longer needed or ...

2 A. No. We had an armed robbery. And I said I done got
3 too old to die by a gun. So I didn't go back.

4 Q. Were you operating that Greenwood business the same
5 way you were running -- operating Ma Cat's Bingo with the
6 video games of chance and ...

7 A. I didn't own the bingo, and they didn't have
8 machines.

9 Q. Okay. Okay.

10 MR. EPPS: If the Court will grant me a minute.

11 THE COURT: Sure.

12 MR. EPPS: Your Honor, at this time, I have no
13 further questions.

14 THE COURT: Okay.

15 MR. WELCH: I've got just a couple, Judge.

16 THE COURT: Yes, sir.

17 REDIRECT EXAMINATION

18 BY MR. WELCH:

19 Q. Ma'am, on the Shrine club accounts, like when you
20 paid the bills and that kind of thing, it did require co-
21 signing for the Shrine club; is that correct

22 A. It required both signatures, mine and the sponsor.

23 Q. And the exhibits we talked about, 2, 3, and 4, that
24 were sent in for Fun City Bingo, those have to be
25 approved by the state, don't they?

1 A. That's correct.

2 Q. And you said they sent his back originally?

3 A. Just a few words that they needed changed.

4 Q. But you worked through that with him; correct?

5 A. Yes.

6 Q. And ma'am, did you ever have anyone from the State
7 of South Carolina, regulatory commission or whatever, say
8 you were doing anything illegal?

9 A. Absolutely not.

10 Q. Did they ever say that selling these assets and you
11 helping him to take over that portion, that that was
12 illegal?

13 A. No.

14 MR. WELCH: I don't have any further questions,
15 Judge.

16 RE CROSS-EXAMINATION

17 BY MR. EPPS:

18 Q. Did anybody from the State of South Carolina come
19 down to your place of business?

20 A. You mean to check the paper, that sort of stuff?

21 Q. Just come down and inspect Ma Cat's Bingo?

22 A. Not to inspect the bingo, no.

23 Q. You didn't have nobody from the Department of
24 Revenue or anybody else, law enforcement, come into your
25 place of business; right?

1 A. I don't understand what you're saying.

2 Q. You didn't have anybody from law enforcement or the
3 Department of Revenue come into your place of business?

4 A. Occasionally. About every three months or so, the
5 South Carolina Department of Revenue would send someone
6 in to scan the paper to make sure we didn't have what
7 they call bootleg paper, picking it up other places and
8 bring it up there. They would come in to do that.

9 Q. They didn't come in and look around or participate
10 or see how the bingo game and concessions were being
11 conducted or ...

12 A. Yes. And they even walked back there where the
13 machines were and never said anything.

14 Q. So you're saying that the Department of Revenue came
15 in and saw these machines?

16 A. They didn't do anything.

17 Q. Okay.

18 MR. EPPS: I have no further questions, Your
19 Honor.

20 RE-REDIRECT EXAMINATION

21 BY MR. WELCH:

22 Q. Based on that, ma'am, did you have somebody else
23 that wanted to buy the bingo at the same time?

24 A. Yes, I did.

25 Q. And did you turn them down?

1 A. I did because I had already gave Cass my word that I
2 would sell it to him, and I believe in doing what you
3 say.

4 Q. And who was that?

5 A. That was Ms. Betty Rogers.

6 MR. WELCH: No further questions.

7 THE COURT: All right. You can step down.

8 Thank you. I appreciate it.

9 Okay. Does plaintiff intend to put anything else
10 on?

11 MR. WELCH: Your Honor, the only other witness
12 we would put up is Betty Rogers. And I think it's maybe
13 being redundant. She's here. She was prepared to pay,
14 and Wanda told us what she said. But the testimony's
15 into evidence, so I'm not going to bring her in and put
16 her up.

17 THE COURT: All right. Okay. Well, let's take
18 a short break, and then we'll come back in in about five
19 or ten minutes and you can elect to put her up or not.
20 It's your case. It doesn't matter to me one way or the
21 other.

22 MR. WELCH: Okay. Very good.

23 THE COURT: And then Mr. Epps, you can proceed
24 with your case. Okay?

25 MR. EPPS: Yes, sir, Your Honor.

1 (WHEREUPON, court stood at recess for a short
2 break.)

3 THE COURT: All right. Are you ready to
4 proceed?

5 MR. WELCH: Yes, sir, Judge. I would tell you
6 at this time, I think Ms. Rogers is just redundant
7 testimony. We're not going to put her up and we rest at
8 this time.

9 THE COURT: Okay. Good enough.
10 All right. Mr. Epps, your case, sir.

11 MR. EPPS: Yes, sir, Your Honor. I make a
12 motion for a direct verdict as to breach of contract.
13 Would you like me to wait until the end of the ...

14 THE COURT: You can do it. In either event --
15 you can go ahead and make it and protect yourself on the
16 record. I'll take it under advisement. Okay?

17 MR. EPPS: Yes, sir, Your Honor.

18 THE COURT: All right.

19 MR. EPPS: Your Honor, I would make a motion
20 for directed verdict as to the plaintiff's cause of
21 action for breach of contract. One, I think the
22 testimony is replete and clear that this business -- this
23 business known as Ma Cat's Bingo was, in essence, an
24 illegal gambling operation with illegal video games of
25 chance, house players, things of that nature. Going over

1 the allowed limit during sessions. Basically, from the
2 testimony gleaned that the books were -- or documents and
3 paperwork was changed, erased in pencil to put them on --
4 to move those numbers over to other paperwork dealing
5 with other sessions.

6 I heard -- what I heard was the Greenwood Shrine
7 Club had very, very little, if anything, to do with any
8 of these bingo operations. And that in accordance with
9 state law, the Bingo Act, which is South Carolina Code
10 Annotated § 12-21-3910 et. seq, that, number one, there
11 should be no other gambling device or video devices in
12 the building.

13 That a lot of the licensed non-profit organizations
14 or the ones that will submit quarterly record keeping and
15 quarterly reports to the Department of Revenue, you have
16 Wanda Gambrell doing that. The Greenwood Shrine Club, I
17 don't think ever did that. I think this whole situation,
18 Your Honor, this whole business, the way this was
19 running, the way this was -- the way this was operated, I
20 believe, and I think the statute, the Bingo Act, the
21 Bingo Tax Act, addresses this fictitious charity which is
22 basically a sham charity.

23 There was -- again, there was very little of
24 anything that Greenwood Shrine Club did in this case in
25 relation to Ma Cat's Bing or Fun City Bingo. We would

1 submit, Your Honor, pursuant to -- under Ward versus West
2 Oil Company, which is 692 S.E.2d 516, that case
3 specifically directs -- and they brought it up -- the
4 State Supreme Court brought it up on their own, the
5 contract between individuals for pull tab machines that
6 violated § 12-21-2710, that they were gambling devices,
7 the pull tabs. They found that because the court was not
8 enforcing a legal contract that they were not going to --
9 they were not going to force a legal contract on the
10 subject matter of the contract or the act required for
11 performance violates public policy as expressed in the
12 constitutional provisions, statutory law or judicial
13 decisions. And they basically said they can bring it up
14 sua sponte. They can bring it up at any time if the
15 matter is serious enough without it being pled if it's
16 developed through the evidence. And I think just on the
17 evidence of the plaintiff's case-in-chief, what was going
18 on did not comport with statutory law, did not comport
19 with the article -- well, the South Carolina State
20 Constitution regarding bingo or the ban on lotteries.

21 So I -- on those grounds, Your Honor, I would move
22 to -- number one, I think that someone if -- well, I
23 would say that this contract was in essence illegal. And
24 we would ask that, therefore, the Court should not
25 enforce a contract. And it certainly violates the public

1 policy as well as statutory law and the South Carolina
2 State Constitution. And we'd ask that plaintiff's claim
3 to be dismissed.

4 THE COURT: Okay. Well, I'll deny the motion
5 at this time. You can restate it at the conclusion of
6 your case.

7 MR. EPPS: Yes, sir, Your Honor.

8 THE COURT: If you choose to. Okay?

9 MR. EPPS: Yes, sir.

10 THE COURT: All right.

11 MR. EPPS: Your Honor, we would call Mr. Ray
12 Dorn.

13 (WHEREUPON, the witness was duly sworn.)

14 MR. EPPS: May it please the Court, Your Honor.

15 THE COURT: Yes, sir. Absolutely.

16 **PHILLIP RAY DORN,**

17 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION

19 BY MR. EPPS:

20 Q. Mr. Dorn, how are you?

21 A. Fine.

22 Q. Mr. Dorn, can you state your full name for the
23 record, please?

24 A. My name is Phillip Ray Dorn.

25 Q. Yes, sir. And are you a member of the Greenwood

1 Shrine Club?

2 A. I am.

3 Q. And what is your -- what do you for the Greenwood
4 Shrine Club?

5 A. I'm the treasurer.

6 Q. You're the treasurer? Okay. And I think that the
7 Greenwood -- am I correct that the Greenwood Shrine Club
8 is the charitable organization that Ma Cat's Bingo and
9 Fun City Bingo went through? Is that correct?

10 A. Yes, sir.

11 Q. All right. And did you have -- let me show you
12 what's been marked as Plaintiff's 1. You've seen this
13 contract before; is that right?

14 A. No.

15 Q. You've never seen that contract before?

16 A. No, sir. This is the first time I've ever seen it.

17 Q. That's the first time you saw that?

18 A. The first time.

19 Q. Okay.

20 A. The secretary probably has a copy of that, but I
21 don't need a copy of it.

22 Q. The Greenwood Shrine Club?

23 A. Yeah.

24 Q. All right. Now, you certainly know about -- you and
25 Cass Smith entered into three separate contracts

1 regarding the Greenwood Shrine Club and Cass Smith; is
2 that right?

3 A. Three separate contracts?

4 Q. Yes, sir.

5 A. Now, I don't know.

6 Q. I'm going to hand you -- let me hand you what's been
7 -- and let you look at it -- what's already been entered
8 into evidence. And it's marked as Plaintiff's Exhibit 2.

9 Take a moment and look over that.

10 A. Now, that one I've seen.

11 Q. Okay. That one you've seen? And that's a -- that's
12 the one -- that is a contract between the Greenwood
13 Shrine Club referring to the lessee, Phillip R. Dorn.

14 That's you; right?

15 A. Uh-huh (affirmative).

16 Q. And Christopher A. Smith is the lessor where you
17 agreed to lease the premises including all fixtures and
18 equipment located at 621 McGee Road for the purposes of
19 bingo in the amount of five thousand dollars per month on
20 behalf of the Greenwood Shrine Club; right?

21 A. For what, now? Five thousand?

22 Q. Five thousand dollars a month.

23 A. Yeah, I guess so.

24 Q. And you signed that as the lessee down at the
25 bottom?

1 A. Yes, sir. .

2 Q. Okay. All right. Now, did you also -- I'm going to
3 hand you what's been marked as Plaintiff's Exhibit 3. Do
4 you remember seeing that document, and do you remember
5 signing that document?

6 A. That's my signature, but I don't think -- that's my
7 signature.

8 Q. That's your signature, but you don't think ...

9 A. To be honest with you, it kind of looks like my
10 signature has been copied onto that piece of paper.

11 Q. Are you saying you didn't sign this document?

12 A. I don't remember signing it.

13 Q. Let me also hand you what's been marked and entered
14 into evidence as Plaintiff's Exhibit 4. Do you remember
15 signing that document, or do you remember seeing that
16 document?

17 A. No, I don't remember signing it.

18 Q. All right. But you agree that there had to have
19 been -- well, let me ask you this. Did you ever file --
20 did the Greenwood Shrine Club -- did you file those
21 contracts with the Department of Revenue?

22 A. We had to.

23 Q. Okay.

24 A. But I wasn't the one that done the filing. Like I
25 said, you might ought to be talking to the secretary.

1 Q. Okay. Now, did the Greenwood Shrine Club -- who ran
2 Ma Cat's Bingo?

3 A. Wanda.

4 Q. Wanda? Who ran Fun City Bingo?

5 A. Chris.

6 Q. And the Greenwood -- you agree the Greenwood Shrine
7 Club had very little to do with Wanda -- Ma Cat's Bingo
8 or Fun City Bingo?

9 A. Well, if you call very little to do, there was about
10 ten of us got together and went up there one time. And
11 then myself and a friend of mine went up there three or
12 four times over the years.

13 Q. Over the years? So about three, four, five times at
14 the most?

15 A. Yeah.

16 Q. Okay. Did you obviously -- did you or anybody from
17 the Greenwood Shrine Club file monthly or quarterly
18 reports with the Department of Revenue?

19 A. Yes, sir.

20 Q. You did?

21 A. I did.

22 Q. You did?

23 A. I filed the reports according to the Department of
24 Revenue, the ones that they wanted filed. And I had to

25 ---

1 Q. Wanda didn't file those or Cass didn't file those?

2 A. They had other things to -- they had some more, the
3 ones that they had to send it.

4 Q. All right.

5 A. Like I say, I am not the one to be talking about
6 contracts.

7 Q. Well, let me ask you this. You signed -- but your
8 name was on these contracts. Did Greenwood Shrine Club
9 ever pay to Christopher A. Smith five thousand dollars a
10 month lease?

11 A. No.

12 Q. Okay.

13 A. But he did come to a meeting early in 2013. He came
14 to it and said he was in a rough part, and he needed a
15 loan from us. And we give him twenty-five hundred
16 dollars as a loan. And then three or four weeks later --
17 I mean, three or four months later, he came back and
18 wanted another twenty-five hundred dollars. And we gave
19 it to him. Although I will say this. I told the club --
20 and I was on record -- that after we got through
21 listening to him, I told the members of the board and the
22 members at large that we should not pay him that twenty-
23 five hundred dollars. Not the second time.

24 Q. But there was never a five-thousand-dollar lease
25 payment paid out?

1 A. No, sir.

2 Q. And do you -- to your knowledge, you signed this.

3 There was never -- Cass Smith was never compensated for
4 the weekly five dollars per person per bingo session; is
5 that correct?

6 A. No.

7 Q. And he never did receive the five percent of gross
8 revenues to be paid quarterly; is that correct?

9 A. Uh-uh (negative).

10 Q. Did you ever look at the books of Ma Cat's Bingo or
11 Fun City Bingo?

12 A. When it was Fun City Bingo, yeah.

13 Q. Okay. What about when it was Ma Cat's Bingo?

14 A. Yeah.

15 Q. Okay. Did you ever deal with Darrell Patterson?

16 A. Yes, sir.

17 Q. Okay. But in essence, Wanda Gambrell ran all
18 aspects of that bingo business; right?

19 A. Yes, sir.

20 Q. Okay. Now, if I told you that some video games of
21 chance were in Ma Cat's Bingo and she was receiving
22 compensation for that, did you have knowledge of that?

23 A. No, sir.

24 Q. Did you have knowledge of any players coming in and
25 playing on credit ---

1 A. No.

2 Q. --- and not paying for the bingo paper?

3 A. No, sir.

4 Q. You didn't know about?

5 A. No, sir.

6 Q. Okay. Did you have any knowledge of games -- did
7 you understand that during a session during the day when
8 the bingo was going on that Ma Cat's Bingo or Fun City
9 Bingo couldn't exceed eight thousand dollars for a
10 session for a day of bingo games?

11 A. You talking about something I don't know nothing
12 about.

13 Q. Okay. All right. All right. But if I told you
14 that per the state law that neither one of those
15 businesses was supposed to -- or Ma Cat's Bingo could not
16 exceed eight thousand dollars a day, if that was being
17 done or late games were being played, did you know about
18 it?

19 A. No, sir.

20 Q. Okay. Did you have a list of employees that worked
21 at Ma Cat's Bingo or ---

22 A. Our accountant took care of that.

23 Q. Did you have a copy of any of the background checks
24 that may have been done on these individuals?

25 A. No.

1 Q. Okay. Did you have knowledge of Wanda Gambrell
2 keeping a book of individuals who didn't pay for the
3 bingo paper?

4 A. No, sir.

5 Q. All right. Now, did the Greenwood Shrine Club have
6 a bingo checking account or a bingo savings account?

7 A. Yeah.

8 Q. Y'all did? Is that the monies -- is that the money
9 where the bingo proceeds would go into?

10 A. Yes, sir.

11 Q. Okay. All right. Did you have control over -- did
12 the Greenwood Shrine Club have control over those bank
13 accounts?

14 A. Yes, sir.

15 Q. Y'all did? Did you ever -- did the account -- did
16 other individuals put monies into those accounts that the
17 Greenwood Shrine Club had to match?

18 A. No.

19 Q. Okay. Did you review or did you have -- did you
20 review checks that were spent out of the -- sent out of
21 the bingo account to pay for reasonable and necessary
22 expenses of the bingo -- conduct of the bingo? Did you
23 ever -- did you approve that?

24 A. Yes, sir.

25 Q. Did you approve payment of necessary and reasonable

1 compensation incurred and paid in connection with the
2 conduct of the bingo? Did you ever ...

3 A. You're talking above my head about that.

4 Q. Did you know if -- but you already testified, I
5 mean, a lot of the compensation in the contracts that you
6 had with Mr. Smith, that they were not paid; is that
7 right?

8 A. He paid them if he -- if he ran the bingo, he paid
9 them.

10 Q. Let me ask you this. Did you -- in order for Cass
11 to get his bingo license to operate Fun City Bingo, he
12 had to enter into an agreement with the Greenwood Shrine
13 Club and himself; is that correct?

14 A. That's correct.

15 Q. Okay. And in fact, you had these same agreements
16 with Wanda when Wanda was the promoter for Ma Cat's
17 Bingo; right?

18 A. The year it got started, I was not treasurer. So
19 I'm not privy to those documents there because ---

20 Q. But you -- do you have knowledge that Wanda had the
21 same ---

22 A. Yes, sir.

23 Q. She had the same contracts. And, in fact, is it
24 Wanda that brought Cass to the Greenwood Shrine Club?

25 A. To be honest with you, sir, I don't remember.

1 Q. Okay. Did Cass -- did Mr. Smith ask you about why
2 the Greenwood Shrine Club didn't pay the five thousand
3 dollars a month lease?

4 A. No.

5 Q. When he came to talk to -- I think you testified
6 they came and saw -- they came up to Greenwood twice; is
7 that correct?

8 A. Who did?

9 Q. Cass Smith. Chris Smith. Christopher Smith.

10 A. More than twice.

11 Q. Okay. But are you saying he never asked about the
12 payment, the compensation or the payment of this lease?

13 A. No, sir.

14 Q. Are you telling me that you -- I mean, you signed
15 it. You know what it says, don't you?

16 A. Yeah.

17 Q. Did y'all ever have any intention of paying that per
18 month?

19 A. The intention of the Shrine club was to get money
20 into the account so we could do modifications to the
21 Shrine club, remodel it, one thing and another, and to
22 write checks to the Shriner's Hospital.

23 Q. All right. Now, Mr. Dorn ...

24 A. Yes, sir.

25 Q. ... I think you testified that the Greenwood Shrine

1 Club or you were submitting quarterly reports to the
2 Department of Revenue?

3 A. Yes, sir.

4 Q. Okay. And this information, did you have access to
5 the information, the amount of gross proceeds derived
6 from the games?

7 A. No, sir, I do not.

8 Q. Okay. Did you have access or have knowledge that
9 the items of expenses incurred were paid for the quarter
10 regarding the conduct of the bingo games?

11 A. No, sir.

12 Q. You didn't have that? Did you have a copy or
13 knowledge of an item, an expenditure made or to be made,
14 with the description of the merchandise purchases or the
15 services rendered for the conduct of bingo, the bingo
16 games during that quarter?

17 A. No.

18 Q. You didn't? Okay. What about the net proceeds
19 derived from the game. Do you have any knowledge of that?

20 A. I know we got checks from the Department of Revenue
21 periodically. It started out it was almost monthly. And
22 toward the end of it when Fun City Bingo come in, we give
23 him more money than he made us.

24 Q. Okay. All right. Did you have knowledge or
25 information -- or did you submit on those quarterly

1 reports ---

2 A. To be honest with you, the quarterly reports for the
3 Department of Revenue was done by Darrell Patterson.

4 Q. Okay. So Darrell Patterson submitted the quarterly
5 reports?

6 A. Yes, sir.

7 Q. Well, I thought you said you submitted them?

8 A. No. I said I had to do the annual one.

9 Q. Okay. All right. Now, if you knew that some video
10 games of chance or some illegal video games were ---

11 MR. WELCH: Your Honor, I've given him a lot of
12 leeway. Asked and answered. He's already asked that
13 very question before.

14 A. Yeah.

15 THE COURT: I'll let you ask him. Go ahead.

16 MR. EPPS: Yes, sir.

17 Q. If you knew that those video games were in the Ma
18 Cat's Bingo, what would you have done?

19 A. Probably shut the place down then and there.

20 Q. You'd have shut the place down then and there? If
21 you knew that Ma Cat's Bingo was exceeding the daily
22 limit of eight thousand dollars, what would you have
23 done?

24 A. I probably would congratulate them.

25 Q. You would congratulate them? Okay. If you knew

1 that individuals were playing on credit or were splitting
2 the winnings with Ma Bingo -- with Wanda Gambrell, what
3 would you have done?

4 A. Same thing.

5 Q. Shut them down?

6 A. Yes, sir.

7 MR. EPPS: All right. Your Honor, I have no
8 further questions at this time.

9 Thank you, Mr. Dorn.

10 MR. WELCH: Your Honor, if I could get those
11 quarterly reports from you?

12 THE COURT: Sure.

13 CROSS-EXAMINATION

14 BY MR. WELCH:

15 Q. Mr. Dorn, when Wanda was running Ma's Bingo ...

16 A. Yes, sir.

17 Q. ... you co-signed checks with her; correct?

18 A. Yes, sir.

19 Q. In fact, she would come to Greenwood and bring all
20 the checks, payroll and all that stuff?

21 A. Yes, sir.

22 Q. In fact, I'm going to hand you Exhibit Number 9.

23 It's one of the bingo financial quarterly reports. Is
24 that one of the ones you're talking about that she filed
25 that Mr. Patterson filled out?

1 A. Yes, sir.

2 Q. Okay. And, sir, on the back of that is listing the
3 inventory, cash accounting schedules, all that
4 information. That's attached to those quarterly reports,
5 isn't it?

6 A. Yes, sir.

7 Q. And you got copies of that?

8 A. No, I don't have copies of it. The secretary
9 probably does.

10 Q. The secretary? Okay. And then, sir, again, the
11 payroll accounts, all the money that was spent on
12 expenses and stuff, it came out of that Shrine club
13 account that came from the income from the bingo that went
14 to the Shrine club account? Anything that went out of
15 that, you had to cosign the check, didn't you?

16 A. Yes, sir.

17 Q. And, in fact, you could look at any of those checks.
18 You saw what expenses was being paid and all of that?

19 A. Yes, sir.

20 Q. And you had oversight?

21 A. Yes, sir.

22 Q. Okay. And in fact, sir, did you have any problems
23 at all while Ma's Bingo was running the game?

24 A. I wish she never had left.

25 Q. And did you ever have anybody tell you she was doing

1 anything illegal?

2 A. No.

3 Q. The state Department of Revenue ever tell you she
4 did anything illegal?

5 A. No, sir.

6 Q. And, again, when these contracts were signed, did
7 anybody tell you that was illegal?

8 A. No.

9 Q. And, sir, one of the forms -- one of the -- on each
10 of these forms, it shows on the front page lease
11 payments, building and lease payment equipment. You see
12 that?

13 A. Yes, sir.

14 Q. Now, that was actually paid out of that income
15 account, Shrine club income account, bingo account,
16 wasn't it?

17 A. Yes, sir.

18 Q. And that was paid to Ma's Bingo?

19 A. Yes, sir.

20 Q. Okay.

21 MR. WELCH: No further questions, Your Honor.

22 MR. EPPS: I have some.

23 THE COURT: Yes, sir. Followup?

24 REDIRECT EXAMINATION

25 BY MR. EPPS:

1 Q. Mr. Dorn, the documentation you received from Wanda
2 Gambrell, Ma Cat's Bingo, and Cass Smith, was that
3 handwritten information regarding the amount of players,
4 the gross proceeds, and net proceeds of the ...

5 A. It's not handwritten.

6 Q. It's not handwritten?

7 A. Handwritten? When people come in, yeah, they write
8 their names down or sign in, as you call it.

9 Q. Sign in at the bingo place?

10 A. Yeah.

11 Q. Okay. Do you ever remember -- did you get a copy of
12 that information daily or weekly from Wanda Gambrell or
13 Cass Smith?

14 A. Neither one of them ever sent me anything about
15 that.

16 Q. Well, let me ask you this. I think you said you had
17 oversight of the checks that went out of the account for
18 Ma Cat's Bingo and Fun City Bingo. Isn't it true that
19 you signed those checks well in advance?

20 A. Sometimes.

21 Q. Okay. So you would sign checks, but you didn't --
22 when they went out, you didn't know what they were going
23 out for; is that right?

24 A. Sometimes.

25 Q. Okay.

1 MR. EPPS: Your Honor, I have no further
2 questions.

3 THE COURT: Okay.

4 MR. WELCH: No further questions.

5 THE COURT: All right.

6 Thank you, sir. I appreciate your being here.

7 MR. EPPS: Your Honor, may Mr. Dorn be excused?

8 MR. WELCH: No objection.

9 THE COURT: Yes, sir. Absolutely.

10 All right. Mr. Epps, sir, call your next witness,
11 sir.

12 MR. EPPS: Yes, sir, Your Honor. If Your Honor
13 would grant me one ...

14 THE COURT: Sure.

15 MR. EPPS: Your Honor, I call Christopher A.
16 Smith.

17 THE COURT: Okay.

18 (WHEREUPON, the witness was duly sworn.)

19 MR. EPPS: May it please the Court.

20 THE COURT: Yes, sir.

21 **CHRISTOPHER A. SMITH,**

22 **BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:**

23 **DIRECT EXAMINATION**

24 **BY MR. EPPS:**

25 Q. Mr. Smith, how are you?

- 1 A. Good.
- 2 Q. Mr. Smith, are you employed now?
- 3 A. I am.
- 4 Q. Where do you work?
- 5 A. C.M.H. Homes.
- 6 Q. And where did you work in 2012? Where did you work
- 7 prior to entering into this contract with Wanda Gambrell?
- 8 A. Progressive Realty.
- 9 Q. Okay. What did you do for Progressive Realty?
- 10 A. I was the co-owner.
- 11 Q. Okay. And do you have an education?
- 12 A. High school.
- 13 Q. High school education? Okay. Have you -- and you
- 14 were working for Progressive Realty when you and Wanda
- 15 entered into this or discussing this contract for
- 16 purchase in February 2013?
- 17 A. Yes.
- 18 Q. Tell the Court -- how did you come about being --
- 19 did you know Wanda Gambrell? When did you meet her?
- 20 A. I met her right within a month prior to the
- 21 contract.
- 22 Q. Okay. And how did you come in contact with Ms.
- 23 Gambrell?
- 24 A. I don't remember exactly. Ms. Gambrell testified
- 25 that I came to her. Somebody came to me and said that

1 she was interested in selling. And I had a little bit of
2 interest in the business, so I went and talked to her.

3 Q. And who is Cathy? Did Cathy Brown facilitate y'all
4 meeting? Is that correct?

5 A. Yes.. I think Cathy Brown played there one night.
6 And there was a rumor that Wanda was going to sell. She
7 had been talking to people about it. And Cathy thought I
8 would be good at this business and I should go talk with
9 her.

10 Q. Okay. And just to be -- I mean, you owned -- you
11 had -- there was a period of time you owned some
12 sweepstakes places; right?

13 A. Correct.

14 Q. And went into some litigation regarding those
15 sweepstake businesses; is that correct?

16 A. Correct.

17 Q. And did a lot of the same people that frequented the
18 sweepstakes place of business also frequented Wanda's
19 bingo, Ma Cat's Bingo?

20 A. Yes.

21 Q. Okay. Had you ever been involved with bingo in any
22 way, shape or form?

23 A. No.

24 Q. How did you -- tell the Court what was the extent of
25 your knowledge regarding bingo?

1 A. I went into Wanda's bingo two or three times during
2 the negotiating period. But other than that, I knew
3 nothing about it.

4 Q. Okay. Did you understand the laws regarding bingo,
5 state laws and the regulation of bingo?

6 A. I looked into them once we started talking about the
7 deal.

8 Q. Okay. Tell the Court about your conversations and
9 what you and Wanda discussed regarding this coming --
10 regarding this contract for purchase right here?

11 A. What we discussed?

12 Q. Uh-huh (affirmative).

13 A. We basically just discussed that she had Ma Cat's
14 Bingo for sale and that I was buying her out. I was
15 basically buying the bingo business.

16 Q. Okay. And what was your understanding -- through
17 your conversations with Wanda, what did you think you
18 were buying in terms of the business known as Ma's Bingo,
19 Ma Cat's Bingo?

20 A. Everything.

21 Q. Explain everything to the Court.

22 A. All the equipment, the player base, all the
23 furnishings, everything. I was under the assumption that
24 it was all included as part of the purchase.

25 Q. Okay. And why were you under that assumption?

- 1 A. Because that's what I was told.
- 2 Q. Did Wanda tell you that?
- 3 A. Yes.
- 4 Q. Okay. What did she say to you when she told you
- 5 that?
- 6 A. She just basically said that there had to be a
- 7 charity involved. There was a charity that was involved,
- 8 but you didn't have to worry about them. You never saw
- 9 them. They stayed out of the picture, and she ran it.
- 10 It was hers.
- 11 Q. Okay. And the charity was the Greenwood Shrine
- 12 Club; right?
- 13 A. Yes.
- 14 Q. Did you have any dealings or know anything about the
- 15 Greenwood Shrine Club prior to entering into this
- 16 contract?
- 17 A. No.
- 18 Q. Now -- and you're looking at the contract. It says
- 19 that the purchase price would be a hundred thousand
- 20 dollars; is that right?
- 21 A. Yes.
- 22 Q. How did y'all come up with that amount?
- 23 A. My partner, Ms. Capell, was a large contributor.
- 24 Q. Okay. Well, how did you make the determination
- 25 between you and Wanda the amount of a hundred thousand

1 dollars?

2 A. That's what she told us she wanted for the business.

3 Q. Okay. And did you look at -- what did you ask Wanda
4 to provide to you or show you in regards to the bingo
5 business?

6 A. Again, at that time, I did not know a lot about what
7 I should ask for and things that I could find.

8 Q. Why would you -- explain that to the Court.

9 A. Well, I wasn't -- at that time, I was not
10 knowledgeable about being able to find things from the
11 state as far as what she had -- her sales and things of
12 that nature. It's just not something that I was aware
13 of. I basically -- I trusted her a lot as far as what
14 she was telling me and the income she told me that she
15 was earning, and I put a lot of faith in what she was
16 telling me.

17 Q. Okay. So you relied on her; is that correct?

18 A. Yes.

19 Q. Okay. She knew -- she knew everything about ---

20 MR. WELCH: Your Honor, I object. He's leading
21 now.

22 THE COURT: All right. Don't lead. Go ahead.

23 MR. EPPS: Yes, sir. Yes, sir.

24 Q. And did you rely on what Wanda told you in terms of
25 coming to the agreement that y'all did regarding that

1 contract for purchase?

2 A. Yes. I was told also that there were multiple
3 people supposedly looking at it, and she needed an answer
4 quick. So I kind of -- I rushed in a little bit.

5 Q. What financial information did you review prior to
6 signing that contract?

7 A. The only thing that I ever saw physically was one
8 day in there she showed me a W-2 that was right at a
9 hundred thousand dollars. And that's when we had the
10 conversation that she assured me that, you know, "Hey,
11 this is a great deal. You'll have your investment back
12 in a year."

13 Q. Well, let me ask you this. What were you told about
14 the Greenwood Shrine Club?

15 A. That you have a contract with them. And in the
16 event you have a slow month, you've still got a contract
17 and you're getting money. So going into it, my thought
18 was worst case scenario if the business is -- I put a lot
19 of faith in the headcount also. The lease and the
20 headcount. I viewed the business multiple nights, Ms.
21 Capell and myself. And we were looking at the headcounts
22 at five dollars a head. And they were averaging a
23 hundred-plus people a night. We got five hundred dollars
24 a night revenue plus the lease. Worst case scenario if
25 the business doesn't make much money, we should at least

1 be able to make the lease amount which would help us
2 recoup our initial investment.

3 Q. Okay. And that was the series of contracts that you
4 signed with the Greenwood Shrine Club; right?

5 A. Correct.

6 Q. Okay. And what were you told by the Greenwood
7 Shrine Club and Wanda when you entered into these -- you
8 signed these agreements on March 26th of 2013?

9 A. The Shrine Club basically said that as long as my
10 contracts didn't deviate from Wanda's, we didn't increase
11 any fees or go up on my charge to them as a promoter, as
12 long as all the contracts were the same, they were happy.

13 Q. Were you told that you were going to be paid the
14 five thousand dollars a month for the lease?

15 A. Yes.

16 Q. Who told you that?

17 A. Wanda as well as Ray Dorn.

18 Q. Okay. Were you told that you'd get five dollars --
19 you'd be compensated five dollars a head and five percent
20 of the gross revenues?

21 A. Yes.

22 Q. That would be paid quarterly?

23 A. (Nodded head up and down in the affirmative.)

24 Q. Okay. Were you ever paid that?

25 A. No.

1 Q. Okay. Let me ask you. This is what was provided.

2 Have you ever seen that? Can you identify that document?

3 A. No.

4 Q. Okay. Was that a W-2 that you reviewed -- well, let
5 me ask you. This has been marked as Plaintiff's 13.

6 MR. WELCH: Your Honor, I'm going to object.

7 He said that he can't identify that document.

8 THE WITNESS: I've never seen it.

9 MR. EPPS: Well, I'm going to ask him questions
10 about ...

11 THE COURT: All right. Ask him questions.

12 Q. I'm going to hand -- this has been marked as
13 Plaintiff's 13. It's already been entered into evidence.
14 Have you seen that document?

15 A. No.

16 Q. That is a -- what is that? What are you looking at?

17 A. It's a 2013 for Wanda Gambrell. The employer is the
18 Greenwood Shrine Club. It's a form W-2.

19 Q. And it said -- what does it -- how much -- what does
20 it say that Ms. Gambrell received?

21 A. Fifty-five thousand one hundred and seventy-five
22 dollars.

23 Q. Okay. Did she ever show you that, or is that
24 something that she used to say ---

25 MR. WELCH: Your Honor, I'm going to object.

1 He said he's never seen it before.

2 THE COURT: Okay.

3 MR. WELCH: How could she show it to him if
4 he's never seen it before?

5 THE COURT: I understand that. I'm giving Mr.
6 Epps some latitude. He can ask him questions.

7 A. No, I've never seen this before.

8 Q. All right. And Ms. Gambrell didn't present this to
9 you in terms of showing you the income or the financial
10 information of the business prior to ---

11 A. The only W-2 I ever saw from her was in the business
12 one day prior to us giving her the money. I had to ask
13 for one. And she showed me one from the previous year
14 that showed right at a hundred thousand dollars. And
15 that's when she made the comment that you can make good
16 money. You'll have your investment back in a year.

17 Q. Okay. So you saw a W-2 from Wanda that roughly said
18 -- it was roughly a hundred thousand dollars; is that
19 right?

20 A. It was right at a hundred thousand dollars.

21 Q. Do you know what year that was?

22 A. It would have been the previous year, so 2012, I
23 guess.

24 Q. Okay. Did you ever see this -- this has been
25 entered as Plaintiff's 6 -- a 2012 Schedule C for Ma

1 Cat's Bingo?

2 A. No.

3 Q. Okay. Did that W-2 that you saw, does that -- did
4 that line up with that Schedule C for Ma Cat's Bingo?

5 A. No. I can assure you that had I seen that she was
6 making sixteen thousand dollars a year, I never would
7 have paid her a hundred thousand dollars.

8 Q. If you knew -- let me ask you this, Mr. Smith. If
9 you knew or -- if you -- if you knew going into this that
10 you would not be compensated pursuant to these contracts
11 with the Greenwood Shrine Club, would you have entered
12 into this agreement with Wanda to -- this contract of
13 purchase?

14 A. Absolutely not.

15 Q. Okay. And the reason you signed that -- and prior
16 to February 22nd, 2013, Wanda explained to you how the
17 bingo worked and the Greenwood Shrine Club would be
18 compensating you; is that right?

19 A. Correct.

20 Q. Okay. Now, once -- okay. But you didn't -- and
21 part of that contract was contingent upon you getting
22 licensed with the State of South Carolina to be a
23 promoter; right?

24 A. Yes.

25 Q. And you got your license, which was a Class B

1 license; is that right?

2 A. Yes.

3 Q. Okay. And once you got your Class B license, that's
4 when you took over the bingo business; is that right?

5 A. Yes.

6 Q. Okay. And explain to the Court -- when was that?

7 A. I'd have to look at the dates.

8 Q. Would you say ---

9 A. Somewhere around May or June.

10 Q. June of 2013; right?

11 A. Yes, sir. That sounds right.

12 Q. Okay. And Wanda had been -- Wanda continued to run
13 it up until June of 2013?

14 A. Yes.

15 Q. Okay. And, in fact, did she stay on afterwards to
16 help run it after June of 2013?

17 A. Well, when I went in, she -- she had initially said
18 she would stay on and help us for about a month to learn
19 the business a little better and things of that nature.

20 She asked a few questions. But, no, she basically turned
21 into -- once she got her money, she didn't have anything
22 else to do with the business. She just started playing.

23 Q. And do you agree that she played and she was there
24 every night?

25 A. Yes.

1 Q. Now, after you started running the business, did you
2 receive payment from the Greenwood Shrine Club regarding
3 leasing and compensation?

4 A. No.

5 Q. Did you ask -- did you contact the Greenwood Shrine
6 Club, or did you contact Wanda Gambrell?

7 A. The first month -- basically, the first month ended
8 right after we had a full operating month under our
9 belly. And we looked at the number at the end of the
10 month and said the money's tight. What's the deal? I
11 mentioned to Wanda the lease thing. At that time, it was
12 explained to me that the lease contract and all those
13 numbers are basically over-inflated numbers to ensure
14 that the Shrine club doesn't get anything. But if you
15 don't get money or if the business isn't profitable, you
16 don't get that money.

17 Q. And that's what Wanda told you?

18 A. Yes.

19 Q. After you had paid her -- after you had got your
20 license and started running the business?

21 A. Afterwards, correct.

22 Q. And that is not what she told you before you entered
23 that contract; is that right?

24 A. No.

25 Q. Okay. And at that point in time, she had been paid

- 1 how much?
- 2 A. By us?
- 3 Q. Uh-huh (affirmative).
- 4 A. Seventy-five thousand dollars.
- 5 Q. Okay. She was ultimately paid eighty thousand
- 6 dollars?
- 7 A. Correct.
- 8 Q. Okay. Now, did there -- what problems did you have
- 9 when you started running Fun City Bingo?
- 10 A. I mean, basically when we took over, I immediately
- 11 kind of felt like Wanda was on a mission to try to get us
- 12 shut down.
- 13 Q. Well, let me ask you this. Did you have -- well,
- 14 did you -- what did you do with the video machines?
- 15 A. I removed them.
- 16 Q. Okay. Describe to the Court those video machines.
- 17 A. They were Palmetto Gold.
- 18 Q. And what did they do?
- 19 A. It's a poker machine. You put money in it, and you
- 20 try to line up things like on any poker machine. If you
- 21 win, you receive a payout.
- 22 Q. Okay. And did you shut those down?
- 23 A. Yes.
- 24 Q. And, in fact, did you -- when you took over, did you
- 25 cover them up?

1 A. Yes, sir.

2 Q. And did you have them removed from the business ---

3 A. Yes.

4 Q. --- from McGee Road?

5 A. Yes.

6 Q. Okay. What other problems did you have?

7 A. Just -- I mean, we kept the same employees. Most of
8 the same players were there. The issues were with Wanda
9 complaining. Things of that nature.

10 Q. Okay. When you say Wanda complained, what was she
11 complaining about?

12 A. Anything and everything. From the temperature in
13 the building to the runners not doing their job. And
14 just -- I had the appearance or the feeling that she was
15 trying to make it hard on us.

16 Q. Okay. Did Wanda poor-mouth or badmouth the way ---

17 MR. WELCH: Your Honor, I object to the
18 leading.

19 THE COURT: I overrule. Keep going.

20 Q. Did Wanda badmouth and say bad things about how
21 y'all were running ...

22 A. Yes.

23 Q. Okay. All right. And you heard the testimony
24 regarding the house players and people playing on credit?

25 A. Yes.

1 Q. Did you continue with that or what?

2 A. No. Once I found out that was taking place, all of
3 those things immediately stopped. All of the employees
4 were addressed basically in a meeting, the ones that
5 weren't there were told one-on-one, we absolutely never
6 exceed the payout. If you don't have -- if the customer
7 doesn't have money to buy sheets at the door, then they
8 don't play. And if I find out anybody's splitting or
9 essentially paying for a customer to play and splitting
10 proceeds with them or the winnings from the game, that
11 they would be immediately terminated.

12 Q. Okay. And these individuals would continue to try
13 to come in; is that right?

14 A. Yes.

15 Q. Okay. And you shut that down; is that right?

16 A. Yes.

17 Q. Okay. All right. And so during -- how long was Fun
18 City Bingo open?

19 A. Approximately eleven months, I think.

20 Q. Okay. And how many -- did anybody from the
21 Greenwood Shrine Club ever come down to Fun City Bingo?

22 A. No.

23 Q. Okay. Did anybody, whether it be Ray Dorn or any
24 other member of that Greenwood Shrine Club, contact you
25 or anybody to see what was going on at the Fun City

1 Bingo?

2 A. No.

3 Q. Did anybody provide them documentation of the
4 deposit or the weekly or quarterly or monthly
5 information?

6 A. Everything went to our accountant, Mr. Patterson.
7 Whether or not the Greenwood Shrine Club saw that, I'm
8 not sure.

9 Q. Now, how would you -- and what is a electronic
10 dabber? What is a site -- what is an electronic dabber?

11 A. Those are things that are involved in the electronic
12 bingo process. We were a paper bingo.

13 Q. You were a paper bingo, so you didn't have a site
14 system or electronic dabber; is that correct?

15 A. Correct.

16 Q. So you handwrote all of the information that you
17 were required to keep up with?

18 A. Yes.

19 Q. Is that right?

20 A. Yes.

21 Q. Okay. And handwrote -- and that was the same way it
22 was done when Wanda was doing it?

23 A. Yes.

24 Q. All right. Can you identify that document?

25 A. Yes. That's a nightly account sheet.

1 Q. Okay.

2 MR. WELCH: Has that been marked as an exhibit
3 for identification?

4 MR. EPPS: No. I'm just asking him about it.

5 Q. But that is a nightly -- that is a nightly -- what
6 is that?

7 A. It's a daily -- like a cost account sheet. It
8 tracks how much paper you sell, how much money you took
9 in, how much money you pay out.

10 Q. Okay. And this was done for every session of bingo?

11 A. Every day.

12 Q. Every day. And who filled these out?

13 A. Now, when Wanda was there, Wanda did. When I took
14 over, Summer did it, who was like the manger.

15 Q. Okay. But that's an example of what was filled out
16 every day that there was a session in play or the bingo
17 business was open; right?

18 A. Yes.

19 Q. Okay.

20 MR. EPPS: Your Honor ...

21 THE COURT: Yes, sir.

22 MR. EPPS: ... I would move at this time to
23 mark this exhibit as Plaintiff's -- Defendant's 1 and
24 enter it into evidence.

25 MR. WELCH: No objection.

1 THE COURT: All right. Without objection, the
2 same is entered. Have the court reporter mark it.

3 (WHEREUPON, Defendant's Exhibit Number 1 was marked
4 and admitted into evidence.)

5 Q. And once -- but do you know -- do you have knowledge
6 -- do you know yourself -- you never altered or -- that
7 weekly -- that daily documentation, did you?

8 A. No. And as Mr. Dorn stated in the last couple of
9 questions about the machines and going over the payouts
10 and changing things, his answer was he would have shut
11 her down. I didn't want that to happen to me, so that's
12 why I did not do those things. That's also why the
13 machines were removed.

14 Q. Okay. So what happened after you removed the
15 machines, shut out the house players, people playing on
16 credit, not going over the daily limit? How did -- what
17 -- tell the Court about the business.

18 A. I immediately knew I was in trouble because you just
19 couldn't make any money. Nothing had changed since -- I
20 mean, it was the first month in business. All the same
21 players were there. All the same employees were there.
22 All the games were being ran the same. The only
23 difference was that Wanda was not behind the counter.
24 The accounting had not changed. The money in daily had
25 not changed, but you just could not make money. And I

1 knew that immediately.

2 Q. Did anybody have to put any of their own money into
3 the bingo account?

4 A. Yes.

5 Q. Who did?

6 A. Laurie and myself and the Greenwood Shrine Club. As
7 Mr. Dorn testified, we went to him on a couple of
8 occasions and got money from them because we were at a
9 point to where there was no money. All the money we had,
10 we had given Wanda up front. And the way the law reads,
11 if you have to put money into the account, it's supposed
12 to be half the charity and half the promoter.

13 Q. Did they match what you put in?

14 A. Yes.

15 Q. Okay. All right. And did you bring up or approach
16 the Shrine club about the lease payment?

17 A. We discussed that the first time I went to him to
18 basically tell him I needed money or we are probably
19 going to have to close down.

20 Q. And what did he say?

21 A. Basically, the same thing Mr. Dorn said. They had
22 very little knowledge of what was going on. I mean, they
23 ---

24 MR. WELCH: I would object to hearsay, Your
25 Honor.

1 THE COURT: All right. Sustained as to the
2 hearsay.

3 MR. EPPS: Yes, sir.

4 Q. You asked -- you went to the Greenwood Shrine Club
5 about the lease and the compensation in these three
6 contracts; right?

7 A. It was discussed the first time we needed money from
8 them, which was approximately two months into it.

9 Q. But they never paid that or intended to pay that?

10 A. No.

11 Q. Okay.

12 A. I don't think they even understood how the contract
13 was written.

14 Q. Let me -- and I just want to -- I'm going to hand
15 you what's been marked as Plaintiff's 8, 9, 10, 11 and
16 12, quarterly reports.

17 A. Okay.

18 Q. Have you had a chance to review them?

19 A. No, sir.

20 Q. Okay. All right. Who handled -- who submitted the
21 quarterly reports to the Department of Revenue for the
22 eleven months you ran the business?

23 A. Our accountant. Well, we -- Laurie handled that.
24 She turned everything in to him, and he prepared it.

25 Q. Okay. Who submitted those to the Department of

1 Revenue?

2 A. I think Laurie did.

3 Q. All right. All right. Mr. Smith, I guess, again,
4 for the Court, if you would have known what you knew
5 after getting your license and taking over the business,
6 would you have entered into that contract?

7 A. Absolutely not.

8 Q. Would you have known or been told -- if you would
9 not have been told that you had been -- you'd be getting
10 that lease and the compensation from the Shrine club,
11 would you have entered in that contract?

12 A. No.

13 Q. If Wanda had been up-front and honest with you
14 regarding the finances and financial, how that business
15 was set up, would you have agreed -- the bingo business
16 was set up, would you have agreed to get into that
17 contract? Would you have agreed to sign that contract?

18 A. No.

19 Q. Okay. And, again, the plaintiff claims that that
20 contract was just for the equipment inside that building?

21 A. I wrote the contract. And basically I was under the
22 impression I'm buying the business known as Ma's Bingo,
23 which is what I originally planned on just writing it up
24 as the business known as Ma's Bingo. And then my thought
25 was if I just write down what she was saying was the

1 business, she could come back later and steal the
2 equipment from me. So I added the equipment basically as
3 an afterthought just to have a list of things that were
4 included. But I was under the assumption that I'm buying
5 the business.

6 Q. What do you -- what was the business in your mind?

7 A. The name, the player base, the mailing list,
8 everything that was in the building and everything that
9 was there. You know, we would never shut down. Nothing
10 would change. We just ...

11 Q. But you knew that you had -- that you -- that the
12 Greenwood Shrine Club was the one that conducted -- or
13 the bingo business went through them?

14 A. I realize now after getting involved.

15 Q. But you realized before that contract that you had
16 to be licensed as a bingo operator, promoter?

17 A. Correct.

18 Q. Have your bingo license?

19 A. Correct.

20 Q. And a big part of it -- I just want to make sure. A
21 big part of it you agreeing to this contract for purchase
22 ---

23 MR. WELCH: Your Honor, again, he's leading.

24 THE COURT: I'll let him lead a little bit.

25 If it'll speed this up a little bit, I'll let you

1 lead all day.

2 MR. EPPS: Yes, sir.. Okay.

3 Q. And the main thing regarding entering that contract
4 was what was your agreement or your setup with the
5 Greenwood Shrine Club; is that correct?

6 A. Correct. Which I assumed was part of her business
7 also because none of the contracts changed.

8 Q. Explain that to the Court.

9 A. Explain?

10 Q. Yes.

11 A. The contract?

12 Q. Yes. With the Greenwood Shrine Club.

13 A. The fact that I was supposed to get five dollars per
14 head, five thousand dollars per month for the lease of
15 the equipment and the building, and then five percent of
16 the gross sales.

17 Q. And that was told to you by Wanda prior to you
18 signing the contract for purchase?

19 A. Yes.

20 THE COURT: Mr. Epps, remember when I told you
21 at the beginning of the case about getting too close to
22 your case?

23 MR. EPPS: Yes, sir.

24 THE COURT: We're going over the same stuff
25 that I've already heard. Probably this is the third

1 time.

2 MR. EPPS: Yes, sir, I understand.

3 THE COURT: Okay?

4 MR. EPPS: Yes, sir.

5 Mr. Smith, thank you.

6 Your Honor, I have no further questions at this
7 time.

8 Please answer any questions opposing counsel may
9 have.

10 THE WITNESS: Okay.

11 THE COURT: Mr. Welch?

12 MR. WELCH: Yes, sir. Judge, may I approach?

13 THE COURT: Sure.

14 MR. WELCH: Would you open this?

15 THE COURT: All right. I'm opening up the
16 original deposition of Mr. Christopher A. Smith dated
17 July 30, 2104.

18 MR. WELCH: Thank you, Judge.

19 THE COURT: I'm handing it to Mr. Welch.

20 CROSS-EXAMINATION

21 BY MR. WELCH:

22 Q. Mr. Smith, we took your deposition in this case. Do
23 you remember when we took your deposition?

24 A. Yes.

25 Q. You've got a copy in front of you. I'm going to ask

1 you a few questions from that. I asked you that day at
2 page 15, line 22 of what due diligence means?

3 A. Correct.

4 Q. And you've been in the real estate business?

5 A. Correct.

6 Q. You've bought and sold real estate. And you
7 understood in real estate you do due diligence on most
8 deals; correct?

9 A. Yes.

10 Q. And your response was, "You have to do your
11 homework?"

12 MR. EPPS: Can you identify what page?

13 MR. WELCH: I just did. 15, 22. That's what I
14 said.

15 Q. Isn't that correct?

16 A. Yes.

17 Q. And then I also asked you 15, 23, going over to the
18 top of 16, 2. "What due diligence did you do in this
19 case?" And you told me, "Really nothing."

20 A. Very little.

21 Q. Sir, you had no prior experience running bingo
22 before, did you?

23 A. No.

24 Q. And basically when you went in -- again, you drafted
25 the contract, Exhibit Number 1?

1 A. Yes, sir.

2 Q. And in fact, you got all of the stuff that is listed
3 there, the caller station, the bingo board. All of that
4 equipment, you got that equipment transferred to you,
5 didn't you, sir?

6 A. Yes.

7 Q. And you got the mailing list?

8 A. I assume, yes.

9 Q. In fact, you sold all of that stuff for fifty
10 thousand dollars later, didn't you?

11 A. Yes.

12 Q. And you didn't tell Wanda?

13 A. No.

14 Q. And you still owe her money; correct?

15 A. Yes.

16 Q. In fact, sir, when you went in, you read through --
17 let's look at 2, 3, and 4. On number 2 on the monthly
18 rent, were you present when Mr. Dorn signed in front of a
19 notary and you were in front of a notary?

20 A. Yes.

21 Q. And Wanda explained to you that that rent came, it
22 was written out of the Shrine club account. Mr. Dorn
23 would co-sign. And it was from income. That was
24 explained to you, wasn't it?

25 A. Not correctly.

1 Q. Well, sir, let me ask you this. You say you have a
2 signed contract; right?

3 A. Yes.

4 Q. And you told me in the deposition you took
5 absolutely no steps to try to enforce that, did you?

6 A. No, not once I realized, you know, how it worked.

7 Q. Well, you say how it worked. You didn't get an
8 attorney to try to enforce the contract, did you?

9 A. No.

10 Q. Because it came from that account. Mr. Dorn would
11 co-sign on that money from whatever was in there,
12 wouldn't he?

13 A. If the money was there.

14 Q. Yes, sir. And, in fact, on Exhibit Number 3,
15 actually 3 and 4 -- no. Let's go to 3. You understood
16 -- look at number 3, please, sir.

17 A. I got it.

18 Q. You understood that as a promoter -- and you
19 understand promoter is a term of art in bingo? You got
20 your license, and you're the promoter?

21 A. Yes, sir.

22 Q. And you understood when you signed in March that
23 your responsibility was going to be to promote the bingo
24 games; right?

25 A. Yes, sir.

- 1 Q. Abide by the rules; right?
- 2 A. Yes.
- 3 Q. You all would hire and fire employees; right?
- 4 A. Yes.
- 5 Q. Made deposits to the bingo checking account; right?
- 6 A. Yes.
- 7 Q. Filed everything on the bingo tax?
- 8 A. Yes.
- 9 Q. All the withholding, quarterly reports; correct?
- 10 A. Yes.
- 11 Q. Paying salaries to the employees?
- 12 A. Yes.
- 13 Q. Keeping the equipment and building and maintenance
- 14 and repairs?
- 15 A. Yes.
- 16 Q. All right. Paying for building lease and equipment?
- 17 A. Yes.
- 18 Q. And that equipment, actually the lease payment would
- 19 be coming back to you, wouldn't it?
- 20 A. Yes.
- 21 Q. Paying utilities?
- 22 A. Yes.
- 23 Q. Paying all supply costs; right? And you understood
- 24 that the business was going to move forward based upon
- 25 the efforts you put in it? That's how business works,

1 isn't it?

2 A. Yes.

3 Q. But you told me in deposition that -- at page 98
4 starting at line 1 -- after the first month you were only
5 there maybe five hours a week.

6 A. Right. Right.

7 Q. Turn to page 98, sir, in your deposition.

8 A. Okay.

9 Q. We start at line 3 of -- well, let's go to page 97
10 as we start the question. The bottom of the page, 97,
11 line 25, "Tell me, sir, once you got your license
12 whenever it was, how many hours a week did you spend at
13 the location?" And your answer? Read that for me. Line
14 3.

15 A. You said page 97?

16 Q. 97. I'm going to 98 now, line 3.

17 A. Okay, 98.

18 Q. Well, sir, you said in line 3 through 5, "To start
19 off with, I'd say about forty for the first month."

20 A. Correct.

21 Q. And my next question, "Okay. Then how many hours
22 after that?" And your answer, "Very little. Five
23 maybe."

24 A. Correct.

25 Q. And so after that first month, you did very little.

- 1 Maybe five hours a week you were there?
- 2 A. Correct.
- 3 Q. But you were supposed to be running the bingo.
- 4 A. We had employees in place to do that.
- 5 Q. And they are very experienced bingo operators?
- 6 A. Yes.
- 7 Q. And did they do all the promotional stuff for you
- 8 too?
- 9 A. Yes. Laurie handled most of that.
- 10 Q. Sir, isn't it true at one point in time Wanda said
- 11 something to you with concern about maybe running some
- 12 dollar packs. Very legal. But a promotion to get people
- 13 in.
- 14 A I don't remember that specifically.
- 15 Q. Isn't it true, sir, after the first couple of months
- 16 there were only two of Wanda's original employees there?
- 17 That would be Summer and Ben.
- 18 A. Correct.
- 19 Q. The rest of the people you brought in?
- 20 A. Yes, after we fired her son and some other people.
- 21 Q. Well, but you started getting complaints about rude
- 22 employees, didn't you, sir?
- 23 A. You always have complaints.
- 24 Q. Sir, isn't it true people came to you and told you
- 25 that you weren't doing anything about those rude

- 1 employees? That that place had changed. They didn't
2 tell you that?
- 3 A. No.
- 4 Q. Nobody ever told you that?
- 5 A. Everybody complains some about bingo.
- 6 Q. Sir, have you ever actually completed a tax return
7 on that business?
- 8 A. No, not yet.
- 9 Q. You had the business from 2013; correct?
- 10 A. Correct.
- 11 Q. And then 2014. But you never even completed a tax
12 return for 2013, did you?
- 13 A. No.
- 14 Q. Never finished up even any accounting documents to
15 show really profit and loss, did you?
- 16 A. I can assure you there was no profit.
- 17 Q. Well, the point is, sir, you've never even had any
18 accounting documents completed, have you?
- 19 A. Mr. Patterson has not finished all that stuff yet.
- 20 Q. Well, you didn't tell him to, did you?
- 21 A. Well, I'm still trying to get everything together.
- 22 Q. A year later? A year after the 2013 operations?
- 23 A. I'm trying to figure out how much money I've
24 actually lost.
- 25 Q. In fact, sir, you told me in deposition that you did

1 pay yourself some money out of that. In fact, there was
2 one check for seventeen hundred dollars you paid to
3 yourself. You turned around and gave the money to
4 somebody that fell and got hurt?

5 A. Correct.

6 Q. But that was your choice; right?

7 A. That was to keep that person from going after the
8 Shriners.

9 Q. In fact, sir, you agreed with me in deposition at
10 page 42, line -- starting with 23 that the purchase of
11 the assets you purchased and the way this was transferred
12 was totally legal?

13 A. Yes, sir.

14 Q. And you also said, when I asked you why you didn't
15 take the name Ma's Bingo, that you just assumed Wanda
16 wouldn't let you. You never asked her, did you?

17 A. No.

18 Q. So if you wanted to continue as Ma's Bingo, that's
19 something you could have done by asking her?

20 A. Possibly.

21 Q. In fact, sir, isn't it true that about this same
22 time you got arrested on gambling charges?

23 A. No. That was after the bingo was closed.

24 Q. But you knew the investigation was being done?

25 A. No.

1 Q. Sir, prior to the time she filed this lawsuit, you
2 never made any of these allegations to anybody that
3 you've made in this case, did you?

4 A. Who would I have made them to?

5 Q. Wanda. Accused her of taking money she wasn't
6 entitled to. Being upset with her. You never had any of
7 these allegations until she filed this lawsuit for the
8 rest of the money in the contract. Isn't that true?

9 A. Yes.

10 Q. Sir, your exhibit, Defendant's Exhibit Number 1,
11 this sheet? Here it is.

12 A. I've got it.

13 Q. Sir, this looks like January the 2nd, 2014; is that
14 correct?

15 A. Correct.

16 Q. Now, this is -- let's see. You guys took it over at
17 the end of June. You'd have been running it July,
18 August, September, October, November, December. Now this
19 is January; right?

20 A. Uh-huh (affirmative).

21 Q. And on this day, if you look at the form, you
22 actually took in almost ten thousand dollars. Nine
23 thousand three hundred fourteen dollars on that day;
24 correct?

25 A. Yeah.

1 Q. And the payout that day wasn't but seven thousand
2 one hundred and eighteen; is that correct?

3 A. Yes.

4 Q. So on that one day alone, you deposited almost
5 twenty-three hundred dollars in that one day into the
6 account?

7 A. Correct.

8 Q. That's pretty typical, isn't it?

9 A. No.

10 Q. So you just happened to pick this one?

11 A. I mean, that was a good day. It happens.

12 Q. You don't have any more that you could bring to show
13 a bad day?

14 A. Oh, I'm sure I do.

15 MR. WELCH: I don't have any further questions,
16 Your Honor.

17 THE COURT: Redirect, Mr. Epps?

18 MR. EPPS: Redirect briefly.

19 REDIRECT EXAMINATION

20 BY MR. EPPS:

21 Q. Mr. Smith, opposing counsel asked you in your
22 deposition on page 16, line 1 what you did when he asked
23 you about due diligence. He referenced you said, "Really
24 nothing." He didn't complete that sentence, did he?
25 What was remaining? What did you say after that?

1 A. I'm sorry?

2 Q. Page 16, line 1?

3 A. Yes.

4 Q. All right. Your answer to his question regarding
5 due diligence was, "Really nothing other than trust Wanda
6 and look at her 1099s and pay stubs." Is that right?

7 A. Yes.

8 Q. Okay. Now, they asked you about -- about reporting
9 fraud or making these claims to anybody. You brought
10 this up to Wanda when you got into the business; is that
11 correct?

12 A. It was brought up after we knew there was no money
13 being made.

14 Q. Okay. Well, you addressed -- you approach Wanda
15 about these problems; is that correct?

16 A. We had a few discussions about it.

17 Q. You approached Wanda regarding the payments from the
18 Greenwood Shrine Club?

19 A. Yes.

20 Q. Okay. You also approached the Greenwood Shrine Club
21 about these problems as well; is that correct?

22 A. Yes.

23 Q. Okay. And they asked you -- and he asked you why
24 didn't you ever get an attorney or write a letter to the
25 Greenwood Shrine Club. You didn't sue the Greenwood.

1 Shrine Club. You didn't do that; is that right?

2 A. That's correct.

3 Q. And what's your reason for doing that, for not doing
4 anything to the Greenwood Shrine Club?

5 A. We were -- I mean, I had no desire to try to obtain
6 money or go after a charitable organization.

7 Q. You didn't want to sue a charity; is that correct?

8 A. That's correct.

9 Q. Okay. And you were willing -- and you recognized
10 that you got into a bad situation, a bad deal; is that
11 correct?

12 A. Correct.

13 Q. Okay. Once you got into the place that you believe
14 -- and Wanda testified that no fraud was going on. Do
15 you believe fraud was going on?

16 A. Absolutely.

17 Q. Okay. And you recognized and you realized what you
18 got yourself into; is that right?

19 A. Very early on.

20 Q. Okay. And is that why you shut -- eventually, you
21 stopped doing it the way it was doing, and y'all had to
22 close the doors; is that right?

23 A. Correct.

24 Q. Okay. And when you stopped paying -- you had paid
25 Wanda eighty thousand dollars. Okay? Were you willing

1 to -- I mean, she sued you. Were you willing to let
2 bygones be bygones and everybody go home.

3 A. That entire experience was so -- it just consumed me
4 so much. It was so overwhelming and so much to deal with
5 and so much trouble even though, yes, we still lost a lot
6 of money. And the things that were being done
7 incorrectly is the only reason that she was able to make
8 money. I was at a point to where Laurie and I both said,
9 we'll lose whatever we're going to lose. Let's just be
10 done with it. We just couldn't handle the stress.

11 Q. Okay. And, in fact, were you approached by Wanda
12 and when she -- was she asked to leave, or did she leave
13 on her own?

14 A. She had -- Laurie could answer that question more
15 specifically. But her and Laurie got into a major
16 blowout. And I don't know if Laurie told her not to come
17 back or if Wanda just decided on her own not to come
18 back. But they had a major blowout, and Wanda did not
19 come back after that.

20 Q. Okay. And her son was fired; is that correct?

21 A. Correct.

22 Q. And shortly thereafter you were served with this
23 lawsuit?

24 A. Correct. My belief is that I was not served with
25 that lawsuit until the very end because she was hoping at

1 the end we'd just turn it back over to her.

2 Q. Had she approached you about getting the equipment
3 back or coming back in?

4 A. She approached Laurie.

5 Q. And then -- and what was -- at that point in time,
6 had y'all agreed to sell it to somebody else?

7 A. We had just agreed that we were done completely, but
8 we weren't going to have anything to do with Wanda.

9 Q. Okay. Did the Greenwood -- were y'all directed by
10 the Greenwood Shrine Club not to have anything to do with
11 Wanda?

12 A. Greenwood Shrine Club directed us to fire her son
13 and also to get her out of the bingo and make sure she
14 did not come back.

15 Q. Okay.

16 MR. EPPS: Thank you, Your Honor. I have no
17 further questions.

18 THE COURT: Any recross?

19 MR. WELCH: No, sir, Your Honor.

20 THE COURT: All right. Thank you, Mr. Smith.
21 You can step down.

22 (WHEREUPON, Court's Exhibit Number 1 was marked for
23 identification only.)

24 THE COURT: Any additional witnesses, Mr. Epps?

25 MR. EPPS: Yes, sir. Your Honor.

1 THE COURT: Okay. How many do you anticipate
2 calling?

3 MR. EPPS: Your Honor, if we could we take a
4 short break, I may just ---

5 THE COURT: I'm going to break for lunch. I
6 just want to know how much we've got because I need to
7 let all of the court personnel go to lunch. I just want
8 to know how much longer we have after.

9 MR. EPPS: I'm not going to have much longer,
10 Your Honor. I've got, maybe -- they should be fairly
11 short. And as matter of fact, I'm going to try to just
12 -- I may can get done with one witness and keep it fairly
13 short.

14 THE COURT: Okay. All right. Well, let's see.
15 Right now it's twenty minutes to one. Let's come back at
16 two o'clock and finish up testimony and presentation of
17 evidence. Okay?

18 MR. EPPS: Okay.

19 THE COURT: Good enough.

20 (WHEREUPON, court stood at recess for a lunch
21 break.)

22 THE COURT: Ladies and gentlemen, good
23 afternoon. All right. Mr. Epps, I believe it's your
24 case, sir. You may call your next witness.

25 MR. EPPS: Yes, sir. Thank you, Your Honor.

1 THE COURT: Yes, sir.

2 MR. EPPS: May it please the Court. We call
3 Summer McAuley.

4 (WHEREUPON, the witness was duly sworn.)

5 MR. EPPS: May it please the Court?

6 THE COURT: Yes, sir.

7 **SUMMER MCAULEY,**

8 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

9 DIRECT EXAMINATION

10 BY MR. EPPS:

11 Q. Ms. McAuley, how are you?

12 A. Fine. How are you?

13 Q. Can you tell the Court -- are you employed Ms.
14 McAuley?

15 A. No.

16 Q. You're not employed. Did you previously work for
17 Wanda Gambrell?

18 A. Yes.

19 Q. Okay. Was that Ma Cat's Bingo?

20 A. Yes.

21 Q. And what time -- what years or how long did you work
22 for Ma Cat's Bingo?

23 A. I think it was 2010 or 2011 when I worked there.

24 Q. Okay. And you worked with her through the bingo
25 becoming Fun City Bingo; is that correct?

- 1 A. Yes.
- 2 Q. And then you continued to work for Christopher Smith
- 3 for that bingo; is that right?
- 4 A. Yes.
- 5 Q. And you worked -- you were employed there at Fun
- 6 City Bingo until they closed the doors; is that correct?
- 7 A. Yes, sir.
- 8 Q. And they were open -- were they open about eleven
- 9 months?
- 10 A. Yes.
- 11 Q. And what were your duties? What did you do in your
- 12 course of your employment with Ma Cat's Bingo?
- 13 A. I would count sheets and help her count the money
- 14 and help her sell the program packs at the door.
- 15 Q. And help her do what?
- 16 A. Sell the program packs at the door.
- 17 Q. Okay. And did you do -- did you have the same
- 18 duties and obligations with Fun City Bingo that you did
- 19 with Wanda Gambrell's bingo?
- 20 A. I did more. I did the money and the sheets.
- 21 Q. Okay. For Fun City Bingo; is that correct?
- 22 A. Yes.
- 23 Q. Okay. There's been a lot of testimony had in this
- 24 case so far. When you worked for Ma Cat's Bingo, there
- 25 were video games of chance in that place of business; is

- 1 that correct?
- 2 A. Yes, sir.
- 3 Q. Okay. And were they in there a significant amount
- 4 of time?
- 5 A. They were in there for a year or so at least. I
- 6 don't remember how long exactly.
- 7 Q. Okay. They were in there for a year or more?
- 8 A. Yes, sir.
- 9 Q. And Wanda knew they were in there; correct?
- 10 A. Yes.
- 11 Q. Did you assist with Wanda -- did Wanda derive profit
- 12 from those machines every night?
- 13 A. Yes.
- 14 Q. Okay. And did you -- did she -- did you physically
- 15 see her get the money from those machines?
- 16 A. She emptied them out nightly, yes, sir.
- 17 Q. Did she have knowledge and understanding that she
- 18 was not supposed to have those machines in there?
- 19 MR. WELCH: Your Honor, I object. Her
- 20 testimony was she called the Department of Revenue.
- 21 THE COURT: All right. All right. I don't
- 22 know that she can testify as to her knowledge one way or
- 23 the other. I'll tell you what, though. Since this is
- 24 non-jury, I'll let you ask your question. Go ahead.
- 25 MR. EPPS: Yes, sir. Thank you, Your Honor.

1 Q. Did you ever have a conversation with Wanda Gambrell
2 about the legality of those machines?

3 A. No, sir.

4 Q. Okay. But she knew they were in there to derive a
5 profit from; correct?

6 A. Yes.

7 Q. Okay. Did you also assist in keeping the nightly --
8 you call them run sheets?

9 A. Yes, sir.

10 Q. Okay. And what -- explain what is a run sheet?

11 A. The run sheets keep up with the total of sales each
12 bingo. It keeps up with the money that the game brings
13 in.

14 Q. Okay. And were there times when Wanda erased or
15 modified or did something with the run sheets?

16 A. Yes, sir.

17 Q. Okay. And explain to the Court how so.

18 A. If we were really busy and she was going over the
19 limit, she would take that money off and put it on
20 another sheet for another night.

21 Q. Were there times when -- so she took -- okay. Were
22 there times when she took money off and did not put it on
23 another sheet?

24 A. No, sir.

25 Q. Okay. All right. And there were also house

1 players; is that right?

2 A. Yes, sir.

3 Q. And what is a house player?

4 A. Somebody that plays for her.

5 Q. Okay. And there were people that played for her.

6 And if they won, then they would divide the proceeds and
7 winnings; is that correct?

8 A. Yes, sir.

9 Q. Okay. And what were the names of these people?

10 A. There's Gary, Mary, Ramona. There was another.

11 Edward and sometimes Lisa and J.D. and Tammy.

12 Q. Okay. And she also had a book that she wrote in
13 people who borrowed or played that owed her money; is
14 that correct?

15 A. Yes, sir.

16 Q. Okay. Explain to the Court that.

17 A. They would want to play Bingo, but they didn't have
18 any money. So she would let them play and then pay her
19 later. Or if they won money, she would just take it out
20 of their winnings.

21 Q. Okay. All right. Now, you continued working for
22 Fun City Bingo. Did Wanda approach you prior to Cass and
23 Wanda entering into that contract -- were you approached,
24 or did you have any conversations with Wanda about
25 purchasing or buying that bingo?

1 A. Did I?

2 Q. Yes.

3 A. We had talked about Tammy and J.D. were interested
4 in it, but didn't really know how to run it. And that
5 was discussed, for me to go in with them.

6 Q. Okay. For you to go in with them; is that correct?

7 A. Yes, sir.

8 Q. And what was the discussion? What was going to be
9 bought?

10 A. The bingo.

11 Q. The bingo. Did she ever specify just the equipment,
12 or was it the bingo?

13 A. It wasn't discussed in great detail. I just assumed
14 it was the bingo.

15 Q. Okay. When you say the bingo, what do you mean by
16 bingo?

17 A. The business.

18 Q. The business? And when you say the business, what
19 do you mean by business?

20 A. The clients. You get all the clientele. You get
21 the mailing list, the -- every piece of equipment in the
22 bingo.

23 Q. Okay. So it wasn't just specifically the equipment
24 or the fixtures in that building; is that correct?

25 A. No.

- 1 Q. Okay. And to your knowledge, the Greenwood Shrine
2 Club didn't come into that place of business; is that
3 correct?
- 4 A. I saw them in there one time.
- 5 Q. One time out of how many years did you work there?
- 6 A. Three.
- 7 Q. Now, Mr. Smith kept most of the same employees with
8 Fun City Bingo that worked with Ma Cat's Bingo; right?
- 9 A. Yes, sir.
- 10 Q. Okay. What changes were made when Cass or Mr. Smith
11 came in?
- 12 A. He got rid of the machines. He tried to do
13 everything the right way. He didn't go over the limit
14 and have house players.
- 15 Q. Okay. So those stopped; right?
- 16 A. Yes.
- 17 Q. Did people leave as a result of that?
- 18 A. Yes.
- 19 Q. Okay. And did Wanda play? She was in -- was she in
20 there pretty much every night playing bingo herself?
- 21 A. Well, right after they sold -- right after she sold
22 it to them, she was.
- 23 Q. Okay. And did she talk bad about the way Fun City
24 Bingo was being run, or did she run -- did she say
25 derogatory things regarding Mr. Smith or anybody else

1 employed with Fun City Bingo?

2 A. Yes.

3 Q. She did? What happened? Can you explain to the
4 Court that statement?

5 A. Customers would tell me things that she said.

6 MR. WELCH: I object, Your Honor. Hearsay.

7 THE COURT: Okay. I sustain. Hearsay.

8 Q. What would Wanda say about Fun City Bingo?

9 A. She said that we didn't know what we were doing.

10 Q. Okay. And she would tell other individuals that
11 statement?

12 A. She would be complaining, and others around her
13 would hear it.

14 Q. Okay. Do you think that affected Fun City Bingo?

15 A. Yes, I do.

16 Q. Okay. Were you -- were there some individuals was
17 -- did -- let me ask you this. Why did Wanda eventually
18 stop coming -- Ms. Gambrell stopped coming to Fun City
19 Bingo; right?

20 A. Yes.

21 Q. Do you know the reason why she stopped coming?

22 A. I think she was asked to stop coming.

23 Q. Okay. And when she left, did she take individuals
24 or players or people with her?

25 A. Yes. People that -- some of the people that she had

1 let play in there, they stopped coming.

2 Q. Okay. Do you think her -- do you think -- number
3 one, do you think that once -- is it your testimony that
4 once Fun City Bingo came in, the aspects of the video
5 games, house players, going over the limit, all of that
6 stopped; right?

7 A. Yes, sir.

8 Q. That affected their business?

9 A. Yes, sir.

10 Q. That effected the bingo business; right?

11 A. (Nodded head up and down in the affirmative)

12 Q. Okay. Also, do you -- is it the statements of Wanda
13 saying bad things or downgrading Fun City Bingo -- do you
14 think that affected their bingo business negatively?

15 A. Yes, sir.

16 Q. Okay. Do you have any knowledge that during the
17 time that you worked for Ma Cat's Bingo, were the
18 machines -- did law enforcement or the Department of
19 Revenue come in to check Ma Cat's Bingo while you were
20 there?

21 A. I cannot remember if they came in when we had the
22 machines or not.

23 Q. Were there times when the machines were moved out
24 for a limited period of time and put back in?

25 A. Yes, sir.

1 Q. Okay. And why were they moved out and put back in?

2 A. Something about that they could be illegal, and she
3 wasn't sure or something. I'm not sure. But she had
4 them removed.

5 Q. But they came back in?

6 A. Yes, sir.

7 Q. All right. Thank you, Ms. McAuley. Please answer
8 any questions opposing counsel may have.

9 CROSS-EXAMINATION

10 BY MR. WELCH:

11 Q. Ms. McAuley, what was your job at Ma Cat's Bingo?

12 A. When I first started, I called some. And I did
13 running. And then after a while, she put me behind the
14 counter with her to count sheets and help do the door and
15 count money.

16 Q. And Ms. Gambrell managed the facility?

17 A. Yes, sir.

18 Q. She was there nightly?

19 A. Yes, sir.

20 Q. Did you ever help with payroll?

21 A. Did I ever what with payroll?

22 Q. Yes, ma'am. Get payroll together?

23 A. I just wrote people's hours on the time sheet.

24 That's all I did.

25 Q. Okay. And she had hours on the time sheet; correct?

1 A. She had what?

2 Q. Hours on the time sheet?

3 A. Her personally?

4 Q. Yes, ma'am. She got paid to manage the business,
5 didn't she? She got a check?

6 A. I never saw her name on the payroll.

7 Q. And then when she sold the business, who began
8 managing the business?

9 A. I did.

10 Q. Who did?

11 A. I did.

12 Q. You did? How much were you making when you worked
13 for Ma Cat's Bingo on that weekly basis?

14 A. Making a week?

15 Q. Yes, ma'am.

16 A. I want to say three hundred, but I'm not sure if
17 that's correct or not.

18 Q. And how much were you making managing the business?

19 A. With Fun City?

20 Q. Yes, ma'am.

21 A. Six something.

22 Q. So you kind of got double income. In other words,
23 you doubled your income by becoming manager?

24 A. Yes, sir.

25 Q. And Mr. Smith wasn't acting as manager, was he? He

1 wasn't acting as manager, was he?

2 A. No.

3 Q. He didn't really know much about the business, did
4 he?

5 A. No, sir.

6 Q. In fact, he could have been manager and taken some
7 of that salary, but he let you make more; correct?

8 A. Yes, sir.

9 Q. And did you hire some other employees?

10 A. Did he hire some?

11 Q. Yes, ma'am.

12 A. Some employees left, so he replaced them.

13 Q. Right. And as you went through with the business, I
14 believe his testimony was that after the first month, he
15 was in there maybe five hours a week?

16 A. Yes. Yes, sir.

17 Q. So it was up to -- who did the promotions? Who
18 decided to send out fliers and stuff?

19 A. We all kind of collaborated on that and decided when
20 it needed to be done.

21 Q. And how frequently did you send out fliers?

22 A. Not very often.

23 Q. Not very often, did you?

24 A. No.

25 Q. Did you ever run any kind of special promotions?

1 A. We did. We tried to do dollar packs. We had pizza
2 nights some nights. People brought in pizzas for the
3 customers to try to get them in there.

4 Q. But in terms of promotions and stuff, people liked
5 Wanda and her personality and that type thing when she
6 was running the bingo?

7 A. Yes, they did.

8 Q. Now, ma'am, on the weekend, you guys could have a
9 hundred and fifty, two hundred people there, couldn't
10 you, ma'am, when Ms. Gambrell was running it?

11 A. Yes, we did.

12 Q. Okay.

13 A. It was normally at the beginning of the month.

14 Q. Okay. People got checks?

15 A. Yes.

16 Q. And on those nights -- now, Ms. Gambrell's testified
17 about two or three people that she kept tabs on in terms
18 of letting them pay and then when they got their check at
19 the beginning of the month -- play -- excuse me -- and
20 they got their check at the beginning of the month?

21 A. Yes.

22 Q. Is that right?

23 A. Yes, sir.

24 Q. Okay. And then you talked about the house players.

25 You call them house players. You named Jerry, Mary,

- 1 Ramona, Edward, Lisa, J.D., and Tammy?
- 2 A. Yes, sir.
- 3 Q. Now, you were looking at buying it with J.D. and
- 4 Tammy; right?
- 5 A. Yes, sir.
- 6 Q. Okay. But none of those people, they weren't
- 7 usually there at night, were they?
- 8 A. No not all of them, no, sir.
- 9 Q. And so if you look at two or three of those people a
- 10 night and maybe one or two at the end of the month of
- 11 those what you call house players, that's actually about
- 12 -- maybe on a weekend night with two hundred if you've
- 13 got five -- that's like less than a percent. That's not
- 14 very many in terms of the total people that play, is it?
- 15 A. Right.
- 16 Q. And, in fact, in terms of the revenues or incomes or
- 17 whatever, that didn't really affect the revenues that
- 18 much, did it?
- 19 A. No.
- 20 Q. Okay. Ma'am, are you aware that Ms. Gambrell
- 21 testified that she talked to a gentleman at the
- 22 Department of Revenue, John Clark, about those machines?
- 23 A. Am I aware?
- 24 Q. Yes, ma'am.
- 25 A. I have no knowledge of who she talked to.

1 Q. Okay. But some of those machines actually were --

2 people were -- maybe they're legal, maybe they're not.

3 There was a lot of that discussion going on, wasn't it?

4 A. Yeah. A lot of questions about whether they were or
5 not.

6 Q. And, ma'am, in terms of the -- you say you think
7 Wanda was asked to stop coming; is that right?

8 A. Yes, sir.

9 Q. Because you don't know for sure?

10 A. I don't know.

11 Q. No. In fact, ma'am, part of what Wanda was saying
12 to you and other people was asking you why you were not
13 doing some things to help pick up the business. Isn't
14 that true?

15 A. Say that one more time.

16 Q. Wanda was making suggestions on some of the stuff to
17 you as to why you're not doing some other things to
18 increase the business, to get the business better. Isn't
19 that true?

20 A. She did at the beginning.

21 Q. And, in fact, ma'am, some of the new employees, you
22 had some complaints about them being rude, didn't you?

23 A. Yes, sir.

24 Q. And some people didn't like some of those new
25 employees, did they?

1 A. Yes, sir.

2 Q. But y'all kept most of them, didn't you?

3 A. Yes, sir.

4 MR. WELCH: I don't have any further questions.

5 THE COURT: Redirect?

6 REDIRECT EXAMINATION

7 BY MR. EPPS:

8 Q. Ms. McAuley, a lot of people liked coming to Ma
9 Cat's Bingo because they could play late games; is that
10 right?

11 A. Yes, sir.

12 Q. A lot of people liked coming to Ma Cat's Bingo so
13 they could play those video games, those games of chance?

14 A. Some of them did.

15 Q. Okay. And those games paid out; right?

16 A. Yes, sir.

17 Q. And you saw Wanda took a cut of that every night;
18 right?

19 A. Yes, sir.

20 Q. Also, people came in and they played -- they played
21 on credit so to speak; is that right?

22 A. Yes, sir.

23 Q. And y'all stayed -- let me ask you this. Did that
24 operation -- did Ma Cat's Bingo stay late -- open later
25 than two a.m. in the morning?

1 A. No, sir.

2 Q. They never play -- stayed -- people never stayed
3 late playing the video games?

4 A. They did stay late for the video games.

5 Q. Okay. So there were people there past -- they went
6 early into the morning hours after two a.m.?

7 A. Some might.

8 Q. Okay. All right.

9 MR. EPPS: Thank you, Your Honor. No further
10 questions.

11 MR. WELCH: I don't have any further questions,
12 Your Honor.

13 THE COURT: Okay. Thank you, ma'am. I
14 appreciate your being here. Have a good day.

15 MR. EPPS: May she be excused, Your Honor?

16 THE COURT: Sure.

17 MR. WELCH: No objection.

18 THE COURT: Okay. You may call your next
19 witness.

20 MR. EPPS: Yes, sir, Your Honor. Your Honor,
21 we would call Hope McCullough.

22 HOPE MCCULLOUGH,

23 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

24 DIRECT EXAMINATION

25 BY MR. EPPS:

- 1 Q. Ms. McCullough, how are you?
- 2 A. Good. How are you?
- 3 Q. Good. Ms. McCullough, where do you reside?
- 4 A. Where do I live?
- 5 Q. Where do you live, yes, ma'am?
- 6 A. 113 Big Creek Lane, Piedmont, South Carolina.
- 7 Q. Okay. Are you employed?
- 8 A. Yes.
- 9 Q. Were you previously employed at Ma Cat's Bingo?
- 10 A. Yes.
- 11 Q. Okay. And when were you employed at Ma Cat's Bingo?
- 12 A. June of 2013 to May 2014.
- 13 Q. All right. June of 2013 to May of 2014?
- 14 A. Yes.
- 15 Q. Okay. And after that, did you also go -- were you
- 16 also employed at Fun City Bingo?
- 17 A. I was with Fun City Bingo from June of '13 to May of
- 18 '14.
- 19 Q. Through May of '14?
- 20 A. Right.
- 21 Q. That's when they closed the doors; is that correct?
- 22 A. Right.
- 23 Q. Okay. And what were your duties? What did you do
- 24 at Ma Cat's Bingo?
- 25 A. When I was employed, I was in the bingo. I ran the

1 snack bar inside of Ma Cat's. It didn't become part of
2 Fun City Bingo until June of 2013.

3 Q. Okay. And what did you do at Fun City Bingo in June
4 of 2013?

5 A. I ran the door.

6 Q. You ran the door?

7 A. Yes.

8 Q. Okay. And tell the Court about the snack bar.

9 While you were working for Ma Cat's Bingo, is that what
10 you -- you just ran the snack bar; is that correct?

11 A. I ran the snack bar, yes, sir. We paid six hundred
12 dollars a month for the snack bar.

13 Q. Okay. So you paid Wanda six hundred dollars a month
14 to rent the snack bar; is that ---

15 A. Correct.

16 Q. Okay. And, also, they were -- there were video
17 games in that place of business; is that right?

18 A. Correct.

19 Q. Okay. What kind?

20 A. There was four of them sitting outside the snack bar
21 door.

22 Q. Okay. And did Wanda ever approach you and say
23 anything to you about those video games?

24 A. We were told that if the SLED or anyone come into
25 the facility to say that we were in control of the

- 1 machines. They had nothing to do with bingo.
- 2 Q. Okay. And that's what Wanda told you?
- 3 A. Yes.
- 4 Q. And she told you and who?
- 5 A. Kathryn Vaughn, yes.
- 6 Q. Okay. All right. And what did you -- what was your
- 7 response?
- 8 A. I wasn't taking the fall for any video poker
- 9 machines.
- 10 Q. And those machines cashed out; right?
- 11 A. Yes. The tickets. And they were to be taken to the
- 12 front to get cash money for.
- 13 Q. Okay. And did Wanda profit off those?
- 14 A. I'm pretty sure she did.
- 15 Q. Okay. And you also have knowledge of the book and
- 16 the pad regarding players paying on borrowed -- or
- 17 players playing on credit; is that right?
- 18 A. Right.
- 19 Q. And how do you know that?
- 20 A. It was found after the fact that Kathryn had took
- 21 control of the bingo.
- 22 Q. Now -- and did you -- was that bingo staying open --
- 23 did the bingo stay open past two a.m.? Did people stay
- 24 late?
- 25 A. They would stay late not playing bingo, but on the

1 machines. There would be some people there late.

2 Q. And that was past two a.m. and that's at Ma Cat's
3 Bingo?

4 A. Correct.

5 Q. Now, when you started working with Cass -- when Mr.
6 Smith came in, were those machines or video machines
7 taken out?

8 A. Yes. They were taken (phonic) out immediately. He
9 turned them around backwards so no one could play them,
10 and they were unplugged.

11 Q. Do you know if Mr. Smith contacted the Department of
12 Revenue about those machines?

13 A. I asked him what was going on with the machines.
14 And he said he had contacted the state, and the state
15 said they were illegal. So he turned them around facing
16 the wall and unplugged them so they could not be used.
17 And they came and took them out.

18 Q. Who took them out?

19 A. The people that owned them, the gaming company.

20 Q. Okay. So those machines were moved out; right?

21 A. Correct.

22 Q. And it was no more -- and it was -- there were --
23 did you have -- there were no more playing -- individuals
24 playing on credit or playing ---

25 A. All that stopped. There was no more credit for

1 packs or no one being able to choose or pick their packs
2 anymore once Cass took it over.

3 Q. How did that affect Fun City Bingo's business?

4 A. Well, if you have people that come in on a regular
5 basis that, you know, you got someone paying your way and
6 then that person getting the money back or at least half
7 of it, that person's going to benefit from it. But with
8 the legal way that it was done, you pay your five dollar
9 seat tax, you purchase your packs. You see what I'm
10 saying?

11 Q. Yes, ma'am.

12 A. That's the way it's supposed to be done.

13 Q. Okay. And that's the way it was done with Cass?

14 A. Correct.

15 Q. And that change -- do you think that change
16 certainly -- that affected his business negatively; is
17 that correct?

18 A. Correct.

19 Q. Do you think it was more than one percent of the
20 business that it affected?

21 A. Sure.

22 Q. And let me ask you this. Did you -- well, let me --
23 what else did -- was effort put in -- let me ask you, did
24 Cass -- did Mr. Smith or anybody else that was employed
25 at Fun City Bingo, what was some of the things they did

1 to try to get people through the door?

2 A. Like if you would purchase -- or after you purchased
3 your five dollar state tax ticket, they would -- you
4 would have -- your second pack would be for a dollar.
5 Where a lot of people would have two five-dollar packs or
6 a five-dollar and ten-dollar pack. That means they were
7 getting an incentive like him running a special other
8 than, you know, the program game. They would only be
9 paying eleven dollars to him versus they would be paying
10 eighteen or twenty-two dollars to him. So he was giving
11 them an incentive to come and play. There would be
12 pizza, free pizza nights on Tuesday nights. You know,
13 just different opportunities that we would be able to do.
14 Birthday night was on Thursday night. Everyone's
15 birthday within that week would be able to get a dollar
16 pack. And we would serve cupcakes or cakes to them for
17 that week of their birthday.

18 Q. So would you say there was certainly -- that
19 individuals worked hard at Fun City Bingo and made a
20 effort to continue on the business and to try to make it
21 work?

22 A. Yes.

23 Q. Okay. Was there any difference between the level of
24 work as far as promoting the game of Ma Cat's Bingo as
25 Fun City Bingo?

1 A. I think that things would have worked if things
2 hadn't ended up being as bitter as they were and people
3 blasting out Fun City, you know, because things wasn't
4 run they way they wanted it run.

5 Q. Okay. Well, a lot of stuff that was going on at Ma
6 Cat's Bingo shouldn't have been going on. Would you
7 agree with that?

8 A. Correct.

9 Q. Okay. Some things were illegal; is that correct?

10 A. Correct.

11 Q. Okay. So when Fun City got back in, all of that was
12 cleaned up; right?

13 A. Correct.

14 Q. Okay. And when you said -- you just testified that
15 a lot of -- who was talking bad about Fun City Bingo?

16 A. Wanda Gambrell was one of them and a little -- like
17 a couple of her other friends were just downgrading the
18 bingo.

19 Q. Okay. Was she ever rude to you?

20 A. Yes.

21 Q. And how so?

22 A. One night we were short of runners, and I believe
23 there was only two of us. And we were trying to rotate
24 the best we could. And she was just loudly saying rude
25 things to me and another worker.

1 Q. Okay. Was her son asked to -- did her son work
2 there?

3 A. Yes.

4 Q. Was his name Michael Gambrell?

5 A. Yes.

6 Q. Okay. Was he terminated?

7 A. Yes.

8 Q. Okay. How did he act? Did he act disruptive?

9 A. Yes.

10 Q. Okay. And how so?

11 A. He was -- he and his girlfriend got into it. He was
12 kicking the chairs and stuff in the bingo. And he would
13 holler out and curse her and call her names. That's a
14 disruption to the game.

15 Q. Okay. And when he was terminated, did Wanda leave
16 at that time?

17 A. Yes.

18 Q. Okay. Did she take her players or friends with her?

19 A. I think she -- Wanda didn't take her players with
20 her until after the fact that Wanda was asked not to come
21 back to Fun City Bingo for a disruption between her and
22 Cass and Laurie.

23 Q. All right. Thank you, Ms. McCullough. Please
24 answer any questions opposing counsel or the Court may
25 have.

1 CROSS-EXAMINATION

2 BY MR. WELCH:

3 Q. Ma'am, were you present to some incident that took
4 place where Ms. Gambrell was asked to leave and not come
5 back to Fun City?

6 A. Yes. I was there the night that she was disruptive.

7 Q. And you heard -- who told her not to come back that
8 you personally heard tell her that?

9 A. Well, someone said that she ---

10 Q. No, I'm not asking what someone said. Who did you
11 personally hear tell Ms. Gambrell not to come back?

12 A. I did not personally hear that, sir.

13 Q. So basically, you aren't a witness to any of that.
14 You just know what somebody told you; right?

15 A. Correct.

16 Q. Do you pay rent on the canteen? Did you pay rent to
17 Fun City Bingo?

18 A. No. It had got to the point we couldn't pay the
19 rent every month.

20 Q. Okay. So did you still sell stuff out of the
21 canteen?

22 A. I was in the snack bar when Fun City took place. I
23 came to work for Fun City at that point in time.

24 Q But you had the ability to pay rent when Ma's Bingo
25 was running; right?

1 A. Correct.

2 Q. You had the funds at that time?

3 A. Correct.

4 Q. And there's been testimony on a good night you'd
5 have two hundred people there? Two hundred players?

6 A. It could have been. Even when Cass and them were
7 there, we had some good nights at the very beginning.

8 Q. And, in fact, the testimony was that there was only
9 two or three people that toward the end of the month
10 sometime would play on credit. And that was the

11 testimony. And there was testimony that some of the ones
12 that she paid and split that there was very seldom more
13 than a couple in there any night?

14 A. There were more than a couple.

15 Q. That was the testimony. So out of two hundred
16 people, you're saying those five or six made a big
17 difference in terms of the revenue?

18 A. I'm not saying they were making a huge turn.

19 Q. Huh? You just didn't want them to come? Isn't it
20 true? That's not -- five or six people out of two
21 hundred is not that much difference in the revenue; is
22 it?

23 A. No.

24 Q. In fact, ma'am, you don't like Wanda very much, do
25 you?

1 A. I was sad when Wanda left the bingo. To be honest
2 with you, I cried. I'm probably one of the only workers
3 that did cry.

4 Q. And, in fact, ma'am, who managed the bingo once Cass
5 took it over?

6 A. Summer. I'm not sure. I don't know how to say
7 Summer's last name.

8 Q. And, in fact, Cass was seldom ever there, wasn't he?

9 A. Cass was there only a very few times.

10 Q. Okay.

11 MR. WELCH: I don't have any further questions.

12 THE COURT: Redirect?

13 REDIRECT EXAMINATION

14 BY MR. EPPS:

15 Q. Ms. McCullough, there was more than a couple house
16 players; right?

17 A. I would say there was like six or seven house
18 players on a nightly basis.

19 Q. On a nightly basis; is that correct?

20 A. Correct.

21 Q. Okay. And there were individuals that would play
22 bingo, and then they'd alternate between playing the
23 video games and the bingo; is that right?

24 A. Yes. They would -- like intermission time or
25 whatever, they'd leave their table and go play the

1 machines.

2 Q. Okay. And were those machines full pretty much
3 every night?

4 A. There would be some nights they wouldn't nobody play
5 them, but there were some people on there, maybe one or
6 two people. I can't say they were full every night.

7 Q. But they were full a good many nights; is that
8 right?

9 A. Yes.

10 Q. Okay. All right. And that would certainly have an
11 effect on the business if that's taken out? You saw a
12 difference in Fun City Bingo as Ma Cat's Bingo after Cass
13 got in -- Mr. Smith got in to the bingo business?

14 A. As far as clientele?

15 Q. Yes.

16 A. Yes.

17 MR. EPPS: Thank you, Your Honor. No further
18 questions.

19 MR. WELCH: I don't have any further questions.

20 THE COURT: Thank you, ma'am. I appreciate
21 your being here.

22 THE WITNESS: You're welcome.

23 THE COURT: Have a great day.

24 Mr. Epps, any additional witnesses, sir?

25 MR. EPPS: Your Honor, we call Mr. Ben Gentry.

1 THE COURT: Gentry?

2 MR. EPPS: Yes, sir.

3 MR. WELCH: Your Honor, I know it's a judge
4 case not a jury case, but there's -- I understand the
5 points that he wants to make, and so I'm hoping these
6 witnesses aren't going to be redundant.

7 THE COURT: You only have one more, don't you?

8 MR. EPPS: That's it, Your Honor. Well, I have
9 Mr. Gentry who's going to be fairly quick, and then Ms.
10 Laurie Capell. She's going to be fairly quick as well.
11 And then we'll be finished, Your Honor.

12 THE COURT: Okay.

13 (WHEREUPON, the witness was duly sworn.)

14 MR. EPPS: May it please the Court.

15 THE COURT: Yes, sir.

16 **BEN GENTRY,**

17 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

18 DIRECT EXAMINATION

19 BY MR. EPPS:

20 Q. Mr. Gentry, how are you?

21 A. All right, sir.

22 Q. Mr. Gentry, are you employed?

23 A. I'm self-employed right now, sir.

24 Q. Okay. You're self-employed. Did you previously
25 work for Wanda Gambrell and Ma Cat's Bingo?

1 A. Yes, sir.

2 Q. Okay. And when did you start working for Wanda
3 Gambrell?

4 A. I'm sorry. I can't give you an exact date. I'm
5 going to say it was 2012 sometime.

6 Q. 2012?

7 A. Yes, sir.

8 Q. Okay. And did you subsequently continue working
9 with Christopher or Cass Smith at Fun City Bingo?

10 A. Yes, sir.

11 Q. What did you do at Ma Cat's Bingo?

12 A. I did a variety of things. I called games, sold
13 sheets, paid winners, counted sheets, sold packs.

14 Q. Okay. And there's been testimony -- you certainly
15 know about the video machines in the business; right?

16 A. Yes, sir.

17 Q. Okay. Was there a time when -- to your knowledge,
18 Wanda knew what those machines were; is that right?

19 A. To my knowledge, yes, sir.

20 Q. Okay. She asked you to remove those machines when
21 the Department of Revenue or law enforcement or SLED were
22 coming in one day?

23 A. She did not ask me to remove them, but she did say
24 they were had to be removed because she heard that SLED
25 was in town.

- 1 Q. Okay. So did you remove them?
- 2 A. I did not remove them myself, no, sir.
- 3 Q. Okay. Were they removed for a period of time?
- 4 A. Yes, they was.
- 5 Q. Were they put back in?
- 6 A. Yes, they was.
- 7 Q. When were they put back in?
- 8 A. Like a few days following after their removal.
- 9 Q. Okay. And you had knowledge of the house players;
- 10 right?
- 11 A. Yes, sir.
- 12 Q. And you had knowledge -- and you had direct
- 13 knowledge of individuals playing for free and splitting
- 14 the winnings, if any, with Wanda Gambrell?
- 15 A. Yes, sir.
- 16 Q. Okay. And you have direct knowledge of the
- 17 individuals playing on credit?
- 18 A. Yes, sir.
- 19 Q. Okay. Now, all of that -- and you have knowledge of
- 20 -- obviously, people were there after two a.m. in the
- 21 morning; is that right?
- 22 A. Yes, sir.
- 23 Q. Okay. Did you ever have discussions with Wanda
- 24 Gambrell about somebody -- her trying to sell the
- 25 business, sell the bingo business?

1 A. Discussion as to her saying that, yes, she was
2 looking to sell the bingo because she was ready to
3 retire?

4 Q. Yes. Okay. You heard her say that? You had a
5 conversation with her regarding that?

6 A. I was involved in a conversation about that, yes,
7 sir.

8 Q. Okay. Did she approach you or did you have a
9 discussion with her about purchasing the business?

10 A. No, sir, not me.

11 Q. When she said she was ready to retire and she was
12 going to sell the bingo business, what was discussed --
13 were there any specifics about what the business was?

14 A. No, sir.

15 Q. Okay. Was there any talk about it's limited only to
16 furniture and fixtures or equipment in the building?

17 A. No, sir.

18 Q. There was just talk that she was ready to retire and
19 she wanted to sell the business; right?

20 A. Yes, sir.

21 Q. Okay. And when Cass took over, what did you -- what
22 did you -- what were your duties with Fun City Bingo when
23 you were employed at Fun City Bingo?

24 A. Much of the same. Calling, selling sheets, selling
25 packs to play, counting sheets, inventory, stuff like

1 that.

2 Q. And the machines got taken out; right?

3 A. Yes, sir.

4 Q. Okay. And there were no more house players, so to
5 speak; right?

6 A. Correct.

7 Q. Okay. And nobody was -- and the staff or Cass -- or
8 Mr. Smith or anybody, nobody was splitting winnings with
9 players; is that correct?

10 A. That's correct, sir. When they took over, they said
11 there would be none of that.

12 Q. Okay. Did you see a difference in the level of play
13 and the level of business?

14 A. Yes, sir.

15 Q. Okay. Did you see any -- did you see Cass or the
16 employees with Fun City Bingo making attempts to market,
17 to promote the game and do the game the right way?

18 A. Yes, sir.

19 Q. Okay. By not having those things go on at Fun City
20 Bingo that were going on at Ma Cat's Bingo, did it have a
21 pretty significant effect ---

22 MR. WELCH: Your Honor, I'm going to object to
23 leading the witness.

24 THE COURT: All right. Overruled.

25 Keep going.

1 Q. Did it have a significant effect on Fun City Bingo?

2 A. I would say it did have an effect on it, yes, sir.

3 Q. Okay. And has it -- would it affect -- it's
4 certainly going to affect -- and you also have knowledge
5 of Ms. Gambrell erasing parts of run sheets or modifying
6 or doing things to the run sheets; is that right?

7 A. Yes, sir.

8 Q. Okay. And what did you see?

9 A. Well, I seen her erasing a few lines of what was
10 wrote down.

11 Q. What's the significance of that?

12 A. The significance of that is that it's not showing
13 what is being sold and not showing what is actually being
14 brought in money-wise.

15 Q. Any time when -- now, it was said and it was
16 testified that that was put on a slow night. Any time
17 there was ever -- were there any -- was there any time
18 there was an issue or commotion regarding a copy of any
19 document or monies that were ...

20 A. Well, one night there was -- the sheet that I was
21 referring to got lost. She couldn't find it. So she had
22 the employees looking for it.

23 Q. Okay. What was lost?

24 A. The sheet that had what was overages on it.

25 Q. Okay. And that was overages that she took off the

1 run sheet; is that right?

2 A. That would have been took off, yes, sir.

3 Q. Okay. All right. And, again, that wasn't going on
4 with Cass and Fun City Bingo; right?

5 A. Correct.

6 Q. Okay. All right. Mr. Gentry ...

7 MR. EPPS: Thank you, Your Honor.

8 Q. ... I have no further questions. Please answer any
9 questions opposing counsel or the Court may have.

10 A. Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. WELCH:

13 Q. Mr. Gentry, you say a sheet was lost one night, and
14 she had employees looking for it?

15 A. Yes, sir.

16 Q. And for all you know, the sheet could have been
17 lost?

18 A. Yeah. The sheet could have been lost, yes, sir.

19 Q. And, in fact, sir, when you got together to talk
20 about all of this, y'all started kind of reminiscing
21 about some of the things and sharing stuff, didn't you?

22 A. Exactly what are you referring to there?

23 Q. Well, you and the other employees and stuff. I
24 mean, y'all started talking about things and kind of
25 sharing stuff, didn't you?

1 A. No, sir. This is my own knowledge here. I bring it
2 up myself.

3 Q. Well, I understand that. But you talked to the
4 other employees about it too, didn't you?

5 A. Today, yes, sir.

6 Q. In fact, sir -- how much did you make when you were
7 working for Ma's Bingo?

8 A. I believe it was eight or eight-fifty an hour.

9 Q. And how much did you make with Cass?

10 A. I believe my final pay was eleven dollars and ten
11 cents.

12 Q. So you got more money working for Cass, didn't you?

13 A. Yes, sir. I was one of the lowest-paid employees
14 that Cass had.

15 Q. But, in fact, a lot of people got more money with
16 Cass, didn't they, than they did at Ma's?

17 A. I believe so, yes, sir.

18 Q. Yes, sir. In fact, you didn't see Cass around very
19 much, did you?

20 A. Did not see Cass around a lot, no, sir.

21 Q. Okay.

22 MR. WELCH: I don't have any further questions.

23 THE COURT: Redirect?

24 MR. EPPS: No, I have no redirect, Your Honor.

25 THE COURT: Thank you, sir. I appreciate you

1 being here.

2 MR. EPPS: May Mr. Gentry be excused?

3 THE COURT: Yes, sir.

4 MR. EPPS: Thank you.

5 THE COURT: All right. Call your next witness,
6 sir.

7 MR. EPPS: Yes, sir, Your Honor. We call --
8 the defendant calls Ms. Laurie Capell.

9 (WHEREUPON, the witness was duly sworn.)

10 MR. EPPS: May it please the Court.

11 THE COURT: Yes, sir.

12 **LAURIE CAPELL,**

13 BEING FIRST DULY SWORN, TESTIFIED AS FOLLOWS:

14 DIRECT EXAMINATION

15 BY MR. EPPS:

16 Q. Ms. Capell, how are you?

17 A. I'm good.

18 Q. Ms. Capell, where do you -- do you live in Anderson
19 County?

20 A. Yes.

21 Q. Okay. And how do you know Mr. Smith, Cass --
22 Christopher Smith?

23 A. I work in a bar, and he used to come into that bar.
24 It's the McAuley Sports Bar. That's how we met. And
25 then I previously worked for him briefly when the

1 sweepstakes machines came out until we closed.

2 Q. Okay. And how do you know Ms. Wanda Gambrell?

3 A. From the bingo.

4 Q. Okay. From Bingo. Did you know Ms. Gambrell prior
5 to the beginning of 2013?

6 A. No.

7 Q. Okay. How did you -- did you invest -- let me ask
8 you, did you invest monies in Ma Cat's Bingo on the
9 agreement that Cass and Wanda Gambrell ...

10 A. Yes.

11 Q. You did?

12 A. Yes.

13 Q. And I'm going to show you what's been marked as
14 Plaintiff's 1. Are you familiar with that contract?

15 A. Yes. I've seen this.

16 Q. You're familiar with that. Okay.

17 A. I am, yes.

18 Q. And ten thousand dollars was paid in February of
19 2013, and once Mr. Smith got his bingo license, a payment
20 of sixty-five thousand dollars was paid to Ms. Gambrell;
21 is that right?

22 A. Correct.

23 Q. Okay. Now, who invested or who put monies into ...

24 A. I put money in.

25 Q. Okay. You put the money in. How so?

1 A. Cass put down the first ten thousand dollars, but I
2 paid him back the ten thousand dollars. And once he got
3 his license, I gave William Gambrell the sixty-five
4 thousand.

5 Q. Okay. And how did you get that money?

6 A. It was me and my husband's 401k that we cashed out.

7 Q. Okay. Now, let me tell you -- tell me, why were you
8 -- and what was the reason that you gave Mr. Smith those
9 monies?

10 A. He had spoken with Wanda and had seen some
11 paperwork, thought it was a good investment to purchase
12 the business.

13 Q. Okay. And when you say you thought it was a good
14 investment, why did you think it was a good investment?

15 A. He told me even like there was guaranteed money to
16 be made, guaranteed. It was fool-proof.

17 Q. When you say guaranteed, what did he -- what did --
18 and who told you about guaranteed monies?

19 A. I remember one of the things was that we had a
20 contract with the Shriner's club and that they paid so
21 much money. And I don't remember the exact figures. But
22 then he said that plus she paid herself out three
23 thousand dollars a week payroll checks. That's what she
24 was paying herself. And that even if business was --
25 wasn't but half of that business, we were still

1 guaranteed certain amounts of money, that it would be
2 worth it as an investment.

3 Q And was -- and did you have knowledge of the -- once
4 he -- obviously, part of that contract was that Mr. Smith
5 was going to get his bingo license?

6 A. Yes. He was going do the license, and I was going
7 to be the investor.

8 Q. Okay. But you understood -- I mean, you understood
9 that the role of the Greenwood Shrine Club in the conduct
10 of the bingo -- did you understand their role?

11 A. I mean, I didn't understand -- I let him handle more
12 of the contracts and all that because I was the investor.
13 And I trusted him to make the decisions. He spoke with
14 me about all of it. I mean, if I had to sit here and
15 detail and tell each and every thing that was what -- I
16 just remember that it was guaranteed money. It was
17 guaranteed, and it was -- we even said sad we could pay
18 for the business in one year with the guaranteed money.

19 Q. And how many times did Cass meet with Wanda
20 regarding negotiating what you've got in front of you?

21 A. Approximately three times that I know of.

22 Q. Okay. So based on, I guess, what Cass told you
23 about what he and Wanda ---

24 MR. WELCH: Your Honor, I object. She didn't
25 say what him and Wanda discussed. I object. He's

1 leading her.

2 THE COURT: Okay. You may continue. I'm going
3 to overrule.

4 Q. Okay. Based on -- and you -- it's safe to say, you
5 were -- do you trust Cass?

6 A. Yes.

7 Q. Okay. And you had a relationship with Cass as far
8 as -- you know, business relationship with Cass; is that
9 right?

10 A. We had a business relationship.

11 Q. Okay. And you decided to invest money or take out
12 monies or provide monies to get into this bingo business;
13 is that correct?

14 A. Yes; correct.

15 Q. Okay. And a lot of it -- did you let Cass, I guess,
16 let him take the lead or do the negotiating or talk or
17 discuss with Wanda the financial aspects?

18 A. Yes, that's correct. I would have handled all that.

19 Q. Okay. Now, and that contract says the business
20 known as Ma's Bingo; right?

21 A. Yes, the business.

22 Q. What did Cass and what did you believe that you were
23 getting out of this?

24 A. I believed I was buying the entire business.

25 Q. Okay. When you say entire business, what do you

1 mean?

2 A. The players, the -- all the equipment, the customer
3 base. She was going to train us, but give us the
4 knowledge to run a bingo. So it was the entire business
5 itself.

6 Q. And did you realize what was going on when Wanda was
7 running the business at Ma Cat's Bingo?

8 A. I didn't understand the whole bingo process, no. We
9 walked in and played several times, talked to the
10 customers. We were just trying to make sure that it was
11 true that that much money was being made. And to us,
12 when we walked in, we saw -- you know, we asked the
13 customers, "How many times you play here a week?" And
14 they would say five. So it looked like it's a good
15 business to get into.

16 Q. Okay. And plus you -- was Cass relying on some
17 monies from the Greenwood Shrine Club?

18 A. Oh, yes. The night we was there, we said, "If all
19 else fails, we've got -- we have guaranteed money coming
20 in.

21 Q. Okay. If you did not have a guarantee, did you --
22 if you did not have a guaranteed stream of money, would
23 you have invested your monies in this business?

24 A. No. I would not have cashed out our 401k and
25 invested it, no.

- 1 Q. Would Cass have entered into this agreement?
- 2 A. No, not without guaranteed money.
- 3 Q. Now -- and we're here because Wanda Gambrell sued
- 4 Cass Smith for twenty thousand dollars, so to speak?
- 5 A. Yes.
- 6 Q. Okay. And y'all -- the equipment -- and, now, she
- 7 claims, plaintiff claims, that that contract only related
- 8 to the equipment and fixtures inside that building?
- 9 A. No. I would not have paid that much money for
- 10 equipment. And that's a hundred thousand dollars for
- 11 equipment? No.
- 12 Q. And Cass -- did Cass ever tell you when you were
- 13 talking to him regarding investing these monies that this
- 14 is just for equipment?
- 15 A. No. It was a business we were purchasing, and we
- 16 would have it paid off in a year.
- 17 Q. All right. Now, y'all -- you -- well, Cass and you
- 18 subsequently sold that equipment; right?
- 19 A. Yes.
- 20 Q. Okay. And when did y'all sell that equipment?
- 21 A. May the 7th approximately. May 7th.
- 22 Q. May 7th. And how much did y'all sell that equipment
- 23 for?
- 24 A. Fifty thousand dollars.
- 25 Q. Okay. So y'all recouped -- you were able to recoup

1 fifty thousand of the eighty thousand dollars; right?

2 A. Yes. Yes.

3 Q. Okay. All right. So I guess arguably that this was

4 -- I mean, you know, Ma's claiming twenty thousand

5 dollars -- Cass Smith -- that on the counterclaims

6 there's thirty thousand dollars that he lost or that

7 y'all lost or -- so to speak; right?

8 A. Yes. I guess I lost.

9 Q. All right. Now, let me hand you -- was there a list

10 made up -- when y'all sold the equipment, okay, who did

11 you sell it to?

12 A. Ramone Ashley.

13 Q. Okay. And who is Ramone Ashley?

14 A. He owns Pop's Bingo. He owns several bingos.

15 Q. Was a list generated of the furniture and fixtures

16 and equipment in that?

17 A. Yes. They took an inventory of it.

18 Q. Can I -- can you identify that document, please?

19 A. Yes. This is the inventory of all the equipment in

20 building.

21 Q. Okay. Is that the in -- is that the same equipment

22 that was in there when Cass got his bingo license?

23 A. Everything is the same except we had chairs that we

24 put in.

25 Q. Okay. So how many more chairs did y'all put in?

- 1 A. Approximately eighty.
- 2 Q. Okay. So y'all -- so everything on this -- were
- 3 those folding metal chairs?
- 4 A. They were more like banquet chairs.
- 5 Q. Okay. White plastic chairs?
- 6 A. Well, we did -- you know what? Let me go back.
- 7 Once we brought in the banquet chairs, we did get rid of
- 8 a bunch of the folding metal chairs because they were
- 9 unsafe. And people were falling, so we threw away the
- 10 unsafe chairs.
- 11 Q. But for the most part -- for the most part, these
- 12 were the same -- this was the equipment ---
- 13 A. Yes.
- 14 Q. --- that was in the bingo business when Cass took
- 15 over; right?
- 16 A. Yes.
- 17 Q. Okay. And what did you -- did I ask you -- what did
- 18 you do -- what was your -- were you employed by Fun City
- 19 Bingo?
- 20 A. I mean, it started that I was an investor. In order
- 21 to pay yourself money, you had to be on the payroll.
- 22 That was the way bingo worked. In order to get your
- 23 money out of it, you had to be on the payroll. So I put
- 24 myself on the payroll. It was my job to kind of manage
- 25 after we got Summer to manage.

1 Q. Okay. And why did -- okay. Did you -- but you had
2 no background or knowledge or experience in bingo; is
3 that correct?

4 A. No. No. I'd never played bingo but just those two
5 times we played.

6 Q. How did you feel when you first started working?

7 A. It was overwhelming. I mean, it was just
8 overwhelming because it was a lot to learn. But as soon
9 as we got into the business, we knew that we had made a
10 mistake.

11 Q. Okay.

12 A. Thirty days in, we knew we'd made a mistake.

13 Q. And why did you believe that you'd made a mistake?

14 A. Because people -- we were led to believe that Wanda
15 ran the bingo a hundred percent by the rules. By the
16 book a hundred percent. As soon as we got into the
17 business, everybody was explaining the bingo business to
18 me and how you really made money. And you had to do
19 illegal things to made all the extra money. And we had
20 already said we were not going to do anything illegal.

21 Q. Okay. And, in fact, those machines were taken out;
22 right?

23 A. The machines were taken out. They were illegal.

24 Q. Did Cass contact the Department of Revenue?

25 A. He called them. And they said they were illegal,

1 and we took them out.

2 Q. And all the other things going on, that stopped as
3 well too. House playing, playing on ---

4 A. House playing stopped. The moment I was in the
5 business that first thirty days, so many things came out
6 as the truth. And we stopped all of it. We stopped it.
7 We said we're going to be a legitimate by-the-book bingo
8 business. We are not going to have house players. We're
9 not going to have poker machines. Just anything like
10 that, we weren't going to do.

11 Q. Okay. And you've looked at that list of -- do you
12 have a copy of that list of equipment or furniture from
13 Fun City Bingo?

14 A. Yes.

15 Q. Okay. And can you name -- can you list -- what's an
16 emax blower.

17 A. That's the bingo machine.

18 Q. What's a capital board diagram and numbers caller?

19 A. That's the board up at the top. When the bingo
20 letters are called, it lights up.

21 Q. What's an amplifier?

22 A. I don't know.

23 Q. Okay. Microphone and stand, that's obvious?

24 A. Yes, sir.

25 Q. A wet and dry vacuum; right?

- 1 A. Uh-huh (affirmative).
- 2 Q. A three-, four-, five-shelf rack?
- 3 A. Yes.
- 4 Q. What is that?
- 5 A. That's the rack we had the papers stacked on.
- 6 Q. Okay. A wireless receiver; is that correct?
- 7 A. Yes.
- 8 Q. Office chairs?
- 9 A. Yes.
- 10 Q. A fax machine?
- 11 A. Yes.
- 12 Q. A telephone?
- 13 A. Uh-huh (affirmative).
- 14 Q. A calculator?
- 15 A. Yes.
- 16 Q. Seventy-seven white plastic tables?
- 17 A. Yes.
- 18 Q. And what is that? An eight-foot wooden table?
- 19 A. I purchased that.
- 20 Q. Okay. You purchased that; is that right?
- 21 A. I purchased that table.
- 22 Q. All right. Two hundred and eighty-six Motes folding
- 23 metal chairs; right?
- 24 A. Yes, sir.
- 25 Q. You had two TV's, one thirteen-inch and a twenty-

1 eight inch?

2 THE COURT: Mr. Epps, are you going through the
3 inventory of the subsequent sale?

4 MR. EPPS: Well, it's the inventory of the
5 equipment that's in -- that was -- yes, the sale. As was
6 the equipment that was in the ...

7 THE COURT: How is it relevant?

8 MR. EPPS: It was relevant -- I was going -- I
9 was going to -- if you'll allow me to ask the question, I
10 was going to tie it in. I was going to ask her regarding
11 ---

12 THE COURT: Okay. I'm comfortable with giving
13 you some latitude ---

14 MR. EPPS: Yes, sir.

15 THE COURT: --- but if you're going to read off
16 a list, you're going to have to hurry up. Okay?

17 MR. EPPS: Yes, sir. Yes, sir.

18 THE COURT: And you can read collectively, or
19 you can enter it as an exhibit. But I'm afraid that I
20 just can't tolerate you reading item after item into the
21 record and then asking her if that was in there. Okay?

22 MR. EPPS: No. I understand, Your Honor. I
23 completely agree. I'm almost finished. She's reviewed
24 it. And I'll ask my last question, and I'll move on.

25 THE COURT: Okay. Good enough.

1 Q. Trash cans, dabbers, ink, cleaning supplies, and
2 plastic ashtrays and a web cam; is that right?

3 A. Yes. All of that is included.

4 Q. That was the stuff -- that was the equipment and
5 furniture and fixtures that were in Ma City -- Ma Cat's
6 Bingo; right?

7 A. Yes.

8 Q. And that was sold by Fun City Bingo; correct?

9 A. Yes.

10 Q. Okay. Would you have paid a hundred thousand
11 dollars for this furniture and equipment?

12 A. No, never. Not for furniture and equipment.

13 MR. EPPS: All right. Your Honor, I would move
14 at this time to just mark and enter that list that she
15 testified to as Defendant's Number 2.

16 THE COURT: Any objections? Mr. Welch, any
17 objection?

18 MR. WELCH: I have no objection, Your Honor.

19 THE COURT: All right. Without objection, the
20 same is entered into evidence.

21 (WHEREUPON, Defendant's Exhibit Number 2 was marked
22 and admitted into evidence.)

23 Q. Just a few more questions. Wanda continued to play
24 every night and come into Fun City Bingo; right?

25 A. Yes, correct.

1 Q. Okay. Did she -- was she rude, derogatory, say bad
2 things about you or Fun City Bingo or Cass or ...

3 A. I received phone calls from players ---

4 MR. WELCH: Your Honor, object to hearsay.

5 THE COURT: All right. Sustained.

6 Q. Did you hear her speak bad about Cass?

7 A. I didn't hear her myself; people would just call and
8 tell me.

9 MR. WELCH: I would again object.

10 THE COURT: Sustained.

11 Q. Did you have an incident with Wanda at some point in
12 time after Fun City Bingo opened?

13 A. I mean, we had an incident with her son where we had
14 to fire her son. And her son and I had words. And then
15 in the same day, Wanda and I had words over the phone.

16 Q. Okay. What kind of words did she say?

17 A. She wanted her money. She wanted her payment.

18 Q. And when was that?

19 A. I'm not sure of the month.

20 Q. Was that very close in time to either closing down
21 or when Mr. Smith got served?

22 A. Exactly. Close.

23 Q. Did she ever mention to you or bring up getting some
24 of this equipment back?

25 A. She didn't ask me for the equipment back, no.

1 Q. Okay. All right.

2 MR. EPPS: Thank you, Your Honor.

3 I have no further questions. Please answer any
4 questions opposing counsel may have.

5 CROSS-EXAMINATION

6 BY MR. WELCH:

7 Q. Ms. Capell, this list, Defendant's Number 2, is that
8 what it is? I'm not sure it's the same one. The one
9 that had all the equipment.

10 A. It should be the same number.

11 Q. That would be Number 2. Look at that. Ma'am, are
12 you aware that the equipment and fixtures and everything
13 left when Fun City took over also included ninety cases
14 of paper the taxes had already been paid on worth nine
15 thousand dollars? Were you aware of that?

16 A. Excuse me. Say that question again.

17 Q. Ninety cases of paper -- excuse me -- yeah, nine
18 thousand dollars worth of paper the tax had already been
19 paid on was left for Fun City Bingo as part of the
20 assets. Are you aware of that?

21 A. I don't believe it was that much paper.

22 Q. There was paper left the tax had already been paid
23 on; correct?

24 A. Some paper. Very little.

25 Q. And fifty cases of dabbers?

- 1 A. Yes.
- 2 Q. Yeah. The dabbers are a hundred and fifty bucks a
3 case, aren't they?
- 4 A. Yes.
- 5 Q. That's seventy-five hundred dollars right there.
6 And there were other things that weren't on the list;
7 isn't that true?
- 8 A. There wasn't many dabbers left. There was not that
9 much paper left.
- 10 Q. Ma'am, you basically -- you start out by telling us
11 you worked at a sweepstakes business with Mr. Smith?
- 12 A. Yes, I did.
- 13 Q. And we're talking the video machines; right?
- 14 A. Yes.
- 15 Q. The kind that you say were in the bingo parlor;
16 right?
- 17 A. Yes.
- 18 Q. So you knew about that business? In fact, how did
19 you get compensated in that business?
- 20 A. The sweepstakes were computers; they weren't
21 machines.
- 22 Q. And how did you get compensated in the sweepstakes
23 business?
- 24 A. How did I get compensated?
- 25 Q. Yes, ma'am. Did you invest money with Mr. Smith?

- 1 A. No.
- 2 Q. Did you work by the hour?
- 3 A. I worked by the hour.
- 4 Q. Okay. But you knew about the business; right?
- 5 A. Yes.
- 6 Q. But you didn't know anything about the bingo
- 7 business, did you?
- 8 A. I didn't know anything about the bingo business.
- 9 Q. And so basically you're telling us whatever Mr.
- 10 Smith told you, that was what you took as the gospel when
- 11 you loaned him the money?
- 12 A. He -- yes, I did.
- 13 Q. Now, ma'am, you trusted him in making decisions?
- 14 A. Yes.
- 15 Q. And did you know that when he went from Ma Bingo to
- 16 Fun City Bingo that he increased the salaries, the
- 17 expenses to the same number of people?
- 18 A. (No verbal response)
- 19 Q. Did you know he doubled Summer's so she'd be
- 20 managing? She went from three something to six hundred
- 21 and something. Were you aware of that?
- 22 A. I doubled Summer's salary myself.
- 23 Q. Okay. You did it yourself?
- 24 A. I did it myself.
- 25 Q. So you were aware of the salary increases?

1 A. I was aware of Summer's salary increase because she
2 was going to be a manager of the business.

3 Q. Right. But, ma'am, isn't it true Ms. Gambrell had
4 been managing the business and derived part of the
5 return, her investment in terms of her job; isn't that
6 correct?

7 A. That's correct. But that did not cause the entire
8 financial problem. No, it did not cause it.

9 Q. And you approved the other raises of the other
10 employees; correct?

11 A. She gave them raises before she left.

12 Q. Well, you were aware that expenses were increasing;
13 right?

14 A. I was aware ---

15 Q. Okay.

16 A. --- because they told us that she gave them raises
17 when she left.

18 Q. And isn't it true that Ms. Gambrell came to you
19 several times and offered if you want to sit down and
20 talk to give you some suggestions on how to get the
21 business to be better.

22 A. Yeah. She gave me suggestions of running over our
23 limit and extra games from twelve to two a.m., which was
24 illegal.

25 Q. And, ma'am, she also told you not to put Benjamin

- 1 Gentry behind the desk, didn't she?
- 2 A. I trust Benjamin Gentry to this day.
- 3 Q. She tried to tell you that you couldn't trust him
- 4 ---
- 5 A. No. I trust Benjamin Gentry. That was her personal
- 6 feelings against him.
- 7 Q. But basically you ignored that because you trusted
- 8 him and not her?
- 9 A. I still trust him.
- 10 Q. Okay. Ma'am, would you agree with me that the books
- 11 and records in terms of what actually happened in this
- 12 business, they haven't even been finalized, have they?
- 13 A. They haven't been what? Excuse me?
- 14 Q. Been finalized. We don't even know what your
- 15 revenue and expenses were for sure totally in 2013. They
- 16 haven't been finished?
- 17 A. Well, I mean ---
- 18 Q. No tax return done. No nothing. Even for 2013?
- 19 A. The tax returns were done.
- 20 Q. Well, the testimony was, ma'am, from the accountant
- 21 that the books and records had not been finished for '13
- 22 or '14.
- 23 A. To my knowledge, they've been done.
- 24 Q. Well, I'm just telling you what the accountant said.
- 25 A. He just told me what I had to give to him, and I

1 gave him the information that he needed.

2 Q. Well, he testified today he ---

3 MR. EPPS: Your Honor, I'm going to object.

4 Pitting one witness against the other.

5 THE COURT: That's okay. Go ahead.

6 Q. Well, the testimony today was, ma'am, he's waiting
7 on more information from you guys. That was his
8 testimony.

9 A. Well, to my knowledge I've given him everything that
10 I have.

11 MR. WELCH: I don't have any further questions,
12 Your Honor.

13 THE COURT: Any redirect?

14 MR. EPPS: No redirect, Your Honor.

15 THE COURT: Okay. Thank you, ma'am. I
16 appreciate your being here.

17 MR. EPPS: May this witness be excused, Your
18 Honor?

19 THE COURT: Yes, sir. Absolutely.

20 MR. EPPS: And that is the defendant's case.

21 THE COURT: All right. Good enough.

22 Anything in reply from the plaintiff, sir?

23 MR. WELCH: Your Honor, if I could have about
24 three minutes to discuss with my client.

25 (WHEREUPON, court stood at ease.)

1 MR. WELCH: Your Honor, we're going to have
2 just a couple of rebuttal.

3 THE COURT: If you must.

4 MR. WELCH: Well, Your Honor, we don't. We
5 don't.

6 THE COURT: I don't want you to take from my
7 body language or my facial expressions that you can't do
8 it. You certainly can. I think I've heard about enough,
9 as much as I need to hear in this case.

10 MR. WELCH: My first inclination was not to.
11 And I think that's affirmative.

12 THE COURT: Okay. All right.

13 Gentlemen, thank you very much. I appreciate it.
14 I'll send a letter out to you within the week directing
15 one of you to draft a proposed order for me.

16 MR. WELCH: You Honor, you talked about closing
17 or something about we were closing. But I do want to
18 point out one thing to the Court for two minutes, if I
19 could, from the exhibits.

20 THE COURT: Okay.

21 MR. WELCH: I think one thing that's important
22 in the case is to be familiar with the fact that profit
23 and loss statements that the accountant brought and put
24 in, there's actually, Judge, two ways income is made from
25 this business. One is an employee with the -- and that's

1 from the account that the Shrine club paid the expenses
2 through. And I want to point out to the Court that the
3 other way is reflected in Exhibit 13 in terms of the
4 wages that she drew and had to pay taxes on.

5 THE COURT: Yes, sir.

6 MR. WELCH: The other way is the business,
7 Wanda Gambrell, a person doing business as Ma Cat's
8 Bingo. And that's where the other exhibits come in.
9 When you see a sixteen-thousand-dollar ---

10 MR. EPPS: I mean, Your Honor, I think he -- I
11 don't know if he's trying to add anything. I mean,
12 certainly you heard the testimony. We have the documents
13 into evidence. You heard the testimony from the
14 witnesses on the stand. I don't know what he's doing
15 because, I mean, this is not closing. This is trying to
16 ---

17 THE COURT: If he wants to comment on the
18 evidence that's been admitted by stipulation, I'll be
19 happy to hear it, understanding, of course, that it's not
20 evidence. I know that. It's just argument. And I'm
21 more than happy to hear from y'all. But I do want you to
22 know that ---

23 MR. WELCH: That's all I want to do, Judge.

24 THE COURT: Okay. That I -- I got it. Okay?
25 Now, I want you to know -- you're lawyers, I'm a lawyer

1 -- I've got it.

2 MR. WELCH: Right. I understand.

3 THE COURT: Okay?

4 MR. WELCH: Yes, sir.

5 THE COURT: Okay. Anything further from either
6 party?

7 MR. WELCH: No, Judge. Thank you.

8 MR. EPPS: Nothing from the Defense, Your
9 Honor.

10 THE COURT: Okay. All right. Thank you. I
11 appreciate it, gentlemen. Y'all have a great day. And I
12 appreciate y'all having tried an excellent civil case.
13 And I hope you have a good weekend as well.

14 (WHEREUPON, court stood at recess in this case at
15 approximately 3:36 p.m.)

16 *** END OF REQUESTED TRANSCRIPT OF RECORD ***

1

CERTIFICATE OF REPORTER

2 I, the undersigned Renee H. Tollison, Official Court
3 Reporter for the Tenth Judicial Circuit of the State of
4 South Carolina, do hereby certify that the foregoing is a
5 true, accurate, and complete transcript of record of all
6 the proceedings had and evidence introduced in the trial
7 of the captioned case, relative to appeal, in the Circuit
8 Court for Anderson County, South Carolina, on the 11th
9 day of February 2015.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

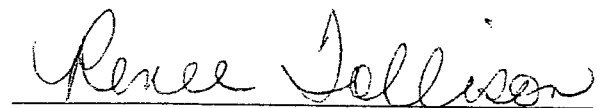
12 I do further certify that I am neither of kin,
13 counsel, nor interest to any party hereto.

14 October 21, 2015

15

16

17



Circuit Court Reporter

FILED-CLERK'S OFFICE
ANDERSON SC

2015 FEB 12 P 4:

COURT FILED
GENERAL SESSION

CONTRACT FOR PURCHASE

This offer to purchase shall be binding under South Carolina law. This offer is made this 22nd Day of February, 2013 between seller Wanda Gambrell aka Ma's Bingo and buyer Christopher A. Smith aka Cas Smith.



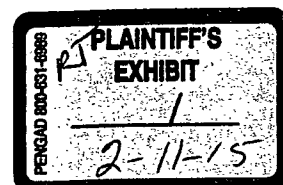
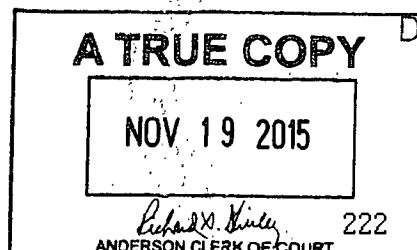
This sale is for a business know as Ma's Bingo located at McGee Rd, Anderson SC. This transaction does not include the passing of any real estate. This sale does include any and all fixtures and equipment locate within the business as of today 2-22-2013. The sale shall include caller station, bingo board, all tables and chairs, tv's, atm machine, desk, stands, counter areas, and any and all other items not addressed here.

Purchase price shall be \$100,000 us dollars and shall be paid as follows. Seller shall receive \$10,000 today 2-22-2013 (check #1059, being made payable to William Gambrell). In the case that the buyer is unable to receive his license, either in his name or the name of a respective family member then the deposit of said \$10,000 shall be non-refundable and retained by seller. The remaining balance shall be paid at the rate of \$65,000 upon buyer receiving his Bingo License (aprox time frame 30-60 days from date of this execution). Upon receipt of said \$65,000 seller shall finance the balance of \$25,000 in the amount of \$2500 per month for ten (10) months, with the first payment due thirty (30) days from the date in which the seller has received proof that buyer has a valid South Carolina Bingo License.

Wanda Gambrell 2-22-13

Seller Christopher A. Smith Date 2-22-13

Buyer _____ Date _____

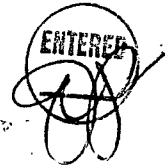


FILED-CLERK'S OFFICE
ANDERSON SC

2015 FEB 12 P 4: 03

CLERK OF COURT, AND
GENERAL SESSIONS

State Of South Carolina
County of Anderson



This lease made and entered into this 26th day of March 2013, by Greenwood Shrine Club hereinafter referred to as "Lessee" Phillip R. Dorn and Christopher A. Smith hereinafter referred to as "Lessor". For in consideration of the mutual promises and agreements of the parties, the parties enter into this lease and Lessor grants this lease unto Lessee and Lessee accepts the same, subject to the terms and conditions set forth below.

I, Phillip R. Dorn agree to lease the premises, including all fixtures and equipment located at 621 McGee Rd., Anderson S.C., 29625 with the exception of the concession area from Christopher A. Smith on this 26th day of March 2013 for the purpose of bingo in the amount of \$5000.00 per month on behalf of the Greenwood Shrine Club. This contract made and entered into this 26th day of March 2013 by the "Greenwood Shrine Club" and "Christopher A. Smith" is renewal yearly and can be canceled by either party with a 60 day written notice of cancellation.

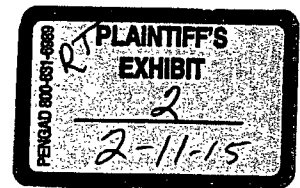
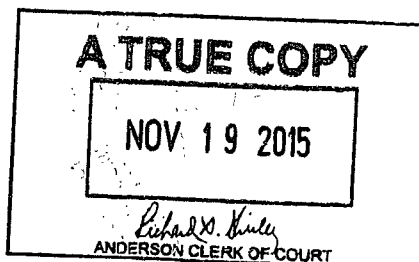
NOTARY PUBLIC of South Carolina

Sworn to before me this 26 day of March 2013

Signature Stacey D. Hart
My commission Expires 1-4-2018

Lessee Phillip R. Dorn
Lessor Christopher A. Smith

Witness [Signature]
Witness [Signature]

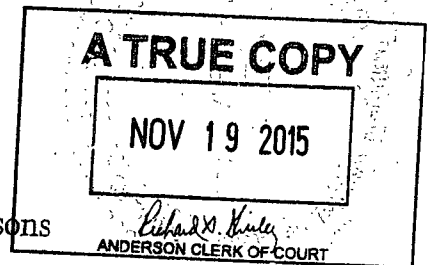


* Greenwood Shrine Club *
Contract between Sponsor and Promoter

This contract made and entered into this 26th day of March 2013 FILED-CLERK'S OFFICE
by Sponsor and Promoter is understood and agreed upon that Sponsor, Christopher A. Smith to be
"Greenwood Shrine Club" has retained Promoter, DBA FUN CITY BINGO AND
said Promoter for the Greenwood Shrine Club Bingo, DBA FUN CITY BINGO AND
Promoter will be compensated for Promoter's license fee yearly and will be
compensated weekly \$5.00 per person, per bingo session who enters to play
bingo, plus 5% of gross revenues to be paid quarterly. Promoter is
responsible for paying all expenses incurred from the operations of said
bingo and these expenses will be paid from the Greenwood Bingo Checking
Account. Net revenues will be distributed quarterly to Greenwood Shrine
Club. If either the Sponsor or the Promoter wishes to cancel this contract it
may be done with a 60 day advance written notice of cancellation.

Promoter's responsibilities are:

1. Promoting bingo games and abiding by the rules and laws outlined by the State of South Carolina.
2. The hiring and firing of employees
3. Making daily deposits into bingo checking account
4. Filing and paying bingo tax
5. Filing and paying payroll withholding
6. Filing monthly and quarterly reports
7. Paying promoter salary & license fees
8. Paying salaries to all employees and/or maintenance persons
9. Paying equipment and building maintenance and repairs
10. Paying for building lease and equipment
11. Paying utilities
12. Paying all supply cost (bingo paper, bingo balls, advertisement, mailings, restroom supplies, office supplies



Sworn to before me this 26 day of March 2013

Notary Public of S.C.

Signature Stacey D. Hart

My commission expires 1-9-2018

Sponsor Signature Phillip R. Hart

Witness

Debra Smith

Promoter Signature Christopher A. Smith

Witness

Debra Smith



Solicitor and Charity contract :

This contract made and entered into this 26th day of March 2013 by the Greenwood Shrine Club and Solicitor, Christopher A. Smith is open ended. It is understood and agreed upon that the Greenwood Shrine Club retained as Solicitor Christopher A. Smith to promote bingo games at 621 McGee Rd., Anderson S.C., 29625, DBA FUN CITY BINGO will remain as the Solicitor for said bingo Christopher A. Smith and is responsible for paying all expenses incurred from the operations of said Bingo and has been given permission to sign checks from the Greenwood Bingo Checking Account to pay these expenses. Net revenues from the bingo to the Greenwood Shrine Club will be 2 ½ % of taxes on bingo paper purchased and will be issued a check from the SC Revenue Department Bingo Division each month. Financial reports will be filed at the end of each quarter for the Bingo Division and an annual Joint Financial Solicitation Report for the Secretary of State.

FILED-CLERK'S OFFICE
ANDERSON SC

2015 FEB 12 P 4:03

COURT REPORTER AND
GENERAL SESSIONS

ENTERED
[Signature]

Solicitor's responsibilities are:

1. Promoting bingo games and abiding by the rules and laws outlined by the State of South Carolina.
2. The hiring and firing of employees
3. Making daily deposits into bingo checking account
4. Filing and paying sales tax
5. Filing and paying payroll withholding
6. Filing monthly and quarterly reports
7. Paying Promoter/Solicitor salary and License fees
8. Paying payroll to all employees and/or maintenance persons
9. Paying building maintenance and repairs
10. Paying for building lease and equipment
11. Paying utilities
12. Travel expenses
13. Paying all supply cost (bingo paper, bingo balls, advertisement, mailings, office supplies.....

A TRUE COPY

NOV 19 2015

Richard D. Hunter
ANDERSON CLERK OF COURT

Sworn to before me this 26th day of March 2013

Notary Public of S.C.

Signature Wesley Barnhill

My commission expires 10/16/2022

Sponsor Phillip R. [Signature]

Witness Summer McAuley

Promoter Chris A. Smith

Witness Summer McAuley

PLAINTIFF'S
EXHIBIT
4
2-11-15

SCHEDULE C
(Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Profit or Loss From Business

(Sole Proprietorship)

► For information on Schedule C and its instructions, go to www.irs.gov/schedulec

► Attach to Form 1040, 1040NR, or 1041; partnerships generally must file Form 1065.

OMB No. 1545-0047

2011

Attachment
Sequence No. **09**

Name of proprietor

WANDA G GAMBRELL

FILED-CLERK'S OFFICE
ANDERSON SC

Social security number (SSN)

A Principal business or profession, including product or service (see instructions)

BINGO

B Enter code from instructions

713900

C Business name. If no separate business name, leave blank.

MA CATS BINGO

D Employer ID number (EIN). (see instr.)

E Business address (including suite or room no.)

621 MCGEE RD

City, town or post office, state, and ZIP code

ANDERSON

GENERAL SFSCN 29625

F Accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) ►

G Did you "materially participate" in the operation of this business during 2011? If "No," see instructions for limit on losses

☒ Yes ☐ No

H If you started or acquired this business during 2011, check here

I Did you make any payments in 2011 that would require you to file Form(s) 1099? (see instructions)

☐ Yes ☒ No

J If "Yes," did you or will you file all required Forms 1099?

☐ Yes ☒ No

Part I Income

1 a Merchant card and third party payments. For 2011, enter -0-

1a 0

b Gross receipts or sales not entered on line 1a (see instructions)

1b 23,606

c Income reported to you on Form W-2 if the "Statutory Employee" box on that form was checked. **Caution.** See instr. before completing this line

1c

d Total gross receipts. Add lines 1a through 1c

1d 23,606

2 Returns and allowances plus any other adjustments (see instructions)

2 0

3 Subtract line 2 from line 1d

3 23,606

4 Cost of goods sold (from line 42)

4 8,057

5 Gross profit. Subtract line 4 from line 3

5 15,549

6 Other income, including federal and state gasoline or fuel tax credit or refund (see instructions)

6

7 Gross income. Add lines 5 and 6

7 15,549

Part II Expenses

Enter expenses for business use of your home only on line 30.

8 Advertising

8 176

18 Office expense (see instructions)

18 171

9 Car and truck expenses (see instructions)

9

19 Pension and profit-sharing plans

19

10 Commissions and fees

10

20 Rent or lease (see instructions):

20a

11 Contract labor (see instructions)

11

a Vehicles, machinery, and equipment

20b

12 Depletion

12

b Other business property

21

13 Depreciation and section 179 expense deduction (not included in Part III) (see instructions)

13 4,146

21 Repairs and maintenance

21 232

14 Employee benefit programs (other than on line 19)

14

22 Supplies (not included in Part III)

22 1,080

15 Insurance (other than health)

15

23 Taxes and licenses

23 400

16 Interest:

16a

24 Travel, meals, and entertainment:

24a

a Mortgage (paid to banks, etc.)

16b

a Travel

24b

b Other

16b 978

b Deductible meals and entertainment (see instructions)

24b

17 Legal and professional services

17 990

25 Utilities

25

26 Wages (less employment credits)

26

27 a Other expenses (from line 48)

27a 4,329

b Reserved for future use

27b

28 Total expenses before expenses for business use of home. Add lines 8 through 27a

28 12,502

29 Tentative profit or (loss). Subtract line 28 from line 7

29 3,047

30 Expenses for business use of your home. Attach Form 8829. Do not report such expenses elsewhere

30

31 Net profit or (loss). Subtract line 30 from line 29.

31 3,047

• If a profit, enter on both Form 1040, line 12 (or Form 1040NR, line 13) and on Schedule SE, line 2.

If you entered an amount on line 1c, see instr. Estates and trusts, enter on Form 1041, line 3.

• If a loss, you must go to line 32.

32 If you have a loss, check the box that describes your investment in this activity (see instructions).

• If you checked 32a, enter the loss on both Form 1040, line 12, (or Form 1040NR, line 13) and on Schedule SE, line 2. If you entered an amount on line 1c, see instructions for line 31.

Estates and trusts, enter on Form 1041, line 3.

• If you checked 32b, you must attach Form 6198. Your loss may be limited

32a ☐ All investment is at risk.

32b ☐ Some investment is not at risk.

A TRUE COPY

Schedule C (Form 1040) 2011

NOV 19 2011

PLAINTIFF'S
EXHIBIT

5
2-11-15

ENTERED

Richard X. Hunter

ANDERSON CLERK OF COURT

For Paperwork Reduction Act Notice, see your tax return instructions.

SCHEDULE C
Form 1040

Department of the Treasury
Internal Revenue Service (99)

Profit or Loss From Business

(Sole Proprietorship)

OMB No. 1545-0074

2012

Attachment
Sequence No. **09**

For information on Schedule C and its instructions, go to www.irs.gov/schedulec.

Attach to Form 1040, 1040NR, or 1041; partnerships generally must file Form 1065.

Name of proprietor
WANDA G GAMBRELL

FILED-CLERK'S OFFICE

A Principal business or profession, including product or service (see instructions)
BINGO

B Enter code from instructions
713900

C Business name. If no separate business name, leave blank.
MA CATS BINGO

D Employer ID number (EIN), (see instr.)

E Business address (including suite or room no.)
City, state, and ZIP **ANDERSON SC 29625**

F Accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify)

G Did you "materially participate" in the operation of this business during 2012? If "No," see instructions for limit on losses ☒ Yes ☐ No

H If you started or acquired this business during 2012, check here ☐ Yes ☐ No

I Did you make any payments in 2012 that would require you to file Form(s) 1099? (see instructions) ☒ Yes ☐ No

J If "Yes," did you or will you file required Forms 1099? ☒ Yes ☐ No

Part I Income

1	Gross receipts or sales. See instructions for line 1 and check the box if this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked	1	44,171
2	Returns and allowances (see instructions)	2	0
3	Subtract line 2 from line 1	3	44,171
4	Cost of goods sold (from line 42)	4	12,538
5	Gross profit. Subtract line 4 from line 3	5	31,633
6	Other income, including federal and state gasoline or fuel tax credit or refund (see instructions)	6	
7	Gross income. Add lines 5 and 6	7	31,633

Part II Expenses

Enter expenses for business use of your home only on line 30.

8	Advertising	8	24	18	Office expense (see instructions)	18	467
9	Car and truck expenses (see instructions)	9		19	Pension and profit-sharing plans	19	
10	Commissions and fees	10		20	Rent or lease (see instructions):	20a	
11	Contract labor (see instructions)	11	3,000	20b	Other business property	20b	
12	Depletion	12		21	Repairs and maintenance	21	428
13	Depreciation and section 179 expense deduction (not included in Part III) (see instructions)	13	3,727	22	Supplies (not included in Part III)	22	1,555
14	Employee benefit programs (other than on line 19)	14		23	Taxes and licenses	23	290
15	Insurance (other than health)	15		24	Travel, meals, and entertainment:	24a	
16	Interest:	16a		24b	Deductible meals and entertainment (see instructions)	24b	
a	Mortgage (paid to banks, etc.)	16a		25	Utilities	25	591
b	Other	16b	392	26	Wages (less employment credits)	26	
17	Legal and professional services	17	965	27a	Other expenses (from line 48)	27a	3,526
				27b	Reserved for future use	27b	
28	Total expenses before expenses for business use of home. Add lines 8 through 27a	28		28		28	14,965
29	Tentative profit or (loss). Subtract line 28 from line 7	29		29		29	16,668
30	Expenses for business use of your home. Attach Form 8829. Do not report such expenses elsewhere	30		30		30	
31	Net profit or (loss). Subtract line 30 from line 29.	31		31		31	16,668
	• If a profit, enter on both Form 1040, line 12 (or Form 1040NR, line 13) and on Schedule SE, line 2. (If you checked the box on line 1, see instructions). Estates and trusts, enter on Form 1041, line 3.						
	• If a loss, you must go to line 32.						
32	If you have a loss, check the box that describes your investment in this activity (see instructions).			32a	All investment is at risk.	32a	
	• If you checked 32a, enter the loss on both Form 1040, line 12, (or Form 1040NR, line 13) and on Schedule SE, line 2. (If you checked the box on line 1, see the line 31 instructions). Estates and trusts, enter on Form 1041, line 3.			32b	Some investment is not at risk.	32b	
	• If you checked 32b, you must attach Form 6198. Your loss may be limited.						

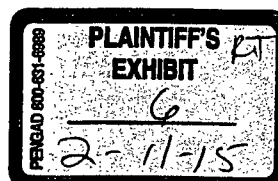
For Paperwork Reduction Act Notice, see your tax return instructions.

Schedule C (Form 1040) 2012

A TRUE COPY

NOV 19 2015

ANDERSON CLERK OF COURT



ENTERED

SCHEDULE C
(Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Profit or Loss From Business

(Sole Proprietorship)

- For information on Schedule C and its instructions, go to www.irs.gov/schedulec.
► Attach to Form 1040, 1040NR, or 1041; partnerships generally must file Form 1065.

OMB No. 1545-0074

2013

Attachment
Sequence No. **09**

Name of proprietor

WANDA G GAMBRELL

FILED-CLERK'S OFFICE
ANDERSON SC

Postal security number (SSN)

A Principal business or profession, including product or service (see instructions)

BINGO

B Enter code from instructions

713900

C Business name. If no separate business name, leave blank.

MA CATS BINGO

D Employer ID number (EIN), (see instr.)

E Business address (including suite or room no.)

621 MCGEE RD

City, town or post office, state, and ZIP code

ANDERSON SC 29625

F Accounting method: (1) ☒ Cash (2) ☐ Accrual (3) ☐ Other (specify) ►

G Did you "materially participate" in the operation of this business during 2013? If "No," see instructions for limit on losses

☒ Yes ☐ No

H If you started or acquired this business during 2013, check here

I Did you make any payments in 2013 that would require you to file Form(s) 1099? (see instructions)

☐ Yes ☒ No

J If "Yes," did you or will you file required Forms 1099?

☐ Yes ☒ No

Part I Income

1 Gross receipts or sales. See instructions for line 1 and check the box if this income was reported to you on Form W-2 and the "Statutory employee" box on that form was checked

1 30,344

2 Returns and allowances

2 0

3 Subtract line 2 from line 1

3 30,344

4 Cost of goods sold (from line 42)

4 6,042

5 Gross profit. Subtract line 4 from line 3

5 24,302

6 Other income, including federal and state gasoline or fuel tax credit or refund (see instructions)

6

7 Gross income. Add lines 5 and 6

7 24,302

Part II Expenses

Enter expenses for business use of your home only on line 30.

8 Advertising

8

18 Office expense (see instructions)

18 588

9 Car and truck expenses (see instructions)

9

19 Pension and profit-sharing plans

19

10 Commissions and fees

10

20 Rent or lease (see instructions):

20a

11 Contract labor (see instructions)

11

a Vehicles, machinery, and equipment

20b

12 Depletion

12

21 Repairs and maintenance

21 2,230

13 Depreciation and section 179 expense deduction (not included in Part III) (see instructions)

13

22 Supplies (not included in Part III)

22 543

14 Employee benefit programs (other than on line 19)

14

23 Taxes and licenses

23 208

15 Insurance (other than health)

15 467

24 Travel, meals, and entertainment:

24a

16 Interest:

16a

25 Utilities

25 521

a Mortgage (paid to banks, etc.)

16b

26 Wages (less employment credits)

26

b Other

17 685

27a Other expenses (from line 48)

27a 5,012

17 Legal and professional services

17

b Reserved for future use

27b

28 Total expenses before expenses for business use of home. Add lines 8 through 27a

28 10,254

29 Tentative profit or (loss). Subtract line 28 from line 7

29 14,048

30 Expenses for business use of your home. Do not report these expenses elsewhere. Attach Form 8829 unless using the simplified method (see instructions).

Simplified method filers only: enter the total square footage of: (a) your home:

and (b) the part of your home used for business:

Use the Simplified

Method Worksheet in the instructions to figure the amount to enter on line 30

31 Net profit or (loss). Subtract line 30 from line 29.

• If a profit, enter on both Form 1040, line 12 (or Form 1040NR, line 13) and on Schedule SE, line 2.

(If you checked the box on line 1, see instructions). Estates and trusts, enter on Form 1041, line 3.

• If a loss, you must go to line 32.

32 If you have a loss, check the box that describes your investment in this activity (see instructions).

- If you checked 32a, enter the loss on both Form 1040, line 12, (or Form 1040NR, line 13) and on Schedule SE, line 2. (If you checked the box on line 1, see the line 31 instructions). Estates and trusts, enter on Form 1041, line 3.
- If you checked 32b, you must attach Form 6198. Your loss may be limited.

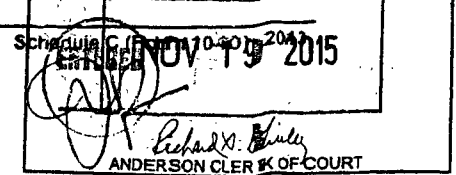
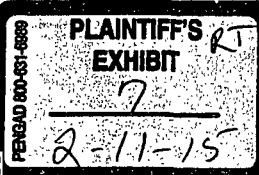
32a ☐ All investment is at risk.

32b ☐ Some investment is not at risk.

A TRUE COPY

For Paperwork Reduction Act Notice, see the separate instructions.

EEA



FILED-CLERK'S OFFICE
ANDERSON SC

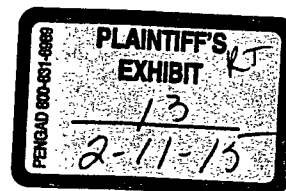
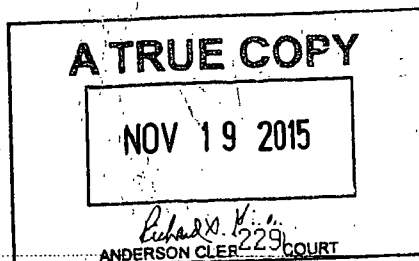
2015 FEB 12 P 4: 04

COMMON PLE/ A
GENERAL SESSION

Copy B To Be Filed with Employee's FEDERAL Tax Return.		2013 OMB No. 1545-0008
a Employee's SSN	1 Wages, tips, other comp. 55175.00	2 Federal income tax withheld 1045.96
b Employer ID no. (EIN)	3 Social security wages 55175.00	4 Social security tax withheld 3420.85
	5 Medicare wages and tips 55175.00	6 Medicare tax withheld 800.05
c Name, address, and ZIP code Greenwood Shrine Club 130 Peach Orchard Dr Honea Path SC 29654		
d Control number 1		
e Employee's name, address, and ZIP code Suff. Wanda G. Gambrell 130 Peach Orchard Rd Honea Path SC 29654 FDEA0110L 06/20/13		
7 Social security tips	8 Allocated tips	9
10 Dependent care benefits	11 Nonqualified plans	12a Code See inst. for box 12
13 Statutory employee	14 Other	12b Code
Retirement Plan		12c Code
Third-party sick pay		12d Code
SC	55175.00	540.00
15 State Employer's state ID number	16 State wages, tips, etc.	17 State income tax
18 Local wages, tips, etc.	19 Local income tax	20 Locality name

Form W-2 Wage and Tax Statement
This information is being furnished to the Internal Revenue Service.

Dept of the Treasury - IRS



8

Fun City BingoDay ThursdayDate 1-2-14FILED-CLERK'S OFFICE
ANDERSON SO**Program Sales**\$10.....18 on 10 up pks \$ 390\$5 ... 18 on 10 up pks \$ 1025\$5 9 on 10 up pks \$ 30\$1 18 on 10 up pks \$ 14\$2 6 on 4 up pks \$ 362\$1 ... 3 on 4 up pks \$ 0\$1.... 3 on 10 up pks \$ 214.10 ...6 on 10 up pks \$ 2

Total Door sales \$ 2037 Entrance fees (\$ 695) Total (\$ 2732)
(139) Money in \$ 2728 (-5)

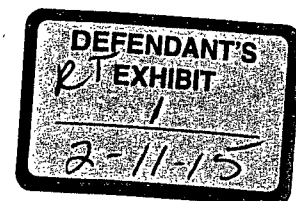
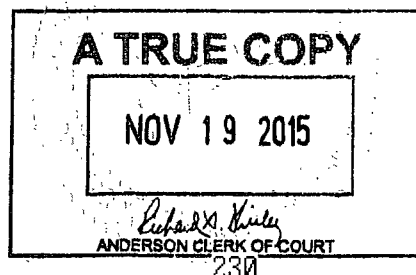
Floor Sales\$2....3 on 4 up pks \$ 274 \$1....3 on 4 up pks 0 Speed Ball \$1 \$ 1203on * Star \$1 174 3 on \$1 loose \$ 1352 Total sales (\$ 1920)3 on \$2 loose \$ 4034 9 on \$2 loose \$ 628 Total sales (\$ 4662)

Floor Total (\$ 6582) Door Total (\$ 2037) Gross Total (\$ 8619)
Money in (\$ 6568) Plus / minus 14

Total door and floor (\$ 8619 + Entrance fee 695 = (\$ 9314)
(139)

Payout Program \$ 3700 Payout floor \$ 3418 Total Payout \$ 7118

Number Players	Entrance Fees	Gross Sales	Prize P/O	Net income Profit/loss	WH Tax	Amount deposited
(139)	\$ <u>695</u>	\$ <u>8619</u>	\$ <u>7118</u>	\$ <u>2196</u>	\$ <u>91</u>	\$ <u>2287</u>



Fun City Bingo

Day Thursday

Date 1-2-14

(18 on 10 up pk \$10)

Starting # 293

Ending # 254

Sold 39 X \$10 390

(18 on 10 up pk \$5)

Starting # 774

Ending # 569

Sold 205 X \$5 1025

(9 on 10 up pk \$5)

Starting # 253

Ending # 247

Sold 6 x\$5 30

(18 on 10 up pk \$1)

Starting # 454

Ending # 440

Sold 14 X \$1 14

(6 on 4 up pk \$2)

Starting # 1515

Ending # 1334

Sold 181 X \$2 362

(3 on 4 up pk \$1)

Starting # 2938

Ending # 2938

Sold 0 X \$1 0

(3 on 10 up pk \$1)

Starting # 2903

Ending # 2689

Sold 214 X1 214

(3 on 10 up pk \$.10)

Starting # 705

Ending # 685

Sold 20 X .10 2

(F) (3 on 4 up pks \$2)

Starting # 2338

Ending # 2201

Sold 137 X \$2 274

Speed Ball \$1

Starting # 4724

Ending # 4604

Sold 120 X \$1 120

(3 on \$1 **star**)

Purple

Starting # 2321

Ending # 2275

Sold X \$1 46

Green Red

Starting # 2330

Ending # 2202

Sold X \$1 128

Total Sold 174

(3 on \$1 loose)

Olive

Starting # 5286

Ending # 4584

Sold X \$1 702

Red Pink

Starting # 5366

Ending # 4716

Sold X \$1 650

Total Sold 1352

(3 on \$2 loose)

Black Red

Starting # 4648

Ending # 3650

Sold 998 X\$2 1996

White

Starting #

Ending #

Sold X\$2

Purple

Starting # 4654

Ending # 3635

Sold 1019 X\$2 2038 Total 4034

(9 on \$2 loose)

Blue

Starting # 995

Ending # 923

Sold 72 X\$2 144

Orange Red

Starting # 1019

Ending # 849

Sold 170 X\$2 340

Green Purple

Starting # 1033

Ending # 961

Sold 72 X\$2 144 Total 628

Starting ticket # 308415

Ending ticket # 308466

Sold 139 X\$5 695

398124

398212

51

88

Location _____ Day Thursday Date 1-2-14

[illegible]

Location _____ Day Thursday Date 1-2-14

Runner	Runner	Runner	Runner	Runner	Cash In	Pay Out	Hold	Total Hold
25	24	21	12		82	50	32	
25	22	25	22		94	50	44	
15	21	25	⁺¹ 25		86	50	36	
⁺¹ 18	25	34	25		102	50	52	
84	⁻² 80	⁻² 90	⁻⁴ 100		354	200	154	
26	19	21	25		91	50	41	
20	25	25	⁻¹ 19		89	50	39	
25	18	25	22		90	50	40	
⁻⁴ 54	52	58	46	4	214	100	114	
42	⁻² 44	60	44	2	192	(100)125/150	92	
#2PKS 54	76	84	60		274	120	154	
27	22	22	21		92	50	42	
25	25	27	⁻¹ 36	1	1760	920	840	
84	⁻² 114	128	⁺² 108		114	50	64	
50	34	50	50		434	300	134	
32	28	31	28		2308	1270	1038	
50	50	50	⁻² 50		184	100	94	
29	33	28	27		119	(50)150	69	
					200	100	100	
					117	50	67	
					2928	1570	1358	

Floor games

Date 1-2-14

Game	PO	# winners
1. 3AW	50	1
2. 2str ² /w 25	25	1
3. 2AW	(25/50)	2
4. 2str ² /w 25	25	+
5. SES	25	1
6. 3AW	50	+
7. TMB	(30/40/50)	2
8. Flag	25	1
9. 2AW	50BB	1
10. 3AW	100	1
11. Bell	50	1
12. Flag	25	1
13. crazy	50	1
14. 3AW	100	1
15. SES	50	1
16. 2AW	50BB	1
17. TMB	(25/50/75)	2
18. 3AW	100	1
19. SES	50	1
20. 2str ² /w 50	50	1
21. 2AW	50	1
22. SES	50	1
23. 3AW	200	1
24. O/E ⁺ /w 50	50	1
25. 2str ² /w 50	50	1

Game	PO	# winners	Game	PO	#winner
26. SES	50	1	51. _____	_____	_____
27. 3AW	100	1	52. _____	_____	_____
28. TMB	(100/125/150)	1	53. _____	_____	_____
29. 4games	120	_____	54. _____	_____	_____
30. Half	50	1	55. _____	_____	_____
31. SES	50	1			
32. 3AW	300	1			
33. 3AW	100	1			
34. 2AW	(50/150)	2			
35. 3AW	100	1			
36. SB	50	1			
37. crazy	100	1			
38. TMB	100/(25/150)	1			
39. 3AW	100	1			
40. O/E ⁺ /w	100	1			
41. 3AW	100	1			
42. 3AW	300	+			
43. 3AW	150	3			
44. _____	_____	_____			
45. _____	_____	_____			
46. _____	_____	_____			
47. _____	_____	_____			
48. _____	_____	_____			
49. _____	_____	_____			
50. _____	_____	_____			

Fun City Bingo

864-261-7707

621 McGee Rd

Anderson SC 29625

7:00 Mini Program

- 11. Straight & Stamp \$50
- 12. Two anyway \$50
- 13. Spec Triple 1 wild \$50+Ball
- 14. Special 2 str 2 wild ... \$ Flag or \$25
- 15. Special Crazy Coverall \$50
- 16. Straight & Stamp ... \$50
- 17. Two anyway \$50
- 18. Special Triple.....\$

3700

8:00 special \$200

*Main program 8:30 *

19. Letter X 1# missing.....**\$300**

20. Check Mark.....**\$300**

21. Special Triple 1 wild \$

22. Special 2 anyway 1 wild * \$

23. Inside Square.....**\$300**

24. Two anyway **\$200**

25. Special Triple 1 wild \$

26. Special Slow Ball Coverall \$

27. Crazy V **\$100**

28. Straight & Stamp.....**\$100**

29. Special Crazy Coverall \$

30. Special Triple 1 wild ...TMB \$

31. Equal Sign.....**\$300**

32. Hat Pin **\$300**

33. Special ...Triple 1 wild \$

34. Special..Odd/Even plus 1 wild\$

35. 2 Stamps OS Co..NN.. **\$200**

36. Special Triple NO Wild \$

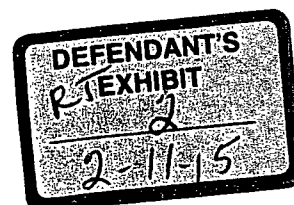
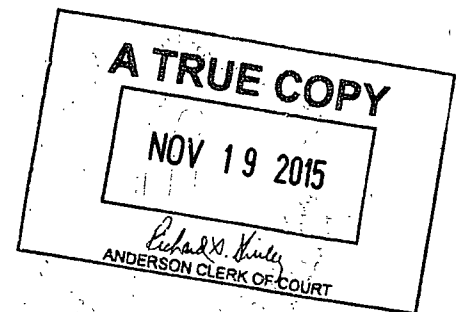
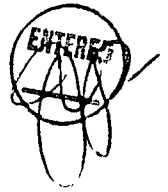
Coverall \$1300

<u>Fun City Bingo</u>	
E-Max Blower	1
Capital Board w/diagram & #s called	1
Amplifier	1
Microphone & Stand	1
Wet/Dry Vacuum	1
3-Shelf Rack	1
4-Shelf Rack	1
5-Shelf Rack	1
Wireless Receiver	1
Office Chair	1
Fax Machine	1
Telephone	1
Calculator	1
White Plastic Tables	77
8' Wooden Table	1
Chairs, most folding metal	286
32" TV	3
28" TV	3
Speakers	4
Webcam	1
Black Plastic Ashtrays	71

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ANDERSON SD

2015 FEB 12 P 4:03

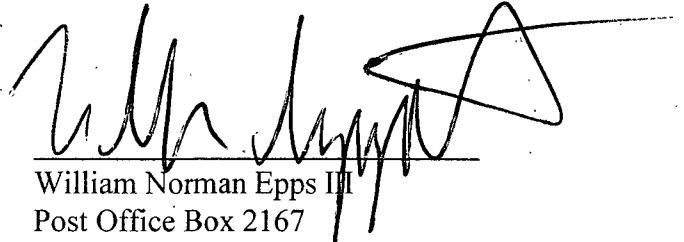
COURT FILED AND
CLERK'S OFFICE



Trash Cans	2
Dabos (Ink)	1100
Assorted Cleaning Supplies	1

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



William Norman Epps III
Post Office Box 2167
Anderson, South Carolina 29622
(864) 224-2111
Attorney for Appellant

April 1, 2016

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SC Court of Appeals