FORM 4

STATE OF SOUTH CAROL.
COUNTY OF:
IN THE COURT OF COMMON PLEAS

JUDGMENT \ CIVIL CASE

CASE NO. 2009-CP-26-620

Ellis E. Smith, Individually, and on behalf of A & E Constructors and Consultants, Inc.
PLAINTIFF(S)

Arthur Wayne Vereen, et al.
DEFENDANT(S)

Submitted by:	Attorney for : ☒ Plaintiff ☐ Defendant or ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.

☐ **ACTION DISMISSED** *(CHECK REASON)*: ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** *(CHECK REASON)*: ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** *(CHECK APPLICABLE BOX)*: ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☒ See attached order (~~formal order to follow~~) ☐ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
A & E Constructors and Consultants, Inc.	Arthur Wayne Vereen, individually and as Trustee of the Arthur W. Vereen Residence Trust	$2,968,790.68
	Linda C. Vereen, individually and as Trustee of the Linda C. Vereen Residence Trust,	$2,968,790.68
	Park Place Properties of Myrtle Beach, LLC	$2,968,790.68
	Arthur Vereen Construction Company, Inc.	$2,968,790.68

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. **Note: Title abstractors and researchers should refer to the official court order for judgment details.**

Master in Equity

3073
Judge C

3/23/15
Date

For Clerk of Court Office Use Only

This judgment was entered on the 24 day of Mar, 2015 and a copy mailed first class or placed in the appropriate attorney's box on this day of , 20 to attorneys of record or to parties (when appearing pro se) as follows:

Frank H. Durant
J. Jackson Thomas

ATTORNEY(S) FOR THE PLAINTIFF(S)

Kathryn M. Cook

ATTORNEY(S) FOR THE DEFENDANT(S)

Melanie Huggins Ward
CLERK OF COURT

Court Reporter:

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

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

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
	FIFTEENTH JUDICIAL CIRCUIT
COUNTY OF HORRY	CASE NO.: 2009-CP-26-620
ELLIS E. SMITH, Individually, and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., a South Carolina Corporation, Plaintiff, vs. ARTHUR WAYNE VEREEN, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, ARTHUR VEREEN CONSTRUCTION COMPANY, INC., LINDA C. VEREEN, ARTHUR W. VEREEN, AS TRUSTEE OF THE ARTHUR W. VEREEN RESIDENCE TRUST, and LINDA C. VEREEN, AS TRUSTEE OF THE LINDA C. VEREEN RESIDENCE TRUST, Defendants. and ARTHUR WAYNE VEREEN, individually and on behalf of A & E CONSTRUCTORS AND CONSULTANTS, INC., and 29th PLACE DEVELOPERS, INC., Third Party Plaintiffs, vs. E. SMITH AND SONS CONSTRUCTION, LLC, AND EES CONSTRUCTION AND CONSULTING, INC., and ELLIS E. SMITH, individually, Third Party Defendants.	JUDGMENT AGAINST THE DEFENDANTS ARTHUR W. VEREEN, INDIVIDUALLY AND AS TRUSTEE OF THE ARTHUR W. VEREEN RESIDENCE TRUST, LINDA C. VEREEN, INDIVIDUALLY, AND AS TRUSTEE OF THE LINDA C. VEREEN RESIDENCE TRUST, PARK PLACE PROPERTIES OF MYRTLE BEACH, LLC, PARKWAY OFFICES, LLC, AND ARTHUR VEREEN CONSTRUCTION COMPANY, INC., JOINTLY AND SEVERALLY

Appearances:

Attorney for A & E, Smith:	Frank H. DuRant
Attorney for Smith, EES and E. Smith & Sons:	J. Jackson Thomas
Attorney for the Defendants and Third Party Plaintiffs:	Kathryn M. Cook

PROCEDURAL HISTORY

This matter was referred to me for hearing pursuant to an Order of Reference of the Honorable Larry B. Hyman, Jr., dated July 23, 2009, with authority to issue a final Order in this matter. The parties presented testimony and hundreds of accounting records over four separate weeks. The case took more than a year to try because of various circumstances.

This is a shareholder's derivative action brought by Ellis E. Smith ("Smith"), individually and on behalf of A & E Constructors and Consultants, Inc. ("the Company") against Arthur Wayne Vereen ("Vereen"), the treasurer and remaining shareholder, and Vereen's wife, as well as some companies which Vereen controlled. Smith and the Company have sued for an accounting as well as for a dissolution of the Company, asserting that Vereen converted corporate assets.

Vereen and the Defendant entities generally denied the allegations, agreed to an orderly dissolution of the Company, and asserted counterclaims for an accounting, indemnification, and misappropriation of the Company's opportunities. Vereen, individually and on behalf of A&E, brought in an additional party, 29th Place Developers, Inc. (29th Place), without court approval, but without objection, and sued E. Smith and Sons Construction, LLC (E. Smith) and EES Construction and Consulting, Inc. (EES) and Smith, individually (Smith) as third party defendants.

I have reviewed the entire Court file, weighed the testimony and evidence presented, and find damages for the Plaintiff Company and against the Defendants Vereen individually and as trustee of the Arthur Wayne Vereen Residence Trust and Linda C. Vereen individually and as trustee of the Linda C. Vereen Residence Trust, Park Place Properties of Myrtle Beach, LLC,

Parkway Offices, LLC, and Arthur Vereen Construction Company, Inc. as discussed below. I find that each of these named Defendants conspired together to misappropriate and convert the assets of the Plaintiff Company and its other shareholder Smith.

DISCUSSION

The Plaintiff Smith and Defendant Vereen are the sole shareholders, officers, and directors of the Company, which was incorporated on October 28, 2003, as a construction company. The Company made a timely subchapter "S" taxation election under the Internal Revenue Code, and Vereen was elected treasurer. At all times, Vereen exclusively handled the Company's finances including managing and controlling the Company's checkbook. Smith and Vereen had equal ownership of the Company's shares of stock and served as its board of director members. When they began the Company, Smith and Vereen agreed that each would finish any pre-existing jobs under the names of their own separate companies and at their own separate expense.

Defendant Arthur Vereen Construction Company, Inc. ("AVCC") is a South Carolina Corporation owned by Vereen. Vereen operated his construction business out of AVCC for many years, but AVCC and Vereen's commercial building licenses expired in October 2003, about the time the Company began. Third Party Defendant EES Construction and Consulting, Inc. ("EES") is a South Carolina Corporation owned by Smith. The Defendant Park Place Properties of Myrtle Beach, LLC ("Park Place") is a South Carolina Limited Liability Company, which is owned 5% by Vereen and 95% by Defendant Linda C. Vereen, Vereen's wife ("Wife"), but managed and controlled by Vereen. The Defendant Parkway Offices, LLC ("Parkway") is a South Carolina Limited Liability Company owned by Wife, but also managed and controlled by Vereen. Parkway and Wife owned several buildings, including one space shared as offices with the other Defendants on Grissom Parkway in Myrtle Beach. E. Smith and Sons Construction, LLC ("E. Smith"), a South

Carolina Limited Liability Company created in April 2007, is owned solely by Smith. 29th Place Developers, Inc. (29th Place) is a corporation owned by Vereen.

The Company became a licensed commercial contractor in January 2004. The Company paid no salaries until June 2004, but beginning in January 2004, Smith and Vereen met each morning at the Company's office on Grissom Parkway. That office also served as an office for AVCC, Vereen's company, Parkway, Wife's company that Vereen managed and controlled, and Vereen's daughter's law practice.

Vereen began receiving a salary of $1,000.00 per week in June 2004. Smith was still finishing prior jobs at EES, and instead of receiving a salary, Smith invoiced the Company, through EES, for his time at $25.00 per hour and for EES's pro-rata expenses spent on Company business. Vereen approved and paid these EES invoices from the Company account at Carolina First Bank; Vereen charged the expenses to jobs performed by the Company on its job ledgers.

In early 2004, the Company began construction of a speculative residential home for Vereen in the Plantation Lakes subdivision near Myrtle Beach and also began several new, large, multi-family jobs. The Company was extremely busy and profitable during its first three years of operation. These years, 2004-2007, coincided with the three peak years of the real estate boom in the Grand Strand area. Opportunities for construction companies were numerous; construction companies were profitable. The Company permitted and performed several large jobs for Defendants Park Place, Parkway, and Wife; these included several jobs for Vereen's family members. Vereen told Smith that the Company would treat the family jobs just like any other job, and the Company would be paid overhead and profit.

A South Carolina corporation is required to maintain "appropriate accounting records" and is required to furnish its shareholders with annual financial statements that include the

corporation's year-end balance sheet, income statement, and statement of changes in shareholder's equity. See SC Code Ann. §33-16-101, et seq. (1976). If the financial statements are reported on by a public accountant, the accountant's report must accompany the financial statement. See SC Code Ann. §33-16-200 (1976). Smith never received an annual statement from Vereen, the Company's treasurer, or the Company's accountant, Richard Crumpler, CPA. Gains or losses from this subchapter "S" corporation were passed through and allocated to the two shareholders, Vereen and Smith, on an equal basis, which were included in the shareholders' taxable income and gains for each tax year.

The Company's CPA, Crumpler, informed Smith in 2007 that the Company had a large profit. When Smith asked Vereen about these profits, Vereen denied that the Company had any profits in 2007, instead asserting that the Company's large expenses offset its profits, leaving no net profits. At that time, the Company had completed construction of 23 resort homes[1] in a subdivision known as "Pointe Marsh" in the Cherry Grove Section in North Myrtle Beach for Park Place, had performed extensive construction on a putt-putt golf course owned by Park Place in North Myrtle Beach, and had performed extensive renovations on office buildings owned by Parkway and Wife on Grissom Parkway in Myrtle Beach. Smith began investigating the office records in early 2007, and he concluded that Vereen, in conspiracy with the remaining Defendants, had engaged in fraudulent practices with the Company. Smith made demand upon Vereen to rectify the wrongdoings. Vereen, however, denied any wrongdoing and refused to account for his actions. Smith suspected Vereen and Park Place were engaging in improper sales practices in selling the 23 homes at Pointe Marsh owned by Park Place.

[1] The Pointe Marsh homes were sold for prices ranging from $500,000.00 to $750,000.00.

Smith thereafter initiated the present shareholder's derivative action on behalf of the Company against Vereen, Wife, Park Place, Parkway and the Vereen's in their capacities as trustees, who owned the Vereen personal residence in Murrells Inlet, SC. The residence[2] was transferred into their names as Trustees of two separate Trusts in 2007 by Vereen and Wife. Smith alleged that the Defendants conspired together to wrongfully convert the Company assets to their own use; he requested an accounting of the Company's books, records, and other items, which are contained in the pleadings. Smith served detailed discovery requests upon the Defendants, and the Defendants served joint discovery responses. The Defendants filed an Answer and Counterclaim and a Third Party Complaint against E. Smith, EES and Smith.

In the Defendants' responsive pleadings, they denied that Vereen controlled the Company's finances or that the disbursements made by Vereen were not for the complete benefit of the Company. Vereen, individually and on behalf of A&E and 29th Place, alleged that he loaned monies from his companies to Smith in the 1990's for which he was to be reimbursed by Smith. He also asserted that EES improperly billed the Company for work allegedly performed for it. Vereen also demanded an accounting. Vereen's corporation, 29th Place, filed a third-party claim against Smith based upon an old promissory note. This Court granted Smith's motion for a directed verdict as to that claim.

AVCC counterclaimed against Smith for refusing to pay Vereen and AVCC for the use of AVCC contractor's license in a condo project 10 years earlier based upon an oral agreement for a 10% commission of the price of construction. This Court dismissed this claim on Smith's motion for a directed verdict.

[2] The Vereen residence is a large house located in an exclusive neighborhood in Murrells Inlet, South Carolina.

As to the Counterclaim for Breach of Contract concerning the alleged improper use of the AVCC license by EES at Carolina Keys, I find that AVCC and Vereen failed to prove their claim by a preponderance of the evidence. Specifically, I find that Vereen and AVCC orally agreed to allow Smith and EES to use the license in return for 10% of the profits earned by Smith and EES, not the cost, and that Smith and EES lost money, and thus owed no money to Vereen and AVCC. Furthermore, I find that the oral contract is illegal and cannot be enforced in South Carolina, as a contractor is prohibited from allowing a non-licensed entity to borrow a commercial license to perform construction. See SC Code Ann. §40-11-200 (1976). Finally, I find the claim, if proper, would be barred by the three year statute of limitations, as I specifically find that Vereen authorized the use of the license and was aware of its use for over nine years prior to the institution of this action. See SC Code Ann. §15-3-530.

Throughout this trial, the Defendants AVCC, Park Place, Parkway, Wife and Vereen referred to themselves as the "Vereen Entities." The Vereen Entities denied the specific allegations of wrongdoing in responding to the Company's discovery requests. The Plaintiff employed Susan Brady, an experienced, local Certified Public Accountant, as an expert witness to determine the nature and extent of the Company's damages. The Court found her testimony most insightful.

Even though not required, the Vereen Entities did not submit any accounting testimony, not even the Company's own accountant, Richard Crumpler. Mr. Crumpler is a well-respected certified public accountant who is the senior partner at a local CPA firm. The very fact that he was not called to testify was telling, especially when he presumably prepared the Company's tax returns based upon information provided by the Company's treasurer.

Ms. Brady conducted a lengthy investigation, testified, and submitted to the Court a detailed written report (the "Brady Report") of the fraudulent or "non-corporate" actions of the

Defendants, which were documented by written evidence. For the calendar years 2004 through 2007, Brady detailed an "Analysis of Non Corporate Activity" for each year, listing each and every improper act by the Defendants that caused the Company financial harm. The evidence of each improper act was contained in numbered tabs along with supporting documentation. As the trial progressed, the Brady Reports were amended to correct any errors, concessions and additions found during late produced discovery and during the trial. Ms. Brady's accounting task was complicated by Vereen's almost complete failure to maintain separate accounting records for the Company and the various Vereen Entities and his consistent commingling of the entities' income and expenses without documentation.

At the trial's end, Ms. Brady submitted her "Amended Summary Analysis of Non-Corporate Activity of A & E Constructors and Consultants," simply referred to as the final "Brady Report." In it, Ms. Brady documented damages sustained by the Company in the amount of $2,712,503.31, directly caused by Defendants' wrongful actions. These findings were fully supported by the evidence. The Company's accounting records, consisting of the Peachtree accounting system ledger, the checking accounts and tax returns, were submitted into evidence, without objection. The Defendants' checking account records and depositions from the Vereen Entities' bookkeeper Drewett and Defendant Linda Vereen were introduced into evidence. The Plaintiff introduced copies of checks for payment for services it rendered; Vereen then deposited the checks into Defendants' accounts. By clear and convincing evidence, the Plaintiff established that the Defendants conspired to convert the Company's assets to their own use with the intent to defraud the Plaintiff as detailed in the final Brady Report. I find the final Brady Report to be credible, accurate and complete. I hereby adopt the findings of the final Brady Report as conclusive evidence of the actual damages sustained by the Plaintiff as a result of the Defendants' actions.

LEGAL ISSUES

The Plaintiff brought this derivative action pursuant to Rule 34, SCRCP, and detailed the efforts he made to resolve these issues with shareholder Vereen prior to instituting this action. I am confident that this litigation was the only avenue available in this matter. Smith was the only party that could represent the Company's interests against the alleged wrongdoers, the Defendants.

Title 33 of the SC Code of Laws defines the duties and obligations of a corporation's officers and directors. It requires a corporation's director and officer to act in good faith, with the care an ordinarily prudent person would exercise under similar circumstances, and in a manner he reasonably believes to be in the best interest of the corporation and its shareholders. See, SC Code Ann. §33-8-300 (1976). In this matter, Vereen had a conflict of interest because of the construction performed by the Company for the Vereen Entities due to the ownership interests of Vereen and Wife in the transactions. See SC Code Ann. §33-8-310 (1976).

The conflict of interest stated in 33-8-310 could be overcome only if Vereen disclosed the material facts of each construction job to Smith, who had to officially authorize, approve or ratify the transaction. See SC Code Ann. §33-8-310(a)(1). If the test's first two prongs are established ([a]disclosure of material facts and [b] authorization, approval or ratification of transaction), the transaction must still be fair to the Company. See, SC Code Ann. §33-8-310(a)(3). Vereen allowed the Company to perform substantial construction for the Defendants even where there was no written construction contract. Vereen also allowed the Company to pay the Defendants' costs and expenses without billing them. Moreover, Vereen paid the Defendants' expenses from the Company's checking account without seeking reimbursement. Since Vereen acknowledged that he did not disclose the secret nature of these wrongdoings to Smith, I did not need to determine

the fairness to Smith of these transactions. The misappropriation of a Company asset can never be fair to an unknowing shareholder.

S. C. Code Ann. §33-8-320 prohibits the Company from loaning money to a director unless strict approval requirements are met. At trial Vereen admitted that he did not disclose these wrongdoings to Smith. Of course, Smith could not approve of any of Vereen's actions of which he was unaware. A director who assents to an unlawful distribution of company funds has a duty to repay the funds under SC Code Ann. §33-8-320. As to any funds converted by or diverted to the Defendants or for their use from the Company account, I find that Vereen failed to establish that Smith approved of the unlawful transactions. Vereen directed the unlawful distributions of the Company's funds; he has a duty to repay the funds.

An officer's duty to a corporation is defined in SC Code Ann. §33-8-410, et seq. He must act in good faith and only in a manner that he reasonably believes to be in the best interest of the Corporation and its shareholders. See SC Code Ann. §33-8-420. These statutory provisions define what has always been the law in this State; the Corporation, through its officers and directors, must always act in the best interest of the Corporation. A breach of these fiduciary duties or responsibilities, whether as officer or director, imposes liability upon the breaching party for any damages sustained by the Corporation and clearly places upon the wrongdoer the burden of proof to establish consent, approval and fairness. Id.

In each contract that the Company had with the Defendants, Vereen, as the Company's treasurer and the financial manager, failed to get a written contract for the construction. He also advanced payment from the Company's account to the Defendants without authorization for construction expenses, and further, he failed to invoice or collect payments and costs from the

Defendants. When payments were made, Vereen on occasion did not deposit the collected payments in the Company account but instead placed them in accounts belonging to one of the other Defendants.

The Defendant Vereen, in conspiracy with the Defendant Vereen Entities, breached his statutory duties to the Company in the following transactions where he had a material conflict of interest:

1. The construction of 23 homes and the renovation of a putt-putt golf course and arcade on Sea Mountain Highway for the related party, Defendant Park Place: Wife gave Vereen exclusive management and control of Park Place. The Company advanced payment for over $900,000.00 in construction expenses for these 23 homes; however, it did not have a construction contract obligating Park Place to pay the Company for the construction, and the Company did not invoice or collect payment for the expenses it advanced. Wife gave Vereen control of the banking accounts of Park Place. The balances in the Park Place banking account were sufficient to pay the Company for the expenses advanced and the costs of construction, but payment to the Company was not made.

2. The construction of a home in Plantation Lakes for the Defendant Vereen in 2004: Vereen owned a lot in the Plantation Lakes subdivision. The Company paid for the construction expenses for Vereen's new home built beginning in early 2004. Vereen did not prepare a construction contract requiring payment for the construction, and Vereen, the Company's treasurer, did not invoice or collect payment for the Company's expenses. I find that the Defendant Vereen obtained a construction loan to pay for the cost of construction but did not use the loan proceeds for that purpose.

3. The construction of improvements made on office buildings owned by the Defendants Parkway and Wife located on Robert Grissom Parkway: The Company advanced payment for construction expenses for buildings owned by Wife and Parkway but did not have a written construction contract obligating the Wife and Parkway to pay the Company for the cost of construction. Vereen, the Company's treasurer, did not invoice or collect payment for the expenses advanced by the Company.

4. The payment of construction expenses for Defendant AVCC: Vereen, as the Company's treasurer, paid construction costs and expenses for AVCC jobs from the Company account without Smith's knowledge and did not invoice or collect for the expenses advanced. Vereen billed and collected from the third parties for the AVCC charges and placed the funds in to the AVCC account or other accounts of the Defendants.

5. The payment of construction expenses for Vereen and Wife: Vereen, as the Company's treasurer, paid for construction expenses out of the Company account for his and Wife's personal home, now owned by the Trustees named as defendants. Vereen, on behalf of the Company, did not require that Vereen and Wife sign a construction contract with the Company obligating Vereen and Wife to pay for construction costs and did not invoice or collect payment for the expenses advanced by the Company. Further, Vereen did not tell Smith that the Company was paying for construction costs of the Vereens' personal home from the Company account. The Vereens received a newly-constructed house at the Company's expense without Smith's knowledge.

6. Vereen had multiple unwritten construction contracts with members of Vereen's and Wife's family, and Vereen paid for construction expenses from the Company account: The Company advanced funds to pay for construction on multiple jobs for members of Vereen and

Wife's family members. There were no written construction contracts obligating the owner to pay for the cost of construction and, on many occasions, Vereen and the Company did not invoice or collect payment for the expenses advanced by the Company.

7. Vereen entered multiple construction contracts through AVCC, which contracts were performed by the Company: AVCC entered into multiple written construction contacts when it was not licensed to perform construction in South Carolina and when the Company obtained all permits and paid for the construction costs of such projects from the Company account. Vereen did not tell Smith that he entered into the secret contracts with the customers of the Company or that he invoiced the owners in the name of AVCC. On multiple occasions, even though the payments for such construction belonged to the Company, Vereen deposited the payments into the Defendants' accounts.

8. Vereen paid for construction expenses from the Company account for improvements made to the home of Elizabeth Vereen Sisson, daughter of Vereen and Wife, who also is a Company employee: Vereen did not require the Company to have a written construction contract obligating his daughter Sisson, a South Carolina lawyer, to pay the Company for the construction on her home. The Company paid over $150,000.00 in construction expenses on her home, and Vereen, as the Company's treasurer, never invoiced Sisson for the expenses. The Plaintiff received a partial payment for the expenses on this job. A large payment from Sisson erroneously was made to Park Place rather than the Company. Vereen admitted, at trial, that over $15,000.00 in labor charges which should have been repaid to the Company for the Sisson job never were made.

9. Vereen, with the tacit assistance of the other Vereen Entities which he controlled, billed third parties for services performed by the Company; Vereen thereafter deposited the

payments from the responsible parties into various accounts of the Defendants, not the Company's account. Smith was unaware of Vereen's improper actions in these matters.

THE ACCOUNTING TRIAL

Vereen admitted at trial that he signed construction contracts in the name of AVCC in 2004, when AVCC was unlicensed, and when the Company had obtained the building permits and paid for the costs of the construction. Vereen further admitted that AVCC billed the Company's customers for these expenses, even though AVCC did not pay for the cost of construction. Moreover, Vereen admitted he did not tell Smith of these practices. Vereen's testimony was contrary to the Defendants' interrogatory responses. The Defendants' united response at trial was that the "Vereen Entities put in more money than they took out." Expert witness Brady accounted for all money the Vereen Entities deposited into the Company checking account, properly giving appropriate credit for each deposit. Brady compiled notebooks for the 2004 – 2007 calendar years, which detailed the ultra vires and improper actions of the Vereen Entities against the Company.

Pursuant to the Court's October 15, 2010 Pretrial Order, the Company's and the Defendants' business records, accounting records, tax records, checks and deposits, banking records, accounting and tax records were admitted into evidence without authentication. In the Pretrial Order, this Court required that the Defendants deliver all accounting information to the Plaintiff's attorneys to support the Defendants' claims for set-off or reimbursement by December 1, 2010. Defendants' claims allegedly occurred from 2004 to 2007. The Court's Order required that the Defendants "shall present evidence of the actual **invoice or bill** for services rendered or labor rendered and the **cancelled check** for payment made pursuant to such invoice (emphasis added)." If the Defendants did not comply by the deadline, the Order provided that "such

accounting records and information shall not be presented in the trial of the case by the Defendants."

During trial, the Court repeatedly sustained the Plaintiff's objections to the Defendants' attempts to introduce records into evidence that did not meet these requirements because they were either not produced by the deadline, or were not original invoices for goods or labor accompanied by the cancelled check of the Defendants for payment. Defendants proffered these records. From this Court's examination of the Company records, Vereen regularly sought reimbursement for expenses he paid on the Company's behalf, which were documented, charged to a job ledger on the Company's accounting system, and were immediately reimbursed to Vereen by a Company check he signed. The Company would then bill the customer for the expense incurred or add it to general overhead. The Defendants submitted invoices paid by the Defendants for improvements made on the Defendants' properties. These invoices were not proper for reimbursement, because the Company had no obligation to pay any of the Defendants' expenses on their own properties. The Defendants submitted claims for reimbursement for Company jobs performed from 2004 until 2007. The Company would not have the ability to invoice the customer or deduct the expense on its tax returns, as the request was submitted over three years after the Company had completed the last job and after the tax returns had or should have been prepared. Finally, if the Defendants did not provide the cancelled check and the invoice for the expense, the Company could not document the expense as a Company's expense or as an expense paid by the Defendant claiming the reimbursement. The Defendants attempted to mass produce claims for reimbursement or offset that were not documented appropriately and as required in the Court's Pretrial Order. As to claimed deductions for 2004 and 2005, the Company's tax returns already had been filed and could not be

amended. The Company accepted approximately $80,000.00 in credits, which are outlined in the Brady Report, which were credited against the Defendants' accounts receivable.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Based upon the testimony and other evidence presented, I make the following findings of fact and conclusions of law:

1. I find that the Plaintiff complied with the requirements of the South Carolina Rules of Civil Procedure and properly brought a derivative action against the Defendants in this action.

2. I find that the Plaintiff alleged in the verified Complaint that the Defendants conspired together to wrongfully convert Plaintiff's assets and to injure Plaintiff. The Defendants generally denied the allegations and counterclaimed against the Plaintiff Smith and his entities, EES and E. Smith.

3. The Counterclaims and Third Party Complaints: After reviewing the credibility of the testimony and evidence presented, I find that the Defendants and Third Party Plaintiffs did not meet their burden of proof by a preponderance of the evidence in establishing that Smith, EES or E. Smith owed any monies to the Defendants or to the Company that was not otherwise accounted for by Brady in her Final Report. To that extent, I find that the Defendants failed to meet their burden of proof that Smith owed Vereen or AVCC for any monies related to the construction of Smith's home in the 1990's, or that Smith owed any sums for the use of the AVCC license in the construction of the condominiums in North Myrtle Beach. Closing documents from the Smith home clearly establish payment in full at closing. As to the Counterclaim by AVCC against Smith, I specifically find that the oral agreement was for Smith and EES to pay Vereen and AVCC 10% of the profits they earned on the Carolina Keys project; Smith and EES did not earn any profits. Accordingly, Smith and EES owed nothing to Vereen and AVCC for the Carolina Keys project.

Moreover, even if there had been profits, I find that an agreement to use the AVCC license is an illegal contract that is unenforceable in Court. See SC Code Ann. §40-11-200 (1976).

As to 1990 debts allegedly due from Smith to the Vereen entities, I find that these debts were either discharged in Bankruptcy or are time barred under the Statute of Limitations. See SC Code Ann. §15-3-530(1). Furthermore, I find as a matter of fact that there was no agreement or discussion at the time this Company was formed for Smith to pay Vereen or the Defendants monies due from the past.

Further, I find that the Defendants failed to meet their burden of proof that Smith, EES or E. Smith misappropriated any corporate assets of the Company that was not accounted for by Brady in her Report. Specifically, I find that the Defendants and Third Party Plaintiffs failed to prove, by a preponderance of the evidence, that Smith or EES submitted any invoice for payment to the Company that was not properly reviewed and paid by Vereen, who approved and signed all Company checks. I find that the Defendants and Third Party Plaintiffs failed to establish that Smith, EES, or E. Smith used corporate assets for their own personal benefit, such as flooring and tile, other than the floor covering that was accounted for, admitted, and contained in the Report of Brady.

As to the claims contained in Paragraph 32 of the Counterclaim, the Court dismissed items 32 (a)(b)(c)(d)(l)(m)(o) and (p) on motion for directed verdict. I specifically find that Smith informed Vereen of the use of the Company license for items (a) through (k), which were instances where the Company license was used with permission of Smith and Vereen, and no monies were paid to the parties and no expense paid by the Company. Vereen produced no evidence of damages sustained by the Company for these actions. As to (l) to (p), I find that the Company's license was

not used and no Company funds were advanced for construction. The Counterclaims are thus dismissed.

I find that the Defendant E. Smith did enter into a construction contract with Martin Brown for the construction of the Condolux Office building in late 2007, after Smith left the Company. However, I find that Vereen had previously rejected the construction proposal as not being profitable. I find that E. Smith did in fact use the Company's construction license to perform the work; however, E. Smith obtained liability insurance for the job and paid each and every expense from its separate funds. I find that the Company has not suffered any damages as the result of Smith's actions and that Smith was the qualifying party with the Contractors Licensing Board for the Company. Smith had already left the Company at the time construction began, when he was receiving 14 weeks of paid leave for unused vacation time. I find that Vereen was aware of Smith's actions and made no complaint against him until this lawsuit was initiated.

4. I find that Vereen and Smith agreed that each could engage in outside construction activities to earn additional income, but any such activities would be at their own expense and in their separate time. Smith engaged in outside activities that did not involve Vereen or the Company, which were done on his own free time and expense. Smith's complaints against the Defendants involved transactions where the Company was performing and paying for construction services and yet, payment from third parties for its services was being made, via Vereen, to Vereen's companies. Smith's activities in performing labor on an hourly basis on his free time caused no legal or financial harm to the Company.

5. I expressly adopt the findings and conclusions contained in the Brady Report, which reflect the actual losses sustained by the Company in transactions between the Company and the Vereen Entities and for other non-corporate actions by Vereen. The Brady Report is detailed and

is supported by clear and convincing evidence. Due to the complexity and the material wrongdoings in several transactions, I make the following additional factual findings of the Defendants' misconduct, resulting in the Company's material damages:

(a) The Plantation Lakes home: In early 2004, Vereen employed the Company to build a residential home on his property in Plantation Lakes near Myrtle Beach. Vereen paid, by Company check, Plantation Lakes construction job expenses in the amount of $132,574.94, which are detailed in the Company job ledger and in the Brady Report. However, Vereen simultaneously had obtained a construction loan from Horry County State Bank to pay for the construction costs which was secured by a first mortgage loan upon the property. In addition to the basic construction job expenses, the Company incurred payroll costs for workers compensation, social security and payroll expense, liability insurance, office overhead, and salaried employees on the Plantation Lakes residence. Smith knew the Company was performing the job, but he was unaware that Vereen was not paying the Company for the construction costs from the Horry County State Bank construction loan.

Vereen sold the house to the Whitleys for an amount that exceeded the balance of the construction mortgage by $102,000.00. On the date of the 2005 real estate closing, Vereen executed a deed into the Company for a stated consideration of "$5.00 and assumption of mortgage" without Smith's knowledge or consent. The Company, by Vereen's signature, then transferred the property on that same day to the Whitleys for the stated purchase price. The HUD closing statement, signed by Vereen for the Company, reflected that Vereen's personal construction mortgage in the amount of $281,000.00 was paid by the closing agent, and the Company received the net proceeds from the sale of $102,480.96. When the Company's 2005 state and federal tax returns were prepared and filed by Vereen's CPA, the $102,480.96 check to the

Company was classified on the Company's books and tax returns as a "loan" from Vereen to the Company. Vereen did not report the income received on his and Wife's tax returns. As a result of these actions, the Company was not repaid the $132,574.94 it had advanced in construction costs, nor the payroll, overhead and profit expected for the construction of the house. Vereen admitted that he did not tell Smith of the same-day transfers, the advances made by the Company for construction expenses, the lack of billing or payment, and the tax treatment given to the transaction on the 2005 tax returns. Vereen offered no explanation for his actions.

Vereen testified that he may have done some "quirky things", but in the end, the Vereen Entities "put more money in than they collectively took out." Smith learned about the transaction when his attorney searched the public records of Horry County. As a result, the Company was defrauded of all the paid construction expenses, plus the indirect costs and expenses, including profit. When the Company later billed the Whitleys for additions they requested after purchase, Vereen deposited their check for payment made to the Company into the account of Defendant Park Place, instead of depositing it into the Company's account. The Brady Report details the losses sustained by the Company, including overhead, profit and expense. Vereen explained that he transferred the home to the Company because it was a "Company" venture, yet he failed to explain why his business partner had no knowledge of the transaction, and why the only revenues received from the sale were treated as a loan from Vereen to the Company.

(b) Willoughby Place: I find that Vereen had a conflict of interest with the Willoughby Place construction job, which was a $4,000,000.00 multi-family construction job performed by the Company from 2004 through 2006. The Company obtained all construction permits from the City of Myrtle Beach, and a construction loan was obtained by the Developer, Willoughby Family Investments, LLC, to pay the costs of construction. The Defendants never produced a copy of the

written construction contract between the Company and the Developer Willoughby Family Investments, LLC, but Defendants' Interrogatory responses stated that this was a job performed by the Company for Defendant AVCC. I find that such an agreement is improper in South Carolina, as AVCC had no construction license at that time and thus could not subcontract the job to a licensed entity. See SC Code Ann. §40-11-200 and §40-11-330 (1976). AVCC submitted multiple construction draw requests from AVCC, from AVCC d/b/a A & E, and from the Company. Vereen then deposited the construction draw payments into the Defendants' accounts.

I find that Willoughby checks totaling $113,480.00 were deposited into the AVCC account. Although the Defendants denied these actions in their pleadings and discovery responses, Vereen admitted at trial that the invoices came from the Defendant AVCC and that he deposited the payments into accounts other than the Company's account. I find that bills for "extras" to Willoughby were billed in the Company's name, and Vereen deposited the payments into Park Place's account. When the Company was sued for copyright infringement over the plans for this project, the Company paid for a portion of the defense and settlement expenses, but mysteriously the Company's "construction contract" could not be located. I find that the Defendants failed to produce a full accounting of these expenses, payments and reimbursements from the insurance carrier and the project's owner. The Brady Report details each misappropriated deposit and the invoices, third party checks and the deposit tickets to the Defendants, which were admitted into evidence. I find that the Defendant Vereen, AVCC, Park Place, and Parkway conspired together to defraud the Plaintiff by billing these charges improperly and in depositing the payment into their accounts.

(c) Dr. Lale job: I find that Vereen had a conflict of interest in the Dr. Lale remodel job. The job was contracted and permitted in the name of the Company on January 30, 2004. The

Company paid the costs and expenses of the job. According to the Defendants' discovery responses, this job was "performed by the Company for AVCC," but AVCC billed Dr. Lale rather than the Company. Vereen then deposited the Lale payments into accounts other than the Company's account. It is illegal in South Carolina for an unlicensed contractor to subcontract with a licensed contractor to perform construction services. See SC Code Ann. §40-11-200 and §40-11-330 (1976). The misappropriations are documented in the Brady Report, as part of the Company's actual damages. I find that Vereen and AVCC conspired to defraud Smith and the Company by billing charges improperly and by then failing to deposit payments received into the Company account. I find that AVCC was not licensed to perform this work, could not subcontract the job to the Plaintiff because it was not licensed, and did not pay for the construction costs. I furthermore find that Vereen failed to disclose these matters to Smith.

(d) Parkway Offices and Wife: I find that Vereen had a conflict of interest in the Company's job performed on Grissom Boulevard for Wife and Parkway Offices. Wife requested that the Company perform the construction contract on a "cost only" basis. I find that Wife and Parkway did not execute a written contract with the Company for the construction. Moreover, the Company did not bill for the services rendered, and Wife and Parkway did not pay for any of the construction at the office location. I find that Vereen wrote checks from the Company's account totaling $107,000.00 for construction costs but never billed Wife and Parkway for such expenses. I find that Vereen admitted he had no discussion with Smith about the job being a "cost only" job or that the Company had not been paid for the construction expenses. Again, the Defendants' explanation was that "the Vereen Entities put more money in than they took out." Each expense listed on the job ledger was paid by a Company check signed by Vereen and assigned to the Parkway Offices job ledger. I find that the Brady Report correctly detailed the Company's losses,

including overhead and profit, due to Wife and Parkway's failure to pay for any of the construction. I find that Vereen, Wife, and Parkway conspired together to defraud the Company..

(e) The Park Place Putt-Putt job: I find that Vereen had a conflict of interest in the Company's construction job performed at the Black Pearl Putt-Putt Golf Course, owned by the Defendant Park Place. Wife owns a 95% interest in Park Place and Vereen the other 5% interest. Vereen managed Park Place, making all decisions for the Company. I find that the Plaintiff established that it paid over $114,290.72 in actual labor and expenses for this job from the Company account, but there was no written construction contract, no invoicing, and no payment for the costs of construction. Defendants asserted that this was a "cost only" job. The expenses were established from the Company job ledger, and Vereen wrote each check from the Company account reflected on the ledger. I find that the Brady Report outlines the losses sustained by the Company caused by the Defendant's failure to pay for this construction, including overhead and profit. I find that although the Defendants challenged the charges maintained on the Plaintiff's accounting records attributed to "shop," the items paid and attributed to the "shop" were not included in this job ledger and were not expensed to the Defendants. I find the Defendants' explanations to be unbelievable and contrary to the documented written evidence. I find that Vereen admitted that he did not tell Smith that there was no written contract for construction, that the Company had not paid for the construction costs, and that the Defendants were not invoiced and did not pay for the construction. I find as a matter of fact that Wife authorized the actions of her husband. Moreover, she and Park Place received the benefit of substantial improvements without payment.

(f) The 23 homes constructed for Park Place: I find that the Defendants had a conflict of interest in the 23 homes that the Company constructed for Park Place at Pointe Marsh, located

on Sea Mountain Highway in North Myrtle Beach. The Company performed these construction jobs, permitted in their name, over a two year period without any written construction contracts on a "cost only" basis." I find that Vereen signed $973,875.47 in Company checks for labor and materials for the 23 homes, and yet, the Company never billed Park Place for any services rendered or materials used. I find that Vereen, on behalf of Park Place, deposited checks he had signed in to the Company account, which were accounted for by the Company in the Brady Report. I find that when the Park Place project was completed, Park Place owed the Company $496,039.57 for the Company's construction costs (with no overhead or profit charged or paid). The Defendant Park Place procured 15 construction loans, which could have provided funds to pay the intended purpose of the loan, construction costs of the houses. Instead, Park Place neglected to use the loan funds for their intended purpose. I find that the Brady Report details the amounts due for labor and materials paid for by the Company, with added costs for payroll, overhead, insurance and expected profit. I find that the Defendants Vereen and Wife, the owners of Park Place, offered no excuse or logical explanation for their actions. I find that the accounting records of Park Place reflected a profit exceeding $6,000,000.00 on the sale of the homes, after payment of construction costs. I find that Vereen admitted that he did not tell Smith that he was paying the construction expenses from the Company account, that he was not invoicing for such charges, and that the defendants did not pay the Company for the construction. I find that in her report, Brady properly computed the payroll, insurance, overhead and expected profit for these jobs, which I expressly adopt as being calculated based upon established standards in the industry. I find that Wife authorized the actions of Park Place and Vereen. I furthermore find that the Brady Report also correctly charged the Defendants with specific checks written out of the Company account to pay interest on the Park Place Development loan.

(g) The Sisson Remodel: I find that Defendant Vereen had a conflict of interest in the Elizabeth Vereen Sisson construction job performed by the Company. Sisson is the daughter of the Wife and Vereen. Sisson, a licensed attorney, was employed by the Company. I find that Vereen signed over $150,000.00 in Company checks to pay for labor and material on the Sisson residence. I also find that that there was no written construction contract or evidence of billing on the Sisson job. According to the Defendants, the Company permitted the Sisson job in 2007 and finished it in early 2008. The Sisson job was "cost only", with no construction contract and no billings. I find that the Defendants failed to explain why the Company advanced any money to pay Sisson's construction expenses. I find that Sisson paid the last payment of $35,803.10 (of the advanced expenses) by a check written to Park Place rather than the Company, which paid for the expenses. I find that the Company did not receive any payment for payroll expenses, insurance, overhead or profit. I find that Vereen admitted that the Company paid an additional $15,000.00 in labor expense to its master carpenter for his work at the Sisson house, which was not charged to the Sisson job ledger in the Company records. I find that the Brady Report outlines the Company's losses sustained because of these unauthorized expenditures from the Company account, together with the overhead and expected profit on this job. The Brady Report gives credit for all of Sisson's payments finally that were deposited in the Company account. Neither the Defendants nor Sisson gave any explanation for their actions.

(h) The Kemp Job: I find that the Defendant Vereen had a conflict of interest in the Company's job performed for Mr. Kemp, a job the Company permitted in 2004. The construction contract was signed in the name of AVCC on January 31, 2004, when AVCC did not have a contractor's license. I find that the Company paid for the Kemp expenses from the Company

account. I find that the Brady Report correctly reports the Company's losses because of its expenditures, and Kemp's payments made which were not deposited in the Company account.

(i) I find that the Defendant Vereen had a conflict of interest when he paid himself "supervisor fees" of $103,760.68 in 2004 and $27,121.62 in 2005 from the Company checking account. I find that these payments were unauthorized payments to Vereen, and that these payments were not reported as W-2 income to Vereen on the Company's 2004 and 2005 state and federal tax returns. Vereen made sure that Smith was not notified of these payments.

(j) I find that in 2004, Vereen took $21,320.15 from the Company account at Carolina First Bank to purchase a cashier's check payable to the Horry County Treasurer to pay his and Wife's real property taxes. This payment is correctly reflected on the Brady report. I find that Vereen and Wife offered no explanation for this payment.

(k) I find that Vereen paid $17,385.27 in expenses related to AVCC's Seven Oaks construction project from the Company checking account. This job was not a job of the Company, and Vereen and AVCC never repaid the funds. I find that these expenses are correctly reflected in the Brady report.

(l) I find that Vereen paid monthly rent from the Company checking account for a storage unit from Paul Thomas, where Vereen stored his personal vehicle and other personal items for many years. Vereen previously paid this expense from the AVCC account. I find that the use of the rental was personal to Vereen and was unauthorized. The amount of such expense is detailed in the Brady Report.

(m) I find that Vereen paid for the construction costs on a two car garage on a house partially owned by Vereen and Wife in the Bahamas and for repairs on their Gamecock football stadium "caboose" from the Company account. Although Vereen initially rationalized that the

Bahamas expenses were for a Company "sponsored" vacation, he subsequently conceded that the expenses were personal. The amount of such expenses is correctly detailed in the Brady report.

(n) I find that Vereen paid for personal insurance by check or pre-authorized draft from the Company account each month. Vereen admitted that these expenses were personal and improper. The amount of such expenses is detailed in the Brady Report. [3]

(o) I find that Vereen incurred monthly charges on multiple credit cards and paid for such expenses from the Company checking account. I find that the Company does not have any credit cards of its own, and these expenses were not Company expenses. For example, Vereen paid his daughter's gasoline charges on a Shell credit card from the Company account. The amount of such expenses is detailed in the Brady Report.

(p) I find that Vereen paid monthly dry cleaning bills for four years from the Company account for his family's personal dry cleaning. When confronted with this issue, Vereen admitted these expenses were personal. The amount of such expenses, annually, is detailed in the Brady Report.

(q) I find that Vereen deposited a $15,000 check from the Tahitian Princess job, a Company job, not into the Company account, but instead, into AVCC's account. This $15,000 deposit is included in the Brady report.

(r) I find that Vereen paid his personal monthly 29th Place HOA dues from the Company checking account. The Company does not own any real property at 29th Place. Vereen admitted that this was a personal expense. The amount of such expenses is detailed in the Brady Report.

[3] In her Final Report, Brady corrected an error in the amount of the charges.

(s) I find that Vereen paid the monthly cell phone bill for a third party from the Company account. The account was for one of Vereen's friends, not a Company employee. Vereen alleged that the Company paid the phone expense of Seth Smith, as a defense. However, the Company paid Seth Smith's cell phone charges while he was employed there. The Company's payment of Vereen's friend's cell phone charges was improper. I find that the Brady report correctly details these improper expenses.

(t) I furthermore find that from the Company account, Vereen paid for the labor and materials for the construction of his and Wife's house. These expenses are detailed in a Company job ledger. Vereen did not notify Smith of this important matter. I find that these payments were improper advances to Vereen and Wife that were never billed to or paid by the Company. I find that the amount of such expenses is detailed in the Brady Report.

(u) I find that Vereen paid for a $9,045 City of North Myrtle Beach construction permit for the Park Place job from the Company account. This expenditure was not included in the Park Place job ledger maintained by the Company and was never charged to the Park Place account on the Company's job ledger. This unauthorized payment is correctly detailed in the Brady Report.

(v) I find that Vereen used the Company's lull and skid for several years while the Company was constructing 23 homes for Park Place. At the same time, the Company had to rent a comparable lull and skid to use on its multi-family jobs. I find that Vereen did not list this expense on the Park Place job ledger maintained by the Company. I find that the Company established the costs that the Company paid for rental of a similar lull and skid, which were calculated and shown as the Defendants' account receivable on the Brady Report. I find Vereen and Park Place utilized the Company's equipment with full knowledge that the Company had to rent comparable equipment for its other jobs.

(w) In 2006, Vereen paid a $5,000 "commission" to his daughter, Elizabeth Vereen Sisson, from the Company checking account. Smith did not authorize this payment as this was a conflict of interest transaction. This payment was to an employee, not a shareholder, and was not reported as W-2 income to Sisson on the Company's income tax return. The amount is shown as an account receivable from Vereen on the Brady report.

(x) I further find that Vereen paid from the Company account the sum of $22,049.48 to Stock Builders for an invoice for materials delivered to the Park Place construction site, which was not charged to that job on the Company job ledger. Vereen reluctantly admitted that it was an expense that he and Park Place owed. The amount is shown on the Brady report as the Defendants' expense.

(y) I find that Vereen paid from the Company account multiple checks to Hartford Insurance and Companion Property & Casualty for insurance for property not owned by the Company. Such improper expenses are delineated on the Brady report.

(z) I find that Vereen improperly paid the expenses for his and Wife's vehicles by Company check. The Company did not own these vehicles, and it was improper for the Company to pay for their expenses. These expenses are shown on the Brady Report.

(aa) I find that Vereen claimed $208,577.66 in "construction in progress" expenses that he alleged were advances by AVCC to the Company in 2006, but for which he produced no backup as is required by the Court's Pre-trial Order and the Internal Revenue Service regulations. Vereen's daughter, Sisson, gave the list of these expenses to the Company's accountant with no documentation to support the claimed expense. I find that the Defendants failed to submit proper documentation to support these claims for reimbursement or offset, as required by the Order, and

I have disallowed these expenses as credits or offsets against the balances due by the Defendants. The amounts disallowed are shown as an accounts receivable on the Brady Report.

(bb) I find that Vereen improperly advanced Company funds to pay for his family members' construction expenses, which were not invoiced by the Company to such persons and were not paid. These expenses are shown on the Brady Report as unauthorized advances made by Vereen to third parties related to Vereen and Wife.

(cc) I find that all construction work performed for the Defendants Park Place, AVCC, Parkway Offices, Vereen, Wife and other "family" members, were, unlike other jobs, not based upon written construction contracts that obligated the owner to pay the Company for the services rendered. I find that although Vereen had a job ledger created at the Company for these jobs, Vereen paid the expenses of these jobs from the Company account but never billed for the labor and materials paid for and provided, the additional payroll expense, the cost of labor provided by salaried employees, the cost of liability insurance and the expected overhead and profit of 15%. Although Vereen initially claimed that these jobs were for "cost" only, on many occasions no payment was received at all. I find that Vereen conceded at trial that these entities should have paid the payroll expenses, liability insurance and expected overhead and profit of 15%. I find that Brady properly calculated the actual payroll costs by multiplying the actual payroll by 140% to determine the actual payroll costs to the Company, which included worker's compensation, FICA and Medicare match, and state and federal unemployment. I find that Brady properly calculated the cost of liability insurance at 2% of the costs of construction, and that overhead and profit were properly calculated at 15% of the cost of construction, which was used to determine the amount that should have been paid by the Defendants on each job. I find as a matter of fact that the calculations performed by Brady are reasonably calculated to provide what the Company

should have charged and collected for each and every job performed for the Defendants or their family members, with the exception of the Vereen personal home. The amounts and the method of calculation are contained in the Brady Report.

(dd) I find that an audit was completed of the Company's 2007 worker's compensation policy, which resulted in a refund check payable to the Company of approximately $49,000.00. I find that Vereen endorsed the check and deposited the check into the Park Place checking account, rather than the Company account. The amount of the check is included in the Brady Report.

6. Vereen, as the controlling Member, Managing Member, or President of each of the Defendant entities, treated the Defendants and the Company as if they were one large one entity, ignoring the corporate formalities required by law, and ignoring the requirements of the Internal Revenue Service concerning reporting of income and benefits paid by the Company to these Defendants. I find that checks payable to the Company were endorsed and paid by Vereen into Park Place, AVCC, Parkway and the Vereens' personal accounts. The Company, via Vereen, advanced funds from its account for construction expenses for Parkway, Park Place, AVCC, Vereen's family members and for Vereen and Wife without invoice or repayment. The Company paid for expenses of Park Place, Parkway, AVCC, Wife and Vereen unrelated to construction. Vereen took Company deposits and placed them into banking accounts of Park Place, Parkway, AVCC and Vereen. Vereen billed for services rendered by the Company in the name of AVCC and deposited the monies in other accounts which he controlled. The Company paid for the costs of constructing a two car garage in the Bahamas on a home partially owned by the Defendants Vereen and for repairs on a University of South Carolina "cockaboose" at the football stadium. Vereen received construction loan disbursements for the Company's construction expenses; he deposited the money into the Defendants' accounts rather than into the Company account. The

common denominator in each transaction is that Vereen personally controlled the financial and legal affairs of each entity and solely made all its decisions. Wife authorized Vereen to act for the entities she owned. When asked about her involvement in Park Place's transactions, Wife stated she had not read the Complaint and didn't know why she was sued. Her professions of ignorance are unconvincing. She either knew or should have known of her husband's misappropriations. In any event, Wife has clearly received the benefit of her husband's actions and has testified that they were authorized.

7. I find, for all accounting purposes in this case, that the Company ceased to perform business on December 31, 2007, and that expert Brady properly disregarded all financial transactions after that date, with the exception of accounts receivable and payments made for warranty work. According to the testimony presented, I find that the only job remaining at the Company after December 2007 was the Elizabeth Vereen Sisson job. According to Bookkeeper Drewitt, the Company had no jobs after 2007.

I find that the Defendants shall not be allowed any credit or offsets for checks of Park Place deposited into the Company account after 2007. From these deposits, Vereen issued checks from the Company account to pay himself, Sisson, and Drewitt, who were then employed by Grand Strand Builders, LLC. Grand Strand Builders, LLC is a licensed construction company owned by Vereen's daughter and son in law. I find that all expenses paid from the Company account after December 31, 2007 were expenses of Grand Strand Builders, LLC, where Vereen is the licensed builder. Beginning in 2008, Vereen and Sisson permitted new jobs in the name of Grand Strand Builders, and the telephone was answered as Grand Strand Builders. I find that the Defendants submitted fraudulent claims for reimbursement to the Court for these expenses advanced by Park Place to the Company. I have examined the checking account records of Grand Strand and Park

Place. I find that construction disbursements and payments for Grand Strand Builders permitted jobs after February 2008 were deposited by Vereen into the Park Place checking account rather than the Grand Strand Builder's account or the account of the Company; however, Park Place was not the developer or owner of these properties. Sisson testified she spent 80% of her time defending this civil action while she worked for, and acted as President of, Grand Strand Builders. Had the records of the Company been kept as they should have instead of being commingled with the Defendants' records, they would not have taken numerous hours to untangle. That is no one's fault but Vereen's fault. I find that the Brady Report properly disregarded advances by Park Place to the Company.

8. Based upon the evidence presented, I find, by clear and convincing evidence, that Park Place, Parkway Offices, AVCC, Arthur Wayne Vereen and Linda C. Vereen, individually and as Trustees, conspired together to convert the assets of the Company to their own benefit. The act of one was the act of the other, and each Defendant shared in the ill-gotten gains. The Defendants together conspired to commit accounting fraud upon the Plaintiff, and commingled funds without regard to ownership or the taxation of such funds to the recipient. I find that most of the ill-gotten gains went to Defendant Park Place, which is owned 95% by Wife. The funds were used to pay Wife a large weekly salary, even though she admitted she did not work for that Company; to construct the Vereen and Wife's personal house; and to pay Wife and Vereen's other personal expenses. Wife worked several years for the Defendants' accountants in Myrtle Beach and taught business courses at Coastal Carolina University for many years. I find that Wife is well educated in business affairs and should have been cognizant of her husband's (mis)management of the companies she owned. I find that according to the Park Place accounting records, Park Place earned over $6,000,000.00 in profits after allowing for payment of construction costs for the 23

Park Place houses the Company constructed. The Defendants had the capacity to make full payment for these construction costs, but instead, sold each of these houses at a substantial profit without paying for the costs of construction.

9. I find that the Company incurred accounting expenses in the amount of $142,268.00 from expert witness Susan Brady, CPA, to uncover and detail the Defendants' improper actions. I find that the Plaintiff shall be entitled to recover, as part of his damages, the Company's expenses incurred for the employment of Susan Brady. I furthermore find that the Defendants shall be responsible for the payment of any and all fines and penalties incurred by the Company in correcting and preparing state and federal income tax returns for the Company.

10. The Plaintiff has requested that the Court disregard the corporate formalities and differences between the defendants and award its judgment against the Defendants jointly and severally, as each Defendant is the alter ego of the others. Such "piercing of the corporate veil" is allowed when the Defendants do not separate their business, personal and corporate identities and act without regard to their separate identities. Mid-South Mgt. Co. v. Sherwood Development Corp., 374 S.C. 588, 597; 649 S.E.2d 135, 140. (S.C. App. 2007). The "alter ego" theory examines the relationship between the Defendant entities and their owners. An alter ego theory requires a showing of total domination and control of one entity by another and inequitable consequences caused thereby. Id. at 603. In this case, Vereen managed and controlled AVCC, Park Place, and Parkway and expended corporate assets for each without regard for the legal rights of the Company and its other owner, Smith. Wife authorized the actions of Vereen. The corporate theft benefited Wife because the majority of the misappropriated assets and monies went to Park Place and Parkway, which she owned. Vereen controlled all of the improper actions and Wife benefited from each and every improper transaction. The Company paid for construction loan interest incurred by

Park Place and for construction expenses at Pointe Marsh and at the putt-putt, which are owned by Park Place. The Company paid for the renovation of Wife's and Parkway's buildings and for home construction costs. I find that from the improper gains, Vereen and Wife built their home in Murrells Inlet. The Defendants referred to themselves as the "Vereen Entities" in the presentation of their defense and in their claims for reimbursement from the Company, lending credence to the amalgamation of identities theory. I find that each Defendant was the alter ego of the other. I find that for all practical purposes, Vereen controlled AVCC, Park Place, Parkway and Wife, with the express permission of Wife.

The first part of the two prong test for piercing the veil involves an eight factor analysis of the shareholder's relationship to the corporate entities, or here, the corporation AVCC, and the limited liability companies Park Place and Parkway, as discussed in Sturkie v. Sifly, 280 S.C. 453, 313 S.E.2d 316 (Ct. App. 1984). These eight factors look to: (1) observance of the corporate formalities by the dominant shareholders; (2) the capitalization of the companies; (3) the failure to observe corporate formalities; (4) the non-payment of dividends; (5) the siphoning of funds of the corporation(s) by the dominant shareholder; (6) the non-functioning of other officers or directors; (7) absence of corporate records; and (8) whether the corporation(s) were merely a façade for the operations of the dominant shareholder; Multimedia Publishing of S.C., Inc. v. Mullins, 314 S.C. 551, 431 S.E.2d 569 (1993); University Medical Associates of S.C. v. UnumProvident Corp., 335 F. Supp. 2d 702, 707 (D.S.C. 2004).

The conclusion to disregard the corporate entity must involve a number of the eight factors, but need not involve them all. Dumas v. InfoSafe Corporation, 320 S.C. 188, 192, 463 S.E.2d 641, 644 (Ct.App. 1995). In the case at hand, the Defendants failed to follow corporate formalities; there was a non-functioning of other officers or other directors in the Defendant entities; there was

siphoning of funds from the Plaintiff to the Defendant entities by the dominant shareholder; there were no payment of dividends to shareholder Smith, when there were clearly funds available to pay dividends; the Defendant corporate entities were merely a façade for the operations of the dominant shareholder Vereen; a dominant officer, manager or family member (Vereen) controlled the Plaintiff and Defendant entities; there is an absence of corporate records supporting the improper actions of the Defendants; and the acts of the Defendants' entities were merely a façade for the operations of Vereen in his multiple capacities. Vereen's acts were the acts of each of the Defendants. Dewitt Truck Brokers, Inc. v. W. Ray Flemming Fruit Co., 540 F.2d 682 (4th Cir. 1976). Once it is established that the requirements of the first prong are met, the second prong of the test requires that "there be an element of injustice or fundamental unfairness if the acts of the corporation be not regarded as the acts of other parties." See Sturkie, 280 S.C. at 458. When the notion of legal entity is used to protect fraud, justify wrong, or defeat public policy, the law will regard the corporation as an association of persons. Here, the Defendant Vereen siphoned all of the assets of the Plaintiff to the Defendant entities that he solely controlled, making the Plaintiff insolvent. When Vereen siphoned all of the assets of the Plaintiff, he prevented the Plaintiff from paying or being able to pay dividends, meeting the requirements of both prongs of the test. When the unfairness consists of misappropriation of assets, the second prong of the test is almost always met, and may be proved or established by showing the Defendants' reckless disregard for the rights of the Plaintiff. See Multimedia, 314 S.C. at 555, 431 S.E.2d at 572. Vereen's siphoning of over $2,000,000.00 of the Plaintiff's earnings to the Defendants is the major factor in meeting both the first and second prongs of the test. Hunting v. Elders, 359 S.C. 217, 597 S.E.2d. 803 (Ct.App. 2004). I am confident that Vereen and Wife were aware of the actions taken against the Company, their responsibility for such actions, and the self-serving actions of the Defendants in regards to

the property and assets misappropriated to their benefit. Vereen is the sole owner of AVCC ; his knowledge is imputed to AVCC. Vereen is the manager of Parkway and Park Place; his knowledge is imputed to Park Place and Parkway.

I find that Wife had actual knowledge of her husband's actions and benefited by the improper gains which she and her companies, Park Place and Parkway, received. Vereen, with the assistance of the Defendants, siphoned all of the assets of the Company through the schemes discussed earlier, which benefited the Defendants. I find by clear and convincing evidence that each of the Defendants is the alter ego of the other, that the corporate identities of the Defendants should be pierced, and that judgment should be rendered against the Defendants jointly and severally for the damages sustained by the Plaintiff.

11. I have examined the fee agreement of the Company with Frank H. DuRant, Attorney for the Plaintiff. I find that without the services of Mr. DuRant on a contingency basis, the Company would not have been able to proceed with this action. I am convinced that without the diligent, time consuming and costly discovery, the Plaintiff would have been unable to establish proof of the Defendants' improper actions and the amount of damages incurred. I therefore approve the contingency fee agreement as reasonable, fair and necessary to protect the Company's interests. I find that Plaintiff shall be entitled to an award of attorney's fees as a part of the Company's damages.

ACTUAL DAMAGES

(a) Prejudgment interest: The Plaintiff requested prejudgment interest in the Complaint and shall be entitled to pre-judgment interest on the misappropriated balance due of $2,588,125.90 commencing January 23, 2009 and ending March 23, 2015 at the rate of 8.75% per annum or the

sum of $ 138,396.78. The interest is based upon the amount of misappropriated assets as determined by Brady in the final Brady Report minus the total due from Ellis E. Smith as contained in the final Brady Report. See QHG of Lake City, Inc. v. McCutcheon, 360 S.C. 196, 600 S.E.2d 105 (Ct. App. 2004) and S. C. Code Ann. §34-31-20(A). The law allows prejudgment interest on obligations to pay money from the time when, either by agreement of the parties or operation of law, the payment is demandable and the sum is certain or cable of being reduced to certainty. Babb v. Rothrock, 310 S.C. 350, 353, 426 S.E.2d 789, 791 (1993). The fact that the sum due is disputed does not render the claim unliquidated for purposes of an award of prejudgment interest. Id. The Court has the discretion to award prejudgment interest in an action to recover under the theory of quantum merit, to make the Plaintiff whole. Id.; Boykin Contracting, Inc. v. Kirby, (Opinion No. 5133, Ct. App. 5/15/13). I have awarded prejudgment interest from the date the Plaintiff complaint in this matter, the date payment was demanded. Prejudgment interest was demanded in Paragraph 18 of the Complaint and has been awarded in conversion cases. Dixie Bell v. Redd, 656 S.C. 765, 768, 376 S.C. 361, 363 (Ct. App. 2007). As a general rule, the measure of damages in a case for conversion of property is the value of the property taken with interest thereon. Industrial Welding Supplies, Inc. v. Atlas Vending Co., Inc., 276 S.C. 196, 277 S.E.2d 196. (S.C.1981); Mack v. Riley, 282 S.C. 100, 316 S.E.2d 731 (S.C.App. 1984). Otherwise, the Defendants would be rewarded with free use of the Plaintiff's funds.

(b) It is therefore Ordered, Adjudged and Decreed that the Plaintiff A & E Constructors and Consultants, Inc. shall have judgment for actual damages against the Defendants Arthur Wayne Vereen, individually and as Trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, individually, and as Trustee of the Linda C. Vereen Residence Trust, Arthur Vereen Construction Company, Inc., Park Place Properties of Myrtle Beach, LLC and Parkway Offices,

LLC, jointly and severally, in the amount of Two Million Five Hundred Eight Thousand One Hundred Twenty Five and 90/100 ($2,588,125.90) in actual damages; for prejudgment interest at the annual rate of 8.75% from January 23, 2009 to March 23, 2015 in the amount of $ 138,396.78, as outlined in (a) above; for the additional sums of $142,268.00 in accounting expenses; together with punitive damages, as described below, together with the costs of this action, including the Court Reporter fees incurred. This amount reflects the balance due from the Defendants on the September 4, 2012 Brady Final Report, minus a credit in the amount of $124,377.41 for benefits received by shareholder Ellis E. Smith. I hereby adopt the findings of the Final Brady Report as the findings of the Court concerning the monies Defendants misappropriated from the Plaintiff herein.

PUNITIVE DAMAGES

The Plaintiffs have requested punitive damages from the Defendants. "Punitive damages are allowed in the interest of society in the nature of punishment and as a warning and example to deter the wrongdoer and others from committing like offenses in the future." Mellen v. Lane, 377 S.C. 261, 290; 659 S.E.2d 236, 251 (Ct. App. 2008) (citing Clark v. Cantrell, 339 S.C. 369, 378-379, 529 S.E.2d 528, 533 (2000)). "They serve to vindicate a private right by requiring the wrongdoers to pay money to the injured party." Id. Punitive damages are recoverable in conversion cases if the defendant's acts are "willful, reckless, and/or committed with conscious indifference to the rights of others." Oxford Finance Companies, Inc. v. Burgess, 303 S.C. 534, 402 S.E.2d 480 (1991) (citing Hunt v. Jordan, 286 S.C. 340, 333 S.E.2d 569 (Ct.App.1985)). "In any civil action where punitive damages are claimed, the plaintiff has the burden of proving such damages by clear and convincing evidence." Mellen, supra, (quoting S.C. Code Ann. §15-33-135 (Supp. 2003)).

The following factors are relevant when considering punitive damages: "(1) the defendants degree of culpability; (2) duration of the conduct; (3) defendants awareness or concealment; (4) the existence of similar past conduct; (5) likelihood the award will deter the defendant or others from like conduct; (6) whether the award is reasonable related to the harm likely to result from such conduct; (7) defendants ability to pay; and finally (8) other factors as noted in Haslip, and other factors 'deemed appropriate." Gamble vs. Stevenson, 305 S.C. 104, 111-112, 406 S.E.2d 350, 354 (1991); Pacific Mutual Life Insurance Co. v. Haslip, 499 U.S. 1, 111 S. Ct. 1032 (1991). The trial court is not required to make findings of fact for each factor to uphold a punitive damage award. Welch v. Epstein, 342 S.C. 279, 306, 536 S.E.2d 408, 422 (Ct. App. 2000).

Here, I find that punitive damages are warranted because of the deliberate, willful misconduct of the Defendants. Vereen owed a fiduciary duty to the Company as its treasurer, board member and exclusive manager of its checking account. Vereen repeatedly converted assets of the Company to his own personal use and to the use of the named Defendants which he exclusively controlled. The Defendants failed to report any of the converted income on tax filings. What is most disturbing is that when confronted with proof of the misconduct, the Defendants refused to accept the responsibility for their collective misconduct and engaged in a four week trial where the proof of misconduct was all but absolute.

It is therefore ordered that Plaintiffs shall be granted punitive damages against the Defendants Arthur Wayne Vereen, Linda C. Vereen, individually and as Trustees, Arthur Vereen Construction Company, Inc., Parkway Offices, LLC and Park Place Properties in the amount of $100,000.00.

The parties both pled that the Company should be dissolved, and I have no dispute with that. However, there was no proof or argument presented concerning how that should be accomplished. Accordingly, I leave that for another day.

CONCLUSION

It is therefore **Ordered, Adjudged and Decreed** that the Plaintiff A & E Constructors and Consultants, Inc. be granted:

(1) Judgment against the Defendants Arthur Wayne Vereen, individually and as Trustee of the Arthur W. Vereen Residence Trust, Linda C. Vereen, individually and as Trustee of the Linda C. Vereen Residence Trust, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC and Arthur Vereen Construction Company, Inc., jointly and severally, as follows:

Amount of monies misappropriated	$ 2,588,125.90
Prejudgment interest from 1/23/2009 until 3/23/2015	138,396.78[44]
Accounting fees due Susan Brady	142,268.00
Punitive Damages	100,000.00
	$ 2,968,790.68

or the sum of $2,968,790.68 in actual and punitive damages, inclusive of pre-judgment interest at 8 ¾% from January 23, 2009 through March 23, 2015.

(2) Frank H. DuRant, PA's contingency fee agreement is expressly approved and shall constitute a first lien upon any recovery in this action and shall be paid by the Company as Ordered when income is received from the Defendants or any other source.

(3) The bill of Susan Brady, CPA, of $142,268.00 for her investigative and accounting work in this case is expressly approved and shall constitute a second lien upon any recovery in this action and shall be paid by the Company as Ordered, when income is received from the Defendants or any other source.

[44] Per diem interest is 61.537.

(4) The taxable costs and expenses of this action, including any Court Reporter fees for the trial, shall be added to the judgment amount against the Defendants. In the event that the Plaintiff incurs late fees and penalties as a result of amending and filing late federal and state tax returns, the amount of such penalties and late fees shall be paid by the Defendants or added to the judgment amount rendered.

(5) The Counterclaims of the Defendants and Third Party Complaints of the Third Party Plaintiff(s) are hereby dismissed with prejudice.

AND IT IS SO ORDERED!

CYNTHIA GRAHAM HOWE
Master In Equity

Conway, South Carolina
March 23, 2015