

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Cynthia Graham Howe
Master-in-Equity, Fifteenth Judicial Circuit

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SC Court of Appeals

Case No.: 2009-CP-26-620

Ellis E. Smith, individually and on behalf of A&E Constructors and Consultants, Inc., a
South Carolina Corporation Plaintiffs,

v.

Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices,
LLC, Arthur Vereen Construction, 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,

v.

E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc. and Ellis
E. Smith, individually, ... Third-Party Defendants.

Of whom Arthur Wayne Vereen, individually and on behalf of A&E Constructors and
Consultants, Inc., 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, Linda C. Vereen, as Trustee of the
Linda C. Vereen Residence Trust, and 29th Place Developers, Inc. are Appellants,

AND

Ellis E. Smith, individually and on behalf of A&E Constructors and Consultants, Inc., a
South Carolina Corporation and E. Smith and Sons Construction, LLC, EES Construction
and Consulting, Inc. and Ellis E. Smith, individually are Respondents.

APPELLANTS' RETURN TO MOTION TO DISMISS

Appellants submit this Return in opposition to Respondents' Motion to Dismiss the Appeal.

I. PROCEDURAL HISTORY & FACTS

Ellis R. Smith ("Smith") and Arthur Wayne Vereen ("Vereen") own fifty percent (50%) of the shares of A&E Constructions and Consultants, Inc. ("A&E"). (**Exhibit #1: Order Granting Judgment Against Defendants dated March 23, 2015, p. 3; Exhibit #2: Complaint, p. 1; Exhibit #3: Answer & Counterclaims, p. 2**). Smith served as President of A&E, while Vereen served as Secretary and Treasurer. (**Exhibit #2, p. 1; Exhibit #3, p. 2**). On January 23, 2009, Smith, in his individual capacity and on behalf of A&E, commenced a derivative action lawsuit, naming Vereen, Vereen's wife, and other corporate entities as defendants. (**Exhibit #2**). The Complaint also appears to assert causes of action for breach of fiduciary duty and civil conspiracy. (**Exhibit #2**). In the Complaint, Smith alleges Vereen converted corporate assets from A&E and diverted them for personal use and for use by the other corporate entities named as defendants.¹ (**Exhibit #2**). Smith sought an accounting, payment of his share of the alleged misappropriated funds, and judicial dissolution of A&E. (**Exhibit #2**).

Vereen, his wife, and the named corporate defendants denied the allegations in the Complaint and asserted counterclaims against Smith for accounting, indemnification, and misappropriation of corporate opportunities. (**Exhibit #3**). Vereen, in his individual capacity and

¹ Although the procedure is unclear as to how it happened, the court allowed Smith to add the Arthur W. Vereen Residence Trust and the Linda C. Vereen Residence Trust as defendants.

as a shareholder of A&E, also brought a Third-Party Complaint against Smith and two (2) corporate entities Smith controlled, E. Smith and Sons Construction, LLC (“Smith and Sons”) and EES Construction and Consulting, Inc (“EES Construction”). (**Exhibit #3**). The counterclaims and Third-Party Complaint alleged: Smith failed to repay loans owed to Vereen; Smith failed to make required contributions to A&E; Smith usurped corporate opportunities of A&E by performing construction jobs through Smith and Sons and EES Construction instead of by A&E; Smith, Smith and Sons, and EES Construction improperly billed and received payments from A&E; Smith, Smith and Sons, and EES Construction converted materials and equipment belonging to A&E for their own purposes; and Smith, Smith and Sons, and EES Construction performed jobs under A&E’s license without A&E’s consent. (**Exhibit #3**).

On July 23, 2009, the Honorable Larry B. Hyman, Jr. signed an Order of Reference, referring this case to the Master in Equity for Horry County, where it was heard by the Honorable Cynthia Graham Howe. (**Exhibit #1**, p. 2). This case was tried in nine (9) days, over the course of eighteen (18) months, with the trial beginning on February 15 and 16, 2011, continuing on June 13 through June 15, 2011, continuing again on October 11 through October 13, 2011, and concluding on August 27 through August 30, 2012. (**Exhibit #4: Order Disposing of Post-Trial Motions**, p. 3). The court did not issue a written order until two and one-half years following the last day of trial. (**Exhibit #1**; **Exhibit #4**, pp. 3-4). On March 23, 2015, the court issued a forty-two (42) page order, granting judgment in favor of Smith, individually and on behalf of A&E, in the amount of \$2,968,790.68 (“First Order”). (**Exhibit #1**). The next day, March 24, 2015, the court issued a one-page *Nunc Pro Tunc* Order, which recalculated prejudgment interest and added a corporate defendant’s name to the Form 4 Order. (**Exhibit #4**, p. 4; **Exhibit #5: Nunc Pro Tunc Order**). Otherwise, the *Nunc Pro Tunc* Order did not alter the First Order. (**Exhibit #1**;

Exhibit #5). With the recalculation of prejudgment interest, the *Nunc Pro Tunc* Order increased the judgment total to \$4,226,383.90. (**Exhibit #5**).

On March 24, 2015, the judge's law clerk emailed all counsel of record a copy of the First Order. (**Exhibit #6: Affidavit of Kathryn M. Cook, Esquire & Accompanying Exhibits**). The First Order sent by the judge's law clerk did not include page thirty-seven (37). (**Exhibit #6; Respondents' Memorandum in Support of Motion to Dismiss Appeal, p. 3**). Page thirty-seven (37) is a critical portion of the First Order. (**Exhibit #1**). Page thirty-seven (37) pierces the corporate veil of the corporate defendants, finds that each Defendant is "the alter ego of the other," and holds all of the named defendants jointly and severally liable for the judgment.² (**Exhibit #1, p. 37**). On Page thirty-seven (37) of the First Order, the trial judge states, "I find by clear and convincing evidence that each of the Defendants is the alter ego of the other, that the corporate identifies 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." (**Exhibit #1, p. 37**).

Trial counsel for Appellants and counsel for Respondents agree that page thirty-seven (37) of the First Order was missing when the judge's law clerk emailed the order to them. (**Exhibit #6; Memorandum in Support of Motion to Dismiss Appeal, p. 3**). On March 25, 2015, counsel for Respondents mailed a copy of the First Order to Appellant's trial counsel but, like the email from the judge's law clerk, the mailed First Order was missing page thirty-seven (37). (**Exhibit #6**). On March 30, 2015, Appellant's trial counsel received a copy of the court's *Nunc Pro Tunc* Order. (**Exhibit #7: Appellants' Motion for Reconsideration, p. 2**).

² Page thirty-seven (37) of the First Order also awards attorney's fees and costs to Plaintiff. (**Exhibit #1, p. 37**).

On April 6, 2015, Appellant's trial counsel wrote a letter to the trial judge, requesting that the court "send to me page 37 or a complete copy of the [First] Order at your convenience so I can take steps to file a motion to reconsider this case." (**Exhibit #6**). Appellant's trial counsel sent a copy of this correspondence to counsel for Respondents. (**Exhibit #6**). The court never responded to this letter. (**Exhibit #6**).

On April 10, 2015, counsel for Respondents emailed Appellant's trial counsel page thirty-seven (37) of the First Order. (**Exhibit #6**). Appellant's trial counsel received the email on April 11, 2015, and thereafter, on April 20, 2015, Appellants filed a Motion for Reconsideration pursuant to Rule 59(e) of the South Carolina Rules of Civil Procedure. (**Exhibit #6; Exhibit #7**). In the Motion for Reconsideration, Appellants argued, in part, that the court erred in piercing the corporate veil and finding that all defendants should be jointly and severally liable for the judgment. (**Exhibit #7, p. 3**). Appellants argued this relief was improper because Respondents did not seek it in their pleading. (**Exhibit #7, p. 3**).

On April 25, 2016, the trial court issued a written order, ruling on Appellants' Motion for Reconsideration ("Post-Trial Order"). (**Exhibit #4**). In the Post-Trial Order, the court treated Appellants' Motion for Reconsideration as timely and issued a new order, revising the First Order. (**Exhibit #4**). In regards to whether the Motion for Reconsideration was timely, the court stated, "I conclude this issue is best left for our appellate courts because of the [First] Order's missing page, Page 37, *and its effect on the finality of the Order*. Accordingly, I will address the motion as if it were timely and leave for the appellate court to determine the timeliness of the motion." (**Exhibit #4, p. 5**) (emphasis added). In the Post-Trial Order, the court determined it erred in piercing the corporate veil and finding that the defendants should be jointly and severally liable for the judgment under this theory of liability. (**Exhibit #4, p. 5**). The Post-Trial Order concluded

instead that “the Defendants” were jointly and severally liable for the judgment “under an amalgamation of interest or blurred identity theory.”³ (**Exhibit #4**, p. 5).

Appellant received a copy of the Post-Trial Order on April 25, 2016, and Appellants filed a Notice of Appeal within thirty days thereafter, on May 20, 2016. (**Notice of Appeal**).

II. ARGUMENT

A. Notice of Appeal Was Timely Filed

This Court should deny Respondents’ Motion to Dismiss because the Notice of Appeal, filed on May 20, 2016, was filed within thirty (30) days of the Post-Trial Order, dated April 25, 2016.

Section 14-3-330 of the South Carolina Code of Law sets forth different categories of appealable judgments. As provided by statute, “The Supreme Court shall have appellate jurisdiction for correction of errors of law in law cases, and shall review upon appeal ... final judgments in such actions” S.C. Code Ann. § 14-3-330(1). In determining whether a matter is a final judgment or interlocutory, the Supreme Court has stated that if there is some further act that must be done by the court prior to a determination of the rights of the parties, then the order is interlocutory and not immediately appealable. Mid-State Distrib., Inc. v. Century Importers, Inc., 310 S.C. 330, 335, 426 S.E.2d 777, 780 (1993).

A “judgment” is defined as “any decree or order which dismisses the action as to any party or finally determines the rights of any party.” Rule 54(a), SCRPC; see Good v. Hartford Accident & Indem. Co., 201 S.C. 32, 41-42, 21 S.E.2d 209, 212 (1942) (A final judgment must “dispose of the cause ... as to all the parties, reserving no further questions or directions for future

³ Respondents neither asserted a cause of action for amalgamation, nor requested such relief in the Complaint. (**Exhibit #2**).

determination. It must finally dispose of the whole subject-matter or be a termination of the particular proceedings or action, leaving nothing to be done but to enforce by execution what has been determined.”). In multi-party litigation or where there are multiple claims for relief, “the court may direct the entry of a final judgment as to one or more but fewer than all of the claims or parties only upon an express determination that there is no just reason for delay and upon an express direction for the entry of judgment.” Rule 54(b), SCRCF (emphasis added). However, in the absence of such a determination and direction, any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties. Rule 54(b), SCRCF (emphasis added).

Here, the First Order, dated March 23, 2015, was not a final judgment, as it did not dispose of all the parties in the lawsuit. As set forth above, the First Order did not include page thirty-seven (37), which found all of the defendants jointly and severally liable for the judgment based on a finding that the corporate veil should be pierced and “that each of the Defendants is the alter ego of the other.” (**Exhibit #1, p. 37**). Without this finding, the First Order does not dispose of all the defendants. In the Post-Trial Order, the court clearly recognized the First Order was not a final judgment. The court stated the issue of whether the Motion for Reconsideration was timely was “best left for our appellate courts because of the [First] Order’s missing page, Page 37, and its effect on the finality of the Order.” (**Exhibit #4, p. 5**) (emphasis added). With this statement, the court observed that the missing page thirty-seven (37) of the First Order effected “the finality of the Order.” (**Exhibit #4, p. 5**). The effect was that it prevented the First Order from being a final judgment.

The court issued a new Order on April 25, 2016—the Post-Trial Order. The Post-Trial Order reversed the First Order’s finding that the defendants should be jointly and severally liable for the judgment under a veil piercing theory. (**Exhibit #4**, p. 5). The Post-Trial Order found the defendants jointly and severally liable for the judgment “under an amalgamation of interest or blurred identity theory.” (**Exhibit #4**, p. 5).

The Post-Trial Order, dated April 25, 2016, supplanted the First Order, dated March 23, 2016. Appellants received written notice of the Post-Trial Order on April 25, 2016, and according to Rule 203 of the South Carolina Appellate Court Rules, Appellants had thirty (30) days to serve a Notice of Appeal thereafter. Rule 203(b)(1), (b)(4), SCACR. Appellants timely filed the Notice of Appeal on May 20, 2016.

Accordingly, for this reason, this Court should deny Respondent’s Motion to Dismiss the appeal.

B. Motion to Reconsider Was Timely Filed

Further analysis is not necessary because, as set forth above, Appellants timely filed their Notice of Appeal within thirty (30) days after the Post-Trial Order. The Court’s analysis should end here. Nevertheless, assuming arguendo further analysis is necessary, Appellants also timely filed their Motion for Reconsideration, as trial counsel for Appellants followed the instructions of the Supreme Court in immediately requesting a copy of the entire written order upon noticing she was not in receipt of it and filed a Motion for Reconsideration within ten (10) days thereafter. See Ackerman v. 3-V Chem., Inc., 349 S.C. 212, 215, 562 S.E.2d 613, 615 (2002).

A notice of appeal must be served on all respondents within thirty (30) days after receipt of written notice of entry of the order or judgment. Rule 203(b)(1), (b)(4), SCACR. Upon the timely filing of a motion to alter or amend the judgment under Rule 59 of the South Carolina Rules

of Civil Procedure, the time for appeal is stayed and shall run from the receipt of written notice of entry of the order granting or denying such motion. Rule 203(b)(1), SCACR; Rule 59(f), SCRCP. A motion to alter or amend the judgment must be served not later than 10 days after receipt of written notice of the entry of the order. Rule 59(e), SCRCP.

In Ackerman, 349 S.C. at 215, 562 S.E.2d at 615, the Supreme Court explained how to deal with the “due process problem in requiring an appeal to be taken when the party is not in receipt of the order.” The Supreme Court observed, “The short and simple answer to this contention is that upon receiving written notice of the entry of an order or judgment, an attorney may immediately call and request a copy of the order.” Id. (emphasis added).

Here, trial counsel for Appellants acted in accordance with the instructions provided by the Supreme Court in Ackerman. The trial judge signed the First Order on March 23, 2014. (**Exhibit #1**). The next day, on March 24, 2015, the judge’s law clerk sent an email to all attorneys of record, with the First Order attached to the email. (**Exhibit #6**). Page thirty-seven (37) of the First Order was missing. (**Exhibit #6; Respondents’ Memorandum in Support of Motion to Dismiss Appeal, p. 3**). On March 25, 2015, counsel for Respondents mailed a copy of the First Order to trial counsel for Appellants, but it was also missing page thirty-seven (37). (**Exhibit #6**). Upon recognizing this, counsel for Appellants wrote a letter to the trial judge requesting “page 37 or a complete copy of the Order ... so I can take steps to file a motion to reconsider this case.” (**Exhibit #6**). Trial counsel for Appellants acted in accordance with the specific instructions from the Supreme Court in Ackerman, and, under such circumstances, due process mandates that this Court find Appellant’s timely filed their Motion for Reconsideration.

Unfortunately, trial counsel for Appellants found herself in the “due process problem” envisioned by Ackerman. The “due process problem” was not the only problem trial counsel

faced, as she also found herself in an issue preservation quandary. On appeal, a losing party is required to file a Rule 59(e) Motion to raise any issue that was raised to the trial court but that the trial court did not rule upon. If a party fails to do so, the issue is not preserved for appellate review. See I'On, LLC v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000) (“If the losing party has raised an issue in the lower court, but the court fails to rule upon it, the party must file a motion to alter or amend the judgment in order to preserve the issue for appellate review.”). In this case, the likelihood of such an occurrence was increased by the fact that this case was tried over nine (9) days, over the course of eighteen (18) months, and at the end of trial on August 30, 2012, the trial court did not issue the First Order until approximately two and one-half years later, on March 23, 2015. (**Exhibit #4**, pp. 3-4).

It is, of course, impossible to preserve arguments in a Rule 59(e) Motion without a copy of the order. Thus, trial counsel for Appellants acted appropriately and in accordance with Ackerman in requesting a copy of the order from the trial court. See Elam v. S.C. DOT, 361 S.C. 9, 25, 602 S.E.2d 772, 780-81 (2004) (“We strive to avoid an interpretation of procedural rules which routinely would place a party between the proverbial rock and a hard place.”). Appellants received the missing page thirty-seven (37) on April 11, 2015, and Appellants filed a Motion for Reconsideration on April 20, 2015.

(**Exhibit #6**).

Accordingly, this Court should find that Appellants timely filed their Motion for Reconsideration and deny Respondents’ Motion to Dismiss the appeal.

C. Due Process

If this court were to rule that Appellants did not timely file their Notice of Appeal, such a decision would deny due process of law to Appellants. Appellants did not have adequate notice

that an appeal would be denied to them under the circumstances of this case. Ackerman, 349 S.C. at 215, 562 S.E.2d at 615. Further, Appellants were subject to an unfair procedure, preventing them from receiving a full review of all aspects of the trial court's ruling. Appellants could not comply with the issue preservation rules and the time restraints in which to file a post-trial motion. The tension between these requirements prevented Appellants from receiving a full review of all aspects of the trial court's ruling.

CONCLUSION

For the foregoing reasons, this Court should deny Respondents' Motion to Dismiss the appeal.

Respectfully Submitted,

Dated:

July 29, 2016

MCNAIR LAW FIRM, P.A.

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EXHIBIT 1

(Order Granting Judgment Against Defendants dated March 23, 2015)

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF _____
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-26-620

Ellis E. Smith, Individually, and on behalf of A & E
Constructors and Consultants, Inc.

Arthur Wayne Vereen, et al.

PLAINTIFF(S)

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

Judge Code

Date _____

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ 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

Kathryn M. Cook

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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.

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.

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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.

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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.

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SA
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 homes¹ 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 residence² 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.

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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.

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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.

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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).

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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.

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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.

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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 contracts 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.

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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

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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.

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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.

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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.

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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:

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(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.

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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,

I find that Vereen, Wife, and Parkway conspired together to defraud the Company..

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(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

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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.

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(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 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.

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(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.

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(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.

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Q/A

(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 ~~cost~~ 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.

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CPH

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.

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ANT

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.

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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.

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604

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.

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OK

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

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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.

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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

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CA

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

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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).

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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	<u>100,000.00</u>
	\$ 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.

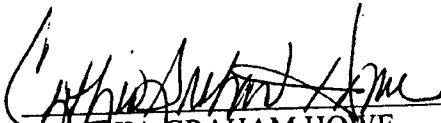
(3) The bill of Susan Brady, CPA, of \$142,268.00 for her investigative and accounting work in this case is expressly approved and shall constitute a second lien upon any recovery in this action and shall be paid by the Company as Ordered, when income is received from the Defendants or any other source.

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

43
681
Conway, South Carolina
March 23 2015

EXHIBIT 2

(Complaint)

STATE OF SOUTH CAROLINA

COUNTY OF HORRY

ELLIS E. SMITH, IND. AND ON BEHALF OF
A&E CONSTRUCTORS AND CONSULTANTS

Plaintiff(s)

vs.

ARTHUR WAYNE VEREEN, PARK PLACE
PROPERTIES OF MYRTLE BEACH, LLC,
PARKWAY OFFICES, LLC, ARTHUR VEREEN
CONSTRUCTION, INC., AND LINDA C.
VEREEN

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2009 CP 26 620

(Please Print)

Submitted By: FRANK H DURANT

Address: PO BOX 960, MYRTLE BEACH, SC 29578

SC Bar #: 1802

Telephone #: 843.448.1541

Fax #: 843.626.7431

Other:

E-mail: fdurant@yahoo.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION (Check all that apply)

*If Action is Judgment/Settlement do not complete

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☒ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|---|---|--|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☒ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☐ Foreclosure (420) |
| ☐ General (130) | ☐ Notice/ File Med Mal (230) | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | ☐ Other (299) | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | | ☐ Personal Injury (350) | ☐ Possession (450) |
| | | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☒ Other (399) | ☐ Other (499) |
-
- | | | | |
|--|--|---|--|
| Inmate Petitions | Judgments/Settlements | Administrative Law/Relief | Appeals |
| ☐ PCR (500) | ☐ Death Settlement (700) | ☐ Reinstate Driver's License (800) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Foreign Judgment (710) | ☐ Judicial Review (810) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Magistrate's Judgment (720) | ☐ Relief (820) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Minor Settlement (730) | ☐ Permanent Injunction (830) | ☐ Municipal (930) |
| | ☐ Transcript Judgment (740) | ☐ Forfeiture-Petition (840) | ☐ Probate Court (940) |
| | ☐ Lis Pendens (750) | ☐ Forfeiture-Consent Order (850) | ☐ SCDOT (950) |
| | ☐ Other (799) | ☐ Other (899) | ☐ Worker's Comp (960) |
-
- | | |
|---|---|
| Special/Complex /Other | |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) |
| ☒ Other (699) | ☐ Sexual Predator (510) |
- accounting and
dissolution of
corporation

Submitting Party Signature: _____

Date: January 22, 2009

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Allendale, Anderson, Beaufort, Colleton, Florence, Greenville,
Hampton, Horry, Jasper, Lexington, Pickens (Family Court Only), and Richland

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2009-CP-26-_____

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,)
Inc., and Linda C. Vereen,)

Defendants.)

SUMMONS

FILED
HORRY COUNTY
2009 JAN 23 AM 11:21
MELANIE HUGGINS
CLERK OF COURT

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your Answer to the said Complaint on the subscriber at his office at 2107 Farlow Street, Post Office Box 960, Myrtle Beach, South Carolina 29578, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to answer the Complaint within the time aforesaid, a Judgment by default will be rendered against you for the relief demanded in the Complaint.

DuRANT & MARTIN



Frank H. DuRant
DuRANT & MARTIN
Post Office Box 960
2107 Farlow Street
Myrtle Beach, SC 29578

January 21, 2008

t. 843.448.1541
f 843.626.7431
fdurant@yahoo.com
SC Bar No.: 1802

STATE OF SOUTH CAROLINA)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO.: 2009-CP-26-0620

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,)
Inc., and Linda C. Vereen,)

Defendants.)

COMPLAINT

FILED
HORRY COUNTY
2009 JAN 23 PM 1:21
KELANIE HUGGINS
CLERK OF COURT

The Plaintiff, complaining of the above Defendants, would respectfully show unto this Honorable Court as follows:

1. That the Plaintiff Ellis E. Smith (hereinafter "Smith") is a citizen and resident of Horry County, South Carolina. Smith is the owner of 50% of the outstanding shares of A & E Constructors and Consultants, Inc. (hereinafter "A&E"), a South Carolina Corporation doing business in Horry County, and is furthermore it's President, Chairman and one of two members of it's Board of Directors.

2. That the Defendant Arthur Wayne. Vereen (hereinafter "Vereen") is, upon information and belief, a citizen and resident of Georgetown County, South Carolina and is the owner of 50% of the outstanding shares in A&E and serves as its Secretary, Treasurer and other remaining Board Member. That during all times mentioned in this action, Vereen controlled the receipts and disbursements of A&E, which included

disbursements made by Vereen that were not for the benefit of A&E, as hereinafter alleged.

3. That the Defendant Park Place Properties of Myrtle Beach, LLC and Parkway Offices, LLC are, upon information and belief, South Carolina Limited Liability Companies, actually doing business in Horry County, South Carolina that are owned and/or controlled by Vereen and/or his wife, the Defendant Linda C. Vereen. That upon information and belief, the Defendants named in this paragraph wrongfully received funds, labor or materials from A&E at the instigation of Vereen, as hereinafter alleged.

4. That the Defendant Arthur Vereen Construction, Inc. is a South Carolina Corporation, actually doing business in Horry County, South Carolina, which is, upon information and belief, wholly owned and/or controlled by Vereen and/or his wife, Linda C. Vereen. That Linda C. Vereen is, upon information and belief, a citizen and resident of Georgetown County, South Carolina and is an owner, shareholder or controlling person in the named defendants as hereinafter alleged.

5. That prior to October 28, 2003, Vereen and Smith, licensed general contractors, met and incorporated A&E, for the purposes of consolidating their general contracting businesses. That as a result, A&E was incorporated with Vereen and Smith each owning 50% of the stock in the company, with Smith serving as President and Vereen as treasurer and each becoming members of the Board of Directors of the corporation. That each agreed to finish up their existing jobs with their respective companies and that any new jobs would vest in the new company, A&E. That as a result, Smith began receiving a weekly payroll check as an employee or as an employee of his

prior company reimbursed completely by A&E with a check signed by Vereen and Vereen began receiving a weekly payroll check signed by Vereen from A&E.

6. That until late 2007 Smith and Vereen remained as employees of A&E. That Smith resigned as an employee in August, 2007 and was paid by A&E through December, because of unpaid vacation time, by a check signed by Vereen.

7. That during this time period from incorporation through the present, Vereen has been in sole control of the receipts and payables of A&E and was in charge of filing appropriate tax returns in his capacity as Treasurer of A&E. In this capacity, Vereen never accounted to Smith or A&E for the receipts and disbursements of the Company and Vereen never provided the records to A&E's accountant so the 2007 state and federal tax returns could be prepared and the books reconciled. That 2005 and 2006 tax returns were not timely filed by A&E, and Smith was unaware of the accounting practices of Vereen until these records were received. That Vereen had a fiduciary duty to A&E and its shareholders not to use the corporate assets to further his own personal interests or for his own personal benefit and was prohibited for using assets belonging to A&E for his own personal benefit or for the benefit of a company he owned or controlled.

8. That the Plaintiff made demand upon Vereen and A&E to account for large amounts of assets of A&E that were, upon information and belief, diverted from A&E from 2003 until the present, so the Company's books could be reconciled, the taxes paid and the assets of the Company be paid to its shareholders after all due and just bills of the Company were paid, as is prescribed by law for liquidation or dissolution of A&E. That despite such lawful demand, the Defendant Vereen has refused to complete such

accounting or to otherwise account for expenditures not related to the business of the Company or to otherwise provide such complete records to the accountant for A&E.

9. That as a result, the Plaintiff brings this action, individually and in his capacity as a shareholder, officer and director and on behalf of A&E in a derivative capacity, as the only other shareholder, officer, director and treasurer has refused to account properly for such assets. That upon information and belief, Vereen has diverted assets belonging to the Company for his or his family's own personal use, as hereinafter alleged.

FOR A FIRST CAUSE OF ACTION

10. That each and every allegation of the Complaint is repeated as if restated verbatim.

11. That the Defendant Vereen, in his capacity as director, shareholder and Treasurer of A&E, has diverted and/or wrongfully paid the assets of the Company to himself and third parties or entities related to Vereen as follows:

a. By paying for laborers, invoices and supplies for the Park Place "Putt Putt", a company owned and controlled, upon information and belief, by Park Place Properties of Myrtle Beach, LLC (hereinafter "Park Place"), which is owned by the Defendant Vereen and his wife, Linda C. Vereen, its members and officers, in an amount that exceeds \$108,872.00, according to the records available to the Plaintiff, which sum has not been accounted for by Vereen or Park Place to A&E.

b. By making payment to Park Place in the amount of \$281,792.00, which were not proper expenditures of the funds belonging to A&E, and which have not been accounted for by Vereen, Park Place to A&E.

c. By making payment on behalf of the Pointe Marsh condo development, which was owned by Vereen and his wife, Linda C. Vereen, in the amount of \$971,488.00, which were not proper expenses of the Company and which have not be accounted for by Vereen and his wife, Linda C. Vereen to A&E.

d. By making payment on behalf of Parkway Offices, LLC, a company solely owned by Vereen and/or his wife, Linda C. Vereen, in the amount of 93,900.00 which were not proper expenses of the Company and which have not been accounted for by Vereen and his wife, Linda C. Vereen to A&E.

e. By making payment on behalf of Park Place for Plantation Lakes in the amount of \$137,654.31 which were not proper expenses of the Company and which have not been accounted for by the Defendants who received such expenditures.

f. By making payments on behalf of Vereen and his wife, Linda C. Vereen in the amount of \$26,965.51 for the Defendants' personal home in Murrells Inlet, which have not been accounted for by the Defendants who received such expenditures or the benefit of such expenditures.

g. By making payments to Wayne Vereen in the amount of \$235,568.64, which were not proper expenditures of the Company which have not been accounted for by the Defendant Vereen.

h. By making payments to Arthur Vereen Construction in the amount of \$113,724.00, which were not proper expenditures of the Company, which have not been accounted for by the Defendants.

- i. By making payments to Carolina First Bank in the amount of \$42,500.74, which were not proper expenditures of the Company, which have not been accounted for by the Defendants.
- j. By making payments for the Green Turtle job, in the amount of \$9,918.50 which were not proper expenditures of the Company, which has not been accounted for by the Defendants.
- k. By making payments to Prudential Insurance in the amount of \$17,778.65 for insurance premiums which were not proper expenditures of the Company, which have not been accounted for by the Defendants.
- l. By making payments to John Hancock Insurance in the amount of \$20,171.86 for insurance premiums which were not proper expenditures of the Company, which have not been accounted for by the Defendants.
- m. By making payments to Acorn Cabinets and Paul Thomas Rentals in the amount of \$13,100.00, which were not proper expenses of the Company, which have not been accounted for by the Defendants.
- n. By making payments to Sam's Club in the amount of \$21,818.64 which were not proper expenses of the Company, which have not been accounted for by the Defendants.
- o. By making payment to Dodson Pest in the amount of \$1,600.00 which was not proper expenses of the Company, which have not been accounted for by the Defendants.
- p. By making payments in the amount of \$5,470.62 to Shell which were not proper expenses of the Company, which have not been accounted for by the Defendants.

q. By making payment to 29th Place at Carriage Row, in the amount of \$3,915.00 which was not proper expenses of the Company, which have not been accounted for by the Defendants.

s. By making payments to Surfside Cleaners in the amount of \$12,703.69 for dry cleaning which were not proper expenses of the Company, which has not been accounted for by the Defendants.

t. By making payments to First Palmetto Savings Bank in the amount of \$100,426.76 which were not proper expenses of the Company, which have not been accounted for by the Defendants.

u. By making payments to Flying Cloud for airplane expenses in the amount of \$22,941.00 which were not proper expenses of the Company, which have not been accounted for by the Defendants.

v. By making payments to Provident Life and Accident in the amount of \$5,616.90 which were not proper expenses of the Company, which has not been accounted for by the Defendants.

w. By making payment to Bankers Insurance/29th Place in the amount of \$924.39 which was not proper expenses of the Company, which have not been accounted for by the Defendants.

x. By making payment to MBNA in the amount of \$11,953.32 for credit card purchases which were not proper expenses of the Company, which have not been accounted for by the Defendants.

y. By making payments to Sign Works in the amount of \$10,277.50 which were not proper expenses of the Company, which have not been accounted for by the Defendants.

z. By making payment to Dolphin in the amount of \$6,209.86 which was not proper expenses of the Company, which have not been accounted for by the Defendants.

aa. By making payment to Stock Builders for materials and supplies in the amount of \$159,682.30 which were not proper expenses of the Company, which have not been accounted for by the Defendants.

bb. By making payment to Coastal Paving in the amount of \$7,000.00 which were not proper expenses of the Company, which have not been accounted for by the Defendants.

cc. By the payments identified in Exhibit A to this Complaint in the total amount of \$755,721.66 which were not proper expenses of the Company, which have not been accounted for by the Defendants.

That, upon information and belief, the Defendants have failed to collectively account for over \$2,272,943.06 in expenditures or payments from the accounts of A&E signed by Vereen which, upon information and belief, were payments for bills which were not incurred on behalf of A&E in the operation of its business, after giving credit to the defendants for \$926,769.16 in payments, according to the records available to the Plaintiff herein.

12. That the actions of the Defendants were unknown to the Plaintiff and were done without the permission or authorization of the Plaintiff. That Plaintiff, as shareholder, director and officer of the Company, has made demand upon Vereen to

account for the heretofore mentioned funds and expenditures, disbursements, credits and debits and the Defendant Vereen has refused to account for such expenditures and has offered no explanation for his self dealing and breach of fiduciary duties due to Plaintiffs.. That as a result, the Plaintiff has been forced to employ the undersigned attorneys and a certified public accountant to examine the books and records of the Company to determine what assets, if any, belong to the Company and to determine what amounts are due from third parties and the Plaintiff herein as the result of the Defendants actions.

13. That the other Defendants are named because, upon information and belief, they are family members of the Defendant Vereen or companies controlled by the Defendants Vereen, who have conspired with and received benefits from the disbursements or wrongful expenditures made by the Defendant Vereen as heretofore stated.

14. That the Plaintiff is informed and believes he, in his individual capacity and as a shareholder, officer and director and on behalf of the Company, is entitled to an accounting from the Defendants for all disbursements made by Vereen at the Company, especially in reference to the above disbursements and that any Defendant who has wrongfully disbursed or received funds and assets from the Company be required to repay such wrongfully diverted funds to the Plaintiff herein or that the Plaintiff be granted a judgment against any such defendants for the such amounts, including prejudgment interest, attorneys fees, accounting fees and the costs of this action. .

FOR A SECOND CAUSE OF ACTION

15. That each and every allegation of the Complaint is restated as if repeated verbatim.

16. That the Plaintiff is informed and believes that the Defendant Vereen has committed ultra vires acts, illegal, fraudulent, oppressive and/or unfairly prejudicial acts toward the individual Plaintiff and the Company and its other shareholder (the Plaintiff) and that the Plaintiff is entitled to a judicial Order of Dissolution based upon such actions by the Defendant Vereen pursuant to Section 33-14-300, et.seq. of the Code of Laws of the State of South Carolina, as amended. That upon information and belief, the Defendant Vereen has "frozen out" the Plaintiff and has seized control of all of the assets of the Company, without due regard for the rights of the other shareholder and director, the Plaintiff, and that the Plaintiff will not receive the benefit of the true value of his shares or the Corporation, its assets, without the assistance of this Court in winding down the affairs of this Company.

17. That the Plaintiff is informed and believes that the Court should issue its orders requiring the Defendants to account for the funds received from A&E and make its determination as to whether such disbursements were reasonably related to the business of A&E, and if not, issue such order as may be just including granting the Plaintiff a judgment against the Defendant Vereen and the other named Defendants, which are entities and persons receiving such benefits for the full amount or reasonable value of such wrongfully received funds or assets, including pre-judgment interest, attorneys fees and accounting incurred by the Plaintiff and A&E herein.

18. That upon information and belief, the named Defendants did intentionally and negligently conspire with the Defendant Vereen to wrongfully divert and receive the assets of A&E, when they knew or should have known such payments and benefits were not owned by the Defendant Vereen, but by the corporate Plaintiff.

19. That because of the Defendants acts, as heretofore alleged, the Plaintiff is informed and believes the Plaintiff is entitled to a judgment against such Defendants for the entire amount of any wrongfully received benefits or funds, for punitive damages for the wrongful taking, including but not limited to prejudgment interest, attorneys fees and accounting fees and the costs incurred by Plaintiff.

20. That because of the Defendant Vereen's wrongful conduct in diverting the company's assets for his own personal gain, the Plaintiffs are informed and believes that he should be required to forfeit all rights to retain any compensation paid for his services to the corporate Plaintiff during the period that he diverted funds from the corporation, as is provided by law. .

Wherefore, the Plaintiff prays that this Honorable Court inquire into the matters alleged herein and issues its Orders as follows:

a. Granting the Plaintiff and A&E judgment against the Defendants, jointly and severally, for the amount found to have been diverted, misappropriated or otherwise wrongfully disbursed by the Defendant Vereen to the named Defendants or to entities owned or controlled by the Defendants, or to any other inappropriate entities or for unlawful purposes, including pre-judgment interest and the costs of this action.

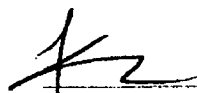
b. For an award of reasonable attorneys fees and costs incurred by the Plaintiff A&E to recover the value of the assets wrongfully diverted from A&E by the Defendants, including accounting fees.

c. Referring this matter to the Master in Equity for Horry County or a Special Referee appointed by the Court for the purposes of a full accounting from the Defendants herein, with authority to issue a final order in this matter.

d. Dissolving and winding down the affairs of A&E, after full accounting, including supervising any further disbursements to be made by the Company.

e. Granting the Plaintiff an award of punitive damages against the Defendants for the conversion of the assets by the actions of such defendants.

f. Such other and further relief as this Honorable Court may deem just and proper.



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January 20, 2009

A

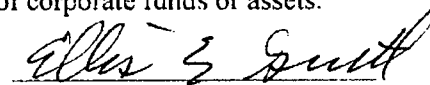
Misc. Checks and Payments (not related)

Description	Amount
Ck -Southern Land & Piling - PM	\$ 6,212.00
Randy's Truck Cost	6,227.72
CES - not A&E Jobs	11,152.00
Willoughby ck to A&E deposited into AVC	113,480.00
Lull Rental - 24 months @ 1900.00 PP	45,600.00
Skid Header - 18 months @ 1250.00 PP	22,500.00
Carrie's time for Park Place	27,691.20
Litchfield Medical - ??	4,348.62
W/C Liability & PR Taxes	94,237.40
Wayne's time for PP	84,000.00
Beth's time for PP	31,200.00
City of NMB -License for PM	14,731.00
SS Cardiology	50,000.00
Leaf - PM	2,041.64
Palmetto Designs - Beth personal home	1,523.27
Pyramid Engineering -Beth personal home	1,375.00
City of MB - Beth personal home	7,489.65
Ck to A&E deposited into AVC account-TP	15,000.00
November checks written	92,571.02
December checks written	77,207.43
Balance in account @ 12/31	<u>47,133.71</u>
Total	<u>\$ 755,721.66</u>

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY) VERIFICATION

Personally appeared before me Ellis Smith, who being duly sworn,
deposes and says:

That he is one of the Plaintiffs in this action and that he is a 50% shareholder in A&E, a South Carolina corporation. That he has read the contents of the Complaint. That the statements made in the complaint are true, except as to those matters alleged upon information and belief, and as to those statements, he believes them to be true. That he has had the available books and records of the corporation examined by a certified public accountant, who has determined that substantial assets of the Company have been paid to or for the benefit of the Defendants without corporate authorization or benefit. That he has made demand upon the defendant Vereen to properly account for the expenditures of the corporation and the Defendant refuses to properly account for such expenditures. That the Defendant Vereen never sought permission from the Plaintiff as the only other officer, director and shareholder to self deal or expend the revenues and resources of A&E for his own benefit. That he is entitled to an accounting from the Defendants for the disbursements made by the Defendants to the Defendants known and for full discovery of any further misappropriations of corporate funds or assets.


Ellis Smith

Sworn to and subscribed before me
this 21 day of January, 2009.



Notary Public for South Carolina
My Commission expires: 11/7/2016

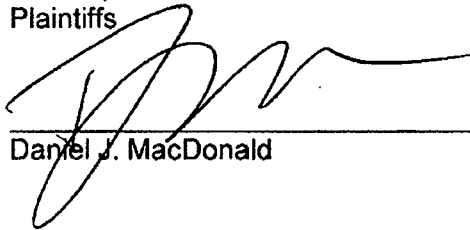
FILED
HORRY COUNTY
2009 JAN 23 PM 4:21
HELANIE HUGGINS
CLERK OF COURT

EXHIBIT 3

(Answer & Counterclaim)

the Third Party Complaint in this action, of which a copy is herewith served upon you, and to serve a copy of your answer to the said Counterclaims and Third Party Complaint on the subscriber or subscribers at his or their office at 950-48th Avenue North, Suite 200, Myrtle Beach, South Carolina 29577, and to file your answer with the Clerk of Court for Horry County, all within thirty (30) days after the service hereof; exclusive of the day of such service; and if you fail to answer the Counterclaims and Third Party Complaint within the time aforesaid; the Defendants and Third Party Plaintiffs in this action will apply to the Court for the relief demanded in the Counterclaims and Third Party Complaint and judgment by default will be rendered against you for the relief demanded in the Counterclaims and Third Party Complaint.

RICE, MacDONALD, BREEDEN & HICKS, P.A.
950 48th Avenue N., Suite 200
Myrtle Beach, SC 29577
(843) 449-4493
Attorneys for the Defendants and Third Party
Plaintiffs



Daniel J. MacDonald

Myrtle Beach, South Carolina

March 12, 2009

AND

**THIRD PARTY COMPLAINT OF ARTHUR WAYNE VEREEN, INDIVIDUALLY
AND ON BEHALF OF A & E CONSTRUCTORS AND CONSULTANTS, INC.
AND 29TH PLACE DEVELOPERS INC.**

The Defendants, Arthur Wayne Vereen (hereinafter "Vereen"), Park Place Properties of Myrtle Beach, LLC (hereinafter "Park Place"), Parkway Offices, LLC, Arthur Vereen Construction, Inc. (hereinafter "AVC, Inc.") and Linda C. Vereen (hereinafter "Linda Vereen") answering the Complaint of the Plaintiff, Ellis E. Smith (hereinafter "Smith"), individually, and on behalf of A & E Constructors and Consultants, Inc. (hereinafter "A & E"), a South Carolina Corporation, and Arthur Wayne Vereen, individually and on behalf of A & E, and 29th Place Developers, Inc., Third Party Plaintiffs, complaining against E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, Individually, would show and allege unto this Honorable Court as follows:

1. That each and every allegation not herein specifically admitted, qualified or explained, is denied, and strict proof is demanded thereof.
2. That as to paragraph 1 of the Complaint, the Defendants admit that the Plaintiff Smith is a citizen and resident of Horry County, South Carolina, is or was the owner of fifty (50%) percent of the outstanding shares of A & E, and is or was the President or Chairman of the Board of Directors, and is one of two members of its Board of Directors. That the remaining allegations inconsistent with this response are denied, and strict proof is demanded thereof. It is also specifically denied that Smith or its attorney represents A & E.
3. That the allegations contained in paragraph 2 of the Complaint are admitted to the extent that Vereen is a citizen and resident of Georgetown County, is the owner of fifty (50%) percent of the outstanding shares of A & E, serves as Secretary/Treasurer and member of the Board of Directors and may also be the defacto President and Chairman of the Board of Directors of A & E. It is denied that Vereen controlled the receipts and disbursements for A & E or that disbursements made by

Vereen were not for the benefit of A & E. That the remaining allegations are denied, and strict proof is demanded thereof.

4. That the allegations contained in paragraph 3 of the Complaint are admitted to the extent that Park Place Properties of Myrtle Beach, LLC and Parkway Offices, LLC are South Carolina limited liability companies doing business in Horry County. It is specifically denied that said Defendants wrongfully received funds, labor or materials from A & E. That the remaining allegations are denied, and strict proof is demanded thereof.
5. That the allegations contained in paragraph 4 of the Complaint are admitted to the extent that Arthur Vereen Construction Company, Inc., is a South Carolina corporation doing business in Horry County, South Carolina and is owned by Arthur Wayne Vereen. It is further admitted that the Defendant, Linda C. Vereen, is a citizen and resident of Georgetown County and may be a shareholder or member of one of the various companies named in the Complaint. The remaining allegations are denied, and strict proof is demanded thereof.
6. That as to the allegations contained in paragraph 5 of the Complaint, it is admitted that Vereen and Smith met and incorporated A & E with Vereen and Smith each owning fifty (50%) percent of the stock in the company, and that between them, the parties served as various officers and directors of the corporation. It is further admitted that Smith received a weekly payroll check as an employee of prior companies. The remaining allegations are denied, and strict proof is demanded thereof. The Defendant also craves reference to the books and records of the various entities and companies, including A & E, for the appropriate determination of payments.
7. That as to allegations contained in paragraph 6 of the Complaint, it is admitted that Smith stopped coming to work at A & E in 2007. As to the remaining allegations, reference to the books and records of A & E is

craved and to the extent the allegations are inconsistent, they are denied and strict proof is demanded thereof.

8. That as to the allegations contained in paragraph 7 of the Complaint, they are denied, and strict proof is demanded thereof.
9. That as to the allegations contained in paragraph 8 of the Complaint, they are denied, and strict proof is demanded thereof.
10. That as to the allegations contained in paragraph 9 of the Complaint, the Defendants lack sufficient knowledge to admit or deny the allegations and therefore, deny same and demand strict proof thereof.
11. That as to the allegations contained in paragraphs 10 and 15 of the Complaint, they do not require a responsive pleading, but to the extent they do, they are denied, and strict proof is demanded thereof.
12. That the allegations contained in paragraphs 11 and 11(a) through 11(cc), inclusive, are denied, and strict proof is demanded thereof.
13. That the allegations contained in paragraph 12 are denied, and strict proof is demanded thereof.
14. That the allegations contained in paragraph 13 are denied, and strict proof is demanded thereof.
15. That the allegations contained in paragraph 14 are denied, and strict proof is demanded thereof.
16. That the allegations contained in paragraph 16 are denied, and strict proof is demanded thereof.
17. That the allegations contained in paragraph 17 are denied, and strict proof is demanded thereof.
18. That the allegations contained in paragraph 18 are denied, and strict proof is demanded thereof.
19. That the allegations contained in paragraph 19 are denied, and strict proof is demanded thereof.
20. That the allegations contained in paragraph 20 are denied, and strict proof is demanded thereof.

**FOR A SECOND DEFENSE, FIRST COUNTERCLAIM AND
FIRST CAUSE OF ACTION**

(Accounting/Indemnity/Misappropriation)

21. That the allegations contained in the First Defense are incorporated herein and made a part and parcel of this Second Defense, First Counterclaim and First Cause of Action.
22. That Vereen is a member and shareholder of the Defendants, Park Place, Parkway Offices, LLC, and AVC, Inc.
23. That Vereen is also a member and shareholder in an entity known as 29th Place Developers, Inc.
24. That the Third Party Defendant, E. Smith and Sons Construction, LLC, is a limited liability company organized and existing pursuant to the laws of the state of South Carolina, with its principal place of business in Horry County, South Carolina.
25. That the Third Party Defendant, EES Construction and Consulting, Inc., is a South Carolina corporation doing business in Horry County, South Carolina.
26. That prior to the formation of A & E, Vereen or his companies had dealings with Ellis E. Smith, loaned money to Ellis E. Smith, or entered into certain contracts, the result of which was that Ellis E. Smith owed money to Vereen, 29th Place Developers, Inc., or AVC, Inc.
27. That in forming the entity known as A & E Constructors and Consultants, Inc., Smith and Vereen agreed and contemplated that out of the funds generated by A & E, Smith would repay monies due and outstanding to Vereen or his companies.
28. That other than repayment of funds due to Vereen, Smith and Vereen agreed to generally make equal contributions and receive equal disbursements from A & E.
29. That Smith failed to make contributions to the company and received improper or inequitable disbursements from A & E.
30. That while still alleged to be a member of A & E, Smith performed work as

E. Smith and Sons Construction, LLC (hereinafter referred to as "E. Smith and Sons") and EES Construction and Consulting, Inc. (hereinafter referred to as "EES").

31. That upon information and belief, E. Smith and Sons and EES are not licensed general contractors in the State of South Carolina.
32. That while a member of A & E, Smith performed and completed the following jobs in the name of A & E, E. Smith and Sons, or EES, without the knowledge and consent of A & E or Vereen, which jobs were corporate opportunities of A & E:
 - a. Horry County Permit, Cari Ann Davis, New Home
 - b. Horry County Permit, Robert Sealey, Home addition
 - c. Myrtle Beach Permit, Ellis Smith, Jasmine Avenue, Home Addition
 - d. NMB Permit, Martin Brown, Office
 - e. NMB Permit, Martin Brown, Fence
 - f. NMB Permit, Martin Brown, Repairs
 - g. NMB Permit, Martin Brown, Pool and Enclosure
 - h. NMB Permit, Martin Brown, Demolition
 - i. NMB Permit, Martin Brown, Remodel
 - j. NMB Permit, Martin Brown, Office Remodel
 - k. Daughter of Robert Sealey, New Home, MB
 - l. Lee McMillan, New Home, MB
 - m. Ewell Smith, Home Addition, MB
 - n. Burroughs and Chapin, New Fence, MB
 - o. Ellis Smith, Repairs, Personal Home, 29th Place
 - p. Other jobs as determined by discovery.
33. That in addition to the above, while a paid employee and shareholder of A & E, Smith and/or E. Smith and Sons and/or EES, improperly billed to and received payment from A & E, charges for jobs performed by A & E, including charges for supervision of projects.
34. That Smith, E. Smith and Sons or EES removed a significant amount of material and equipment, which were paid for by A & E, without

reimbursement and authorization of A & E, retaining same for his or their own benefit. These items include stacks of plywood, windows, concrete saws, hammer drills, parts washers, and other equipment. That the removal of these items constitutes misappropriation of corporate assets.

35. That Smith, while still an employee, officer and or director of A & E, did perform work, under the name and licensure and/or on behalf of A & E, without remitting to A & E payments made to him for said work.
36. That Smith, during and after his employment, and while still an officer and or director of A & E, did perform work under the names of separate entities, thereby misappropriating a corporate opportunity of A & E for himself or his alternate companies.
37. That Smith, during and after his employment, and while an officer and/or director of A & E, did permit jobs using A & E's license, received compensation for his sole benefit, without notice to A & E or A & E's liability insurance carriers, thereby exposing A & E to possible uninsured and uncompensated liability.
38. That A & E has been notified of possible liability exposure for alleged defective work by an alleged customer of A & E, for which coverage may not exist and compensation was not received. Should A & E be determined to be responsible for the alleged defective work, then Smith should be responsible to account and indemnify to A & E and/or Vereen for all costs and fees associated with this claim.
39. That the above-referenced funds have not been paid and should be accounted for by Smith, E. Smith and Sons or EES in an accounting.
40. That Smith also drew a salary from A & E for a period during which he performed work not for A & E's benefit, was a disloyal employee of A & E, or was misappropriating corporate assets or opportunities.
41. That Vereen, as a 50% shareholder of A & E, concurs that an orderly dissolution of the corporation should be had.
42. That Vereen believes that Smith, E. Smith and Sons and EES should be required to account for outstanding amounts due to Vereen, individually,

his companies, and A & E.

43. That Vereen, individually and/or on behalf of A & E and 29th Place Developers Inc., believes that A & E or Smith should account to him or them for all outstanding funds, liabilities, misappropriated opportunities or assets, materials or equipment, or monies inequitably retained by Smith or E. Smith and Sons, or EES.

FOR A SECOND CAUSE OF ACTION

(Breach of Contract - 29th Place Developers, Inc.)

44. That the allegations contained in the First and Second Defenses, First Counterclaim and First Cause of Action are incorporated herein and made a part and parcel of this Second Cause of Action.
45. That the Third Party Plaintiff, 29th Place Developers, Inc., entered into a Land Sales Contract with Smith, wherein Smith agreed to pay to 29th Place Developers, Inc., the sum of Thirty Eight Thousand Seven Hundred Fifty and No/100 (\$ 38,750.00) Dollars, plus interest at ten (10%) per cent per annum, with interest only installments of Three Hundred Twenty Two and 92/100 (\$322.92) Dollars per month, and a balloon payment of Thirty Eight Thousand Seven Hundred Fifty and No/100 (\$ 38,750.00) Dollars.
46. That Smith failed to pay all sums as due.
47. That the Third Party Plaintiff, 29th Place Developers, Inc. believes it is entitled to a judgment for all unpaid balances, plus interest at ten (10%) percent per annum, plus costs and fees associated with this action.

FOR A SECOND COUNTERCLAIM AND THIRD CAUSE OF ACTION

(Breach of Contract - AVC, Inc.)

48. That the allegations contained in the First, Second, and Third Defenses, First Counterclaim and First and Second Causes of Action are incorporated herein and made a part and parcel of this Second Counterclaim and Third Cause of Action.
49. That Smith, Vereen and AVC, Inc. entered into an agreement wherein Smith agreed to pay Vereen and AVC, Inc. ten (10%) percent of the value of construction on a condo project in North Myrtle Beach, known as

Carolina Keyes in exchange for use of Vereen's or AVC, Inc.'s license.

50. That upon information and belief, Smith has used Vereen's or AVC, Inc.'s license for approximately Five Million Eight Hundred Thousand and no/100 (\$5,800,000.00) Dollars worth of work and therefore owes to Vereen and AVC, Inc. approximately Five Hundred Eighty Thousand and No/100 (\$580,000.00) Dollars in compensation.
51. That Vereen and AVC, Inc., believe they are entitled to judgment against Smith in the amount of ten (10%) percent of the value of construction on a condo project in North Myrtle Beach, known as Carolina Keyes in exchange for use of Vereen's or AVC, Inc.'s license, plus the cost of this action and such other and further relief as this court deems just and proper.

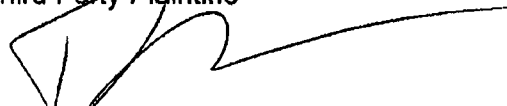
WHEREFORE, the Defendants, Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, Inc. and Linda C. Vereen, answering the Complaint and counterclaiming against the Plaintiff, Ellis E. Smith, Individually and on behalf of A & E Constructors and Consultants, Inc., a South Carolina Corporation, and the Third Party Plaintiffs, Arthur Wayne Vereen, Individually and on behalf of A & E Constructors and Consultants, Inc., and 29th Place Developers, Inc., complaining against the Third Party Defendants, E. Smith and Sons Construction, LLC, EES Construction and Consulting, Inc., and Ellis E. Smith, Individually, would pray unto this Honorable Court as follows:

1. As to the First Defense, that the Plaintiff's Complaint be dismissed with prejudice;
2. As to the Second Defense, First Counterclaim and First Cause of Action, that an accounting of amounts due to and from the various entities and individuals be had, that judgment be rendered in accordance with that accounting, and that the court order judicial dissolution of A & E Constructors and Consultants, Inc., or such other legal and equitable relief the Court deems just and proper;
3. As to the Second Cause of Action, for judgment against the Plaintiff/Third Party Defendant, Ellis E. Smith, for all unpaid balances owed to Third

Party Plaintiff, 29th Place Developers, Inc., plus interest at ten (10%) percent per annum, plus costs and attorney's fees associated with this action; and

4. As to the Second Counterclaim and Third Cause of Action, for judgment against the Plaintiff/Third Party Defendant, Ellis E. Smith, in the amount of ten (10%) percent of the value of construction on a condo project in North Myrtle Beach, known as Carolina Keyes in exchange for use of Vereen's or AVC, Inc.'s license, plus costs and attorney's fees associated with this action; and
5. For such other and further relief as this Court deems just and proper.

RICE, MACDONALD, BREEDEN & HICKS, P.A.
950 - 48th Avenue North, Suite 200
Myrtle Beach, SC 29577
(843) 449-4493
Attorneys for the Defendants and
Third Party Plaintiffs



Daniel J. MacDonald

Myrtle Beach, South Carolina

March 12, 2009

EXHIBIT 4

(Order Disposing of Post-Trial Motions)

COUNTY OF HORRY

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 VIEREN, 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.

) IN THE COURT OF COMMON PLEAS
) FIFTEENTH JUDICIAL CIRCUIT
) CASE NO.: 2009-CP-26-00620

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CLERK OF COURT

ORDER DISPOSING OF POST TRIAL MOTIONS

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
Court Reporter:	Melissa M. Decker

Defendants move to reopen the hearing in this matter for the taking of testimony and presentation of evidence as to events effecting (sic) the subject matter of this accounting action and the relief sought relating to A&E Constructors and Consultants, Inc. (the Company). Specifically, two independent civil actions after the final hearing in this action have been filed against the Company and are presently pending. Defendants wish to reopen the hearing to take testimony concerning those two cases. Additionally, Defendants move for reconsideration of the final judgment. They now request that an independent forensic accountant be appointed and assert that one is required before a full and complete judicial accounting can be completed. However, Defendants never requested that an independent forensic accountant be appointed in this action until they filed their motion for reconsideration.

Except as stated below, Defendants' motions are denied.

This case has been quite frustrating, not only for the parties and the attorneys, but for the Court, as well. It is, at heart, an accounting action, involving a closely held construction corporation between two former close friends operating in a small community. The lawsuit was filed in 2009, when the foreclosure crisis was beginning to hit South Carolina, and particularly, Horry County, hard. The case was referred to this Court on July 23, 2009.

There were discovery issues between the parties almost immediately, and in October 2010, this Court held a pretrial hearing. All attorneys were present, and additionally, five certified public accountants who were involved in some matter also attended: Susan Brady, Bartlett Buie, Richard

Crumpler, Elizabeth Montgomery, and Bert Huggins.¹ Ms. Brady was presented as the Plaintiff's accounting expert witness. Defendants informed the Court that they intended to proceed to trial without an accounting expert. In fact, Defendants' attorney stated emphatically that no accountant was needed because the evidence was simply a matter of adding and subtracting, and certainly, "rocket science" was not involved. Even though five well-qualified certified accountants were present at the pre-trial conference, no attorney there requested that the Court appoint any of them, or, for that matter, any other accountant as an independent forensic accountant so that the Court could complete a full judicial accounting.

When the October 2010 pretrial conference occurred, Defendants had taken no depositions. The Court ordered that Defendants complete discovery by the end of January 2011 so that trial could begin in February 2011.

2
2
6/1
In this Court, the parties schedule their own hearings. By February 2011, this Court's trial schedule was overly burdened with foreclosure hearings, so it was almost impossible to schedule several consecutive, full days for trial. Two days of trial in this matter were held on February 15-16, 2011. In June, two and a half more days of trial, June 13-15, 2011, were held. Before several more consecutive full days were available, four months had passed. The trial resumed on October 11, 2011, and ran through October 13, 2011. The trial finished on August 27, 2012, through August 30, 2012. At some point during the trial, one of the attorneys became quite ill, and the trial had to be delayed.

At the end of the trial on August 30, 2012, because of the length of trial, and more specifically, because of the disjointed way the case was tried, this Court requested a Memoranda

¹ Three of the accountants had been called to the conference because they had worked for the firm that had prepared the Company's tax returns. Defendants' attorney had advised those accountants not to communicate with Plaintiff's attorneys concerning this matter, except through her office. That obviously put the Plaintiff's attorneys at a disadvantage. That issue was addressed by this Court's Pretrial Order.

of Law from the parties summarizing their positions. This Court received a Memoranda from the Plaintiff in September. By February of 2013, six months after the trial ended, Defendants had not sent a memorandum. (To date, Defendants have never sent one.) On March 23, 2015, this Court issued its final order.

The 42-page Order was filed on March 24, 2015. On March 25, 2015, the Court's law clerk scanned and emailed the Order to all counsel of record. Plaintiff's counsel also mailed a copy of the Order to Defendants on March 25, 2015. On that same date, the Court issued a *nunc pro tunc* order, correcting the amount of prejudgment interest and adding a defendant's name to the Form 4 only (it already was in the final order). On March 27, 2015, the Plaintiff's attorney mailed the *nunc pro tunc* order and the Form 4 to all attorneys of record.

4
GPH
Subsequently, Defendants' counsel realized that she had not received Page 37 of the Order. Instead of obtaining the missing page from the clerk's file, she requested it from the trial judge. The judge's office thereafter emailed the missing page to all attorneys. Defendants' attorney then moved for reconsideration, serving and filing the motion on April 20, 2015. Plaintiff contends the motion comes too late. I agree.

Both Rules 52(b) and 59(e) of the South Carolina Rules of Civil Procedure (SCRPC) require that any motions thereunder be made no later than ten days after "receipt of written notice of the entry of the order." See also, *Diamond Jewelers of Spartanburg, Inc. v. Naegele*, 290 S.C. 260, 260-62, 349 S.E.2d 888, 888 (1985). Essentially, there are two ways notice of entry of the order can be given under Rule 77(d) of the SCRPC. Clerks of court can serve notice of the entry, or a party may serve notice in any fashion authorized by Rule 5 of the SCRPC. In this case, Plaintiff's attorney served notice of entry of the order on March 27, 2015, at the latest, when he served a copy of the *nunc pro tunc* order and the Form 4. Computing ten days from March 27,

2015, and adding five days for mailing [Rule 6(e), SCRCP], and then allowing the period to run until Monday because the last day fell on a Saturday, the last day for Defendants to file their Motion for Reconsideration pursuant to Rules 52(b) and 59(e) was Monday, April 13, 2015. Defendants failed to file their post-trial motion until April 20, 2015, a week too late. Their only excuse was that they were waiting on the Court to send them Page 37 of the Order before their ten days began to run.

Even though I have determined that the motion for reconsideration was too late, I conclude that the issue is best left for our appellate courts because of the Order's missing page, Page 37, and its effect on the finality of the Order. Accordingly, I will address the motion as if it were timely and leave for the appellate court to determine the timeliness of the motion. As previously stated, I deny the motion, except as stated below.

1. I grant Defendants' motion in regard to the grounds of piercing the corporate veil.

Instead, I find that the Defendants should be held liable under an amalgamation of interest or blurred identity theory. The test to determine whether a corporate veil should be pierced is applied rather strictly. See *Sturkie v. Sifty*, 280 S.C. 453, 313 S.E.2d 316 (Ct. App. 1984). It consists of two prongs, with the first prong requiring eight factors. The second part requires that there be an element of injustice or fundamental unfairness if the veil not be pierced.

Arthur Vereen blurred the identity of his various entities. They shared the same office, employees, construction jobs, and shareholders. Mr. Vereen paid debts for one entity out of another entity's checking account. Mr. Vereen also deposited into one entity's checking account funds belonging to another entity. This created an accounting nightmare. It also was the basis for this lawsuit: Ellis Smith was a shareholder only in A&E Constructors and Consultants, Inc. and

not in any of the Defendant corporations. I conclude that Mr. Vereen used the various entities as an extension of himself to pay whatever debts he needed to pay, whether they were personal, family, or any of his corporations' debts. This was a classic amalgamation theory case. See *Kincaid v. Landing Dev. Corp.*, 289 S.C. 89, 344 S.E.2d 869 (Ct. App. 1986).

2. I grant Defendants' motion as to judicial dissolution. Both the Plaintiff and the Defendants demanded judicial dissolution. I previously did not grant judicial dissolution because neither side addressed that during the trial. They did not suggest how winding up should occur or whether a receiver should be appointed, or, for that matter, whether an accountant should be appointed to review the corporate records. Nevertheless, I conclude that the parties should follow S.C. Code Ann. §§ 33-14-106 through 107 as to how to deal with claimants of a dissolved corporation. If any other issues arise, the parties may request an additional hearing.

AND IT IS SO ORDERED!


CYNTHIA GRAHAM HOWE
Master In Equity for Horry County

Conway, South Carolina
April 15 2016

EXHIBIT 5

(Nunc Pro Tunc Order)

STATE OF SOUTH CAROLINA
COUNTY OF HORRY
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-26-620

Ellis E. Smith, Individually, and on behalf of A & E
Constructors and Consultants, Inc.,

Arthur Wayne Vereen, et al.

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: The Honorable Cynthia Graham Howe

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX)**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : Amended Form 4 following Nunc Pro Tunc Order

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	\$4,226,383.90
	Linda C. Vereen, Individually, and as Trustee of the Linda C. Vereen Residence Trust	\$4,226,383.90
	Park Place Properties of Myrtle Beach, LLC	\$4,226,383.90
	Parkway Offices, LLC	\$4,226,383.90
	Arthur Vereen Construction Company, Inc.	\$4,226,383.90
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.

Cynthia M. Hume
Master In Equity

Judge Code

3/25/15
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ 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:

J. Jackson Thomas

Kathryn M. Cook

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

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

COUNTY OF HORRY

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 CONSTRUCTINO COMPANY,
INC., LINDA C. VEREEN, ARTHUR W.
VEREEN, AS TRUSTEE OF THE ARTHUR
W. VEREEN RESIDENCE TRUST, and
LINDDA 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 CONSTURCTION AND
CONSULTING, INC., and ELLIS E. SMITH,
individually,

Third Party Defendants.

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CASE NO.: 2009-CP-26-620

NUNC PRO TUNC ORDER AMENDING
JUDGMENT TOTAL AND FORM 4

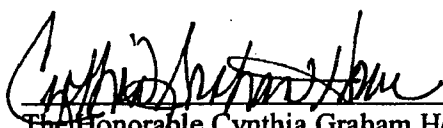
HORRY COUNTY
2015 MAR 25 AM 11:22
CLERK OF COURT

IT APPEARING to the Court that a mathematical error occurred in the computation of prejudgment interest in the Order signed March 23, 2015 and clocked with the Horry County Clerk of Court on March 24, 2015, and that certain parties were left off the Judgment Index on the Form 4 signed and clocked on the same respective days. The per diem rate of prejudgment interest of 8.75% would be six hundred twenty dollars and forty four cents and not 61.537 as indicated by Footnote 4 on Page 41 of that Order. Therefore, total interest between the dates of January 23, 2009 and March 23, 2009 would be \$1,395,990.00. The total judgment amount should therefore be amended to reflect the amount shown below:

Amount of monies misappropriated	\$2,588,125.90
Prejudgment Interest from 1/23/2990 until 3/23/2015	\$1,395,990.00
Accounting fees due Susan Brady	\$142,268.00
Punitive Damages	\$100,000.00
TOTAL:	\$4,226,383.90

 Defendant Parkway Offices, LLC should also be added to the Judgment Index on the Form 4 as indicated by paragraph (1) on Page 41 of the Order.

IT IS SO ORDERED.


The Honorable Cynthia Graham Howe
Master in Equity for Horry County

Conway, South Carolina
 day of March, 2015

EXHIBIT 6

(Affidavit of Kathryn M. Cook, Esquire & Accompanying Exhibits)

AFFIDAVIT OF KATHRYN M. COOK

PERSONALLY APPEARED BEFORE ME after having been duly sworn, deposes and says as follows:

1. I am an attorney licensed to practice law in the State of South Carolina, and I am in good standing with the South Carolina Bar.
2. Beginning on September 15, 2009, I served as counsel for the Defendants and Third Party Plaintiffs in the case captioned Ellis E. Smith, individually and on behalf of A&E Contractors and Consultants, Inc., v. Arthur Wayne Vereen, et al., 2009-CP-26-620. Specifically, I represented the Defendants, who consisted of the following parties: Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices, LLC, Arthur Vereen Construction, 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. I also represented the Third Party Plaintiffs, who consisted of Arthur Wayne Vereen, individually and on behalf of A&E Constructors and Consultants, Inc., and 29th Place Developers, Inc.
3. I represented the Defendants and Third Party Plaintiffs at trial before the Honorable Cynthia Graham Howe, Master-in-Equity for the Fifteenth Judicial Circuit.
4. On March 23, 2015, Judge Howe issued a written Order, entering a Judgment against the Defendants. Judge Howe's signature on the written Order appeared on the page number forty-two (42).
5. On March 24, 2015, Judge Howe's law clerk, R. Stewart Miller, Jr., emailed all counsel of record a copy of Judge Howe's written Order. Mr. Miller's email is attached to this Affidavit as Exhibit #1. The written Order sent by Mr. Miller was incomplete, as it was missing page thirty-seven (37) of the Order.

Exhibit 6

6. By letter dated March 25, 2015, counsel for Plaintiff, Frank H. DuRant, mailed a copy of Judge Howe's written Order to me. I am not sure when I received the written Order from Mr. DuRant. However, the written Order served upon me by Mr. DuRant was also missing page thirty-seven (37).

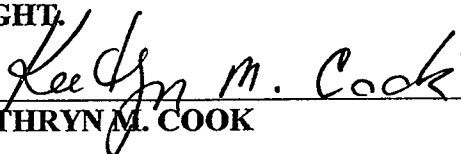
7. On April 6, 2015, I wrote a letter to Judge Howe to notify her that the written Order served upon me by her law clerk and by opposing counsel were not complete and were missing page thirty-seven (37). In this same letter, I requested that Judge Howe "send to me page 37 or a complete copy of the Order at your convenience so I can take steps to file a motion to reconsider in this case." A copy of my letter to Judge Howe is attached to this Affidavit as Exhibit #2.

8. Judge Howe never responded to my letter dated April 6, 2015.

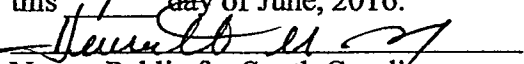
9. On April 10, 2015, Mr. DuRant emailed a copy of page thirty-seven (37) of Judge Howe's written Order to me. A copy of this email is attached to this Affidavit as Exhibit #3. I received Mr. DuRant's email on April 11, 2015.

10. I filed a Motion for Reconsideration on April 20, 2015.

FURTHER AFFIANT SAYETH NAUGHT.


KATHRYN M. COOK

SWORN to and subscribed before me
this 9th day of June, 2016.


Notary Public for South Carolina

My Commission Expires: 12-7-2025



Kif Cook <kifcook55@gmail.com>

Attached Order for Smith v. Vereen (2009-CP-26-0620)

2 messages

Miller, Richard <millerr@horrycounty.org>

Tue, Mar 24, 2015 at 1:45 PM

To: frank durant <fdurant@yahoo.com>, Jack Thomas <JThomas@myrlaw.com>, "kifcook55@gmail.com" <kifcook55@gmail.com>

Attached is a PDF copy of the clocked Order in the above referenced case executed today. If any of you have questions or concerns please don't hesitate to contact me.

Respectfully,

Stewart

R. Stewart Miller, Jr. | Law Clerk

Horry County Government

Office of the Master in Equity

P.O. Box 1236, Conway, South Carolina 29526

Tel 843.915.7853 | Fax 843.915.6310

millerr@horrycounty.org | www.horrycounty.org

All e-mail correspondence to and from this address may be subject to public disclosure under the South Carolina Freedom of Information Act (FOIA). This correspondence is intended exclusively for the individual or entity to which it is addressed and may contain information that is proprietary, privileged, confidential or otherwise legally exempt from disclosure



2009-CP-26-620 Judgment.pdf
1957K

STATE OF SOUTH CAROLINA
COUNTY OF _____
IN THE COURT OF COMMON PLEAS

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2009-CP-26-620

Ellis E. Smith, Individually, and on behalf of A & E
Constructors and Consultants, Inc.

Arthur Wayne Vereen, et al.

PLAINTIFF(S)

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), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
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.

Catharine Graham Ham
Master in Equity

3073
Judge Code

3/23/15
Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ 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)

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.

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.

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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.

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604 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.

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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.

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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 homes¹ 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 residence² 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.

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WTH
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.

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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).

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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.

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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.

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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 contracts 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.

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9/11
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

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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.”

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QA

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.

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Q/A

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:

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6/21/19
(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.

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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.

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(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.

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(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 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.

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(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.

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(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.

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(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.

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(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 ~~cost~~ 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.

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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.

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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.

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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.

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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.

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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

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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

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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

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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).

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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	<u>100,000.00</u>
	\$ 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.

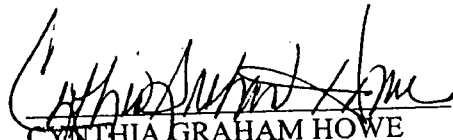
(3) The bill of Susan Brady, CPA, of \$142,268.00 for her investigative and accounting work in this case is expressly approved and shall constitute a second lien upon any recovery in this action and shall be paid by the Company as Ordered, when income is received from the Defendants or any other source.

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

42
6A
Conway, South Carolina
March 23 2015

KATHRYN M. COOK, P.A.

306 Calhoun Road
Myrtle beach, South Carolina 29577

Phone: (843) 449-1396

kifcook55@gmail.com

April 6, 2015

The Honorable Cynthia Graham Howe
Horry County Master-In-Equity
PO Office Box 1236
Conway, SC 29528

Re: Ellis E. Smith and A & E v. Vereen, et al.
Civil Action No.: 2009-CP-26-0620

Dear Judge Howe:

In reviewing your Orders in the above captioned case for purposes of filing a motion to reconsider, I find that I have not been served a complete copy of the Order signed by you on 3/23/2015 and filed with the Horry County Clerk of Court on 3/24/2015. Page 37 of the Order is missing from the filed copy served on me by Frank DuRant. Likewise, the copy that was sent as an email attachment to me by your law clerk, Stuart Miller, was also missing page 37. I assume that is the source from which Frank copied the order he sent to me and he did not realize it was missing a page.

I am unable to take the next steps in this matter until I receive a complete copy of the filed Order. I request that you send to me page 37 or a complete copy of the Order at your convenience so I can take steps to file a motion to reconsider in this case.

If you have any questions, please do not hesitate to contact me. Thank you for your consideration.

Sincerely,



Kathryn M. Cook

CC: Frank H. DuRant, Esq.
J. Jackson Thomas, Esq.

EXHIBIT 2



Kif Cook <kifcook55@gmail.com>

Missing Page 37

2 messages

Frank Durant <fdurant@durantandmartin.com>

Fri, Apr 10, 2015 at 10:58 AM

To: kifcook55@gmail.com

Cc: Jack Thomas <JThomas@myrlaw.com>, HoweC@horrycounty.org

Kif:

I have attached a copy of missing page 37 from Judge Howe's Order which I obtained from the Clerk of Court. I have copied Judge Howe as you had written her concerning this issue. Please confirm that you have received page 37 for my records.

Thanks,

Frank DuRant

Frank H. DuRant, P.A.
DuRant and Martin
Attorneys and Counselors at Law

(843) 448-1541 Work
fdurant@durantandmartin.com

2107 Farlow St. (29577)
P.O. Box 960
Myrtle Beach, SC 29578-0960

2 attachments

 **Frank H DuRant P A .vcf**
2K

 **Missing Page 37.pdf**
56K

Kif Cook <kifcook55@gmail.com>

Sat, Apr 11, 2015 at 9:26 AM

To: Frank Durant <fdurant@durantandmartin.com>

Cc: Jack Thomas <JThomas@myrlaw.com>, "<HoweC@HorryCounty.org>" <HoweC@horrycounty.org>

Bcc: kifcook55@gmail.com

Frank, I got your email with page 37. Thanks.

Sent for my iPad

EXHIBIT 3

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.

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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

EXHIBIT 7

(Appellants' Motion for Reconsideration)

STATE OF SOUTH CAROLINA

COUNTY OF Horry
Ellis E Smith

☐ Plaintiff

v.

Arthur Wayne Veen

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2009-CP-26-620

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Frank Duran
, Bar No. P.O. Box 960
Address: MB, SC 29578
phone: 1314 Professional
e-mail: other: MB, SC 29578

Defendant's Attorney: Kathryn M. Cook
, Bar No. 1371
Address: 306 Calhoun, MB, SC
phone: 843-222-2116
e-mail: other: K.M.Cook55@gmail.com

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Motion to Reconsider

Estimated Time Needed: 1 hr Court Reporter Needed: ☒ YES / ☐ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☐ Plaintiff / ☒ Defendant

Date submitted 4/20/15

SECTION III: Motion Fee

☒ PAID - AMOUNT:

- ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions

Name of Court Reporter:

☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: _____ Date: _____

CLERK'S VERIFICATION

Collected by: _____

Date Filed: _____

- ☐ MOTION FEE COLLECTED: _____
☐ CONTESTED - AMOUNT DUE: _____

FILED
Horry County
2015 APR 20 PM 4:38
MELANIE HUGHES, WARD
CLERK OF COURT

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-26-620

Ellis E. Smith, individually and on behalf)
of A & E Constructors and Consultants, Inc.,)
a South Carolina Corporation,)

Plaintiffs)

v.)

Arthur Wayne Vereen, Park Place)
Properties of Myrtle Beach, LLC, Parkway)
Offices, LLC, Arthur Vereen Construction,)
Inc. and Linda C. Vereen,)

Defendants)

AND)

Arthur Wayne Vereen, individually and on)
behalf of A & E Constructors and)
Consultants, Inc. and 29th Place Developers,)
Inc.,)

Third-Party Plaintiffs)

v.)

E. Smith and Sons Construction, LLC,)
EES Construction and Consulting, Inc., and)
Ellis E. Smith, individually,)

Third-Party Defendants)

**DEFENDANTS' and THIRD- PARTY
PLAINTIFFS' MOTION to RECONSIDER
ORDER**

FILED
Horry County
2015 APR 20 PM 4:38
MELANIE HUGGINS-WARD
CLERK OF COURT

TO: ELLIS E. SMITH, individually and on behalf of A & E CONSTRUCTORS and
CONSULTANTS, INC. and their attorneys, Frank H. DuRant and J. Jackson Thomas

YOU WILL PLEASE TAKE NOTICE that the undersigned will move before the Honorable Cynthia Graham Howe, Master in Equity, at the Horry County Courthouse in Conway, South Carolina within 10 days or as soon thereafter as counsel may be heard for reconsideration of her Order filed March 24, 2015, a complete copy of which was received by Defendants' counsel on April 15, 2015 and her Nunc Pro Tunc Order filed March 25, 2015 received by Defendants' counsel on March 30, 2015. A copy of the Orders are attached hereto. This motion to reconsider is made pursuant to Rule 52(b) and Rule 59(e) of the South Carolina Rules of Civil Procedure. Defendants request that the Court reconsider and amend the Orders and find that a full and complete judicial accounting by an independent forensic accountant is required and order the same. The grounds for this motion include, but are not limited to, that the Court erred as follows:

1. In making a final ruling in this case before ruling on the pending motion to reopen this matter due to post-trial/pre-ruling events involving and effecting the Plaintiff A & E, its liabilities and the accounting sought by the parties. The post-trial motion to reopen the hearing was filed on August 21, 2014 and heard by the Court on November 17, 2014. No ruling has been issued in that matter.
2. In accepting the report of Susan Brady, Plaintiff Smith's personal accountant, as constituting a full and complete judicial accounting of Plaintiff A & E when Ms. Brady unequivocally testified she **did not undertake to perform an accounting**, but had only reviewed certain transactions as pointed out to her by Plaintiff Smith and had not attempted to do a complete review or audit of the accounts of A & E as is required.

3. In not ordering a full and complete judicial accounting which requires the review and adjustment to all the accounts of the parties and the ascertaining of the balance owed by each party, if any, to the corporation as requested by all parties to this litigation. *Historic Charleston Holdings, LLC v. Mallon*, 381 S.C. 417, 673 S.E.2d 448 (2009); *Historic Charleston Holdings, LLC v. Mallon*, 365 S.C. 524, 617 S.E.2d 388 (Ct. App. 2005); 1 Am. Jur.2d *Accounts and Accounting* §§ 52 & 56 (2005).
4. In not requiring the performance of a full accounting to determine the assets, liabilities, discharge of the obligations to creditors of the corporation and distribution of any surplus to the shareholders if applicable. A full accounting of all accounts, not just selected transactions of certain accounts is required under the request of all parties and is required under the S.C Corporate Code as part of the judicial dissolution and winding up process which was requested by Plaintiff.
5. In finding the Defendants jointly and severally liable for the damages awarded and piercing the corporate veils of the Defendants when the same was not requested in the pleadings.
6. In finding any liability on the part of Arthur Wayne Vereen and Linda C. Vereen as trustees of the Arthur W. Vereen Residence Trust and Linda C. Vereen Residence Trust., respectively, in this accounting matter.
7. In making an award of damages against the trustees above referenced and/or the Trusts above mentioned.

8. In awarding punitive damages against Defendant Vereen without undertaking the legal requirements and analysis for such an award required under the United States and South Carolina case law.
9. In making an award of attorney fees without making findings as required under South Carolina law and without proper evidentiary support as to each factor or requirement in that mandate.
10. In making an award of prejudgment interest when the sum was not liquidated in this matter. *See Historic Charleston Holdings, LLC, Id.* at 673 S.E.2d 448, 458.
11. In making an award of prejudgment interest at 8.75% for the more than three years the Court has had this case under consideration.
12. In wrongfully excluding evidence proffered by Defendants which did not violate the Court's Pre-Trial Order and which documents and evidence had all been provided to Plaintiff's counsel and expert in advance of the Court's deadline.
13. In failing to find that Ellis Smith was President and Secretary of A&E and owed the same duties and obligations to the corporation as did Vereen.
14. In failing to find that Smith , from the inception of the corporation until he abandoned the business in early 2007, had the same and unfettered access to all books, records, files and accounting information and financial records as did Vereen and in fact hired his own personal accountant, Susan Brady, to serve as the accountant for A&E.

15. In failing to find and consider that it was Smith himself that directed Vereen that Smith was not to be a signatory on the A&E bank account, but none the less had access to the records of that account and the Peachtree accounting system.
16. In failing to find that Susan Brady was the accountant for A&E from 2003 through 2005 or early 2006 and it was she who failed to file the 2003, 2004 and 2005 tax returns such that the records she had were ultimately turned over to Richard Crumpler.
17. In finding any significance as to Richard Crumpler not being called as a witness by any party in this litigation and in making a ruling based on blatant hearsay evidence of a statement attributed to Mr. Crumpler stated by Smith at trial.

The Defendants believe that the Court misunderstood the following evidence presented at the trial in this case and should reconsider and examine the same:

1. The Court Order states that "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." Smith testified that each member was to receive \$1,000.00/week in salary, and that he charged the Company \$25.00/hour, which included all of his overhead and everything to be charged to the Company. However, the evidence presented shows that the Company paid Smith \$82,002 in supervisory fees from June 2004 until April 2005, which amounts to \$50.00/hour, or \$2,000/week. The Brady Report does not address the supervisory fees received by Smith over and above the \$1,000.00/week agreed by the members.
2. The Court Order states that "[i]n early 2004, the Company began construction of a

speculative residential home for Vereen in the Plantation Lakes subdivision.” Vereen testified that the Plantation Lakes job was a speculative job for the Company, and Smith stated that he believed the same to be true, until the lawsuit was filed. The land was titled in Vereen’s name, but the building permit, the HOA application, and the sales contract were all in the name of the Company. The settlement statement listed the Company as the seller, and the proceeds of the sale were deposited into the Company’s checking account. A mistake by the Company’s bookkeeper coding the proceeds as a loan to the Company is not instructive on this issue.

3. The Court Order states that the “Vereen residence is a large house located in an exclusive neighborhood in Murrells Inlet, South Carolina.” There is no testimony in the record to support the Court’s statement, which is not true. The Vereen residence is located on Highway 17 Business in Murrells Inlet, which is not exclusive or in a neighborhood. Approximately \$26,800.00 of the construction costs on the Vereen residence was paid for with Company checks. Smith testified in Court that profit and overhead is not due to the Company for those amounts related to the Company’s job ledger for Vereen’s personal home.
4. The Court Order states that “Vereen authorized the use of [AVCC’s] license and was aware of its use [by Smith in North Myrtle Beach] for over nine years prior to the institution of this action.” Vereen presented evidence that after this lawsuit was filed, the Company received a phone call from the new owner of the Cari Davis home, one of the many construction projects licensed by Smith, without Vereen’s knowledge, using the Company’s license. In response to this call, Vereen obtained copies of permitting files from the various local building departments, and thereafter was able to identify numerous jobs permitted under the Company’s name which were unknown to him. This fact triggered Vereen’s request for a

search of permits issued under his former company, which revealed Smith's activities on the North Myrtle Beach project.

5. The Court Order states that Vereen "did not submit any accounting testimony," and that Vereen's failure to call the Company's accountant, Richard Crumpler, to testify "was telling." Vereen conducted a thorough investigation of the Company's documents and records, and identified expenses and costs due from Smith and Vereen. For example, during the course of such thorough investigation, Vereen identified several deposits intended for the Company, but received by Vereen, which were unknown to the Plaintiff, and alerted them to the same. On the other hand, the Brady Report is not based on a review of the Company's business records at all, but relies solely on the information electronically stored in the Company's accounting software, and instructions from Smith that certain amounts were not Company expenses, but rather Vereen's personal expenses. When presented with Company records and invoices in support of the checks written by the Company, Smith and Brady refused to consider over 80% of the Company records. Vereen could have employed Crumpler to present similar one-sided biased testimony based on a limited set of facts. Vereen instead chose to present a complete and full accounting of all of the parties, complete with documentation to both contradict the Brady Report and support Vereen's claims for reimbursement/offset.
6. The Court Order states that the Brady Report was "documented by written evidence." The Brady Report did not include supporting backup documentation; the only information included behind the tabs of the Brady Report are print outs from the Company's accounting software. The Brady Report is merely a compilation of those items identified by Smith as improper expenses paid by the Company from a review of the Company's general ledger.

Neither Brady nor Smith reviewed or research any of the Company's business records to determine whether there was support for such expenses. Simply, the Brady Report is nothing more than a summarization of Smith's instructions. In stark contrast, Vereen researched each entry in the Brady Report, provided Smith and Brady with copies of such support, and identified those that are legitimate business expenses, and those which are not.

7. The Court Order states that the final Brady Report is "conclusive evidence of the actual damages sustained by the Plaintiff." However, Brady testified that she did not perform an audit of the Company's records, and that she only performed a compilation. She further testified that a compilation is based on receipts, if they are available, and those expenses that are reasonably believed to be legitimate business expenses, but does not involve pulling invoices, and does not hold her to be financially responsible for her results. The Brady Report is not an audit, and does not follow the guidelines, established by Brady herself.
8. The Court Order states that South Carolina law "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." Smith was the President of the Company, and is equally responsible to the Company, but the Brady Report and the Court held the two members of the Company to different standards.
9. The Court Order states that "Vereen, as the Company's treasurer, paid construction costs and expenses for AVCC jobs from the Company." Smith and Vereen agreed that old jobs of Smith and Vereen and their former companies, in existence as of October 2003, were to be completed in a timely fashion, and that new jobs were to be rolled into the Company. Smith did not roll any jobs into the Company. Vereen rolled the following new AVCC jobs into the

Company: Tahitian Princess, Beach Dunes, Willoughby Place, Kempe, and Lale; these jobs became Company jobs, and were completed by the Company. The AVCC jobs were negotiated and contracted by Vereen, prior to the Company's inception; therefore, AVCC performed work on these jobs, and costs were incurred on these jobs, prior to January 30, 2004. The benefit of work performed by AVCC was realized by the Company; Vereen treated AVCC as nothing more than a subcontractor for the Company, similar to Smith's treatment of EES as a subcontractor for the Company. Vereen should be credited for work performed and expenses paid by AVCC.

10. The Court Order states that "AVCC entered into multiple written construction contracts 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." AVCC was a licensed unlimited general contractor for over ten years prior to October 2003, when Vereen and Smith agreed to start the new Company. The undisputed testimony and evidence at trial showed that in October 2003, it was time for Vereen to pay the annual \$350 renewal fee and renew the AVCC license, but because of his agreement with Smith to start the Company, Vereen did not pay the renewal fee. Vereen intended to move his license into the newly formed Company. The Company was formed on October 28, 2003, and Smith insisted on using his license as the qualifying party for the Company. Thereafter, the Company was licensed on January 30, 2004. On the other hand, Smith's situation is much different and much more egregious. Smith performed work for the Company, and others, under his former company, EES Construction and Consulting for over ten years without ever being licensed, even after the Company was formed and his license was used as the qualifier for the Company.

11. The Court Order states that “On multiple occasions, even though the payments for such construction belonged to the Company, Vereen deposited the payments into the Defendants’ accounts.” Vereen has admitted that payments in the Company name were deposited into the Defendants’ accounts, and Vereen has presented evidence to account for each occurrence, and evidence to show that those amounts were due to the Defendants for payment of Company expenses. Smith, on the other hand, deposited payments in the Company’s name into his personal and/or business accounts, and has no evidence that those amounts were due to him either as a distribution from the Company, or as reimbursement for expenses paid by him. Smith’s only defense is that he forgot that he had done so.
12. The Court Order states that “AVCC billed the Company’s customers for these expenses, even though AVCC did not pay for the cost of construction.” Vereen presented evidence that AVCC paid \$149,067 in direct costs of labor and materials on Company jobs between 2003 and 2006. Vereen presented evidence that AVCC received payment from the Company and Company clients over and above the amount of direct costs, but the Brady Report does not give Vereen credit for any costs or expenses paid by AVCC on behalf of Company jobs. If it is the Court’s intent to disallow these expenses as an offset to amounts which are owed by Vereen simply because AVCC was an unlicensed contractor, then it would follow that Smith would, likewise, be responsible to the Company for the \$349,448 paid to EES for work performed on behalf of Company jobs without a license.
13. The Court Order states that “Brady accounted for all money the Vereen Entities deposited into the Company checking account, properly giving appropriate credit for each deposit.” The Brady Report failed to give Vereen credit for a 2004 \$40,000 deposit made by Parkway Offices, and also failed to give Vereen credit for his \$50,000 initial capital contribution.

14. The Court Order states that “[p]ursuant 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 attorney to support the Defendants' claims for set-off or reimbursement by December 1, 2010.” Vereen presented evidence that the Defendants compiled several notebooks containing checking account records and corresponding invoices from the Defendants' business records, if available, and provided the same to the Plaintiff. The Defendants production was organized monthly, and invoices supporting payments from the checking account were grouped accordingly. The Plaintiffs complained about the method of production. Thereafter, the Defendants re-organized the production, and reproduced the same information. The Defendants supplemented its original production with those documents – documents maintained by the Company in its business records. All of the Company's business records, including the checking account statements, accounts payable files, and job files, had been produced, in total, earlier in 2010, on two separate occasions at the former offices of the Company. Therefore, the Defendants argued that the Plaintiffs were not burdened by this supplementation. Vereen presented further evidence that even if a receipt or invoice did not exist, in 2010, several years after the checks were written, his request for reimbursement is no different than those of Smith that were submitted without a receipt or invoice, totaling \$184,035, and for which payment was nonetheless given by the Company.

15. The Court Order states that “[t]he 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 for 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." The Defendants submitted invoices for reimbursement/offset pertaining to the following Company jobs: Willoughby Place, Tahitian Princess, Dr. Lale, the Fountains, Ocean Blue, Tahitian Pearl, Mathi, Jack Frost, Prospective Jobs, Greg Sisson, Britt, Ron Kim, Charlie Russell, and O'Laughlin. Smith does not deny that these were Company jobs. The Defendants also submitted invoices for reimbursement/offset as they pertained to the overhead expenses of the Company, i.e., warehouse rental, utilities, insurance, maintenance, etc. Smith denies that any amounts for Company overhead are due to Vereen for the use of his offices, warehouses, trucks, and equipment. The invoices submitted by the Defendants for Company jobs and Company expenses are proper and should have been included as an offset in the Brady Report.

16. The Court Order states that "as to claimed deductions [by Vereen] for 2004 and 2005, the Company's tax returns already had been filed and could not be amended." Vereen presented evidence of direct expenses paid on behalf of the Company and checks received by him from the Company and Company clients, all of which are accounted for in the tax returns. Vereen also presented evidence that as of December 31, 2005, the Company still owed Vereen \$160,066 for his direct contributions, in excess of payments received by him. The 2007 Accounts Receivable for Vereen included in the Brady Report shows that as of December 31, 2005, the tax return for the Company shows an amount owed to Vereen of \$48,760. Vereen

also presented evidence that the Company has not reimbursed him for his 2004 \$50,000 capital contribution and a \$40,000 loan from Parkway Offices. Therefore, as on December 31, 2005, the only claimed deductions which have not been addressed amount to \$21,306.

17. The Court Order states that there was no “proof that Smith, EES or E. Smith misappropriated any corporate assets of the Company that was not accounted for by Brady in her Report.” However, Vereen presented evidence that the Company paid \$26,292 in direct expenses for side jobs performed by Smith and EES. Smith testified that if he changed the name of job on an Invoice, it was by mistake, and if the Company paid expenses on his side jobs, then those were amounts that were due to the Company. The Brady Report does not reflect those amounts on Smith’s Accounts Receivable.
18. The Court Order states that “the Company has not suffered any damages as the result of Smith’s actions [in licensing the Condolux job under the Company’s license]. However, the Court is aware that the Company has been sued on this job, and in incurring attorneys’ fees in order to defend this litigation. In addition, the Court is aware that Smith’s company E. Smith was not licensed at the time the job was performed under the Company’s license; thereby, exposing the Company to unlimited liability for such construction, and any defects associated therewith.
19. The Court Order states that “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.” However, the Court ignores the fact that the Brady Report refuses to give Vereen credit for payment of the office overhead, or payment of salaried Company employees, during this period of construction; thereby creating the situation where the Company did not pay for either, and is not due to be reimbursed. In fact,

with respect to all jobs that the Brady Report identifies as personal or family jobs of Vereen, office overhead is included in the profit and overhead calculations as an amount due from Vereen to reimburse the Company. However, the Company paid no office expenses; therefore, this should not be included in the profit and overhead calculations.

20. The Court Order states that, with respect to the Willoughby Place litigation, "the Defendants failed to produce a full accounting of these expenses, payments and reimbursements from the insurance carrier and the project's owner." On behalf of the Company, Vereen paid \$112,749 towards attorneys' fees, expenses, and settlement of litigation where the Company was a named party. Smith participated in meetings with the Company's attorneys, discovery, and depositions, but Smith refused, at the last minute, to attend the settlement conference. Vereen presented evidence of the payments made, but the Brady Report credits Vereen for only \$19,000.00 of those amounts. There is an additional \$93,749 that should be credited to Vereen. Smith has presented no evidence that shows that Vereen has already been reimbursed for these amounts. The Defendants have produced each and every checking account record for 2003 through 2009; any purported amounts for reimbursement are not shown on those records.

21. With respect to the Dr. Lale job, the Court Order states that "[t]he Company paid the costs and expenses of the job." Vereen presented evidence that Parkway Offices and AVCC also paid for some of the costs and expenses of that job.

22. The Court Order states that "the Defendants challenged the charges maintained on the Plaintiff's accounting records attributed to "shop," the items paid and attributed to "shop" were not included in the [Park Place Putt-Putt] job ledger and were not expensed to the Defendants." However, the Defendants challenged the charges maintained on the Plaintiff's

accounting records attributed to “shop” charges on the Parkway Offices job ledger. Vereen provided evidence that Company employees, working on Company jobs at the Company’s offices, would write “shop” on their timecard, and those expenses would be entered on the Parkway Offices job ledger. Vereen presented evidence that Drewett improperly included such entries totaling \$58,373.00 on the Parkway Offices job ledger. However, the Brady Report does not provide any consideration for this erroneous practice.

23. The Court Order states that, with respect to the 23 homes constructed for Park Place, “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.” The Brady Report charges \$228,464 in profit and overhead on expenses paid by the Company on the Pointe Marsh job. The Brady Report then charges over \$565,075.00 to Vereen for lost profit and overhead on those expenses paid by Vereen on the Pointe Marsh job. Although Vereen continues to dispute that any profit and overhead is due to the Company on the \$959,287 paid by the Company on behalf of the Pointe Marsh job, the Court cannot have intended to allow the Company to recoup profit and overhead on work performed and expenses paid by a third party, i.e., the \$3,767,172 in estimated construction costs included in the Brady Report, paid out of the construction loans secured by Vereen with First Palmetto Bank. If this was the Court’s intent, then Smith’s 2007 licensure of almost \$1.4 million in construction, using the Company’s license, and Smith’s licensure of his side jobs, under the Company’s license, are also subject to the same profit and overhead calculation. In addition, it is telling that the Brady Report distinguishes between the two different profit and loss calculations on this job – one is based on direct expenses paid by the Company, and the other is based on the estimated construction cost paid by others. The Brady Report further fails to include any

similar profit and overhead calculations for those expenses paid by the Company on behalf of Smith personally or Smith's side jobs.

24. The Court Order states that, with respect to the 23 homes constructed for Park Place, "[t]he Company advanced payment for over \$900,000 in construction expenses and the Company did not invoice or collect payment for the expenses it advanced." The Brady Report includes copies of the job ledgers for the Pointe Marsh job which shows that the Company collected payment in an amount of \$611,000 for this job. Vereen presented evidence that Park Place made an additional \$43,720 in deposits to the Company, and made payments on behalf of the Company for expenses on Company jobs in an amount of \$346,432 between 2004 and 2007. Therefore, the evidence presented to the Court is proof that Park Place reimbursed the Company for the \$959,287 paid for construction expenses on the Pointe Marsh job.

25. The Court Order states that, with respect to the Sisson Remodel, "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." Vereen would argue that his testimony was that Sisson was not charged for additional labor expenses, in the form of payroll costs. There is no testimony that any Company employee received additional payroll for work performed on the Sisson job.

26. The Court Order states, with respect to the Kempe job, "the Company paid for the Kemp[e] expenses from the Company account." Vereen presented evidence that AVCC also paid for some of the costs and expenses of that job.

27. The Court Order states that "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's

checking account.” However, the Court ignores testimony from Smith that the members were to receive \$1,000/week in the form of salary. In addition, the Court ignores the evidence presented that Smith invoiced the Company through EES \$2,000/week in supervisory fees during 2004 and 2005.

28. The Court Order states that “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 Wife's real property taxes.” Vereen presented evidence that the \$21,320.15 withdrawal from the Company's account represents two checks written out of the Company's account – one check was payable to Rockford Manufacturing for Company expenses in an amount of \$17,426.80, and the second check was payable to the Horry County Treasurer in an amount of \$3,893.35, which Vereen admits was for a personal expense. This correction has been included in the final Brady Report.

29. The Court Order states 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.” Vereen presented evidence that the Company did not own any credit cards, and that Vereen and Smith used their personal credit cards to charge materials for Company jobs. Smith and Vereen were reimbursed by the Company for these charges; however, the Brady Report and the Court have disallowed Vereen's reimbursements, but have ignored reimbursement by the Company for charges made to Smith's personal credit cards.

30. The Court Order states 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." The Brady Report includes a copy of the Company's job ledger for the Pointe Marsh job. The \$9,045 payment for the permit is included on page 31 of that job ledger. The Brady Report does not make a correction for this duplicate charge to Vereen.

31. The Court Order states 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." Vereen presented evidence that Vereen paid for rental equipment to be used at the Pointe Marsh job. The Brady Report charges Vereen \$75,650.00 in equipment rental, without any proof or substantiation of such charges, and despite evidence that Vereen paid a third party for rental of such equipment.
32. The Court Order states 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." The Brady Report fails to take into consideration the coverage of those insurance policies. Vereen presented evidence that the Hartford Insurance policies provided auto, equipment, premises, and other insurance coverage for the benefit of the Company, and that the Companion insurance policies provided coverage for an automobile owned by Smith and EES. Therefore, those expenses are improperly included on Vereen's Accounts Receivables in the Brady report.
33. The Court Order states that "Vereen claimed \$208,577.66 in "construction in progress" expenses ... 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 produced evidence that AVCC made \$149,067 in direct contributions

on behalf of Company jobs between 2003 and 2006.

34. The Court Order states that "Vereen's daughter, Sisson, gave the list of [AVCC] expenses to the Company's accountant with no documentation to support the claimed expense." Sisson testified that the Company's accountant requested that the Company identify significant amounts of expenses reported on the Company's jobs in progress report, but not coded to a particular job. This request had nothing to do with AVCC and was well before the filing of the lawsuit. Sisson further testified that she and Drewett, the Company's office manager and bookkeeper, identified the majority of those uncoded expenses, pull the corresponding invoices, and provided that information to the Company's accountant. These are reasonable actions in response to a request from the Company's accountant.
35. The Court Order states that, during the Condolux construction, "Smith had already left the company . . . when he was receiving 14 weeks of paid leave for unused vacation time." Vereen presented evidence that paid vacation was not contemplated as a term of employment with the Company. Smith did not present evidence of a written agreement authorizing paid vacation for either Vereen or Smith, or any other employees. Therefore, Smith was not entitled to paid vacation. Likewise, Smith was not entitled to receive salary after unilaterally terminating his employment in 2007. The Brady Report does not address paid vacation benefits received by Smith; or the \$35,000 that Smith received in income after his termination. These are amounts which are due from Smith to the Company.
36. The Court Order states that "Brady properly calculated overhead and profit at 15% of the cost of construction." However, the Court ignores the fact that such profit and overhead contemplates a breakdown of 10% profit and 5% overhead and that such overhead includes office, warehouse, trucks, and equipment overhead. The Company paid for no offices,

warehouses, trucks, or equipment, but utilized those assets of Vereen; therefore, if 5% overhead is reasonable and expected, then the Company owes Vereen 5% of \$20,000,000, or \$1,000,000, for the use of Vereen's offices, warehouses, trucks, and equipment.

37. The Court Order states that "Vereen did not tell Smith that he entered into secret contracts with the customers of the Company." Smith admitted that he and Vereen met each morning to discuss Company jobs and where the Company's employees would be working for that day. Smith was aware of all jobs performed by the Company, all jobs performed for Vereen or any of Vereen's family members, and all jobs where Company resources were being used. Until Smith and Vereen's disagreement over the Condolux job, and Smith's decision to leave the company, Smith stated no objection to those jobs, no objection to employees or materials being sent to those jobs, and no objection to those customers. On the other hand, Smith admitted that he performed numerous side jobs, while employed by the Company, without telling Vereen about them. Jobs performed by Vereen were not secret; they were known to Smith, the Company, and the Company's employees. Jobs performed by Smith were secret, and were not discovered until after Smith left the Company.

38. The Court Order states that "all accounting purposes in this case ... 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." However, the Brady Report provides no credit for warranty items performed on Company jobs. Evidence was presented at trial that Vereen undertook to address the issues of the Company's clients, after Smith failed to respond to those requests.

39. The Court Order states that "the Company incurred accounting expenses in the amount of \$142,268.00 from the expert witness Susan Brady, CPA, to uncover and detail the

Defendants' improper actions.” The Brady Report, according to Brady’s own testimony, was nothing more than a screen shot of expenses contested by Smith, and cannot be believed to be supported by hundreds of hours of work. Brady did not pull copies of the checks or invoices supporting those expenses, and in some cases, did not even make sure that the checks had been cashed. Similarly, Brady did not follow her own established guidelines – to treat the members equally, to “take receipts, if you have them,” to look and see what was reasonable. Brady did not take into consideration the Company providing Smith with a vehicle, and not Vereen; Brady did not look to see if Smith had provided receipts for his reimbursements, and wholly ignored Vereen’s receipts; and Brady did not take into consideration that the Company did not pay for office space, warehouse space, trucks, and equipment usage, despite insisting that Vereen reimburse the Company for the same.

40. The Court Order states 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.” The Company’s delay and failure to file tax returns for 2006 through 2009 are, in part, due to Smith’s failure, as President of the Company, to raise concerns regarding the Company’s accounting practices, in 2005, when he first became aware of such practices. Had Smith insisted on a corporate accounting and financial statement, and a change in the bookkeeping methods, at that time, it is likely this litigation would have never been filed.

41. The Court Order states that “Wife authorized the actions of Vereen,” that “Wife is well-educated in business affairs,” and that Wife “should have been cognizant” and “benefitted” from Vereen’s actions. The same can be said for Smith. Smith testified that he has built thousands of condos, and has worked with Vereen for many years. Smith also testified that

he was the President of the Company and allowed Vereen to be the Vice-President and Treasurer. Smith further testified that he had no money or capital to put into the Company, and looked to Vereen to do that. Finally, Smith testified that in 2005 when he presented Vereen with a list of concerns about the Company's accounting and Vereen answered those questions. Smith authorized the actions of Vereen; Smith is well-educated in the construction industry; Smith benefitted from Vereen's assets and capital which were invested into the Company, and as President of the Company, Smith should have been cognizant of Vereen's actions, especially after his personal CPA and long-time friend Brady made him aware of them. Vereen's Wife cannot be believed to have had any role in the operations of the Company, and how the Company's construction expenses were being funded or paid. In fact, Smith failed to present any testimony or evidence at the trial which can be used to argue that Wife took any actions against the Company. Therefore, if Wife's actions are deemed to be joint and several with those of Vereen, by virtue of her ownership in Park Place and of the office buildings, then surely Smith's actions and inactions, as a 50% member and President of the Company itself, can bind him to the actions of Vereen as well.

The Defendants believe that the Court failed to issue a ruling on the following evidence presented at the trial in this case:

1. Liabilities for the Company will exist until all pending litigation is completed and/or until eight years has expired from the date of the Certificate of Occupancy for the last job completed by the Company, or until the end of 2015. However, Smith's use of the Company's license on the Condolux building and the Martin Brown projects will extend those potential liabilities.
2. The employees of the Company were employees of both Smith and Vereen, and all corporate

documents and records were documents and records of both Smith and Vereen; both members had equal access to all of the Company's employees, and the Company's documents and records.

3. In early 2005, Smith took information compiled by Drewett, for the 2004 calendar year, to his personal CPA, Susan Brady, to prepare the Company's corporate returns. Smith selected Brady for such work, because Brady and Smith had a long term business relationship. Brady identified several concerns regarding deposits into, and payments made out of, the Company's checking account, and this information was shared with Smith and Vereen, at that time. Vereen testified that he told Brady that he was due credits for rent on the offices, warehouses, trucks, and equipment to offset some of the expenses paid on his behalf by the Company. Smith testimony was consistent with this, and he stated that Vereen answered all of Brady's questions. Nevertheless, Brady did not prepare the returns, and the documents compiled by Drewett were taken to Richard Crumpler at Smith Sapp, who filed the Company's 2004 returns. Smith failed to demand, as early as 2005, that Drewett and/or Vereen maintain the Company's records and accounting in a different manner. Thereafter, Crumpler also filed the Company's 2005 returns. Smith received a K-1 for both years – 2004 and 2005. Smith did not raise his concerns about the Company's accounting again until 2007, when he left the Company.
4. Smith cannot be believed to have been shocked and surprised by payments made and expenses paid by the Company either before 2005 or after. Smith routinely reviewed corporate billing and payments, and requested job ledgers and general ledgers from Drewett throughout his employment with the Company.
5. Vereen made an initial \$50,000 capital contribution to the Company, and transferred personal

assets into the Company's name as basis for the Company's license; Smith did not, at any time, make any cash or other capital contributions to the Company. Brady testified that she performed the initial audit of the Company and identified the assets and capital contribution of Vereen. However, the Brady Report failed to give credit to Vereen for the initial capital contribution of \$50,000. The Brady Report also fails to give Vereen any credit for other personal assets (offices, warehouses, trucks, and equipment) used by the Company.

6. Vereen allowed the Company to use Vereen's offices, warehouses, trucks, and equipment. Vereen never intended for the Company to use these resources for free, and discussed the same with Smith. There was no written agreement, but Vereen is due to be compensated for those contributions. Vereen presented evidence of those amounts at trial. Smith testified to varying amounts that were agreed upon for rent to be paid by the Company, from \$600.00 to \$1,200.00.
7. The Brady Report charges Vereen for expenses, totaling \$11,327.20, paid by the Company on behalf of a van titled in Smith's former company's name. There was no written agreement between the members that this was to be a Company expense, or that this was to be an expense paid by Vereen. As these expenses were paid on behalf of Smith's former company, Smith should be responsible to pay these costs back to the Company.
8. Salaries for Company employees, including Vereen, Carrie Drewett, and Elizabeth Sisson, were paid by AVCC prior to June 2004. Drewett was the Company's Office Manager and Bookkeeper, and Sisson was a project manager for the Company. The Brady Report did not give Vereen credit for such payments. Vereen is due to be reimbursed for these amounts.
9. Expenses and costs paid for Vereen to respond to warranty items after 2007 on Company jobs are the expense of the Company. The Brady Report did not give Vereen credit for such

expenses.

10. The Company provided Smith with a corporate vehicle, paid for all fuel, insurance, and property tax expenses associated with that vehicle. Vereen was due the same consideration. Vereen presented evidence that he is due a credit for truck expenses, including the cost of the truck, fuel expenses, insurance premiums, and property taxes, totaling \$57,498.00, all of which were similarly paid for Smith, through 2009, when the corporate vehicle was ultimately titled in Smith's name. The Brady Report does not address this issue.
11. Vereen did not dispute or refuse payment of any requests for reimbursement made by Smith; Vereen expected to be given the same consideration by Smith and Brady, Smith's expert. Brady testified that both members should be treated the same.
12. Prospective activities are routinely conducted in the performance of corporate business development; this Company is no different. Vereen presented evidence that the Company engaged in such prospective activities in an attempt to secure speculative opportunities, with the full knowledge of and participation by Smith. However, the Brady Report charges Vereen for the full cost of those such activities. These amounts should not be included as a charge back to Vereen in the Brady Report.
13. The Brady Report also refuses to give Vereen credit for expenses paid on behalf of the Company if there is no readily available receipt to support such expense; however, she did not apply the same standard to Smith. Vereen presented evidence that Smith requested over \$203,041 from the Company in the form of reimbursement without being held to the same standard.
14. All parties agree that the Company paid Smith large sums of money, in the form of advances and commissions, totaling \$85,842, and that those sums have not been reimbursed by Smith.

All parties also agree that the Company paid for materials for Smith's personal residence, totaling \$3,471, and that those sums have not been reimbursed by Smith. [NOTE: Brady records this amount as \$3,420]. All parties further agree that Smith deposited a payment totaling \$19,280, intended for the Company, into Smith's personal account. Vereen also presented evidence that Smith received \$2,317 from the Tahitian Princess job, that Smith received \$41,619 from the Ocean Blue job, and that the Company paid for construction costs of some of Smith's side jobs, totaling \$24,038, none of which was reimbursed by Smith. Despite testimony by the owner of the Tahitian Princess building, and an Invoice created by Smith himself for the Ocean Blue job [NOTE: Smith whited out the mailing address on this Invoice], and Company records presented to Smith during trial, the Brady Report fails to include amounts in Smith's Accounts Receivables for the Company.

15. Vereen routinely infused the Company with personal funds; Smith never made any cash or other financial contributions to the Company.
16. Company jobs total more than \$20 million between 2003 and 2007. In 2003, Vereen rolled over \$7 million in new jobs into the new Company, and secured over \$8 million in new jobs for the Company over the next four years. The remaining \$5 million in construction jobs were from repeat clients of the Company.
17. Vereen offered his personal jobs at Pointe Marsh and the Putt Putt to the Company, but Smith refused them. Thereafter, Vereen hired a superintendent to oversee and perform those jobs not out of revenue or money of Company.
18. After Smith left the Company in 2007, Vereen continued to fund and pay all of the Company's financial responsibilities, including financing agreements for equipment owned

by the Company, and the vehicle titled in the Company's name which was driven by Smith and retained by him after he left the Company.

The Defendants believe that the Court's Order should be changed based on the following evidence discovered after the trial in this case:

1. Coinciding with his departure from the Company, Smith permitted a \$1,400,000 commercial building under the Company's license. Smith did not disclose this information to Vereen, but rather stated that the building was permitted under Smith's newly formed and separate company. Vereen had no reason, at that time, to believe this was a lie. Smith's separate company paid for the construction costs and expenses for this job. At trial, Smith and Smith's attorneys, DuRant and Thomas, emphatically denied that the construction of the building was a Company job, and that Smith's separate company was wholly responsible for the construction and solely entitled to receipts, including profit and overhead for this job. In 2009, a guest at the building fell, and the Company was sued. When served a copy of the Complaint, Smith filed a claim under the Company's insurance policy, but did not notify Vereen of the lawsuit. Thereafter, Smith engaged DuRant to represent the Company and file an Answer on the Company's behalf. When Vereen discovered the lawsuit, Smith assured him that DuRant would straighten out the facts, make sure all parties knew that Smith separate company was responsible for the construction, and that the Company would be dismissed from the lawsuit. Vereen requested an opportunity to review the Answer being prepared by DuRant, prior to its filing. DuRant ignored Vereen's request, and filed an Answer, as the Company's attorney, stating the Company was the Contractor for the building, and that Smith's separate company served as a subcontractor of the Company. DuRant failed to file an indemnity claim against Smith's separate company, on behalf of and

protecting the Company from Smith's actions. Furthermore, DuRant represented Smith's separate company in an action brought by the insurance company for a declaratory judgment on insurance coverage. Based on this newly discovered information, Vereen argues that Smith owes the Company lost profit and overhead consistent with the award of profits and overhead on Vereen's Pointe Marsh job.

Vereen admits that the corporate records were not properly maintained and that based on a review of the accounting performed by all of the parties, there are costs and expenses which Vereen owes to the corporation. Vereen alleges that those expenses, totaling \$652,048.54, which are owed by him, are an offset to the amounts which the corporation owes Vereen for his direct and indirect contributions to the corporation, which have not been reimbursed. Vereen alleges that the corporation owes him approximately \$482,560.00 for direct contributions made by him in the form of payments to the corporation, or payments to others on behalf of the corporation, through 2007, and that the corporation also owes him for indirect contributions, including, at the very minimum, rent on the office space, through 2007, as agreed by Smith, in an amount of \$76,800.00, and vehicle expenses, in an amount of \$57,498.00, which represents similar expenses paid on behalf of Smith, through 2009. Vereen alleges this brings the total due from him to the corporation to \$35,190.00, for these relevant time periods. Vereen alleges that he continued to incur expenses on behalf of the corporation in 2008 and 2009, and continues to incur expenses to date, for which he has not been reimbursed. Vereen presented this information in his accounting summary for the Court's review.

Vereen further alleges that a detailed analysis of Brady's accounting arrives at the same conclusion. Brady alleges that Vereen owes the corporation \$2,712,503.31.

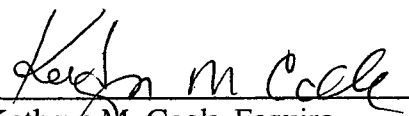
However, after the corrections or adjustments which Vereen alleges are required by the facts of the case, are made, that total is reduced to \$32,707.25. Specifically, Vereen alleges the following corrections are necessary: (1) a deduction of \$836,568.34 in legitimate business expenses paid by the corporation and supported by the Company's business records; (2) a deduction of \$925,394.33 in profit and overhead calculations Brady, which were improperly calculated; (3) a deduction of \$63,535.62 in corporate

payments received by Vereen after December 31, 2007, when Brady did not consider any corporate expenses after that date; (4) a credit of \$23,306.64 which Brady applied to Vereen for receipts on the Perry and Abston jobs, which were Company jobs; (5) a deduction of \$653,306.41 in reimbursements requested by Vereen, for Company expenses; (6) a deduction of \$90,000, for the 2003 \$50,000 capital contribution paid by Vereen, and the 2004 \$40,000 loan from Parkway Offices, which are not reflected by Brady on Vereen's Accounts Receivable; (7) a deduction of \$76,800.00 in rent due as a credit to Vereen, per Smith; and (8) a deduction of \$57,498.00 for truck expenses paid by Vereen. Vereen alleges that when you consider both parties equal, under both accountings, the conclusion is that Vereen owes the corporation approximately \$35,000.00. Vereen further alleges that the amount owed by Smith to the corporation far exceeds \$35,000.00, and at a minimum, is \$124,377.41, as calculated by Brady.

Based on the foregoing, Defendants request the Court reconsider its Order and find that a full and complete accounting of the Company must be done as requested by the parties and as required under S.C. statutory law for the winding up and dissolution of the corporation by an independent forensic accountant rather than relying and adopting the report of Smith's personal accountant who candidly admitted she did not do a full accounting in this matter, but only look at specific accounts and specific transactions as instructed by Ellis Smith.

This motion will be further supplemented by way of oral argument before the Court.

Respectfully Submitted,


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Myrtle Beach, South Carolina

Date: 4/20/2015

STATE OF SOUTH CAROLINA)
)
COUNTY OF HORRY)

IN THE COURT OF COMMON PLEAS
FIFTEENTH JUDICIAL CIRCUIT
CIVIL ACTION NO.: 2009-CP-26-620

Ellis E. Smith, individually and on behalf)
of A & E Constructors and Consultants, Inc.,)
a South Carolina Corporation,)

Plaintiffs)

v.)

Arthur Wayne Vereen, Park Place)
Properties of Myrtle Beach, LLC, Parkway)
Offices, LLC, Arthur Vereen Construction,)
Inc. and Linda C. Vereen,)

Defendants)

AND)

Arthur Wayne Vereen, individually and on)
behalf of A & E Constructors and)
Consultants, Inc. and 29th Place Developers,)
Inc.,)

Third-Party Plaintiffs)

v.)

E. Smith and Sons Construction, LLC,)
EES Construction and Consulting, Inc., and)
Ellis E. Smith, individually,)

Third-Party Defendants)

**DEFENDANTS' and THIRD- PARTY
PLAINTIFFS' CERTIFICATE OF
SERVICE**

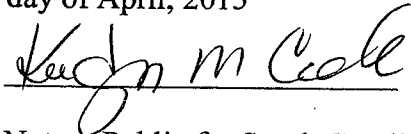
I certify that I have on April 20, 2015 hand delivered a copy of the Defendants' Motion to Reconsider the Orders of the Horry County Master in Equity to the Office of the Master in Equity and filed the original of the same with the Horry County Clerk of Court.

I also certify that a copy of this Motion to Reconsider is also being hand-delivered to counsel for Plaintiffs and Third –Party Defendants by Kathryn M. Cook, Counsel for Defendants this same day.



SWORN to before me this 20th

day of April, 2015



Notary Public for South Carolina

My Commission Expires: 1/13/2023

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM HORRY COUNTY
Court of Common Pleas

The Honorable Cynthia Graham Howe
Master-in-Equity, Fifteenth Judicial Circuit

RECEIVED
AUG 01 2016
SC Court of Appeals

Case No.: 2009-CP-26-620

Ellis E. Smith, individually and on behalf of A&E Constructors and Consultants, Inc., a
South Carolina Corporation Plaintiffs,

vs.

Arthur Wayne Vereen, Park Place Properties of Myrtle Beach, LLC, Parkway Offices,
LLC, Arthur Vereen Construction, 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, EES Construction and Consulting, Inc. and Ellis
E. Smith, individually, ... Third-Party Defendants.

OF WHOM Arthur Wayne Vereen, individually and on behalf of A&E Constructors and
Consultants, Inc., 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, Linda C. Vereen, as Trustee of the
Linda C. Vereen Residence Trust and 29th Place Developers, Inc. are Appellants,

AND

Ellis E. Smith, individually and on behalf of A&E Constructors and Consultants, Inc., a
South Carolina Corporation and E. Smith and Sons Construction, LLC, EES Construction
and Consulting, Inc. and Ellis E. Smith, individually are Respondents.

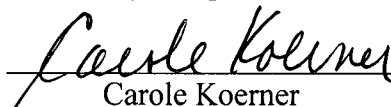
PROOF OF SERVICE

I, Carole Koerner, an employee of McNair Law Firm, P.A., attorneys for Appellants, Arthur Wayne Vereen, individually and on behalf of A&E Constructors and Consultants, Inc., 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, Linda C. Vereen, As Trustee of the Linda C. Vereen Residence Trust, and 29th Place Developers, Inc. in the above-entitled action, certify that I have served the Appellants' Return to Respondents' Motion to Dismiss, and Proof of Service on Counsel of Record to this matter by depositing a copy in the United States Mail, first class postage prepaid on the 29th day of July, 2016 as follows:

OTHER COUNSEL OF RECORD:

Frank H. DuRant, Esquire
DuRant and Martin
Post Office Box 960
Myrtle Beach, SC 29578-0960
Phone: (843) 448-1541
Fax: (843) 626-7431
Email: fdurant@durantandmartin.com
Attorneys for Ellis E. Smith, individually and on behalf of A&E Constructors and Consultants, Inc., and EES Construction and Consulting, Inc., Respondents

J. Jackson Thomas, Esquire
Thompson & Henry, P.A.
1314 Professional Drive
Myrtle Beach, SC 29577
Phone: (843) 692-2628
Email: jthomas@myrlaw.com
Attorneys for E. Smith and Sons Constructions, LLC, EES Construction and Consulting, Inc. and Ellis E. Smith, Individually, Respondents


Carole Koerner

Myrtle Beach, South Carolina

July 29, 2016

James K. Gilliam

jgilliam@mcnair.net

T (843) 444-1107

F (843) 444-4729

Via Federal Express

The Honorable Jenny Abbott Kitchings
Clerk, South Carolina Court of Appeals
1220 Senate Street
Columbia, South Carolina 29201

RECEIVED

AUG 01 2016

SC Court of Appeals

Re: Ellis Smith v. Arthur Vereen
Appellate Case no.: 2016-001075
Our file #: 064758.00001

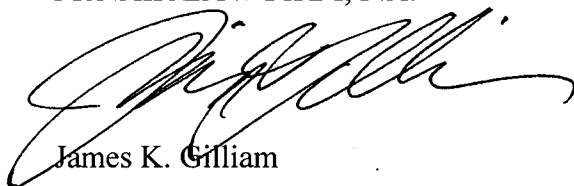
Dear Ms. Kitchings:

Enclosed for filing is an original and seven copies of a Appellants' Return to Respondents' Motion to Dismiss and Proof of Service in the above matter.

Please return one filed copy of the Return and Proof of Service in the enclosed, self-addressed stamped envelope. By copy of this letter, and as indicated in the Proof of Service, we are serving Counsel of Record.

Sincerely,

McNAIR LAW FIRM, P.A.



James K. Gilliam

JKG/ck

cc: Frank H. DuRant, Esquire
J. Jackson Thomas, Esquire
Clients (via email)

Enclosures

McNAIR LAW FIRM, P.A.
Founders Centre
2411 Oak Street, Suite 206
Myrtle Beach, SC 29577

Mailing Address
Post Office Box 336
Myrtle Beach, SC 29578

mcnair.net