

STATE OF SOUTH CAROLINA)
)
 COUNTY OF RICHLAND)
)
 Tiffany's Café & Bakery on)
 Devine, Inc.)
)
 Plaintiff,)
)
 vs.)
)
 James S. Archer)
)
 Defendant.)

IN THE COURT OF COMMON PLEAS
 Case Number: 2008-CP-40-3076

AMENDED ORDER FOR JUDGMENT

RECEIVED

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SC Court of Appeals

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 JEANNETTE W. MCBRIDE
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 RICHLAND COUNTY
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THIS MATTER comes before the Court on Plaintiff's Summons and Complaint, dated May 1, 2008. These pleadings were duly and properly served on the Defendant, as evidenced by the proof of service appearing in the Court's filing, whereupon he served and filed his Answer and Counterclaim, dated May 16, 2008. Plaintiff then served and filed its Reply dated June 16, 2008.

By Consent Order entered by the parties, this action was referred to the Master in Equity for Richland County, with the provision that any appeal from a final Order in this case be directed to the South Carolina Court of Appeals.

A hearing was scheduled and held in open Court before the undersigned on July 29, 2015. Due and proper notice was provided to all parties. Plaintiff's President, James J. McMillan, was present, with attorney Carlos W. Gibbons, Jr. Defendant was also present with his attorney, S.R. Anderson. An Order in this matter was issued by the undersigned on September 25, 2015 and filed with the Clerk of Court on October 1, 2015. Subsequent to service of said Order, Defendant's counsel timely served and filed Plaintiff's Notice of Motion to Alter or Amend Order pursuant to Rules 52(b), 59(e) and 60(b), SCRPC.

A hearing on Plaintiff's Motion was scheduled and held before the undersigned in open Court on February 8, 2016. Both attorneys were present and presented their respective arguments for consideration. Based thereupon, and upon the Court's review of the file in this matter and all other relevant considerations, the Court vacates the prior Order dated September 25, 2015 and substitutes therefor the following:

JURISDICTION AND VENUE

All pleadings are in their usual and proper form with valid proof of service where applicable. The Court has both personal and subject jurisdiction in this matter and venue is proper in Richland County

PROMISSORY NOTE CAUSE OF ACTION

On July 24, 2003, Plaintiff sold to Defendant a forty-nine (49%) percent interest in the corporation. This transaction is memorialized in a written Stock Purchase Agreement signed by both parties and introduced into evidence. As part of the consideration for the stock purchase, Defendant executed and delivered to Plaintiff a Promissory Note, also dated July 24, 2003, whereby he promised to pay the sum of Ten Thousand and no/100 (\$10,000.00) Dollars by July 24, 2005. This document was also introduced into evidence. This debt did not accrue interest if paid by the maturity date, but provided for the addition of interest at the rate of ten (10%) percent per annum after that date until paid. The written Note executed by Defendant also provided for the addition of reasonable attorney's fees and costs of collection upon default. The Note did not include any provisions to any credits or offsets to Defendant as to the amount due.

The Court finds and concludes that the Note was not paid by Defendant as provided and he is in default of his obligations thereunder. No amount has been paid by Defendant on the debt. According to its terms, the Note began accruing interest at the rate of ten (10%) percent, which is the sum of \$1,000.00 per year. As of July 24, 2015, the sum of Ten Thousand and no/100 (\$10,000.00) Dollars in interest had accrued on the debt. Accordingly, as of July 24, 2015, Defendant owed a total of Twenty Thousand and no/100 (\$20,000.00) Dollars to Plaintiff under the Note. After July 24, 2015, the rate of interest is \$2.7397 per day.

Plaintiff provided proof that he had paid to its attorney the sum of Three Thousand Eight Hundred and no/100 (\$3,800.00) Dollars for legal services and costs in connection with this matter. No evidence was offered by Defendant on the issue of fees and the Court finds these fees and costs to be reasonable and that the amount should be added to the amount due from Defendant to Plaintiff.

Accordingly, The Court finds and concludes that Plaintiff is entitled to monetary judgment against the Defendant as of July 24, 2015 in the total sum of Twenty-Three Thousand Eight Hundred and no/100 (\$23,800.00) Dollars, with interest continuing to accrue after that date in the

amount of \$2.7397 per day.

OTHER CLAIMS AND DEFENSES

Plaintiff included in its Complaint causes of action for breach of contract, negligence and breach of fiduciary duty on the part of the Defendant. Likewise, Defendant asserted defenses seeking an offset in the amount of Three Thousand Five Hundred and no/100 (\$3,500.00) Dollars for sums he advanced on behalf of the corporation, for an accounting of the funds he paid toward the stock purchase, and he questioned the application of the proceeds from an auction that was held to liquidate the business equipment and related items when the business ceased operation.

Plaintiff presented as a witness Glenn Creel, who handles tax reporting and bookkeeping for the Plaintiff corporation. Mr. Creel is an enrolled agent for the Internal Revenue Service ("IRS") and Defendant stipulated to his expertise and qualifications. Mr. Creel explained how Defendant assumed personal liability to the IRS for the payment of tax withholding as a result of his signing employer paychecks. One of the largest debts of the business when it closed was unpaid taxes, including sales tax and hospitality tax, owed to the Federal and State taxing authorities.

Plaintiff's witness, Mr. McMillan, testified that the corporation was the subject of very aggressive collection efforts by the State and Federal tax authorities, including threatened attachment and levy of his other business location and his personal property. Mr. McMillan attempted to obtain Defendant's cooperation in the payment of his 49% share of these tax bills, but Defendant did not pay or otherwise cooperate or assist. To protect his other business and personal assets, Mr. McMillan loaned the Plaintiff corporation to total sum of \$43,588.30. Mr. Creel testified that this sum is still carried on the books of the Plaintiff as a loan payable. A detailed summary of the amounts paid was introduced into evidence.

Mr. Creel also testified that since Plaintiff is taxed as an S Corporation, Plaintiff's payment of these sums resulted in tax credits/deductions on the personal tax returns of Mr. McMillan and Defendant. Mr. Creel testified that his office prepared and submitted to Defendant the necessary tax forms for him to realize the tax credit created for him by the payments made by Plaintiff. In effect, Defendant received a tax credit of 49% of the amount Plaintiff paid to resolve the tax and other indebtedness, even though Defendant could have been held individually liable as the fiduciary agent of the taxing authorities for the entire tax liability. This situation resulted in a

"windfall" benefit to Defendant and the Court finds and concludes it would be inequitable to allow this to exist without a remedy.

Defendant did personally pay to his present employer, Institutional Food House ("IFH"), the sum of Three Thousand Five Hundred and no/100 (\$3,500.00) Dollars to cover two (2) checks he wrote on Plaintiff's account that were returned due to insufficient funds. Defendant testified that he did this to avoid criminal prosecution for having written bad checks, but on cross-examination he conceded that no prosecution was ever undertaken and he was never contacted by law enforcement relative to these checks. Plaintiff's counsel raised the question to Defendant as to whether he paid the checks to ensure his continued employment at IFH. Regardless of Defendant's motive, the Court finds and concludes that his payment of the amount to resolve the bad checks should be compensated in the same manner as the funds advanced by Mr. McMillan by way of his loan.

Defendant raised questions about the auction of the business equipment upon the close of the business and related questions regarding the value of inventory and other matters, however, he did not offer any specific proof of these matters, only his speculation.

The Court finds and concludes that the total sum of Forty Seven Thousand Eighty Eight and 30/100 (\$47,088.30) Dollars was advanced by the parties to pay the various past due taxes and related bills of the business upon its closing. This sum consists of the amount paid by Plaintiff from the loan from Mr. McMillan (referenced above), together with the amount paid by Defendant to IFH. Based upon the respective shares of ownership, Plaintiff should bear Fifty One (51%) Percent of the sum and Defendant Forty Nine (49%) Percent. Accordingly, Defendant's share is Twenty Three Thousand Seventy Three and 27/100 (\$23,073.27) Dollars. Giving him a credit toward this amount for the sum he paid to IFH, Defendant owes to the Plaintiff the sum of Nineteen Thousand Five Hundred Seventy Three and 27/100 (\$19,573.27) Dollars. As previously noted, Plaintiff's payment of the taxes allowed Defendant to avoid personal liability as the fiduciary agent of the government and resulted in a tax credit to Defendant.

At the hearing on Plaintiff's Motion, Defendant's counsel reiterated certain arguments contained in the initial Order referencing statutory duties of corporations in instances of liquidation/termination of business. However, at the hearing on the merits in this matter, Defendant did not offer any evidence or proof that the statutory duties both applied and were not

adhered to in this particular case. In the absence of such evidence and proof, the record is void of any supporting facts of these allegations raised by Defendant.

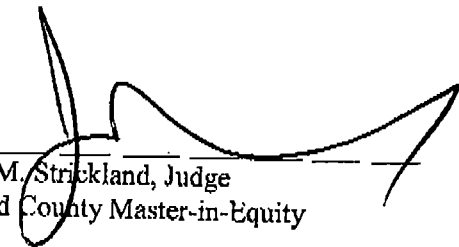
The Court finds and concludes that the forgoing analysis represents the fairest and most equitable manner in resolving the various claims and defenses raised by the parties and is in conformance with the preponderance of the testimony and evidence presented to the Court on these issues.

NOW, THEREFORE, based upon the forgoing, the following Order is made and entered:

1. Plaintiff is awarded monetary judgment against Defendant in the sum of Twenty Three Thousand Eight Hundred and no/100 (\$23,800.00) Dollars for his default under the Promissory Note dated July 24, 2003, said amount accruing interest after July 24, 2015 at the rate of \$2.7397 per day; and,

2. Plaintiff is awarded judgment against Defendant in the sum of Nineteen Thousand Five Hundred Seventy Three and 27/100 (\$19,573.27) Dollars representing Defendant's share of the tax liability and other costs of closing the business, less all credits and adjustments supported by the evidence.

AND IT IS SO ORDERED:



Joseph M. Strickland, Judge
Richland County Master-in-Equity

Columbia, South Carolina

25th day of March, 2016.