

THE STATE OF SOUTH CAROLINA
In the Court of Appeal

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Sr., Circuit Judge

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SC Court of Appeals

Appellate Case No: 2016-001170

William B. Haskin, Jr.....Appellant

Samuel W. Rhodes, Jr., Rhodes Investments, Inc, Rhodes Consulting, LLC
and Tracey M. Bozzelli.....Respondents

INITIAL BRIEF OF RESPONDENTS

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STATEMENT OF THE CASE

The Appellant, William B. Haskin, Jr., (“Haskin”) filed this action in the Court of Common Pleas for Charleston County on October 5, 2012, seeking recovery against the Respondent, Samuel W. Rhodes, Jr. (“Rhodes”) for Breach of Contract, Unjust Enrichment/Quantum Meriut, Judicial Dissolution as to Station 22, Contribution, Constructive Trust, and Accounting. Haskin also sought to Pierce the Corporate Veil of the Respondents, Rhodes Investments, Inc. and Rhodes Consulting, LLC. (ROA____ Complaint). Haskin filed his Amended Complaint on July 25, 2013, adding, Rhodes Wife, Tracey Bozzelli, (“Bozzelli”) as a party and adding a cause of action for Fraudulent Conveyance. (ROA___ Amended Complaint).

By Order dated May 22, 2013, Chief Justice Toal assigned this case to the business court pilot program, Judge Roger M. Young, presiding (ROA___,Order for Case Assignment dated May 22, 2013).

The case came before Judge Roger M. Young, for trial on November 16, 17, 18 and 19, 2015. The case was originally on the jury trial roster, but the parties agreed that since several of the causes of action asserted by Haskin were to be decided by the Court, the entire case would be tried non-jury. (ROA___,Order of Judgment dated February 5, 2016, p.1).

By Order of Judgment dated February 5, 2016, Haskin’s Complaint was dismissed and the Clerk was directed to cancel the Lis Pendens filed by Haskin on November 8, 2013 against the property owned by Bozzeill, located at 3029 Middle Street, Sullivans Island, SC. (ROA___, Order of Judgment, dated February 5, 2016, P.12).

Haskin then filed a Motion to Alter and/or Amend Order on February 19, 2016. (ROA___,Motion to Alter and/or Amend).

By Order dated April 28, 2016, Judge Young denied in part and granted in part, the Plaintiff's Motion to Alter and/or Amend Order. The Order clarified the Order of Judgment, however, it did not change the ultimate decision contained in the Order of Judgment (ROA ____, Order Denying In Part and Granting in Part Plaintiff's Motion to Alter and/or Amend Order).

Haskin served the Notice of Appeal on May 31, 2016. (ROA ____, Notice of Appeal dated May 31, 2016).

STATEMENT OF THE FACTS

This is an appeal from the Order of Judge Roger M. Young, dated February 5, 2016 which dismissed Haskin's Complaint and directed the Clerk of Court to cancel the Lis Pendens filed against Bozzelli's property located at 3029 Middle Street. (ROA ____, Order of Judgment, P.12)

Haskin and Rhodes had been friends since meeting in college in 1982. (Rhodes direct, P. 30, L. 10-11). At the time this dispute arose, Haskin and Rhodes were best friends. (Haskin direct, P.8, L 2-7). Over the last twenty (20) or so years, Haskin and Rhodes formed various limited liability Companies with each LLC acquiring an unimproved lot and then would construct a house on the lot(s) to sell to a third party. (ROA ____, Haskin Affidavit, P.1, paragraph 4). The arrangement was profitable until the down turn in the economy in the later part of 2007. Six projects were successful in that the money for which they were sold exceeded the expenses and financing costs associated with the given project. (ROA ____, Haskin Affidavit, P.3, para 7 and P.4, para 18). This action involved four (4) projects that were not successful.

This dispute involves four (4) of the limited liability companies 2624 Myrtle, LLC ("2624 Myrtle"); 2802 Middle Street, LLC ("2802 Middle"); Station 22 of Charleston, LLC ("Station

22"); and 1723 Middle Street-HR, LLC ("1723 Middle"). (ROA ____, Amended Complaint, p. 3, paragraph 15).

2624 Myrtle is a limited liability company organized under the laws of the State of Florida in 2006. The members of 2624 Myrtle are Haskin and Rhodes Investments. (ROA ____, Livingston cross, P.4, L. 15-24). 2624 Myrtle was formed for the specific purpose of acquiring a lot located at 2624 Myrtle Avenue on Sullivans Island, South Carolina and building a home on the property to be sold to a third party. (ROA ____, Haskin Affidavit, P.4, paragraphs 17 and 18).

2802 Middle is a limited liability company organized under the laws of the State of Florida in 2006. The members of 2802 Middle are Haskin and Rhodes Investments. (ROA, Livingston cross, P.4, L.11-14). 2802 Middle was formed for the specific purpose of acquiring a lot located at 2802 Middle Street, Sullivans Island, South Carolina and building a home on the property to be sold to a third party. (ROA ____, Haskin Affidavit, P.4, paragraphs 17 and 18).

Station 22 is a limited liability company, organized under the laws of the State of South Carolina in 2004. The members of Station 22 are Haskin, Rhodes Investments and Covington Properties, Inc. (ROA ____, Livingston cross, P. 4, L.25-P.6, L.13) Station 22 was formed for the specific purpose of acquiring a lot located at 22 Lafar Street, Daniel Island, South Carolina and building a home on the subject property to be sold to a third party. (ROA ____, Haskin Affidavit, P.4, paragraphs 17 and 18).

1723 Middle is a limited liability company organized under the laws of the state of Florida in 2007. Members of 1723 Middle were Haskin and Rhodes Investments. Rhodes purchased the home constructed by 1723 Middle ultimately conveyed it to his wife, Bozzelli. In this action, Haskin did not seek to recover any losses relative to 1723 Middle, however, he

sought to set aside the conveyance of a property from Rhodes to Bozzelli as a fraudulent conveyance. Haskin does not challenge the Circuit Court's denial of the fraudulent conveyance cause of action in this appeal.

The tax returns for 2624 Myrtle and 2802 Middle list the members as Haskin and Rhodes Investments. The tax returns also show that Haskin and Rhodes each had a fifty (50%) percent interest in the profits of these LLCs. (ROA ____, Tax Returns for 2624 Myrtle and 2802 Middle). The losses were allocated on the tax returns based upon the contributions made by the two (2) members. (ROA ____, Livingston direct, P. 31, L.11 to P.32, L.6; and tax returns).

The tax returns for Station 22 list the members as Haskin, Rhodes Investments and Covington Properties, Inc. (ROA ____, Tax Returns, Station 22). The returns also show that profits were be divided equally between the three (3) members and that losses were allocated based upon the contributions of the members. (ROA ____, Livingston direct, P.31, L6 to P.32, L.6; and tax returns).

Rhodes Investments is an IRS sub chapter S corporation, incorporated under the laws of the state of South Carolina. The sole shareholder of Rhodes Investments is Rhodes. (ROA ____, Livingston cross, P.3, L.7-17).

The structure of each project was virtually the same. Haskin secured the necessary financing to purchase the various lots; obtain loans to fund the project; and funded any shortfall during construction. Rhodes Investments duties through the efforts of Rhodes were to construct and manage the projects on a day to day basis; hire all subcontractors; oversee the work; and pay all subcontractors. A separate checking account was open for each of the limited liability companies into which money would be deposited and disbursed. Cancelled checks would be sent

to Debbie Eures, a bookkeeper for the companies. On the projects that were profitable, Haskin would first be reimbursed for the costs advance and then the profits would be split equally between Haskin and Rhodes Investments. (ROA___, Haskin cross, P.44, L.15 to P. 47, L.22 and Haskin Affidavit, P. 2, paragraph 2).

The structure of Station 22 was also the same except, Covington Properties, Inc., and Haskin obtained the construction loan and funded any shortfalls during construction. Rhodes Investments, through Rhodes, constructed and managed the property on a day to day basis and hired and paid all subcontractors. (ROA___, Covington direct, P. 20, L.3-25; P. 22, L.1-10; and Haskin Affidavit, p.7, paragraph 30).

2802 Middle, 2624 Myrtle and Station 22 did not make a profit. Due to the downturn in the economy, the properties owned by these three entities were either lost to foreclosure or lost money due to short sales. (ROA___, Haskin cross, P.72, L.6 to P.73, L.3)

Between 2006 and 2011, Haskin made capital contributions to 2802 Middle Street of \$822,342.00 which he claimed as losses on his individual tax returns. From 2007 until 2011, Haskin made capital contributions to 2624 Myrtle totaling \$470,342.00 which he claimed as losses on his individual tax returns. From 2007 until 2010, Haskin made capital contributions to Station 22 in the amount of \$131,440.00 which he claimed as losses on his individual tax returns.(ROA___, Order of Judgment, P.4, para 10).

In this action, Haskin seeks recovery from Rhodes for one-half of the losses that he sustained on these three (3) projects based upon an alleged oral agreement between Haskin and Rhodes to equally share in the losses. (ROA___, Amended Complaint, P.6, paragraph 24; P.7, paragraph 31; and P.9, paragraph 38). Haskin first made demand upon Rhodes to reimburse him

for one-half of the losses on November 3, 2011 (ROA____, Haskin cross, P.56, L.20-23).

Covington Properties, Inc.'s sole shareholder is James Covington. According to the testimony of James Covington, he and Haskin signed a Note at the bank relative to financing to build the house and Rhodes did not sign the Note. Covington further testified that there was never any discussion between he, Rhodes and Haskin about who was going to pay losses. He further testified that he was not looking to Rhodes for reimbursement of any losses and that Rhodes built the house and put in sweat equity. (ROA____, Covington direct, P. 19, L.21-P.22, L.9)

According to the testimony of Rhodes, there was never any agreement between he and Haskin whereby Rhodes agreed to reimburse Haskin for one-half of his losses. (ROA____, Rhodes direct, P. 23, L.8 to P.24, L.1).

No signed Operating Agreements appear to exist for the various limited liability companies formed by Haskin and Rhodes Investments, with the exceptions of 2624 Bayonne, LLC. The Operating Agreement for 2624 Bayonne, LLC provides in article 3.2 that "No member shall be required to contribute additional capital to the Company. Article 6.3 provides that "Each Member shall look solely to the assets of the Company for the return of the Member's capital contribution, and if the Company's property remaining after payment or discharge of the debts and liabilities of the Company is insufficient to return the contributions of each Member, a Member shall have no recourse against any other Member(s)." (ROA____, Livingston direct, P.66, L.20-P.67, L.19; Livingston cross, P.74, L.4-P.76, L.6; and Operating Agreement for 2624 Bayonne, LLC).

The unsigned Operating Agreements mirror the signed Operating Agreement of 2624

Bayonne, LLC. Both unsigned Operating Agreements for 2624 Myrtle and 2802 Middle contain the same language concerning capital contributions. (ROA____, Livingston cross, P.76, L.23-P.77, L.6; P.79, L.1 to P.80, L.12). These Operating Agreements apparently were not signed as bank financing was not obtained by Haskin as to these two projects as he used a credit line on his primary residence. (ROA____, Rhodes direct, P.46, L.14 to L.25).

Rhodes Investments contribution of capital was in the form of services performed through the effort of Rhodes in constructing various homes for the limited liability companies. ROA____, Rhodes direct, P. 25, L.6-20). Rhodes Investments or Rhodes were not paid any money to construct the homes. (ROA____, Rhodes direct, P.35, L.12 to L.15). The evidence shows that a contractor typically charged twenty (20%) percent of the costs of construction of homes at the time the subject residences were constructed. Twenty (20%) percent of the cost of construction for projects done by 2624 Myrtle, 2802 Middle, and Station 22 totals approximately \$692,000.00. (ROA____, Rhodes direct, P.27, L.11 to P.28, L.11). Haskin loss the money he invested in these projects and Rhodes Investments and Rhodes lost their time and effort in constructing the residences over a period of twelve (12) to eighteen (18) months. (ROA____, Rhodes direct, P.25, L.14 to L. 20). Haskin was the investor and Rhodes Investments performed the work through the efforts of Rhodes.

At the time of trial, 2624 Myrtle, 2802 Middle, and Station 22 were not operating and had no assets. The homes had been deeded in lieu of foreclosure or sold at short sales. (Livingston cross, P. 71, L.6 to P.72, L.2; Haskin direct, P. 19, L.8-10; P.21, L.18-22; and P.25, L.17 to P.26, L.10).

STANDARD OF REVIEW

“In an action at law tried without a jury, an appellate court’s scope of review extends merely to correction of errors of law. This Court will not disturb the trial court’s findings unless they are found to be without evidence that reasonably supports those findings. The rule is the same whether the judge’s findings are made with or without a reference. The judge’s findings are equivalent to a jury’s findings in a law action.” *Miller Construction Company, LLC vs. PC Construction of Greenwood, Inc. and Safeco Insurance Company of American, Appellate Case No. 2014-002749*. “In an equity action, tried by a judge without a reference, we may review all the evidence to determine the facts in accordance with our own view of the preponderance of the evidence. Nevertheless, we do not disregard the findings of the trial court. Moreover, the appellant carries the burden of convincing this Court that the trial court erred.” *Duckett by Duckett vs. Payne, 279 S.C. 94 302 S.E. 2d 342, (1983)*.

ARGUMENT

A. The Circuit Court did not err by failing to consider Haskin’s equitable cause of action for Accounting.

In Haskin’s seventh cause of action for an Accounting, he alleges that “the Defendants are required to account to the Plaintiff for any assets, cash, or real estate of Plaintiff or the LLCs that Defendants acquired in contravention of the rights of the Plaintiff. (ROA____, Amended Complaint, P.20, paragraph 92). There was no testimony or evidence presented at the trial that any of the Defendants possessed or received any assets, cash or real estate from the Plaintiff or the LLCs in question. In fact, Haskin testified that Rhodes was his best friend and that he trusted him completely. (ROA____, Haskin direct, P.8, L.4-7). Haskin also acknowledged that neither

Rhodes Investments or Rhodes got anything out of the three projects, 2624 Myrtle, 2802 Middle and Station 22. (ROA____; Haskin's cross, P.70, L5-8). He also acknowledged that 2802 Middle Street and 2624 Myrtle were sold at short sales in 2011. (ROA____, Haskin direct, P.19, L.8-10; P.21, L.18-22; P.23, L.13-18). The Station 22 property located at 22 LaFare Avenue was deeded to the bank in lieu of foreclosures (ROA____, Haskin direct, P.25, L.17 to P. 26, L.10). Haskin also signed all of the tax returns which were prepared by his accountant. (ROA____, Haskin cross, P. 61, L.1-3).

The Order of Judgment, Judge Young found that an accounting had been done for each of these entities and that none of the entities currently own any assets. (ROA____, Order of Judgment, P.11)

B. The Circuit Court did not err by disregarding the Prenuptial Agreement of Rhodes and his wife, Bozzelli.

Haskin argues that the Prenuptial Agreement proves that Rhodes considered himself personally liable for one-half (1/2) of the debt of the projects at issue. The Prenuptial Agreement, however, does not contain any language that indicates that Rhodes considered himself personally liable for one-half (1/2) of the debt projects. (ROA____, Prenuptial Agreement).

Paragraph 13H of the Prenuptial Agreement simply list what Rhodes thought was the fair market value of the three projects and the amount of debt owing on the projects. There was no contention by Haskin that he relied on the Prenuptial Agreement in making additional contributions to the three projects.

Haskin's expert CPA, Richard Livingston, testified that the tax returns and the K-1s show that Rhodes and Haskin's each had a fifty (50%) percent ownership in the net asset value of the

subject entities throughout all of the time periods. (ROA____, Livingston direct, P.35, L. 17-25).

Mr. Livingston also testified that the losses were allocated on the tax returns to the member who actually contributed and lost money. (ROA____, Livingston direct, P.31, L.11-24).

Even though Haskin and Rhodes each had a fifty (50%) percent interest in the net asset value of the companies; losses were allocated on the tax returns in accordance with each members contribution.

Livingston also testified that the members of 2802 Middle and 2624 Myrtle were Haskin and Rhodes Investments. (ROA____, Livingston cross, P.4, L.11-24). He also testified that the members of Station 22 at all times were Haskin, Rhodes Investments and Covington Properties, Inc. (ROA____, Livingston cross, P.5, L.20-22). Rhodes was never a member of any of the three limited liability companies at issue in this case.

Mr. Livingston also testified that he reviewed the signed Operating Agreement for 2624 Bayonne and reviewed the unsigned Operating Agreements for 2802 Middle and 2624 Myrtle as one of the sources to determine the understanding of the parties. (ROA____, Livingston cross, P.65, L.24, P.66, L.18; Livingston direct, P.66, L.20 to P.67, L.6). He acknowledged that the Operating Agreements set forth the duties and responsibility of the members; that the subject Operating Agreements provide that no member shall be required to contribute additional capital to the company. (ROA____, Livingston cross, P.67, L.25, P.68, L.25). Livingston testified that section 3.3 of the Operating Agreement was consistent with Rhodes' version of the agreement that he was not responsible for losses. (ROA____, Livingston direct, P.70, L.2-24).

Haskin also acknowledged that the first time he took the position that Rhodes Investments or Rhodes owed him for his losses for the three subject entities was November 3,

2011 (ROA ____, Haskin cross, P.56, L.20-23), even though Haskin sustained losses on 2802 Middle every year between 2006-2007; sustained losses for 2624 Myrtle each year between 2007-2011; and sustained losses for Station 22 for each year between 2007-2010. (ROA ____, Livingston direct, P. 12, L.21-24; Plaintiff's Exhibit 60; Livingston cross, P.24,L.19 to P.25, L. 8; tax returns for 2426 Myrtle; 2802 Middle; and Station 22).

Judge Young chose to believe Rhodes testimony. He never agreed with Haskin that Rhodes Investments or Rhodes would be liable for losses. (ROA ____, Rhodes, P.23, L.8, P.24, L.1).

C. The Circuit Court did not ignore the tax returns for 2426 Myrtle, 2802 Middle, and Station 22 in making findings concerning Haskin's position that there was an oral agreement to share equally in losses as well as profits.

Judge Young found that all of the tax returns for 2802 Middle and 2624 Myrtle reflect that Haskin and Rhodes Investments were allocated losses based upon their respective capital contribution and that the tax returns for Station 22 reflected that losses were allocated based upon the capital contributions made by Haskin, Covington Property and Rhodes Investments. This finding is supported by the tax returns for three (3) entities; the testimony of Haskin's expert, Richard Livingston; and the testimony of Rhodes's expert, Ellie Thomas. (ROA ____, Livingston, P.26, L.21 to P.27-28, L.25; Thomas Testimony, P.30, L.3 to P.98, L.24; tax returns for 2624 Myrtle, 2802 Middle and Station 22; Defendants' Exhibits 12, 13, 14, 15 and 16).

D. The Circuit Court did not make incorrect and contradictory findings as to whether Rhodes was either obligated and/or agreed to contribute towards losses.

The main issue in this case is whether Haskin and Rhodes entered into an oral agreement whereby they would share equally in losses resulting from construction and sale of homes by the these LLCs. Rhodes never agreed with Haskin that his company or he would be liable for losses sustained by 2802 Middle, 2624 Myrtle or Station 22. Rhodes never had a conversation with Haskin prior to the time construction started on the three (3) projects concerning losses. Rhodes was not obligated on any of the indebtedness relative to the three (3) entities. Rhodes never claimed any losses that Haskin contributed to the LLCs on his tax returns. (ROA____, Rhodes direct, P.23, L.8 to P.24, L.1).

Rhodes did make some capital contributions during a few times when Haskin was out of town and there were bills that needed to be paid. Haskin asked him to put money in to pay the bills and that is exactly what he did. (ROA____, Rhodes direct, P. 24, L.2 to L.9). Haskin acknowledged that his part of the agreement relative to the three (3) LLCs was to provide financing; fund any short fall during construction; and pay interest and things of that nature. (ROA____, Haskin cross, P. 44, L.15 to L.22). Haskin acknowledged that Rhodes did everything relative to the construction of the project with Haskin providing the financing. (ROA____, Haskin cross, P. 47, L. 19 to L.22).

The Circuit Court did not err in finding that “the first time that Haskin’s took the position that Rhodes Investments and Rhodes owed him for half of the losses on 2802 Middle, 2624 Myrtle and Station 22 was on November 3, 2011, as show by an email from Haskin to Rhodes.” Haskin acknowledged on cross examination that the first time that he made any demand upon Rhodes to discuss losses was November 3, 2011, as shown by the November 3, 2011 email. (ROA____, Haskin cross, P. 56, L.10 to L. 23). Haskin also acknowledged that he never

provided an accounting to Rhodes as to what the losses were that were incurred by Haskin in 2006, 2007 and 2008. (ROA____, Haskin cross, P.57, L. 21 to P.58, L.4). The first time that Rhodes was aware that Haskin was making a claim against him for the losses was when he received the November 3, 2011 email. (ROA____, Rhodes direct, P.24, L.21 to P.25; L. 3; and Plaintiff's Exhibit 68-A).

James Covington, who's company owned a 1/3 membership interest in Station 22 also testified that he had no conversations with Haskin or Rhodes about who was going to pay losses. (ROA____, Covington direct, P.21, L.4-11). Rhodes also had a conversation with Haskin concerning the purchase of a lots at 2802 Middle and 2624 Myrtle in which he expressed concern that the lots were overpriced and he did not want Haskin to loose any money. Haskin responded by telling Rhodes that he had plenty of money and that all Rhodes had to loose was his time. (ROA____, Rhodes direct, P.44, L. 5 to P.45, L.4). Contributions that Rhodes Investments made to the three (3) LLCs were arbitrary and were for expenses that were paid when Haskin was out of town and bills needed to be paid. (ROA____, Rhodes direct, P. 45, L.5 to L.13). Haskin confirmed that he was often out of town as his office was in Greensboro, NC so he would leave on Monday and would come back on Friday. (ROA____, Haskin cross, P. 43, L.19 to P.44, L.14).

The Circuit Court's findings are reasonably supported by the record.

E. The Circuit Court did not err in finding that Rhodes Investments contribution of capital was in the form of services performed through the efforts of Rhodes in constructing various homes for the limited liability companies.

Rhodes contribution to 2802 Middle, 2624 Myrtle and Station 22 was to construct nice

homes on all three of those lots. Haskin and Covington did not help him build the homes. It took Rhodes 12 to 14 months to construct the house at 2802 Middle; 12 to 14 months to construct the house at 2624 Myrtle; and 18 months to construct the house for Station 22. (ROA____, Rhodes direct, P.25, L.6 to L. 20).

If Rhodes was going to build the three homes for a fee, he would have charged twenty (20%) of the total costs of construction. The costs of constructing 2802 Middle was approximately \$1,150,000.00 so a twenty (20%) percent fee would have been approximately \$230,000.00. The costs of constructing 2624 Myrtle was approximately \$1,330,000.00 so a twenty (20%) percent fee would have been approximately \$266,000.00. The costs of constructing the home for Station 22 was approximately \$980,000.00 so a twenty (20%) percent fee would have been \$196,000.00. (ROA____, Rhodes direct, P.27, L. 11 to P. 28, L.11) Haskin testified on cross examination that he was not aware of any money that was paid to Rhodes or Rhodes Investments for constructing homes for the three LLCs. Haskin also acknowledged that if he had to hire a contractor to build the homes, he may be able to get them built for a ten (10%) percent fee but he could have at least got it done for twenty (20%) percent of the costs of construction. (ROA____, Haskin cross, P.66, L. 5 to P.67, L.4).

Rhodes did not receive a penny for constructing the three homes. (ROA____, Rhodes direct, P.35, L. 12 to L.15).

Haskin also acknowledged on cross examination that Rhodes Investments and Rhodes did not need money to construct the houses because Haskin was providing the money, the financing, and the shortfall. (ROA____, Haskin cross, P.70, L.24 to P.71, L.3).

Rhodes has never done a transaction or a business deal when he was the builder and also

agreed to pay one-half (1/2) of any losses. (ROA ____, Rhodes direct, P.45, L. 14 to P. 46, L.2).

The Circuit Court's finding that Rhodes Investments and Rhodes contribution of capital was in the form of services performed in constructing the various homes is reasonably supported by the record.

F. The Circuit Court did not err in concluding that Haskin and Rhodes were not partners under South Carolina law and that Rhodes was not liable for his share of the losses.

According to the testimony of Haskin's forensic accountant, Livingston, 2802 Middle, 2624 Myrtle, and Station 22 are limited liability companies. The Members of 2802 Middle and 2624 Myrtle were Haskin and Rhodes Investments. The Members of Station 22 were Haskin, Rhodes Investments and Covington Properties, Inc. Rhodes was not a member of any of these limited liability companies. (Livingston cross, P.3, L.7 to P.6, L.3).

Livingston also testified that one of the main reasons for forming a limited liability company is to insulate the members from liability. These three (3) limited liability companies were organized to acquire lots, build homes and put those homes in the stream of commerce so it was smart to form limited liability companies. (ROA ____, Livingston cross, P. 7, L.14 to P.8, L.7).

Haskin continues to complain that the Circuit Court found that an oral agreement did not exist by which Haskin and Rhodes agreed to share losses equally. As set forth above, there was ample evidence in the record to reasonably support the Circuit Court's finding that no oral agreement to share losses existed.

G. ~~The Circuit Court did not make unsupported findings that led it to conclude that no enforceable oral agreement existed whereby Haskin and Rhodes agreed to share losses equally.~~

Rhodes was not obligated on any of the indebtedness relative to three limited liability companies. (ROA____, Rhodes direct, P. 23, L. 21 to L.22; P.29, L. 19 to L.22).

Livingston also confirmed that he had no evidence that Rhodes Investments signed on for any liability associated with the three (3) limited liability companies. (ROA____, Livingston cross, P. 12, L. 10 to L.14). Covington testified that Rhodes did not sign the Note for the Station 22 project. (ROA____, Covington direct, P. 20, L. 15 to L.25).

The evidence reasonably supports the trial court's findings.

H. The Circuit Court did not find that the Operating Agreement for 2624 Bayonne, LLC was binding on the parties as to 2624 Myrtle and 2802 Middle.

The Circuit Court did not find that the executed Operating Agreement for 2624 Bayonne, LLC was binding on the parties as to 2624 Myrtle and 2802 Middle. The 2624 Bayone Operating Agreement does provide that "no member shall be required to contribute additional capital to the company".

The Circuit Court's finding that the unsigned Operating Agreements for 2624 Myrtle and 2802 Middle mirror the signed Operating Agreement of 2624 Bayonne is supported by the record. Haskin's forensic accountant, Livingston, testified that he utilized the 2624 Bayonne Operating Agreement and the other unsigned Operating Agreements to glean and understanding of the agreement between the parties. Livingston acknowledged that both of the signed and

unsigned Operating Agreements do not require members to make additional contributions to the limited liability companies. (ROA____, Livingston cross, P. 74, L. 4 to P.76; L6). Livingston also acknowledged that the signed executed Operating Agreement for 2624 Bayonne and the unsigned Operating Agreements for 2624 Myrtle and 2802 Middle were consistent with Rhodes's position that Rhodes Investments was not required to make capital contribution to any of the entities. (ROA____, Livingston cross, P. 81, L. 9 to P. 82, L.7).

The Circuit Court did not erroneously find that the Operating Agreements for 2624 Myrtle and 2802 Middle were not signed because bank financing which requires signed agreements before closing was not used. Rhodes testified, without object, that Haskin switched the financing to an equity line on his house and It was his understanding that a signed operating agreement was only needed when a loan was obtained by the LLC. (ROA____, Rhodes direct, P.46, L.17 to P.47, L.1).

I. The Circuit Court did not err in failing to recognize the part performance exception to Florida statute annotated Section 608-4211(2).

The Circuit Court did not need to discuss "the part performance exception". The Court found "that the agreement between the parties regarding the business operations of 2624 Myrtle and 2802 Middle did not include one in which Rhodes or Rhodes Investments would contribute to losses sustained by Haskin." (ROA____, Order Denying In Part and Granting in Part Plaintiff's Motion to Alter and/or Amend Order, P.4). The Circuit Court found there was no oral agreement by which Rhodes Investments or Rhodes agreed to contribute to Haskin's losses so "the part performance exception" to the Florida statute which provides "A promise by a member to contribute to the limited liability company is not enforceable unless it is set out in writing signed

by the member” has no application to this case.

CONCLUSION

Respondents submit that the evidence reasonably supports the Circuit Court’s findings and there were no errors of law. The Circuit Court’s Orders should be affirmed.

Respectfully Submitted,

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This 29th day of December, 2016

THE STATE OF SOUTH CAROLINA
In the Court of Appeal

RECEIVED
JAN 03 2017
SC Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

The Honorable Roger M. Young, Sr., Circuit Judge

Appellate Case No: 2016-001170

William B. Haskin, Jr.....Appellant

Samuel W. Rhodes, Jr., Rhodes Investments, Inc, Rhodes Consulting, LLC
and Tracey M. Bozzelli.....Respondents

PROOF OF SERVICE

I certify that I have served a copy of the Respondents' Initial Brief and Designation of Matter to be Included in the Record on Appeal, by United States Mail, postage prepared, on December 29, 2016, I, addressed to the Appellate's attorneys, John E. Rosen and Richard S. Rosen with the law firm of Rosen, Rosen & Hagood, located at PO Box 893, Charleston, SC 29402.

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December 29, 2016

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals
P.O. Box 11629
Columbia, SC 29211

RE: Willam B. Haskin, Jr. v. Samuel W. Rhodes, Jr., et.al
Appellate No.: 2016-001170
Our file: 13-113

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JAN 03 2017
SC Court of Appeals

Dear Ms. Kitchings:

Enclosed is the original and one (1) copy of the Respondents' Initial Brief and Designation of Matter to be Included in the Record on Appeal together with my Proof of Service. I would appreciate you filing the original and returning one (1) filed copy to me in the self-addressed stamped envelope provided.

With kindest regards, I am

Very truly yours,


Frank M. Cisa

FMC/alp
Enclosures

cc: John E. Rosen, Esquire (w/enc.)
Richard S. Rosen, Esquire (w/enc.)