

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

Joseph M. Strickland, Master-in-Equity Judge

Case No. 2008- CP-40-03076

RECEIVED

MAY 02 2017

SC Court of Appeals

Tiffany's Café & Bakery on Devine, Inc.....Respondent,

v.

James S. Archer.....Appellant.

RECORD ON APPEAL

T. Jeff Goodwyn, Jr.
Goodwyn Law Firm, LLC
2519 Devine Street
Suite A
Columbia, SC 29205
Attorney for Appellant

Carlos W. Gibbons, Jr., Esquire
Ashley & Gibbons, P.A.
712 Calhoun Street, Suite B
Columbia, SC 29201
Attorney for Respondent

Adam T. Silvernail, Esquire
Law Offices of Adam T. Silvernail
P.O. Box 7995
Columbia, SC 29202
Attorney for Respondent

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STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Tiffanys Café & Bakery on Devine, Inc.,

Plaintiff,

vs.

James S. Archer,

Defendant,

IN THE COURT OF COMMON PLEAS
DOCKET NO. 2008-CF-40-03076

COPY

**CONSENT
ORDER OF REFERENCE**

JEANETTE W. McBRIDE
C.C.P. & G.S.

2009 MAY 22 PM 12:18

RICHLAND COUNTY
FILED

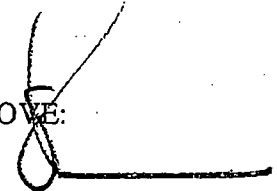
Pursuant to Circuit Court Rule 53 of the South Carolina Rule of Civil Procedure,

IT IS ORDERED that the issues in this action be referred to the Honorable Joseph M. Strickland as Master-in-Equity for Richland County, to take the testimony arising under the pleadings and to thereafter render a final decision in the cause appealable directly to the South Carolina Court of Appeals.

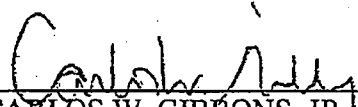
AND IT IS SO ORDERED, this 20 day of May, 2009.


Clerk of Richland County

I SO MOVE:


S.R. ANDERSON
Attorney for the Defendant

I CONSENT:


CARLOS W. GIBBONS, JR.
Attorney for the Plaintiff

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Tiffany's Café & Bakery on Devine, Inc.,
Plaintiff,

vs.

James S. Archer,

Defendant,

IN THE COURT OF COMMON PLEAS

FIFTH JUDICIAL CIRCUIT

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Docket No.: 2008-CP-40-3076

Plaintiff's Attorney:

Carlos W. Gibbons, Jr., Bar No. _____
Address: 712 Calhoun St., Ste. B, Columbia, SC 29201
Phone: (803) 771-4488 Facsimile: _____
E-mail: cgibbons@aglawsc.com
Other: _____

Defendant's Attorney:

S.R. Anderson, Bar No. 391
Address: PO Box 12188, Columbia, SC 29211-2188
Phone: (803) 252-2828 Facsimile: (803) 254-1935
E-mail: sraatlaw@bellsouth.net
Other: _____

- ☐ 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: _____
Estimated Time Needed: _____

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

LAND COURT
FILED
OCT 13 PM 3:55
October 13, 2014
Date Submitted
JEANETTE W. HICBRIDE
C.C.P. & C.S.

SECTION III: Motion Fee

- ☒ Paid - Amount \$25.00
☐ Exempt: (check one reason)
☐ Rule to Show Cause in Child or Spousal Support
☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status
☐ Sexually Violent Predator Act
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication
☐ 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: _____
☐ State Agency v. Indigent Party
☐ Post-Conviction Relief
☐ Motion for Execution (Rule 69, SCRPC)

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of attached Order. JUDGE CODE: _____ Date: _____
☐ Other: _____ Judge's Signature: _____

CLERK'S VERIFICATION

Collected By: _____ Date Filed: _____
☐ Motion Fee Collected: \$ _____ ☐ Contested - Amount Due \$ _____

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) C/A No.: 2008-CP-40-3076

Tiffany's Café & Bakery on Devine, Inc.,)

Plaintiff,)

vs.)

James S. Archer,)

Defendant,)

ORDER OF CONTINUANCE

It appears that this matter is set for trial on October 23, 2014. It appears that the Plaintiff has not responded to the Defendant's discovery requests. The Defendant has filed a Motion for Summary Judgment.

The trial set for October 23, 2014, is continued.

Joseph M. Strickland
Master-In-Equity for Richland County

Oct. 13 2014
Columbia, South Carolina

WE SO CONSENT:

Carlos W. Gibbons, Jr.
Carlos W. Gibbons, Jr.
Attorney for the Plaintiff

S.R. Anderson
S.R. Anderson
Attorney for the Defendant

SCANNED

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2008-CP-40-5076

ORDER

James S. Archer,

Defendant.

A hearing was held on July 29, 2015. The Plaintiff was present with its attorney, Carlos W. Gibbons, Jr. The Defendant was present with his attorney, S.R. Anderson.

1. On July 24, 2003, Tiffany's Café and Bakery on Devine, Inc. and James S. Archer executed a "Stock Purchase Agreement" whereby Jim Archer agreed to pay the sum of \$40,000 in exchange for 950 shares of common stock of Tiffany's Café and Bakery on Devine, Inc.
2. On July 24, 2003, James S. Archer transferred the sum of \$30,000 cash to Tiffany's Café and Bakery on Devine, Inc.
3. On July 24, 2003, James S. Archer executed a "Promissory Note" promising to pay the sum of \$10,000 on or before July 24, 2005.



SCANNED

4. Shortly before and following July 24, 2003, James S. Archer managed the day-to-day operation of the business.
5. James J. McMillan, president of Tiffany's Café and Bakery on Devine, Inc. maintained the checkbook until January 2004.
6. Accountant Glen Creel prepared monthly financial statements which were submitted to both James J. McMillan and James S. Archer.
7. James J. McMillan and James S. Archer met weekly to discuss matters related to the business.
8. James J. McMillan regularly exercised control over the business in numerous ways including hiring a manager in 2006, firing a manager in 2007, and closing the bank account in 2007.
9. James S. Archer resigned from the business on January 2, 2007.
10. Around the end of the 2006 calendar year, James J. McMillan closed Tiffany's Café and Bakery on Devine, Inc.'s checking account causing several checks written by the defendant to bounce. Thereafter, James S. Archer paid two of these checks from his personal funds in the amount of \$3,500.
11. From the beginning of calendar year 2007 until the business closed, James J. McMillan, acted as the sole officer of the company.
12. During this time, James J. McMillan, hired his son to manage the business. His son had no prior managerial experience nor any experience working at Tiffany's Café and Bakery on Devine.
13. During this time, although the company was losing significant money every month, James J. McMillan chose to keep the business operational.
14. During this time, James J. McMillan, regularly wrote checks to vendors of a separate business he owned out of the Tiffany's Café' and Bakery on Devine checking account.
15. Around December 2007, James J. McMillan closed the business and sold the assets.
16. No notice was ever provided to James S. Archer regarding the close of the business or the sale of the assets.
17. Some assets were auctioned off for which an accounting was provided.

18. All of the inventory was transferred to James J. McMillan's other business. James S. Archer testified at the trial that there would have been approximately \$10,000 of inventory at any given time.
19. Tiffany's Café and Bakery on Devine, Inc. never accounted for the remaining inventory.
20. A walk-in oven was sold outside of the auction and Tiffany's Café and Bakery on Devine never accounted for the proceeds. It is undisputed that the value of the oven was at least \$18,000.

CONCLUSIONS OF LAW

- A. The face of the note reads "FOR VALUE RECEIVED", but there is no other recitation of anything which could constitute consideration. Without such, the note is not a valid instrument because it lacks a stated consideration.
- B. If the note is valid, then it is an asset of Tiffany's Café and Bakery on Devine. Accordingly James S. Archer owns 49% of that note bringing its principal balance to \$4,900.
- C. Jim Archer paid \$3,500 to make checks good at the end of 2006. Because James S. Archer personally discharged a debt of the business, such payment should be credited to any outstanding balance on the note which would bring the balance to \$1,400.
- D. Tiffany's Café and Bakery on Devine, Inc. breached its fiduciary duty to James S. Archer by selling off the assets and winding down the business without notice to him.
- E. Tiffany's Café and Bakery on Devine, Inc. breached its fiduciary duty to James S. Archer when it transferred inventory to a business owned by James J. McMillan for no value.
- F. Tiffany's Café and Bakery on Devine, Inc. breached its fiduciary duty to James S. Archer when it transferred a walk-in oven for less than its true value and failed to account for the proceeds.
- G. James S. Archer is entitled to his 49% share of those assets transferred, the value of those assets being approximately \$30,000. This, in addition to the numerous other wrongdoings on the part of Plaintiff and or its members (outlined below), results in

any remaining obligation Defendant may have on the subject note being fully discharged.

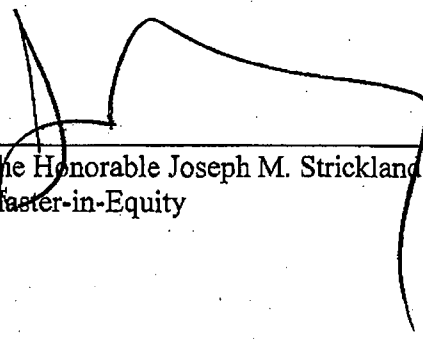
- H. There is no evidence in the record showing where Plaintiff Tiffany's Café and Bakery on Devine, Inc. has paid any attorney's fees in an attempt to collect on the note. Because Tiffany's Café and Bakery on Devine, Inc. is the holder of the note and it was never negotiated to James M. McMillan, Tiffany's Café and Bakery on Devine, Inc., cannot recover for monies paid by James McMillan.
- I. S.C. Code Ann. § 33-12-102(a) provides that a corporation may dispose of substantially all of its property only "if the board of directors proposes *and its shareholders approve the proposed transaction.*" Tiffany's Café and Bakery on Devine, Inc. failed to propose a sale of substantially all the assets in violation of this code section. Further, although, James M. McMillan held 51% of the stock, pursuant to S.C. Code Ann. § 33-12-102(b), "the transaction must be approved by two-thirds of all the votes entitled to be cast on the transaction."
- J. S.C. Code Ann. § 36-3-303(b) provides " 'consideration' means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed." Here, during the time James M. McMillan was the sole officer, Plaintiff continued to operate despite increasing losses. This decision was willful and resulted in a substantial decline in the value of the stock. Additionally, the sale of substantially all of the corporation's assets near the end of 2007 made the stock worthless. These willful acts of the Plaintiff made the consideration given in exchange for the note worthless. Accordingly, the note is void for lack of consideration.
- K. S.C. Code Ann. § 33-8-420 provides that "an officer with discretionary authority shall discharge his duties under that authority: (1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner he reasonably believes to be in the best interest of the corporation and its shareholders." James M. McMillan breached all of these aforementioned duties when he continued to operate the business despite it losing

money, paid another corporations bills from Plaintiff's checkbook; paid his Two Notch bill first; put his son in charge, and sold off corporate assets without notification to the Defendant.

ORDER

As a result of the Plaintiff's conduct by and through its officers, Defendant owes no money upon the subject note and judgement is granted in favor of Defendant.

AND IT IS SO ORDERED



The Honorable Joseph M. Strickland
Master-in-Equity

Sept. 25, 2015
Columbia, South Carolina

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2008 CP-40-3076

Tiffany's Café and Bakery on Devine, Inc.,

James S. Archer,

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: S.R. Anderson, Esq., P.O. Box 12188

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.
- ☐ **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)
		\$
		\$
		\$

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.

Circuit Court Judge

SCRCP Form 4C (12/2011)

Judge Code

Date

Page 1

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:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

IN THE COURT OF COMMON PLEAS
Case Number: 2008-CP-40-3076
(Referred to Master-in-Equity)

**ORDER DENYING MOTION TO ALTER
OR AMEND JUDGMENT**

RICHLAND COUNTY
FILED
2016 JUL 11 PM 1:00
JEANNETTE W. BRIDGE
C.C.P. & G.

THIS MATTER comes before the Court on Defendant's Notice of Motion to Alter or Amend Judgment, dated April 7, 2016, wherein he asserts various requests that the Amended Order for Judgment, dated March 25, 2016 and filed on March 28, 2016, be altered or amended in certain particulars pursuant to Rules 52(b), 59(e) and 60(b) of the SCRCF.

A hearing on said Motion was scheduled for June 13, 2016. All parties were duly noticed of the date and time. Present at the hearing was Plaintiff, along with its attorney, Carlos W. Gibbons, Jr. Defendant was also in attendance with his counsel, T. Jeff Goodwyn, Jr. The Court has reviewed the file in this matter and at the hearing received oral arguments from counsel regarding their relative positions in the matter. Based thereupon, the Court finds and concludes that its ruling, as set forth in detail in the Amended Order for Judgment should not be further altered or amended and, therefore, Defendant's Motion is denied.

AND IT IS SO ORDERED.

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

Columbia, South Carolina

7th day of July, 2016

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

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

AMENDED ORDER FOR JUDGMENT

RICHLAND COUNTY
FILED
2016 MAR 28 AM 10:37
JENNIFER W. MCBRIDE
C.C.P. & G.S.

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

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

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

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

JURISDICTION AND VENUE

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

PROMISSORY NOTE CAUSE OF ACTION

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

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

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

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

amount of \$2.7397 per day.

OTHER CLAIMS AND DEFENSES

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

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

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

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

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

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

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

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

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

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

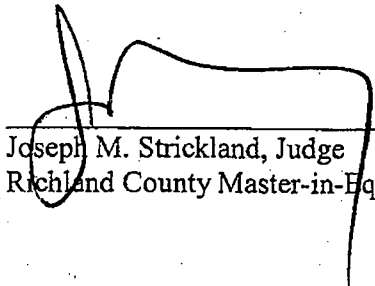
The Court finds and concludes that the forgoing analysis represents the fairest and most equitable manner in resolving the various claims and defenses raised by the parties and is in conformance with the preponderance of the testimony and evidence presented to the Court on these issues.

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

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

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

AND IT IS SO ORDERED:



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

Columbia, South Carolina

25th day of March 2016.

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2008 CP-40-3076

Tiffany's Cafe & Bakery on Devine, Inc.

James S. Archer

PLAINTIFF(S)

DEFENDANT(S)

Submitted by: Carlos W. Gibbons, Jr.

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)
		\$
		\$
		\$

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.

Circuit Court Judge

2097
Judge CodeMarch 25, 2016
Date

For Clerk of Court Office Use Only

This judgment was entered on the 28 day of Mar, 2016 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:

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.

FORM 4C INSTRUCTIONS—JUDGMENT IN A CIVIL CASE

(Instructions for Information Only-Not to be filed with Form 4C)

1. Form 4C-Judgment in a Civil Case has been modified to add order information and enrollment instructions for the clerk of court. The purpose of Form 4 has not changed with the exception that judgment information is provided when applicable.
2. Please note that the Form 4C must be attached to all orders that include information to enroll in the judgment index. The clerk will not be responsible for reading the order to determine enrollment information.

The attorney or prevailing party will prepare and attach the Form 4C when submitting the proposed order that includes judgment enrollment information for the judgment index. The judge will review and sign Form 4C when he or she signs an order that includes judgment enrollment information for the judgment index.

3. Form 4C is not required to be submitted to the Court with orders that do not include information to enroll in the judgment index. If the clerk receives such an order without Form 4C attached, the clerk should enter and process the order pursuant to Rule 58 and Rule 77(d), SC Rules of Civil Procedure (i.e., the clerk should serve notice of entry of the judgment by mail or provide the attorneys with copies of the signed order by other means).
4. The "Information for the Judgment Index" section should be completed when the judgment affects title to real or personal property or if any amount should be enrolled. In the "Judgment in Favor of" column, enter the name of the party to whom the judgment is awarded. In the "Judgment Against" column, enter the name of the person to whom the judgment is against. The judgment amount to be enrolled should be noted in the "Judgment Amount" column. As necessary, describe any property referenced in the order if it is to be enrolled in the judgment index. If there is no judgment information to enroll, indicate "N/A" in one of the boxes in this section of the form.
5. To enter information to accommodate multiple parties, additional Form 4Cs may be used as necessary. Additional space may be inserted on the form as necessary.
6. The section "For the Clerk of Court Office Use Only" should be completed by the clerk as it has been with the previous version of Form 4.
7. If the matter is on appeal to the Circuit Court, then the parties on the form should be changed from Plaintiff and Defendant to Appellant and Respondent.
8. If an arbitrator prepares an order after arbitration, the arbitrator should strike through "Circuit Court Judge" and indicate "Arbitrator" in the signature block.

9. If a Special Circuit Court Judge, Master in Equity, or Special Referee prepares an order after hearing a Circuit Court matter, then he or she should strike through the title "Circuit Court Judge" below the signature line and indicate the appropriate title.
10. When an Order of Foreclosure is filed, neither the parties or debt owed should be listed in the Information for the Judgment Index Section, unless the foreclosure order specifically requires entry of the full judgment amount before the foreclosure sale, pursuant to Section 29-3-650 of the SC Code.
11. If the deficiency judgment is waived in a Foreclosure action, indicate N/A in the "Judgment Amount To Be Enrolled" box.
12. Foreclosure actions should be ended by the Clerk of Court upon receipt of the Order of Foreclosure. Subsequent information, including deficiency judgments, can be added to the action after the case is ended. The Master in Equity should end the action in the MIE system upon the receipt of the Order of Foreclosure.
13. When judgment enrollment information is included in the Information for the Judgment Index Section (for example, when there is a deficiency judgment), only the parties who the judgment is for and against should be included in the Section. Subordinate parties and lienholders should not be included in the box if there is not a judgment amount specifically for or against them.
14. Form 4C is not required to be attached to Transcripts of Judgment and Confession of Judgment.

Tiffany's Cafe & Bakery on Devine, Inc.

Plaintiff(s)

CIVIL ACTION COVERSHEET

vs.

2008 CP 4 003076

James S. Archer

Defendant(s)

(Please Print)

Submitted By: Carlos W. Gibbons, Jr.

Address: P.O. Box 8657

Columbia, SC 29202

SC Bar #: 2463

Telephone #: 803-254-4220

Fax #: 803-736-7334

Other:

E-mail: carlos@ormandlawfirm.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 filed 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 Circuit Court Alternative Dispute Resolution Rules.
- ☒ This case is subject to MEDIATION pursuant to the Circuit Court Alternative Dispute Resolution Rules.
- ☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION (Check One Box Below)

Contracts ☐ Constructions (100) ☐ Debt Collection (110) ☐ Employment (120) ☐ General (130) ☒ Breach of Contract (140) ☐ Other (199)	Torts - Professional Malpractice ☐ Dental Malpractice (200) ☐ Legal Malpractice (210) ☐ Medical Malpractice (220) ☐ Other (299)	Torts - Personal Injury ☐ Assault/Slander/Libel (300) ☐ Conversion (310) ☐ Motor Vehicle Accident (320) ☐ Premises Liability (330) ☐ Products Liability (340) ☐ Personal Injury (350) ☐ Other (399)	Real Property ☐ Claim & Delivery (400) ☐ Condemnation (410) ☐ Foreclosure (420) ☐ Mechanic's Lien (430) ☐ Partition (440) ☐ Possession (450) ☐ Building Code Violation (460) ☐ Other (499)
Inmate Petitions ☐ PCR (500) ☐ Sexual Predator (510) ☐ Mandamus (520) ☐ Habeas Corpus (530) ☐ Other (599)	Judgments/Settlements ☐ Death Settlement (700) ☐ Foreign Judgment (710) ☐ Magistrate's Judgment (720) ☐ Minor Settlement (730) ☐ Transcript Judgment (740) ☐ Lis Pendens (750) ☐ Other (799)	Administrative Law/Relief ☐ Reinstate Driver's License (800) ☐ Judicial Review (810) ☐ Relief (820) ☐ Permanent Injunction (830) ☐ Forfeiture (840) ☐ Other (899)	Appeals ☐ Arbitration (900) ☐ Magistrate-Civil (910) ☐ Magistrate-Criminal (920) ☐ Municipal (930) ☐ Probate Court (940) ☐ SCDOT (950) ☐ Worker's Comp (960) ☐ Zoning Board (970) ☐ Administrative Law Judge (980) ☐ Public Service Commission (990) ☐ Employment Security Comm (991) ☐ Other (999)
Special/Complex /Other ☐ Environmental (600) ☐ Pharmaceuticals (630) ☐ Automobile Arb. (610) ☐ Unfair Trade Practices (640) ☐ Medical (620) ☐ Other (699)			

Submitting Party Signature:

Carlos W. Gibbons, Jr.

Date: May 1, 2008

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

Florence, Horry, Lexington, Richland, Greenville**, and Anderson**

** Contact Respective County Clerk of Court for modified ADR Program Rules

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 within 210 days of filing of this action, and the Plaintiff shall file a "Stipulation of Neutral Selection" on or before the 224th day after the filing of the action. If the parties cannot agree upon the selection of the neutral within 210 days, the Plaintiff shall notify the Court by filing a written "Request for the Appointment of a Neutral" on or before the 224th day after the filing of this action. The Court shall then appoint a neutral from the Court-approved mediator/arbitrator list.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Case 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. Cases which are appellate in nature such as appeals or writs of certiorari;
 - c. Post Conviction relief matters;
 - d. Contempt of Court proceedings;
 - e. Forfeiture proceedings brought by the State;
 - f. Cases involving mortgage foreclosures; and
 - g. Cases that have been submitted to mediation with a certified mediator prior to the filing of this action.
4. 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 had 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 RICHLAND)
)
Tiffany's Café & Bakery on)
Devine, Inc.)
)
Plaintiff,)
)
vs.)
)
James S. Archer)
)
Defendant.)
_____)

IN THE COURT OF COMMON PLEAS

SUMMONS

2008 MAY -1 AM 11:31
BARBARA A. SCUIT
C.C.C. & G.S.

TO: THE DEFENDANT JAMES S. ARCHER:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in the above entitled action, a copy of which is hereby served upon you, and to serve your answer to the said Complaint upon you, and to serve your answer to the said Complaint upon the subscribers, at their offices, 625 Taylor Street, Second Floor, Columbia, South Carolina, 29201, within thirty (30) days after the service hereof; and, if you fail in this action will apply to the Court for a default judgement for the relief demanded in the said Complaint.

ORMAND, ASHLEY & GIBBONS

By: Carlos W. Gibbons, Jr.
Carlos W. Gibbons, Jr., Esquire
Attorney for the Plaintiff
625 Taylor Street, Second Floor
Columbia, SC 29201
(803) 254-4220

Columbia, South Carolina

1st day of May, 2008

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

IN THE COURT OF COMMON PLEAS

COMPLAINT
(Jury Trial Demanded)

2008 MAY -1 AM 11:31
BARBARA A. SCOTT
C.C.C. & G.S.

Plaintiff above named, by way of Complaint against the Defendant, would respectfully allege and show unto this Court as follows:

FOR A FIRST CAUSE OF ACTION
(Collection of Promissory Note)

1. Plaintiff is a corporation duly organized and existing pursuant to the Laws of the State of South Carolina. At all times in question herein, Plaintiff was conducting its business in the County of Richland in said state.

2. Defendant is a citizen and resident of the County of Richland, State of South Carolina.

3. On or about July 24, 2003, for good and valuable legal consideration, Defendant did sign and execute in favor of Plaintiff that certain Promissory Note in the sum of Ten Thousand and No/100 (\$10,000.00) Dollars. A copy of said Note is attached hereto as Exhibit "A" and incorporated herein by reference.

4. Said Note provided for payment of the principal amount due on or before July 24, 2005. No amount of this debt has been paid by Defendant to Plaintiff and the Note is legally in default.

5. Plaintiff has demanded payment from Defendant and does hereby reiterate said demand for all amounts due pursuant to the Note.

6. The Note provides for interest at the rate of ten (10%) percent per annum beginning July 24, 2005 until it is paid. It also provides for the addition of Plaintiff's reasonable attorney's fees and all costs of collection in the event of default.

7. Plaintiff is informed and believes that it is entitled to judgment against Defendant in the sum of Ten Thousand and No/100 (\$10,000.00) Dollars, plus interest at the aforesaid rate from July 24, 2005 until paid, together with Plaintiff's reasonable attorney's fees and all costs of collection.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract)

8. Each and every allegation contained above is reiterated and incorporated herein by reference.

9. On or about July 24, 2003, for good and valuable legal consideration, Plaintiff and Defendant entered into a contractual relationship whereby Defendant would manage and operate on a day-to-day basis the business operation engaged in by Plaintiff, which was a bakery and food service establishment. Included in Defendant's duties were the requirements to properly oversee and direct Plaintiff's employees, to timely remit payment to vendors and suppliers, to attend to all bookkeeping and accounting needs of the business, and to pay on a timely basis all sales taxes and withholding taxes for the

employees. Defendant was monetarily compensated by Plaintiff for the performance of these duties on its behalf.

10. Defendant breached his contract with Plaintiff by not performing and/or partially performing and/or inadequately performing and/or improperly performing the duties which he undertook pursuant to the parties' contractual relationship.

11. As a direct and proximate consequence, result and cause of Defendant's breach of contract, Plaintiff has been monetary and otherwise damaged. These damages include past-due and delinquent taxes and penalties, unpaid accounts with suppliers and vendors, and including the ultimate closing and complete loss of the business operation.

12. Plaintiff is informed and believes that it is entitled to a monetary judgement against Defendant in the amount of its damages as determined by the finder of fact.

FOR A THIRD CAUSE OF ACTION
(Negligence)

13. Each and every allegation contained above is reiterated and incorporated herein by reference.

14. Defendant owed a duty to Plaintiff to perform and discharge his duties as manager of the business in a reasonable and prudent manner.

15. As a result of Defendant's actions and inactions, as specified above, he breached his duties to Plaintiff and was wilful, wanton, negligent and grossly negligent in so doing.

16. Plaintiff has been directly and proximately damaged as a result, consequence and cause thereof, as more particularly described above.

17. Plaintiff is informed and believes that it is entitled to a monetary judgement against Defendant in the amount of its damages as determined by the finder of fact.

FOR A FOURTH CAUSE OF ACTION
(Breach of Fiduciary Duty)

18. Each and every allegation contained above is reiterated and incorporated herein by reference.

19. At the time in question, Defendant was the fiduciary agent of the Plaintiff and on behalf of the State and Federal taxing authorities with regard to the proper calculation and withholding of sales and employment-related taxes, and had the duty of remitting all taxes owed and withholding due to the proper taxing authority in a timely manner.

20. The Defendant breached this fiduciary authority in that the taxes were not withheld and/or paid as scheduled and due.

21. As a direct and proximate cause and result of Defendant's breach of his fiduciary duty, Plaintiff has been monetarily damaged. Specifically, Plaintiff has incurred penalties and interest in addition to having to remit the amounts which Defendant had the duty to withhold.

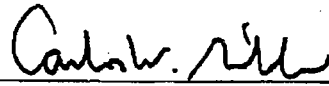
22. Plaintiff is informed and believes that it is entitled to a monetary judgement against Defendant in the amount of its damages as determined by the finder of fact.

WHEREFORE, Plaintiff prays for monetary judgement against the Defendant for payment in full of the amount due under the Promissory Note, including accrued

interests, attorney's fees and costs; for monetary judgment against Defendant for actual and punitive damages under the breach of contract, negligence and breach of fiduciary duty causes of action set forth above; and for such other and further relief as the Court may deem just and proper.

ORMAND ASHLEY & GIBBONS

By:



Carlos W. Gibbons, Jr.
625 Taylor Street, Second Floor
Columbia, SC 29201
(803) 254-4220

Columbia, South Carolina

1st day of May, 2008.

PROMISSORY NOTE

\$10,000.00

July 24, 2003
Columbia, South Carolina

FOR VALUE RECEIVED, the undersigned promises to pay Tiffany's Café and Bakery on Devine, Inc., or order, the principal sum of Ten Thousand and 00/100 (\$10,000.00) Dollars on or before July 24, 2005.

This Note may be prepaid in part or in full at any time without penalty.

No delay or omissions on the part of the Holder in exercising any right hereunder shall operate as a waiver of such right or any other rights of this Note.

In the event of default under the terms of this Promissory Note, the maker and any guarantor or endorser of this Promissory Note further promises to pay on demand interest at the rate of ten (10%) percent per annum from July 24, 2005 until the date the balance is paid in full and all costs of collection including the reasonable attorney's fees and costs incurred or paid by the holder in collecting or enforcing this Note on default.

This contract is to be construed in all respects and enforced according to the Laws of the State of South Carolina.

By:

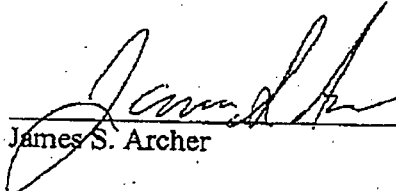

James S. Archer

EXHIBIT "A"

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

Tiffany's Café & Bakery on
Devine, Inc.)

Plaintiff,)

vs.)

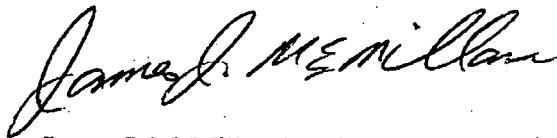
VERIFICATION

James S. Archer)

Defendant.)

2008 MAY -1 AM 11:31
BARBARA A. SCOTT
C.C.C. & G.S.

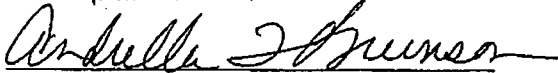
BEFORE ME personally appeared James J. McMillan, President Tiffany's Café and Bakery on Devine, Inc., who, first being duly sworn, deposes and says: That he is the Plaintiff in the above entitled action; that he has read the foregoing Complaint consisting of five (5) pages and that the allegations contained therein are true of his own knowledge, except those matters and things stated on information and belief, and those he believes to be true. That he has authorized his attorneys, Ormand, Ashley & Gibbons, to file and serve said Complaint and to secure on his behalf the relief requested therein.



James J. McMillan, President
Tiffany's Cafe and Bakery on Devine, Inc.

SWORN to and subscribed before me

this 28th day of April, 2008



Notary Public for South Carolina

My Commission Expires: 1-18-2016

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Tiffany's Café & Bakery on Devine, Inc.,)
Plaintiff,)
Vs.)
James S. Archer,)
Defendant.)

C/A No.: 2008-CP-40-3076

ANSWER AND COUNTERCLAIM

DAVID A. SCOTT
C.C.C. & G.S.

2008 MAY 16 PM 2:12

FILED

The Defendant, answering the Complaint of the Plaintiff, would show:

FOR A FIRST DEFENSE

1. The Defendant denies each and every allegation contained in the Complaint of the Plaintiff not specifically admitted herein.
2. The Defendant admits those allegations as contained in paragraphs 1, 2, and 3 of the Complaint of the Plaintiff.
3. That as to paragraph 4 of the Complaint of the Plaintiff, the Defendant would admit only that the terms of the note speak for itself.
4. The Defendant denies those allegations as contained in paragraph 5 of the Complaint of the Plaintiff.
5. That as to paragraph 6 of the Complaint of the Plaintiff, the Defendant would only admit that the terms of the note speaks for itself.
6. The Defendant denies those allegations as contained in paragraph 7 of the Complaint of the Plaintiff.

#12

7. That as to paragraph 9 of the Complaint of the Plaintiff, the Defendant would deny that there was a contract between him and the Plaintiff; however the Defendant did manage the restaurant on a daily basis and he did account to the Plaintiff for his actions.

8. The Defendant denies those allegations as contained in paragraphs 10, 11 and 12 of the Complaint of the Plaintiff.

9. The Defendant admits those allegations as contained in paragraph 14 of the Complaint of the Plaintiff.

10. The Defendant denies those allegations as contained in paragraphs 15, 16, and 17 of the Complaint of the Plaintiff.

11. The Defendant admits those allegations as contained in paragraph 19 of the Complaint of the Plaintiff.

12. The Defendant denies those allegations as contained in paragraphs 10, 21, and 22 of the Complaint of the Plaintiff.

FOR A SECOND DEFENSE AND BY WAY OF OFFSET

13. The Defendant reiterates each and every allegation contained in his first defense as if repeated herein verbatim.

14. That in April of 2003, the Defendant began to work part-time on the weekends for the Plaintiff's restaurant.

15. That in July of 2003, the Defendant purchased a 49% interest in Plaintiff's corporation for the purchase price of \$40,000.00.

16. That in July of 2003, the Defendant began to manage the day-to-day operation of the Plaintiff's restaurant and to work for it on a full-time basis.

A handwritten signature in black ink, appearing to be a stylized name, located at the bottom center of the page.

17. That after July of 2003, the Plaintiff continued to manage the financial affairs of the business, but it was not until January of 2004 that the Defendant began to write checks to pay the restaurant's vendors and suppliers.

18. That the owners of the Plaintiff corporation discussed the business affairs of the restaurant on a regular basis and the difficulty it was facing making a profit.

19. That in February of 2006, the Defendant ceased to manage the business on a full-time basis as it was apparent to him and his fellow stockholder that he could not make a living managing the restaurant. That Plaintiff's son thereafter managed the restaurant with the Defendant continuing to work on weekends and to manage the books.

20. That in January of 2007, Plaintiff discharged Plaintiff's son as manager of the restaurant and the Defendant ceased his association therewith.

21. That immediately after the Defendant left the restaurant, the Plaintiff closed the restaurant's checking account causing a \$3,500.00 check he had drawn to pay a food vendor to bounce.

22. That the Defendant had to personally make the \$3,500.00 check good from his own funds.

23. That against any amounts found to be owing the Plaintiff by the Defendant, there should be deducted the \$3,500.00, plus interest, he paid on behalf of the Plaintiff.

FOR A THIRD DEFENSE

24. The Defendant reiterates each and every allegation contained in his first and second defenses as if repeated herein verbatim.

25. That the Plaintiff purchased 49% of the stock in the Plaintiff corporation for a price of \$40,000.00; \$30,000.00 was paid in cash and \$10,000.00 is represented by the note upon which this action is based.

11/4
13

26. That in January of 2007, the Defendant ceased his management of Tiffany's Café and Bakery on Devine, Inc.

27. That the Plaintiff has never accounted to the Defendant for the assets of the corporation and he is informed and believes that the Plaintiff should be ordered to produce a detailed accounting as to the whereabouts of all corporation property; how the corporate profits were allocated and to whom and in what fashion Defendant's \$30,000.00 stock purchase was spent.

28. That if there are amounts due the Plaintiff corporation, the Defendant is informed and believes that he is entitled to 49% thereof.

FOR A FOURTH DEFENSE AND BY WAY OF COUNTERCLAIM

29. The Defendant reiterates each and every allegation contained in his first, second and third defenses as if repeated herein verbatim.

30. That since January 2, 2007, the Plaintiff has had complete control of the business to the total exclusion of the Defendant.

31. That if the business suffered a loss, it is a result of the Plaintiff's mismanagement.

32. That the Plaintiff's conduct with regard to the operation of the business for the past eleven (11) months relieves the Defendant of any responsibility upon the note in question.

33. That Plaintiff's mismanagement has caused Defendant to suffer a financial loss in an amount to be determined upon the trial of this matter.

WHEREFORE, having fully answered the Complaint of the Plaintiff, the Defendant prays that the court inquire into this matter and award him such relief as is just and proper and to otherwise dismiss Plaintiff's complaint with costs, and to award him damages in an amount to be determined upon the trial of this action.



S.R. Anderson
2008 Marion Street, Suite J
PO Box 12188
Columbia, SC 29211-2188
(803) 252-2828

Columbia, South Carolina
May 16, 2008

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

IN THE COURT OF COMMON PLEAS

Case No.: 2008-CP-40-3076

**PLAINTIFF'S REPLY TO
DEFENDANT'S COUNTERCLAIM**

2008 JUN 10 PM 12:54
FILED
BARBARA A. SCOTT
C. CLERK & G.S.

Plaintiff above-named, by way of Reply to the Offset and Counterclaim of the Defendant, would respectfully allege and show unto the Court as follows:

1. Plaintiff denies each and every allegation of the Offset and Counterclaim not specifically admitted herein.
2. Plaintiff is presently without sufficient information regarding the offset claimed in Paragraphs 14 through 23 of Defendant's pleading so as to respond to the truth thereof. Therefore, these allegations are denied pending discovery between the parties and the testimony and evidence offered by Defendant on this subject.
3. Paragraph 24 requires no response.
4. Paragraph 25 is admitted.
5. Paragraph 26 is admitted on information and belief.
6. As to Paragraph 27, Defendant has not heretofore requested any accounting and his request in these pleadings is not proper under the corporate by-laws. Notwithstanding these facts,

Plaintiff will allow Defendant and/or his counsel access to the corporate records pursuant to the SCRCF discovery rules for such an accounting at Defendant's expense.

7. In answer to Paragraph 28, Plaintiff agrees that Defendant would be entitled to a 49% share of any dividends declared by the corporation. However, there has not been any and, under present circumstances, the corporation cannot declare any dividends to shareholders.

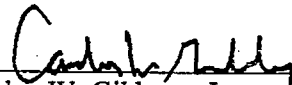
8. Paragraph 29 requires no response.

9. Paragraphs 30 through 33 are denied.

WHEREFORE, having fully responded to Defendant's Offset and Counterclaim, Plaintiff prays that same be dismissed; and for such other and further relief as this Court may deem just and proper.

ORMAND, ASHLEY & GIBBONS

By:


Carlos W. Gibbons, Jr.
Attorney for Defendant
625 Taylor Street, 2nd Floor
Columbia, South Carolina 29201
(803) 254-4220

Columbia, South Carolina

16th day of June, 2008.

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

Tiffany's Café & Bakery on
Devine, Inc.)

Plaintiff,)

vs.)

James S. Archer)

Defendant.)

IN THE COURT OF COMMON PLEAS

Case Number: 2008-CP-40-3076

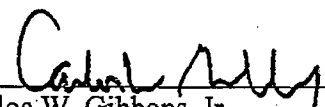
CERTIFICATE OF SERVICE

FILED
2008 JUN 17 PM 12:47
BARBARA A. SCUDLARK
C.C.C. & G.S.

I, the undersigned, of Ormand, Ashley & Gibbons, Attorney for the Plaintiff Tiffany's Café & Bakery on Devine, Inc., do hereby certify that I have this date served the foregoing **Plaintiff's Reply to Defendant's Counterclaim**, by mailing a copy of the same, postage prepaid, addressed to the parties as indicated below:

S.R. Anderson, Esquire
Law Office of S.R. Anderson
2008 Marion Street, Suite J
P.O. Box 12188
Columbia, SC 29211

ORMAND ASHLEY & GIBBONS, PA.

By: 

Carlos W. Gibbons, Jr.
Attorney for Plaintiff
625 Taylor Street, 2nd Floor
P.O. Box 8657
Columbia, SC 29202
(803) 254-4220

Columbia, South Carolina

16th day of June, 2008.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2008-CP-40-3076
(Referred to Master-in-Equity)

Tiffany's Cafe & Bakery on Devine, Inc.

Plaintiff,

vs.

James S. Archer

Defendant.

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney:
Carlos W. Gibbons, Jr., Bar No. 2463
Address:
712 Calhoun Street, Suite B, Columbia, SC
29201
Phone: 771-4488 Fax 736-7334
E-mail: cgibbons@aglawsc.com Other:

Defendant's Attorney:
S.R. Anderson, Bar No. _____
Address:
2008 Marion Street, Suite J, Columbia, SC
29201
Phone: 252-2828 Fax 254-1935
E-mail: sraatlaw@bellsouth.net Other:

- ☒ **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 Alter or Amend Order

Estimated Time Needed: 30 min.

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

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, SCRPC)
☐ 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: metto Date Filed: 10/22/15

☐ MOTION FEE COLLECTED: \$

☐ CONTESTED - AMOUNT DUE: \$

SCANNED

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

IN THE COURT OF COMMON PLEAS
Case Number: 2008-CP-40-3076
(Referred to Master-in-Equity)

**NOTICE OF MOTION TO ALTER
OR AMEND ORDER**

[SCRCP Rules 52 (b), 59 (e) and 60(b)]

2015 OCT 22 AM 11:12
CLERK OF COURT
RICHLAND COUNTY

TO: DEFENDANT, ABOVE-NAMED AND HIS ATTORNEY, S.R. ANDERSON,
ESQUIRE:

YOU WILL PLEASE TAKE NOTICE that ten (10) days following the service hereof, or as soon thereafter as counsel may be heard, Plaintiff above-named, by and through his undersigned attorneys, intends to and does hereby move the Court for its Order altering or amending the **Order** entered in this action which was signed on September 25, 2015, filed with the Clerk of Court on October 1, 2015 and received by electronic transmittal on October 12, 2015 and by mail from Defendant's counsel on October 13, 2015.

This Motion is based upon the following grounds:

a. Plaintiff respectfully requests that Paragraph 10 be altered, modified or amended to reflect that Mr. Archer paid the two (2) checks in conjunction with his employment at Institutional Food House and not in conjunction with any prosecution for writing fraudulent checks, as alleged by him. This was done by Mr. Archer to further his personal interest in maintaining good relations with his employer, under pressure from it.

b. Plaintiff respectfully requests that Paragraph 12 be altered, modified or amended to reflect that Mr. Archer also hired his son as a manager and that his son had no previous management experience.

c. That the Finding of Fact contained in Paragraph 13 of the Order be altered, modified or amended to reflect that Mr. McMillan kept the business operational due to the existing lease on the property and the continuing obligations thereunder.

d. That the Finding of Fact contained in Paragraph 14 of the Order be altered, modified or amended to reflect that Mr. McMillan's other company regularly advanced money and product to Tiffany's Cafe and Bakery on Devine the financially support the failing business. Any checks to vendors of the other business were simply to reimburse for those advances, as testified to by Mr. Creel.

e. That the Finding of Fact contained in Paragraph 16 be altered, modified or amended to reflect that Mr. Archer clearly expressed no desire to have anything further to do with the business and, therefore, notice to him of the sale was immaterial and did not result in any prejudice to him.

f. That the Finding of Fact contained in Paragraph 18 be altered, modified or amended to reflect that Mr. McMillan disputed the value of the assets transferred, most were perishable and had no commercial value, and Mr. Archer did not offer any independent evidence of the specific items transferred or their market value(s).

g. That the Finding of Fact contained in Paragraph 20 be altered, modified or amended to reflect that the oven sold at the auction was not valued at \$18,000.00, but, rather, at its auction price. Mr. Archer never provided any evidence or proof of its value, other than his uninformed opinion. The value of the oven was very much disputed, as opposed to the Court's stated finding of fact, and the preponderance of the evidence showed that it was worth what was paid at the auction.

h. That the Conclusion of Law in Paragraph A be amended to delete the conclusion that the note was not supported by legal consideration when the evidence clearly showed that Mr. Archer bought the 49% share of the business for \$40,000.00, with \$30,000.00 of that amount being paid by him in cash and the remaining being in the form of the promissory note. For the Court to conclude that there was no consideration for the note was clearly error, as the stock for which it was given in partial payment was, in fact, issued to Mr. Archer.

i. That the Conclusion of Law in Paragraph B of the Order should be altered, amended or modified to delete the reference to Mr. Archer owning 49% of the note in question. Shareholders of a corporation do not own any percentage of corporate assets based on their stock ownership. The note is an asset of the corporation. To the extent payment of the note results in the corporation being able to declare any dividend, the shareholders (in this case Mr. Archer) would be entitled to said dividend in conjunction with their respective percentage of share ownership. It was error for the Court to conclude that Mr. Archer owns 49% of the note in questions.

j. That the Conclusion of Law regarding the computed value of the promissory note does not take into account any accrued interest from the date of default or for the addition of attorney's fees and costs, both of which was clearly stated on the face of the document. This was error by the Court.

k. The Court erred in concluding the Plaintiff breached its duty to Defendant in winding down the business without notice to him, as the evidence clearly documented that Defendant expressed no interest in being further involved in the business and he showed no prejudice or harm as a result of the lack of notice. Plaintiff requests that the Order be amended to include these facts and conclusions.

l. The Court erred in concluding that the Plaintiff never paid any fees to collect the note, as Mr. Creel testified this amount was held on the books of the corporation as a loan from a shareholder. Plaintiff requests that the Order be amended to include these facts and conclusions.

m. The facts which allegedly support the Conclusion of Law in Paragraph J of the Order all occurred after the due date of the note from Defendant and cannot be used after the fact in an attempt to excuse his full compliance with, and payment of, the terms of the note. Plaintiff requests that the Order be amended to include these facts and conclusions.

n. The evidence presented by Defendant is insufficient to legally support the Conclusion of Law contained in Paragraph K of the Order. Plaintiff requests that the Order be amended to include these facts and conclusions.

o. The Order makes no reference to Mr. McMillan's personal payment of Defendant's share of the past due Federal and State tax liabilities, which resulted in a windfall tax credit to Defendant, as testified to by Mr. Creel. Plaintiff requests that the Order be amended to include

these facts and conclusions.

p. Plaintiff submits that the Order entered herein should be vacated and that the proposed Order timely submitted by Plaintiff by letter to the Court dated August 28, 2015 be substituted therefor. A copy of said proposed Order is attached hereto and incorporated hereby by reference.

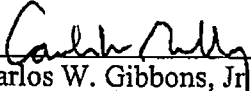
q. That the Order be vacated pursuant to Rule 52(b) SCRPC as the evidence presented in the record is insufficient to support the findings of fact contained therein.

This Motion to be further based upon such additional sustaining grounds and will be presented at the hearing.

AND I SO MOVE.

ASHLEY & GIBBONS, P.A.

By: _____


Carlos W. Gibbons, Jr.
Attorney for the Plaintiff
712 Calhoun Street, Suite B
Columbia, South Carolina 29201
(803) 771-4488

Columbia, South Carolina

22nd day of October, 2015

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

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

ORDER FOR JUDGMENT

THIS MATTER comes before the Court on Plaintiff's Summons and Complaint, dated May 1, 2018. These pleadings were duly and properly served on the Defendant, as evidenced by the proof of service appearing in the Court's filing, whereupon he served and filed his Answer and Counterclaim, dated May 16, 2008. Plaintiff then served and filed its Reply dated June 16, 2008.

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

A hearing was scheduled and held in open Court before the undersigned on July 29, 2015. Due and proper notice was provided to all parties. Plaintiff's President, James J. McMillan, was present, with attorney Carlos W. Gibbons, Jr. Defendant was also present with his attorney, S.R. Anderson. Based upon the testimony and evidence presented, the following finds of facts and conclusions of law are made:

JURISDICTION AND VENUE

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

PROMISSORY NOTE CAUSE OF ACTION

On July 24, 2003, Plaintiff sold to Defendant a forty-nine (49%) percent interest in the corporation. This transaction is memorialized in a written Stock Purchase Agreement signed by

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

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

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

Accordingly, The Court finds and concludes that Plaintiff is entitled to monetary judgment against the Defendant as of July 24, 2015 in the total sum of Twenty-Three Thousand Eight Hundred and no/100 (\$23,800.00) Dollars, with interest continuing to accrue after that date in the amount of \$2.7397 per day.

OTHER CLAIMS AND DEFENSES

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

to liquidate the business equipment and related items when the business ceased operation.

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

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

Mr. Creel also testified that since Plaintiff is taxed as an S Corporation, Plaintiff's payment of these sums resulted in tax credits/deductions on the personal tax returns of Mr. McMillan and Defendant. Mr. Creel testified that his office prepared and submitted to Defendant the necessary tax forms for him to realize the tax credit created for him by the payments made by Plaintiff. In effect, Defendant received a tax credit of 49% of the amount Plaintiff paid to resolve the tax and other indebtedness, even though Defendant could have been held individually liable as the fiduciary agent of the taxing authorities for the entire tax liability. This situation resulted in a "windfall" benefit to Defendant and the Court finds and concludes it would be inequitable to allow this to exist without a remedy.

Defendant did personally pay to his present employer, Institutional Food House ("IFH"), the sum of Three Thousand Five Hundred and no/100 (\$3,500.00) Dollars to cover two (2) checks he wrote on Plaintiff's account that were returned due to insufficient funds. Defendant testified that he did this to avoid criminal prosecution for having written bad checks, but on cross-examination he conceded that no prosecution was ever undertaken and he was never

contacted by law enforcement relative to these checks. Plaintiff's counsel raised the question to Defendant as to whether he paid the checks to ensure his continued employment at IFH. Regardless of Defendant's motive, the Court finds and concludes that his payment of the amount to resolve the bad checks should be compensated in the same manner as the funds advanced by Mr. McMillan by way of his loan.

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

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

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

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

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

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

AND IT IS SO ORDERED:

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

Columbia, South Carolina

_____ day of _____, 2015.

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

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

CERTIFICATE OF MAILING

2015 OCT 22 AM 11:12
C.C.P. & C.S.
JULIA A. GIBBONS, JR.
C.C.P. & C.S.

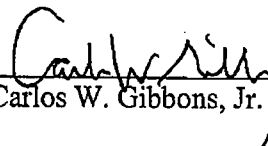
I, the undersigned, of Ashley & Gibbons, Attorney for the Plaintiff, do hereby certify that I have this date served the foregoing **Notice of Motion to Alter or Amend Order** by mailing a copy of the same, postage prepaid, addressed to the party(ies) as indicated below:

S.R. Anderson, Esquire
Law Office of S.R. Anderson
2008 Marion Street, Suite J
Columbia, SC 29201

Honorable Joseph M. Strickland
Richland County Master In Equity
1701 Main Street, Room 212
Columbia, SC 29201

ASHLEY & GIBBONS, PA

By:


Carlos W. Gibbons, Jr.

Columbia, South Carolina
22nd day of October, 2015.

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Tiffany's Café & Bakery on Devine, Inc.,

Plaintiff,

vs.

James S. Archer

Defendant.

IN THE COURT OF COMMON PLEAS
FIFTH JUDICIAL CIRCUIT

CASE NO.: 2008-CP-40-3076
(Referred to Master-in-Equity)

COPY

MOTION AND ORDER INFORMATION
FORM AND COVERSHEET

Plaintiff's Attorney:

Carolos W. Gibbons, Bar No. 2463

Address:

712 Calhoun Street, Suite B, Columbia, SC
29201

Phone: 771-4488 Fax 736-7334

E-mail: cgibbons@aglawsc.com Other:

Defendant's Attorney:

T. Jeff Goodwyn, Jr., Bar No. 73789

Address:

2519 Devine Street, Suite A, Columbia, SC
29205

Phone: 251-4517 Fax 251-4527

E-mail: jgoodwyn@goodwynlaw.com Other:

- ☒ 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 Alter or Amend Order

Estimated Time Needed: 30 min.

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

04/07/2016

Date submitted

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: \$ _____

STATE OF SOUTH CAROLINA

COUNTY OF RICHLAND

Tiffany's Café & Bakery on
Devine, Inc.,

Plaintiff,

v.

James S. Archer,

Defendant.

IN THE COURT OF COMMON PLEAS
Case Number: 2008-CP-40-3076
(Referred to Master-in-Equity)

**NOTICE OF MOTION TO ALTER
OR AMEND ORDER**
[SCRCP Rules 52(b), 59(e) and 60(b)]

2016 APR -7 PM 12:22
JENNIFER W. MCBRIDE
C.C.P. & G.S.
RICHLAND COUNTY
FILED

TO: PLAINTIFF, ABOVE-NAMED AND HIS ATTORNEY, CARLOS W. GIBBONS, JR.,
ESQUIRE

YOU WILL PLEASE TAKEN NOTICE that ten (10) days following the service hereof,
or as soon thereafter as counsel may be heard, Defendant above-named, by and through his
undersigned attorney, intends to and does hereby move the Court for its Order altering or
amending the **Amended Order for Judgment** entered in this action which was signed on March
25, 2016, filed with the Clerk of Court on March 28, 2016 and received by mail from Plaintiff's
Counsel on April 1, 2016.

This Motion is based upon the following grounds:

1. Defendant respectfully request that the **Amended Order for Judgment** be altered,
modified, or amended to reflect that James J. McMillan, president of Tiffany's Café &
Bakery on Devine, Inc. maintained the checkbook until January 2004.
2. Defendant respectfully request that the **Amended Order for Judgment** be altered,
modified, or amended to reflect that Accountant Glen Creel prepared monthly financial
statements which were submitted to both James J. McMillan and James S. Archer.

3. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that James J. McMillan and James S. Archer met weekly to discuss matters related to the business.
4. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that James J. McMillan regularly exercised control over the business in numerous ways including hiring a manager in 2006, firing a manager in 2007, and closing the bank account in 2007.
5. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that James S. Archer resigned from the business on January 2, 2007.
6. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that around the end of the 2006 calendar year, James J. McMillan closed Tiffany's Café & Bakery on Devine, Inc.'s checking account causing several checks written by the defendant to bounce, and thereafter, James S. Archer paid two of these checks from his personal funds in the amount of \$3,500.
7. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that from the beginning of calendar year 2007 until the business closed, James J. McMillan acted as the sole officer of the company.
8. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that during this time, James J. McMillan, hired his son to manage the business and that his son had no prior managerial experience, nor any experience working at Tiffany's Café & Bakery on Devine, Inc.

9. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that during this time, although the company was losing a significant amount of money each month, James J. McMillan chose to keep the business operational.
10. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that during this time, James J. McMillan regularly wrote checks to vendors of a separate business he owned out of the Tiffany's Café & Bakery on Devine, Inc. checking account.
11. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that around December 2007, James J. McMillan closed Tiffany's Café & Bakery on Devine, Inc. and sold all of the assets.
12. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that no notice was ever provide to James S. Archer regarding the close of the business or the sale of the assets.
13. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that some assets were auctioned off for which an accounting was provided.
14. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that all of the inventory was transferred to James J. McMillan's other business and Defendant testified at trial that there would have been approximately \$10,000.00 of inventory on-hand at any given time.

15. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that Tiffany's Café & Bakery on Devine, Inc. never accounted for the remaining inventory.
16. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that a walk-in oven was sold outside of the auction and Tiffany's Café & Bakery on Devine, Inc. never accounted for the proceeds.
17. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that the value of the oven was at least \$18,000.
18. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that the face of the note reads "FOR VALUE RECEIVED", but there is no other recitation of anything which could constitute consideration and without such, the note is not a valid instrument because it lacks a stated consideration.
19. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that if the note is valid, then it is an asset of Tiffany's Café & Bakery on Devine, Inc. and accordingly, James S. Archer owns 49% of the note bringing its principal balance to \$4,900.00.
20. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that Defendant personally paid \$3,500 to make Plaintiff's checks good at the end of 2006 and because Defendant personally discharged a debt of the business, such payment should be credited to any outstanding balance on the note which would bring the balance to \$1,400.00.

21. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that Tiffany's Café & Bakery on Devine, Inc. breached its fiduciary duty to James S. Archer by selling off the assets and winding down the business without notice to him.
22. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that Tiffany's Café & Bakery on Devine, Inc. breached its fiduciary duty to James S. Archer when it transferred inventory to a business owned by James J. McMillan for no value.
23. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that Tiffany's Café & Bakery on Devine, Inc. breached its fiduciary duty to James S. Archer when it transferred a walk-in oven for less than its fair market value and failed to account for the proceeds.
24. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that James S. Archer is entitled to his 49% share of those assets transferred, the value of those assets being approximately \$30,000.00 and that this, in addition to the numerous other wrongdoings on the part of Plaintiff and or its members (outlined below), results in any remaining obligation Defendant may have on the subject note being fully discharged.
25. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that the record is void of any evidence showing where Plaintiff, Tiffany's Café & Bakery on Devine, Inc., has paid any attorney's fees in an attempt to collect on the note.

26. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that because Tiffany's Café & Bakery on Devine, Inc. is the holder of the note and it was never negotiated to James M. McMillan, Tiffany's Café & Bakery on Devine, Inc. cannot recover for monies paid by James M. McMillan.
27. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that S.C. Code Ann. § 33-12-102(a) provides that a corporation may dispose of substantially all of its property only "if the board of directors proposes *and its shareholders approve the proposed transaction*" and Tiffany's Café & Bakery on Devine, Inc. failed to propose a sale of substantially all the assets in violation of this code section.
28. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that although James M. McMillan held 51% of the stock, pursuant to S.C. Code Ann. § 33-12-102(b), "the transaction must be approved by two-thirds of all the votes entitled to be cast on the transaction."
29. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that S.C. Code Ann. § 33-3-303(b) provides, "'consideration' means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and promise has not been performed" and here, during the time James M. McMillan was the sole officer, Plaintiff continued to operate despite increasing losses. This decision was willful and resulted in a substantial decline in the value of the stock. Additionally, the sale of substantially all of

the corporation's assets near the end of 2007 made the stock worthless. These willful acts of the Plaintiff made the consideration given in exchange for the note worthless and accordingly, the note is void for lack of consideration.

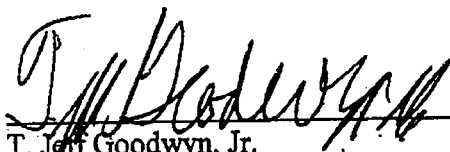
30. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that S.C. Code Ann. § 33-8-420 provides that "an officer with discretionary authority shall discharge his duties under that authority: (1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner he reasonably believes to be in the best interest of the corporation and its shareholders" and that James M. McMillan, in his capacity as officer of Plaintiff, breached all of these aforementioned duties when he continued to operate the business despite it losing money, paid another corporation's bills from Plaintiff's checkbook; paid his Two Notch bill first; put his son in charge, and sold off corporate assets without notification to the Defendant.
31. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that Defendant had no obligation to Plaintiff, legal, contractual, or otherwise, to pay Plaintiff's debts, including tax debts, with his personal funds.
32. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that Defendant has no personal liability to the Plaintiff corporation for debts of the corporation.
33. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that Defendant's financial exposure for the monetary losses of the corporation is limited to his capital investment in the corporation.

34. Defendant respectfully request that the **Amended Order for Judgment** be altered, modified, or amended to reflect that even if Defendant was personally obligated on a tax debt to the tax collection agency, Defendant was not personally obligated to Plaintiff to the extent Plaintiff discharged that obligation.
35. Defendant submits that the **Amended Order for Judgment** herein should be vacated and that the proposed **Order** timely submitted by Defendant following the trial held on July 29, 2015 be substituted therefor. A copy of said proposed is attached hereto and incorporated by reference.
36. That the **Amended Order for Judgment** be vacated pursuant to Rule 52(b) SCRPC as the evidence presented in the record is insufficient to support the findings of fact and conclusions of law contained therein.

This Motion to be further based upon such additional sustaining grounds as will be presented at the hearing.

AND I SO MOVE.

GOODWYN LAW FIRM, LLC



T. Jeff Goodwyn, Jr.

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Columbia, SC 29205

(803) 251-4517

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ATTORNEY FOR PLAINTIFF

Columbia, South Carolina

April 7, 2016

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

IN THE COURT OF COMMON PLEAS

Civil Action No.: 2008-CP-40-3076

Tiffany's Café and Bakery on Devine, Inc.,

Plaintiff,

vs.

James S. Archer,

Defendant.

ORDER

This action was commenced by the filing of a Summons and Complaint on May 1, 2008. The Defendant timely filed an Answer and Counterclaim denying liability on the note in question and asserting that the Plaintiff mismanaged the business, causing the Defendant to suffer a monetary loss. The Plaintiff timely replied to the Defendant's Counterclaim.

This matter was referred to the undersigned via a Consent Order of Reference, with authority to render a final decision directly appealable to the South Carolina Court of Appeals.

A hearing was held on July 29, 2015. The Plaintiff was present with its attorney, Carlos W. Gibbons, Jr. The Defendant was present with his attorney, S.R. Anderson.

FINDINGS OF FACT

1. On July 24, 2003, Tiffany's Café and Bakery on Devine, Inc. and James S. Archer executed a "Stock Purchase Agreement" whereby Jim Archer agreed to pay the sum of \$40,000 in exchange for 950 shares of common stock of Tiffany's Café and Bakery on Devine, Inc.
2. On July 24, 2003, James S. Archer transferred the sum of \$30,000 cash to Tiffany's Café and Bakery on Devine, Inc.
3. On July 24, 2003, James S. Archer executed a "Promissory Note" promising to pay the sum of \$10,000 on or before July 24, 2005.

4. Shortly before and following July 24, 2003, James S. Archer managed the day-to-day operation of the business.
5. James J. McMillan, president of Tiffany's Café and Bakery on Devine, Inc. maintained the checkbook until January 2004.
6. Accountant Glen Creel prepared monthly financial statements which were submitted to both James J. McMillan and James S. Archer.
7. James J. McMillan and James S. Archer met weekly to discuss matters related to the business.
8. James J. McMillan regularly exercised control over the business in numerous ways including hiring a manager in 2006, firing a manager in 2007, and closing the bank account in 2007.
9. James S. Archer resigned from the business on January 2, 2007.
10. Around the end of the 2006 calendar year, James J. McMillan closed Tiffany's Café and Bakery on Devine, Inc.'s checking account causing several checks written by the defendant to bounce. Thereafter, James S. Archer paid two of these checks from his personal funds in the amount of \$3,500.
11. From the beginning of calendar year 2007 until the business closed, James J. McMillan, acted as the sole officer of the company.
12. During this time, James J. McMillan, hired his son to manage the business. His son had no prior managerial experience nor any experience working at Tiffany's Café and Bakery on Devine.
13. During this time, although the company was losing significant money every month, James J. McMillan chose to keep the business operational.
14. During this time, James J. McMillan, regularly wrote checks to vendors of a separate business he owned out of the Tiffany's Café' and Bakery on Devine checking account.
15. Around December 2007, James J. McMillan closed the business and sold the assets.
16. No notice was ever provided to James S. Archer regarding the close of the business or the sale of the assets.
17. Some assets were auctioned off for which an accounting was provided.

18. All of the inventory was transferred to James J. McMillan's other business. James S. Archer testified at the trial that there would have been approximately \$10,000 of inventory at any given time.
19. Tiffany's Café and Bakery on Devine, Inc. never accounted for the remaining inventory.
20. A walk-in oven was sold outside of the auction and Tiffany's Café and Bakery on Devine never accounted for the proceeds. It is undisputed that the value of the oven was at least \$18,000.

CONCLUSIONS OF LAW

- A. The face of the note reads "FOR VALUE RECEIVED", but there is no other recitation of anything which could constitute consideration. Without such, the note is not a valid instrument because it lacks a stated consideration.
- B. If the note is valid, then it is an asset of Tiffany's Café and Bakery on Devine. Accordingly James S. Archer owns 49% of that note bringing its principal balance to \$4,900.
- C. Jim Archer paid \$3,500 to make checks good at the end of 2006. Because James S. Archer personally discharged a debt of the business, such payment should be credited to any outstanding balance on the note which would bring the balance to \$1,400.
- D. Tiffany's Café and Bakery on Devine, Inc. breached its fiduciary duty to James S. Archer by selling off the assets and winding down the business without notice to him.
- E. Tiffany's Café and Bakery on Devine, Inc. breached its fiduciary duty to James S. Archer when it transferred inventory to a business owned by James J. McMillan for no value.
- F. Tiffany's Café and Bakery on Devine, Inc. breached its fiduciary duty to James S. Archer when it transferred a walk-in oven for less than its true value and failed to account for the proceeds.
- G. James S. Archer is entitled to his 49% share of those assets transferred, the value of those assets being approximately \$30,000. This, in addition to the numerous other wrongdoings on the part of Plaintiff and or its members (outlined below), results in any remaining obligation Defendant may have on the subject note being fully discharged.

- H. There is no evidence in the record showing where Plaintiff Tiffany's Café and Bakery on Devine, Inc. has paid any attorney's fees in an attempt to collect on the note. Because Tiffany's Café and Bakery on Devine, Inc. is the holder of the note and it was never negotiated to James M. McMillan, Tiffany's Café and Bakery on Devine, Inc., cannot recover for monies paid by James McMillan.
- I. S.C. Code Ann. § 33-12-102(a) provides that a corporation may dispose of substantially all of its property only "if the board of directors proposes *and its shareholders approve the proposed transaction.*" Tiffany's Café and Bakery on Devine, Inc. failed to propose a sale of substantially all the assets in violation of this code section. Further, although, James M. McMillan held 51% of the stock, pursuant to S.C. Code Ann. § 33-12-102(b), "the transaction must be approved by two-thirds of all the votes entitled to be cast on the transaction."
- J. S.C. Code Ann. § 36-3-303(b) provides " 'consideration' means any consideration sufficient to support a simple contract. The drawer or maker of an instrument has a defense if the instrument is issued without consideration. If an instrument is issued for a promise of performance, the issuer has a defense to the extent performance of the promise is due and the promise has not been performed." Here, during the time James M. McMillan was the sole officer, Plaintiff continued to operate despite increasing losses. This decision was willful and resulted in a substantial decline in the value of the stock. Additionally, the sale of substantially all of the corporation's assets near the end of 2007 made the stock worthless. These willful acts of the Plaintiff made the consideration given in exchange for the note worthless. Accordingly, the note is void for lack of consideration.
- K. S.C. Code Ann. § 33-8-420 provides that "an officer with discretionary authority shall discharge his duties under that authority: (1) in good faith; (2) with the care an ordinarily prudent person in a like position would exercise under similar circumstances; and (3) in a manner he reasonably believes to be in the best interest of the corporation and its shareholders." James M. McMillan breached all of these aforementioned duties when he continued to operate the business despite it losing money, paid another corporation's bills from Plaintiff's checkbook; paid his Two Notch bill first; put his son in charge, and sold off corporate assets without notification to the Defendant.

ORDER

As a result of the Plaintiff's conduct by and through its officers, Defendant owes no money upon the subject note and judgement is granted in favor of Defendant.

AND IT IS SO ORDERED

The Honorable Joseph M. Strickland
Master-in-Equity

_____, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

IN THE COURT OF COMMON PLEAS

Tiffany's Café & Bakery on Devine, Inc.,)

Plaintiff,)

vs.)

James S. Archer,)

Defendant.)

Civil Action No. 2008-CP-40-3076

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on **April 7, 2016**, that a copy of the foregoing **Notice of Appearance** and **Notice of Motion to Alter or Amend Order** and **Order** has been served upon the following party(s) via regular U.S. mail, postage prepaid at the address as shown below:

Carlos W. Gibbons, Jr., Esquire
Ashley & Gibbons, PA
712 Calhoun Street, Suite B
Columbia, SC 29201



Mary S. Bush
Paralegal to T. Jeff Goodwyn, Jr., Esquire
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STATE OF SOUTH CAROLINA) COURT OF COMMON PLEAS
COUNTY OF RICHLAND) C/A No. 2008-CP-40-3076

Tiffany's Cafe and Bakery
on Devine, Inc.

Plaintiff,

v.

James S. Archer,

Defendants.

CCPY

HEARING

Wednesday, July 29, 2015
2:21 p.m. - 6:32 p.m.

The hearing before the Honorable Joseph M. Strickland, was taken at 1701 Main Street, Columbia, South Carolina on the 29th day of July, 2015 before Mary H. Occhipinti, Court Reporter and Notary Public in and for the State of South Carolina.



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APPEARANCES

Carlos W. Gibbons, Jr., Esquire
 Ashley and Gibbons, PA
 712 Calhoun Street
 Columbia, South Carolina 29201
 Attorney for the Plaintiff

Stephen R. Anderson, Esquire
 Law Offices of S.R. Anderson
 2008 Marion Street, Suite J
 Columbia, SC 29201
 Attorney for Defendant

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(All Exhibits were retained by the court.)



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1 (Defendant's Exhibit Numbers 1 through 7 were marked
2 prior to the hearing for identification purposes.)

3 (Plaintiff's Exhibit Numbers 1 through 4 were marked
4 prior to the hearing for identification purposes.)

5 THE COURT: This is a civil action number 2008-CP-
6 40-3076, Tiffany's Cafe and Bakery on Devine
7 against James Archer. Are we all here on the
8 same case?

9 MR. GIBBONS: Yes, sir.

10 MR. ANDERSON: Yes, sir.

11 THE COURT: First, let me ask. Why has it been
12 going on for -- since 2008? This is 2015,
13 that's seven years. There's been a bankruptcy
14 or something in the meantime, or just taking a
15 long time to get it -- get to this point?

16 MR. GIBBONS: Just some inertia set in and we
17 referred it somewhat later in the proceedings,
18 Your Honor, and ---

19 THE COURT: Okay.

20 MR. GIBBONS: --- no particular reason of any
21 import, just it's time to go forward.

22 THE COURT: All right. Nobody's in bankruptcy now?

23 MR. GIBBONS: No, sir. No, sir.

24 MR. ANDERSON: Never had one.

25 MR. GIBBONS: Never had one.



1 THE COURT: Okay. That's good, I just wanted to
2 make sure, because I see a case that's seven
3 years old, I wonder if something happened with
4 it then, obviously I want to know what
5 happened. I think the attorneys -- we were in
6 chambers a little while ago, and they explained
7 the case. Do y'all think it's necessary to
8 make an opening statement or do you want to go
9 ahead and call the first witness?

10 MR. GIBBONS: No, we're ready to go.

11 THE COURT: Okay. Please proceed, Mr. Gibbons.

12 MR. GIBBONS: Thank you, Your Honor. If it please
13 the court ---

14 THE COURT: Yes.

15 MR. GIBBONS: --- we would call James S. -- or, I'm
16 sorry. James McMillan to the stand, please,
17 sir.

18 THE COURT: Okay. This is going to sound real
19 basic, I thought in chamber Mr. Ashley said he
20 was representing the plaintiff, is that ---

21 MR. GIBBONS: That is for the case tomorrow.

22 THE COURT: That's the case tomorrow? Okay.

23 MR. GIBBONS: Yes, sir.

24 COURT REPORTER: Will you raise your right hand for
25 me, please?



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1 JAMES McMILLAN, having been duly sworn, testifies as
2 follows:

3 MR. McMILLAN - DIRECT EXAMINATION BY MR. GIBBONS:

4 Q: Mr. McMillan, give us your full name and
5 address please, for the record.

6 A: James McMillan, I live at 160 Haywain Drive in
7 Chapin, South Carolina.

8 Q: And how are you employed, sir.

9 A: I own Tiffany's Bakery on Two Notch Road. I've
10 owned it for 38 years.

11 Q: Briefly describe what kind of business
12 Tiffany's Bakery on Two Notch is.

13 A: Tiffany's is a full line bakery, we make
14 everything except donuts and bagels. Cakes,
15 pastries, breads. We also have a small deli
16 inside of it. Most -- 75 percent of our
17 business is bakery and 25 percent is deli.

18 Q: And forgive me, you may have said, but you've
19 been in business how long?

20 A: Since 1977.

21 Q: 1977. Okay. Now did there come a time during
22 your business operation that you opened a
23 second location ---

24 A: Yes, sir.

25 Q: --- for the bakery?



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1 A: I did.

2 Q: Tell us about when that was?

3 A: That was in '97. I think it was about middle
4 of the year. I purchased the cafe on Devine
5 street from the IRS, had a sealed bid and I
6 purchased it -- the contents of the building.

7 Q: And did you start a new corporation to assume
8 the operation of that business?

9 A: Yes, sir.

10 Q: And what was the name of that new business that
11 you opened?

12 A: That was Tiffany's Cafe and Bakery.

13 Q: And that is the plaintiff in this case that
14 we're here today for, correct?

15 A: Yes, sir.

16 Q: Is that business still in operation?

17 A: No, sir.

18 Q: Is it still a corporation in good standing in
19 the secretary of state's office?

20 A: Yes, sir.

21 Q: Judge, I think we -- Mr. Anderson and I agreed
22 by stipulation we'd just admit this. This is
23 a print off from the secretary of state that
24 Tiffany's is a corporation in good standing.

25 MR. ANDERSON: Without objection.



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1 THE COURT: All right. Motion's granted.

2 Q: And that was in 2003 that you opened the bakery
3 on Devine?

4 A: '97.

5 Q: '97, I'm sorry. Okay. And what sort of
6 business operation did it engage in?

7 A: It was a cafe with two bakery counters in it.
8 Most of the business was cafe. Like
9 sandwiches, salads, we served breakfast and
10 lunch and Sunday brunch. We were open seven
11 days a week.

12 Q: And the bakery items that you sold, where did
13 they come from?

14 A: They came from the Two Notch store.

15 Q: And was that an arms length business
16 arrangement between Two Notch and Devine?

17 A: Yes, sir.

18 Q: Explain me that a little more if you would,
19 please.

20 A: Sold the bakery items to that store for half
21 price. They'd showcase that, put it in a bag,
22 and just hand the customer. They made more
23 than I did at the other store.

24 Q: And did you maintain separate accounting ---

25 A: Yes, sir.



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- 1 Q: --- systems for both businesses?
- 2 A: Yes, I did.
- 3 Q: And they're obviously separate corporations?
- 4 A: Yes, they were.
- 5 Q: Separate federal ID numbers?
- 6 A: Yes, sir.
- 7 Q: Separate checking accounts?
- 8 A: Yes, sir.
- 9 Q: Complete separation, and everything that was
- 10 handled between the two corporations was done
- 11 on paper and done correctly?
- 12 A: Yes, sir.
- 13 Q: Now at some later point, you entered into an
- 14 agreement with James Archer for his purchase of
- 15 a portion of the Devine street location, is
- 16 that correct?
- 17 A: Yes, sir.
- 18 Q: All right. First of all, tell us how you knew
- 19 Mr. Archer and what transpired that put y'all
- 20 in conversation with each other about the
- 21 business dealing.
- 22 A: Well he was my salesman for -- in IFH, and
- 23 before that it was another company, I don't
- 24 recall the name of the company.
- 25 Q: And the IFA- -- IFH, please describe that in a



- 1 little more detail.
- 2 A: Institutional Food House, out of Florence.
- 3 Q: Okay. Because that's going to come in play
- 4 later. But they're a supplier of goods for
- 5 your business?
- 6 A: Restaurant supply, yes.
- 7 Q: Okay.
- 8 A: They sell bakery items, yeah.
- 9 Q: Okay. And Mr. Archer worked for IFH?
- 10 A: Yes, sir.
- 11 Q: And how did you two start talking about him
- 12 coming into business with you?
- 13 A: Well my manager for years was moving -- getting
- 14 married and moving to California, and I told
- 15 her I was going to try to find somebody to buy
- 16 into it, have a piece of it, manage it better
- 17 I thought, or find another manager. And I told
- 18 her that and a few days later I think Jim came
- 19 in and told, Alicia was her name, that he was
- 20 going to be our new salesman. And she said not
- 21 for long; I'm getting ready to move to
- 22 California. Asked what's Jim gonna do, he said
- 23 I think he's going to try and find another
- 24 manager or maybe somebody wants to buy into it.
- 25 Q: Okay. We have a couple Jims in there ---



1 A: Yes.

2 Q: ---- the first Jim we're talking about, Mr.
3 Archer.

4 A: Yeah, Jim Archer. Yeah.

5 Q: Second Jim you referred to was yourself.

6 A: Right.

7 Q: Okay. All right. So then the conversation
8 took on a more serious nature?

9 A: Yes, sir. He left there and then came over to
10 see me at the Two Notch Road store.

11 Q: Okay. And what was his presentation to you?

12 A: He was very interested in being a managing
13 partner.

14 Q: And did that result in a stock purchase
15 agreement being entered into between the two of
16 you?

17 A: Yes, sir.

18 Q: Let me ask if you can identify this for me, Mr.
19 McMillan.

20 A: This is the stock purchase agreement, yes, sir.
21 I signed it and Jim Archer signed it too.

22 Q: Okay. I'm going to hand you a copy of that.
23 What's the date on that document, Mr. McMillan?

24 A: 24th of July, 2003.

25 Q: And the signatures on it are -- are those of



1 what individuals?

2 A: Mine, as president, and Jim Archer as a buyer
3 for the stock.

4 Q: Okay. So this is an agreement, it's not
5 between you individually, it's between your
6 company and Mr. Archer?

7 A: Right. Yes, sir.

8 Q: And how much was the purchase price he was
9 going to pay you for his interest in the
10 product?

11 A: It was \$40,000.

12 Q: And what percentage interest was that \$40,000
13 going to buy him?

14 A: 49 percent. I retained another one point over
15 his, but the name -- would keep control of the
16 name, Tiffany's.

17 Q: Okay. And of the \$40,000, how did he pay that?

18 A: He paid with a check for \$30,000, and as a
19 promissory note -- I guess you call it a
20 promissory note, for \$10,000, and it was due in
21 -- let's see, the same date two years later,
22 that was 2005. At 10 percent interest I
23 believe after that time.

24 Q: Okay. Before we get to that. Identify this
25 document for me if you ---



1 A: That's a bank statement.

2 Q: A bank statement for the ---

3 A: Cafe.

4 Q: --- the cafe and bakery?

5 A: Yes, sir.

6 Q: And let's get it introduced here, this will be
7 Number 5?

8 COURT REPORTER: Yes, sir.

9 (Plaintiff's Exhibit Number 5 was marked for
10 identification purposes.)

11 Q: Okay. On Plaintiff's Number 5, Mr. McMillan,
12 there is an entry on that bank statement that's
13 got a circle around it. Tell us what that is
14 please, sir.

15 A: It was on the July 25th, it was \$30,000.

16 Q: And is that the \$30,000 that Mr. Archer paid
17 you pursuant to that stock purchase agreement?

18 A: Yes, sir.

19 Q: And then I want to ask you if you can identify
20 this document, which has been marked as
21 Plaintiff's Number 3.

22 A: This is a promissory note from Mr. Archer.
23 It's dated July 24th, 2003.

24 Q: Okay. I'm going to give you a copy of it.

25 A: Okay.



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- 1 Q: Now looking at what's been marked as
2 Plaintiff's Number 3, who signed that document,
3 Mr. McMillan?
- 4 A: Jim Archer did.
- 5 Q: And he signed it individually?
- 6 A: Yes, sir.
- 7 Q: It's payable to whom?
- 8 A: Tiffany's Cafe.
- 9 Q: And that's the plaintiff in this lawsuit?
- 10 A: Yes, sir.
- 11 Q: And the principal amount that's owed is how
12 much?
- 13 A: \$10,000.
- 14 Q: And after a certain date, did it accrue an
15 amount of interest?
- 16 A: Yes, sir.. Ten percent after 2005.
- 17 Q: What date in ---
- 18 A: July the 24th.
- 19 Q: So starting in July 24th of 2005, it was to
20 accrue interest at 10 percent per year?
- 21 A: Yes, sir.
- 22 Q: And have you calculated how many years it's
23 been since July 24th of 2005?
- 24 A: It's been 10 years.
- 25 Q: So there are 10 years of interest due at 10



- 1 percent a year?
- 2 A: Yes, sir.
- 3 Q: And how -- have you calculated how much
- 4 interest that is?
- 5 A: \$10,000.
- 6 Q: So there's a total of how much owed under this
- 7 note right now?
- 8 A: \$20,000.
- 9 Q: Has any amount of this note ever been paid by
- 10 Mr. Archer to the cafe?
- 11 A: No, sir.
- 12 Q: Has it been paid to you?
- 13 A: No, sir.
- 14 Q: Has it been paid to any other third party of
- 15 which you are aware?
- 16 A: No, sir.
- 17 Q: Now, there's a provision in the note in the
- 18 third paragraph about the addition of
- 19 attorney's fees and court costs, is that
- 20 correct?
- 21 A: Yes, sir.
- 22 Q: And have you retained the services of my firm
- 23 to collect this note?
- 24 A: I have.
- 25 Q: I'm going to ask you what's been marked as



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1 Plaintiff's Number 4, and tell us please sir,
2 what that is.

3 A: It's a personal check from myself to your law
4 firm for \$3,800.

5 Q: Okay. Let's -- I'm going to substitute a copy
6 of it for you.

7 MR. ANDERSON: Your Honor, please, we would object
8 to the introduction of that check. My client,
9 Mr. Archer, owns 49 percent of Tiffany's on
10 Devine, and I'm not sure how he can be
11 responsible to Mr. McMillan for attorney's fees
12 in trying to collect the note of which he owns
13 49 percent.

14 THE COURT: Okay. Mr. Gibbons?

15 MR. GIBBONS: He doesn't own 49 percent of that
16 note, Your Honor, he owns 49 percent of the
17 stock in a corporation that is defunct and
18 without assets. Now I'm going to ask Mr.
19 McMillan more about that check and why it came
20 from him personally and not the corporation.
21 If Mr. McMillan or rather Mr. Archer wants to
22 pay that note, and then we ultimately figure
23 out how much of it he may ultimately be
24 entitled to, we'd be glad to accept his money.
25 But I don't think it has anything to do with



1 the admissibility of that -- of that check.

2 THE COURT: Okay. Mr. Anderson?

3 MR. ANDERSON: I'm not sure how Mr. Archer, who owns
4 49 percent, of the payee of that note can be
5 held responsible for any attorney's feed paid
6 by Mr. McMillan to collect upon the note.

7 THE COURT: Objection overruled. Now remember, I'm
8 willing based on the fact that whether or not
9 it's relevant or not. It's relevant, but may
10 not necessarily be the conclusion I draw at the
11 end of all the evidence.

12 MR. ANDERSON: I just want to make you aware of
13 that.

14 THE COURT: Yeah. Objection's overruled.

15 MR. GIBBONS: Thank you, Your Honor.

16 Q: Mr. McMillan, that's the check you wrote from
17 your personal account to my law firm, is that
18 right?

19 A: That's correct.

20 Q: And tell the court, please, why you wrote it
21 out of your personal funds and not any funds of
22 Tiffany's Bakery and Cafe?

23 A: There was no funds in that account.

24 Q: And there were no funds in that account because
25 why?



1 A: I had to pay bills myself before this, like I
2 paid IRS, South Carolina tax commission. There
3 was no money to pay any of those bills.

4 Q: Is there anything in this promissory note
5 that's been introduced that entitles Mr. Archer
6 to any offsets or any credits or any other
7 consideration for his ownership in the
8 corporation?

9 A: No, sir.

10 Q: All right. I want to move on to a different
11 subject. The -- was there a point in time when
12 you and Mr. Archer parted ways in his
13 relationship with the cafe on Devine Street?

14 A: Yes, sir.

15 Q: Tell us about that, about when it was, what
16 happened, and what the overall outcome of that
17 situation turned into being.

18 A: That was January of 2007, I believe.

19 Q: Okay. What was going on with the business at
20 that time?

21 A: It was mismanaged and couldn't pay bills.

22 Q: What bills were going unpaid that you are aware
23 of?

24 A: State tax commission, IRS, sales tax, was
25 paying -- paying late, every time you pay it



1 late there's penalties and interest every
2 month. On every one of them.

3 Q: Okay. Did you have an accountant helping you
4 with the business operation at that point in
5 time?

6 A: Yes, sir.

7 Q: And that's Mr. Creel, who's seated here?

8 A: Yes, sir.

9 Q: And he also helps you over on the store on Two
10 Notch, right?

11 A: Yes, sir.

12 Q: Now, I'm going to talk with Mr. Creel in a
13 minute about that. When did you become aware
14 of the tax liens to the IRS?

15 A: The first of January I took over the management
16 of the cafe in 2007, and the next week, two IRS
17 agents walked in the door and said we owed
18 \$16,000 ---

19 MR. ANDERSON: Object to just hearsay, Your Honor.
20 And I guess Mr. Creel was not listed as an
21 expert. And that being the case, I would like
22 to sequester him as a witness.

23 THE COURT: Okay. You want -- you want him outside
24 so he won't hear ---

25 MR. ANDERSON: Yes, sir.



1 THE COURT: --- what the -- what is said by Mr.
2 McMillan. Mr. Gibbons, do you object to that?
3 MR. GIBBONS: Well, if we do, we'll sequester the
4 other witness as well.
5 MR. ANDERSON: That's fine.
6 THE COURT: Who is the other witness?
7 MR. GIBBONS: That's Mr. Archer's son.
8 THE COURT: Okay. But he's not a party?
9 MR. GIBBONS: No, sir.
10 THE COURT: All right, so that -- y'all want to
11 exclude the witnesses? That's allowed, and I'm
12 ---
13 MR. GIBBONS: I'm happy to leave them in here, but -
14 --
15 MR. ANDERSON: No. No.
16 MR. GIBBONS: Okay. We'll ask them to sit outside.
17 THE COURT: Okay. There's a -- there's some pew's
18 out there in the hall.
19 MR. GIBBONS: Right.
20 THE COURT: We'll come get you when you're called.
21 MR. GIBBONS: Okay. Thank you, sir.
22 THE COURT: All right. Motion's granted. Now I'm
23 not -- I want to go back to the question. What
24 was the last question you asked, Mr. Gibbons?
25 MR. GIBBONS: About when he learned about the tax



1 liens and what was going on with the business.
2 **THE COURT:** Okay. Mr. Anderson, you said you
3 objected because you said it was hearsay.
4 **MR. ANDERSON:** He said that two ladies walked into
5 my office from the IRS ---
6 **MR. McMILLIAN:** Two agents.
7 **MR. ANDERSON:** --- and they said.
8 **THE COURT:** Two agents. Okay. And they said --
9 they said to Mr. McMillan?
10 **MR. ANDERSON:** Yes, sir.
11 **THE COURT:** Objection's overruled.
12 **Q:** Okay. Mr. McMillan, based on what you just
13 described, the agents coming into your place of
14 business ---
15 **A:** Yes, sir.
16 **Q:** --- what did they report to you of what needed
17 to be done, what did they demand to be done,
18 and what did they threaten to do if it wasn't
19 done?
20 **A:** They would levy -- I guess they'd call it levy
21 liens on the property, personally or business-
22 wise, if they couldn't get it out of the
23 business they would do it personally.
24 **Q:** And did they threaten to close the business
25 down?



- 1 A: Yes, sir.
- 2 Q: Was it ever closed down for any period of time?
- 3 A: No, sir.
- 4 Q: Why was that?
- 5 A: Because I guess I had to pay the taxes.
- 6 Q: And where did the money come from for you to
- 7 pay those past due taxes?
- 8 A: Personally, I'd inherited some money from my
- 9 father and I had to use that money.
- 10 Q: What other bills that you had to pay personally
- 11 that were leftover as a result of the closing
- 12 of the -- the Devine Street store?
- 13 A: There were sales tax, IRS, let's see -- I think
- 14 I have a list.
- 15 MR. GIBBONS: Bear with me here, Your Honor. I've
- 16 got that list to be produced and I just walked
- 17 away from it.
- 18 A: Of course I might have it on my stack over
- 19 there too.
- 20 MR. GIBBONS: Okay, Your Honor.
- 21 Q: Is this the list you're talking about, Mr.
- 22 McMillan?
- 23 A: It's -- yes, sir.
- 24 Q: Let's get that introduced as Plaintiff's Number
- 25 6.



1 (Plaintiff's Exhibit Number 6 was marked for
2 identification purposes.)

3 Q: Okay.

4 A: Want me to start over?

5 Q: Yeah. Besides it -- this list that you
6 prepared, tell us what this list consists of.

7 A: It's ---

8 MR. ANDERSON: Your Honor -- Your Honor, please,
9 before Mr. McMillan does that, I think we need
10 to lay a little groundwork about where these
11 figures came from first. Who compiled them.

12 THE COURT: Now Mr. Anderson, I'll give you a chance
13 to cross examine on this list, that's the kind
14 of question I think you might want to ask on
15 the cross examination. Objection overruled.

16 Q: Mr. McMillan, in -- outline these expenses for
17 us and tell us the source of these payments
18 that were made.

19 A: You want the amounts too?

20 Q: You can go ahead and read the amounts in the
21 record, sure.

22 A: Sales tax for December '06 was \$1,933.63. The
23 hospitality tax for December was 657.70. Sales
24 tax for November, the month before was
25 1,445.47. The sales tax for the month before



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1 that, September, was 1,551.43. A phone bill
2 for 343.64. Yellow pages contract was 440.16.
3 The pest control was owed a couple months,
4 that's 358 -- \$358. Waste Management trash,
5 that was 83.33. And the last payroll of '06
6 was \$1,398.66. And the IRS was \$16,775.88.

7 Q: Now the last payroll, that was money that was
8 worked for by the employees ---

9 A: Yes, sir.

10 Q: --- is that correct?

11 A: Yes, sir.

12 Q: And there was not money in the business account
13 to pay that?

14 A: No, sir.

15 Q: And the source of all these payments, what's
16 the total that's down there, Mr. McMillan?

17 A: \$24,987.82.

18 Q: And who paid that money?

19 A: I did.

20 Q: Now there are two additional amounts down
21 there, the IFH again, Institutional Food House,
22 and then the tax commission. Have those
23 amounts been paid?

24 A: The tax commission has, that was \$11,005.65.
25 And I'm not sure where if -- what Jim paid



1 Institution Food House as part of this, I'm not
2 -- it's been so long ago.

3 Q: Okay. Leaving the IFH amount out, there's
4 roughly \$36,000 that you came out of pocket
5 when the business closed after Mr. Archer left?

6 A: Yes, sir.

7 Q: Now the sales tax, the hospitality tax, that's
8 money that is generated from sales from the
9 business, correct?

10 A: Yes, sir.

11 Q: Who had the responsibility, at the time those
12 bills were approved, who had the responsibility
13 for remitting that money ---

14 A: Mr. ---

15 Q: --- to the taxing authority?

16 A: Mr. Archer did.

17 Q: And what arrangements were made available to
18 Mr. Archer to remit that money? In other
19 words, did Mr. Creel help with that?

20 A: Yes, he did. He gets -- prints out a coupon
21 with the amount on it, made payable to the
22 bank. He gives him the check. And all Jim had
23 -- Mr. Archer had to do was sign it and give to
24 the bank. The -- not the sales tax, but the
25 tax commission money. And the sales tax, it



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1 gives you a form, you write a check, and you
2 mail it.

3 Q: And was there a point in time that Mr. Archer
4 communicated to you that he was cutting his
5 ties with the business?

6 A: Yes, sir.

7 Q: And about when was that?

8 A: About the 10th of January, and you retro
9 postdate it to like the 2nd of January, I
10 think.

11 Q: And what did you receive from him ---

12 A: A letter.

13 Q: --- in regard ---

14 A: A letter of resignation.

15 Q: He resigned in all his positions with the
16 corporation?

17 A: Yes, sir.

18 Q: And he never really came back, did he?

19 A: No, sir. Just to meet with the IRS one day,
20 but.

21 Q: And what was -- he met with the IRS?

22 A: Yes, sir.

23 Q: Did you meet with them?

24 A: They did individually.

25 Q: Individually?



- 1 A: Yes, sir.
- 2 Q: Same time? Same ---
- 3 A: Same day. Yes, sir.
- 4 Q: Same day?
- 5 A: Yes, sir.
- 6 Q: And what did the IRS talk to you about?
- 7 A: They wanted their \$16,775.
- 8 Q: And what did they say they were going to do if
- 9 they didn't get it?
- 10 A: Put a lien on my -- I guess a lien on my
- 11 checking account personally.
- 12 Q: And did you and Mr. Archer discuss that meeting
- 13 with the IRS at that time?
- 14 A: No, sir.
- 15 Q: Where did it take place?
- 16 A: At the cafe.
- 17 Q: On Devine Street?
- 18 A: Yes, sir.
- 19 Q: Okay. Now describe the relationship between
- 20 you and Mr. Archer at that point in time.
- 21 A: We weren't talking anymore.
- 22 Q: And did he ever indicate to you he was going to
- 23 cooperate in trying to resolve all these past
- 24 due debts?
- 25 A: No, sir.



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1 Q: Did he ever indicate he was going to do his 49
2 percent share?

3 A: No, sir.

4 Q: Did he ever offer to contribute any of this
5 money that the corporation owed that was not
6 available to pay?

7 A: No, sir.

8 Q: Now, you came back in and tried to salvage the
9 business?

10 A: Yes, sir.

11 Q: And how long did that take place?

12 A: Started in January, and the lease was up in
13 September I believe, or October. And we stayed
14 until November and closed the door.

15 Q: Did the business ever get back on it's feet,
16 Mr. McMillan?

17 A: No. I just keep getting bills from other
18 people. The state sales tax commission kept --
19 we're behind in that too.

20 Q: Now how did you ultimately decide to liquidate
21 the business, to close it down?

22 A: How did I decide to -- just owed too much
23 money, I couldn't keep on ---

24 Q: Once -- I'm beyond that. Once you made the
25 decision to close it down, what did you do to



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1 liquidate the assets ---

2 A: The assets?

3 Q: --- and the other ---

4 A: Well I did what I thought was best, because the
5 rent was like \$3,100 and the electric bill was
6 a couple hundred dollars a month, just had it
7 sitting there. I hired one of the top auction
8 companies in the two states, Classic Auctions,
9 and he auctioned off the equipment.

10 Q: Let me ask you if you could identify this
11 document for me.

12 A: This is a contract with Classic Auctions.

13 Q: Okay. Let's get it introduced here.

14 (Plaintiff's Exhibit Number 7 was marked for
15 identification purposes.)

16 MR. GIBBONS: Okay. And you've got a copy of that
17 there.

18 MR. ANDERSON: Say it again, Plaintiff's Seven?

19 MR. GIBBONS: I think it's eight.

20 COURT REPORTER: It's seven.

21 MR. GIBBONS: Seven. Sorry, seven.

22 Q: All right. Tell us -- tell us again who
23 Classic Auctions is, Mr. McMillan.

24 A: They are a top auctioneer in Locust, North
25 Carolina. They do restaurants mostly. About



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- 1 any kind of big auction they do. He has a
2 large following -- he has a mailing list with
3 people that buy restaurant equipment. Dealers
4 and individuals.
- 5 Q: And did you have any other way of liquidating
6 that asset other than by auction?
- 7 A: No, sir.
- 8 Q: Did you have the ability to do it on your own?
- 9 A: No, sir. Not that much.
- 10 Q: You were still operating the Two Notch store at
11 the time?
- 12 A: Yes, sir. The busiest ti- ---
- 13 Q: Full time.
- 14 A: The busiest time of the year for me too.
- 15 Q: Okay. And did you attend the auction that took
16 place in November of '07?
- 17 A: Yes, sir.
- 18 Q: And was it handled in a professional manner?
- 19 A: Oh, yes, sir.
- 20 Q: Was it properly advertised?
- 21 A: Yes, sir.
- 22 Q: Was it well attended?
- 23 A: Yes, sir.
- 24 Q: And what has been -- have you been to auctions
25 before? Have you bought things at auctions?



- 1 A: I bought a lot from him.
- 2 Q: Okay. What is your general experience about
3 prices at auction and things being sold for
4 either their value or less than their value?
- 5 A: At most restaurant equipment goes anywhere from
6 10 percent to 30, 40 percent.
- 7 Q: And was that the experience that you had when
8 you auctioned off this property?
- 9 A: Yes, sir. He auctions off each piece, not like
10 a lot, like each pan.
- 11 Q: And as a representative of the corporation,
12 were you satisfied with the overall results of
13 the auction?
- 14 A: Yes, sir. He's very professional.
- 15 Q: Okay. And mention has been made that the
16 auction did not -- or you didn't give notice of
17 the auction to Mr. Archer. Why was that?
- 18 A: He wasn't talking to me. He left --
19 relinquished his duties, so.
- 20 Q: You think it would do any good to talk to him
21 about what you were doing?
- 22 A: No, sir.
- 23 Q: And he had resigned at that point as an officer
24 of the corporation?
- 25 A: Yes, sir.

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- 1 Q: Had no decision making authority?
- 2 A: Right.
- 3 Q: And the money from the auction, where did it
- 4 go?
- 5 A: Into the cafe account.
- 6 Q: And was it still insufficient to pay the bills
- 7 that had been accumulated?
- 8 A: No, sir.
- 9 Q: Now, at the time Mr. Archer became 49 percent
- 10 owner, what was the financial status of the
- 11 bakery on Devine Street, the bakery and the
- 12 cafe?
- 13 A: It was paying the bills.
- 14 Q: What was it's approximate gross sales?
- 15 A: Almost \$400,000.
- 16 Q: And during the time that Mr. Archer ran the
- 17 business, what was the history of the sales and
- 18 the profitability?
- 19 A: They dropped every year.
- 20 Q: Do you have a reason to conclude why that was?
- 21 A: No. Had to be mismanagement.
- 22 Q: Mr. Archer had family members in there working
- 23 for him, didn't he?
- 24 A: Yes, sir.
- 25 Q: Who was that?



- 1 A: His son.
- 2 Q: And that's the young man that was here earlier
- 3 and is now outside, right?
- 4 A: Yes, sir. Uh-huh.
- 5 Q: Did -- to your knowledge, did the son have any
- 6 restaurant experience or ability?
- 7 A: No, sir. I didn't know.
- 8 Q: What was his son's job before he came the
- 9 manager of the cafe and bakery?
- 10 A: He was a waiter -- waiter. Wait on tables,
- 11 take people their food to the table.
- 12 Q: And who made him manager of that facility?
- 13 A: Jim did, Jim Archer ---
- 14 Q: Jim Archer?
- 15 A: Yes, sir.
- 16 Q: And part -- part of the lawsuit filed by the
- 17 corporation, Mr. McMillan, is for breach of
- 18 contract, breach of fiduciary duty, and
- 19 negligence. What would you tell the court
- 20 would be your reasons for making those claims
- 21 against Mr. Archer, and how it affected the
- 22 value of the business?
- 23 A: Mismanagement of employees, the funds we had
- 24 taken in to pay the bills.
- 25 Q: Were the taxes ever paid on time by Mr. Archer?

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1 A: Yeah, they were in the beginning.

2 Q: Were the other bills ever behind when Mr.
3 Archer was managing?

4 A: Not in the beginning, I don't think so.

5 Q: Now, the total amount that you contend US
6 President of the Cafe Corporation, the total
7 amount you contend that Mr. Archer owes under
8 the note, I believe you testified to was
9 \$20,000 plus the \$3,800 attorney's fee, is that
10 right?

11 A: Yes, sir.

12 Q: And the additional amount that you were
13 claiming under the other causes of action, is
14 that contained in the summary that you
15 testified to? I forget which Exhibit it is.
16 I think it's Number 6.

17 A: Let's see. Right here?

18 Q: Yeah. This is the total on Number 6?

19 A: Yes, sir. Yes, sir.

20 Q: So the total amount you're claiming is the
21 amount due under the note, which is \$23,800,
22 and then the amount shown due on that Exhibit
23 Number 6?

24 A: Yes, sir.

25 Q: Answer any questions that Mr. Anderson might



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1 have for you, please.

2 MR. McMILLAN - CROSS EXAMINATION BY MR. ANDERSON:

3 Q: When you had a discussion with Mr. Archer about
4 him coming in and purchasing a 49 percent
5 interest in the business, that were to be paid
6 with \$30,000 in cash ---

7 A: Yes, sir.

8 Q: --- and a \$10,000 note?

9 A: Yes, sir.

10 Q: All right. Did y'all create any sort of a
11 management document with regard to who was
12 going to be responsible for what, who was going
13 to do what, what the duties of the parties
14 were?

15 A: He was personably responsible for paying the
16 bills ---

17 Q: No, did you have a document that was created --
18 -

19 A: Document? No, sir. No.

20 Q: Pardon me?

21 A: No, sir.

22 Q: So it was just word of mouth?

23 A: Yes, sir.

24 Q: All right. At the time he was talking to you
25 about producing the business, did you provide



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- 1 him with profit and loss statements?
- 2 A: Yes, sir.
- 3 Q: For how many years?
- 4 A: I don't remember.
- 5 Q: Did you provide him with copies of tax returns?
- 6 A: I think so.
- 7 Q: You think so?
- 8 A: Yes, sir. I don't remember.
- 9 Q: You don't remember?
- 10 A: No, sir.
- 11 Q: His duty ---
- 12 A: I'm sure Mr. Creel gave them to him.
- 13 Q: Pardon me?
- 14 A: I'm sure Mr. Creel produced them for him, yes,
- 15 sir.
- 16 Q: Do you know if he had conversations with Mr.
- 17 Creel before he purchased the business?
- 18 A: I don't remember. It's been 12 years.
- 19 Q: He actually came in and began to run the
- 20 business prior to the actual date of the note
- 21 and the agreement, correct?
- 22 A: I think so. Yes, sir.
- 23 Q: Came in April of 2003?
- 24 A: Uh-huh.
- 25 Q: And he paid you in July of 2003?



1 A: Yes, sir.

2 Q: So he was in there about three months or so
3 beforehand. So tell me how y'all managed the
4 finances of this business? You had a checkbook
5 in the beginning, did you not?

6 A: Yes, sir.

7 Q: And you were the only person authorized to sign
8 checks.

9 A: Yes, sir.

10 Q: Mr. Archer, when he began running the business,
11 would bring to you, on a weekly basis or daily
12 basis, the monetary receipts that had been
13 taken in for sales?

14 A: Pardon me, I don't -- you -- about money? No,
15 he deposited money himself.

16 Q: Okay. He took the money that came in and
17 deposited it to the account?

18 A: Yes, sir.

19 Q: Okay. And then he would give you the deposit
20 ticket showing how much had been deposited?

21 A: I don't recall that.

22 Q: Okay. When did Mr. Archer have the authority
23 to start signing checks? When did that occur?

24 A: In December.

25 Q: In December?



1 A: Yes, sir.

2 Q: All right. So for the first approximate year
3 that he was there -- the first year that he was
4 working there, he did not have check writing
5 authority?

6 A: Right.

7 Q: Okay. And he would make the deposits of
8 whatever came into the restaurant and provide
9 you with that so that you could enter that as
10 a deposit in the checkbook.

11 A: Yes, sir.

12 Q: Okay. And you're saying that in the beginning,
13 the business was doing okay?

14 A: Yes, sir.

15 Q: And when did it start to nosedive?

16 A: I don't think it nosedived, but it went down
17 every year after that.

18 COURT REPORTER: Do you need water?

19 A: Yeah.

20 Q: Let me show you what is marked as -- I'm sorry.
21 You need something to drink.

22 A: Yeah, I got sinuses real bad, I'm sorry.

23 Q: Okay. That's all right.

24 MR. GIBBONS: You want some water?

25 MR. McMILLIAN: Yeah, please. I've got a cup over



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1 there.

2 **MR. GIBBONS:** I should have paid closer attention to
3 you.

4 **Q:** Let me show you what's been marked as
5 Defendant's Exhibit Number 2.

6 **(Defendant's Exhibit Number 2 was introduced into the**
7 **record at this time.)**

8 **Q:** And we talked about that when we took your
9 deposition, did we not?

10 **A:** Yes, sir.

11 **Q:** And the first year of this is 2003, that would
12 be the first year that Mr. Archer was involved,
13 correct?

14 **A:** Yes, sir.

15 **Q:** And what was the loss that was sustained in
16 2003?

17 **A:** And these aren't really correct either. Mr.
18 Creel has a different amount on the tax return.
19 It's less than this ---

20 **Q:** Okay. Well what does that show.

21 **A:** It says \$34,339 ---

22 **Q:** That's ---

23 **A:** 329.

24 **Q:** That's the loss?

25 **A:** Yes, sir. It's actually less than that though.



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- 1 Q: Pardon me?
- 2 A: It's less than this.
- 3 Q: Okay. And that's with the \$30,000 deposit that
- 4 would have been made for ---
- 5 A: Yes.
- 6 Q: --- his interest in buying 49 percent of the
- 7 stock?
- 8 A: Yes, sir.
- 9 Q: Okay. And the next year, what as the loss?
- 10 A: 9,500.
- 11 Q: Okay. And that was the first year that Mr.
- 12 Archer was running the business, first full
- 13 year?
- 14 A: Yes, sir.
- 15 Q: Okay. And what was the loss for 2005?
- 16 A: \$9,000.
- 17 Q: And what was the loss for 2006?
- 18 A: This says 18,000.
- 19 Q: \$18,000.
- 20 A: I don't think these are correct though.
- 21 Q: And that was the last year that he ran the
- 22 business.
- 23 A: On this, but he's got tax his tax returns that
- 24 show different amounts.
- 25 Q: Okay. So starting in December then, Mr. Archer



1 had check writing authority?

2 A: Yes, sir.

3 Q: Okay. After he began to be involved in the
4 business in April of 2003, did you and he meet
5 on a regular basis?

6 A: I came over at least once or twice a week and
7 ate breakfast so we can sit down and talk.

8 Q: Okay. Did you discuss the finances?

9 A: I don't recall.

10 Q: Would you sit and go through the checkbook to
11 see what had been deposited and what checks had
12 been written?

13 A: In the next year, the second year?

14 Q: No, throughout the course of his involvement
15 with the restaurant.

16 A: No.

17 Q: So your testimony is that you gave Mr. Archer
18 the checkbook and said go with it?

19 A: Basically.

20 Q: So when you came over and sat down with Mr.
21 Archer, Mr. Archer would -- and you would not
22 talk about, look here, we've got X number of
23 dollars coming in and we've got these expenses
24 we don't have enough to meet our financial
25 obligation?



1 A: No, sir.

2 Q: Well you, as a 51 percent owner of this
3 business, don't you think as a business man you
4 would have sat down with Mr. Archer to try to
5 discuss and find out how the business is going?

6 A: Uh-huh.

7 Q: Pardon me?

8 A: Yes, sir.

9 Q: But you didn't do that?

10 A: Not every week, no, sir.

11 Q: Well how often would you do it?

12 A: I don't remember.

13 Q: Mr. McMillan, you claim that Mr. Archer was
14 negligent in running this business, and
15 breached his fiduciary duty in some capacity.
16 Well didn't you have some sort of an obligation
17 to determine what's going with the business?

18 A: I don't know.

19 Q: You say you don't know if you had an ---

20 A: No.

21 Q: Well with -- Tiffany's on Two Notch, I mean,
22 you keep up with it, don't you?

23 A: Yes, sir. It was a full time job, a handful.

24 Q: All right, and Tiffany's on Devine is owned 51
25 percent by you. You decide that you weren't



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1 going to be interested in what it's doing?

2 A: Not that. I just let Jim take and run with it.
3 I guess I should have been more involved, but
4 ...

5 Q: Did Mr. Archer have discussions with you about
6 how to improve the business?

7 A: No, sir.

8 Q: Did you happen -- did you ever suggest things
9 to him that you were doing on the Two Notch
10 store to make -- that maybe he could utilize in
11 the Devine Street store?

12 A: I would think so, yes, sir. I'm not sure. We
13 do this -- it's a different -- both of them are
14 different kind of stores.

15 Q: Both of them are selling pastries.

16 A: Yeah, mostly the cafe sold meals, like lunch,
17 dinner, Sunday brunch. They sold a few
18 pastries.

19 Q: Tell me, if you have no involvement with the
20 business, how is Mr. Archer negligent?

21 A: By not paying the bills.

22 Q: Well if he didn't have any money to pay the
23 bills, is that negligent?

24 A: I don't know what you call it.

25 Q: Well in your own personal life, if a bill comes



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1 in that you don't have the money to pay it, you
2 don't pay it, do you?

3 A: I'd try to borrow the money and pay it.

4 Q: Did you expect Mr. Archer to borrow money to
5 pay the bills ---

6 A: And to mention to me about paying it, but he
7 never did ---

8 Q: I'm sorry, what ---

9 A: He never came to me about how we were short
10 that much money.

11 Q: Well your testimony is that you own 51 percent
12 of the business, that you sold Mr. Archer, and
13 you don't discuss what the business is doing?

14 A: We discussed but I don't remember what it was
15 about. You know, I don't remember what we
16 talked about. I mean if it had been last year,
17 I'd never remember. How are you gonna remember
18 some ten years ago, twelve years ago, I don't
19 remember what we talked about. I'm sure I gave
20 him some ideas, try to sell more pastries, but
21 the restaurant part, that was his specialty,
22 not mine.

23 Q: At the end of 2003, you obviously had some
24 inkling of what's going on because Mr. Creel
25 would have done your tax returns.



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1 A: Yes, sir.

2 Q: And what was the loss that was suffered in
3 2003?

4 A: Payroll was a lot more than it should have
5 been.

6 Q: No, no. What was the total loss as shown on
7 the tax returns.

8 A: I think it was 27 or so.

9 Q: 27,000?

10 A: Yes, sir.

11 Q: And that's with the infusion of the 30,000?

12 A: Yes, sir.

13 Q: Now when -- when that happened, you knew that
14 something was going on with his restaurant if
15 it's in the hole \$27,000.

16 A: Uh-huh.

17 Q: Right?

18 A: Yes, sir.

19 Q: Did you have discussions with him at that point
20 about what's going on?

21 A: I don't remember.

22 Q: All right. In 2004, what was the loss,
23 approximately?

24 A: Let me have that. This says \$9,500.

25 Q: Okay. That's the first year he's running the



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1 thing full time?

2 A: Yes, sir.

3 Q: The whole year? Did you have a discussion with
4 him about that loss?

5 A: I don't remember.

6 Q: Do you remember having any discussions with him
7 at all after having received the tax forms for
8 the years that he ran the business? Discussing
9 with him why this thing's going so bad?

10 A: I don't remember, I really don't.

11 Q: Well Mr. McMillan, if you're saying that Mr.
12 Archer is negligent, wouldn't you say that
13 you're negligent as well for not keeping up
14 with this better than you did?

15 A: No, sir.

16 Q: No?

17 A: No, sir.

18 Q: When you eventually discussed opening the
19 business, or running the business with Mr.
20 Archer, did you discuss health insurance with
21 him?

22 A: I don't remember.

23 Q: Did he discuss with you the fact that he's got
24 health issues and it's imperative that he have
25 health insurance?



1 A: I don't remember.

2 Q: Did you have health insurance for your
3 employees at the Two Notch Road ---

4 MR. GIBBONS: Judge, let me -- let me object on the
5 basis of relevance, there's nothing in the
6 pleadings or otherwise about health insurance
7 being a component of this case. I just don't
8 think it's relevant.

9 THE COURT: Overruled.

10 Q: Did you provide health insurance at the Two
11 Notch branch?

12 A: For my wife and myself and my children.

13 Q: All right. Did you tell Mr. Archer that you
14 were going to put him on as an insured through
15 the bakery?

16 A: I don't remember.

17 Q: Did Mr. Archer ultimately have to purchase his
18 own insurance?

19 A: I'm assuming so, if he got it.

20 Q: And what was his salary as the manager of the
21 Devine Street branch?

22 A: I don't remember, really.

23 Q: Did he have a salary?

24 A: Yes, sir.

25 Q: So he had a salary as the manager?



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- 1 A: Yes, sir.
- 2 Q: If I said \$30,000, would that seem ---
- 3 A: Be close.
- 4 Q: --- within the realm?
- 5 A: Within -- within close, yeah.
- 6 Q: Okay. And if I told you his health insurance
- 7 cost \$1,000 a month, would any way -- a reason
- 8 to dispute that?
- 9 A: I wouldn't, mine cost that much.
- 10 Q: Pardon me?
- 11 A: Mine cost that much, I wouldn't doubt it.
- 12 Q: So that means that he was earning, if you were
- 13 running his restaurant, \$18,000 a year,
- 14 correct?
- 15 A: If that's the figure you've got.
- 16 Q: And he's there 7 days a week?
- 17 A: Yes, sir.
- 18 Q: Did he show up everyday?
- 19 A: I think so.
- 20 Q: Did he stay from early in the morning until
- 21 when he finally closed in the afternoon?
- 22 A: Most of the day, probably. Yes, sir.
- 23 Q: And he stayed past closing.
- 24 A: Have to, to close up.
- 25 Q: did you at some point tell Mr. Archer, or did



1 you and Mr. Archer have a conversation at some
2 point that you gotta understand that your
3 health insurance is being paid out of what you
4 earn. Consequently, how about let the
5 company, let the Devine Street branch start
6 paying it?

7 A: I don't recall that.

8 Q: Y'all -- Mr. Gibbons asked you a question about
9 his son being involved in the business.

10 A: Yes, sir.

11 Q: What was the son doing when he was first
12 employed?

13 A: I think he was working the counter in the
14 bakery -- it was just like help customers with
15 the bakery stuff, I think.

16 Q: Okay. And when he was first employed, he
17 wasn't employed as a dishwasher?

18 A: I don't think so.

19 Q: And did he then go up to being a cook?

20 A: I don't know.

21 Q: And that became waiting on tables?

22 A: I don't know that.

23 Q: I'm just trying to get a feel for what your
24 involvement was in this business.

25 A: Uh-huh.



1 Q: What was your involvement?

2 A: Well Mr. Archer had -- had previous experience
3 in restaurant, and I thought to let him run it
4 -- the restaurant part.

5 Q: And what was your involvement in the business?

6 A: I didn't have much involvement in it.

7 Q: Did Mr. Archer not tell you that the payment of
8 the IRS taxes and the other taxes due to the
9 state were always being paid a quarter late?

10 A: No, sir.

11 Q: Never told you that? Did you ever inquire?
12 Did you ever get notices from the IRS or the
13 state ---

14 A: They mailed it -- they mailed it over to the
15 cafe, they didn't mail to me.

16 Q: He never showed you any notices?

17 A: I don't remember that.

18 Q: Did Mr. Creel ever have discussions with you as
19 to, look here, this business isn't doing well,
20 the taxes aren't being paid on time?

21 A: Close to the end probably.

22 Q: When did Mr. Archer come to you and say this is
23 it, I can't devote all my time to this business
24 and it's not making any money, I'm going to
25 back on out of it. Do you remember when



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- 1 approximately that was?
- 2 A: No, sir. I don't.
- 3 Q: 2006, could that be it?
- 4 A: It might be.
- 5 Q: And who then did you appoint as the manager of
- 6 the business after Mr. Archer told you he
- 7 wasn't going to be there full time?
- 8 A: He appointed his son.
- 9 Q: But he left, okay? Was it not your
- 10 responsibility to appoint a manager?
- 11 A: No, he appointed him.
- 12 Q: Okay. Did Mr. Archer continue to come in on
- 13 the weekends and do the books?
- 14 A: Yes, sir.
- 15 Q: Did he have discussions with you when he left,
- 16 that this restaurant isn't doing anything? I
- 17 can't live on what I'm earning out of the
- 18 restaurant, I've got to go get another job?
- 19 A: I think so.
- 20 Q: That's what he said?
- 21 A: Yes, sir.
- 22 Q: Did he not sit down with you? Or did you not
- 23 ask to sit down with him to go through the
- 24 books?
- 25 A: I don't recall.



- 1 Q: When his son began to manage the restaurant, do
2 you remember when approximately that was?
- 3 A: No, sir.
- 4 Q: Did you, when his son was managing the
5 business, come in and review the books?
- 6 A: The daily sheets, or what?
- 7 Q: Everything. How much money is coming in, what
8 the vendors are charging, how much money's
9 going out, how much we got in the checking
10 account?
- 11 A: Well Jim was doing all that. Jim was doing it,
12 I think ---
- 13 Q: But you didn't follow that with his son?
- 14 A: No, sir.
- 15 Q: And you fired his son, didn't you?
- 16 A: Yes, sir.
- 17 Q: When was that?
- 18 A: January 2nd.
- 19 Q: Why did you fire him?
- 20 A: I was looking at all the bills we had and I
21 thought I'd try to go in and salvage the
22 business, see if I could get it back going
23 again, profitable. But bills kept coming more
24 and more, I knew I couldn't do it.
- 25 Q: So the first time then that you ever looked the



- 1 books was in January of 2007?
- 2 A: No. No, sir.
- 3 Q: Prior to that?
- 4 A: Yeah.
- 5 Q: When?
- 6 A: I don't remember, but I looked at them.
- 7 Q: Do you -- okay. Mr. Creel, as the accountant
- 8 ---
- 9 A: Yes, sir.
- 10 Q: --- would get the hours the employees worked,
- 11 and he would determine how much they would do.
- 12 Is ---
- 13 A: Yes, sir.
- 14 Q: --- that correct?
- 15 A: Right.
- 16 Q: And he would provide that to Mr. Archer?
- 17 A: Right.
- 18 Q: He would determine what the sales were and what
- 19 the sales tax would be and provide that to Mr.
- 20 Archer?
- 21 A: Yes, sir.
- 22 Q: And what the withholdings were on the
- 23 employees, he would provide that to Mr. Archer?
- 24 A: Yes, sir.
- 25 Q: Okay. And then Mr. Archer had the



1 responsibility of paying those, right?

2 A: Yes, sir.

3 Q: If there wasn't money in the account, how would
4 those various bills get paid?

5 A: I don't know.

6 Q: Did Mr. Creel ever discuss with you those
7 particular issues?

8 A: I don't recall that.

9 Q: You fired Mr. Archer's son when?

10 A: January the 2nd, I think.

11 Q: January the 2nd.

12 A: I think.

13 Q: You think?

14 A: Yes, sir.

15 Q: Okay.

16 A: 2007.

17 Q: And again, why was the reason that you fired
18 him? Your testimony was that you went in there
19 at some point and began to look at the books,
20 and you see there's not enough money coming in?

21 A: A lot of bills weren't paid.

22 Q: The bills aren't being paid.

23 A: Yes, sir. Tax commission, sales tax, IRS.

24 Q: So why did you fire Mr. Archer's son?

25 A: Because I wanted to try and save it.



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- 1 Q: Well what did firing Mr. Archer's son have to
2 do with that? Was he mismanaging the business?
- 3 A: He didn't have any experience.
- 4 Q: How long had he been there working in the
5 business?
- 6 A: Waiting tables? A year, I don't know.
- 7 Q: How long had he been behind the counter?
- 8 A: I don't remember.
- 9 Q: You don't know?
- 10 A: No, sir. I don't.
- 11 Q: So he may have had managerial experience. And
12 in fact, when Mr. Archer's son was running the
13 business, you changed his position and brought
14 somebody else new in to manage the business,
15 right?
- 16 A: I don't remember.
- 17 Q: You don't remember?
- 18 A: No.
- 19 Q: Let me show you this. When did -- when did you
20 say that Mr. Archer resigned?
- 21 A: I think January.
- 22 Q: Do you remember when in January?
- 23 A: No, sir. There's a document somewhere.
- 24 Q: Are you familiar with that?
- 25 A: Yes, sir. Uh-huh. That's it. It's dated



1 January 2nd.

2 Q: January the 2nd.

3 A: Yes, sir. Yes, sir.

4 Q: Now, you closed the checking account with

5 Tiffany's, did you not?

6 A: Yes, sir.

7 Q: When did you do that?

8 A: January 10th or so, I'm not sure. It had

9 \$1,300 in the bank.

10 Q: Okay. January the what?

11 A: It had \$1,300 in the bank.

12 Q: January the what?

13 A: I think 10th, I'm not sure.

14 Q: January the 10th?

15 A: I think, I don't know. It was shortly after

16 that, that ---

17 Q: Let me show you this check. Two checks ---

18 (Defendant's Exhibit Number 4 was introduced into the

19 record at this time.)

20 A: Yes, sir.

21 Q: --- that were dated January the 2nd, 2006.

22 A: Yes, sir. Uh-huh.

23 Q: Okay. And it has on there account close.

24 A: Yes, sir.

25 Q: So these two checks bounced.



1 A: They would have bounced anyway. Because we
2 only had \$1,300 ---

3 Q: Okay. Those two checks bounced.

4 A: Yes, they did.

5 Q: In the amount of \$3,500?

6 A: Yes, sir. There was \$1,300 in the bank.

7 COURT REPORTER: What exhibit number was that, sir?

8 MR. ANDERSON: It's been marked.

9 COURT REPORTER: Okay.

10 Q: Excuse me, I'm sorry. Were there other checks
11 that Mr. Archer, or that you found that Mr.
12 Archer had written to pay other various bills
13 of the restaurant for the month of December?

14 A: I don't recall there being anything else.

15 Q: When you say there was \$1,300 in the bank ---

16 A: Sir?

17 Q: When you say there was \$1,300 in the bank ----

18 A: Yes, sir.

19 Q: --- did that count the deposit that was due to
20 be made there at the end of the month?

21 A: Deposit for?

22 Q: For the end of December.

23 A: Deposit for who?

24 Q: From the receipts ---

25 A: Receipts?



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- 1 Q: --- from the restaurant.
- 2 A: Yes, sir. Because it was always in arrears.
- 3 Q: Okay. So -- so there was money awaiting to be
- 4 deposited into the ---
- 5 A: No.
- 6 Q: --- account?
- 7 A: No.
- 8 Q: And your testimony is that there was no money
- 9 to be put into the account at the end of
- 10 December and there was 1,300 dollars in the
- 11 account?
- 12 A: Yes.
- 13 Q: Is that correct?
- 14 A: Yes.
- 15 Q: And you knew the checks had been written to pay
- 16 various vendors, did you not?
- 17 A: Yes, sir.
- 18 Q: And one of the checks that had been written was
- 19 to the particular vendor here, Plaintiff's
- 20 Exhibit -- Defendant's Exhibit Number 4, for
- 21 \$3,500, right?
- 22 A: Yes, sir.
- 23 Q: Did you call Mr. Archer and tell Mr. Archer
- 24 that you had closed that account?
- 25 A: No, I didn't.



- 1 Q: Why not?
- 2 A: I don't have a reason.
- 3 Q: You saw the check had been written --
- 4 A: Yes, sir.
- 5 Q: -- those two checks. And you knew he signed
- 6 those checks? And you knew he would be
- 7 personally, criminally responsible? If those
- 8 checks bounced, right?
- 9 A: Well, they were bouncing before that.
- 10 Q: Okay. You knew that he would be criminally
- 11 responsible if those checks bounced?
- 12 A: I knew he'd be responsible for them.
- 13 Q: But you didn't call him up and tell him?
- 14 A: I guess we weren't talking.
- 15 Q: Pardon me?
- 16 A: We weren't talking.
- 17 Q: He didn't resign until January the 2nd?
- 18 A: Yeah.
- 19 Q: You didn't feel you had any responsibility ---
- 20 A: That was after that.
- 21 Q: Pardon me?
- 22 A: That was after I closed the account.
- 23 Q: When did you close the account?
- 24 A: About a week after that.
- 25 Q: Knowing that these two checks had been written?



1 A: If there's no money to put in the bank, I
2 couldn't -- it wouldn't do any good anyway.
3 I've got two receipts over there. The two
4 checks bounced and they sent them back. Other
5 than these two.

6 Q: What were they?

7 A: Tax commission, and something else. NSF -- NSF
8 receipts over there.

9 Q: The month of December, being Christmas --

10 A: Yes, sir.

11 Q: -- was your busiest month, right?

12 A: Yes, sir.

13 Q: And what was the deposit that had been made to
14 the account for December of 2006?

15 A: Explain what you are trying to ask me.

16 Q: How much money was deposited to the account?

17 A: That last day?

18 Q: The last month of 2006, December 2006?

19 A: I don't have that figure in front of me. I
20 don't know.

21 Q: Do you have any idea how much it was?

22 A: No, sir. Probably 30,000. I don't know.

23 Q: 30,000?

24 A: I don't know. I'm just guessing. I have no
25 idea.



- 1 Q: Well, you said you went in and looked at the
2 books before you fired Jim's son.
- 3 A: Yes, sir.
- 4 Q: And so, how much had been deposited for
5 December?
- 6 A: I don't have any idea.
- 7 Q: Well, you figured out you were losing money,
8 but you didn't determine how much had come in?
- 9 A: I looked at it but I don't remember from 12
10 years ago how much was in there. How much was
11 deposited in there.
- 12 Q: The equipment that was in the restaurant ---
- 13 A: Yes, sir.
- 14 Q: --- was auctioned off?
- 15 A: Yes, sir.
- 16 Q: Okay. When it came time, or when the decision
17 was made to auction off all of the equipment,
18 did you discuss that with Mr. Archer?
- 19 A: No, sir.
- 20 Q: You knew where he lived?
- 21 A: Yes, sir.
- 22 Q: You knew his phone number?
- 23 A: Yes, sir.
- 24 Q: You didn't feel it was important to call and
25 discuss that with him?

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1 A: No, sir.

2 Q: 49 percent of all that stuff in there was his,
3 right?

4 A: Yes, sir.

5 Q: And you were just going to sell it without
6 telling him?

7 A: I chose the best way I think to get it out of
8 the building and the quickest way to get the
9 most money for it, at auction. It's not
10 piecing out, selling one piece at a time. Then
11 have an auction later and later. A month later
12 when the rent was mounting up every month.

13 Q: Mr. Archer worked for a food service company
14 before --

15 A: Yes, sir

16 Q: -- and he called upon restaurants all around --

17 -

18 A: Yes, sir.

19 Q: --- the southeast?

20 A: Yes, sir.

21 Q: Do you think it would prudent to discuss that
22 with Mr. Archer whether or not he knew of
23 anybody that might want to come in and try to
24 salvage the restaurant? Or buy the equipment?

25 A: I don't think he would have sold it all.



1 Q: That wasn't what my question Mr. McMillian.

2 A: I thought I did the best thing for the cafe, is
3 to sell at auction and get the most money for
4 it. And get it all out of there.

5 Q: Okay. My question to you was that, Mr. Archer
6 with his contacts -- with all of the various
7 restaurants throughout the southeast, did you
8 think it would be prudent to discuss with him
9 closing the restaurant down and what was going
10 to be done with all of the assets?

11 A: No, sir. I don't think he could of sold it.

12 Q: Pardon me?

13 A: I don't think he could have sold everything out
14 of there.

15 Q: You didn't give him the chance, did you?

16 A: No, sir.

17 Q: Now then. This is a restaurant that had all
18 sorts of, I guess, perishables and non-
19 perishables, in the restaurant for resale and
20 use in creating meals, right?

21 A: Yes, sir.

22 Q: And what generally, value wise, was in the
23 restaurant for it's use in November of 2011
24 (sic)?

25 A: 2011?



1 Q: Excuse me. 2007?

2 A: Maybe a thousand dollars. I don't know if
3 that. We knew we were closing a certain day,
4 so we didn't order anything. Like we were out
5 of things we made on the menu. So we tried to
6 go down to bones, nothing. There was paper
7 goods left and a little bit of food left. Not
8 much.

9 Q: And what happened to all of that stuff?

10 A: I took it to the other store.

11 Q: And there was so much of it, you had to use the
12 Tiffany's on Two Notch's van to move it?

13 A: It was more than a car. Yes, sir. The cups
14 are in boxes were this high (indicating).

15 Q: And so you had to use a truck to move all of
16 that stuff from Devine Street to Two Notch?

17 A: Yes, sir.

18 Q: So starting in January of 2007 until when you
19 closed the restaurant in November of 2007, you
20 had the responsibility for running that
21 restaurant?

22 A: Yes, sir.

23 Q: And in fact, you turned that responsibility
24 over to your son?

25 A: Yes, sir.



- 1 Q: And he had no --
- 2 A: Under my supervision, yes, sir.
- 3 Q: He had no experience running a restaurant, did
- 4 he?
- 5 A: No, sir.
- 6 Q: And the loss suffered by the restaurant in
- 7 2007, the year that he was running it, was how
- 8 much?
- 9 A: It says \$35,000. That included IRS and state
- 10 tax commission stuff from the year before.
- 11 Q: So, \$35,000 was lost during that year?
- 12 A: Well, it's part of '06 also. Because the taxes
- 13 weren't paid in '06.
- 14 Q: Okay. But it says ---
- 15 A: But that's without ---
- 16 Q: --- 2007 was \$36,000 (sic).
- 17 A: Well part of that is the taxes though.
- 18 Q: Okay. Taxes from 2007?
- 19 A: 2006.
- 20 Q: You had taxes from 2007 that weren't paid.
- 21 A: 2006 weren't paid.
- 22 Q: You also have taxes for 2007 that weren't paid.
- 23 A: It had both years.
- 24 Q: Both years?
- 25 A: On the '07 year.



1 Q: Well you're not looking to Mr. Archer for the
2 responsibility to pay taxes for 2007, are you?

3 A: Those were paid. All these taxes -- bills were
4 from '06, '05 and '06. I have documents if you
5 want to see them. We paid in '07, because they
6 came in.

7 Q: Bear with me one minute. After you took over
8 the restaurant in January of 2007, did you
9 start to pay bills? Did you start to pay the
10 bills?

11 A: Yes, sir.

12 Q: The checks are so small I can barely make them
13 out. On one of the bills that you paid, you
14 paid on 3/30 of '07. Three months after you
15 started running that restaurant, did you not?

16 A: Yes, sir.

17 Q: And this bill that you paid was to whom?

18 A: To the bakery, to Tiffany's Bakery.

19 Q: To the bakery?

20 A: Yes, sir.

21 Q: Okay. And how much was it?

22 A: 4,000 dollars.

23 Q: And you also paid 10 days prior to that ---

24 A: 20.

25 Q: --- another bill.



1 A: 20 days.

2 Q: Did you not?

3 A: Yes, sir.

4 Q: And how much was that?

5 A: 5,000.

6 Q: \$5,000. And that was to whom?

7 A: The bakery.

8 Q: To the bakery?

9 A: Yes, sir.

10 Q: Okay. So you're taking money out of the

11 Tiffany account on Devine Street, totaling

12 \$9,000 in the month of April? And you're

13 paying that money to yourself?

14 MR. GIBBONS: Objection, your honor.

15 A: That's the supplier.

16 THE COURT: Hold on a second. What's the objection

17 you have, sir?

18 MR. GIBBONS: That's not who the check is payable

19 to. The check is payable to his business,

20 which is a different entity than Mr. McMillan

21 personally.

22 THE COURT: I'll give you a chance to re-direct

23 momentarily. Objection overruled.

24 Q: Okay. So, there was enough money in the

25 account three months after you took the



1 restaurant over to pay Tiffany's Bakery \$9,000?
 2 A: Yes, sir.
 3 Q: So, where did all of this money come from, if
 4 there was only \$1,300 in the account when you
 5 came in to take it over?
 6 A: In sales.
 7 Q: So the sales that were generated during the
 8 period of time that you were running it, when
 9 you had a \$36,000 loss for 2007, were
 10 sufficient to pay yourself \$9,000?
 11 A: They were for ---
 12 MR. GIBBONS: Objection, Your Honor. Same as
 13 before.
 14 THE COURT: Hold on one second. Hold on a second.
 15 MR. McMILLIAN: They were for supplies.
 16 THE COURT: One second. One second, Mr. McMillan.
 17 All right. What was your objection, Mr.
 18 Gibbons?
 19 MR. GIBBONS: He was characterizing those payments
 20 to himself, Your Honor. That's not what it is.
 21 But I understand your ruling.
 22 THE COURT: Objection overruled. Answer, Mr.
 23 McMillan.
 24 A: That was for supplies. The baked goods I took
 25 over there, they sold every day, came from the



1 Two Notch store. That's what it's for.

2 Q: Well if the Devine Street store is in so much
3 difficulty, so much trouble -- you're baking
4 nine thousand dollars worth of goods in April
5 of 2007 ---

6 A: Wasn't April.

7 Q: --- for sale to ---

8 A: It was ---

9 THE COURT: Hold on. Let him finish his question.
10 Then you can answer.

11 Q: --- for sale in April on the Devine Street
12 store?

13 A: No. That was for January through April.

14 Q: January through April?

15 A: Yes, sir.

16 Q: The three months, \$3,000 a month you ---

17 A: I could have been some in December. I don't
18 know when it was. They buy -- they sold
19 sometimes more than I did in December over at
20 the cafe than I had sold.

21 MR. ANDERSON: Let me mark these separately, please.

22 (Defendant's Exhibit Numbers 8 and 9 were marked for
23 identification purposes.)

24 Q: Does Mr. Archer have any personal liability to
25 Tiffany's on Devine?



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1 A: I would think so.

2 Q: He's a share holder in Tiffany's on Devine.

3 A: Yes, sir.

4 Q: And his investment is the \$40,000. Where does
5 he have personal responsibility for anything to
6 Tiffany's on Devine?

7 MR. GIBBONS: Calls for a legal conclusion, Your
8 Honor. Object.

9 THE COURT: Okay. Sustained.

10 Q: Mr. McMillian, y'all don't have an operating
11 agreement, do you?

12 A: Operating agreement as in what his duties were?

13 Q: Yeah. What his duties were.

14 A: No, sir.

15 Q: Is there an operating agreement with regard to
16 if there's a loss taken in the business, you
17 were going to put in 51 percent of the loss and
18 he's going to put in 49?

19 A: I would think that's a given.

20 Q: No, no, no. I say, is there anything written
21 down that says if the business takes a loss,
22 Mr. Archer is responsible for 49 and you're
23 responsible for 51?

24 A: Not in writing that I know of, no.

25 Q: Was that ever discussed with him?



1 A: I don't recall that.

2 Q: So if you don't recall that, then that would
3 mean that no, you never had that discussion
4 with him?

5 A: I don't know.

6 Q: What was the rent on the business property?

7 A: I think it started as 34- -- \$2,400 and went to
8 like 31 at the end of the lease. It'd escalate
9 every couple of years.

10 Q: All right. And at the time you closed it, how
11 much was it?

12 A: 31 something plus property tax.

13 Q: All right. So that would have been a total of
14 what?

15 A: Almost \$3,500.

16 Q: \$3,500. This was a ten year lease?

17 A: Yes, sir.

18 Q: And if you had closed the restaurant down when
19 Mr. Archer left, it would have been what,
20 \$40,000 worth of rental payments due?

21 A: Somewhere close to that. Yes, sir.

22 Q: Okay. And you were personally on that lease,
23 weren't you?

24 A: Yes, sir.

25 Q: So that's a personal liability that you would



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1 have had, correct?

2 A: I think so.

3 Q: And was it not your intention then to keep this
4 restaurant open as long as possible whether Mr.
5 Archer was running it or your son was running
6 it to pay the rent so that you wouldn't have
7 that personal liability?

8 A: I wanted to keep it open until the lease was
9 up. I thought that much of the landlord. Mr.
10 Patterson was a good landlord. And I signed a
11 lease for ten years and I was going to stay the
12 rest of the few months left.

13 Q: And you paid the rent out of the proceeds of
14 the restaurant ---

15 A: Yes, sir.

16 Q: --- so that you would not personally be
17 responsible for those lease payments?

18 A: That's not why I did it.

19 Q: Okay. When the business closed, did you call
20 Mr. Archer and tell him you were going to close
21 the business?

22 A: No, sir. The lease was up.

23 Q: I understand the lease was up but you weren't
24 going to renew the lease? You never had that
25 discussion with Mr. Archer? Don't you think



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1 you had some duty to discuss what was going to
2 go on with regard to the business after Mr.
3 Archer left?

4 A: No, sir. He resigned everything, his duties.
5 The lease was up so I didn't have no choice but
6 to close it.

7 Q: Okay. I understand that but still he's a 49
8 percent owner.

9 A: Yeah.

10 Q: He owned 49 percent of the stock.

11 A: Yes, sir.

12 Q: You own 51.

13 A: Right.

14 Q: Earlier on you said he was a bad manager,
15 right?

16 A: Yes, sir.

17 Q: And he was a bad manager why?

18 A: He didn't pay all the bills, he mismanaged
19 employees.

20 Q: And you owed 51 percent of this business don't
21 you?

22 A: Yes, sir.

23 Q: So you could have fired him as the manager
24 anytime you wanted?

25 A: Not really.



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1 Q: Well that's why you retained 51 percent of it
2 and he had 49 percent---

3 A: No. I wouldn't say ---

4 Q: --- so that you would be able to control the
5 business.

6 A: Control the name on there.

7 Q: Do you have anything in writing that says that
8 the reason you took 51 percent was to control
9 the name only?

10 A: I told him that. I don't have it in writing
11 but I told him that's why.

12 Q: But if you called a meeting of the shareholders
13 and you wanted to vote on doing something or
14 the other then you would automatically control
15 because you own 51 percent, correct?

16 A: I guess.

17 Q: Now if in turn, Mr. Archer paid or pays that
18 note, that money goes into Tiffany's on Devine
19 right?

20 A: Yes, sir.

21 Q: And then he would be entitled to 49 percent of
22 that wouldn't he?

23 A: Yeah.

24 MR. GIBBONS: Objection, Your Honor. Again that's
25 legal conclusion.



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1 THE COURT: Sustained.

2 A: That would go in an account. It should go to
3 pay bills first.

4 Q: Well, what if Mr. Archer said no, I want my
5 \$4,900? You shaking your head.

6 A: I don't know what the legal part of that is.
7 I have no idea.

8 Q: All right. Do you know whether or not Mr.
9 Archer paid those two checks out of his
10 personal account?

11 A: I would think he did.

12 Q: So this is \$3,500 for the benefit of the
13 company, right? Tiffany's on Devine.

14 A: Yes, sir.

15 Q: Does not that constitute an offset from his
16 \$10,000 note?

17 MR. GIBBONS: Objection, Your Honor, legal
18 conclusion.

19 THE COURT: Sustained.

20 Q: Did you make an effort to pay Mr. Archer back
21 his \$3,500?

22 A: No, sir.

23 Q: Why not?

24 A: I had lost a lot of money in it myself in this
25 other one.



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- 1 Q: Pardon me.
- 2 A: That's \$30,000 I had to pay out. We can offset
- 3 that anytime.
- 4 Q: Pardon me?
- 5 A: We can offset that in the end. No problem.
- 6 THE COURT: What did you just say, sir? I'm sorry.
- 7 A: I said we could offset, you know, like when
- 8 they put money in the account and we can pay
- 9 all our bills.
- 10 THE COURT: You weren't talking about the merits of
- 11 this case were you?
- 12 A: No, no, no. Huh-uh.
- 13 THE COURT: Okay. I'm sorry.
- 14 Q: And when it came time to pay your son's health
- 15 insurance, you paid that out of the Tiffany's
- 16 on Devine, correct?
- 17 A: Yes, sir.
- 18 Q: You wouldn't pay Mr. Archer's health insurance
- 19 but you paid your son's out of Tiffany's on
- 20 Devine.
- 21 A: Yes, sir. The Tiffany's on Two Notch couldn't
- 22 pay it. because he didn't work there anymore.
- 23 Q: One minute, Your Honor. I don't have anymore
- 24 questions, Judge.
- 25 THE COURT: Okay. Now there were some exhibits you



1 had on the table we didn't get into evidence.
2 Do you want me to admit them right now?
3 They're already marked.
4 MR. ANDERSON: I think Carlos -- excuse me, I think
5 Mr. Gibbons got those in through his.
6 THE COURT: All right.
7 MR. GIBBONS: No.
8 MR. ANDERSON: I would, I guess, like to go ahead
9 and put in all of these checks.
10 THE COURT: Okay.
11 MR. ANDERSON: In one exhibit.
12 THE COURT: Two exhibits?
13 MR. ANDERSON: They're one exhibit, Judge.
14 THE COURT: One exhibit, Number 6? Now the one that
15 you have in your hand, what's that number?
16 (Defendant's Exhibit Number 6 was introduced into the
17 record at this time.)
18 MR. ANDERSON: This one I don't think I'm gonna
19 introduce to this witness.
20 THE COURT: Okay. One moment please.
21 MR. ANDERSON: You can go ahead and skip me.
22 MR. GIBBONS: Your Honor, I have no redirect of
23 this witness. I'm going to call Mr. Creel back.
24 MR. McMILLAN - EXAMINATION BY THE COURT:
25 Q: Hold one second. Mr. McMillan, sometimes in



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1 non-jury cases the judge will ask questions.
2 And I don't let the lawyers follow up because
3 they'll drive you crazy. But I ask questions
4 and if they want to follow up on it, I don't
5 let them do it. I'm just curious, what kind of
6 corporation was this? Just a regular old
7 straight corporation or was it a sub-chapter S
8 corporation?

9 A: Is it S? I'm not sure.

10 MR. GIBBONS: Mr. Creel can answer that.

11 A: He can answer that. I can't.

12 Q: But you didn't know your ---

13 A: I think it's a S.

14 Q: You think it was S. Okay.

15 A: I'm not sure, you know. I hate to answer that.

16 Q: Say again, sir.

17 A: I hate to answer that but he would know, Mr.
18 Creel would.

19 THE COURT: All right. Thank you so much. You may
20 come down. Watch your step coming down, sir.

21 MR. ANDERSON: Can we take a short break sir?

22 THE COURT: Sure, sure. We stand in recess until
23 ten minutes till four o'clock, a ten minute
24 break.

25 (Off the Record)



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1 THE COURT: Now the Court Reporter and my staff
2 indicate that they can stay late tonight to
3 try to finish today and ---

4 MR. GIBBONS: We will try our best to finish today.

5 THE COURT: Well we can. I told my wife about six
6 but if it's later than that she'll have to wait
7 until I get there, you know. I wear the pants
8 in the family.

9 COURT REPORTER: Me too.

10 MR. ANDERSON: Are we ready then, Your Honor?

11 THE COURT: Yes, sir.

12 MR. GIBBONS: I call Mr. Glenn Creel.

13 GLENN CREEL, having been duly sworn, testifies as
14 follows:

15 MR. CREEL - DIRECT EXAMINATION BY MR. GIBBONS:

16 MR. GIBBONS: Judge, just a housekeeping matters
17 before Mr. Creel testifies. The court reporter
18 spoke to Mr. Anderson and myself during the
19 break about some apparent confusion over what
20 got admitted. And Mr. Anderson and I
21 stipulated that everything that you've got on
22 the bench there is admitted as of a piece of
23 evidence in the case.

24 THE COURT: All right. Let's go through it and make
25 sure. Plaintiff's 1 I'm looking at,



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1 Plaintiff's 6, Plaintiff's 7, Plaintiff's 4,
2 Plaintiff's 3, Plaintiff's 5 and Plaintiff's 2.
3 That's all?

4 MR. GIBBONS: Yes, sir.

5 THE COURT: All right. Mr. Anderson, Defendant's 6,
6 Defendant's 4, Defendant's 8, Defendant's 9,
7 Defendant's 2 and Defendant's 1.

8 MR. ANDERSON: Yes, sir.

9 THE COURT: Okay.

10 MR. GIBBONS: Thank you, Your Honor.

11 Q: If it pleases the court, Mr. Creel give us your
12 full name and address -- your employment
13 address please.

14 A: Glenn Creel. 550 Spears Creek Church Road
15 Suite C, Elgin, South Carolina, 29 ---

16 Q: I'm sorry.

17 A: 29045.

18 Q: And what is it you do for a living, sir?

19 A: I'm an accountant.

20 Q: And how long have you been in the accounting
21 world?

22 A: 44 years.

23 Q: And basically what sort of services would your
24 company or your firm offer to a business like
25 Mr. McMillan's?



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- 1 A: We offer full bookkeeping, payroll services and
2 tax -- income tax preparation, sales tax,
3 payroll tax preparation and advisory services
4 that they so choose.
- 5 Q: And just very briefly if you could, can you
6 give us a summary of your educational
7 background and your experience other than your
8 43 plus years as an accountant?
- 9 A: Okay. Graduated from ---
- 10 THE COURT: I'll stipulate that he's an expert CPA.
- 11 Q: Very Well. Thank you, Your honor.
- 12 A: Let me back up I'm not a CPA. I'm an enrolled
13 agent.
- 14 Q: And that would be my next question explain what
15 an enrolled agent is what do those words mean?
- 16 A: Enrolled agent means that I've been certified
17 by the Internal Revenue Service to represent
18 clients before the Internal Revenue Service,
19 the same as a CPA or an attorney.
- 20 Q: But you've had that designation since what
21 year?
- 22 A: 2003
- 23 Q: So about 13, almost 13 years?
- 24 A: Right.
- 25 Q: Okay. Now with regard to Mr. McMillan's

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- 1 business how long have you been providing those
2 same services to him?
- 3 A: Since the year 2001.
- 4 Q: And obviously he had been in business and using
5 other services up to that point?
- 6 A: That's correct.
- 7 Q: But ever since 2001 you've been the financial
8 guy for the businesses of Mr. McMillan?
- 9 A: Yes, sir.
- 10 Q: Okay. I think the Judge had a question right
11 before we broke that nobody seemed to know the
12 specific answer to. Tiffany's Bakery and Cafe
13 on Devine. What type of corporation was it?
14 And we were caught between S and C.
- 15 A: It's an S corporation.
- 16 Q: It's an S corporation? Is the store on Two
17 Notch also an S?
- 18 A: Yes, sir.
- 19 Q: Okay.
- 20 A: It is.
- 21 Q: Now were you aware when Mr. James Archer came
22 into the picture and wanted to purchase a share
23 of the Devine Store business?
- 24 A: I had some foreknowledge of that. Mr. McMillan
25 had approached me and said that with the



1 manager leaving he was taking on a partner or
2 a shareholder to take over the management and
3 run that store.

4 Q: And did Mr. Archer ever have any discussions
5 with you about any specific details or any of
6 the terms or provisions of that arrangement?

7 A: As well as I can remember he did call for some
8 copies of some financial statements on it and
9 we did give it him them. I don't recall any
10 other in depth conversation with him about
11 that.

12 Q: Okay. Did any attorney contact you on his
13 behalf about the transaction?

14 A: Not that I can recall.

15 Q: Did any other accountant, tax preparer,
16 bookkeeper, anybody else contact you?

17 A: Not that I recall.

18 Q: Any person that would be in the business of
19 evaluating a business or giving ---

20 A: No, sir.

21 Q: --- advice about these types of things.

22 A: No, sir.

23 Q: Did you give Mr. Archer everything he asked
24 for?

25 A: Yes, sir.



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- 1 Q: Was there anything that he asked about that you
2 didn't provide or supply to him?
- 3 A: No, sir.
- 4 Q: All right. So at some point you learned that
5 the arrangement had been consummated and Mr.
6 Archer was a 49 percent shareholder of the
7 Devine Store location, correct?
- 8 A: Yes, sir.
- 9 Q: All right. Now when he first started working
10 there he did not have check writing authority.
11 Is that your understanding?
- 12 A: That's my understanding.
- 13 Q: Okay. Do you know about when that changed?
- 14 A: Oh, I think it was within the first year if I
15 remember correctly on that. I may be off but
16 I think it was within the first year.
- 17 Q: Okay. During his operation of the business,
18 did he ever independently contact you for any
19 kind of business advice or tax advice or any
20 financial questions or concerns or anything?
- 21 A: There were a few times he called to question
22 how things were done on certain items. I don't
23 remember any specific situations but we did
24 have some conversation.
- 25 Q: Okay. And with regard to the payroll services



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1 that your firm provided, explain a little more
2 in detail how that would work. How would you
3 receive the information, what would you do with
4 it and how would you deliver that information
5 back to Mr. Archer?

6 A: We generally provided a time sheet page that
7 they would send back to us either fax or
8 dropped by our office. And we would prepare
9 the payroll checks. They would come by and
10 pick them up. And if I remember correctly they
11 were getting paid bi-weekly, I think, on that.
12 They would pick up the checks. We did not sign
13 checks. We did not have signing authority.
14 They would pick up the checks, sign them and he
15 would be responsible for giving them out.

16 Q: And what about for the tax deposits, the
17 various withholdings and sales tax and other
18 tax liabilities that businesses have. How was
19 that handled?

20 A: We would prepare the coupons for the monthly
21 payroll tax deposits and give them to them.
22 This was before the days of mandatory EFTPS
23 filing by the IRS, we would ---

24 THE COURT: I'm sorry, sir. I don't know what that
25 means.



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1 A: Okay. EFTPS is Electronic File Taxpayer
2 Services and the IRS is now mandated that
3 taxpayers go to that where it's done
4 electronically and no longer accept checks with
5 the coupons. So in the previous years you
6 could take the tax coupons to a authorized bank
7 and they would accept payment. So we prepared
8 the coupons, sent them in. We prepared the
9 sales tax returns. We gave them to them to be
10 paid.

11 Q: But you did not sign checks?

12 A: We did not sign checks.

13 Q: You did not sign those returns?

14 A: Did not sign those returns.

15 Q: And did not follow-up to see that tax payment
16 coupons got made in a correct fashion?

17 A: When we reconciled the bookkeeping at the end
18 of the month, we would recognize that either
19 the checks had not been recorded or were still
20 outstanding, maybe had been written and were
21 outstanding.

22 Q: We'll return to that but I first want to ask
23 you if you are aware of the significance that
24 the IRS places on a person who signs payroll
25 checks?



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1 A: Yes, sir.

2 Q: Tell us more about that if you would, please.

3 A: It's called responsible party. And they hold
4 anybody that has control over the funds of the
5 assets of the business responsible for issuing
6 payroll checks. They hold them responsible
7 outside of the responsibility of the
8 corporation.

9 Q: So personal liability?

10 A: Personal liability.

11 Q: So if John Doe signs the payroll check, John
12 Doe is personally liable for the deposit of the
13 taxes that are associated with that payroll
14 check?

15 A: Yes, sir. In the eyes of the IRS they are.

16 Q: In the eyes of the IRS. And do you know who
17 the responsible person was for Tiffany's Cafe
18 and Bakery on Devine?

19 A: Far as I know, Mr. Archer was signing those
20 checks.

21 Q: Okay. And was there ever any information that
22 you received that changed that knowledge by
23 you?

24 A: No, sir.

25 Q: Now at what point in time did you become aware



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1 of the general financial challenges that the
2 Bakery and Cafe on Devine was going through?

3 A: Probably about 2000- -- end of 2004, 2005 I
4 would say. Mr. McMillan started expressing
5 concern about the business wasn't doing as well
6 as he thought it should be.

7 Q: What information did you observe as far as
8 changes in gross sales, changes in net profits,
9 any losses -- what did you see from the books?

10 A: Well we did see that there was a steady decline
11 in the volume of the business. And the
12 profitability was dropping off, tax returns
13 were not looking good. The revenues -- the
14 bank account was not looking good.

15 Q: And at what point did you specifically learn
16 that taxes were being unpaid?

17 A: In about '05 we noticed that they were starting
18 to drag, that they were not being paid timely.
19 In '06 started getting serious letters from the
20 IRS, the latter part of '06. Threatening with
21 liens and things of that nature not only from
22 the IRS but State Department of Revenue.

23 Q: And to whom were those letters being addressed?

24 A: They were addressed to Tiffany's Bakery -- Cafe
25 and Bakery on Devine Street but I did have one



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1 letter that was addressed to Mr. Archer
2 directly from the Internal Revenue Service.

3 Q: And what if anything did -- were you aware of
4 that was done either by Mr. McMillan or by Mr.
5 Archer or by yourself to address any of those
6 issues?

7 A: We had a couple of conversations about it.
8 Obviously the money wasn't there. Once Mr.
9 Archer was out of the business I advised Mr.
10 McMillan that he needed to go ahead and pay
11 these taxes because they weren't going away and
12 the longer they sat out there the more
13 penalties and interest were going to accrue.
14 And they were going to come after somebody. So
15 we need to go ahead and get them paid.

16 Q: And are you aware that he did personally pay
17 them?

18 A: Yes, sir.

19 Q: And were you involved in that process?

20 A: I was.

21 Q: And was Mr. Archer involved in that process at
22 all?

23 A: No, sir.

24 Q: Were you aware that Mr. Archer resigned his
25 position with the corporation sometime in early



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1 January of '06?

2 A: Yes, sir.

3 Q: And how did you come across that knowledge?

4 A: Mr. McMillan shared with me that Jim was
5 leaving and I think Mr. Archer and I may have
6 had some conversation. I don't remember
7 exactly how that came about, I don't know that
8 he told me or I heard it through Mr. McMillan
9 but I was aware that he was leaving the
10 business.

11 Q: What was your understanding of the relationship
12 that existed at that time between Mr. McMillan
13 and Mr. Archer?

14 A: I know they had known each other for a long
15 time and it appeared that the relationship was
16 on a -- on somewhat of a downward trend.

17 Q: In a word they were not cooperating with each
18 other or ---

19 A: Exactly.

20 Q: --- communicating with each other.

21 A: Not communicating fully with each other.

22 Q: Okay. Do you know of any efforts Mr. McMillan
23 took to try to get Mr. Archer involved in the
24 tax payment situation?

25 A: There were several conversations that I had



1 privy to that, you know, we talked about, hey
2 we got to start making these things on time.
3 But that didn't help a whole lot.

4 Q: Are you aware of any personal profit or
5 personal gain or benefit that Mr. McMillan ever
6 received from the Devine Street store?

7 A: No, sir.

8 Q: To your knowledge did he ever receive a
9 paycheck?

10 A: Not that I know of.

11 Q: And did he ever get any other personal benefit
12 that you're aware of, out of the Devine Street
13 store?

14 A: No, sir.

15 Q: Now. You mentioned the penalties and the
16 interest and all that accrued. Was -- did any
17 effort get made to try to evade or avoid or
18 reduce those penalties and interest?

19 A: I wrote a letter to the Department Of Revenue,
20 I think it was in '07 asking for an abatement
21 of some of the penalties. They generally don't
22 abate interest but I did ask for abatement of
23 penalties to no success.

24 Q: So they pretty much went after every penny they
25 could get.



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- 1 A: Right. And their reasoning on that was the
2 history for the last year -- year and a half,
3 if it'd had been a one time deal they probably
4 would have been more willing to have done that.
- 5 Q: Are you aware of the promissory note that Mr.
6 Archer signed in favor of the corporation for
7 his -- for a portion of the stock purchase?
- 8 Q: And how did that promissory note get carried on
9 the books of the corporation?
- 10 A: It was shown as a receivable from Mr. Archer in
11 the asset section of the balance sheet.
- 12 Q: Is it still shown in that same status?
- 13 A: Yes, sir.
- 14 Q: Are you aware of any payments Mr. Archer made
15 on that promissory note?
- 16 A: No, sir.
- 17 Q: You've been through situations with clients
18 with the IRS where past due taxes and penalties
19 and interests are involved, correct?
- 20 A: Yes, sir.
- 21 Q: And what is your conclusion about what the end
22 result of this situation would have been had
23 Mr. Mcmillan not paid those taxes personally?
- 24 A: They would have come after the assets of the
25 corporation which had basically was nothing,



1 then they would have gone after the assets of
2 the individual.

3 Q: And which individual in particular?

4 A: Either one. They have no preference, which
5 ever one has assets that's the one they are
6 going to come after.

7 Q: And by Mr. McMillan paying those taxes and
8 interests and penalties personally, Mr. Archer
9 benefitted as well did he not?

10 A: Yes, sir.

11 Q: That's all the questions I have, Your Honor,
12 thank you.

13 THE COURT: Ok Mr. Anderson?

14 MR. CREEL - CROSS EXAMINATION BY MR. ANDERSON:

15 Q: Was the company profitable in 2003?

16 A: No, sir.

17 Q: And you know what the loss was in 2003?

18 A: I think, according to the tax return in 2003,
19 my memory not be quite right but I want to say
20 it was about \$29,000. I could be -- I have
21 that on the table over there.

22 Q: Judge, can I hand Mr. Creel a document he might
23 want to reference to? I just handed you a
24 document. Is that the one you prepared?

25 A: I prepared this this morning. Yes, sir.



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1 MR. ANDERSON: Will you go ahead and put that in as
2 one exhibit?

3 THE COURT: That's fine.

4 (Off the Record)

5 MR. ANDERSON: All right so how about 2002 was a
6 profitable?

7 THE COURT: I'm sorry start all over again.

8 MR. ANDERSON: I'm sorry.

9 THE COURT: All right. Go ahead and start again.

10 Q: And 2002 was it profitable?

11 A: No, sir.

12 Q: AND 2001 was a profit?

13 A: Yes, sir.

14 Q: So do you know what it was, the profit in 2001?

15 A: 2001 I think was 32 -- \$3,300, if I remember
16 correctly.

17 Q: Okay. And 2002 was unprofitable?

18 A: Yes, sir.

19 Q: How much?

20 A: I think it was unprofitable about that amount
21 the 31, \$3,200, if I remember correctly.

22 Q: And then in 2003 it was unprofitable how much?

23 A: \$29,365.

24 Q: And when you take into consideration that Mr.
25 Archer paid in his \$30,000 for the purchase of



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1 the spot, which went into the account, that
2 would really mean that it was unprofitable
3 \$49,000.

4 A: No, sir. There's a difference between
5 profitability and cash flow.

6 Q: Okay. So this is profitability?

7 A: Yes, sir.

8 Q: So what's the difference than if Mr. Archer
9 paid \$30,000 to Mr. McMillan and Mr. McMillan
10 put that money in the account? That means that
11 if he hadn't put that in there then \$29,000
12 would have been the loss coupled with ---

13 A: No, sir. The stock sale is not a taxable
14 income.

15 Q: Okay.

16 A: The corporation transferred stock to Mr.
17 Archer.

18 Q: Right.

19 A: The money that was put in is not a taxable
20 entity at that point for the corporation.

21 Q: When does it become a taxable entity?

22 A: It becomes a taxable entity if Mr. McMillan had
23 gotten the money instead of the corporation.

24 Q: So he would not show that on his books at all?

25 A: It would show it on the books as a receipt --



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1 as shareholder equity for Mr. Archer.

2 Q: But that money was used to pay bills of
3 Tiffany's on Devine.

4 A: That's correct.

5 Q: Okay. And Mr. Archer came to work for
6 Tiffany's in April of 2003?

7 A: It was in '03 I'm not -- wasn't sure what
8 month. But yeah, I'll go along with that.

9 Q: The next year what was the status of the
10 business?

11 A: Showed a loss of \$9,194.

12 Q: And that's when Mr. Archer was able then
13 partially bring things under control?

14 A: Somewhat.

15 Q: And then in 2005?

16 A: Yes, sir.

17 Q: And what was at that point?

18 A: \$11,311 loss.

19 Q: Okay. Still were getting it under control
20 somewhat. Not as good as the prior year.

21 A: Not as good as the prior year.

22 Q: All right. And then in 2006 what was it?

23 A: \$19,671 loss.

24 Q: Okay. You understand that was for Mr. Archer's
25 last year.



1 A: Yes, sir.

2 Q: Okay. You had discussions with Mr. McMillan
3 about things not getting paid when they're
4 suppose to be paid?

5 A: Yes, sir.

6 Q: So he was being kept abreast that this business
7 has got problems?

8 A: From the standpoint of taxes. Yes, sir.

9 Q: Okay. Did it appear that other vendors weren't
10 being paid or were you privy to that
11 information?

12 A: Not privy to that information.

13 Q: The only thing that you were privy to were IRS
14 withholdings, state tax withholding, sales tax
15 withholdings ---

16 A: Yes, sir.

17 Q: --- and those matters? And when did they -- or
18 when did it come to your attention that they
19 weren't being handled properly?

20 A: You talking about the payroll taxes, etcetera?

21 Q: Yeah. The ones that you were doing.

22 A: That we were doing? In the -- about mid '06.

23 Q: Mid '06.

24 A: Somewhere in that neighborhood.

25 Q: So, prior to mid '06 those were all being paid



1 on time?

2 A: They were being -- if I remember correctly they
3 were being paid fairly -- they may not have all
4 paid on time but they were not stacking on top
5 of each other.

6 Q: All right. So Mr. Archer then, through the
7 probability of the restaurant was able to keep
8 those people happy? To a degree.

9 A: To a degree.

10 Q: He may have been a quarter past due, but he's
11 none the less keeping them happy.

12 A: If you can keep them happy.

13 Q: If you can keep them happy. What would have
14 been the busiest month of this restaurant?

15 A: I have no idea. I hate tell you that. I
16 don't.

17 Q: You were not privy to what was being deposited
18 to the account?

19 A: I did. I have that information but I don't
20 remember what the busiest months of the year
21 were.

22 Q: You also reconciled books ---

23 A: Yes, sir.

24 Q: --- so to speak on the month on the monthly
25 basis. Would you have conversations with Mr.



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1 McMillan on a monthly basis as to what's going
2 on with the business?

3 A: Not necessarily on a monthly basis.

4 Q: Did he indicate to you that he had had
5 conversations with Mr. Archer as to what the
6 business was doing a monthly basis?

7 A: Yes, sir.

8 Q: Do you know that he sat down with Mr. Archer on
9 a very frequent basis to discuss what the
10 business was doing?

11 A: I really don't have knowledge of that.

12 Q: Do you have knowledge of the balance that was
13 in the account in December 30th, 2006?

14 A: I'm sure it's in my records. I don't recall it
15 off the top of my head but I'm sure it's in my
16 records.

17 Q: Do you have those records here?

18 A: Yes, sir.

19 Q: Can you get that real quick?

20 A: Yes, sir. The balance -- the reconciled
21 balance for outstanding checks at the end of
22 December of '06 was a credit balance -- a
23 negative balance of \$13,111.

24 Q: So \$13,000 worth of bad checks had been
25 written?



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- 1 A: Well the checks had been written. Maybe not
2 sent out.
- 3 Q: What was actually in the account?
- 4 A: I don't have that information with me.
- 5 Q: So I -- as I understand what you're telling me
6 is that you looked at the checkbook and added
7 up all the checks that had actually been
8 written but not sent out and it was some
9 13,000.
- 10 A: Yes, sir.
- 11 Q: But you don't know how much was actually in the
12 account?
- 13 A: I don't know what was in the account per se.
14 When we reconciled the bank, we go with what's
15 been written. Not necessarily what's in the
16 bank.
- 17 Q: Okay. Thank you.
- 18 A: Yes, sir.
- 19 Q: Do you know the percentage of the business that
20 was paid by a credit card, visa be cash and
21 checks?
- 22 A: On the income side?
- 23 Q: Right.
- 24 A: No, sir. But it -- traditionally in restaurant
25 business it's a pretty high ratio of credit



1 card business.

2 Q: Say 95 percent?

3 A: Not that high. I'm going to guess 65, 35.

4 Q: And those monies come in at a later point that
5 the cash money?

6 A: Usually the next day.

7 Q: Okay. Were you providing to Mr. McMillan a
8 monthly profit and loss?

9 A: Yes, sir.

10 Q: And that monthly profit and loss would have
11 shown the status of the business also?

12 A: Yes, sir.

13 Q: And Mr. McMillan would have known some time in
14 2006 that they were having problems.

15 A: If he was looking at the financial statements.

16 Q: Well if he owns 51 percent that's kind of one
17 of his obligations and responsibilities to
18 follow up, right?

19 A: I can't judge that. I have a lot of
20 partnerships, a lot of people with S-Corps
21 where some shareholders don't look at the
22 financial statements every month.

23 Q: He's got a 51 percent ownership in this
24 business. He's personally on the lease, right?

25 A: Yes, sir.



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1 Q: And there's a couple of other notes out there
2 floating around dealing with the business as
3 well?

4 A: That's correct.

5 Q: And he's personally on those notes?

6 A: Yes, sir.

7 Q: And a businessman then, if he were any at all
8 astute, would be following what the restaurants
9 doing?

10 A: You would think. In my experience, not always
11 the case.

12 Q: In 2006, when the taxes weren't being paid, do
13 you know the extent of the amount that wasn't
14 being paid and whether or not -- say that's
15 what would have been due for the fourth quarter
16 would have been used to pay the third quarter?

17 A: Yes, sir. The amounts if I recall correctly
18 were running five to \$6,000 a quarter for
19 payroll taxes. Sales taxes I don't remember the
20 number off the top of my head there but the
21 penalty -- the South Carolina Department of
22 Revenue, if you don't pay the sales tax on time
23 the penalty of interest is substantial. The
24 IRS also has substantial penalties for that but
25 the sales tax has a more severe penalty that the



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1 payroll tax.

2 Q: But here before the restaurant was managing to
3 pay those taxes, albeit late?

4 A: Yes, sir.

5 Q: And that started in 2006?

6 A: As well as I remember.

7 Q: What were you able to discern after the 2006
8 that was different from three, four and five?

9 A: The volume was going down considerably. That
10 effects cash flow. Payroll wasn't going down in
11 proportion to the volume. So the expenses were
12 still maintaining pretty high. But from 2005 to
13 2006 there was a -- almost a \$40,000 drop in
14 sales which was -- over a ten percent drop in
15 sales. I don't remember what the percentage of
16 labor was but it didn't drop proportionately.

17 Q: Was the rent being paid on time?

18 A: I can't answer that question. I don't know.

19 Q: Okay.

20 A: I'm assuming it was but I don't know that for a
21 fact.

22 Q: How about the two notes upon which Mr. McMillan
23 was personally responsible. Were they being
24 paid on time?

25 A: I don't know that either.



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- 1 Q: Do you know that there were some months when Mr.
2 Archer wouldn't take a paycheck?
- 3 A: I know that he had months when his paycheck
4 wasn't cashed.
- 5 Q: When you looked at 2006, your testimony was that
6 there was a negative balance of what, 13,000 I
7 think you said?
- 8 A: Yes, sir.
- 9 Q: But you don't know what had been or what could
10 have been the deposited to the account?
- 11 A: I don't ---
- 12 Q: What was in the account?
- 13 A: I don't have those records with me.
- 14 Q: Did Mr. McMillan ever express dissatisfaction to
15 you with Mr. Archer's running of the restaurant?
- 16 A: Yes, sir.
- 17 Q: And what did he say was the problem in 2006?
- 18 A: Well. He told me he thought that Mr. Archer had
19 more background in restaurant management. That
20 he had told him that he had background in that
21 and he thought he was going to be able to come
22 in and build the business and in fact the
23 business was going downhill instead of going
24 uphill. And that he apparently didn't have the
25 experience that he thought he had.



1 Q: But when he took it over and had his first full
2 year he brought the loss down some \$20,000. In
3 the next year he brought the loss down from 2003
4 to what, \$18,000?

5 A: I'm sorry run that by me again.

6 Q: I'm saying in 2005 he brought the loss that had
7 been sustained in 2003, he brought it down what
8 would that be \$18,000?

9 A: \$18,000.

10 Q: And you were aware that 2007 Mr. Archer had no
11 further association with the restaurant?

12 A: Right. There was a time when Mr. McMillan was
13 transferring product from his bakery on Devine
14 -- Two Notch Road to the Devine Street store.
15 And he was getting paid for that merchandise.
16 When cash got tight in the cafe, he wasn't
17 getting paid for that merchandise. So it was
18 showing up in sales with no purchase price. So
19 it was making the store look more profitable
20 than it was. So a lot of that is attributable
21 to that.

22 Q: Are you aware that in 2007, after Mr. McMillan
23 took over the business, in one month he paid
24 Tiffany's on Two Notch \$9,000?

25 A: I am.



1 Q: Okay. And do you know what that was for?

2 A: Well it was a partial payment on back bills that
3 had not been paid. He owed a lot more than that
4 to the other corporation.

5 Q: Are you aware that the fixtures and the assets
6 of this restaurant were auctioned off?

7 A: Yes, sir.

8 Q: Do you know what the net proceeds from that
9 auction were?

10 A: I recall the net proceeds. It was 24,000 less
11 fees from the auctioneer brought it down to
12 about seventeen five.

13 Q: Seventeen five?

14 A: Yes, sir.

15 Q: And that was money that was placed in to the
16 account ---

17 A: Yes, sir.

18 Q: --- and they used to pay bills?

19 A: Used to pay bills.

20 Q: Okay. Are you aware that Mr. Archer would have
21 had a 49 percent interest in the proceeds from
22 the sale of that auction?

23 A: Typically in a corporation, proceeds -- the
24 ownership only gets money once all the bills are
25 paid. So if there's still outstanding



1 liabilities usually people who own the business
2 are last to get their money.

3 Q: You mentioned about the past liability that the
4 IRS would come after the assets of the business
5 ---

6 A: Yes, sir.

7 Q: And that those assets were insufficient or they
8 didn't have any assets, they'd come after the
9 individual owners?

10 A: They have that right.

11 Q: Okay. And that would be both of the owners.

12 A: Yes, sir.

13 Q: And that would be Mr. Archer as a 49 percent
14 owner and Mr. McMillan ---

15 A: Yes, sir.

16 Q: --- 51 percent owner. Do you know the extent to
17 which Mr. McMillan paid any monies into
18 Tiffany's?

19 A: Mr. McMillan paid the IRS and the Department Of
20 Revenue directly, without putting the money into
21 Tiffany's. But he paid it from his personal
22 funds, for the benefit of Tiffany's Cafe.

23 Q: Do you whether there's a note from Tiffany's to
24 Mr. McMillan for those monies?

25 A: We're showing that as a stockholder loan.



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- 1 Q: A stockholder loan. And how much is that loan?
- 2 A: I don't remember off the top my head sir.
- 3 Q: 2007 you're showing a loss of \$10,000. Does
- 4 that represent the loss after Mr. McMillan paid
- 5 taxes or is that just the loss?
- 6 A: That's just the loss.
- 7 Q: Is that ---
- 8 A: Most of these taxes were not paid, if I remember
- 9 correctly, until after that.
- 10 Q: Okay. Does this loss take into consideration
- 11 the sale of the goods of the ---
- 12 A: Yes, sir.
- 13 Q: --- business? So the loss then would have been
- 14 \$19,000 in excess of this?
- 15 A: Yes, sir.
- 16 Q: So the loss then for 2007 the year that you ---
- 17 A: Actually. Let me back up. Actually I think on
- 18 sale of all the equipment there was some of the
- 19 equipment sold outside of the auction. Now I
- 20 think the gain on all of the sale of the
- 21 equipment was \$24,000.
- 22 Q: Okay. All right. So \$24,000 then should have
- 23 been counted in here as well?
- 24 A: Yes, sir.
- 25 Q: So that would have meant the loss would have



1 been \$34,000?

2 A: The operating loss was \$34,000.

3 Q: And that does not include any money that Mr.
4 McMillan would have paid on taxes individually?

5 A: Correct.

6 Q: So, if Mr. Archer had no affiliation with the
7 restaurant in 2007 it did it's absolute worse.

8 A: Well, I need to go back and look at the payments
9 for Mr. McMillan. I may have the dates wrong.
10 I don't actually remember when all those
11 payments were made. I know it was strung out
12 over several years.

13 Q: Well Mr. McMillan is talking about how bad Mr.
14 Archer ran the restaurant. But during that last
15 year the restaurant would have taken a hit of
16 \$34,000.

17 A: Sales were down 40,000.

18 Q: During that year that year that.---

19 A: During that year.

20 Q: --- Mr. McMillan was running it?

21 A: Which is fairly consistent. They were down
22 39,000 from '05 to '06. So it was a steady
23 spiral.

24 Q: You talking about the ---

25 A: The volume.



1 Q: --- receipts?

2 A: Receipts.

3 Q: Did Mr. McMillan ever explain to you why the
4 receipts went down in the fashion that they did?
5 Did he have an explanation for that?

6 A: Did not.

7 Q: Now, when you say that Mr. Archer called on you
8 but you weren't quite sure whether you provided
9 him with any financial information into 2003
10 before he became an owner in the business?

11 A: Now we did provide him copies of financial
12 statements before he became -- in the business.
13 He needed copies so we provided them at the
14 permission of Mr. McMillan.

15 Q: And you also say that he may have called you
16 from time to time?

17 A: He and I had some conversations from time to
18 time. He'd come by the office to pick up
19 payroll checks sometimes we'd talk and he'd call
20 me occasionally on something.

21 Q: Did he express to you concern about not having
22 sufficient revenues to pay the various taxes for
23 which he and Mr. McMillan would be responsible
24 for?

25 A: He would say he and Jim would have to get



1 together on some things. Wasn't sure how they
2 were going to pay some of the bills.

3 Q: Your -- you understand that it's shareholders
4 liability, other than perhaps for taxes, is
5 limited to his investment in the corporation?

6 A: Yes, sir.

7 Q: So various vendors then, if they were not
8 paying, could sue the corporation but not the
9 stockholders.

10 A: If the stockholders signed personally they
11 could.

12 Q: They could, correct. You know whether or not
13 there were any personal guarantees on any of the
14 vendors accounts?

15 A: I do not.

16 Q: Are you aware that after 2006 Mr. Archer was not
17 advised that an auction was going to take place
18 and how the business was running the serious
19 nature of the business and taxes of the
20 business?

21 A: I have no knowledge of what conversation took
22 place between Mr. Archer and Mr. McMillan during
23 that time.

24 Q: I have no further questions.

25 THE COURT: Redirect?



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1 MR. GIBBONS: Just very briefly you honor.

2 MR. CREEL - RE-DIRECT EXAMINATION BY MR. GIBBONS:

3 Q: This might seem to elementary, Mr. Creel but
4 there are two ways a shareholder realizes return
5 on his investment. One is if the corporation
6 declares a dividend, correct?

7 A: Correct.

8 Q: The second way is if he sells the stock for more
9 than he bought it?

10 A: Correct.

11 Q: Were either of those scenarios possible based on
12 what you knew and what you observed of that
13 financial condition of the cafe on Devine
14 Street?

15 A: No, sir, neither.

16 Q: So Mr. Archer had 49 percent. He could have had
17 80 percent and it would have been the same
18 result. Correct?

19 A: It would have been.

20 Q: Or could he -- he could have had two percent, it
21 would have been the same thing?

22 A: Been the same thing.

23 Q: The big liability was his personal execution of
24 the note and his personal potential liability
25 for the taxes.



1 A: That's correct.

2 Q: That's all I have, Your Honor, thank you.

3 THE COURT: Any cross sir?

4 MR. ANDERSON: No, sir.

5 MR. CREEL - EXAMINATION BY THE COURT:

6 Q: Sometimes in an non-jury case the judge will ask
7 questions and again it's elementary and I
8 apologize. I guess, you know, what advantage is
9 it to people when they choose a business
10 organization? Why is the subchapter S
11 corporation so popular for people just starting
12 out? Why would you do that instead of just a
13 regular straight corporation?

14 A: The profits or losses passed through to the
15 shareholders, that's what we call a passed
16 through entity. The corporation itself doesn't
17 pay taxes in an S corporation. So if you start
18 out a new business and you have a loss you can
19 use it against your personal -- other personal
20 income. Whereas, a C corporation, if you make
21 a profit, the C corporation has to pay taxes and
22 the shareholders have to take salaries or
23 dividends out to realize benefit from it.

24 Q: Now so, I'll make this clear, I'm going to give
25 you a test on it. If there were losses and Mr.



1 McMillan paid them paid them, paid the taxes or
2 whatever and there are losses he can get
3 deduction on his personal income tax return for
4 the loss of the business?

5 A: Well the losses are divided proportion to the
6 ownership of the business.

7 Q: So he takes 51 percent of it?

8 A: Takes 51 percent of it.

9 Q: And Mr. Archer get's 50 percent? 49 percent.

10 A: 49 percent.

11 Q: 49 percent. See why I'm not an accountant? And
12 did that happen in this case?

13 A: Yes, sir.

14 Q: That happened? So Mr. McMillan got a tax
15 deduction and so did Mr. Archer?

16 A: Yes, sir.

17 Q: Okay. All right. Thanks, that's about all I
18 have. Thank you. You may come down, sir.
19 Watch your step.

20 A: Now, I am.

21 MR. ANDERSON: Can I ask a follow up on that Judge?

22 THE COURT: Well. I usually don't allow it. Mr.
23 Gibbons do you object? I'd give you a follow up
24 too.

25 MR. GIBBONS: I don't object. If I get a chance to



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1 follow up, Your Honor.

2 THE COURT: Okay. Go ahead.

3 MR. CREEL - RE-CROSS EXAMINATION BY MR. ANDERSON:

4 MR. ANDERSON: If I understood you question or the
5 question the judge posed to you and your
6 response, so for the monies that Mr. McMillan
7 put into company he was able to take a write off
8 on his individual taxes for that?

9 A: He can take 51 percent of the money he put into
10 the company to pay bills. He couldn't take the
11 money he put in off. But the bills that he paid
12 with that money for expenses, he could take 51
13 percent off and Mr. Archer got 49 percent off on
14 the same money that Mr. McMillan put into the
15 business.

16 Q: All right. So then if Mr. McMillan put in
17 \$10,000 he could take off his taxes 5,100.

18 A: If those expenses were paid -- if those monies
19 were paid on expenses. He could take that ...

20 Q: And that would be tax expenses as well.

21 A: Yes, sir.

22 Q: Okay.

23 MR. CREEL - RE-DIRECT EXAMINATION BY MR. GIBBONS:

24 Q: My question is, Mr. McMillan paid money that got
25 Mr. Archer a tax deduction?



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1 A: That's correct.

2 Q: He got a windfall.

3 A: He did.

4 Q: Thank you. That's all I have.

5 THE COURT: Thank you, sir. Step down please.

6 MR. GIBBONS: That's the Plaintiff's case, Your
7 Honor.

8 THE COURT: The attorney rests. Any motions at this
9 time?

10 MR. ANDERSON: Your Honor, I move for a motion for
11 a summary judgement in so far as it pertains to
12 the second cause of action which is a breech of
13 contract. The third cause of action was his
14 negligence. And the fourth cause of action
15 which is a breech of the fiduciary duty. I don't
16 think you've had any testimony, at all, Judge,
17 relative to Mr. McMillan or Mr. Archer's
18 operation of the business. I don't think
19 anybody has said that he through his negligence
20 mismanagement caused the business to go
21 downhill. It wasn't until, according to Mr.
22 Creel, that the business began to go downhill
23 and began to have problems was in 2006. And so
24 the business was running all right up until that
25 point. Whether or not he had a fiduciary duty



1 to pay the taxes, both of them have a fiduciary
2 duty to pay the taxes because it's both of their
3 businesses. But if the money is not there to
4 pay the taxes I do not know if you can breach a
5 duty if can't do something. And then lastly
6 with the breach of the contract, Mr. McMillan
7 never testified anything about how Mr. Archer
8 was mismanaging that business. So I think he
9 failed on all of those causes of action leaving
10 only, I'd think, the suit on the note.

11 **MR. GIBBONS:** Of course, Your Honor, the threshold
12 at this point is very much tilted in the favor
13 of the party posing the motion and Your Honor
14 knows who all well on that point. I would
15 submit though, we did provide information about
16 a verbal agreement between Mr. McMillan and Mr.
17 Archer about the management of the Devine Street
18 store. It was pretty much his baby to run. And
19 he took control and did in fact run it. And
20 there was testimony about him putting his son in
21 a position of managerial authority and that son
22 may not have had the prerequisite experience and
23 background and amount of training, etcetera.
24 Mr. Creel certainly testified sufficiently about
25 the fiduciary duty that one assumes to the IRS



1 when you sign a payroll check. Mr. Archer was
2 the one signing those checks. So on all three
3 of those counts, Your Honor, and the negligence.
4 I mean it was simple negligence, requires a duty
5 -- a breach in the duty in damages. So I think
6 on all three of those arguments by Mr.
7 Anderson, at this point, I think they have to
8 fail, Your Honor.

9 **THE COURT:** Well, you want to say anything else, Mr.
10 Anderson?

11 **MR. ANDERSON:** No, sir.

12 **THE COURT:** Okay. I think there's enough evidence
13 that was presented by the Plaintiff to get past
14 the motion. That doesn't imply that I've made
15 a decision on the case at this point. But I
16 think they've made enough of a showing to get
17 past this stage. So the motion's denied.

18 **MR. GIBBONS:** Thank you, Your Honor.

19 **THE COURT:** All right. Mr. Anderson?

20 **MR. ANDERSON:** Call Mr. Archer.

21 **JAMES ARCHER,** having been duly sworn, testifies as
22 follows:

23 **MR. J. ARCHER - DIRECT EXAMINATION BY MR. ANDERSON:**

24 **THE COURT:** Mr. Anderson, I guess the Mr. Gibbons
25 gave you copies. Mr. Gibbons, on your motion



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1 you expressed a belief that the only thing that
2 the plaintiff had on your client was this
3 promissory note, is that correct?

4 **MR. ANDERSON:** I think that the only thing that can
5 go forward is the issue about the promissory
6 note.

7 **THE COURT:** Is that -- I mean, I understand that I
8 denied your motion but is your theme going to be
9 that a promissory note is all that they have
10 left? Based on what you've heard and based on
11 what you're going to present now.

12 **MR. ANDERSON:** That's correct. And we maintain
13 that with regard to the promissory note, my
14 client is entitled to offsets and credits on
15 that note, because of what he's otherwise done
16 in regards to the business.

17 **THE COURT:** So now I want it clear for the record
18 and for my understanding. Your client would
19 admit that he did not pay what he promised to
20 pay under the note.

21 **MR. ANDERSON:** We will admit that he did pay on the
22 note but we admit or we show that we have
23 offsets against that note which reduced it
24 substantially.

25 **THE COURT:** I understand. Mr. Gibbons, we're all on



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1 the same page then.

2 MR. GIBBONS: We of course don't believe there's
3 any offsets that applies but yes, sir. What
4 Your Honor says is correct.

5 THE COURT: Okay. All right. Please proceed, Mr.
6 Anderson.

7 Q: If it pleases the court, Mr. Archer, give me a
8 brief history of your work, education -- work
9 experience.

10 A: One year of college, food service sales rep for
11 IFH Foods, a national account rep for them.

12 Q: And did you ever have any experience running a
13 restaurant?

14 A: I did. I did. I ran a restaurant before I
15 became a food -- before I became a sales rep.
16 When I was about twenty years old I started
17 managing a Western Sizzlin' Steakhouse in
18 Florence.

19 Q: How many years did you do that?

20 A: I managed it for three years.

21 Q: Okay. As a food salesman, what does that
22 entail?

23 A: I handle the day to day ordering, making sure
24 orders are processed correctly, taking care of
25 the customer, taking care of any problems,



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1 handling any complaints.

2 Q: Okay. You call on restaurants throughout South
3 Carolina?

4 A: I call on restaurants all the way from
5 Chesapeake, Virginia down to Savannah, Georgia.

6 Q: And you've been doing that for how long?

7 A: I've been doing that for 20 years.

8 Q: And at -- did you have a relationship with Mr.
9 McMillan with regards to providing him with food
10 stuff?

11 A: I did. Jim was -- Mr. McMillan was a customer
12 of mine.

13 Q: Were you aware of the fact that he had Tiffany's
14 on Two Notch and Tiffany's on Devine?

15 A: I did.

16 Q: And at some point did you become aware -- let me
17 back up a bit. The Tiffany's on Devine, would
18 you call on that restaurant individually or
19 would you do everything through Tiffany's on Two
20 Notch?

21 A: We called -- I called on each one individually.

22 Q: Okay. With regards to Tiffany's on Devine, how
23 was that managed -- restaurant managed?

24 A: He had a manager in there.

25 Q: A professional manager?



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1 A: Yeah.

2 Q: Okay. All Right. And at some point did that
3 manager leave -- at some point did you become
4 aware that that position was open?

5 A: Yeah. Jim told me she was going to be leaving
6 and she was moving to California. She had been
7 the manager there a couple of years, I think.

8 Q: Did you enter into a conversation with Mr.
9 McMillan about being interested in becoming the
10 owner ---

11 A: I did.

12 Q: A owner?

13 A: I did.

14 Q: Do you remember when approximately that it was?

15 A: That would've been probably been January of
16 2003.

17 Q: January of 2003. Were you and he able to strike
18 an agreement?

19 A: We were.

20 Q: And tell me what the agreement was.

21 A: The agreement was that he would have me manage
22 the restaurant and I would pay him \$40,000 for
23 49 percent of the stock.

24 Q: 30 in cash, 10 by the note?

25 A: That's correct.



1 Q: Is this your first venture into becoming a
2 stockholder and owner of a restaurant?

3 A: It was.

4 Q: Did you inquire of Mr. McMillan the
5 profitability of Tiffany's on Devine?

6 A: I -- we did sit down and I did ask him about
7 that and he provided me with the last years, I
8 guess would've been 2002, P&L which showed
9 about a \$3,500 loss.

10 Q: 3,500?

11 A: Right.

12 Q: Did that concern you?

13 A: I felt like I could turn that around pretty
14 quickly.

15 Q: Why did you feel that you could turn that around
16 quickly?

17 A: Just with the experience that I had. I could
18 set up a buying program being that I was in the
19 business and we could save that much money just
20 in the cost of goods.

21 Q: And so for 2002, your testimony was that it was
22 about a 30 some hundred dollar loss?

23 A: That's correct.

24 Q: And you thought you could turn that around?

25 A: I -- that's correct.



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1 Q: How many employees did the business have?

2 A: Ten, twelve. About four cooks and dishwashers
3 and probably another seven, eight servers,
4 retail people.

5 Q: Did you intend to do anything with the
6 employees?

7 A: What I did is took over -- I took over
8 responsibilities for the retail people. I let
9 them go because I was going to be there
10 everyday. So I took those duties over, being
11 that I was a salary employee there. And I
12 figured I could save the money in payroll by
13 doing that job, being I was there anyway.

14 Q: Did -- prior to you actually buying that into
15 the company, did you become an employee of the
16 company? Did you ---

17 A: I worked there for -- from April through July,
18 when I signed my note, pretty much for free. I
19 -- they didn't pay me anything. I worked there
20 every weekend, learning the business, learning
21 the employees, learn how the manager there
22 worked things and how that business worked.

23 Q: So you had your regular job and you were there
24 on the weekends?

25 A: Thats correct. I worked my regular job Monday



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1 through Friday and I worked there on Saturdays
2 and Sundays.

3 Q: Were you privi to any of the information
4 concerning how the business was doing in 2003,
5 its profit and loss?

6 A: No.

7 Q: Were you aware of how much money was coming in
8 and how much money was going out?

9 A: No because I didn't handle any of that. It was
10 still being handled by the manager.

11 Q: So the manager would collect all the money, make
12 the deposit and advise Mr. McMillan what the
13 deposit was?

14 A: That's correct.

15 Q: And advise Mr. McMillan what things were owed?

16 A: Up until the time that she left, she was
17 handling that.

18 Q: And so then in July of 2003, you went ahead and
19 paid Mr. McMillan ---

20 A: That's correct.

21 Q: --- the \$30,000?

22 A: Right.

23 Q: And signed the note?

24 A: That's correct.

25 Q: Did y'all enter into any sort of a written



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1 agreement with regards to the management of the
2 business?

3 A: No.

4 Q: Was there an operation agreement setting forth
5 what your duties were and what his duties were?

6 A: No.

7 Q: But your understanding was that you were to
8 manage the restaurant?

9 A: That's correct.

10 Q: And what did that mean?

11 A: At that time, I simply opened the store
12 everyday, I did the schedules, managed the
13 employees, did the ordering. That was pretty
14 much it. Jim handled all the payment of the
15 vendors and the money.

16 Q: And you didn't have any check writing authority,
17 did you?

18 A: No, I did not.

19 Q: At some point your son come to work with you?

20 A: That's correct.

21 Q: When was that?

22 A: Probably two months after I started. Probably
23 in July.

24 Q: And what was his job?

25 A: He was a dishwasher.



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- 1 Q: And what was he getting paid for it?
- 2 A: He was getting paid minimum wage.
- 3 Q: Minimum wage and was he going to school full-
- 4 time?
- 5 A: He was.
- 6 Q: Did you need a dishwasher?
- 7 A: I did.
- 8 Q: Why?
- 9 A: Because in the restaurant business, it was like
- 10 a weekly thing someone quitting there. So there
- 11 was constant turnover.
- 12 Q: So you filled the position with your son?
- 13 A: That's correct.
- 14 Q: Okay. Just carry on with that for a little bit,
- 15 did he gradually move upward?
- 16 A: He did. After he learned that position, I moved
- 17 him into cooking.
- 18 Q: And how long did he do that?
- 19 A: He probably cooked for two or three months.
- 20 Q: And then he became a cook?
- 21 A: And then he was a cook. That's correct.
- 22 Q: And how long was he a cook?
- 23 A: He was a cook for two or three months, four
- 24 months.
- 25 Q: How long was he a dishwasher?

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- 1 A: Probably a month and a half.
- 2 Q: After he was a cook, what did he do?
- 3 A: He moved into retail, working the retail
- 4 counter.
- 5 Q: And how long did he do that?
- 6 A: Probably another four or five months, maybe
- 7 three months.
- 8 Q: And after that what did he do?
- 9 A: He started waiting tables.
- 10 Q: Okay. And how long did he do that?
- 11 A: Again probably another -- for a while, six,
- 12 eight months.
- 13 Q: Okay. Tell me your involvement with the
- 14 business. What time did you get there in the
- 15 morning?
- 16 A: I was there around 5:15 every morning.
- 17 Q: And what time would you leave?
- 18 A: When we were serving dinner, probably around
- 19 10:30, 11:00 o'clock at night.
- 20 Q: And how about the weekends?
- 21 A: I worked all weekend. Same thing. Sunday was
- 22 a little later, we opened up later so I usually
- 23 got there around 6:15 on Sundays.
- 24 Q: So at some -- Mr. McMillan testified at some
- 25 point that you did breakfast and lunch.



1 A: We did breakfast and lunch. And then we did --
2 we had the retail part of the bakery, which
3 stayed open until before we did dinner, until
4 5:00.

5 Q: So at some point, did you close dinner out?

6 A: At -- when we were serving dinner we would close
7 that out usually around 9:30 or 10:00 o'clock.

8 Q: Okay. So you were serving three meals a day?

9 A: That's correct.

10 Q: Okay.

11 A: For a period of time.

12 Q: When did you stop serving dinner?

13 A: Probably it was sometime in 2004, 2005. I don't
14 remember exactly when we did that.

15 Q: Why did you stop serving dinner?

16 A: Because we just -- it just wasn't -- for the
17 time that I was putting into it, it wasn't
18 generating the sales. I thought it was costing
19 us more than it was to, to stay open.

20 Q: What, with the help?

21 A: With the help and, you know, just with the time
22 that I was putting in. It came to the point
23 where I just, you know, I physically -- I was
24 working fifteen or sixteen hours a day. It
25 just -- it became too much and I didn't think



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1 that the business that we were getting from
2 dinnertime really added anything to the
3 business.

4 Q: With regard to your and Mr. McMillan's
5 conversation with regard to the business, how
6 often would you meet?

7 A: We met every Saturday.

8 Q: Every Saturday?

9 A: Every Saturday when he would bring the retail
10 items over. Sometimes on Friday too. I mean,
11 he brought retail over most of the time. He did
12 have another person work for him that would
13 bring retail over but on Saturdays he usually
14 always brought it over. So we would meet. We
15 would sit down and have breakfast every
16 Saturday.

17 Q: After you got check writing authority, would you
18 sit down with the checkbook?

19 A: Absolutely.

20 Q: Would you go through the checkbook with him?

21 A: A lot of times he just went through the
22 checkbook. The checkbook was always at the
23 office --in the office. So on Saturday mornings
24 when I was working the retail counter, Jim would
25 come over, he'd eat breakfast and then he'd go



1 into my office and he'd go through the
2 checkbook.

3 Q: Would he look at the receipts?

4 A: Yes.

5 Q: Would you have discussions with him as to how
6 the restaurant was doing, what you could do to
7 improve, what changes you wanted to make?

8 A: Yeah. We talked about that all the time.

9 Q: Did he have suggestions that he presented to
10 you?

11 A: I think he pretty much listened to me. I don't
12 remember any suggestions though, that he gave
13 me.

14 Q: But anything that you did with regards to the
15 restaurant was with the agreement of Mr.
16 McMillan?

17 A: That's correct.

18 Q: Did you ever see the profit and loss statements
19 that came out that Mr. Creel talked about on a
20 monthly basis?

21 A: I didn't see the profit and loss statements
22 until 2004.

23 Q: 2004?

24 A: That's correct.

25 Q: All right. At some point did it become apparent



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1 to you that maybe this isn't going to work?

2 A: It did. In probably 2005, 2006 I -- I just knew
3 that we weren't generating the income that I
4 needed to generate. I just wasn't making enough
5 money. And with the -- what I had to pay out,
6 I talked to Jim about it and I told him that,
7 you know, that I needed to find another job.

8 Q: How much was your salary?

9 A: My salary was about \$30,000 a year.

10 Q: Is that something you and he negotiated?

11 A: Yeah. That -- he pretty much said that's what
12 I think he was paying the other manager.

13 Q: With regard to health insurance, did your
14 discussion before you bought the business
15 involve co-insurance?

16 A: It did.

17 Q: And tell me about your conversations with Mr.
18 McMillan.

19 A: I have some health problems that I have to have
20 health insurance for. And that was one of the
21 discussions that we had is, can he put me on his
22 health insurance and he told me, he could.

23 Q: Did you have health insurance with your previous
24 employer?

25 A: I did.



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1 Q: And how did you understand his health insurance,
2 that he was going to put you on, was handling
3 it?

4 A: I thought it was a group plan I didn't know
5 exactly how -- who he had it with. But I think
6 he had a group plan and I was just expecting to
7 be attached to that group.

8 Q: Was that for Tiffany's on Two Notch or Tiffany's
9 on Devine?

10 A: I was expecting it through Two Notch.

11 Q: Two Notch?

12 A: Right.

13 Q: Did he put you on there?

14 A: No.

15 Q: Did that require that you go out and get your
16 own policy?

17 A: It did.

18 Q: And you got that through whom?

19 A: I got that through the South Carolina
20 Reinsurance.

21 Q: And what did that cost you?

22 A: It cost a \$1,000 a month. It was \$998 a month.

23 Q: Were you paying that personally?

24 A: I was.

25 Q: So that means that if you were paying that, how



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1 much were you earning then as a manager of the
2 restaurant?

3 **MR. GIBBONS:** Judge, let me just reiterate my earlier
4 objection about this line of questioning on the
5 basis of relevance. There is nothing in this
6 lawsuit about health insurance. Nothing in the
7 pleadings about it. Nothing in discoveries
8 mentioned about it. I would object to the
9 relevance here.

10 **THE COURT:** Objection overruled.

11 **Q:** So what were you earning before taxes after you
12 paid your health insurance?

13 **A:** Oh, probably, 18,000, \$19,000 a year.

14 **Q:** Did you have a discussion with Mr. McMillan down
15 the road about the health insurance?

16 **A:** We did. He finally agreed to let the business
17 start paying it. I want to say in 2005.

18 **Q:** The taxes that we discussed here today, you
19 understood the significance of the taxes and
20 paying the taxes to the state and the feds,
21 correct?

22 **A:** I did.

23 **Q:** The taxes would be paid on a monthly basis?

24 **A:** Yeah. We actually would -- they would have been
25 paid on a bi-weekly basis. When I picked the



1 payroll up from Mr. Creel, he would have the
2 tickets that you take to the bank and you'd pay
3 the taxes on a bi-weekly basis.

4 Q: Mr. Creel mentioned that in 2006 things got in
5 bad shape.

6 A: We were paying about a quarter in the arrears.

7 Q: A quarter in the arrears?

8 A: Right.

9 Q: Would the IRS fuss at you about paying those
10 taxes a quarter in arrears?

11 A: Occasionally we would get a letter from them
12 saying that we were behind a quarter.

13 Q: So then the third quarter, you were paying the
14 taxes for the second quarter?

15 A: Correct.

16 Q: What was the busiest time of the year for you?

17 A: It would be the fourth quarter of the year.

18 Q: And why was that?

19 A: Because that was November, December when we did
20 the majority of our retail business, the
21 holidays.

22 Q: And through -- well, how much more would you
23 make in November and December than say the rest
24 of the year?

25 A: Sales were probably thirty percent higher in



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1 those two months.

2 Q: Okay.

3 A: It depended. In the summertime, we would
4 probably be 50 percent higher.

5 Q: And through the proceeds of November and
6 December, sales, profits, were you able to catch
7 up with the taxes?

8 A: Usually in January, that's correct. We'd use
9 the proceeds from December to catch up in
10 January.

11 Q: So by January of the following year, the taxes
12 would be caught up for the state and the fed?

13 A: That's correct.

14 Q: And the taxes for hospitality tax?

15 A: That was paid every month.

16 Q: That was every month? Sales tax?

17 A: That was paid every month.

18 Q: In 2006 -- the end of 2006, would you generally
19 sit down and see what money was there and what
20 money was going out?

21 A: I would.

22 Q: Were you aware of the monies that were on hand
23 in December 2006?

24 A: I was.

25 Q: And getting ready to pay those taxes, salaries,



1 the vendors, you were aware of what money you
2 needed to pay all those people?

3 A: Right. I would write the checks ahead of time
4 and then as the money came in I would mail the
5 checks out.

6 Q: Okay. Your business was cash, credit card or
7 check?

8 A: That's correct.

9 Q: What percentage of the income coming in was cash
10 and credit card?

11 A: Credit card was probably 90 percent of what we
12 did, very little cash.

13 Q: And the checks?

14 A: Checks -- actually checks more than cash.
15 Probably I would say three percent cash and
16 seven percent checks.

17 Q: When people would write and use their credit
18 card, what was the lag time before the money
19 came back into the account?

20 A: It was usually four days. It depends when it
21 went through. If you have someone use it on a
22 Friday afternoon or a Saturday, it would -- you
23 would have -- Saturday and Sunday wasn't counted
24 as business days so it might be the following
25 Wednesday before that money was put into the



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1 checking account.

2 Q: So the end of the year then, of 2006, you knew
3 what money you were going to have?

4 A: Right. By the -- by -- just by the receipts.
5 Although the money may not be there because
6 you're waiting for those credit card
7 transactions to come through.

8 Q: You knew what you would have had?

9 A: Right.

10 Q: All right. And based upon that knowledge, did
11 you pay all the taxes that were due? Or write
12 checks to pay all the taxes?

13 A: Is this for '06?

14 Q: '06.

15 A: I wrote the checks but I didn't mail them.

16 Q: Okay. With regard to the vendors. Did you
17 write the checks?

18 A: I did.

19 Q: There was some money in the account.

20 A: That's correct.

21 Q: And you sent some of the money off, or some of
22 the checks off to pay those vendors.

23 A: Right.

24 MR. ANDERSON: Judge, I'm trying to find that exhibit
25 that deals with the checks that were returned



1 for insufficient funds.

2 **THE COURT:** It's Defendant's Exhibit 4.

3 **MR. ANDERSON:** Four

4 **Q:** Let me hand you what's been marked as
5 Defendant's Exhibit Number 4. Those are two
6 checks, 4,500 and 1,000, correct?

7 **A:** That's correct.

8 **Q:** And to whom were these checks made payable?

9 **A:** ISH Foods.

10 **Q:** And that one of your vendors?

11 **A:** That was.

12 **Q:** One of your food vendors?

13 **A:** Uh-huh.

14 **Q:** Okay. And you wrote the checks and actually
15 sent these off?

16 **A:** I did.

17 **Q:** All right. It would have been sometime -- oh
18 probably would you send them off on the 2nd of
19 ---

20 **A:** It was probably on the second, third when I
21 wrote the -- you know when they were mailed off.
22 So yeah, some --within a couple days of that.

23 **Q:** And they came back?

24 **A:** They did.

25 **Q:** Were you still working there when they came



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- 1 back?
- 2 A: I was working for IFH.
- 3 Q: Okay. And you were aware they were returned
- 4 insufficient funds?
- 5 A: I was. I was told through the company that we
- 6 had checks returned.
- 7 Q: So the company -- when you left Tiffany's you
- 8 went to work for this company?
- 9 A: That's correct.
- 10 Q: Food supplier.
- 11 A: That's right.
- 12 Q: Did you make those checks good?
- 13 A: I did.
- 14 Q: Out of your own pocket?
- 15 A: I did.
- 16 Q: Why?
- 17 A: Because I was going to be held criminally liable
- 18 for the checks.
- 19 Q: Now the account was closed. And this is the
- 20 account that you all had through First Palmetto,
- 21 right?
- 22 A: Right.
- 23 Q: And that was the checking account you had used
- 24 the entire time that you were working there?
- 25 A: That's correct.



1 Q: Did Mr. -- who closed the account?

2 A: Mr. McMillan.

3 Q: Did he tell you he closed the account?

4 A: No, he did not.

5 Q: You had no prior knowledge of that?

6 A: No.

7 Q: Did you discover that two of the checks from the
8 rear of the checkbooks had been removed?

9 A: I -- after the fact, yes.

10 Q: Do you know if Mr. McMillan used those two
11 checks to take all the money out of the account?

12 A: It looks like he used those checks to take the
13 money out of the account and close that account
14 out and open a new account.

15 Q: You resigned from the business by a letter dated
16 January the 2nd of 2007, correct?

17 A: That's correct.

18 Q: And why did you stop doing that or why did you
19 resign?

20 A: Well I just told Jim that if, you know, he
21 didn't like the way my son was running the
22 business that I was not going to work there
23 anymore.

24 Q: Okay. You quit because he fired your son?

25 A: That's -- that and he told me he wanted to take



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1 the business in a new direction. That's what
2 Jim told me.

3 Q: And he let your son go?

4 A: Right.

5 Q: Up until that time in 2006, you had still been
6 coming in on weekends?

7 A: That's correct.

8 Q: And taking care of the financial side of things?

9 A: Right. And also working there, you know, the
10 retail, and the cooking and everything else.

11 Q: Do you know or do you think that the restaurant
12 could have survived for 2007?

13 A: You know, I don't know, but, I was never given
14 that opportunity.

15 Q: But you know that when you left there was
16 sufficient funds on hand.

17 A: I do.

18 Q: To pay all the vendors ---

19 A: Right.

20 Q: --- the help and the taxes?

21 A: That's correct.

22 Q: Now then, from 2007 forward, did you have any
23 contact with Mr. McMillan?

24 A: No. The only contact I had with him is when I
25 got a letter from Mr. McMillan's attorney saying



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1 that there's going to be a meeting at Mr.
2 McMillian's attorney's office.

3 Q: And what was that meeting suppose to be about?

4 A: It was a corporate meeting to discuss the
5 business itself.

6 Q: And at that meeting were any demands made upon
7 you?

8 A: They wanted me to pay the taxes.

9 Q: Wanted you to pay the taxes?

10 A: They thought I was responsible for half the
11 bills that were left to the restaurant.

12 Q: I thought you testified earlier that there was
13 sufficient money in 2006 early 2007 to make all
14 those payments.

15 A: I would have thought there would have been more
16 than enough money to make those payments.

17 Q: Well you would have thought or do you know?

18 A: I do know. I know there was money in that
19 account to pay those bills.

20 Q: To pay all the bills?

21 A: That's correct.

22 Q: You know why there would there would have been
23 bills left over unpaid?

24 A: I do not.

25 Q: Mr. McMillan and his son were responsible for



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1 running the restaurant on after your son was
2 fired, correct?

3 A: That's correct.

4 Q: And the loss that was sustained in 2007 was how
5 much?

6 A: \$10868.

7 Q: And you've heard Mr. Creel testify that the
8 auction brought in some \$24,000.00?

9 A: That's correct.

10 Q: What would that mean for the loss then of the
11 restaurant in 2007, when it was being run by
12 Mr. McMillan?

13 A: There would have been about ---

14 MR. GIBBONS: Objection, Your Honor, he's not
15 qualified as an expert or accountant or anybody
16 else to testify about any kind of tax losses,
17 tax returns or anything else.

18 THE COURT: Objection overruled. Please restate the
19 question.

20 MR. ANDERSON: So what's the answer? I'm sorry.

21 THE COURT: Please restate the question.

22 Q: The loss that's shown on Mr. Creel's report
23 shows 10,800 and some dollars.

24 A: What they brought in from the auction there
25 would have been about a \$34,000 loss.



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- 1 Q: And that's during the period of time that Mr.
2 McMillan was running the store?
- 3 A: That's correct.
- 4 Q: With regard to the auction, did anybody ever
5 discuss that with you?
- 6 A: No.
- 7 Q: How did you find out about it?
- 8 A: Actually read it in the newspaper.
- 9 Q: Do you think that was the best way to dispose of
10 the goods that belonged to the restaurant?
- 11 A: Yeah. I don't know that was the best way but I
12 wasn't given the option to talk about it.
- 13 Q: If you had been given the opportunity, could you
14 have tried to go shop these things around to
15 other restaurants with whom you dealt?
- 16 A: I think we could have.
- 17 Q: With regard to the goods that were sold, what
18 was the one biggest ticket item?
- 19 A: Probably the walk in oven.
- 20 Q: And what would that walk in oven have been
21 worth?
- 22 A: Probably would have been worth \$30,000.
- 23 Q: Do you know what it sold for?
- 24 A: I know it's on the auction but I don't remember
25 what it sold for.

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1 Q: Did it bring \$30,000?

2 A: No, it did not.

3 Q: Did anybody ever contact you after the business
4 was closed out to tell you what the loss was for
5 2007?

6 A: No.

7 Q: Did you have the opportunity then to take any
8 deduction off -- deduction off your taxes with
9 regard to the loss?

10 A: I don't -- I don't remember that. I don't
11 remember if I received anything from Mr. Creel
12 as far as what the loss was for 2007.

13 Q: Do you know whether or not you declared any
14 loss?

15 A: I don't think I did.

16 Q: Too late to do something now, isn't it?

17 A: I would think so.

18 Q: Now then, with regards to this \$10,000 note, you
19 acknowledge that you gave that note in partial
20 payment for the stock.

21 A: I do?

22 Q: And you acknowledge that you haven't paid
23 anything on that note?

24 A: I do.

25 Q: Do you feel that you're entitled to a credit



1 against that note?

2 **MR. GIBBONS:** Objection. Legal conclusion, Your
3 Honor.

4 **THE COURT:** What was the question? Let him finish
5 the question. What was the question, Mr.
6 Anderson? Don't answer yet.

7 **MR. ANDERSON:** I was just asking does he think he's
8 entitled a credit against the \$10,000 note for
9 the \$3,500 that he paid on the checks that Mr.
10 McMillan stopped payment on.

11 **THE COURT:** Mr. Gibbons, your objection?

12 **MR. GIBBONS:** Same thing, Your Honor. The note has
13 no -- those are apples and oranges. They're two
14 separate issues, two separate things. One does
15 not link in with the other.

16 **THE COURT:** They have a counterclaim -- what they're
17 saying is that ---

18 **MR. ANDERSON:** Yes, sir.

19 **THE COURT:** You say it's not relevant?

20 **MR. GIBBONS:** Just because they have a counterclaim
21 doesn't mean it's a valid counterclaim, Judge.
22 I mean, if he's entitled to an offset it's not
23 as to the note.

24 **THE COURT:** Again, I thought you said not relevant.

25 **MR. ANDERSON:** Legal conclusion, Your Honor.



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1 THE COURT: Okay. All right. Objection sustained.

2 In other words, that's something I'm going to
3 have to decide. You know, I understand the
4 positions going to be that he's entitled to it.
5 Is that his position?

6 MR. ANDERSON: He paid s debt on behalf of the
7 business, Judge, that he wasn't obligated to
8 pay.

9 THE COURT: But the question was, aren't you entitled
10 to a credit for that, for an offset? Did you
11 give us that as a legal conclusion? And as far
12 as discounting items to the side -- but of
13 course you have to put evidence in. And I
14 understand your point. He's going to say, yes
15 he's entitled but please proceed. You can
16 rephrase the question if you like or ...

17 Q: Do you believe you are responsible for the
18 entire \$10,000?

19 A: I do not.

20 Q: Why not?

21 A: I believe that me paying that \$3500 would -- to
22 the corporation that I don't feel like I was
23 responsible for. The net sales of the auction
24 that I don't think I've really gotten a full
25 accounting of. All the food stuffs that were in



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1 that restaurant that were taken over to Jim's
2 restaurant and sold. I was never given any
3 accounting of or given any money for. And the
4 debts -- the bills that Jim paid out of the Two
5 Notch Road location to pay for vendors and goods
6 and services that he used at the Two Notch Road
7 location. I don't think that, you know, was
8 right.

9 Q: Do you have any idea of the extent of bills that
10 he paid out for the Two Notch location came from
11 the monies that belonged to the Devine location?

12 A: That's right. He used Devine Street checkbook to
13 pay for goods and services that he used at the
14 Two Notch Road location.

15 Q: And how much would that have been, do you have
16 any idea?

17 A: It -- according to the checks that he gave me it
18 was a few thousand dollars.

19 Q: 2,000?

20 A: It was a few thousand. I don't know the exact
21 amount.

22 Q: Lets talk about -- a little bit about the food
23 stuffs that were in the restaurant in 2006, when
24 you left. What generally was kept on hand?

25 A: I think we kept anywhere from probably seven to



1 \$10,000 worth of inventory. And that would
2 include all the dry goods, the paper products,
3 the chemicals, all the frozen products, fresh
4 meats, produce.

5 Q: If you're running the restaurant would you have
6 to have that much stuff on hand to meet ---

7 A: You would -- we -- our purchases were around
8 \$3700 a week. And we would keep a few weeks
9 worth of inventory on hand.

10 Q: Do you know how much of those produce, can
11 goods, paper products etcetera, etcetera, were
12 taken by Mr. McMillan to the Two Notch
13 location?

14 A: I don't have first hand knowledge of that. I
15 just know that, you know, they wasn't sold at
16 the auction.

17 Q: That's go some value to it as well, doesn't it?

18 A: Yes, it does.

19 Q: Did he make any comments to you about, hey what
20 are we going to do about all the food stuffs?

21 A: No.

22 Q: You never knew how much that auction made did
23 you?

24 A: No.

25 Q: Do you think that you are responsible to



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1 Tiffany's for any sum of money?

2 A: I do not.

3 MR. GIBBONS: Legal conclusion, Your Honor.

4 THE COURT: Hold on one second. His question was,
5 you are entitled -- do you owe Tiffany's any
6 money? You're not responsible for anything.
7 You say that's legal conclusion?

8 MR. GIBBONS: Yes, sir.

9 MR. ANDERSON: I think that he's got an opinion as
10 to what he owes. If anything.

11 THE COURT: I'd say objection sustained. Now that
12 having been said I understand your point. You
13 understand that, Mr. Gibbons?

14 MR. GIBBONS: Yes, sir. Yes, sir.

15 THE COURT: Testimony will resume.

16 Q: This note that's out there floating around, it
17 was due when?

18 A: I want to say July of 2005.

19 Q: Did Mr. McMillan ever come to you and say Jim,
20 you need to pay on the note?

21 A: Not while I was working there.

22 Q: In 2006 when you left did he even make any
23 mention to you about the note?

24 A: No.

25 Q: And so you never heard anything about the note



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1 until this lawsuit was filed in 2008?

2 A: That's correct.

3 Q: I've no further questions.

4 THE COURT: Any cross?

5 MR. GIBBONS: Yes, sir, Your Honor.

6 MR. J. ARCHER - CROSS EXAMINATION BY MR. GIBBONS:

7 Q: Mr. Archer, let's break it down starting with
8 the promissory note and that's Plaintiff's
9 Exhibit Number 3, okay?

10 (PPlaintiff's Exhibit Number 3 was introduced into the
11 record at this time.)

12 Q: That's clearly your signature on that document?

13 A: Uh-huh.

14 Q: And it's clear the amount of money that's owed,
15 \$10,000, correct?

16 A: Correct.

17 Q: And it's clear that after July 24th of '03 it's
18 going to start accruing interest at ten percent
19 a year? That's clear in there too, right?

20 A: No. It says from July 24th of 2005, not 2003.

21 Q: Sorry, 2005. But there's no confusion or
22 ambiguity about that, correct?

23 A: No.

24 Q: All right. And it's equally clear that you've
25 not paid a dime under this document?



1 A: That's ---

2 Q: That's true.

3 A: That's true.

4 Q: Okay. Is there anything in this document that
5 relates to any offset that you might be entitled
6 to?

7 A: Not in this document, no, sir.

8 Q: Is there anything in this document that says you
9 are entitled to a credit from some other
10 transaction or for some other reason or for
11 anything that is not expressed clearly in this
12 document?

13 A: No, sir.

14 Q: Okay. So you agree with me that you signed it
15 and it's clear what it says. And it's clear
16 about the interest and it's equally as clear
17 you've not paid a penny toward it?

18 A: That's correct.

19 Q: Okay. Have you signed promissory notes in the
20 past for other reasons?

21 A: No.

22 Q: You never bought a car?

23 A: Oh, is that a promissory note?

24 Q: Yes.

25 A: Yes.



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1 Q: You never bought a house?

2 A: Yes, I have.

3 Q: That has a note with it right?

4 A: That's correct.

5 Q: Okay. And if you buy a car and the car turns
6 out to be a lemon you don't get to take an
7 offset on the amount that you agreed to pay the
8 lender for that car, do you?

9 A: No.

10 Q: And you buy a house and the house has structural
11 damage or foundation issues you don't get to go
12 to your mortgage company and say, hey I need a
13 credit or an offset because my house is not what
14 I thought it was going to be. That doesn't work
15 like that does it?

16 A: No.

17 Q: And truth of fact is this promissory note
18 doesn't work like that either, does it?

19 A: I don't know.

20 Q: Well you're claiming the offset against what you
21 clearly have stated you owe under this note from
22 unrelated, unconnected different sets of facts
23 and circumstances, isn't that correct?

24 A: This is all connected to the business.

25 Q: It's all connected. Well I just asked you,



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1 there's nothing in this document that talks
2 about an offset, a credit or any deductions or
3 any modifications for any other reason. This
4 says I owe Tiffany's Bakery \$10,000.

5 A: That's what that says.

6 Q: Okay. So anything outside of what's in that
7 document is an unrelated, unconnected
8 transaction.

9 MR. ANDERSON: Your Honor, I would -- we've got a
10 counterclaim outstanding that sets fourth that
11 he's entitled and he believes he's entitled to
12 an offset because of what he -- the debt he paid
13 on the affidavit.

14 THE COURT: All right. So you're objecting or you
15 just want to make that statement?

16 MR. ANDERSON: I'm objecting to the continued
17 questioning about that because -- yes, he
18 maintains he's entitled to that credit
19 regardless of what the note says.

20 THE COURT: Objection overruled.

21 Q: So, Mr. Archer, any offset or credit or
22 deduction is for these other things we are
23 talking about here today, not because of this
24 note?

25 A: I don't know how to answer that. I would say,



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1 you know, the note says I owe the \$10,000 ---

2 Q: Okay.

3 A: --- but I do believe that the off -- that the
4 money that I've paid and the money that Jim took
5 out of the business offset what this note says.

6 Q: And I just asked you about if you have a car
7 that's a lemon, you still owe the money to the
8 bank that lent it to you to buy it, correct?

9 A: That's true.

10 Q: Okay. Isn't that the same type of situation?
11 This business didn't go as anybody wanted. And
12 Mr. McMillan wanted it to succeed as well, you
13 will agree with that won't you?

14 A: I will.

15 Q: Okay. So this business just -- it was a
16 business deal that just didn't work, correct?

17 A: This wasn't really a business -- it was a stock
18 purchase.

19 Q: Okay. But you went into the business hoping it
20 would succeed, you would make some money off
21 your ---

22 A: I -- that's correct.

23 Q: Okay. Have you been a shareholder in other
24 small businesses ever before?

25 A: No.



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1 Q: This is a first time venture.

2 A: That's correct.

3 Q: Okay. And do you acknowledge and agree as Mr.
4 Creel testified that the only two ways
5 shareholders make money is if the corporation
6 declares a dividend or if you sell you stock for
7 money than you paid for it?

8 A: That's correct.

9 Q: Okay. That's clear, right?

10 A: Uh-huh.

11 Q: Okay. Do you understand and acknowledge and
12 agree that a corporation cannot declare a
13 dividend unless it is profitable? It is not
14 allowed by law.

15 A: I agree.

16 Q: So in nothing we've seen indicates this business
17 was ever in a position to declare a dividend?

18 A: Agreed.

19 Q: You agree with that. Okay. So you weren't
20 going to get your money from the corporation
21 being profitable because it never showed a
22 profit. So the other way you make money is you
23 sell your stock at a gain and you never tried to
24 sell this stock have you?

25 A: No.



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1 Q: And you probably would agree with me this stock
2 is not on the market for sell at any price
3 nobody's going to pay for this, right?

4 A: Right.

5 Q: So you're never going to make any money for your
6 stock investment regardless of this lawsuit,
7 regardless of the promissory note, regardless of
8 any other circumstances we've talked about here
9 today?

10 A: Correct.

11 Q: Okay. So you not entitled to any kind of offset
12 because you lost money on the deal?

13 A: That's -- but that's not what I -- losing money
14 is -- the offset that I'm asking for is not
15 because the restaurant lost money.

16 Q: Tried to whittle it down.

17 THE COURT: Hold on. Let him finish his answer.

18 MR. GIBBONS: Okay. Sorry.

19 THE COURT: Did you finish everything you wanted to
20 say?

21 A: No. I mean the offset is because of the monies
22 that Mr. McMillan took out of there. Plus
23 the monies that I had to pay out of my pocket
24 to the corporation.

25 Q: Okay. Now you've heard him testify that he paid



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1 monies out of his pocket as well, right?

2 A: I did.

3 Q: Okay. And while we're on that point do you know
4 what K1 is?

5 A: K1.

6 Q: A K1 form, K1.

7 A: I don't.

8 Q: Who does you're taxes for you every year?

9 A: I do my own.

10 Q: So you've never dealt with a K1 before?

11 A: I don't remember that.

12 Q: Do you recall getting this from Mr. Creel in
13 2007? Let me let Mr. Anderson look at it.

14 I'll represent to you that's a form K1 that
15 shows a shareholders share of a loss for the
16 year of 2000- --

17 A: Okay. Yeah. I remember getting these from Mr.
18 Creel.

19 Q: Okay. Did you ever do anything with them on
20 your taxes?

21 A: I'm sure I filed them with my taxes.

22 Q: So if you properly filed your taxes and you did
23 it yourself, right?

24 A: Right.

25 Q: So you would have received the benefit of the



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1 share of the money that Mr. McMillan paid that
2 represented your 49 percent of the stock.

3 A: No, not necessarily.

4 Q: Did you not take ---

5 A: That's the loss of the business that's not the
6 loss from Mr. Mcmillan. Isn't that the loss --
7 is that my percentage of the of my the loss of
8 the business that's not necessarily money from
9 Mr. McMillan.

10 Q: In 2007 you were gone.

11 A: Right.

12 Q: You weren't working there, you had resigned
13 everything, no obligation. You got a tax loss
14 because of the money Mr. McMillan paid to pay
15 those outstanding bills and those outstanding
16 taxes.

17 A: Mr. McMillan made that decision to do that.

18 Q: But you benefitted though, you'll agree with
19 that?

20 A: I -- I would say that I had a -- I benefitted
21 from the loss of the business.

22 Q: Okay. So that's not a part of any kind of
23 offset or deduction or credit or modification
24 because you actually got a benefit from what he
25 paid.



1 A: I got a benefit from what the business loss
2 which was -- wouldn't really be a benefit.
3 Because I've lost my entire investment. So I
4 didn't really benefit from that. I still have
5 a loss.

6 Q: Okay. Well, you've heard that the books -- on
7 the books of the corporation that's carried as
8 a loan from shareholder because Mr. McMillan
9 paid it.

10 A: That's because -- because he took a loan from
11 the business, or he gave a loan to the business.

12 Q: You didn't loan the business any money, that's
13 for sure.

14 A: I loaned them \$3,500 to pay a note to pay a bad
15 check ---

16 Q: Let's talk about that.

17 THE COURT: Just hold on for a second. Let him
18 finish his answer.

19 MR. GIBBONS: Okay. I'm sorry.

20 THE COURT: I'm sorry. Were you finished, sir?

21 A: I mean I paid a \$3,500 check so that would be
22 considered a loan to the corporation, correct?

23 Q: All right. And you indicated that you felt like
24 you were going to be criminally prosecuted for
25 that?



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- 1 A: That's correct.
- 2 Q: Did anybody contact you from law enforcement and
- 3 say, hey we need you to pay these checks?
- 4 A: Because it never went that far. Because I paid
- 5 the check.
- 6 Q: So you were never under any threat of criminal
- 7 prosecution?
- 8 A: If I had not paid that check I would have.
- 9 Q: You just surmising that. You don't know that.
- 10 A: No. I do -- you do -- that's what they --
- 11 that's how South Carolina works. If you don't
- 12 pay bad checks they come after you criminally.
- 13 Q: Well, lets be clear. We're testifying in court
- 14 under oath. Nobody ever told you they were
- 15 going to prosecute you for a bad check.
- 16 A: No because I paid it.
- 17 Q: Okay. And the reason in fact you paid it was
- 18 because it was written to your employer you were
- 19 trying to get a job with.
- 20 A: No -- I've -- I was working for them.
- 21 Q: Okay. Did they ever tell you they were going
- 22 to fire you if you didn't make this check good?
- 23 A: I was told I had to make the checks good.
- 24 Q: Okay. And the point being they want to keep you
- 25 employed there with those checks you had written



1 that had been returned.

2 A: They had -- excuse I couldn't understand ---

3 Q: In other words, they were gonna fire you, had
4 you not made those checks good?

5 A: I'm not saying they would fire me.

6 Q: That was your concern though.

7 A: My concern was that would have -- they would --
8 had I not paid those checks they would have
9 prosecuted me, yes. And I probably would have
10 lost my job.

11 Q: Okay.

12 THE COURT: Let me interrupt. I want to make sure I
13 understand your testimony. You had a new job?

14 MR. ARCHER: Right.

15 THE COURT: And the new job told you -- you had to
16 pay the ---

17 MR. ARCHER: Right.

18 THE COURT: --- the bad checks?

19 MR. ARCHER: The job was responsible for the bad
20 checks.

21 THE COURT: Okay. All right. Go ahead, Mr.
22 Gibbons.

23 Q: Yes, sir. So, and again whittling this down,
24 the \$3500 that you paid, that wasn't anything
25 that Mr. McMillan put upon you? That was



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1 something that your employer put upon you?

2 A: No. Mr. McMillan would have put that upon me
3 because he closed the checking account down and
4 caused those checks to come back. Had he not
5 closed the checking account down, those checks
6 would have never come back and I would not have
7 been responsible for them.

8 Q: You heard him testify it was \$1300 in the bank
9 in December of '07.

10 A: That's what he testified to.

11 Q: Okay. Do you have any proof that that's
12 incorrect?

13 A: I -- just my knowledge from working at the
14 restaurant. The receipts that we would have
15 gotten from the last week of December, that
16 would have gone in there and the first week of
17 January would have been a lot more than that.

18 Q: You are surmising that though, right?

19 A: I'm not -- yeah. I would -- actually, yeah.
20 I'm making an educated guess.

21 Q: Okay. So my question is you have no proof that
22 there was more money than \$1300.00 in that
23 account when it was closed out?

24 A: I do not.

25 Q: Okay. Now, I want to go backwards a little bit.



1 When you made the decision to make this
2 investment, did you have a lawyer advise you as
3 to the legal part of the transaction?

4 A: I did not.

5 Q: Did you have a business evaluator look at these
6 books to tell you what this business may or may
7 not be worth?

8 A: I did not.

9 Q: Did you have anybody on your behalf look at the
10 materials that Mr. Creel provided to you.

11 A: I did not. Mr. Creel didn't provide me with any
12 materials.

13 Q: Okay. Did you ask him for materials?

14 A: I did not. I had never had a conversation with
15 Mr. Creel before I bought that business from Mr.
16 McMillan.

17 Q: Okay. Now -- and you're not laying that at Mr.
18 McMillan's feet.

19 A: No, I'm not.

20 Q: Okay. That's what we call due diligence right?

21 A: That's right.

22 Q: Okay. So you entered into this without the
23 benefit of financial advice, legal advice, tax
24 advice. Basically you did it on your own.

25 A: I did it because I had friendship with Mr.



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1 McMillan for 20 years and I trusted him.

2 Q: Okay. All right. Now -- and he likewise
3 trusted you. You'll agree with that?

4 A: Yeah.

5 Q: Okay. And you said that you went in there and
6 you worked from April through July. You didn't
7 get any salary or you learned the business you
8 recall that testimony?

9 A: Uh-huh.

10 Q: That was your own volition as well, right?

11 A: That I did it on my own?

12 Q: Yes.

13 A: I had to learn the business for -- yeah. I
14 would say ---

15 Q: You were doing that to enhance your ability to
16 be successful with it?

17 A: To learn how Jim operated things, that's
18 correct.

19 Q: Okay. But you weren't making the point that in
20 someway shape or form you were put upon to work
21 with no salary or you were put upon to come and
22 work those weekends. You were doing that to
23 enhance your ability to be successful.

24 A: Yes.

25 Q: Okay. So that's not anything that you need a



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1 credit or a deduction or an offset for?

2 A: I don't want -- that's correct.

3 Q: Okay. Now, you mentioned in your direct
4 testimony that this health insurance issue was
5 very important to you. But there's nothing in
6 writing that states that that's a part of your
7 compensation package, correct?

8 A: Correct.

9 Q: And you assumed or you surmised again, that there
10 was a group plan that the Devine Street business
11 had for it's employees etcetera, correct?

12 A: No. Jim told me about his plan -- that I would
13 be put on his plan at Two Notch Road.

14 Q: Okay. But you never were an employee of Two
15 Notch Road, were you?

16 A: I was not.

17 Q: Okay. And you know they are two separate
18 corporations? You didn't buy into Two Notch. You
19 bought in to Devine Street.

20 A: That's correct.

21 Q: Okay. And did you ever check to see whether that
22 was even doable? Whether you as a non-employee
23 could be on the other corporation's group plan?

24 A: I did not. I trusted Jim on that.

25 Q: Okay. But it was very important to you?



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- 1 A: It was.
- 2 Q: But it wasn't so important that you got it in
3 writing? And it wasn't so important that you
4 independently checked into whether or not it
5 could be done.
- 6 A: I didn't do either of those.
- 7 Q: Okay. And as a matter of fact, that issue never
8 got mentioned again the whole four years, three
9 and half years you were there.
- 10 A: We talked about insurance a lot.
- 11 Q: Okay. Did you ever say if I don't get insurance
12 I'm out of here?
- 13 A: No, because I went ahead and got it myself.
- 14 Q: Okay. All right. And you know now -- and did
15 you know then that Mr. McMillan's family is the
16 only people in the Two Notch Store for whom
17 insurance is paid through the business?
- 18 A: I thought he told me one of his cooks were on
19 that insurance policy too.
- 20 Q: Okay. But again you don't have any confirmation
21 of that?
- 22 A: I don't.
- 23 Q: Okay. All right. When you made the decision to
24 stop serving dinner at the Devine location, did
25 you consult Mr. McMillan about that?



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1 A: I think I did.

2 Q: And he pretty much let you make the decisions,
3 didn't he?

4 A: He did.

5 Q: And the fact of the matter is that the operation
6 of Devine Street was almost entirely in your
7 hands after the first year, after 2003. From
8 2004 on it was yours to run?

9 A: Yes, I ran it. That's correct.

10 Q: Okay. You could hire and fire?

11 A: Right.

12 Q: You had the check writing ability?

13 A: Right.

14 Q: You were working with Mr. Creel's office on
15 payroll issues etcetera, etcetera?

16 A: Right.

17 Q: Okay. So Mr. McMillan basically was hands off.
18 He was basically a 51-percent shareholder, when
19 everything else was up to you.

20 A: No. Mr. McMillan looked at the books every
21 Saturday when he came over. So he was not --
22 wasn't hands off.

23 Q: Now you made mention also about occasionally we
24 would get a letter from the IRS. As a matter of
25 fact you got a fairly severely worded letter from



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1 IRS in mid 2006 didn't you?

2 A: I don't know. You'll have to show it to me,
3 remind me. I don't recall.

4 MR. ANDERSON: I object to that, Your honor. That's
5 a letter from the IRS. We don't have anybody
6 from the IRS here to authenticate it, to testify
7 about it.

8 THE COURT: Of course. Now, Mr. Gibbons, you just
9 want to refresh his recollection or did you want
10 to ---

11 MR. GIBBONS: Well ---

12 THE COURT: --- make that an exhibit or what do you
13 want to do about it?

14 MR. GIBBONS: I'm going to ask him about it and I may
15 make it an exhibit depending on his answers, Your
16 Honor. But he's the one that brought up that
17 letters from the IRS and I want to cross.

18 MR. ANDERSON: Again he brought up letters from the
19 IRS. He didn't introduce any letter because he
20 doesn't have an IRS agent here to authenticate
21 the letter.

22 MR. GIBBONS: I'm not asking --

23 THE COURT: So you want a us to -- well I'm inclined
24 to let him use it to refresh his recollection.
25 Now if he wants to get a man in, you might want



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1 to renew your objection to that. You know the
2 rule. He can use anything to refresh his
3 recollection. And he just wants to -- Mr. -- I
4 think the testimony is you don't remember.

5 MR. ARCHER: I do not remember getting that letter
6 from the IRS.

7 THE COURT: If you want to show him the letter to jog
8 his memory that's perfectly acceptable. But now
9 if he tries to admit them in, you can renew your
10 objection. We'll ---

11 MR. ANDERSON: Can I impose upon the court for one
12 minute to call my office and tell my secretary to
13 put my keys in the mailbox?

14 THE COURT: Oh, yes, sir.

15 (Off the Record)

16 MR. GIBBONS: Thank you, Your Honor.

17 Q: Mr. Archer, this is the letter I'm referring to
18 -- the IRS. It's addressed to you at your
19 Fernview Drive address, is that right?

20 A: That's right.

21 Q: And that is your correct home address?

22 A: That's Fernview Drive, correct.

23 Q: Okay. And do you see at the top where it looks
24 like it's been faxed to somebody and has a fax
25 transmittal header and has your name up there?



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1 A: , Jim Archer, uh-huh.

2 Q: Okay. You faxed that letter to Mr. Creel didn't
3 you?

4 A: I don't remember.

5 Q: Okay. If I represent to you that fax number is
6 Mr. Creel's fax number would you have any quarrel
7 with that?

8 A: This is -- it doesn't say where it's faxed from
9 it just says where it's faxed to.

10 Q: Okay.

11 A: So I don't know who would have faxed it.

12 Q: It would've have first come to you though from
13 the IRS. That's your home address on there?

14 A: That's correct.

15 Q: And it's notifying you of unpaid and delinquent
16 tax amounts that are due?

17 A: Is that -- I haven't read the letter yet.

18 Q: Okay. And that's in -- the date from the IRS is
19 smudged. It looks to me to be April but the fax
20 transmittal is May of 2006?

21 A: May 30th of 2006.

22 Q: Okay. All right. So you did, at least on this
23 occasion, receive a letter from the IRS notifying
24 you about unpaid tax liability from the
25 corporation.



- 1 MR. ANDERSON: Your Honor, he has not answered that he
2 has received that letter. He just says that's a
3 letter addressed to him. He hasn't -- the
4 question hasn't been asked did he get it?
- 5 Q: Do you deny receiving such a letter?
- 6 A: I do not recall receiving that letter.
- 7 Q: Are you testifying under oath that you've never
8 received a letter at your home address from the
9 IRS about unpaid taxes for the business from the
10 IRS?
- 11 A: I'm not testifying to that, no.
- 12 Q: Because in fact you did, right?
- 13 A: I don't recall receiving that letter.
- 14 Q: Okay. And your testimony about the sales taxes,
15 if I understood you, you said the sales taxes
16 were paid every month.
- 17 A: That's correct.
- 18 Q: So is it your testimony -- does it flow from that
19 that sales taxes were never delinquent?
- 20 A: No, I'm not gonna say that because we -- at one
21 time we were delinquent on the sales tax.
- 22 Q: Okay. Let me ... Okay. I'm gonna show you a
23 letter addressed to the cafe on Devine Street in
24 May of '07. Albeit after you'd left your position
25 and had resigned there's a letter from the state



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1 taxing authority indicating sales tax
2 delinquencies going back to '05 and many, many
3 months in '06, if not every month in '06,
4 including some months in '07 for a grand total of
5 some \$9700. If they were paid every month on
6 time do you have any information as to why the
7 state taxing authority would be sending that
8 letter saying that that's not correct?

9 A: I do not.

10 **THE COURT:** This is the sales tax you were talking
11 about?

12 **MR. ARCHER:** Yes, sir.

13 **THE COURT:** I want to make sure I understood the
14 testimony. You said a minute ago, Mr. Archer,
15 that y'all did -- you were delinquent once on the
16 sales tax? Or was that ---

17 **MR. ARCHER:** Well I also said that we were usually a
18 quarter in the rears so.

19 Q: You'll agree with me. I'm gonna look over your
20 shoulder here. That goes back to ...

21 A: August of 2006.

22 Q: Well it goes back to December -- actually
23 November of '05 through February of '06 ---

24 A: And it actually kind of looks like partial
25 payments. Because it's saying we were delinquent



1 \$87.64 in that month. So it's not like we
2 weren't -- they weren't paid. Looks like they
3 may have been.

4 Q: Well the other column just says applied a \$1.90.
5 Do you see any other credit's on there other than
6 a \$1.90?

7 A: No. But I just -- it's saying they could be, you
8 know, how we paid. And we could have made a
9 mistake or something in paying them because it's
10 not showing the total outstanding due. It's just
11 showing that we had remaining partial payments on
12 the -- on those returns that we filed.

13 Q: The point being, your testimony is the taxes
14 being paid every month is not correct, evidently.
15 Do you agree with that statement? Or disagree
16 with it?

17 A: I would say probably at some point we didn't pay
18 them every month. That would be correct.

19 Q: But you also testified on the record that, again
20 based on your surmise about what the December
21 receipts should have been, albeit you don't have
22 any proof of that, that there was money in the
23 account to pay the taxes due and vendors and the
24 payroll. Was that your testimony?

25 A: Uh-huh.



1 Q: But again, you didn't look at the books at that
2 point in time did you?

3 A: No because I didn't have it. Jim had it.

4 Q: So you had no access to it?

5 A: That's correct.

6 Q: Or you had no corporate office because you had
7 resigned?

8 A: That's correct.

9 Q: So again, that testimony was strictly speculation
10 on your part?

11 A: Based on what I -- the receipts were from the
12 last week of December.

13 Q: And in prior years?

14 A: In the year -- in 2006 because I was still there
15 December of 2006.

16 Q: And you acknowledge the gross receipts had been
17 steadily spiraling downward since you became a
18 shareholder in 2003? I'm sorry, 2004.

19 A: The receipts spiraled downward. That's correct.
20 But the taxable income, or the losses were
21 actually better. So we were -- we were losing --
22 we were -- the receipts were less but we were
23 losing less money.

24 Q: But the cost of goods sold also went down,
25 correct? Along with the gross sales, cost of



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1 goods sold went down? So you're not spending as
2 much money to generate less than sales.

3 A: But that wouldn't -- the cost of goods go down
4 still doesn't -- the bottom line is not based
5 just on the cost of goods.

6 Q: Your one year of college, what did you study?

7 A: Just your basics, you know.

8 Q: Do you have any post high school education in
9 finance or accounting or tax or ---

10 A: No. I do not.

11 Q: --- business, anything like that?

12 A: No.

13 Q: Okay. With regard to the auction of the
14 equipment, you deal with a lot of restaurants.
15 You've testified to that, right?

16 A: Uh-huh.

17 Q: All up and down the east coast. And sometimes
18 they go out of business?

19 A: Sometimes they do.

20 Q: And when they go out of business you have
21 personal knowledge of auctions to liquidate the
22 equipment?

23 A: I do. I've never been to one auction to
24 liquidate equipment.

25 Q: Okay. You've never bid on anything at an auction



1 like that?

2 A: I never had a need to.

3 Q: And probably not a desire to, right?

4 A: Just haven't had a need to.

5 Q: Okay.. All right. Are you familiar in your other
6 work with the auction company that Mr. McMillan
7 arranged to handle the liquidation?

8 A: No, I didn't know anything about that.

9 Q: Okay. Do you have any direct involvement with
10 any other auction company?

11 A: No.

12 Q: And do you have the independent ability to have
13 liquidated this equipment that was put up for
14 auction?

15 A: The only thing I could have done was, you know,
16 I could have checked with people just, you know,
17 to see if people would have want of want bought
18 -- buy that product piece mill -- we could have
19 advertise it -- there's a lot of things we could
20 have done.

21 Q: Okay.

22 A: We could have sold the business as a whole ...

23 Q: Did you receive -- with those financials you
24 think you could have sold that business as a
25 whole?



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1 A: I don't know.

2 Q: Okay. But this is your one and only venture into
3 this so you really don't have any reason for
4 saying that, correct?

5 A: I know people try to sell businesses all the
6 time.

7 Q: Okay.

8 A: And we were -- at one time we were trying to sell
9 Tiffany's.

10 Q: All right. Now in your travels within the
11 restaurant community that you served in your job
12 at IFH, did you receive any word of mouth or any
13 kind of gossip, if you will, that Tiffany's was
14 having this auction?

15 A: No.

16 Q: Do you read trade publications regarding any of
17 these restaurants?

18 A: Not with it -- not that would -- I mean I read
19 stuff on national accounts. I'm a national
20 account rep.

21 Q: So you don't know what efforts Mr. McMillan or
22 the auction company may have made to reach out to
23 a broader audience to bring in more potential
24 bidders?

25 A: No because they didn't discuss anything with me.



1 Q: Okay. Then to that point, you had basically
2 washed your hands of the Devine Street location
3 on January 2nd of 2007?

4 A: I resigned my position with them the corp -- as
5 an officer with the company.

6 Q: And you had no interest in any further decision
7 making involvement, correct?

8 A: That's correct.

9 Q: And so had they told you about the auction
10 there's nothing you could have done about it,
11 correct?

12 A: I don't know.

13 Q: Well, would you have done anything about it?

14 A: I -- there may have been another auction company.
15 I have no idea what you pay auctioneers. You
16 know, you could have got the auction companies as
17 a -- you know, to competitively bid against each
18 other. There's a lot of things you could
19 probably done.

20 Q: But you have no proof to offer here today that
21 this auction was not the best possible way for
22 the liquidation of the equipment at Tiffany's on
23 Devine?

24 A: Repeat the question again.

25 Q: You have no proof to offer here today ---



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1 A: I have no proof -- no, that's correct. I don't
2 have any proof.

3 Q: Okay. All right. And the meeting that was held
4 -- the notice of the special meeting, you
5 attended that?

6 A: I did.

7 Q: Okay. Mr. McMillan -- I mean, Archer. I'm going
8 to show you the minutes of that special meeting.
9 Do you recall having seen that?

10 A: No, I've never seen this before.

11 Q: You were at that meeting.

12 A: I was at that meeting, but I never received any
13 minutes on it.

14 Q: Did you ask for any?

15 A: I don't remember asking for any but I never
16 received any.

17 Q: Do you want to take a minute to read that to see
18 if you have any objections to anything that is
19 contained in there or anything that's different?

20 A: I'll be honest with you, I don't remember all
21 this taking place. It may have but I don't
22 remember this. I don't remember anything coming
23 up as far as the \$3,000 of unpaid rent to the
24 landlord because I don't believe that was the
25 case. We weren't a month behind on paying the



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1 landlord.

2 MR. GIBBONS: Can we stand in recess for just a short
3 period of time?

4 THE COURT: Sure.

5 MR. GIBBONS: Long enough for me to return a call.

6 THE COURT: Sure.

7 (Off the Record)

8 THE COURT: Please be seated.

9 Q: My question about the contents of this, Mr.
10 Archer, have to do with where it says, effective
11 January 1st of '07 Mr. McMillan will take over
12 the day to day management of the business,
13 effective January 1st of '07.

14 A: That would be correct.

15 Q: Okay. So after January 1st of '07 he had complete
16 decision making authority of the corporation
17 because it said so in a meeting that you were
18 present at?

19 A: Of the corporation -- as a stockholder I didn't
20 give up my ---

21 Q: I understand. But the day to day management of
22 the business was clearly Mr. McMillan's ---

23 A: That's ---

24 Q: --- after January 1st of '07?

25 A: That's correct.



1 Q: So he had the sole ability to auction of the
2 assets or not? And we've already talked about
3 you as a shareholder would not have received a
4 penny unless the corporation could declare a
5 dividend or unless you sold your stock for more
6 money?

7 A: As a shareholder in the corporation, I should
8 have been privy to the information of what the
9 corporation was going to do.

10 Q: All right. Do you own stock in any other
11 companies?

12 A: Not -- I mean I'm involved in IRA's and 401K's
13 but none of which I'm sure owns stock in
14 companies.

15 Q: Okay. Is it your understanding and belief that
16 a shareholder of GM can be privy to all the
17 decision making and all the managerial and
18 executive decisions GM should make?

19 A: No.

20 Q: So for this application the same is true,
21 correct?

22 A: That would be correct. Can I also add something
23 to that?

24 Q: Unfortunately, I'm the one that gets to ask the
25 questions, sorry.



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1 THE COURT: I'll give you a chance to redirect, Mr.
2 Anderson, if you want to.

3 Q: One last thing I want to cover with you, the --
4 you were aware that the Two Notch store was
5 selling a product to the Devine Street store for
6 it to sale to make a profit on?

7 A: Right.

8 Q: And that had been the case before you got
9 involved?

10 A: I didn't know that until I got involved but I
11 assumed that, yes.

12 Q: Okay. That was the case when you started in
13 April of '04.

14 A: '04.

15 Q: And worked for those several months learning
16 business. That was the case?

17 A: That's correct.

18 Q: And it didn't change until you resigned your
19 position in January of '07?

20 A: No, it did not.

21 Q: Okay. So that was a usual pattern of business
22 that you were well aware of?

23 A: Yes.

24 Q: And I think Mr. McMillan testified that property
25 be sold at a 50 percent discount for the Devine



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- 1 Street store and they made a profit margin on it.
- 2 A: That's correct.
- 3 Q: Okay. All right. So the fact -- and were you
- 4 aware that in the later part of '06 going into
- 5 '07, the Devine Street store had not paid for
- 6 product from the Two Notch store?
- 7 A: We may have missed some weeks with paying them
- 8 but for the most part we were paying them.
- 9 Q: Okay. And after January of '07 you don't have
- 10 any knowledge about ---
- 11 A: I do not.
- 12 Q: --- what's owed or what? Okay. So if Two Notch
- 13 was not getting paid for product that Devine was
- 14 selling, Devine was making money at the expense
- 15 of Two Notch?
- 16 A: If that was happening.
- 17 Q: Okay. So you don't have any proof, here today,
- 18 that the checks that Mr. McMillan wrote from
- 19 Devine somehow were not owed to Two Notch.
- 20 A: I don't have any proof that they were.
- 21 Q: Okay. You are surmising that again, correct?
- 22 A: Correct.
- 23 Q: Okay. So you don't have -- after January of '07
- 24 you have no knowledge?
- 25 A: No.



- 1 Q: Okay. But your argument is that you're entitled
2 to an offset or some sort of reduction or
3 modification or credit because Devine wrote
4 checks to Two Notch, wasn't that part -- isn't
5 that part of your position in the case?
- 6 A: Part of the -- that not just Two Notch but also
7 other vendors.
- 8 Q: Okay. But you no proof of that?
- 9 A: We have checks to other vendors that Jim -- that
10 Mr. McMillan wrote out of the Devine Street
11 location for the Two Notch Road location.
- 12 Q: Okay. Do you have any underlying documentation
13 as to why that situation existed?
- 14 A: Do I know why he did that?
- 15 Q: Yes.
- 16 A: No.
- 17 Q: Okay. So that again is a surmised on your
18 behalf?
- 19 A: That would be -- there's no other way to surmise
20 it.
- 21 Q: Well but you have no proof of it?
- 22 A: No.
- 23 Q: Okay. That's all the questions I have, Your
24 Honor.
- 25 A: But -- okay.



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1 Q: Thank you.

2 THE COURT: Redirect?

3 MR. ANDERSON: Yes, sir.

4 MR. J. ARCHER - RE-DIRECT EXAMINATION BY MR. ANDERSON:

5 Q: Mr. Gibbons asked you some questions about the
6 K1. Do you not remember getting that K1?

7 A: Yes, I remember getting -- I remember getting the
8 K1s. I don't remember this particular one, but
9 I remember getting these.

10 Q: And that shows that you were entitled to a --
11 take a loss of 5,325?

12 A: Right.

13 Q: Did you get one for '06?

14 A: I don't remember that. I'd have to check my '07
15 taxes to see if that actually happened. This
16 would have been pretty large.

17 Q: Did you get that one?

18 A: I don't remember.

19 Q: And it's showing loss of what?

20 A: 9,639 so it means we lost about \$19,000.

21 Q: And that would have included all of the taxes Mr.
22 McMillan maintains that he paid and all the other
23 vendors and everybody else?

24 A: That's correct.

25 Q: Same thing for '07?



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- 1 A: And I don't remember getting one for '07 either.
- 2 Q: In 2006 you had run that business for three
- 3 years?
- 4 A: Right.
- 5 Q: And you had a feel for what happens in December
- 6 vis-a-vis the rest of the months in the year.
- 7 A: That's correct.
- 8 Q: And you were the one that was responsible for
- 9 getting the money in, depositing the money and
- 10 paying the bills?
- 11 A: Right.
- 12 Q: And when you left in January of 2007, was there
- 13 enough money either in the bank or coming into
- 14 the bank by credit cards to pay all the bills?
- 15 A: I felt like there was, yes.
- 16 Q: You felt like there was or there was?
- 17 A: There was.
- 18 Q: Do you know what happened to that money?
- 19 A: I just know Mr. McMillan closed the checking
- 20 account down and I have no idea what happened to
- 21 that money.
- 22 Q: You had no control over it after January of 2007?
- 23 A: That's correct.
- 24 Q: And you had written checks already ready to be
- 25 sent out to cover all the taxes and everything



1 else?

2 A: I did.

3 Q: No further questions.

4 THE COURT: Do you need to cross?

5 MR. GIBBONS: Just very briefly, Your Honor.

6 MR. J. ARCHER - RE-CROSS EXAMINATION BY MR. GIBBONS:

7 Q: Let me show you two notices of insufficient funds
8 from First Palmetto Bank, one dated January 10th
9 of '07 and one dated January 11th of '07
10 returning checks for \$1,400 and \$147. Doesn't
11 that indicate to you there was not sufficient
12 money in that account to pay the bills?

13 A: This indicates to me this could be the checking
14 account that Jim closed and that's why they were
15 returned.

16 Q: So the fact of the matter though is that you
17 don't have proof of what was in the bank in
18 December of 2006?

19 A: No. What I'm saying is this doesn't show that
20 there were insufficient funds in there just like
21 my checks. My checks were -- that I wrote came
22 back because the account was closed and this
23 could be the exact same reason that this came
24 back because the account was closed.

25 Q: That's all for me, Your Honor. Thank you.



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1 THE COURT: All right. Thank you, sir. You may come
2 down. Watch your step coming down.

3 MR. ANDERSON: I've got one quick witness, Judge.

4 CHRISTOPHER ARCHER, having been duly sworn, deposes
5 and testifies as follows:

6 MR. C. ARCHER - DIRECT EXAMINATION BY MR. ANDERSON:

7 Q: You were in this courtroom not long ago weren't
8 you?

9 A: I was.

10 Q: You're now a lawyer?

11 A: I am.

12 Q: Passed the bar?

13 A: Yes, sir.

14 Q: You're -- also have a Bachelor's Degree in
15 Accounting?

16 A: I got a BA in Business and then I got a Master's
17 in Accounting.

18 Q: Okay. You were hired by your daddy after he
19 began to manage this restaurant, is that correct?

20 A: Yes, sir.

21 Q: And what was your first job?

22 A: Dishwasher.

23 Q: How long did you do that?

24 A: Probably six, seven, eight months, I don't know.

25 Q: What were you paid?



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- 1 A: I think minium wage.
- 2 Q: Did you move up from there?
- 3 A: I did.
- 4 Q: Then what?
- 5 A: I went to work the retail counter and did that
- 6 for probably a year, then became a server and
- 7 then a cook. I basically did everything. As
- 8 there was a need in the restaurant I would
- 9 basically fill the need.
- 10 Q: Ultimately in 2006 did you begin to manage the
- 11 restaurant?
- 12 A: I did.
- 13 Q: Would your father still come in on the weekends
- 14 and do the books?
- 15 A: Yeah. He would work Saturday and Sundays I'd
- 16 work Monday through Friday.
- 17 Q: During the course of the time that you worked
- 18 there starting in 2003, would you see Mr.
- 19 McMillan come to the business and have
- 20 conversations with your daddy?
- 21 A: Yeah. He would come every Saturday morning and
- 22 then, you know, several times during the week he
- 23 would come.
- 24 Q: Do you know what your father and Mr. McMillan
- 25 discussed?



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- 1 A: I know Mr. McMillan would always come in, fix
2 himself breakfast and they'd sit down at a table
3 in the back of the restaurant for about half an
4 hour and discuss the business.
- 5 Q: Would the checkbook be present?
- 6 A: I'd assume so.
- 7 Q: Was Mr. McMillan a hands on part-owner of this
8 business?
- 9 A: Yes. He knew everything that was going on.
- 10 Q: When your father quit managing the business seven
11 days a week, did you begin?
- 12 A: Yeah. When he went back to work for IFH, I
13 started managing the day-to-day operations and he
14 would come in on the weekends.
- 15 Q: At some point did Mr. McMillan hire another
16 manager?
- 17 A: Yes. A lady by the name of Sue, I think.
- 18 Q: And how long did she last?
- 19 A: About a month, maybe two months.
- 20 Q: Two months?
- 21 A: Yeah.
- 22 Q: Who took the place back over?
- 23 A: Then I took it back over after she left.
- 24 Q: Did Mr. McMillan ever complain about your ability
25 to manage the restaurant?



1 A: Never to me.

2 Q: When did he let you go?

3 A: It was the first day back, 2007. So there was a
4 break at the end of the year and then when we
5 reopened for the first day of the first 2007 he
6 came in that morning and fired me.

7 Q: He just said, you're fired, get out?

8 A: Essentially, yeah.

9 Q: And your daddy resigned as well shortly
10 thereafter.

11 A: Yeah. I called him and told him what had
12 happened and then he resigned.

13 Q: Okay. Did your father have anymore association
14 with that business?

15 A: Not to my knowledge.

16 Q: Did you?

17 A: No.

18 Q: What is the busiest month of the year for y'all?

19 A: December.

20 Q: And what would have been the percentage that you
21 would have made in December vis-a-vis the other
22 months?

23 A: You know, the two weeks prior to Christmas were
24 the busiest two weeks of the year. It's really
25 hard to say, you know, how much it would have



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1 been this week versus every other week. But I
2 would say roughly twice what any other month
3 would average. I don't know.

4 Q: Do you know what would have been traditionally
5 the income of the restaurant for the month of
6 December?

7 A: My guess would be somewhere between thirty and
8 forty thousand.

9 Q: You got a Master's Degree in Accounting. Did you
10 run an am schedule indicating what your daddy
11 would owe on that note if he is given credit for
12 his 49 percent interest in the business?

13 A: I did.

14 MR. GIBBONS: Judge.

15 THE COURT: Yes, sir.

16 MR. GIBBONS: Number one, this was not given to me in
17 discovery at all. Number two, this witness is
18 not an expert, not offered as one or qualified as
19 one to give any financial information or opinion
20 testimony, and I think it's improper.

21 THE COURT: What document is this Mr. Anderson?

22 MR. ANDERSON: This is a document created by Mr.
23 Archer who is -- has a Master's Degree in
24 Accounting as to what the balance would be on the
25 note if indeed Mr. Archer is given credit for his



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1 49 percent interest in the business. I think
2 he's perfectly capable to testify to that. With
3 regards to anything dealing with discovery, I
4 don't remember being asked any questions about
5 the balance on the note.

6 **THE COURT:** All right. Mr. Gibbons, any response?

7 **MR. GIBBONS:** I'm looking to see Mr. Anderson's
8 answers to the interrogatories that I submitted.

9 **THE COURT:** Take your time.

10 **MR. ANDERSON:** And this witness ---

11 **THE COURT:** One moment please. Okay. Before we go
12 any further -- everybody's going kind of fast.
13 You never asked the witness to state his name.

14 **MR. ANDERSON:** Oh. I'm sorry. I am supposed to do
15 that.

16 **THE COURT:** What's your name again, sir?

17 **MR. ARCHER:** Christopher Archer.

18 **COURT REPORTER:** Thank you.

19 **(Off the Record)**

20 **MR. GIBBONS:** Are we ready?

21 **THE COURT:** Yes, sir, Mr. Gibbons.

22 **MR. GIBBONS:** I was just going to say, Your Honor,
23 that this witnesses testimony was described as
24 factual and based on his involvement in the
25 restaurant. Nothing about calculating balances



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1 or offsets or whatever. And again, I will say
2 that's a legal conclusion the court has got to
3 make.

4 **THE COURT:** Was he identified as a witness by
5 discovery?

6 **MR. GIBBONS:** I'm looking for -- I've got Mr.
7 Anderson's second answers to his second
8 interrogatories.

9 **MR. ANDERSON:** Mr. Gibbons and I discussed who our
10 witnesses were going to be yesterday.

11 **MR. GIBBONS:** He never mentioned he was going to offer
12 financial information other than factual.

13 (Off the Record)

14 **MR. GIBBONS:** Judge.

15 **THE COURT:** Yes, sir.

16 **MR. GIBBONS:** Can we speak very briefly on this. I
17 can't anticipate what his answers are going to
18 be. And again, I've made objections that have
19 been sustained on the legal conclusion -- status
20 of the offsets, credits, deductions, you know,
21 what have you. I think we can fairly well
22 conclude this gentleman is going to support his
23 father's position in the case. I think it's self
24 serving at best. I can't seem to locate Mr.
25 Anderson's answers in my interrogatories where



1 this witness was identified at all. I don't ...

2 **THE COURT:** But you knew he was going to testify in
3 court today, right?

4 **MR. GIBBONS:** Mr. Anderson and I talked about who our
5 witnesses were he did not mention to me he had an
6 amortization scheduled from this witness that was
7 going to be used in support of any kind of offset
8 argument or credit argument or counterclaim
9 argument. And I'm not trying to sandbag Mr.
10 Anderson. That's not the primary crux of my
11 objection ---

12 **THE COURT:** Uh-huh.

13 **MR. GIBBONS:** I don't think it comes in through this
14 witness.

15 **THE COURT:** Okay. What -- yes, sir, Mr. Anderson?

16 **MR. ANDERSON:** My client has testified he is a 49
17 percent owner of this business. A49 percent
18 owner of the business and we have a \$10,000 note.
19 It's his position and he's testified to this,
20 that \$4,900 of that note is his. All right.
21 He's also testified that he paid \$3500 of a bill
22 -- that belonged to Tiffany's. And so what I've
23 got my witness here to testify to is that if he
24 -- if you give him credit for those two ---

25 **THE COURT:** Yes, sir.



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1 MR. ANDERSON: --- that the balance is that he would
2 be owing. If -- and he is going to testify that
3 if you only give him the \$4,900, what the balance
4 would be owed.

5 THE COURT: How does he know though?

6 MR. ANDERSON: He's an accountant and he ran the am
7 schedules.

8 MR. GIBBONS: He is not an accountant.

9 THE COURT: No, the question is where did he get --
10 how did he get the information to figure out
11 what his conclusion's about?

12 MR. ANDERSON: Because he knows that his father owns
13 49 percent interest in his business.

14 THE COURT: Right.

15 MR. ANDERSON: And he's seen the check's that were
16 returned by the bank for 35, \$3500 that his daddy
17 made good on.

18 THE COURT: Okay. And your not going to -- I mean,
19 if you want to prop him as an expert. I know Mr.
20 Gibbons has an expert. I mean, I'm willing to
21 hear it. I'm curious about what he's going to
22 say. Mr. Gibbons objects because he wasn't
23 disclosed and my question to you was where did he
24 get the information from and how did he get it?
25 You said he already knew because he worked for



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1. the restaurant.

2 MR. ANDERSON: I'll lay that as a foundation.

3 MR. GIBBONS: And, Judge, I didn't offer Mr. Creel as
4 an expert. Mr. Anderson very graciously
5 accepted him as an expert. He was never offered
6 as one. And again I think this is prejudicial,
7 Judge. The court can make those calculations.
8 The court has heard the testimony on all the
9 positions Mr. Archer's taken. And heard my cross
10 on those positions, so I don't think it smooths
11 the ball, Your Honor.

12 MR. ANDERSON: I think he's going to save you the
13 effort and the trouble doing the calculations.

14 MR. GIBBONS: I've never known the court to be less
15 than willing to do it's share of the work, Your
16 Honor.

17 THE COURT: Objection's overruled. Because again, --
18 and I know the appellate courts would fuss at me,
19 but I'm curious what he's going to say. And
20 again, it's not a ruling on the merit's of the
21 case so I'll overrule the objection. Go ahead
22 Mr. Anderson.

23 Q: You know how to do an am schedule?

24 A: Yes, sir.

25 Mr. GIBBONS: Just so the record's clear on this.



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1 This witness was not identified as an expert.
2 This witness as far as I can tell was not even
3 disclosed in discovery responses. I just want to
4 make sure the record is clear on that and then --
5 -

6 THE COURT: Now wait. You said you couldn't find his
7 discovery responses, is that what he said?

8 MR. ANDERSON: Yes.

9 MR. GIBBONS: Yeah. Mr. Anderson couldn't find any
10 discovery responses either.

11 THE COURT: So we don't know if he's disclosed or
12 not?

13 MR. GIBBONS: That's right.

14 THE COURT: Okay. And I'm going to ask -- Mr.
15 Anderson, what is an am schedule? I don't know
16 what that is.

17 MR. ANDERSON: Okay.

18 THE COURT: What is it? You can tell me. Unless you
19 want to ask it.

20 MR. ANDERSON: The am schedule is an amortization
21 schedule, Judge, whereby you determine if you
22 owe x number of dollars on day one with interest
23 at x percent what is owed at day 15?

24 THE COURT: Okay. All right. Go ahead your
25 question.



1 Q: You're aware of the note in question?

2 A: Yes.

3 Q: You are aware of the terms of the note in
4 question?

5 A: Yes.

6 Q: You are aware of when the payments were suppose
7 to be made?

8 A: Yes.

9 Q: You were aware of the interest rate?

10 A: Yes.

11 Q: You are aware that the note hasn't been paid?

12 A: Yes.

13 Q: You are aware that this is 2015?

14 A: Yes.

15 Q: And are you capable of determining what is owed
16 on that note today under certain circumstances.

17 A: Yes.

18 Q: All right. If your father is a 49 percent owner
19 of this business and if he is entitled to 49
20 percent of the note that he owes Tiffany's, what
21 would be the balance that he would owe on that
22 note today?

23 A: I mean, essentially ten years at ten percent you
24 just double whatever the principle of the note
25 initially was. So if it's determined that he



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1 owes 4900 then we would multiply that by two and
2 that would be what would be owing on the note.

3 Q: And how much would that be?

4 A: 4,900 would be \$9,800.

5 Q: That was what he'd be owing on the note today?

6 A: Yes, sir.

7 Q: All right. If he is given credit for his 49
8 percent interest on the note plus \$3500 that he
9 paid in order to discharge a debt of Tiffany's,
10 in 2007, what would he owe on the note?

11 A: \$2800.

12 Q: \$2800? Are these copies of your two work
13 product?

14 A: Yes, sir.

15 Q: Your Honor, I believe we'd like to go ahead and
16 put these in.

17 MR. GIBBONS: Objection, for the same reason, Your
18 Honor.

19 THE COURT: I'm sorry. What did you say Mr. Anderson?
20 I didn't head what you said. You were walking to
21 me. What did you say?

22 MR. ANDERSON: I said is this your work product? And
23 then I said we'd like to go ahead and put these
24 in.

25 THE COURT: Okay. All right. Mr. Gibbons?



1 MR. GIBBONS: Same objections, Your Honor. Haven't
2 seen it, wasn't advised of the testimony, put at
3 a disadvantage because of this new information,
4 you know, this isn't trial by ambush, Your Honor.

5 THE COURT: I know. Objection is overruled.

6 MR. ANDERSON: I have no further questions.

7 THE COURT: This is two copies or?

8 MR. ANDERSON: One copy of each, Judge.

9 COURT REPORTER: Do you want me to give them separate
10 numbers?

11 MR. ANDERSON: Yeah.

12 COURT REPORTER: Ten and eleven, Your Honor.

13 (Defendant's Exhibit Numbers 10 and 11 were marked for
14 identification purposes.)

15 THE COURT: Okay. Do you want to hold these, to look
16 at these again Mr. Gibbons?

17 MR. GIBBONS: I want to see them for the first time.
18 Yes, sir.

19 THE COURT: Look at these first time. Let me look at
20 it too. I'll hand it back to you. Okay. Take
21 a minute.

22 MR. GIBBONS: Sure I'll take look here if that's okay,
23 Your Honor.

24 MR. C. ARCHER - CROSS EXAMINATION BY MR. GIBBONS:

25 Q: Mr. Archer, good afternoon. And I don't know



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1 whether to congratulate you or offer you my
2 commiserations for being admitted to the bar.

3 **THE COURT:** Well we can all say a prayer of
4 Thanksgiving today is the first day of the bar
5 this summer. Everytime this year I say a prayer
6 of Thanksgiving I'm not taking the bar.

7 **MR. GIBBONS:** I can't speak for anybody else but I
8 wouldn't take it again, Judge.

9 **THE COURT:** Yeah. That's right. That's right.

10 **Q:** Let me ask you some background questions. Where
11 did you go to law school?

12 **A:** USC.

13 **Q:** And you graduated in?

14 **A:** 2014.

15 **Q:** And so you took the bar in '14 -- been admitted
16 about a year now?

17 **A:** Yes, sir.

18 **Q:** Okay. And your Master's of Accounting, where was
19 it from?

20 **A:** The University of South Carolina.

21 **Q:** Okay. And have you ever been employed in the
22 accounting area?

23 **A:** Yes, sir.

24 **Q:** In what capacity?

25 **A:** I worked for Bauknight, Pietras, Stormer while I



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1 was in school and then took an internal audit
2 position with a company called Constantia out in
3 Blythewood.

4 Q: When did you run these amortization schedules?
5 The date on the top of these is today.

6 A: This morning.

7 Q: You ran them this morning?

8 A: Yes, sir.

9 Q: And who gave you the information to plug into
10 this amortization schedule?

11 A: My -- Cam Anderson

12 Q: Okay. And your father to some extent I'm sure
13 too, right?

14 A: We didn't discuss it -- no.

15 Q: Who asked you to do this?

16 A: Cam Anderson.

17 Q: And when did he ask you to do it?

18 A: This morning I believe.

19 Q: So he asked you -- all this is within the last
20 nine hours?

21 A: Uh-huh.

22 Q: Okay. All right. And you being a lawyer and an
23 accountating person you know that being a
24 shareholder in a corporation does not give you
25 any ownership other than dividends you sale your



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1 shares for more than they are worth?

2 A: What's that?

3 Q: That's how you benefit from being a shareholder,
4 correct?

5 A: Repeat it.

6 Q: When you're a shareholder of a corporation
7 there's two ways you make money, dividends that
8 are declared.

9 A: Uh-huh.

10 Q: Or you sell your stock for more than you paid for
11 it. Do you agree with that?

12 A: I would agree that those are two ways that you
13 can earn money as a shareholder of a corporation,
14 yes.

15 Q: Tell me any other ways you know, that a
16 shareholder can benefit from their share
17 ownership other than those two.

18 A: A salary. A shareholder who works for a company
19 ---

20 Q: Right.

21 A: --- can earn a salary.

22 Q: If a shareholder does not work for a salary, then
23 what it said is correct, right?

24 A: Sure.

25 Q: And the salary is not as a derivative for being



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1 a shareholder, it's a derivative for being an
2 employee?

3 A: Okay.

4 Q: Correct? So we're stuck with what I said,
5 dividends, you sell you shares for mor than you
6 paid.

7 A: Okay.

8 Q: Okay. Now if you buy a car and you sign a bank
9 note to purchase that car and the car turns out
10 to be a lemon, you don't get an offset against
11 the bank note that you signed to borrow the money
12 to buy the car, do you?

13 A: I don't know.

14 Q: Mr. Archer, you don't know that?

15 A: I don't know the answer to that, no.

16 Q: You're a licensed attorney, admitted to practice
17 in this court. You're an officer of the court as
18 we speak.

19 A: Uh-huh.

20 Q: You know that, don't you?

21 A: Repeat what the statement was.

22 Q: If you go to Bank of America and you borrow
23 \$30,000 to buy a car and you sign a note for that
24 car ---

25 A: Yes.



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1 Q: --- for that money, and the car turns out to be
2 a lemon, it's worthless, it's a piece of junk,
3 you don't get to go to Bank of America and say,
4 hey, what I bought wasn't worth what I borrowed
5 from you to pay for it. I want an offset. It
6 doesn't work like that does it?

7 A: Well, I think that would depend. I mean there
8 could be. If he were deceived by the seller of
9 the vehicle. I mean there could be a variety of
10 facts which could alter that scenario that you've
11 provided.

12 Q: You've got a cause of action against the person
13 that lends you the money, is that your testimony?

14 A: You may. You're offering some fact set. I'm
15 saying that the -- I could change a fact and it
16 would change your conclusion.

17 Q: If the note doesn't have any reference to it
18 about that fact scenario, how do you get that
19 accomplished?

20 A: Repeat the question.

21 Q: If you borrow money from a bank to buy a car and
22 the car turns out to be a piece of junk and the
23 note has nothing in it about any kind of offset
24 or any kind of deduction, modification, or
25 credit, based on those facts you're not going to



- 1 be able to get anywhere with the bank on the
2 claim, are you?
- 3 A: Perhaps not.
- 4 Q: Okay. Have you ever handled one like that?
- 5 A: No, sir.
- 6 Q: Would you advise a client to quit paying on a car
7 loan because the car was a bad car?
- 8 A: I wouldn't take a case if I didn't know how the
9 law worked on it.
- 10 Q: All right. Do you know how the law works on it?
- 11 A: You seem more knowledgeable than I do on that.
- 12 Q: You're up there testifying as an expert. Mr.
13 Anderson has offered you as an expert.
- 14 A: Have I been offered as an expert?
- 15 **THE COURT:** I don't think so. I think I caused
16 confusion with that.
- 17 Q: For this Exhibit 10 and Exhibit 11 offered by Mr.
18 Anderson to have any validity or any relevance or
19 worth -- worthiness at all, you've got to believe
20 everything that's been testified to about your
21 dad's claim for an offset of credit or a
22 reduction, correct?
- 23 A: I haven't heard any of the testimony.
- 24 Q: The point exactly. You haven't heard a thing,
25 have you?



1 A: No.

2 Q: So this is just merely plugging in numbers on an
3 am schedule that's on a computer?

4 A: Very simple math.

5 Q: You didn't construct the software program that
6 spit this out, did you?

7 A: Absolutely not.

8 Q: Okay. And you have not confirmed in any way,
9 shape, or form any of the information that you've
10 plugged into this?

11 A: It's simple math. I can add one and one which is
12 essentially what that does.

13 Q: My question is you have not confirmed any of the
14 information that went in here to create these
15 numbers?

16 A: Confirmed how? I input the information.

17 Q: Did you -- have you looked at the books for
18 Tiffany's Bakery on Devine?

19 A: No.

20 Q: Have you ever looked at the checkbook?

21 A: Yeah. I've seen the checkbook before.

22 Q: Do you -- have you ever examined or audited or
23 reconciled or balanced the checkbook?

24 A: No.

25 Q: Have you ever talked to Mr. Creel about the



1 finances of that corporation?

2 A: Not that I can remember.

3 Q: So you've not confirmed anything that you used to
4 spit this out in Exhibit 10 or 11?

5 A: I just input numbers.

6 Q: Okay. You're here asking the court to consider
7 this as valid evidence in your father's case,
8 correct?

9 A: I'm not a party to the case. I'm not asking the
10 court to do anything.

11 Q: You're a witness that your father has offered in
12 support of his position in the case?

13 A: Uh-huh.

14 Q: And you've created these two documents at your
15 father's lawyer's request this morning to bring
16 these two documents and have them introduced into
17 evidence in support of his position?

18 A: I have run a calculation.

19 Q: So is it your testimony that this evidence is
20 worthless?

21 A: No.

22 Q: Well what worth does it have?

23 A: It tells you what the value of the note would be
24 if the court would to -- were to buy into
25 whatever position it does.



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1 Q: And that's for the court to determine, correct?

2 A: Sure.

3 Q: And it's simple math, plugging in numbers in an
4 am schedule?

5 A: Uh-huh.

6 Q: Anybody could do it?

7 A: Sure.

8 Q: So you bring no special knowledge to this by
9 virtue of your education and training and
10 background?

11 A: I don't think so.

12 Q: With regard to your time managing the business
13 and the meetings that you say took place with Mr.
14 McMillian and your father on these Saturday
15 mornings and other times, you were not privy to
16 those conversations, were you?

17 A: I wasn't excluded from them. I mean they just
18 took place in the middle of the restaurant.

19 Q: Were you sitting at the table with them?

20 A: No.

21 Q: Were you contributing to the conversation?

22 A: No.

23 Q: Were you being asked any questions that were
24 being discussed?

25 A: Was I being asked any questions that were being



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1 discussed? I don't understand that question.

2 Q: Were they consulting with you about any of the
3 matters that were being discussed between the two
4 of them?

5 A: While they were having those conversations?

6 Q: Yes.

7 A: No.

8 Q: Okay. And were you presented any documents that
9 might have been relevant to their discussion?

10 A: As far as what?

11 Q: Whatever they were talking about.

12 A: No.

13 Q: So your testimony of these meetings, you have no
14 knowledge of what may or may not have been
15 discussed?

16 A: It's pretty easy to presume that they were
17 discussing the business.

18 Q: Mr. Archer, you're a lawyer.

19 A: Uh-huh.

20 Q: We don't presume in court. You are here
21 testifying under oath about facts. You have no
22 knowledge about the subjects of those
23 discussions, do you?

24 A: No direct knowledge, no.

25 Q: No indirect knowledge, do you?



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1 A: Anybody in the restaurant knew what they were
2 talking about.

3 Q: Everybody knew what they were talking about?

4 A: Yes.

5 Q: Where are all those people?

6 A: I don't know.

7 Q: That's all the questions I have, Your Honor.

8 THE COURT: Any redirect?

9 MR. ANDERSON: No, sir.

10 MR. C. ARCHER - EXAMINATION BY THE COURT:

11 Q: All right. Mr. Archer, before you go, sometimes
12 in non jury cases the judge will ask questions.

13 A: Okay.

14 Q: And I think, quite frankly, it's probably --
15 because maybe I haven't seen enough of these type
16 of case. It's kind of a novel approach I think.
17 And I'm going to throw you a softball. I'm not
18 playing games but what is a note?

19 A: A note is a signed piece of paper is an
20 obligation to pay somebody a sum of money at some
21 point in time.

22 Q: Okay. Isn't it true that a note is a sum certain
23 in money? A promise to pay to a sum certain of
24 money?

25 A: Uh-huh.



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1 Q: At a specific time and a specific place?

2 A: I would agree with that.

3 Q: Okay. Now that's why I consider this a novel
4 issue. The note was signed back on July 24th,
5 2003.

6 A: Uh-huh.

7 Q: And unless you show me a case or a statue or
8 something, the notion that you can come back 12
9 years later and say because of -- well Mr.
10 McMillian testified, but you didn't hear what he
11 said. I'll tell you what he said. He said this
12 was considered a loan to a shareholder. All
13 right. Is that accurate, Mr. Gibbons? Or is
14 that what he testified to?

15 MR. GIBBONS: No, sir. It's carried on the books as
16 a receipt. Well, Mr. Creel is here and he can
17 respond better than I can.

18 THE COURT: Okay. Well maybe I just remember. Tell
19 me what he said.

20 MR. GIBBONS: As I understood the testimony to be,
21 advances Mr. McMillian made were a loan from a
22 shareholder for some \$36,000 and change for the
23 taxes and the unpaid vendors. That document is
24 carried on the books as a receivable just like if
25 it was note from xyz corporation or a note from



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1 me.

2 THE COURT: Are we Plaintiff's Exhibit 3?

3 MR. GIBBONS: That's right, the promissory note. It's
4 a receivable to the corporation. It's not a loan
5 from a shareholder.

6 THE COURT: A loan to a shareholder is ---

7 MR. GIBBONS: No, it's not -- he said -- is that --
8 no, no. It's a loan to the corporation. It's a
9 loan from Mr. -- from Tiffany's Bakery from Mr.
10 Archer, personally.

11 THE COURT: Okay. Now I am confused.

12 MR. GIBBONS: Do you want Mr. Creel to perhaps ---

13 THE COURT: No, I can maybe make -- I'm looking at
14 what it says. Let me -- I mean the note says
15 that Mr. Archer is getting money from Tiffany's
16 Cafe. That's not what it says?

17 MR. ANDERSON: No, sir.

18 MR. GIBBONS: No, sir.

19 MR. ANDERSON: Mr. Archer agreed to pay \$40,000 for a
20 49 percent interest in Tiffany's.

21 THE COURT: Okay.

22 MR. ANDERSON: 30,000 of that was paid in cash.

23 THE COURT: Right.

24 MR. ANDERSON: And the remaining \$10,000 was
25 represented by that note.



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1 THE COURT: And this is money who lended -- who was
2 lending the \$10,000?

3 MR. ANDERSON: Mr. Archer owes Tiffany's \$10,000 for
4 a portion of the 49 percent interest in Tiffany's
5 that he's received.

6 THE COURT: Okay. And your witness' position is that
7 he doesn't owe that much anymore?

8 MR. ANDERSON: That's correct. Because of the fact
9 that, number one, he owns 49 of the company, so
10 how can owe the company \$10,000 when he owns 49
11 percent of it. And then secondly, he paid a bill
12 of the company for \$3,500 and that he should be
13 entitled to an offset for that against the 10,000
14 that he owes.

15 THE COURT: All right. We'll get you off the stand
16 in a minute. Let me go ahead and polish the note
17 and the record is going to show that maybe I was
18 a little confused. So it says -- at the top it
19 says promissory note. At the top of that it says
20 \$10,000. In the right it says July 24th, 2003,
21 Columbia, South -- it's a copy of it. It's not
22 -- do you have the original with you?

23 MR. GIBBONS: We do not, Your Honor. I served Mr.
24 Anderson with a request for admission that that
25 document is a true and correct copy of the



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1 original. He admitted that.

2 **THE COURT:** Okay. The margins are a little -- let me
3 publish what I can see. It says for value
4 received, the undersigned promises to pay
5 Tiffany's Cafe and, and then you can't read it,
6 on Devine, Inc or order the principal sum of
7 \$10,000 on or before July 24th, 2005. Okay.
8 This note may be prepaid in full at anytime
9 without penalty. No delay or admissions -- I'm
10 sorry, no delay or omissions on the part of the
11 holder in exercising any right hereunder operates
12 as a waiver of such right for any other right of
13 this note. In the event of default, under the
14 terms of this promissory note the maker as
15 guarantor or endorser of this promissory note
16 further promises to pay, on demand, interest rate
17 of ten percent per annum from July 24th, 2005
18 until the date the balance is paid and all costs
19 of collection, including the reasonable
20 attorney's fees and costs incurred or -- I can't
21 make out this margin -- the holder in collecting
22 on portions, forcing this note on default. This
23 contract is to be construed in all respects and
24 enforced according the laws in the state of South
25 Carolina. Signed James S. Archer. It's marked



1 as Plaintiff's Exhibit 3 in this case. Now your
2 explanation to me is that this was part of Mr.
3 Archer's purchase of the stock of 49 percent of
4 this company. That's what you're trying to say?

5 MR. ANDERSON: Yes, sir.

6 MR. GIBBONS: Yes, sir.

7 THE COURT: So he doesn't actually have to pay
8 \$10,000? Is that ---

9 MR. GIBBONS: No, no. He does.

10 THE COURT: Okay. I see.

11 MR. GIBBONS: I've got a better copy of that note.

12 THE COURT: I'm still maybe -- and maybe I'm sleepy
13 and it's late in the day.

14 MR. GIBBONS: You want to hand that one I just gave.
15 Can you just -- the margins of this one. I
16 didn't realize that one was ---

17 THE COURT: Yeah. That's the one we marked. And
18 maybe I'm not characterizing correctly. Mr.
19 Gibbons, quite -- a big part of your lawsuit is
20 that Mr. Archer, James Archer, signed a note and
21 he owes your client ---

22 MR. GIBBONS: Correct.

23 THE COURT: --- money.

24 MR. GIBBONS: Correct.

25 THE COURT: Okay. And Mr. Anderson, your point is



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1 that this was simply a part of his contribution
2 to purchase in the buying of the business, right?
3 To buy stock in the business?

4 **MR. ANDERSON:** Right, that grants him 49 percent
5 interest in the corporation.

6 **THE COURT:** Okay. And we've been fighting all that
7 and I'm listening to you argue. I shouldn't say
8 fighting, you know. Everybody's representing
9 their client. And, Mr. Anderson, your point is
10 your client doesn't owe \$10,000?

11 **MR. ANDERSON:** Correct.

12 **THE COURT:** After it happened. And your point is,
13 Mr. Christopher Archer, that you can figure out
14 how much he really does owe or if he owes
15 anything?

16 **MR. ARCHER:** My testimony is you can determine, based
17 on -- if its \$1,000 you can determine what ten
18 percent at ten years simple interest computes to.

19 **THE COURT:** Okay. Well I don't think -- I don't have
20 an argument with that and neither do you, Mr.
21 Gibbons.

22 **MR. GIBBONS:** I do have one follow up or re-direct I
23 want to ---

24 **THE COURT:** Well hold on a sec. Hold on a second. I
25 think I'm finished with the questions I have for



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1 the witness. All right. But part of the -- have
2 you seen the note before?

3 MR. ARCHER: I have.

4 THE COURT: Okay. It talks about what happens if
5 there is a default, what constitutes a default in
6 this particular testimony.

7 MR. ARCHER: I don't know.

8 THE COURT: Okay.

9 MR. GIBBONS: I would say, Your Honor ---

10 THE COURT: No, I wasn't asking you about that.

11 MR. GIBBONS: I'm sorry.

12 THE COURT: Okay.

13 MR. ARCHER: I mean there's no terms in the document
14 that define default. I know that. It's a very
15 simple document.

16 THE COURT: Yeah. That's right. We're on the same
17 page as far as that's concerned. All right.
18 Now, normally I don't allow follow up questions
19 to my questions. But I've been doing it today,
20 if the parties don't object to that. So you want
21 to do a re-direct? Mr. Anderson, any re-direct?
22 Any follow-up to my questions? Well technically
23 it wouldn't be re-direct.

24 MR. ANDERSON: I don't have any questions based upon
25 your questions.



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1 MR. GIBBONS: And, Judge, I think Mr. Archer -- again,
2 we don't agree with his position. But I think he
3 unintentionally misspoke. And I'd like to
4 straighten that for the record, if I could.

5 THE COURT: Mr. Christopher Archer?

6 MR. GIBBONS: Mr. Chrisptoher Archer, you're right.
7 Yes, sir.

8 MR. C. ARCHER - RE-CROSS EXAMINATION BY MR. GIBBONS:

9 Q: Mr. Archer, you -- what I heard you say a minute
10 ago was that the figure would be 4900 times two?

11 A: Yes, sir. I think I misspoke. I think it would
12 actually be 51 times two. Yes, sir.

13 Q: Okay. So does that change -- these calculations
14 need to change on the basis of that testimony?

15 A: Like I said, you just take the principal amount
16 and multiply it by two. It's a pretty simple
17 complication.

18 Q: I hear you, okay? But that -- what you said just
19 now is the correct calculation. Those figures
20 don't reflect what you just testified to?

21 A: Right. And if the court would determine that he
22 owed 1000, he would owe 2000 on the note.

23 THE COURT: All right, Mr. Archer. Thank you. You
24 can come down. Watch your step coming down.

25 MR. ANDERSON: I renew my motions, Judge.



1 THE COURT: Okay. Your motions are denied. Obviously
2 I need to bone up a little bit on a lot in this
3 case. If y'all submit proposed orders, I'd
4 appreciate it. Let's see, today is July 29th.
5 How long do y'all need to get those to me?

6 MR. GIBBONS: Judge, ordinarily I would say less than
7 30 days. But I had written the court and asked
8 for protection ---

9 THE COURT: That's right.

10 MR. GIBBONS: --- from August the 13th through the
11 22nd. If we can have it in the end of August,
12 that would be much appreciated.

13 THE COURT: Mr. Anderson, is that okay?

14 MR. ANDERSON: And I'm going to be gone just the
15 first two weeks of September, Judge.

16 THE COURT: Okay. Well, I mean, do you want to pick
17 the deadlines? I don't know if that gives one
18 side an advantage or not but you were the first
19 to come up so.

20 MR. GIBBONS: Can you say the end of August?

21 MR. ANDERSON: Yeah.

22 THE COURT: Today's the 29th of July. The 31st of
23 August is a Monday. That's the ---

24 MR. GIBBONS: That's a sale date though, isn't it,
25 Judge?



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1 THE COURT: No, not for us, no. The August sale is
2 August 3rd. And the September sale is September
3 8th. And Labor Day is the first Monday, so yeah.

4 MR. ANDERSON: So August 30th?

5 THE COURT: 31st.

6 MR. ANDERSON: 31st.

7 MR. GIBBONS: Okay. Thank you, Judge.

8 MR. ANDERSON: Thank you.

9 (There being nothing further, the hearing concluded at
10 6:32 p.m.)
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CERTIFICATE

This is to certify that the within hearing consisting of two hundred and twenty four (224) pages, is a true and correct transcript of the testimony given by said witnesses after being duly sworn; said hearing was reported by the method of Stenomask with Backup.

I further certify that I am neither employed by nor related to any of the parties in this matter or their counsel; nor do I have any interest, financial or otherwise, in the outcome of same.

IN WITNESS WHEREOF I have hereunto set my hand and seal on September 23, 2016.



Mary H. Occhipinti
Court Reporter

Notary Public for South Carolina
My Commission Expires: October 18, 2020



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STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND)

TIFFANY'S CAFÉ & BAKERY ON) 2008-CP-40-3076
DEVINE, INC.,)
) TRANSCRIPT
VS.)
) OF
JAMES S. ARCHER,)
) MOTION HEARING
)

MOTION HEARING CONDUCTED BEFORE THE HONORABLE JOSEPH
M. STRICKLAND, COMMENCING AT THE HOUR OF 3:20 P.M.,
FEBRUARY 8th, 2016, AT THE RICHLAND COUNTY JUDICIAL
CENTER, 1701 MAIN STREET, COLUMBIA, SOUTH CAROLINA.

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REPORTED BY
JAMES SCOTT



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REPORTED BY:

JAMES SCOTT

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THERE WERE NO EXHIBITS MARKED FOR THIS HEARING.



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HEARING

[CALL TO ORDER.]

JUDGE STRICKLAND: Please be seated. This is Civil Action 2008-CP-40-3076, Tiffany's Café and Bakery on Devine, Incorporated against James Archer. Before the Court is a motion to alter and amend judgment. Are we all on the same page?

MR. ANDERSON: Yes, sir.

JUDGE STRICKLAND: Mr. Gibbons, is it your motion?

MR. GIBBONS: It is, Your Honor.

JUDGE STRICKLAND: Okay. You may proceed.

MR. GIBBONS: Thank you, Your Honor. May it please the Court, Judge, just by way of background and for the record, this case was set before Your Honor for a hearing on the merits back on July 29th of 2015, for about a half-day hearing. Subsequently, it was asked for Mr. Anderson and myself to submit proposed orders, which we did. On October the 12th -- I'm sorry -- October the -- yeah, the 12th of 2015 -- I received, by email from Mr. Anderson, a copy of Your Honor's order dated September 25th and filed on October 1st, and thereupon filed this motion for amended judgment under Rule 59(e) and another rule, Rule 60, on October 22nd, Your Honor. On October 29th, Your Honor, you asked Mr.

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1 Anderson and I to attend a status conference in
2 chambers, at which time we discussed the various
3 logistics about this case and how the orders were
4 submitted. Just for the record, Judge, it appeared
5 at that time that Your Honor had strongly
6 considered substituting the proposed order I
7 submitted in lieu of the proposed order that Mr.
8 Anderson had submitted, and it was decided that we
9 would go ahead and schedule this time for a hearing
10 today to deal with all of that.

11 So, with that, with that background, Your
12 Honor, the motion to alter or amend that I filed --
13 and a copy of it was submitted to the Court,
14 obviously, and I attached to that motion my
15 proposed order, and I can go through it line by
16 line, but we basically asked that specific findings
17 of fact and conclusions of law be altered and
18 modified.

19 The first one that we make reference to, Your
20 Honor, is -- and I'm referring to Mr. Anderson's
21 order, the one that was filed, signed and filed --
22 and the first paragraph that I make reference to is
23 paragraph 10 of the order, to reflect that it be
24 modified and amended to reflect that Mr. Archer
25 paid the two checks in conjunction with his

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1 employment at an institutional food house, not in
2 conjunction with any prosecution for writing
3 fraudulent checks. If Your Honor will recall the
4 testimony on that point, Mr. Archer's testimony
5 initially, on direct, was that he feared
6 prosecution and being issued a warrant for his
7 arrest for writing a bad check. On cross
8 examination, I believe the record will reflect that
9 he admitted that he had not received any notice
10 from any law enforcement agency, that there was no
11 warrant ever issued, and that he felt like he had
12 to issue those checks to maintain his good
13 relations with his current employer.

14 In paragraph 12, Your Honor, of Mr. Anderson's
15 order, you indicated that Mr. McMillan, my client,
16 and his son could manage the business, and we
17 wanted that paragraph to be modified to reflect
18 that Mr. Archer also hired his son, and in neither
19 of those relationships did the child have any
20 managerial experience in the restaurant business.
21 We wanted that added as a specific finding of fact.

22 In paragraph 13, Your Honor, where it says
23 that, even though the company is losing money, Mr.
24 McMillan chose to keep the business operational, we
25 wanted that to be altered to reflect that he kept

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1 the business operational due to the continuing
2 lease obligations on the property, and so as not to
3 be in default of that lease.

4 In paragraph 14, Your Honor, it indicates in
5 the order that the company was -- I'm sorry -- that
6 Mr. McMillan wrote checks to vendors of his
7 separate business, and we wanted that to be amended
8 to reflect that he wrote those checks to compensate
9 the separate business for expenses and purchases
10 made by Tiffany's on Devine that were paid for or
11 reimbursed by the other Tiffany's entity.

12 Paragraph 16, Your Honor, we wanted to be
13 amended to reflect that Mr. Archer expressed no
14 desire to have anything to do with the business
15 after his departure from the employ of the company,
16 and therefore any notice to him of the sale would
17 be immaterial, as he had already clearly
18 communicated that he didn't want any further
19 involvement with the business, and it did not
20 result in any credits to him. He also testified
21 under cross, Your Honor, that, if he had in fact
22 received direct notice or actual notice, he
23 wouldn't have done anything differently. He would
24 not be prepared to offer any money, nor was he
25 prepared to do anything to help alleviate the poor

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1 business situation that existed.

2 In paragraph 18, Your Honor, we asked that
3 that be amended to reflect that the items that were
4 not entered in the sale, the auction that was held
5 for the assets of the company -- there were some
6 assets that Mr. Archer claimed had some value and
7 that he ought to be given credit for that value,
8 but we believe his testimony more accurately
9 reflected that he didn't offer any evidence of that
10 value, that there were things that were not of
11 commercial value. Therefore, we ask that that be
12 amended to reflect that as well.

13 Then we move to conclusions of law, Your
14 Honor. The order as signed and filed indicates
15 that the note that Mr. Archer personally signed for
16 his acquisition of the stock in the company, it
17 indicated in the order that there was no
18 consideration for that note. We would ask that the
19 order be amended, Your Honor, that there was, in
20 fact, consideration supporting the note, to wit the
21 stock that was actually issued to Mr. Archer, the
22 actual stock certificate issued, and he received
23 the benefit of a 49% share of the business, so we
24 would ask that that be amended to reflect that the
25 note did have monetary consideration.

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1 Moving on, Your Honor, to paragraph B, we ask
2 that the order be amended to delete the reference
3 to Mr. Archer owning 49% of the note. He did not
4 own 49% of the note. The note was owned by the
5 corporation. He was a 49% shareholder of the
6 corporation, but that does not lead to the
7 conclusion that he has a 49% interest of each
8 individual asset of the corporation. He owns 49%
9 of the assets as a whole. If he had paid the note,
10 there may well have been some argument he could
11 make that he would be entitled to some derivative
12 benefit from that, but the fact that he did not pay
13 the note obviates that situation.

14 Your Honor, in the order that was signed and
15 filed, there was no consideration for any accrued
16 interest from the date of default or for the
17 issuance of attorneys' fees and costs, both of
18 which are clear and unambiguous provisions of the
19 note, and we provided the only evidence of the
20 attorneys' fees. We provided the only evidence as
21 to the interest accrual on the note on default.
22 That was from Mr. McMillan as well as eyewitness
23 Glenn Creel, and we think it's an error for the
24 order not to reflect that.

25 The order also contains a conclusion of law

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1 that the plaintiff breached its duty to the
2 defendant in winding down the business without
3 notice to him. Again, your honor, the clear
4 testimony was that Mr. Archer clearly expressed no
5 desire to have anything to do with the business
6 after he left the employment.

7 The other issue, Your Honor, dealt with -- if
8 you recall, there was an issue of Mr. McMillan
9 having to personally pay some unpaid tax liability.
10 He paid that from personal funds, and, when he did
11 that, Glenn Creel testified that, since it was an S
12 Corporation, it resulted in a tax credit or a tax
13 benefit for Mr. Archer; basically, a windfall to
14 him.

15 The argument that we submitted, Your Honor,
16 was that he should be responsible for debiting any
17 credit accruing from that windfall profit, based
18 upon that tax lien that Mr. McMillan paid, based
19 upon the pressure that was being exerted upon him
20 by the IRS and by the other taxing authorities.
21 Again, that's all fleshed out in more detail in my
22 proposed order that I submitted to you, Your Honor.

23 Last, in my motion, we ask that the order that
24 the Court issued in this case be vacated, and the
25 order that I submitted be substituted for it. That

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1 order basically does two things, Judge. It deals
2 in two parts, one with the note. There's no
3 question that the note was supported by valid legal
4 consideration. There's no question that it was
5 defaulted upon by Mr. Archer. It's just a simple
6 math equation of calculating the accrued interest,
7 the testimony we've offered about the attorneys'
8 fees, and the proposed order that I submitted to
9 you, which reflects very clearly upon the findings
10 of fact in that situation.

11 The second part of my proposed order, Your
12 Honor, goes into some detail of trying to, fairly
13 and equitably, balance the debits and credits
14 between these two parties on the windup of the
15 business. We give Mr. Archer credit for the \$3,500
16 that he did pay. You know, we can disagree as to
17 why he paid it, but we gave him credit for it in
18 the calculation of the ultimate amount of the
19 judgment. We also debited his interest for the tax
20 benefit. He was the beneficiary of a windfall,
21 once Mr. McMillan paid the unpaid taxes of the
22 corporation. Again, that's all in my order as
23 well.

24 We further conclude, Your Honor, that when you
25 calculate all of the debits and credits, all the

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1 amounts paid by Mr. McMillan and/or the
2 corporation, and then you apply the 49/51% ratio
3 between the two parties on the stock ownership,
4 that Mr. Archer is still -- still owes a sum of
5 19,573.27 to equate all those debits and credits
6 upon the windup of the business, Your Honor, and,
7 for that reason, we would reiterate our request
8 that the order of the Court be amended to reflect
9 the arguments which I have just enumerated to the
10 Court, and ultimately vacate the first order and
11 substitute for that the proposed order that I
12 submitted to the Court, and which is attached to my
13 motion.

14 JUDGE STRICKLAND: All right. Mr. Anderson, any
15 response?

16 MR. ANDERSON: May it please the Court, Your Honor,
17 indeed, Mr. Archer did run the restaurant for a
18 period of time. However, he resigned in January of
19 2007 and Mr. McMillan ran the business for a year
20 after that. The business was steadily losing
21 money, and no notice of that was ever brought to my
22 client's attention. When they deactivated the
23 business in January of 2007, there was sufficient
24 money to meet the obligations of the business at
25 that particular point. If Mr. McMillan put his son

1 in charge of the business and ran it down, then my
2 client ought not to be held responsible for that.
3 There's a couple of code sections that come into
4 play. One of them is 338.120, which states that
5 any sale of assets must be done by the shareholders
6 with their approval, and no sale of assets was ever
7 done here, with my client granting his approval.
8 My client was never asked whether or not he
9 approved -- my client was never asked about any
10 sort of an auction or any other way to try to
11 minimize any potential loss. Mr. McMillan owed a
12 fiduciary duty to my client in that regard, and he
13 breached that by not consulting with him and by
14 holding him liable for the debts of the business,
15 when he had no input as to how those debts were
16 accumulated or why they were accumulated. I submit
17 that he breached his fiduciary duty in that regard,
18 and that my client should not be held responsible,
19 and that the order you actually signed should be
20 the order in place.

21 JUDGE STRICKLAND: Mr. Gibbons?

22 MR. GIBBONS: In response, Your Honor, there are two
23 parts to the argument. One is that testimony, I
24 think, would reflect that Mr. McMillan did go to
25 Mr. Archer and ask for his assistance, particularly

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1 with tax liability, and all the pressure he was
2 being put upon by the IRS to take care of that.
3 Secondly, from the standpoint of his testimony, he
4 said he wanted nothing more to do with the
5 business, and his testimony was that he wouldn't
6 have changed anything, had he had notice. On the
7 third point, Your Honor, about the statutory breach
8 of fiduciary duty, number one, there's no evidence
9 offered of that. The only two witnesses Mr. Archer
10 put up was himself and his son, but there was no
11 testimony from anybody about any breach of
12 fiduciary duty, no mention of any kind of effort by
13 Mr. Archer to do anything within that context, to
14 assert any of those rights or remedies. So, from
15 that standpoint, Your Honor, I think there is no
16 evidence in the record to support that allegation,
17 from that standpoint.

18 JUDGE STRICKLAND: I understand.

19 MR. ANDERSON: I would just say, Judge, that we weren't
20 given the opportunity. Had we been given the
21 opportunity, things could have been done
22 differently that would not have caused my client to
23 -- don't forget, my client owns 49% of this
24 business, consequently, 49% of its debt. No debt
25 is his.

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1 MR. GIBBONS: That's just wrong, Your Honor. That's
2 just an incorrect assessment of how a note
3 belonging to an individual in a corporation works
4 -- and I would submit, Your Honor, my proposed
5 order gives him credit for all that, gives him
6 credit for the 49%.

7 JUDGE STRICKLAND: Let's do it this way. Mr. Gibbons,
8 you've already submitted a proposed amended order?

9 MR. GIBBONS: Well, it's the proposed order I first
10 submitted. I'll be glad to resubmit it, and --

11 JUDGE STRICKLAND: Well, no. I was going to ask you to
12 submit your proposed amendments to the order that I
13 actually signed.

14 MR. GIBBONS: Well, I think, that my proposed order is
15 the order of the Court, and the amendments are --

16 JUDGE STRICKLAND: Already in there?

17 MR. GIBBONS: -- already in there. Yes, sir.

18 JUDGE STRICKLAND: Well in that case, is that the way
19 you want to approach it, then, Mr. Anderson?

20 MR. ANDERSON: Well, the first amended order -- I need
21 to submit a proposed order denying his motion, but
22 if you would rather, we can just go back and look
23 at his original, and see if I agree with what he
24 said today.

25 MR. GIBBONS: I think that would be a better way of

1 doing it.

2 JUDGE STRICKLAND: All right. We'll do it that way.

3 MR. GIBBONS: Out of an abundance of caution, Judge, I

4 will redraft the order submitted by Mr. Anderson.

5 JUDGE STRICKLAND: Whatever's easy, easier for you. Do

6 you want to do that, or you don't? Do you want to

7 rest on what you've already submitted?

8 MR. GIBBONS: I'll rest on what was submitted, Your

9 Honor.

10 JUDGE STRICKLAND: Okay. Thank you all.

11 [WHEREUPON, THE HEARING WAS

12 CONCLUDED AT 3:31 P.M.]

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STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) CERTIFICATE

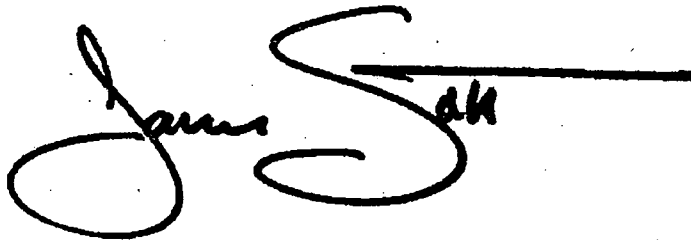
BE IT KNOWN THAT I, JAMES SCOTT, DULY OBSERVED AND
REPORTED THE FOREGOING HEARING AND HEREBY ATTEST:

THAT I WAS THEN AND THERE A NOTARY PUBLIC IN AND FOR THE
STATE OF SOUTH CAROLINA-AT-LARGE;

THAT THE FOREGOING TRANSCRIPT OF 15 TYPEWRITTEN PAGES
REPRESENTS A TRUE, ACCURATE AND COMPLETE TRANSCRIPTION OF THE
HEARING CONDUCTED AT THE TIME AND PLACE AFORESAID TO THE BEST
OF MY SKILL AND ABILITY;

THAT I AM NOT RELATED TO NOR AN EMPLOYEE OF ANY OF THE
PARTIES HERETO, NOR A RELATIVE OR EMPLOYEE OF ANY ATTORNEY OR
COUNSEL EMPLOYED BY THE PARTIES HERETO, NOR INTERESTED IN THE
OUTCOME OF ANY ACTION ASSOCIATED WITH THIS MATTER.

WITNESS MY HAND AND SEAL THIS 12th DAY OF SEPTEMBER,
2016.

A large, stylized handwritten signature in black ink, appearing to read "James Scott". The signature is written over a horizontal line.

JAMES SCOTT
PRESIDENT, CRS
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES APRIL 2nd, 2023.

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STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF RICHLAND

TIFFANY'S CAFE AND BAKERY
ON DEVINE, INC.,

Plaintiff,

VS.

JAMES S. ARCHER,

Defendant.

:
:
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:
: CASE NO.:
:
: 2008-CP-40-3076
:
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:
:

HEARING
(Before Master-in-Equity Joseph M. Strickland)

DATE TAKEN: June 13, 2016
TIME BEGAN: 2:00 p.m.
TIME ENDED: 2:15 p.m.
LOCATION: Richland County Judicial Center
1701 Main Street
Columbia, SC 29201
REPORTED BY: Kelli R. Billingsley
EveryWord, Inc.
P.O. Box 1459
Columbia, South Carolina 29202
(803) 212-0012

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1 THE COURT: This is Civil Action Number
2 2008-CP-40-3076, Tiffany's Cafe and Bakery on
3 Devine, Inc. vs. James Archer. The matter
4 before the Court today is a motion to alter
5 amended order.

6 Now, whose motion is it?

7 MR. GOODWYN: It's the defendant's
8 motion, your Honor.

9 THE COURT: Okay. You may proceed.

10 MR. GOODWYN: Sir, I'd like to apologize
11 in advance, I'm a little sick today.

12 THE COURT: Oh, I'm sorry.

13 MR. GOODWYN: That's all right. I just
14 can't speak very well, so if my voice goes,
15 that's why.

16 THE COURT: That's fine.

17 MR. GOODWYN: How much of the facts do
18 you think you need? I can go into the facts,
19 but if you're familiar with them, then --

20 THE COURT: Well, no, you need to go into
21 them because the record will be clear. What
22 I've been given is for me to review later on,
23 so you go ahead and give us --

24 MR. GOODWYN: I'll give you a brief
25 resuscitation of the facts. I did not try

1 this case. I've been retained for this
2 portion and a potential appeal.

3 THE COURT: Yes, sir.

4 MR. GOODWYN: But this case was tried
5 before your Honor, and the award was issued --
6 and the Court indicated that it was -- to
7 modify it's own order whenever the hearing
8 allowed, and the final order was issued, and
9 this motion is to alter or amend that final
10 order.

11 But the case basically is a
12 shareholder's dispute for the Tiffany's Cafe
13 and Bakery on Devine. The defendant was a
14 49 percent partner in the company. With --
15 surrendered his -- not ownership rights, but
16 his -- I can't think of the wording -- his
17 option rights, I'm sorry. My brain is not
18 firing on all cylinders today.

19 In 2007 after that -- Mr. McMillan
20 was running the company by himself after that.
21 He -- there's allegations by my client,
22 Mr. Archer, that Mr. McMillan breached
23 fiduciary duties in running the company;
24 hiring somebody, his son, that was
25 inexperienced to run the company. After he

1 left, drove it into the ground and then took
2 the assets and transferred them to his own --
3 other Tiffany's Bakery without giving the
4 other Tiffany's proper credit for that.

5 There was a number of other issues
6 that is a -- like I say, it's a very
7 fact-intensive case. But at the end of the
8 day, the company, after it was wound up, they
9 owed the -- that's when they had the tax lien
10 that the company was liable for. And both
11 partners were personally liable for as the IRS
12 makes you -- makes -- the owners of the
13 company are for these payroll taxes. And
14 Mr. McMillan paid this IRS lien out of his
15 pocket -- and we don't think that that had
16 anything to do with -- we don't think that
17 would make Mr. Archer liable to the
18 corporation. And that's an issue I'll get
19 into in a minute.

20 And then, of course, there's the
21 note that was, kind of, the basis of the whole
22 case, where Mr. Archer had given the
23 corporation a \$10,000 note in exchange for the
24 49 percent ownership. That was part of the
25 basis of the claim, and the interest on that

1 note, there are a number of credits that
2 defendants are starting to acquire.

3 In our motion for reconsideration
4 we've raised 36 grounds for the Court to
5 consider. I'm not going to go through each of
6 the 36 today, I'm only going to hit the
7 highlights. I'm going to rely on our motion
8 and our brief and the documents that we've
9 submitted to this court.

10 For those -- for the -- of the
11 remaining 36 of the issues that I don't
12 have -- that I just filed April 7th, 2016. I
13 think the key points today for the Court to
14 consider are the tax payments. That's one of
15 the biggest issues here. That's what I
16 mentioned a minute ago. There was an IRS lien
17 on the corporation for some tax payments that
18 were owed, and the owners of the corporation,
19 shareholders, were personally liable for that
20 debt as well if the corporation couldn't pay.

21 At the end of the day, Mr. McMillan
22 paid this \$19,573.20 something, and he paid
23 that -- I'm sorry. And he paid that -- or I'm
24 sorry. He paid more than that. Mr. Archer's
25 share of the total payment to the IRS ended up

1 being the \$19,000 figure.

2 Mr. McMillan paid it; however, we
3 think it's was an error for the Court to find
4 that Mr. Archer owes the corporation a portion
5 of that.

6 THE COURT: Uh-huh.

7 MR. GOODWYN: If he's -- if the
8 corporation owes it, and both of the
9 individual shareholders are liable for it, if
10 one pays it, that does not mean the other has
11 to pay the corporation anything.

12 That is not -- it doesn't create a
13 debt to the other shareholder. I mean, that's
14 a -- that's one of the glaring errors of the
15 order was finding that Mr. Archer somehow owed
16 the corporation because of a tax debt that one
17 of the other shareholders paid. The law does
18 not support that.

19 That's something that I -- that's
20 something that would be reversed on appeal if
21 we had to appeal it, but we're asking the
22 Court to correct that now.

23 THE COURT: Uh-huh.

24 MR. GOODWYN: Another key issue that was
25 really unaddressed in the order was the

1 defendant's claims for the breach of fiduciary
2 duty on the -- on Mr. McMillan's part. There
3 were approximately \$30,000 in assets that were
4 transferred from the business that were
5 unaccounted for.

6 THE COURT: Uh-huh.

7 MR. GOODWYN: There is a notice
8 requirement under 3312.102(a) and (b) that
9 shareholders, other than the primary
10 shareholder, have to be notified of such
11 transactions or such sales of assets of the
12 corporation. They were not notified --
13 Mr. Archer was not notified, rather. And I --
14 as I said, Mr. McMillan has another Tiffany's
15 Bakery that he took the inventory for which
16 was about \$10,000 and transferred them to his
17 other store without giving the corporation or
18 Mr. Archer any credit for it.

19 There were a number of breaches of
20 fiduciary duty that were not taken into
21 consideration in the order of which we think
22 should be taken into consideration when
23 looking at that overall picture in the order.

24 In addition, the other grounds I
25 wanted to bring up and highlight was the

1 \$3,500 in company debt that Mr. Archer paid.
2 These were some outstanding bills that he paid
3 out of his pocket. He wasn't given any credit
4 for that in the order as well, and he should
5 have been given some kind of credit either
6 towards the note or towards the total amount
7 of the judgment.

8 Yeah, please take a look at the rest
9 of our grounds. Like I said, there's 36
10 grounds. Some of them overlap, but there is a
11 number of issues that we think are in here,
12 but these particular ones are the most glaring
13 in our eyes.

14 THE COURT: Steven?

15 MR. ANDERSON: Thank you. If it will
16 please the Court --

17 THE COURT: First of all let me ask you,
18 is there anything that counsel said that you
19 can agree with? Any of those 36 grounds, is
20 there anything you can agree with?

21 MR. ANDERSON: Well, no sir, not -- they
22 all go to the heart of the case. And an
23 agreement would result in your order being
24 substantially modified a second time. And
25 frankly, Judge, my argument to the Court is

1 very simple. We brought this action for
2 breach of contract and breach of fiduciary
3 duty and negligence. The case really turned
4 on two things -- and the suit on the note, of
5 course, the promissory note -- the case turned
6 on two issues, the promissory note and then
7 the issue about the IRS lien that Mr. McMillan
8 had to advance so as to avoid garnishment,
9 levy, all of these aggressive collections
10 efforts that the IRS was taking.

11 If you remember, there were only
12 four witnesses in the case, your Honor; my
13 client, Mr. Glenn Creel, who was accepted as
14 an expert, Mr. Archer and Mr. Archer's son,
15 who at that time was an employee of the
16 business for a short time.

17 There was no evidence offered about
18 any kind of statutory duty, there was no
19 expert testimony offered by the defendant on
20 any accounting issues or the value of this
21 inventory as alleged, or any of the notice
22 requirements that they are now alleging. None
23 of this was brought up at trial, Judge. On a
24 59(e) motion, the law is clear that's not
25 proper, you don't get a redo on a 59(e) motion

1 just because you did not present that evidence
2 at the hearing on the merits.

3 I'll take issue with Mr. Goodwyn's
4 statement, Judge, that Mr. Archer did not
5 receive compensation for his \$3,500. On page
6 4 of the order, it specifically deals with the
7 \$3,500 and it says that the Court finds and
8 concludes that the amount he paid to resolve
9 the bad check should be compensated in the
10 same manner as the funds advanced by
11 Mr. McMillan.

12 What the order did, your Honor --
13 and I'm leaving aside for a minute the
14 collection of the promissory note -- but what
15 the Court did basically, I believe, was
16 conclude that based on Mr. Creel's testimony,
17 and the collection efforts of the IRS,
18 Mr. McMillan was put in a very uncomfortable
19 position of having to pay that bill or bad
20 things were going to start happening in a very
21 short order.

22 When he did that, he created a tax
23 credit that inured to the benefit of
24 Mr. Archer. It inured to his benefit as well,
25 but 51 percent inured to Mr. McMillan, a

1 49 percent tax benefit was inured for
2 Mr. Archer. And Mr. Creel testified that he
3 sent Mr. Archer the tax documentation so as he
4 could take advantage of that tax credit.

5 So what the order did, Judge, on the
6 money that Mr. McMillan had to pay is
7 basically he paid \$43,000, I believe -- let me
8 get the exact figure -- he paid \$47,088.30 and
9 that was for the tax bill and the other bills
10 that he advanced to basically wipe the slate
11 clean on this corporation. From that the
12 Court apportioned 51 percent to
13 Mr. McMillan -- which he understands, he
14 willingly accepts -- and 49 percent to
15 Mr. Archer. And then from that, your Honor,
16 gave him the credit for the \$3,500 and the
17 other credits -- which is an eminently fair
18 way to do this. A tax benefit was created for
19 him not to be responsible for the situation it
20 created, and it was equitable at the highest
21 in our opinion, your Honor.

22 So I believe that the order of the
23 Court should stand as far as the allocation of
24 the IRS debt and the apportion of those
25 figures between the two parties.

1 And again, Judge, of the 26 or 36
2 enumerated things in the motion, I would
3 submit to the Court 70 percent of them were
4 not addressed at trial. And any of the
5 findings of fact that 70 percent of those
6 things deal with don't have anything to do
7 with the trial or the ultimate decision of the
8 Court, in my opinion.

9 The promissory note, Judge, is
10 probably the easiest issue to resolve. A
11 promissory note is on its face a debt. A
12 consideration was paid and Mr. Archer was
13 given 49 percent of the company in exchange
14 for the debt. No amount was ever paid,
15 interest continued to accrue provided for the
16 assessment of attorney's fees and court costs.
17 And we submitted through Mr. Creel very
18 specific calculations of what that debt was at
19 the time of the hearing and still is, frankly,
20 your Honor, it's still accruing post-judgment
21 interest as we speak.

22 So we would submit, your Honor, that
23 none of the order -- has there been a
24 compelling case made for the modification at
25 this point. Again a 59(e) motion is not a

1 redo, you don't get to go back and try a case
2 like you wish you tried it the first time.
3 And, again, Mr. Goodwyn did not try the case,
4 but there was no evidence presented on any of
5 these things that dealt with the hiring of
6 people, the supervision of people, fiduciary
7 duties here or there, this was not part of the
8 case.

9 So, your Honor, we would ask that
10 the order be allowed to stand as is, and any
11 remedy from this point forward would be for
12 the defendant to take elsewhere.

13 Thank you, sir.

14 THE COURT: Yes, sir.

15 MR. GOODWYN: In response, your Honor, on
16 the tax issue, again, I think it's important
17 to know -- I think this is a fundamental
18 principle that everybody seems to understand
19 even coming out of law school if you take any
20 kind of corporations class, is that a
21 shareholder is not obligated for the debts of
22 the company beyond his capital investment in
23 the company. That's what is happening here.
24 Their order says that my client has to pay
25 back to the company an additional \$19,573

1 beyond his capital contribution for the debts
2 of the company. That's why we think this is
3 such a glaring error. And so it's just
4 obvious that that -- it cannot and should not
5 hold up on appeal, and it shouldn't be the
6 order of the Court that a shareholder be
7 obligated to pay the debts of a company beyond
8 his capital contribution.

9 THE COURT: Steven?

10 MR. ANDERSON: That would be essentially
11 true, your Honor, but for one very, very
12 important fact, and that was testimony from
13 Mr. Creel that when Mr. Archer chose to sign
14 payroll checks, he became a fiduciary agent of
15 the United States Government and personally
16 responsible for the payment and remittance of
17 the payroll taxes and all the other taxes that
18 employers have to pay. He was, in fact,
19 personally liable for that.

20 Mr. McMillan came in and saved the
21 day for him, frankly, by paying the \$47,000.
22 And again, it created the tax benefit to
23 Mr. Archer and it took away from him his
24 personal liability that he had at the time
25 that Mr. McMillan paid that bill. And that

1 was clear from the testimony of Mr. Creel. So
2 he assumed that responsibility when he chose
3 to sign payroll checks. So that, your Honor,
4 if you talk about equity, you can't give the
5 man a tax benefit and let him skate on the
6 personal liability that he had to the United
7 States Government. And I think the order of
8 the Court, your Honor, is eminently fair and
9 gives credit where every credit needs to be
10 given to both parties.

11 So that would be my argument, your
12 Honor.

13 MR. GOODWYN: Well, just quickly
14 responding to that, your Honor. Yes, he was
15 personally liable, but personally liable to
16 the government, not to Mr. McMillan, not to
17 the corporation. Keep in mind the plaintiff
18 in the case is a corporation. He was
19 personally liable to the government. And the
20 fact that somebody else paid that debt, okay
21 fine. The corporation didn't pay the debt,
22 Mr. McMillan paid the debt.

23 So to make my client be responsible
24 to pay back the corporation, again, is making
25 him pay money beyond his capital contributions

1 for company debts. That's just -- that's
2 mixing the two issues of who he was personally
3 liable to. He was liable to the government.
4 The fact that somebody else satisfied that
5 debt, that is irrelevant to what he should
6 owe.

7 MR. ANDERSON: Not completely, your
8 Honor, the testimony also provided
9 Mr. McMillan contact Mr. Archer to try to
10 resolve this -- to try to ask him for his 49
11 percent of what the government was leaning on
12 them to pay. And his attitude at that point
13 in time: I'm done, I'm out of there, you're
14 on your own, or words to that effect. For him
15 to now say I wasn't given notice or I wasn't
16 treated fairly, those things just don't ring
17 true in the face of the facts and the
18 testimony that was offered, your Honor.

19 Thank you.

20 THE COURT: All right. Based on what has
21 been presented here today, I deny the motion
22 to alter and amend judgment. And I guess you
23 can write a brief of non-argumentative orders.

24 MR. ANDERSON: I will indeed, your Honor.
25 I'll give them to Mr. Goodwyn first. Thank

1 you, sir.

2 - - -

3 (Hearing concluded at 2:15 p.m.)

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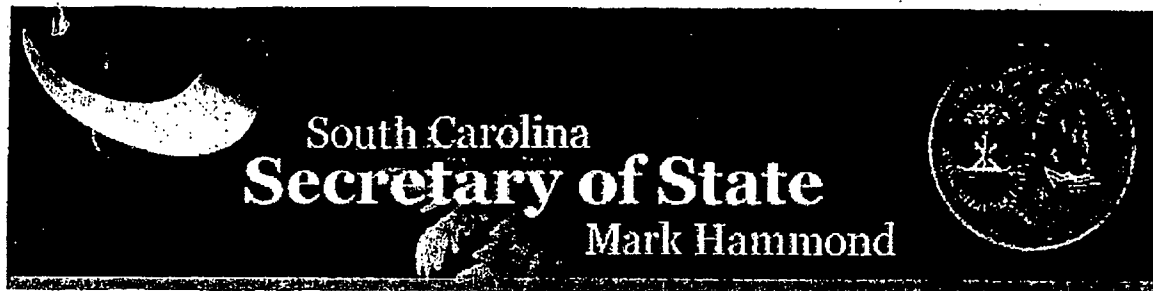
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TIFFANY'S CAFE & BAKERY ON DEVINE, INC.

Note: This online database was last updated on 7/29/2015 3:07:16 AM.
See our Disclaimer.

DOMESTIC / FOREIGN:	Domestic
STATUS:	Good Standing
STATE OF INCORPORATION	SOUTH CAROLINA
/ ORGANIZATION:	Profit

REGISTERED AGENT INFORMATION

REGISTERED AGENT NAME:	JAMES J MCMILLAN
ADDRESS:	8502 TWO NOTCH RD
CITY:	COLUMBIA
STATE:	SC
ZIP:	29223
SECOND ADDRESS:	

FILE DATE:	06/25/1997
EFFECTIVE DATE:	06/25/1997
DISSOLVED DATE:	//

Corporation History Records

CODE	FILE DATE	COMMENT	Document
Incorporation	06/25/1997	INCORPORATION	Image

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STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

STOCK PURCHASE AGREEMENT

For and in consideration of the payment by James S. Archer to Tiffany's Café and Bakery on Devine, Inc. of the sum of Forty Thousand and 00/100 (\$40,000.00) Dollars, Tiffany's Café and Bakery on Devine, Inc. hereby agrees to transfer and set over to James S. Archer of 315 Fernview Drive, City of Columbia, State of South Carolina, his executors, administrators and assigns, with full power to transfer the same on the books of the Corporation, Nine Hundred Fifty (950) shares of common stock of Tiffany's Café and Bakery on Devine, Inc., a corporation organized under the laws of the State of South Carolina and having its principal place of business at 8502 Two Notch Road in the City of Columbia, State of South Carolina. The purchase price shall be paid as follows: Thirty Thousand and 00/100 (\$30,000.00) Dollars to be paid to Tiffany's Café and Bakery on Devine, Inc. on July 24, 2003 and Ten Thousand and 00/100 (\$10,000.00) Dollars to be paid to Tiffany's Café and Bakery on Devine, Inc. on or before July 24, 2005 pursuant the Promissory Note from James S. Archer to Tiffany's Café and Bakery on Devine, Inc. dated July 24, 2003. The stock being sold, assigned, transferred and set over to James S. Archer is represented by the following Certificate: Stock Certificate Number 2. Tiffany's Café and Bakery on Devine, Inc. warrants that the stock now stands on the books of the Corporation and that all assessments to date are paid upon said shares. James S. Archer agrees to purchase said shares for the consideration set forth above and agrees to abide by all of the conditions and restrictions set forth in the Articles of Incorporation, By-Laws and in any Shareholder Agreements of Tiffany's Café and Bakery on Devine, Inc.

In witness whereof, the parties have executed this Stock Purchase Agreement on the 24th day of July, 2003.

WITNESSETH:

TIFFANY'S CAFÉ AND BAKERY ON
DEVINE, INC.

Rhixly A. Baker

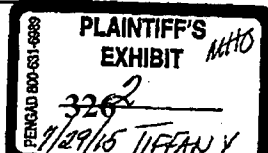
Hyder S. Stettin

James J. McMillan
James J. McMillan
Its President

Rhixly A. Baker

Hyder S. Stettin

James S. Archer
James S. Archer



PROMISSORY NOTE

\$10,000.00

July 24, 2003
Columbia, South Caroli

FOR VALUE RECEIVED, the undersigned promises to pay Tiffany's Café and I on Devine, Inc., or order, the principal sum of Ten Thousand and 00/100 (\$10,000.00) Dollars or before July 24, 2005.

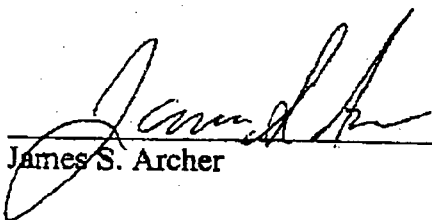
This Note may be prepaid in part or in full at any time without penalty.

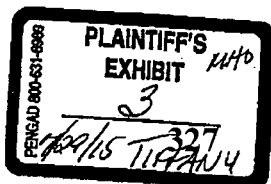
No delay or omissions on the part of the Holder in exercising any right hereunder operate as a waiver of such right or any other rights of this Note.

In the event of default under the terms of this Promissory Note, the maker as guarantor or endorser of this Promissory Note further promises to pay on demand interest at a rate of ten (10%) percent per annum from July 24, 2005 until the date the balance is paid and all costs of collection including the reasonable attorney's fees and costs incurred or by the holder in collecting or enforcing this Note on default.

This contract is to be construed in all respects and enforced according to the Laws of the State of South Carolina.

By:


James S. Archer



PROMISSORY NOTE

\$10,000.00

July 24, 2003
Columbia, South Carolina

FOR VALUE RECEIVED, the undersigned promises to pay Tiffany's Café and Bakery on Devine, Inc., or order, the principal sum of Ten Thousand and 00/100 (\$10,000.00) Dollars on or before July 24, 2005.

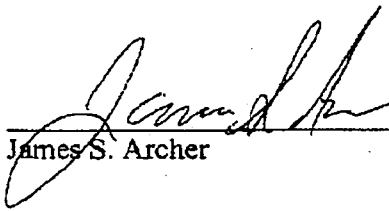
This Note may be prepaid in part or in full at any time without penalty.

No delay or omissions on the part of the Holder in exercising any right hereunder shall operate as a waiver of such right or any other rights of this Note.

In the event of default under the terms of this Promissory Note, the maker and any guarantor or endorser of this Promissory Note further promises to pay on demand interest at the rate of ten (10%) percent per annum from July 24, 2005 until the date the balance is paid in full and all costs of collection including the reasonable attorney's fees and costs incurred or paid by the holder in collecting or enforcing this Note on default.

This contract is to be construed in all respects and enforced according to the Laws of the State of South Carolina.

By:


James S. Archer

James J. McMillan
 Kay M. McMillan
 5 Olde Springs Rd.
 Columbia, SC 29223
 Ph. (803) 736-5746 W.L. (803) 786-2253

677191-2532
 1743

DATE 3-21-08

PAY TO THE ORDER OF *Orlando B. King, Jr. Gibbons PA* \$ *3800.00*

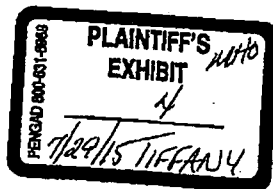
Three Thousand Eight Hundred and no/100

FIRST PALMETTO SAVINGS BANK
 COLUMBIA, SC 29204

FOR *Car Insurance / Jimenez* *Gay M. McMillan*

⑆253271916⑆ 53094891 1743

TM & © DC Comics. (406)





FIRST PALMETTO SAVINGS BANK

407 DeKalb Street • P. O. Box 861
Columbia, South Carolina 29020

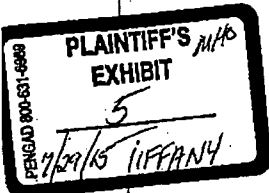
3105 003

TIFFANY'S CAFE & BAKERY ON DEVINE INC
8502 TWO NOTCH RD
COLUMBIA, SC 29223-6307

PAGE 6 OF 12
STATEMENT PERIOD
FROM 07/01/03
THRU 07/31/03

DEPOSITS AND CREDITS

DATE	DESCRIPTION	AMOUNT
		179.30
07/22	ACH DEPOSIT	
	UMS	
	TRACE# 154498825	424.08
07/22	DEPOSIT TRACE# 73990785	170.84
07/23	ACH DEPOSIT	
	UMS	
	TRACE# 155604593	11.08
07/23	ACH DEPOSIT	
	DISCOVER BUS SVC-SETTLEMENT	
	TRACE# 21097462	132.91
07/23	ACH DEPOSIT	
	AMERICAN EXPRESS-SETTLEMENT	
	TRACE# 21512590	334.18
07/24	ACH DEPOSIT	
	UMS	
	TRACE# 156551267	20.00
07/24	ACH DEPOSIT	
	AMERICAN EXPRESS-SETTLEMENT	
	TRACE# 26084732	354.98
07/24	DEPOSIT TRACE# 76400400	224.01
07/24	DEPOSIT TRACE# 76400560	358.79
07/25	ACH DEPOSIT	
	UMS	
	TRACE# 157394691	75.55
07/25	ACH DEPOSIT	
	AMERICAN EXPRESS-SETTLEMENT	
	TRACE# 20861954	30,000.00
07/25	DEPOSIT TRACE# 77830405	506.21
07/25	DEPOSIT TRACE# 77830415	367.51
07/28	ACH DEPOSIT	
	UMS	
	TRACE# 150493000	207.05
07/28	ACH DEPOSIT	
	AMERICAN EXPRESS-SETTLEMENT	
	TRACE# 24861638	



This is the deposit that was put in the
Cafe account. Proceeds from Jim's stock purchase of
stock.

330

Sales Tax December 2006	\$1933.63
Hospitality Tax Dec 2006	\$ 657.70
Sales Tax November 2006	\$1445.47
Sales Tax September 2006	\$1551.43
MCI phone	\$ 343.64
Yellow Pages Bell South	\$ 440.16
Ecolab Pest Control	\$ 358.00
Waste Management	\$ 83.33
Last payroll of 2006	\$1398.66
IRS	\$16,775.88

\$24,987.82

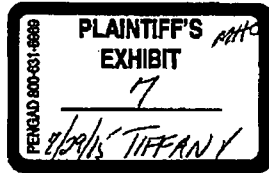
The above figure has been paid by me personally.

Still pending:

Insttutional Food House	\$7594.75
SC Tax Commission	\$11,005.65

(this figure changes weekly because of penalties and interest)





CLASSIC AUCTIONS
PERSONAL PROPERTY CONSIGNMENT FORM

SELLER(S) NAME (PRINT) JAMES McMillan
 SELLER(S) SIGNATURE James McMillan DATE 11-9-07
 SELLER(S) ADDRESS 6 Olde Springs Road, Columbia, SC
 PHONE 803-736-2253 29223
 FAX 803-788-9635 CELL 803-767-7800
 EMAIL ADDRESS _____

THE FOLLOWING ITEMS ARE TO BE SOLD AT ABSOLUTE AUCTION:

Restaurant Equipment, Seating
Bakery Equipment

Auction to be held on Nov 29 2007 @ 10A

TIFFANY'S Cafe & Bakery on Devine
2805 Devine Street
Columbia, S.C. 29205

SELLER COVENANTS AND AGREES THAT HE/SHE HAS GOOD TITLE AND THE RIGHT TO SELL AND SAID GOODS ARE FREE FROM ALL ENCUMBRANCES. THE SELLER ALSO AGREES TO HOLD THE AUCTION FIRM / AUCTIONEERS HARMLESS FROM ANY CLAIMS ARISING BECAUSE OF ANY BREACH OF THE ABOVE CERTIFICATION OR FAILURE TO CONVEY SUCH GOODS AND MERCHANTABLE TITLE. NO ITEMS MAY BE WITHDRAWN, IF SELLER & AUCTION CO AGREES TO WITHDRAW AN ITEM, AUCTION CO. WILL RECEIVE FULL COMMISSION ON SUCH ITEMS. AUCTION CO. WILL CHARGE A 10% BUYERS PREMIUM TO BE RETAINED BY AUCTION COMPANY.

COMMISSION 10 %
 HAULING 0
 STORAGE 0
 ADVERTISING \$1500.00

AUCTIONEERS SIGNATURE Jonny Jun
 DATE 11/7/07

332

Date: 11-2-2007 13:58:15

CLASSIC AUCTIONS

Page: 1

Settlement
Seller: 2

TIFFANY'S BAKERY & CAFE

Item	Description	Price	Qty	Total
	CAKE PANS		1	45.00-3
	STACK OF 66 INSERTS	7.50	2	15.00-3
	TRAY LOT		1	7.50-3
	BOX OF 66 FOLDERS/PLASTIC LIDS, ETC		1	17.50-3
	STACK OF SMALL INSERTS		1	25.00-3
	1/2 SIZE 66 INSERTS		1	7.50-3
	66 FULL SIZE INSERTS W/LIDS	7.50	2	15.00-3
	PANS, STRAINERS, LIDS, ETC		1	25.00-3
	PLASTIC CAMBROS INSERTS-LUT		1	40.00-3
	HOTEL/CLOCK		1	7.50
	STOP EAT HERE SIGN		1	20.00
	6 BREAD PANS		1	5.00
	POTATO MASHER, GRATER, SIGN		1	10.00
	BISSELL VAC CLEANER		1	22.50
	BUNN COFFEE MAKER-NEW		1	140.00
	WAITRESS TRAYS		1	7.50
	SET OF WHITE DISHES		1	55.00-2
	SALT & PEPPER SHAKERS		1	7.50
	DESSERT PLATES		1	5.00
	CAFE TOUR CLOCK		1	25.00
	SHAVING MIRROR/FLOWERS		1	5.00
	WAKE UP AND SMELL COFFEE		1	17.50
	DOOR KNOB RACK		1	20.00
	CHOICE OF 3 PICTURES/TRAYS	15.00	3	45.00
	LIGHT BAR STOCK	35.00	6	210.00-2
	SIGNS-ALL IN BACK		1	30.00
	TEATIME COAT RACK		1	5.00
	FRAMED PHOTOS (2)		1	10.00
	COFFEE ART		1	55.00
	OPEN COFFEE SHOP		1	17.50
	OPEN SIGN		1	80.00
	MIRROR-EIFFEL TOWER		1	7.50
	LOT-EASEL, COFFEE STAND		1	22.50
	JELLY HOLDERS/SYRUP/JELLY		1	12.50
	PLASTIC WATER		1	7.50
	CONTAINERS/BUCKET/CORR CRACKERS		1	5.00
	CONDIMENT HOLDERS, ETC		1	25.00
	KNIFE SHARPENER		1	15.00
	TRAYS/BAGEL Dishes		1	25.00
	SOUP KETTLE		1	30.00
	CHOCOLATE FUND/WARMER		1	30.00

Date: 11/29/2007 13:50:18

CLASSIC AUCTIONS

Settlement

Settlement

TIFFANY'S BAKERY & CAFE

Page:

Item	Description	Price	Qty	Total
	BASKETS		1	17.50
	METAL BAGEL BIN (1)		1	47.50
	OLIVER BREAD SLICER		1	250.00
	EXPRESSO MACHINE		1	325.00
	GRINDER		1	100.00
	3 CO2 TANKS		1	20.00
	2 BOXES OF COFFEES		1	15.00
	PLATES/BOWLS		1	30.00
	POLY TOP STAINLESS TABLE		1	70.00
	POT RACK		1	50.00
	PERSONEL SINK		1	25.00
	HOSHIZAKI ICE MACHINE		1	1,000.00
	DISH MACHINE		1	300.00
	DISH TABLES		1	350.00
	DISH MACHINE HOOD		1	250.00
	UNIVEX MIXER		1	400.00
	Waffle Maker		1	20.00
	BERKEL SLICER		1	125.00
	CHOICE OF 2 TABLES	60.00	2	120.00
	55 SHELF		1	5.00
	FLOUR BIN CHOICE	5.00	5	25.00
	CHOICE OF FRAYMASTER	250.00	2	500.00
	DEEPPRYER			
	FLAT TOP GRILL-PAN		1	375.00
	CHARGRILL		1	325.00
	EQUIPMENT STAND		1	75.00
	AMERICAN 6 BURNER W/OVEN		1	300.00
	(NOT SALAMANDER)			
	HOOD SYSTEM, ANSEL		1	550.00
	SYSTEM, FAN, EXHAUST FAN			
	2 WALL SHELVES		1	40.00
	HOT BAR		1	60.00
	MAKE UP STATION-TRUE		1	125.00
	ROUND UP WARMER DRAWER		1	80.00
	2 SHELF RISER		1	35.00
	BOX OF COFFEE MUGS/SAUCERS,		1	7.50
	ETC			
	2 SHELF RISER		1	10.00
	2 FLAT OF WINE		1	15.00
	GLASSES, TRAYS, ETC			
	BUNN D MATIC COFFEEMAKER		1	90.00
	BUNN COFFEE BRIDGES		1	90.00

PAUL

18 PAN SANDWICH PREP AGAINST
WALL
SIDE BY SIDE FREEZER
2 SOUP WELLS
DELI DISPLAY CASE
DELI DISPLAY CASE
REFRIGERATED DISPLAY CASE
3 COMPARTMENT SINK
PREP TABLES
PREP SINK
SMALLWARES
2 SPEED RACKS
18X24 SHEET PANS
COMMERCIAL MICROWAVE
CHINA, UTENSILS, GLASSES
TABLES AND CHAIRS
SHELVING
SINGLE DOOR REFRIGERATOR
SINGLE DOOR FREEZER

\$17,500.00

*Auctioneer sold these items before the auction -
He did tell us that the above items would not bring
that much at the
Auction, so I took
the offer and sold it
an individual before
Auction. The individual
saw the ad in paper as
called the auctioneer.
Who in turn called
me.*

TIFFANY'S BAKERY
202 TWO NOTCH RD
COLUMBIA, SC 29204
736-2259

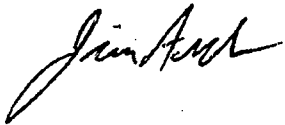
January 2, 2007

Jim McMillan

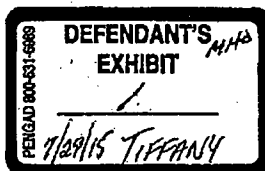
Dear Jim:

As Of January 2, 2007, I resign my position as Vice President and Secretary in Tiffany's Café and Bakery Inc. I also relinquish all check writing privileges and any responsibly in the operation of Tiffany's Café and Bakery located at 2865 Devine Street, Columbia SC 29205.

Sincerely,



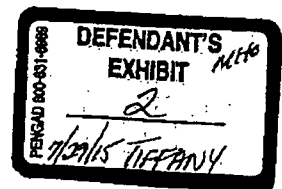
Jim Archer

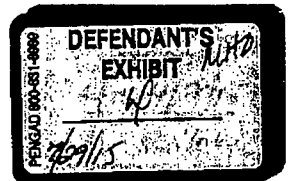


Tiffany's Financials

Year	Sales	COGS	Gross Profit	Operating Exp.	Net Income (Loss)
2003	\$ 392,214.24	\$ 181,910.88	\$ 210,303.36	\$ 244,633.00	\$ (34,329.64)
2004	\$ 379,717.21	\$ 154,296.52	\$ 225,420.69	\$ 235,006.02	\$ (9,585.33)
2005	\$ 348,428.36	\$ 134,930.48	\$ 213,497.88	\$ 222,589.91	\$ (9,092.03)
2006	\$ 309,329.61	\$ 119,838.92	\$ 189,490.69	\$ 207,618.62	\$ (18,127.93)
2007	\$ 268,026.15	\$ 99,826.16	\$ 168,199.99	\$ 203,997.04	\$ (35,797.05)

*** Note in 2007 a portion of sales were generated through the sale of equipment and not inventory





TIFFANY'S CAFE' & BAKERY, INC.
2865 DEVINE ST
COLUMBIA, SC 29205

3568
67-7191/2532

ACCOUNT CLOSED
NSF

PAY TO THE
ORDER OF

IFH

One Thousand four/100

\$ 1000.00

DOLLARS



First Palmetto Savings Bank
Columbia, SC 29204

FOR

#110137

003568 25327191656 5609920 0000100000

TIFFANY'S CAFE' & BAKERY, INC.
2865 DEVINE ST
COLUMBIA, SC 29205

3566
67-7191/2532

ACCOUNT CLOSED
NSF

PAY TO THE
ORDER OF

IFH

Two Thousand Five/100

\$ 2500.00

DOLLARS



First Palmetto Savings Bank
Columbia, SC 29204

FOR

#110137

003566 25327191656 5609920 0000250000

003566 25327191656 338 565609920 0000250000

1-44 page 12/19/06

NAME Tiffany's Cafe & Bakery, Inc. DATE 12-29-06 3539

ACCT. NO. 56-5609920

PAID TO 1st Palmetto \$ 3353.72

Great Handwritten check for 12/19/06

First Palmetto

12/29/06 \$3353.72

TIFFANY'S CAFE & BAKERY, INC. 3539

DATE 11-30-06

PAID TO IFH \$ 2500.00

Two Thousand Five Hundred

First Palmetto

12/04/06 \$2500.00

TIFFANY'S CAFE & BAKERY, INC. 2393

DATE 12-26-06

PAID TO T. L. Howell \$ 262.08

Two Hundred Sixty Two and 8/100

First Palmetto

12/26/06 \$262.08

TIFFANY'S CAFE & BAKERY, INC. 3541

DATE 12/5/06

PAID TO Tiffany's Bakery \$ 1400.00

Four Hundred Dollars

First Palmetto

12/05/06 \$1400.00

TIFFANY'S CAFE & BAKERY, INC. 2394

DATE 12-29-06

PAID TO 1st Palmetto \$ 2500.00

Great Handwritten check for 12/29/06

First Palmetto

12/29/06 \$2500.00

TIFFANY'S CAFE & BAKERY, INC. 3542

DATE 12/4/06

PAID TO City of Columbia Hospitality Tax \$ 496.18

Four Hundred Ninety Six and 18/100

First Palmetto

12/08/06 \$496.18

TIFFANY'S CAFE & BAKERY, INC. 3475

DATE 12-19-06

PAID TO IRS/First Palmetto \$ 190.61

One Hundred九十 and 61/100

First Palmetto

12/19/06 \$190.61

TIFFANY'S CAFE & BAKERY, INC. 3544

DATE 12-11-06

PAID TO City of Columbia \$ 79.33

Seventy Nine and 33/100

First Palmetto

12/14/06 \$79.33

TIFFANY'S CAFE & BAKERY, INC. 3529

DATE 12-19-06

PAID TO First Palmetto \$ 620.00

Six Hundred Twenty

First Palmetto

12/19/06 \$620.00

TIFFANY'S CAFE & BAKERY, INC. 3545

DATE 12-6-06

PAID TO Camryn \$ 20.00

Twenty

First Palmetto

12/19/06 \$20.00

TIFFANY'S CAFE & BAKERY, INC. 3537

DATE 11-27-06

PAID TO State Paper \$ 149.80

One Hundred Forty Nine and 80/100

First Palmetto

12/06/06 \$149.80

TIFFANY'S CAFE & BAKERY, INC. 3546

DATE 12-6-06

PAID TO Bill Smith \$ 200.00

Two Hundred

First Palmetto

12/06/06 \$200.00

DEFENDANT'S
EXHIBIT
6
7/29/15 TIGFAN 14

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Oakland, CA 94612
(510) 435-0250

DATE: 1/16/07

TO THE ORDER OF: Service Supply

\$ 64.85

Sixty four dollars and 85/100

FOR: [Signature]

1005 01/23/07 \$64.85

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Oakland, CA 94612
(510) 435-0250

DATE: 1/19/07

TO THE ORDER OF: Columbia meats

\$ 77.70

Seventy seven dollars and 70/100

FOR: 523320 [Signature]

1011 01/23/07 \$77.70

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Oakland, CA 94612
(510) 435-0250

DATE: 1/16/07

TO THE ORDER OF: Jacob Privette

\$ 50.00

Fifty dollars

FOR: [Signature]

1006 01/16/07 \$50.00

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Oakland, CA 94612
(510) 435-0250

DATE: 1/19/07

TO THE ORDER OF: Jacob Privette

\$ 300.00

Three hundred dollars

FOR: [Signature]

1012 01/19/07 \$300.00

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Oakland, CA 94612
(510) 435-0250

DATE: 1/17/07

TO THE ORDER OF: Cash

\$ 233.31

Two hundred and thirty three dollars and 31/100

FOR: [Signature]

1007 01/17/07 \$233.31

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Oakland, CA 94612
(510) 435-0250

DATE: 1-29-07

TO THE ORDER OF: City of Alameda Property Tax

\$ 657.70

657 and 70/100

FOR: [Signature]

1014 01/29/07 \$657.70

4333000334
01/21/07
DISCOUNTED
This is a LEGAL COPY of your receipt. You can use it to return your receipt used for the original receipt.

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Oakland, CA 94612
(510) 435-0250

DATE: 1/16/07

TO THE ORDER OF: Senn Bros

\$ 39.90

Thirty nine dollars and 90/100

FOR: [Signature]

1008 01/23/07 \$39.90

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Oakland, CA 94612
(510) 435-0250

DATE: 1-23-07

TO THE ORDER OF: Kevin Banks

\$ 466.71

466 and 71/100

FOR: [Signature]

1017 01/23/07 \$466.71

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Oakland, CA 94612
(510) 435-0250

DATE: 1/19/07

TO THE ORDER OF: Tiffany's Bakery

\$ 257.02

Two hundred and fifty seven dollars and 02/100

FOR: [Signature]

1009 01/19/07 \$257.02

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Oakland, CA 94612
(510) 435-0250

DATE: 1-23-07

TO THE ORDER OF: James Nixon

\$ 132.69

132 and 69/100

FOR: [Signature]

1018 01/23/07 \$132.69

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Oakland, CA 94612
(510) 435-0250

DATE: 1/19/07

TO THE ORDER OF: Standard Coffee

\$ 108.73

One hundred and eight dollars and 73/100

FOR: [Signature]

1010 01/31/07 \$108.73

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Oakland, CA 94612
(510) 435-0250

DATE: 1-22-07

TO THE ORDER OF: Sygne Taylor

\$ 210.97

210 and 97/100

FOR: [Signature]

1019 01/23/07 \$210.97

TIFFANY'S CAFE ON DEVINE
280 Devine Street
Columbia, SC 29205
803-733-0200

DATE 2-9-07

NO. Tiffany's Baby

TO THE ORDER OF 2335.75 \$ 2335.75

FOR Don McMillan

001085 C253271916C55 564612* /0000009051*

1085 02/09/07 \$2335.75

TIFFANY'S CAFE ON DEVINE
280 Devine Street
Columbia, SC 29205
803-733-0200

DATE 2-10-07

NO. SC 200

TO THE ORDER OF 90.61 \$ 90.61

FOR Don McMillan

001091 C253271916C55 564612* /0000009051*

1091 02/23/07 \$90.61

TIFFANY'S CAFE ON DEVINE
280 Devine Street
Columbia, SC 29205
803-733-0200

DATE 2-9-07

NO. Carla Patton

TO THE ORDER OF 3237.00 \$ 3237.00

FOR Ed. R. T.

001086 C253271916C55 564612* /0000003700*

1086 02/14/07 \$3237.00

TIFFANY'S CAFE ON DEVINE
280 Devine Street
Columbia, SC 29205
803-733-0200

DATE 2-15-07

NO. 1st Palmetto Bank

TO THE ORDER OF 300.00 \$ 300.00

FOR Don McMillan

001092 C253271916C55 564612* /0000003700*

1092 02/15/07 \$300.00

TIFFANY'S CAFE ON DEVINE
280 Devine Street
Columbia, SC 29205
803-733-0200

DATE 2-21-07

NO. T. McMillan

TO THE ORDER OF 585.34 \$ 585.34

FOR Don McMillan

001087 C253271916C55 564612* /0000005534*

1087 02/21/07 \$585.34

TIFFANY'S CAFE ON DEVINE
280 Devine Street
Columbia, SC 29205
803-733-0200

DATE 2-27-07

NO. Robert R. R. R.

TO THE ORDER OF 35.00 \$ 35.00

FOR Don McMillan

001093 C253271916C55 564612* /0000003500*

1093 02/27/07 \$35.00

TIFFANY'S CAFE ON DEVINE
280 Devine Street
Columbia, SC 29205
803-733-0200

DATE 2-13-07

NO. Cash

TO THE ORDER OF 236.82 \$ 236.82

FOR Don McMillan

001088 C253271916C55 564612* /0000003500*

1088 02/13/07 \$236.82

TIFFANY'S CAFE ON DEVINE
280 Devine Street
Columbia, SC 29205
803-733-0200

DATE 2-19-07

NO. City of Columbia

TO THE ORDER OF 393.81 \$ 393.81

FOR Don McMillan

001097 C253271916C55 564612* /0000003938*

1097 02/26/07 \$393.81

TIFFANY'S CAFE ON DEVINE
280 Devine Street
Columbia, SC 29205
803-733-0200

DATE 2-15-07

NO. Sena Bros

TO THE ORDER OF 75.60 \$ 75.60

FOR Don McMillan

001089 C253271916C55 564612* /0000007560*

1089 02/15/07 \$75.60

TIFFANY'S CAFE ON DEVINE
280 Devine Street
Columbia, SC 29205
803-733-0200

DATE 2-19-07

NO. City of Columbia

TO THE ORDER OF 73.73 \$ 73.73

FOR Don McMillan

001098 C253271916C55 564612* /0000007373*

1098 02/23/07 \$73.73

TIFFANY'S CAFE ON DEVINE
280 Devine Street
Columbia, SC 29205
803-733-0200

DATE 2-13-07

NO. Columbia Meats

TO THE ORDER OF 77.70 \$ 77.70

FOR Don McMillan

001090 C253271916C55 564612* /0000007770*

1090 02/15/07 \$77.70

TIFFANY'S CAFE ON DEVINE
280 Devine Street
Columbia, SC 29205
803-733-0200

DATE 2-19-07

NO. West Hargreaves

TO THE ORDER OF 83.37 \$ 83.37

FOR Don McMillan

001099 C253271916C55 564612* /0000008337*

1099 02/27/07 \$83.37

TIFFANY'S CAFE ON DEVINE
2865 Devine Street
Columbia, SC 29205
803-733-0250

DATE 1-22-07

PAY TO THE ORDER OF Therese Nathan \$175.47

175.47

FOR Upd McNeill

001020 C253271916C56 564612P *0000002789*

1020 01/23/07 \$175.47

TIFFANY'S CAFE ON DEVINE
2865 Devine Street
Columbia, SC 29205
803-733-0250

DATE 1-22-07

PAY TO THE ORDER OF Agnes Quay \$27.89

27.89

FOR Upd McNeill

001032 C253271916C56 564612P *0000002789*

1032 01/24/07 \$27.89

TIFFANY'S CAFE ON DEVINE
2865 Devine Street
Columbia, SC 29205
803-733-0250

DATE 1-22-07

PAY TO THE ORDER OF Anthony Gack \$19.93

19.93

FOR Upd McNeill

001021 C253271916C56 564612P *0000001993*

1021 01/31/07 \$19.93

TIFFANY'S CAFE ON DEVINE
2865 Devine Street
Columbia, SC 29205
803-733-0250

DATE 1-22-07

PAY TO THE ORDER OF S.C. Dymy Bueve \$22.49

22.49

FOR Upd McNeill

001033 C253271916C56 564612P *0000001249*

1033 01/26/07 \$22.49

TIFFANY'S CAFE ON DEVINE
2865 Devine Street
Columbia, SC 29205
803-733-0250

DATE 1-22-07

PAY TO THE ORDER OF James J McNeill Jr \$175.00

175.00

FOR Upd McNeill

001028 C253271916C56 564612P *0000001750*

1028 01/26/07 \$175.00

TIFFANY'S CAFE ON DEVINE
2865 Devine Street
Columbia, SC 29205
803-733-0250

DATE 1-22-07

PAY TO THE ORDER OF John Gros \$89.45

89.45

FOR Upd McNeill

001034 C253271916C56 564612P *0000008945*

1034 01/25/07 \$89.45

TIFFANY'S CAFE ON DEVINE
2865 Devine Street
Columbia, SC 29205
803-733-0250

DATE 1-22-07

PAY TO THE ORDER OF James J McNeill Jr \$558.38

558.38

FOR Upd McNeill

001029 C253271916C56 564612P

1029 01/22/07 \$558.38

TIFFANY'S CAFE ON DEVINE
2865 Devine Street
Columbia, SC 29205
803-733-0250

DATE 1/22/07

PAY TO THE ORDER OF Cash \$385.00

Three hundred and eighty five and 00/100

FOR Upd McNeill

001035 C253271916C56 564612P

1035 01/23/07 \$385.00

TIFFANY'S CAFE ON DEVINE
2865 Devine Street
Columbia, SC 29205
803-733-0250

DATE 1-22-07

PAY TO THE ORDER OF Richland Cty. Family Court \$97.65

97.65

FOR Upd McNeill

001030 C253271916C56 564612P *0000009765*

1030 01/29/07 \$97.65

TIFFANY'S CAFE ON DEVINE
2865 Devine Street
Columbia, SC 29205
803-733-0250

DATE 1/25/07

PAY TO THE ORDER OF Cash \$376.84

Three hundred and seventy six and 84/100

FOR Upd McNeill

001040 C253271916C56 564612P

1040 01/26/07 \$376.84

TIFFANY'S CAFE ON DEVINE
2865 Devine Street
Columbia, SC 29205
803-733-0250

DATE 1-22-07

PAY TO THE ORDER OF Richland Cty. Family Court \$140.70

140.70

FOR Upd McNeill

001031 C253271916C56 564612P *0000001407*

1031 01/29/07 \$140.70

TIFFANY'S CAFE ON DEVINE
2865 Devine Street
Columbia, SC 29205
803-733-0250

DATE 1/26/07

PAY TO THE ORDER OF Columbia Meats \$102.74

One hundred and two dollars and 74/100

FOR Upd McNeill

001041 C253271916C56 564612P *0000001074*

1041 01/30/07 \$102.74

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Camden, NJ 07905
609-423-0225

DATE 2-5-07

PAY TO THE ORDER OF James Wilson \$ 232.09

232.09 DOLLARS

FOR James Wilson

#001072# 4253271916056 5644612# #0000023209#

1072 02/06/07 \$232.09

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Camden, NJ 07905
609-423-0225

DATE 2-1-07

PAY TO THE ORDER OF 1st Payments \$ 693.62

Six hundred and ninety three and 62/100 DOLLARS

FOR James Wilson

#001078# 4253271916056 5644612#

1078 02/12/07 \$693.62

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Camden, NJ 07905
609-423-0225

DATE 2-5-07

PAY TO THE ORDER OF James McMillan Jr \$ 672.85

672.85 DOLLARS

FOR 10673

#001073# 4253271916056 5644612#

1073 02/06/07 \$672.85

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Camden, NJ 07905
609-423-0225

DATE 3/8/07

PAY TO THE ORDER OF Cash \$ 432.73

four hundred and thirty two dollars and 73/100 DOLLARS

FOR James Wilson

#001079# 4253271916056 5644612#

1079 02/06/07 \$432.73

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Camden, NJ 07905
609-423-0225

DATE 2-5-07

PAY TO THE ORDER OF Portland City Family Court \$ 70.35

70.35 DOLLARS

FOR James Wilson 20034410

#001074# 4253271916056 5644612#

1074 02/20/07 \$70.35

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Camden, NJ 07905
609-423-0225

DATE 3/6/07

PAY TO THE ORDER OF Sam's club \$ 126.58

one hundred twenty six dollars and 58/100 DOLLARS

FOR James Wilson

#001080# 4253271916056 5644612#

1080 02/09/07 \$126.58

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Camden, NJ 07905
609-423-0225

DATE 2-5-07

PAY TO THE ORDER OF Portland City Family Court \$ 97.65

97.65 DOLLARS

FOR James Wilson

#001075# 4253271916056 5644612#

1075 02/20/07 \$97.65

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Camden, NJ 07905
609-423-0225

DATE 3/6/07

PAY TO THE ORDER OF Columbia meats \$ 77.70

Seventy seven dollars and 70/100 DOLLARS

FOR 531830

#001081# 4253271916056 5644612#

1081 02/08/07 \$77.70

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Camden, NJ 07905
609-423-0225

DATE 2-5-07

PAY TO THE ORDER OF Kelli Watson \$ 65.60

65.60 DOLLARS

FOR James Wilson

#001076# 4253271916056 5644612#

1076 02/16/07 \$65.60

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Camden, NJ 07905
609-423-0225

DATE 2/4/07

PAY TO THE ORDER OF Sean Bros \$ 84.64

Eighty four dollars and 64/100 DOLLARS

FOR James Wilson

#001082# 4253271916056 5644612#

1082 02/09/07 \$84.64

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Camden, NJ 07905
609-423-0225

DATE 2-5-07

PAY TO THE ORDER OF Kay McMillan \$ 175.00

175.00 DOLLARS

FOR James Wilson

#001077# 4253271916056 5644612#

1077 02/09/07 \$175.00

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Camden, NJ 07905
609-423-0225

DATE 2/8/07

PAY TO THE ORDER OF Cash \$ 398.00

Three hundred ninety eight dollars and 00/100 DOLLARS

FOR James Wilson

#001083# 4253271916056 5644612#

1083 02/09/07 \$398.00

TIFFANY'S CAFE ON DEVINE
2003 Devine Street
Columbia, SC 29205
803-733-0000

DATE: 3/1/07

TO THE ORDER OF: Custom Signature Company

AMOUNT: \$65.00

ONE hundred and five dollars and no cents

FOR: [Signature]

ACCOUNT NO: 001115P C253271916C56 5644612P

VOID CODE: 00000004500P

1115 03/09/07 \$65.00

TIFFANY'S CAFE ON DEVINE
2003 Devine Street
Columbia, SC 29205
803-733-0000

DATE: 3/1/07

TO THE ORDER OF: Sam Brothers

AMOUNT: \$101.46

ONE hundred and one dollar and 46 cents

FOR: [Signature]

ACCOUNT NO: 001124P C253271916C56 5644612P

VOID CODE: 00000010146P

1124 03/15/07 \$101.46

TIFFANY'S CAFE ON DEVINE
2003 Devine Street
Columbia, SC 29205
803-733-0000

DATE: 3/2/07

TO THE ORDER OF: Columbia Meats

AMOUNT: \$102.79

ONE hundred and two dollars and 79 cents

FOR: [Signature]

ACCOUNT NO: 001116P C253271916C56 5644612P

VOID CODE: 00000010279P

1116 03/06/07 \$102.79

TIFFANY'S CAFE ON DEVINE
2003 Devine Street
Columbia, SC 29205
803-733-0000

DATE: 3/12/07

TO THE ORDER OF: [Blank]

AMOUNT: \$63.54

ONE hundred and three dollars and 54 cents

FOR: [Signature]

ACCOUNT NO: 001125P C253271916C56 5644612P

VOID CODE: 00000006354P

1125 03/12/07 \$63.54

TIFFANY'S CAFE ON DEVINE
2003 Devine Street
Columbia, SC 29205
803-733-0000

DATE: 3/2/07

TO THE ORDER OF: Sam Brothers

AMOUNT: \$100.83

ONE hundred and two dollars and 83 cents

FOR: [Signature]

ACCOUNT NO: 001117P C253271916C56 5644612P

VOID CODE: 00000010083P

1117 03/07/07 \$100.83

TIFFANY'S CAFE ON DEVINE
2003 Devine Street
Columbia, SC 29205
803-733-0000

DATE: 3/4/07

TO THE ORDER OF: Columbia Meats

AMOUNT: \$102.74

ONE hundred and two dollars and 74 cents

FOR: [Signature]

ACCOUNT NO: 001126P C253271916C56 5644612P

VOID CODE: 00000010274P

1126 03/13/07 \$102.74

TIFFANY'S CAFE ON DEVINE
2003 Devine Street
Columbia, SC 29205
803-733-0000

DATE: 3/4/07

TO THE ORDER OF: John West

AMOUNT: \$213.48

TWO hundred and thirteen dollars and 48 cents

FOR: [Signature]

ACCOUNT NO: 001118P C253271916C56 5644612P

VOID CODE: 00000021348P

1118 03/08/07 \$213.48

TIFFANY'S CAFE ON DEVINE
2003 Devine Street
Columbia, SC 29205
803-733-0000

DATE: 3/2/07

TO THE ORDER OF: [Blank]

AMOUNT: \$3237.00

THREE thousand two hundred and thirty seven dollars and no cents

FOR: [Signature]

ACCOUNT NO: 001127P C253271916C56 5644612P

VOID CODE: 000000323700P

1127 03/15/07 \$3237.00

TIFFANY'S CAFE ON DEVINE
2003 Devine Street
Columbia, SC 29205
803-733-0000

DATE: 3/5/07

TO THE ORDER OF: H.S. Ford & Son

AMOUNT: \$62.95

SIXTY two dollars and 95 cents

FOR: [Signature]

ACCOUNT NO: 001119P C253271916C56 5644612P

VOID CODE: 00000006295P

1119 03/07/07 \$62.95

TIFFANY'S CAFE ON DEVINE
2003 Devine Street
Columbia, SC 29205
803-733-0000

DATE: 3/10/07

TO THE ORDER OF: Sam's Club

AMOUNT: \$39.50

THIRTY nine dollars and 50 cents

FOR: [Signature]

ACCOUNT NO: 001128P C253271916C56 5644612P

VOID CODE: 00000003950P

1128 03/15/07 \$39.50

TIFFANY'S CAFE ON DEVINE
2003 Devine Street
Columbia, SC 29205
803-733-0000

DATE: 3/5/07

TO THE ORDER OF: Allen Food

AMOUNT: \$111.32

ONE hundred and eleven dollars and 32 cents

FOR: [Signature]

ACCOUNT NO: 001120P C253271916C56 5644612P

VOID CODE: 00000011132P

1120 03/14/07 \$111.32

TIFFANY'S CAFE ON DEVINE
2003 Devine Street
Columbia, SC 29205
803-733-0000

DATE: 3/13/07

TO THE ORDER OF: Service Supply Company

AMOUNT: \$150.51

ONE hundred and fifty dollars and 51 cents

FOR: [Signature]

ACCOUNT NO: 001129P C253271916C56 5644612P

VOID CODE: 00000015051P

1129 03/21/07 \$150.51

TIFFANY'S CAFE ON DEVINE
2645 Devine Street
Columbia, SC 29205
803-733-0200

DATE 3/13/07 1130

TO THE ORDER OF City of Columbia \$ 69.94

Sixty nine dollars and 94 CENTS

FOR 17744014-1026494-1

POD1130F C253271916C56 5644612P /0000001994/

1130 03/19/07 \$69.94

TIFFANY'S CAFE ON DEVINE
2645 Devine Street
Columbia, SC 29205
803-733-0200

DATE 3/16/07 1137

TO THE ORDER OF Columbia Meats \$ 77.70

Seventy seven dollars and 70 CENTS

FOR 537376

POD1137F C253271916C56 5644612P /0000007770/

1137 03/20/07 \$77.70

TIFFANY'S CAFE ON DEVINE
2645 Devine Street
Columbia, SC 29205
803-733-0200

DATE 3/16/07 1131

TO THE ORDER OF Sean Bros \$ 46.99

Forty six dollars and 99 CENTS

FOR POD1131F C253271916C56 5644612P /0000004699/

1131 03/15/07 \$46.99

TIFFANY'S CAFE ON DEVINE
2645 Devine Street
Columbia, SC 29205
803-733-0200

DATE 3/16/07 1138

TO THE ORDER OF Sean Bros \$ 29.53

Twenty nine dollars and 53 CENTS

FOR POD1138F C253271916C56 5644612P /0000002953/

1138 03/20/07 \$29.53

TIFFANY'S CAFE ON DEVINE
2645 Devine Street
Columbia, SC 29205
803-733-0200

DATE 3/16/07 1132

TO THE ORDER OF Green Creek \$ 150.23

one hundred and fifty dollars and 23 CENTS

FOR POD1132F C253271916C56 5644612P /0000015023/

1132 03/26/07 \$150.23

TIFFANY'S CAFE ON DEVINE
2645 Devine Street
Columbia, SC 29205
803-733-0200

DATE 3/26/07 1139

TO THE ORDER OF City of Columbia Hospitality Tax \$ 464.92

Four hundred and sixty four dollars and 92 CENTS

FOR POD1139F C253271916C56 5644612P /0000046492/

1139 03/26/07 \$464.92

TIFFANY'S CAFE ON DEVINE
2645 Devine Street
Columbia, SC 29205
803-733-0200

DATE 3/25/07 1133

TO THE ORDER OF SC Dept of Revenue \$ 46.00

forty six DOLLARS

FOR POD1133F C253271916C56 5644612P /0000004600/

1133 03/22/07 \$46.00

TIFFANY'S CAFE ON DEVINE
2645 Devine Street
Columbia, SC 29205
803-733-0200

DATE 3/20/07 1140

TO THE ORDER OF SC Department of Revenue \$ 1366.87

one thousand three hundred and sixty six DOLLARS AND 87 CENTS

FOR POD1140F C253271916C56 5644612P /0000136687/

1140 03/28/07 \$1366.87

TIFFANY'S CAFE ON DEVINE
2645 Devine Street
Columbia, SC 29205
803-733-0200

DATE 3/22/07 1134

TO THE ORDER OF AG Express \$ 313.24

three hundred thirteen DOLLARS AND 24 CENTS

FOR POD1134F C253271916C56 5644612P /0000031324/

1134 03/23/07 \$313.24

TIFFANY'S CAFE ON DEVINE
2645 Devine Street
Columbia, SC 29205
803-733-0200

DATE 3/20/07 1143

TO THE ORDER OF Sean Bros \$ 68.11

Sixty eight dollars and 11 CENTS

FOR POD1143F C253271916C56 5644612P /0000006811/

1143 03/22/07 \$68.11

TIFFANY'S CAFE ON DEVINE
2645 Devine Street
Columbia, SC 29205
803-733-0200

DATE 3/22/07 1135

TO THE ORDER OF Caroline Ann Place \$ 119.67

one hundred and nineteen DOLLARS AND 67 CENTS

FOR POD1135F C253271916C56 5644612P /0000011967/

1135 03/23/07 \$119.67

TIFFANY'S CAFE ON DEVINE
2645 Devine Street
Columbia, SC 29205
803-733-0200

DATE 3/20/07 1144

TO THE ORDER OF Sam's Club \$ 107.63

one hundred and seven DOLLARS AND 63 CENTS

FOR POD1144F C253271916C56 5644612P /0000010763/

1144 03/23/07 \$107.63

TIFFANY'S CAFE ON DEVINE
2985 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
(803) 533-0098

FIRST PALMETTO SAVINGS BANK
FAGELAND, SC
67-7191/2532

DATE: 4/3/2007 AMOUNT: \$41.75

PAY TO THE ORDER OF: "Forty-one And 75/100 Dollars"

Payee: Ricard G B Sanders
SC

#004057# C253271916C56 5644612P

4057 04/03/07 \$41.75

TIFFANY'S CAFE ON DEVINE
2985 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
(803) 533-0098

FIRST PALMETTO SAVINGS BANK
FAGELAND, SC
67-7191/2532

DATE: 4/30/2007 AMOUNT: \$175.00

PAY TO THE ORDER OF: "One Hundred Seventy-five And 00/100 Dollars"

Payee: Kays McAllen

#004063# C253271916C56 5644612P

4063 04/30/07 \$175.00

TIFFANY'S CAFE ON DEVINE
2985 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
(803) 533-0098

FIRST PALMETTO SAVINGS BANK
FAGELAND, SC
67-7191/2532

DATE: 4/2/2007 AMOUNT: \$25.94

PAY TO THE ORDER OF: "Twenty-five And 94/100 Dollars"

Payee: Brenda G Hamley
1106 Pennington St
Columbia, SC 29208

#004058# C253271916C56 5644612P

4058 04/04/07 \$25.94

TIFFANY'S CAFE ON DEVINE
2985 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
(803) 533-0098

FIRST PALMETTO SAVINGS BANK
FAGELAND, SC
67-7191/2532

DATE: 4/2/2007 AMOUNT: \$97.65

PAY TO THE ORDER OF: "Ninety-seven And 65/100 Dollars"

Payee: Redland County Family Ct
PO Box 182
Columbia, SC 29202

#004064# C253271916C56 5644612P

4064 04/10/07 \$97.65

TIFFANY'S CAFE ON DEVINE
2985 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
(803) 533-0098

FIRST PALMETTO SAVINGS BANK
FAGELAND, SC
67-7191/2532

DATE: 4/3/2007 AMOUNT: \$672.85

PAY TO THE ORDER OF: "Six Hundred Seventy-two And 85/100 Dollars"

Payee: James McAllen, Jr.
8 Oak Springs Rd.
Columbia, SC 29223

#004059# C253271916C56 5644612P

4059 04/03/07 \$672.85

TIFFANY'S CAFE ON DEVINE
2985 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
(803) 533-0098

FIRST PALMETTO SAVINGS BANK
FAGELAND, SC
67-7191/2532

DATE: 4/5/2007 AMOUNT: \$96.51

PAY TO THE ORDER OF: "Ninety-six And 51/100 Dollars"

Payee: SCOR

#004065# C253271916C56 5644612P

4065 04/05/07 \$96.51

TIFFANY'S CAFE ON DEVINE
2985 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
(803) 533-0098

FIRST PALMETTO SAVINGS BANK
FAGELAND, SC
67-7191/2532

DATE: 4/6/2007 AMOUNT: \$30.89

PAY TO THE ORDER OF: "Thirty And 89/100 Dollars"

Payee: Amanda Burroughs
SC

#004060# C253271916C56 5644612P

4060 04/06/07 \$30.89

TIFFANY'S CAFE ON DEVINE
2985 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
(803) 533-0098

FIRST PALMETTO SAVINGS BANK
FAGELAND, SC
67-7191/2532

DATE: 4/2/2007 AMOUNT: \$348.80

PAY TO THE ORDER OF: "Three Hundred Forty-eight And 80/100 Dollars"

Payee: Robert Williams

#004067# C253271916C56 5644612P

4067 04/04/07 \$348.80

TIFFANY'S CAFE ON DEVINE
2985 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
(803) 533-0098

FIRST PALMETTO SAVINGS BANK
FAGELAND, SC
67-7191/2532

DATE: 4/3/2007 AMOUNT: \$214.54

PAY TO THE ORDER OF: "Two Hundred Fourteen And 54/100 Dollars"

Payee: LeChavert Stoen
SC

#004061# C253271916C56 5644612P

4061 04/03/07 \$214.54

TIFFANY'S CAFE ON DEVINE
2985 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
(803) 533-0098

FIRST PALMETTO SAVINGS BANK
FAGELAND, SC
67-7191/2532

DATE: 4/16/2007 AMOUNT: \$414.47

PAY TO THE ORDER OF: "Four Hundred Fourteen And 47/100 Dollars"

Payee: Kays Barks
2804 English Ave
Columbia, SC 29204

#004068# C253271916C56 5644612P

4068 04/17/07 \$414.47

TIFFANY'S CAFE ON DEVINE
2985 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
(803) 533-0098

FIRST PALMETTO SAVINGS BANK
FAGELAND, SC
67-7191/2532

DATE: 4/3/2007 AMOUNT: \$750.38

PAY TO THE ORDER OF: "Seven Hundred Fifty And 38/100 Dollars"

Payee: First Palmetto Bank

#004062# C253271916C56 5644612P

4062 04/03/07 \$750.38

TIFFANY'S CAFE ON DEVINE
2985 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
(803) 533-0098

FIRST PALMETTO SAVINGS BANK
FAGELAND, SC
67-7191/2532

DATE: 4/16/2007 AMOUNT: \$338.49

PAY TO THE ORDER OF: "Three Hundred Thirty-eight And 49/100 Dollars"

Payee: Robert Williams
1106 Pennington St
Columbia, SC 29208

#004069# C253271916C56 5644612P

4069 04/17/07 \$338.49

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
(803) 533-0200

FIRST PALMETTO SERVICE BANK
FACELAND, SC
07-7191/2532

DATE: 4/16/2007 AMOUNT: \$273.27

PAY TO THE ORDER OF: Two Hundred Seventy-three And 27/100 Dollars

Tyler D Taylor
2718 Convent Road
Columbia, SC 29204

#004070# 4253271916456 5644612# /0000027327#

4070 04/17/07 \$273.27

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
(803) 533-0200

FIRST PALMETTO SERVICE BANK
FACELAND, SC
07-7191/2532

DATE: 4/16/2007 AMOUNT: \$175.00

PAY TO THE ORDER OF: One Hundred Seventy-five And 00/100 Dollars

Kaye McMillan

#004078# 4253271916456 5644612# /0000017500#

4078 04/30/07 \$175.00



TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
(803) 533-0200

FIRST PALMETTO SERVICE BANK
FACELAND, SC
07-7191/2532

DATE: 4/16/2007 AMOUNT: \$47.12

PAY TO THE ORDER OF: Forty-seven And 12/100 Dollars

Abigail H York
1031 N. Kings Court
Columbia, SC 29203

#004072# 4253271916456 5644612# /0000004712#

4072 04/23/07 \$47.12

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
(803) 533-0200

FIRST PALMETTO SERVICE BANK
FACELAND, SC
07-7191/2532

DATE: 4/16/2007 AMOUNT: \$65.29

PAY TO THE ORDER OF: Sixty-five And 29/100 Dollars

SCDOR

76596800

#004081# 4253271916456 5644612# /0000006529#

4081 04/27/07 \$65.29

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
(803) 533-0200

FIRST PALMETTO SERVICE BANK
FACELAND, SC
07-7191/2532

DATE: 4/16/2007 AMOUNT: \$351.28

PAY TO THE ORDER OF: Three Hundred Fifty-one And 28/100 Dollars

James M. Beale
427 Laurel Hill Lane
Columbia, SC 29201

#004073# 4253271916456 5644612# /0000035128#

4073 04/17/07 \$351.28

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
(803) 533-0200

FIRST PALMETTO SERVICE BANK
FACELAND, SC
07-7191/2532

DATE: 4/29/2007 AMOUNT: \$175.00

PAY TO THE ORDER OF: One Hundred Seventy-five And 00/100 Dollars

Kaye McMillan

#004091# 4253271916456 5644612# /0000017500#

4091 04/30/07 \$175.00



TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
(803) 533-0200

FIRST PALMETTO SERVICE BANK
FACELAND, SC
07-7191/2532

DATE: 4/16/2007 AMOUNT: \$725.12

PAY TO THE ORDER OF: Seven Hundred Twenty-five And 12/100 Dollars

James McMillan, Jr.
8 Dora Springs Rd.
Columbia, SC 29223

#004075# 4253271916456 5644612# /0000072512#

4075 04/17/07 \$725.12

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
(803) 533-0200

FIRST PALMETTO SERVICE BANK
FACELAND, SC
07-7191/2532

DATE: 4/16/2007 AMOUNT: \$48.52

PAY TO THE ORDER OF: Forty-eight And 52/100 Dollars

Amanda O. Burroughs
409 Hampton Drive Court
Columbia, SC 29208

#004076# 4253271916456 5644612# /0000004852#

4076 04/20/07 \$48.52

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
(803) 533-0200

FIRST PALMETTO SERVICE BANK
FACELAND, SC
07-7191/2532

DATE: 4/19/2007 AMOUNT: \$253.98

PAY TO THE ORDER OF: Two Hundred Fifty-three And 98/100 Dollars

Laverne A. Beale
916 Oak Manor Road
Columbia, SC 29210

#004077# 4253271916456 5644612# /0000025398#

4077 04/19/07 \$253.98

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29205
803-733-0200

DATE: 4/29/07

TO: Sam's Club

FOR: Security on dollars and 100

AMOUNT: \$ 71.10

FOR: P001186# C253271916C56 564612# /0000007110#

1186 05/01/07 \$71.10

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29205
803-733-0200

DATE: 5/17/07

TO: Fisher's

FOR: 5237501500

AMOUNT: \$ 3237.00

FOR: P001192# C253271916C56 564612# /00000323700#

1192 05/17/07 \$3237.00

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29205
803-733-0200

DATE: 4/29/07

TO: Senn Bros

FOR: Eighty eight dollars and 72

AMOUNT: \$ 88.72

FOR: P001187# C253271916C56 564612# /0000008872#

1187 05/04/07 \$88.72

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29205
803-733-0200

DATE: 5/3/07

TO: Standard Coffee

FOR: One hundred and seventy one dollar and 73

AMOUNT: \$ 171.73

FOR: P001193# C253271916C56 564612# /0000017173#

1193 05/23/07 \$171.73

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29205
803-733-0200

DATE: 4/29/07

TO: James S. McMillan Jr.

FOR: Seventy dollars and 71

AMOUNT: \$ 70.71

FOR: P001188# C253271916C56 564612# /0000007071#

1188 05/01/07 \$70.71

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29205
803-733-0200

DATE: 5/4/07

TO: Senn Bros

FOR: Forty one dollar and 09

AMOUNT: \$ 41.09

FOR: P001194# C253271916C56 564612# /0000004109#

1194 05/10/07 \$41.09

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29205
803-733-0200

DATE: 5/2/07

TO: MCI

FOR: One hundred and ten dollars and 03

AMOUNT: \$ 110.03

FOR: P001189# C253271916C56 564612# /0000011003#

1189 05/14/07 \$110.03

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29205
803-733-0200

DATE: 5/4/07

TO: Columbia Meats

FOR: Two hundred and six dollars and 08

AMOUNT: \$ 206.08

FOR: P001195# C253271916C56 564612# /0000020608#

1195 05/07/07 \$206.08

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29205
803-733-0200

DATE: 5/3/07

TO: DANF Foods

FOR: 173.21

AMOUNT: \$ 173.21

FOR: P001190# C253271916C56 564612# /0000017321#

1190 05/10/07 \$173.21

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29205
803-733-0200

DATE: 5/8/07

TO: Ecolab

FOR: One hundred and seventy nine dollars and 00

AMOUNT: \$ 179.00

FOR: P001196# C253271916C56 564612# /0000017900#

1196 05/14/07 \$179.00

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29205
803-733-0200

DATE: 5/3/07

TO: First Citizens Bank

FOR: 250.00

AMOUNT: \$ 250.00

FOR: P001191# C253271916C56 564612# /0000025000#

1191 05/04/07 \$250.00

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29205
803-733-0200

DATE: 5/8/07

TO: Senn Bros

FOR: Eighty one dollar and 08

AMOUNT: \$ 81.08

FOR: P001197# C253271916C56 564612# /0000008108#

1197 05/14/07 \$81.08

TIFFANY'S CAFE ON DEVINE
280 Devine Street
Columbia, SC 29205
803-733-0200

DATE 5/16/07 1198

TO THE ORDER OF City of Columbia \$ 27.00

Twenty Seven dollars and 00/100

FOR POD1198 C25327191656 565644612 /0000002700/

1198 05/16/07 \$27.00

POD1207 C25327191656 565644612 /0000004781/

1207 05/21/07 \$47.81

TIFFANY'S CAFE ON DEVINE
280 Devine Street
Columbia, SC 29205
803-733-0200

DATE 5/16/07 1202

TO THE ORDER OF City of Columbia \$ 104.05

One hundred and four dollars and 05/100

FOR POD1202 C25327191656 565644612 /00000010405/

1202 05/16/07 \$104.05

POD1208 C25327191656 565644612 /0000008647/

1208 05/21/07 \$86.47

TIFFANY'S CAFE ON DEVINE
280 Devine Street
Columbia, SC 29205
803-733-0200

DATE 5/16/07 1203

TO THE ORDER OF Columbia Meats \$ 103.04

One hundred and three dollars and 04/100

FOR POD1203 C25327191656 565644612 /00000010304/

1203 05/15/07 \$103.04

POD1210 C25327191656 565644612 /00000048893/

1210 05/31/07 \$488.93

TIFFANY'S CAFE ON DEVINE
280 Devine Street
Columbia, SC 29205
803-733-0200

DATE 5/16/07 1204

TO THE ORDER OF Senn Bros \$ 74.44

Seventy four dollars and 44/100

FOR POD1204 C25327191656 565644612 /0000007444/

1204 05/16/07 \$74.44

POD1211 C25327191656 565644612 /0000007800/

1211 05/23/07 \$78.00

TIFFANY'S CAFE ON DEVINE
280 Devine Street
Columbia, SC 29205
803-733-0200

DATE 5/16/07 1205

TO THE ORDER OF Refrigeration Service Company \$ 279.02

Two hundred and seventy nine dollars and 02/100

FOR POD1205 C25327191656 565644612 /00000027902/

1205 05/21/07 \$279.02

POD1212 C25327191656 565644612 /0000165655/

1212 05/25/07 \$1656.55

TIFFANY'S CAFE ON DEVINE
280 Devine Street
Columbia, SC 29205
803-733-0200

DATE 5/14/07 1206

TO THE ORDER OF IFH \$ 735.77

Seven hundred and thirty five dollars and 77/100

FOR POD1206 C25327191656 565644612 /0000073577/

1206 05/22/07 \$735.77

POD1213 C25327191656 565644612 /0000002000/

1213 05/23/07 \$200.00

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29205
803-733-0242

DATE 5/22/07 1214

TO THE ORDER OF Kevin Banks

thirty five and 00/100 \$ 35.00

FOR DEPOSIT ONLY
MICROFILM
MICROFILM

POD1214 C253271916C56 5644612P

1214 05/23/07 \$35.00

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29205
803-733-0242

DATE 5/31/07 1221

TO THE ORDER OF John McMillan

one hundred thirty five and 00/100 \$ 135.70

FOR DEPOSIT ONLY
MICROFILM
MICROFILM

POD1221P C253271916C 565644612P

1221 05/31/07 \$135.70

✓

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29205
803-733-0242

DATE 5/22/07 1215

TO THE ORDER OF Sam's Club

Eighty dollars and 89/100 \$ 80.89

FOR DEPOSIT ONLY
MICROFILM
MICROFILM

POD1215P C253271916C56 5644612P

1215 05/24/07 \$80.89

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29205
803-733-0242

DATE 5/30/07 1222

TO THE ORDER OF Sam's Club

sixty and 00/100 \$ 60.00

FOR DEPOSIT ONLY
MICROFILM
MICROFILM

POD1222P C253271916C56 5644612P

1222 05/30/07 \$60.00

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29205
803-733-0242

DATE 5/29/07 1216

TO THE ORDER OF Sam Bros

fourteen dollars and 35/100 \$ 14.35

FOR DEPOSIT ONLY
MICROFILM
MICROFILM

POD1216P C253271916C56 5644612P

1216 05/29/07 \$14.35

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29205
803-733-0242

DATE 5/30/07 1223

TO THE ORDER OF Abigail York

ninety and 00/100 \$ 90.00

FOR DEPOSIT ONLY
MICROFILM
MICROFILM

POD1223P C253271916C56 5644612P

1223 05/30/07 \$90.00

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29205
803-733-0242

DATE 5/24/07 1218

TO THE ORDER OF Matt Chambers

two hundred dollars \$ 200.00

FOR DEPOSIT ONLY
MICROFILM
MICROFILM

POD1218P C253271916C56 5644612P

1218 05/25/07 \$200.00

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29205
803-733-0242

DATE 5/31/07 1227

TO THE ORDER OF First Palmetto Bank

five hundred and 00/100 \$ 500.00

FOR DEPOSIT ONLY
MICROFILM
MICROFILM

POD1227P C253271916C56 5644612P

1227 05/31/07 \$500.00

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29205
803-733-0242

DATE 5/30/07 1219

TO THE ORDER OF Sam Bros

twenty nine dollars and 04/100 \$ 29.04

FOR DEPOSIT ONLY
MICROFILM
MICROFILM

POD1219P C253271916C56 5644612P

1219 05/30/07 \$29.04

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29205
803-733-0242

DATE 5/14/07 4037

TO THE ORDER OF First Palmetto Bank

six and 32/100 \$ 6.32

FOR DEPOSIT ONLY
MICROFILM
MICROFILM

POD4037P C253271916C 565644612P

4037 05/14/07 \$6.32

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29205
803-733-0242

DATE 5/30/07 1220

TO THE ORDER OF Andrew Brummett

five hundred and 34/100 \$ 585.34

FOR DEPOSIT ONLY
MICROFILM
MICROFILM

POD1220P C253271916C 565644612P

1220 05/30/07 \$585.34

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29205
803-733-0242

DATE 5/09/07 4045

TO THE ORDER OF Richard County Family Co

ninety seven and 00/100 \$ 97.65

FOR DEPOSIT ONLY
MICROFILM
MICROFILM

POD4045P C253271916C56 5644612P

4045 05/09/07 \$97.65

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205
(803) 555-0050

FIRST PALMETTO SAVINGS BANK
FACELAND, SC
07/21/2007

DATE 5/13/2007 AMOUNT \$33.38

PAY TO THE ORDER OF
"Thirty-three And 33/100 Dollars"

AMANDA G. BURGESS
408 Hampton Creek Court
Columbia, SC 29205

004104 *25327191656 5644612* /0000003338/

4104 05/23/07 \$33.38

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205
(803) 555-0050

FIRST PALMETTO SAVINGS BANK
FACELAND, SC
07/21/2007

DATE 5/13/2007 AMOUNT \$68.34

PAY TO THE ORDER OF
"Sixty-eight And 34/100 Dollars"

SCOR

76514586

004111 *25327191656 5644612* /0000006834/

4111 05/21/07 \$68.34

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205
(803) 555-0050

FIRST PALMETTO SAVINGS BANK
FACELAND, SC
07/21/2007

DATE 5/13/2007 AMOUNT \$180.45

PAY TO THE ORDER OF
"One Hundred Eighty And 45/100 Dollars"

LAWRENCE A. BLANE
915 Old Manor Road
Columbia, SC 29219

004105 *25327191656 5644612* /0000001804/

4105 05/14/07 \$180.45

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205
(803) 555-0050

FIRST PALMETTO SAVINGS BANK
FACELAND, SC
07/21/2007

DATE 5/29/2007 AMOUNT \$330.10

PAY TO THE ORDER OF
"Three Hundred Thirty And 10/100 Dollars"

ROBERT H. WYNN
1508 Page St
Columbia, SC 29205

004113 *25327191656 5644612* /0000003010/

4113 05/29/07 \$330.10

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205
(803) 555-0050

FIRST PALMETTO SAVINGS BANK
FACELAND, SC
07/21/2007

DATE 5/13/2007 AMOUNT \$29.01

PAY TO THE ORDER OF
"Twenty-nine And 01/100 Dollars"

MAISON MCH BERT
4 Oak Driftway R.A.
Columbia, SC 29221

004106 *25327191656 5644612* /0000002901/

4106 05/15/07 \$29.01

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205
(803) 555-0050

FIRST PALMETTO SAVINGS BANK
FACELAND, SC
07/21/2007

DATE 05/31/2007 AMOUNT \$344.35

PAY TO THE ORDER OF
"Three Hundred Forty Four And 35/100 Dollars"

PA 824-833

004114 *25327191656 5644612* /0000003435/

4114 05/31/07 \$344.35

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205
(803) 555-0050

FIRST PALMETTO SAVINGS BANK
FACELAND, SC
07/21/2007

DATE 5/13/2007 AMOUNT \$175.00

PAY TO THE ORDER OF
"One Hundred Seventy-five And 00/100 Dollars"

JOY JOHNSON

004107 *25327191656 5644612* /0000001750/

4107 05/21/07 \$175.00

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205
(803) 555-0050

FIRST PALMETTO SAVINGS BANK
FACELAND, SC
07/21/2007

DATE 05/31/2007 AMOUNT \$141.15

PAY TO THE ORDER OF
"One Hundred Forty One And 15/100 Dollars"

PA 824-833

004115 *25327191656 5644612* /0000001415/

4115 05/31/07 \$141.15

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205
(803) 555-0050

FIRST PALMETTO SAVINGS BANK
FACELAND, SC
07/21/2007

DATE 5/13/2007 AMOUNT \$97.65

PAY TO THE ORDER OF
"Ninety-seven And 65/100 Dollars"

Richard County Family Co
PO Box 162
Columbia, SC 29222

004109 *25327191656 5644612* /0000009765/

4109 05/16/07 \$97.65

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205
(803) 555-0050

FIRST PALMETTO SAVINGS BANK
FACELAND, SC
07/21/2007

DATE 5/29/2007 AMOUNT \$48.41

PAY TO THE ORDER OF
"Forty-eight And 41/100 Dollars"

Abigail H. York
1311 Maple Court
Columbia, SC 29229

004117 *25327191656 5644612* /0000004841/

4117 05/30/07 \$48.41

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205
(803) 555-0050

FIRST PALMETTO SAVINGS BANK
FACELAND, SC
07/21/2007

DATE 5/13/2007 AMOUNT \$879.06

PAY TO THE ORDER OF
"Eight Hundred Seventy-nine And 06/100 Dollars"

First Palmetto Bank

004110 *25327191656 5644612* /0000008790/

4110 05/17/07 \$879.06

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205
(803) 555-0050

FIRST PALMETTO SAVINGS BANK
FACELAND, SC
07/21/2007

DATE 5/29/2007 AMOUNT \$335.63

PAY TO THE ORDER OF
"Three Hundred Thirty-five And 63/100 Dollars"

JENNIFER M. BOWEN
427 Laurel Hill Lane
Columbia, SC 29221

004118 *25327191656 5644612* /0000003356/

4118 05/31/07 \$335.63

✓

06/11/2007
1199 06/11/07 \$1873.83

TIFFANY'S CAFE ON DEVINE
2405 Devine Street
Columbia, SC 29205
803-733-0200

73358034
DATE 5-25-07
1562.85
\$1362.85

1226 06/07/07 \$1362.85

06/12/2007
1200 06/12/07 \$1363.91

TIFFANY'S CAFE ON DEVINE
2405 Devine Street
Columbia, SC 29205
803-733-0200

73358035
DATE 6/1/07
Columbia meats
One hundred and three dollars and 04/100
\$103.04

1229 06/04/07 \$103.04

TIFFANY'S CAFE ON DEVINE
2405 Devine Street
Columbia, SC 29205
803-733-0200

73358036
DATE 5-31-07
I Food House
Two thousand seven hundred and eighty seven and 18/100
\$2787.18

1201 06/08/07 \$2787.18

TIFFANY'S CAFE ON DEVINE
2405 Devine Street
Columbia, SC 29205
803-733-0200

73358037
DATE 6/4/07
City of Columbia
Twenty Seven and 00/100
\$27.00

1230 06/07/07 \$27.00

TIFFANY'S CAFE ON DEVINE
2405 Devine Street
Columbia, SC 29205
803-733-0200

73329461
DATE 5/18/07
SC Department of Revenue
One thousand four hundred and thirty seven and 47/100
\$1437.47

1209 06/04/07 \$1437.47

TIFFANY'S CAFE ON DEVINE
2405 Devine Street
Columbia, SC 29205
803-733-0200

73329465
DATE 6/4/07
Robert Taylor
Fifty Dollars
\$50.00

1231 06/05/07 \$50.00

TIFFANY'S CAFE ON DEVINE
2405 Devine Street
Columbia, SC 29205
803-733-0200

73329466
DATE 5/30/07
Waste Management of Columbia Heights
forty one dollar and 99/100
\$41.99

1224 06/06/07 \$41.99

TIFFANY'S CAFE ON DEVINE
2405 Devine Street
Columbia, SC 29205
803-733-0200

73329467
DATE 6/1/07
Sam Bros
thirty two dollars and 43/100
\$32.43

1232 06/07/07 \$32.43

TIFFANY'S CAFE ON DEVINE
2405 Devine Street
Columbia, SC 29205
803-733-0200

73329468
DATE 6/30/07
The Student media group
Two hundred and two dollars and 00/100
\$202.00

1225 06/05/07 \$202.00

TIFFANY'S CAFE ON DEVINE
2405 Devine Street
Columbia, SC 29205
803-733-0200

73329469
DATE 6/5/07
Service Supply Company
Two hundred and thirty six dollars and 04/100
\$236.04

1233 06/18/07 \$236.04

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29204
803-733-0000

DATE 6/6/07 1235

TO: Standard \$ 162.90

FOR: One hundred and sixty two dollars and 90

FOR: 162.90

1235 06/27/07 \$162.90

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29204
803-733-0000

DATE 6-7-07 1241

TO: For bar \$ 3237.00

FOR: 3237.00

1241 06/13/07 \$3237.00

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29204
803-733-0000

DATE 6/11/07 1236

TO: 1185 PALMETTO, 735 \$ 42.23

FOR: 42.23

1236 06/11/07 \$42.23

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29204
803-733-0000

DATE 6/11/07 1242

TO: Sen Bros \$ 55.69

FOR: 55.69

1242 06/12/07 \$55.69

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29204
803-733-0000

DATE 6/6/07 1237

TO: U.S. Postal Service \$ 41.00

FOR: forty one dollars and 00

1237 06/11/07 \$41.00

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29204
803-733-0000

DATE 6/10/07 1243

TO: Tyrene Taylor \$ 50.00

FOR: fifty dollars

1243 06/12/07 \$50.00

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29204
803-733-0000

DATE 6/6/07 1238

TO: Jacob Privette \$ 150.00

FOR: one hundred and fifty dollars and 00

1238 06/08/07 \$150.00

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29204
803-733-0000

DATE 6-11-07 1244

TO: U.S. Ford Service \$ 154.21

FOR: 154.21

1244 06/13/07 \$154.21

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29204
803-733-0000

DATE 6/11/07 1239

TO: Sen Bros \$ 137.08

FOR: one hundred and thirty seven dollars and 08

1239 06/11/07 \$137.08

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29204
803-733-0000

DATE 6-20-07 1245

TO: Sen Bros \$ 119.67

FOR: 119.67

1245 06/20/07 \$119.67

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29204
803-733-0000

DATE 6/8/07 1240

TO: Columbia Meats \$ 78.00

FOR: seventy eight dollars and 00

1240 06/12/07 \$78.00

TIFFANY'S CAFE ON DEVINE
2845 Devine Street
Columbia, SC 29204
803-733-0000

DATE 6-21-07 1246

TO: Traveler \$ 485.34

FOR: 485.34

1246 06/21/07 \$485.34

4122

TIFFANY'S CAFE ON DEVINE
2801 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29204
(803) 533-0250

DATE: 6/29/07

AMOUNT: \$501.69

PAY TO THE ORDER OF: *Columbia Meats*

FOR DEPOSIT ONLY: *[Signature]*

POD4122* 425327191656 565644612* /0000050169*

1248 06/29/07 \$501.69

4122

TIFFANY'S CAFE ON DEVINE
2801 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29204
(803) 533-0250

DATE: 6/12/07

AMOUNT: \$159.50

PAY TO THE ORDER OF: *[Signature]*

FOR DEPOSIT ONLY: *[Signature]*

POD4122* 425327191656 565644612* /0000015950*

4122 06/12/07 \$159.50

41250

TIFFANY'S CAFE ON DEVINE
2801 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29204
(803) 533-0250

DATE: 6/22/07

AMOUNT: \$103.04

PAY TO THE ORDER OF: *Columbia Meats*

FOR DEPOSIT ONLY: *[Signature]*

POD4250* 425327191656 565644612* /0000040304*

1250 06/26/07 \$103.04

4127

TIFFANY'S CAFE ON DEVINE
2801 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29204
(803) 533-0250

DATE: 6/28/07

AMOUNT: \$97.65

PAY TO THE ORDER OF: *Richland County Family Ct*

FOR DEPOSIT ONLY: *[Signature]*

POD4127* 425327191656 565644612* /0000009765*

4127 06/08/07 \$97.65

41256

TIFFANY'S CAFE ON DEVINE
2801 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29204
(803) 533-0250

DATE: 6/29/07

AMOUNT: \$218.40

PAY TO THE ORDER OF: *Sena Bros*

FOR DEPOSIT ONLY: *[Signature]*

POD4256* 425327191656 565644612* /0000021840*

1256 06/29/07 \$218.40

4128

TIFFANY'S CAFE ON DEVINE
2801 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29204
(803) 533-0250

DATE: 6/29/07

AMOUNT: \$1011.14

PAY TO THE ORDER OF: *First Palmetto Bank*

FOR DEPOSIT ONLY: *[Signature]*

POD4128* 425327191656 565644612* /0000001011*

4128 06/11/07 \$1011.14

4080

TIFFANY'S CAFE ON DEVINE
2801 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29204
(803) 533-0250

DATE: 6/28/07

AMOUNT: \$882.38

PAY TO THE ORDER OF: *First Palmetto Bank*

FOR DEPOSIT ONLY: *[Signature]*

POD4080* 425327191656 565644612* /0000008823*

4080 06/28/07 \$882.38

4130

TIFFANY'S CAFE ON DEVINE
2801 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29204
(803) 533-0250

DATE: 6/14/07

AMOUNT: \$343.33

PAY TO THE ORDER OF: *Kevin Banks*

FOR DEPOSIT ONLY: *[Signature]*

POD4130* 425327191656 565644612* /0000003433*

4130 06/08/07 \$343.33

4116

TIFFANY'S CAFE ON DEVINE
2801 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29204
(803) 533-0250

DATE: 6/08/07

AMOUNT: \$60.04

PAY TO THE ORDER OF: *[Signature]*

FOR DEPOSIT ONLY: *[Signature]*

POD4116* 425327191656 565644612* /0000006004*

4116 06/08/07 \$60.04

4131

TIFFANY'S CAFE ON DEVINE
2801 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29204
(803) 533-0250

DATE: 6/14/07

AMOUNT: \$155.98

PAY TO THE ORDER OF: *[Signature]*

FOR DEPOSIT ONLY: *[Signature]*

POD4131* 425327191656 565644612* /0000015598*

4131 06/14/07 \$155.98

4120

TIFFANY'S CAFE ON DEVINE
2801 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29204
(803) 533-0250

DATE: 6/15/07

AMOUNT: \$34.95

PAY TO THE ORDER OF: *Armando C Serrano*

FOR DEPOSIT ONLY: *[Signature]*

POD4120* 425327191656 565644612* /0000003495*

4120 06/15/07 \$34.95

4132

TIFFANY'S CAFE ON DEVINE
2801 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29204
(803) 533-0250

DATE: 6/14/07

AMOUNT: \$299.41

PAY TO THE ORDER OF: *[Signature]*

FOR DEPOSIT ONLY: *[Signature]*

POD4132* 425327191656 565644612* /0000029941*

4132 06/14/07 \$299.41

565644612
06/14/2007
4133

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205
(803) 333-0050

DATE: 06/14/2007
AMOUNT: \$132.05

PAY TO THE ORDER OF: *[Signature]*

POD4133# 0253271916056 5644612# 00000013205#

4133 06/14/07 \$132.05

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205
(803) 333-0050

DATE: 06/11/2007
AMOUNT: \$74.14

PAY TO THE ORDER OF: *[Signature]*

POD4141# 0253271916056 5644612# 00000074147#

4141 06/11/07 \$74.14

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205
(803) 333-0050

DATE: 06/20/2007
AMOUNT: \$105.89

PAY TO THE ORDER OF: *[Signature]*

POD4135# 0253271916056 5644612# 00000010589#

4136 06/20/07 \$105.89

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205
(803) 333-0050

DATE: 06/12/2007
AMOUNT: \$62.98

PAY TO THE ORDER OF: *[Signature]*

POD4141# 0253271916056 5644612# 0000006298#

4142 06/12/07 \$62.98

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205
(803) 333-0050

DATE: 06/11/2007
AMOUNT: \$672.85

PAY TO THE ORDER OF: *[Signature]*

POD4137# 0253271916056 5644612# 00000067285#

4137 06/11/07 \$672.85

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205
(803) 333-0050

DATE: 06/22/2007
AMOUNT: \$175.00

PAY TO THE ORDER OF: *[Signature]*

POD4145# 0253271916056 5644612# 00000017500#

4145 06/22/07 \$175.00

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205
(803) 333-0050

DATE: 06/15/2007
AMOUNT: \$95.71

PAY TO THE ORDER OF: *[Signature]*

POD4138# 0253271916056 5644612# 0000009571#

4138 06/15/07 \$95.71

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205
(803) 333-0050

DATE: 06/14/2007
AMOUNT: \$97.65

PAY TO THE ORDER OF: *[Signature]*

POD4147# 0253271916056 5644612# 0000009765#

4147 06/14/07 \$97.65

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205
(803) 333-0050

DATE: 06/12/2007
AMOUNT: \$92.16

PAY TO THE ORDER OF: *[Signature]*

POD4139# 0253271916056 5644612# 0000009216#

4139 06/12/07 \$92.16

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205
(803) 333-0050

DATE: 06/11/2007
AMOUNT: \$750.69

PAY TO THE ORDER OF: *[Signature]*

POD4148# 0253271916056 5644612# 00000075069#

4148 06/11/07 \$750.69

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205
(803) 333-0050

DATE: 06/12/2007
AMOUNT: \$11.50

PAY TO THE ORDER OF: *[Signature]*

POD4140# 0253271916056 5644612# 0000001150#

4140 06/12/07 \$11.50

TIFFANY'S CAFE ON DEVINE
2845 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29205
(803) 333-0050

DATE: 06/25/2007
AMOUNT: \$532.40

PAY TO THE ORDER OF: *[Signature]*

POD4149# 0253271916056 5644612# 00000053240#

4149 06/25/07 \$532.40

1264 07/11/07 \$39.05

TIFFANY'S CAFE ON DEVINE
284 Devine Street
Columbia, SC 29205
803-733-0220

DATE: 7/1/07

PAY TO THE ORDER OF: Senn Bros \$ 39.05

ONE hundred and thirty nine and 00/100

FOR: invoice for June

POD1264 425327191656 5644612P /0000003905P

1270 07/11/07 \$3237.00

TIFFANY'S CAFE ON DEVINE
284 Devine Street
Columbia, SC 29205
803-733-0220

DATE: 7-7-07

PAY TO THE ORDER OF: Forbes Advertising \$ 3237.00

3237 DOLLARS

FOR: John McArthur

POD1270 425327191656 5644612P /000003900P

1265 07/05/07 \$1901.14

TIFFANY'S CAFE ON DEVINE
284 Devine Street
Columbia, SC 29205
803-733-0220

DATE: 7/3/07

PAY TO THE ORDER OF: JFH \$ 1901.14

ONE thousand nine hundred and one and 14/100

FOR: invoice for June

POD1265 425327191656 5644612P /0000190114P

1271 07/13/07 \$795.00

TIFFANY'S CAFE ON DEVINE
284 Devine Street
Columbia, SC 29205
803-733-0220

DATE: 7-11-07

PAY TO THE ORDER OF: Everything's Different \$ 795.00

795 DOLLARS

FOR: OR 004272

POD1271 425327191656 5644612P /0000079500P

1266 07/10/07 \$18.18

TIFFANY'S CAFE ON DEVINE
284 Devine Street
Columbia, SC 29205
803-733-0220

DATE: July 8, 2007

PAY TO THE ORDER OF: 7347 PALMETTO, ISB \$ 18.18

ONE hundred and eight and 18/100

FOR: Office supply

POD1266 425327191656 5644612P /0000001818P

1272 07/24/07 \$500.00

TIFFANY'S CAFE ON DEVINE
284 Devine Street
Columbia, SC 29205
803-733-0220

DATE: 7-24-07

PAY TO THE ORDER OF: Franklin \$ 500.00

500 DOLLARS

FOR: STALIN 781928 For 2007

POD1272 425327191656 5644612P /0000050000P

1267 07/26/07 \$144.45

TIFFANY'S CAFE ON DEVINE
284 Devine Street
Columbia, SC 29205
803-733-0220

DATE: 7/6/07

PAY TO THE ORDER OF: Standard coffee \$ 144.45

ONE hundred and forty four and 45/100

FOR: Standard coffee

POD1267 425327191656 5644612P /0000014445P

1275 07/31/07 \$1618.18

TIFFANY'S CAFE ON DEVINE
284 Devine Street
Columbia, SC 29205
803-733-0220

DATE: 7-31-07

PAY TO THE ORDER OF: S. C. Dept of Revenue \$ 1618.18

1618 DOLLARS

FOR: 83124328

POD1275 425327191656 5644612P /0000161818P

1268 07/11/07 \$82.45

TIFFANY'S CAFE ON DEVINE
284 Devine Street
Columbia, SC 29205
803-733-0220

DATE: 7/1/07

PAY TO THE ORDER OF: Senn Bros \$ 82.45

Eighty two and 45/100

FOR: City of Columbia

POD1268 425327191656 5644612P /0000008245P

1277 07/16/07 \$128.38

TIFFANY'S CAFE ON DEVINE
284 Devine Street
Columbia, SC 29205
803-733-0220

DATE: 7/9/07

PAY TO THE ORDER OF: Retail Services \$ 128.38

128 DOLLARS

FOR: 6559

POD1277 425327191656 5644612P /0000012838P

1269 07/11/07 \$27.00

TIFFANY'S CAFE ON DEVINE
284 Devine Street
Columbia, SC 29205
803-733-0220

DATE: 7/1/07

PAY TO THE ORDER OF: City of Columbia \$ 27.00

Twenty seven dollars and 00/100

FOR: 304059-1026459

POD1269 425327191656 5644612P /0000002700P

1278 07/19/07 \$300.00

TIFFANY'S CAFE ON DEVINE
284 Devine Street
Columbia, SC 29205
803-733-0220

DATE: 7/19/07

PAY TO THE ORDER OF: Mint Magazine \$ 300.00

Three hundred and 00/100

FOR: 304059-1026459

POD1278 425327191656 5644612P /0000030000P

THIS IS A LEGAL COPY OF
YOUR CHECK. YOU CAN USE IT
TO PROVE THE AMOUNT OF
THE CHECK AND THE DATE.
IF YOU LOSE IT, YOU MUST
NOTIFY THE BANK IMMEDIATELY.

TIFFANY'S CAFE ON DEVINE
2841 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
803 733-0000

7/27/07

6021294

4253271916456 5644612P

60000006276P

1294 07/30/07 \$62.76

TIFFANY'S CAFE ON DEVINE
2841 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
803 733-0000

7/23/07

4160

6253271916456 5644612P

60000005161P

4160 07/02/07 \$51.81

TIFFANY'S CAFE ON DEVINE
2841 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
803 733-0000

7/18/07

4124

6253271916456 5644612P

60000002562P

4124 07/18/07 \$25.62

TIFFANY'S CAFE ON DEVINE
2841 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
803 733-0000

7/10/07

4164

6253271916456 5644612P

60000005393P

4164 07/10/07 \$53.93

TIFFANY'S CAFE ON DEVINE
2841 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
803 733-0000

7/2/07

4144

6253271916456 5644612P

60000006530P

4144 07/02/07 \$66.30

TIFFANY'S CAFE ON DEVINE
2841 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
803 733-0000

7/9/07

4165

6253271916456 5644612P

600000032152P

4165 07/09/07 \$321.52

TIFFANY'S CAFE ON DEVINE
2841 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
803 733-0000

7/3/07

4155

6253271916456 5644612P

60000009470P

4155 07/03/07 \$294.70

TIFFANY'S CAFE ON DEVINE
2841 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
803 733-0000

7/12/07

4166

6253271916456 5644612P

600000043535P

4166 07/12/07 \$435.35

TIFFANY'S CAFE ON DEVINE
2841 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
803 733-0000

7/2/07

4158

6253271916456 5644612P

60000004173P

4158 07/02/07 \$41.73

TIFFANY'S CAFE ON DEVINE
2841 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
803 733-0000

7/12/07

4167

6253271916456 5644612P

600000037694P

4167 07/12/07 \$376.94

TIFFANY'S CAFE ON DEVINE
2841 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
803 733-0000

7/18/07

4159

6253271916456 5644612P

60000000637P

4159 07/18/07 \$6.37

TIFFANY'S CAFE ON DEVINE
2841 DEVINE STREET
COLUMBIA, SOUTH CAROLINA 29208
803 733-0000

7/12/07

4168

6253271916456 5644612P

60000000860P

4168 07/12/07 \$88.60

TIFFANY'S CAFE ON DEVINE 804401160165 1303
 DATE 8/16/07
 Home Depot
 One hundred and two
 \$100.32
 1303 08/17/07 \$100.32

TIFFANY'S CAFE ON DEVINE 83295889 1309
 DATE 8/20/07
 SC Department of Revenue
 1193.20
 \$1193.20
 1309 08/30/07 \$1193.20

TIFFANY'S CAFE ON DEVINE 83295889 1304
 DATE 8/16/07
 Sean Bros
 Forty four and six
 \$44.61
 1304 08/17/07 \$44.61

TIFFANY'S CAFE ON DEVINE 83295889 1310
 DATE 8/27/07
 Cardenas
 \$135.70
 1310 08/27/07 \$135.70

TIFFANY'S CAFE ON DEVINE 83295889 1305
 DATE 8/16/07
 I FH
 Two thousand one hundred and fifty eight and 40
 \$2158.40
 1305 08/20/07 \$2158.40

TIFFANY'S CAFE ON DEVINE 83295889 1311
 DATE 8/29/07
 Dave Food
 \$1882.89
 1311 08/29/07 \$1882.89

TIFFANY'S CAFE ON DEVINE 83295889 1306
 DATE 8/16/07
 Sean Bros
 Thirty five and 12
 \$35.12
 1306 08/20/07 \$35.12

TIFFANY'S CAFE ON DEVINE 83295889 1313
 DATE 8/24/07
 Bureau of finance
 \$90.00
 1313 08/24/07 \$90.00

TIFFANY'S CAFE ON DEVINE 83295889 1307
 DATE 8/16/07
 Service Supply Company
 One hundred and sixty three and 66
 \$163.66
 1307 08/21/07 \$163.66

TIFFANY'S CAFE ON DEVINE 83295889 1314
 DATE 8/23/07
 Sean Bros
 \$24.98
 1314 08/23/07 \$24.98

TIFFANY'S CAFE ON DEVINE 83295889 1308
 DATE 8/27/07
 Retail Systems
 \$347.87
 1308 08/27/07 \$347.87

TIFFANY'S CAFE ON DEVINE 83295889 1315
 DATE 8/24/07
 Retail Systems
 \$180.00
 1315 08/24/07 \$180.00

1312

TIFFANY'S CAFE ON DEVINE
2400 Devine Street
Columbia, SC 29205
803-733-0200

DATE: 8/29/07

TO: Bar Breads

FOR: 966 M1967

AMOUNT: \$956.96

1312 09/04/07 \$956.96

1329

TIFFANY'S CAFE ON DEVINE
2400 Devine Street
Columbia, SC 29205
803-733-0200

DATE: 8/16/07

TO: Columbia MCHS

FOR: 8547Y and 10

AMOUNT: \$80.70

1329 09/05/07 \$80.70

1323

TIFFANY'S CAFE ON DEVINE
2400 Devine Street
Columbia, SC 29205
803-733-0200

DATE: 9/26/07

TO: Harvard collection services Inc

FOR: one hundred and fifty nine and 10/100

AMOUNT: \$135.70

1323 09/26/07 \$135.70

1330

TIFFANY'S CAFE ON DEVINE
2400 Devine Street
Columbia, SC 29205
803-733-0200

DATE: 10/4/07

TO: Harvard collection services Inc

FOR: one hundred and fifty nine and 10/100

AMOUNT: \$159.01

1330 09/12/07 \$159.01

1325

TIFFANY'S CAFE ON DEVINE
2400 Devine Street
Columbia, SC 29205
803-733-0200

DATE: 8/29/07

TO: Publisher's Business Services

FOR: twenty four and 00/100

AMOUNT: \$24.00

1325 09/10/07 \$24.00

1331

TIFFANY'S CAFE ON DEVINE
2400 Devine Street
Columbia, SC 29205
803-733-0200

DATE: 10/4/07

TO: AT&T

FOR: four hundred and 00/100

AMOUNT: \$400.00

1331 09/10/07 \$400.00

1326

TIFFANY'S CAFE ON DEVINE
2400 Devine Street
Columbia, SC 29205
803-733-0200

DATE: 9/6/07

TO: Refugee Service Center

FOR: one hundred and fifty eight and 50/100

AMOUNT: \$158.50

1326 09/10/07 \$158.50

1332

TIFFANY'S CAFE ON DEVINE
2400 Devine Street
Columbia, SC 29205
803-733-0200

DATE: 10/4/07

TO: Waste Management

FOR: forty two and 00/100

AMOUNT: \$42.38

1332 09/10/07 \$42.38

1327

TIFFANY'S CAFE ON DEVINE
2400 Devine Street
Columbia, SC 29205
803-733-0200

DATE: 8/29/07

TO: Forbes Patterson

FOR: three thousand two hundred and thirty seven and 00/100

AMOUNT: \$3237.00

1327 09/04/07 \$3237.00

1333

TIFFANY'S CAFE ON DEVINE
2400 Devine Street
Columbia, SC 29205
803-733-0200

DATE: 8/14/07

TO: Urene Taylor

FOR: fifty and 00/100

AMOUNT: \$50.00

1333 09/05/07 \$50.00

1328

TIFFANY'S CAFE ON DEVINE
2400 Devine Street
Columbia, SC 29205
803-733-0200

DATE: 8/29/07

TO: Standard

FOR: eighty one and 45/100

AMOUNT: \$81.45

1328 09/13/07 \$81.45

1334

TIFFANY'S CAFE ON DEVINE
2400 Devine Street
Columbia, SC 29205
803-733-0200

DATE: 9/6/07

TO: Senn Bros

FOR: one hundred and fifteen and 95/100

AMOUNT: \$118.85

1334 09/10/07 \$118.85

TIFFANY'S CAFE ON DEVINE
260 Devine Street
Columbia, SC 29205
803-733-0300

DATE: 9/22/07

TO THE ORDER OF: But Brands

FOR: But Brands

AMOUNT: \$960.01

POD1324 C253271915C 565644612 #0000095001

1324 10/03/07 \$960.01

TIFFANY'S CAFE ON DEVINE
260 Devine Street
Columbia, SC 29205
803-733-0300

DATE: 9/28/07

TO THE ORDER OF: Columbic meats

FOR: John Mc

AMOUNT: \$292.18

POD1346 C253271915C 565644612 #000029218

1346 10/01/07 \$292.18

TIFFANY'S CAFE ON DEVINE
260 Devine Street
Columbia, SC 29205
803-733-0300

DATE: 9/26/07

TO THE ORDER OF: Refrigeration Service Company

FOR: Refrigeration Service Company

AMOUNT: \$458.24

POD1336 C253271915C 565644612 #0000045824

1336 10/01/07 \$458.24

TIFFANY'S CAFE ON DEVINE
260 Devine Street
Columbia, SC 29205
803-733-0300

DATE: 9/28/07

TO THE ORDER OF: Kintels

FOR: Kintels

AMOUNT: \$28.89

POD1347 C253271915C 565644612 #000002889

1347 10/02/07 \$28.89

TIFFANY'S CAFE ON DEVINE
260 Devine Street
Columbia, SC 29205
803-733-0300

DATE: 9/26/07

TO THE ORDER OF: S.C. Dept of Revenue

FOR: S.C. Dept of Revenue

AMOUNT: \$1311.13

POD1338 C253271915C 565644612 #000013113

1338 10/02/07 \$1311.13

TIFFANY'S CAFE ON DEVINE
260 Devine Street
Columbia, SC 29205
803-733-0300

DATE: 10/4/07

TO THE ORDER OF: IFH

FOR: IFH

AMOUNT: \$3418.67

POD1348 C253271915C 565644612 #0000341867

1348 10/09/07 \$3418.67

TIFFANY'S CAFE ON DEVINE
260 Devine Street
Columbia, SC 29205
803-733-0300

DATE: 9/24/07

TO THE ORDER OF: IFH

FOR: IFH

AMOUNT: \$2133.82

POD1343 C253271915C 565644612 #000021338

1343 10/01/07 \$2133.82

TIFFANY'S CAFE ON DEVINE
260 Devine Street
Columbia, SC 29205
803-733-0300

DATE: 10/11/07

TO THE ORDER OF: But Brands

FOR: But Brands

AMOUNT: \$1253.16

POD1349 C253271915C 565644612 #0000125316

1349 10/11/07 \$1253.16

TIFFANY'S CAFE ON DEVINE
260 Devine Street
Columbia, SC 29205
803-733-0300

DATE: 9/29/07

TO THE ORDER OF: Service supply Company

FOR: Service supply Company

AMOUNT: \$65.46

POD1344 C253271915C 565644612 #000006546

1344 10/02/07 \$65.46

TIFFANY'S CAFE ON DEVINE
260 Devine Street
Columbia, SC 29205
803-733-0300

DATE: 10/12/07

TO THE ORDER OF: But Brands

FOR: But Brands

AMOUNT: \$1072.79

POD1350 C253271915C 565644612 #0000107279

1350 10/12/07 \$1072.79

TIFFANY'S CAFE ON DEVINE
260 Devine Street
Columbia, SC 29205
803-733-0300

DATE: 9/27/07

TO THE ORDER OF: Senn Bros

FOR: Senn Bros

AMOUNT: \$47.02

POD1345 C253271915C 565644612 #000004702

1345 10/02/07 \$47.02

TIFFANY'S CAFE ON DEVINE
260 Devine Street
Columbia, SC 29205
803-733-0300

DATE: 10/19/07

TO THE ORDER OF: Transduction

FOR: Transduction

AMOUNT: \$2000.00

POD1351 C253271915C 565644612 #000020000

1351 10/19/07 \$2000.00

TIFFANY'S CAFE ON DEVINE
285 Devine Street
Camden, NJ 07905
609-435-0255

Rec # 110157
DATE 11/13/07
1378

TO THE ORDER OF IPH \$ 337.76

Three hundred and thirty seven and 76/100

FOR PH

001378 425327191656 5544612* /0000033776*

1379 11/13/07 \$337.76

TIFFANY'S CAFE ON DEVINE
285 Devine Street
Camden, NJ 07905
609-435-0255

DATE 11/15/07
1385

TO THE ORDER OF First National Bank \$ 125.00

on Debit Card

FOR PH

001385 425327191656 5544612* /0000033776*

1385 11/15/07 \$125.00

TIFFANY'S CAFE ON DEVINE
285 Devine Street
Camden, NJ 07905
609-435-0255

8500
DATE 11/14/07
1380

TO THE ORDER OF Columbia Meats \$ 80.70

eighty dollars & 70/100

FOR PH

001380 425327191656 5544612* /0000033776*

1380 11/14/07 \$80.70

TIFFANY'S CAFE ON DEVINE
285 Devine Street
Camden, NJ 07905
609-435-0255

DATE 11/19/07
1388

TO THE ORDER OF Mike Nathan \$ 27.92

Twenty seven and 92/100

FOR PH

001388 425327191656 5544612* /0000033776*

1388 11/19/07 \$27.92

TIFFANY'S CAFE ON DEVINE
285 Devine Street
Camden, NJ 07905
609-435-0255

DATE 11/14/07
1381

TO THE ORDER OF Mike Nathan \$ 80.00

eighty and 00/100

FOR PH

001381 425327191656 5544612* /0000033776*

1381 11/14/07 \$80.00

TIFFANY'S CAFE ON DEVINE
285 Devine Street
Camden, NJ 07905
609-435-0255

DATE 11/20/07
1389

TO THE ORDER OF Sam's Club \$ 89.65

Eighty nine and 65/100

FOR PH

001389 425327191656 5544612* /0000033776*

1389 11/20/07 \$89.65

TIFFANY'S CAFE ON DEVINE
285 Devine Street
Camden, NJ 07905
609-435-0255

DATE 11/14/07
1382

TO THE ORDER OF Seann Bros \$ 182.87

one hundred eighty two and 87/100

FOR PH

001382 425327191656 5544612* /0000033776*

1382 11/14/07 \$182.87

TIFFANY'S CAFE ON DEVINE
285 Devine Street
Camden, NJ 07905
609-435-0255

DATE 11/28/07
1390

TO THE ORDER OF Forbes Patterson \$ 3237.00

Three thousand two hundred and thirty seven and 00/100

FOR PH

001390 425327191656 5544612* /0000033776*

1390 11/28/07 \$3237.00

TIFFANY'S CAFE ON DEVINE
285 Devine Street
Camden, NJ 07905
609-435-0255

DATE 11/16/07
1383

TO THE ORDER OF IPH \$ 448.80

four hundred and forty eight dollars and 80/100

FOR PH

001383 425327191656 5544612* /0000033776*

1383 11/16/07 \$448.80

TIFFANY'S CAFE ON DEVINE
285 Devine Street
Camden, NJ 07905
609-435-0255

DATE 11/29/07
1392

TO THE ORDER OF City of Columbia \$ 406.26

four hundred and six and 26/100

FOR PH

001392 425327191656 5544612* /0000033776*

1392 11/29/07 \$406.26

TIFFANY'S CAFE ON DEVINE
285 Devine Street
Camden, NJ 07905
609-435-0255

DATE 11/15/07
1384

TO THE ORDER OF Columbia Meats \$ 80.70

eighty and 70/100

FOR PH

001384 425327191656 5544612* /0000033776*

1384 11/15/07 \$80.70

TIFFANY'S CAFE ON DEVINE
285 Devine Street
Camden, NJ 07905
609-435-0255

DATE 11/30/07
1393

TO THE ORDER OF IPH \$ 4266.08

4266 and 08/100

FOR PH

001393 425327191656 5544612* /0000033776*

1393 11/30/07 \$4266.08

TIFFANY'S CAFE & BAKERY, INC.
ONE SERVICE ST.
COLUMBIA, SC 29201

DATE 12-6-06 3547

Pay to the order of Ch of Columbia \$ 14.60

For deposit only Three + 00/100

Signature: [Signature]

⑆003547⑆ ⑈253271916⑈56 5609920⑈ ⑆000001160⑆

3547 12/15/06 \$14.60

TIFFANY'S CAFE & BAKERY, INC.
ONE SERVICE ST.
COLUMBIA, SC 29201

DATE 12-15-06 3554

Pay to the order of State Paper \$ 53.50

For deposit only Five + 50/100

Signature: [Signature]

⑆003554⑆ ⑈253271916⑈56 5609920⑈ ⑆0000005150⑆

3554 12/27/06 \$53.50

TIFFANY'S CAFE & BAKERY, INC.
ONE SERVICE ST.
COLUMBIA, SC 29201

DATE 12-5-06 3548

Pay to the order of Wm \$ 172.36

For deposit only One Hundred and Two + 36/100

Signature: [Signature]

⑆003548⑆ ⑈253271916⑈56 5609920⑈ ⑆0000011736⑆

3548 12/18/06 \$172.36

TIFFANY'S CAFE & BAKERY, INC.
ONE SERVICE ST.
COLUMBIA, SC 29201

DATE 12-15-06 3555

Pay to the order of Toby B. \$ 1823.81

For deposit only One thousand eight hundred and Three + 81/100

Signature: [Signature]

⑆003555⑆ ⑈253271916⑈56 5609920⑈ ⑆0000011736⑆

3555 12/26/06 \$1823.81

TIFFANY'S CAFE & BAKERY, INC.
ONE SERVICE ST.
COLUMBIA, SC 29201

DATE 12-5-06 3549

Pay to the order of SCFG \$ 370.80

For deposit only Three hundred and 80/100

Signature: [Signature]

⑆003549⑆ ⑈253271916⑈56 5609920⑈ ⑆0000037080⑆

3549 12/13/06 \$370.80

TIFFANY'S CAFE & BAKERY, INC.
ONE SERVICE ST.
COLUMBIA, SC 29201

DATE 12-15-06 3556

Pay to the order of RSC \$ 200.00

For deposit only Two hundred + 00/100

Signature: [Signature]

⑆003556⑆ ⑈253271916⑈56 5609920⑈ ⑆0000020000⑆

3556 12/27/06 \$200.00

TIFFANY'S CAFE & BAKERY, INC.
ONE SERVICE ST.
COLUMBIA, SC 29201

DATE 12-5-06 3550

Pay to the order of Bayer \$ 267.12

For deposit only Two hundred and Sixty + 12/100

Signature: [Signature]

⑆003550⑆ ⑈253271916⑈56 5609920⑈ ⑆0000026712⑆

3550 12/15/06 \$267.12

TIFFANY'S CAFE & BAKERY, INC.
ONE SERVICE ST.
COLUMBIA, SC 29201

DATE 12-10-06 3558

Pay to the order of Fab's Patterson \$ 3237.00

For deposit only Three thousand two hundred + 00/100

Signature: [Signature]

⑆003558⑆ ⑈253271916⑈56 5609920⑈ ⑆0000032370⑆

3558 12/21/06 \$3237.00

TIFFANY'S CAFE & BAKERY, INC.
ONE SERVICE ST.
COLUMBIA, SC 29201

DATE 12-14-06 3552

Pay to the order of IFH \$ 2500.00

For deposit only Two thousand Five hundred + 00/100

Signature: [Signature]

⑆003552⑆ ⑈253271916⑈56 5609920⑈ ⑆0000025000⑆

3552 12/21/06 \$2500.00

TIFFANY'S CAFE & BAKERY, INC.
ONE SERVICE ST.
COLUMBIA, SC 29201

DATE 12-15-06 3559

Pay to the order of Seane Lopez \$ 200.00

For deposit only Two hundred + 00/100

Signature: [Signature]

⑆003559⑆ ⑈253271916⑈56 5609920⑈ ⑆0000020000⑆

3559 12/27/06 \$200.00

TIFFANY'S CAFE & BAKERY, INC.
ONE SERVICE ST.
COLUMBIA, SC 29201

DATE 12-16-06 3553

Pay to the order of Toby B. \$ 1056.30

For deposit only One thousand Five hundred and 30/100

Signature: [Signature]

⑆003553⑆ ⑈253271916⑈56 5609920⑈ ⑆0000010563⑆

3553 12/18/06 \$1056.30

TIFFANY'S CAFE & BAKERY, INC.
ONE SERVICE ST.
COLUMBIA, SC 29201

DATE 12-15-06 3560

Pay to the order of Fred Polgretto \$ 260.00

For deposit only Two hundred + 00/100

Signature: [Signature]

⑆003560⑆ ⑈253271916⑈56 5609920⑈ ⑆0000026000⑆

3560 12/18/06 \$260.00

✓

Tiffany's Cafe on Devine
NAME
ACCOUNT NO. 56-564461-2
DATE 4/20/07
TO THE ORDER OF Tiffany's Bakery \$ 500.00
Five hundred
FOR First Palmetto
FOR 10672
1179 05/09/07 \$500.00

Tiffany's Cafe on Devine
NAME
ACCOUNT NO. 350000
DATE 4/16/07
TO THE ORDER OF Charmelle \$ 78.00
Seventy eight dollars and 00/100
FOR First Palmetto
FOR 1179
1179 05/01/07 \$78.00

Tiffany's Cafe on Devine
NAME
ACCOUNT NO. 59593
DATE 2-5-07
TO THE ORDER OF Valerie Kenner \$ 31.80
Thirty one dollars and 80/100
FOR First Palmetto
FOR 10672
1065 05/04/07 \$31.80

Tiffany's Cafe on Devine
NAME
ACCOUNT NO. 1181
DATE 4/27/07
TO THE ORDER OF Waste Management of Columbia \$ 41.99
Forty one dollars and 99/100
FOR First Palmetto
FOR 1181
1181 05/03/07 \$41.99

Tiffany's Cafe on Devine
NAME
ACCOUNT NO. 73161556
DATE 4-2-07
TO THE ORDER OF SC Dept of Revenue \$ 1469.93
One thousand four hundred sixty nine dollars and 93/100
FOR First Palmetto
FOR 1122
1122 05/03/07 \$1469.93

Tiffany's Cafe on Devine
NAME
ACCOUNT NO. 1182
DATE 4/27/07
TO THE ORDER OF Senn Bros \$ 63.34
Sixty three dollars and 34/100
FOR First Palmetto
FOR 1182
1182 05/04/07 \$63.34

Tiffany's Cafe on Devine
NAME
ACCOUNT NO. 1156
DATE 4-5-07
TO THE ORDER OF The State \$ 154.10
One hundred fifty four dollars and 10/100
FOR First Palmetto
FOR 1156
1156 05/04/07 \$154.10

Tiffany's Cafe on Devine
NAME
ACCOUNT NO. 1183
DATE 4/28/07
TO THE ORDER OF First Palmetto Bank \$ 170.57
One hundred seventy dollars and 57/100
FOR First Palmetto
FOR 1183
1183 05/01/07 \$170.57

Tiffany's Cafe on Devine
NAME
ACCOUNT NO. 1164
DATE 5/8/07
TO THE ORDER OF Standard coffee \$ 108.73
One hundred and eight dollars and 73/100
FOR First Palmetto
FOR 1164
1164 05/02/07 \$108.73

Tiffany's Cafe on Devine
NAME
ACCOUNT NO. 1184
DATE 4/29/07
TO THE ORDER OF SC Employment Security Comm \$ 277.25
Two hundred seventy seven dollars and 25/100
FOR First Palmetto
FOR 1184
1184 05/03/07 \$277.25

Tiffany's Cafe on Devine
NAME
ACCOUNT NO. 1178
DATE 4/24
TO THE ORDER OF Service Supply Company \$ 64.85
Sixty four dollars and 85/100
FOR First Palmetto
FOR 1178
1178 05/01/07 \$64.85

Tiffany's Cafe on Devine
NAME
ACCOUNT NO. 1185
DATE 4/28/07
TO THE ORDER OF IFH \$ 1330.85
One thousand three hundred and thirty dollars and 85/100
FOR First Palmetto
FOR 1185
1185 05/03/07 \$1330.85

DEFENDANT'S
EXHIBIT
4/29/07
Tiffany's

TIFFANY'S CAFE & BAKERY ON DEVINE INC.
ACCOUNT NO. 56-56461-2
DATE 3/29/07
Senn Bros \$56.95
Fifty six dollars and 95 cents
First Palmetto
FOR: 2532719165 564612 /0000005695/

1 03/29/07 \$56.95

TIFFANY'S CAFE ON DEVINE
ACCOUNT NO. 56-56461-2
DATE 2-26-07
S.C. Dept of Public Safety - Raleigh \$100.00
Twenty dollars and 00 cents
First Palmetto
FOR: 237.07 2532719165 564612 /0000001000/

1104 03/08/07 \$100.00

TIFFANY'S CAFE & BAKERY ON DEVINE
ACCOUNT NO. 56-56461-2
DATE 3-30-07
Jaffany's Bakery \$4000.00
four thousand dollars and 00 cents
First Palmetto
FOR: 2532719165 /0000004000/

1 03/30/07 \$4000.00

TIFFANY'S CAFE ON DEVINE
ACCOUNT NO. 56-56461-2
DATE 3-20-07
Tenneco Inc \$601.50
Six hundred and one dollar and 50 cents
First Palmetto
FOR: 2532719165 564612 /0000006000/

1105 03/20/07 \$600.00

TIFFANY'S CAFE & BAKERY ON DEVINE INC.
ACCOUNT NO. 56-56461-2
DATE 3/28/07
FedEx Kinko's \$65.62
Sixty five dollars and 62 cents
First Palmetto
FOR: 2532719165 /0000006562/

1 03/30/07 \$65.62

TIFFANY'S CAFE ON DEVINE
ACCOUNT NO. 56-56461-2
DATE 2/26/07
Senn Bros \$76.72
Seventy six dollars and 72 cents
First Palmetto
FOR: 2532719165 564612 /0000007672/

1111 03/02/07 \$76.72

TIFFANY'S CAFE ON DEVINE
ACCOUNT NO. 56-56461-2
DATE 2-19-07
mcl \$229.21
Two hundred and twenty nine dollars and 21 cents
First Palmetto
FOR: 2532719165 564612 /0000022921/

1094 03/14/07 \$229.21

TIFFANY'S CAFE ON DEVINE
ACCOUNT NO. 56-56461-2
DATE 2/22/07
IFH \$645.03
Six hundred and forty five dollars and 03 cents
First Palmetto
FOR: 2532719165 564612 /0000064503/

1112 03/05/07 \$645.03

TIFFANY'S CAFE ON DEVINE
ACCOUNT NO. 56-56461-2
DATE 2-19-07
Scabs \$179.00
One hundred and seventy nine dollars and 00 cents
First Palmetto
FOR: 2532719165 564612 /0000017900/

1095 03/01/07 \$179.00

TIFFANY'S CAFE ON DEVINE
ACCOUNT NO. 56-56461-2
DATE 2/26/07
Service Supply Company \$228.67
Two hundred and twenty eight dollars and 67 cents
First Palmetto
FOR: 2532719165 564612 /0000022867/

1113 03/06/07 \$228.67

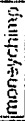
TIFFANY'S CAFE ON DEVINE
ACCOUNT NO. 56-56461-2
DATE 2-19-07
Orca Carlin Dept of Revenue \$1157.79
One thousand one hundred and fifty seven dollars and 79 cents
First Palmetto
FOR: 2532719165 564612 /0000115779/

1096 03/06/07 \$1157.79

TIFFANY'S CAFE ON DEVINE
ACCOUNT NO. 56-56461-2
DATE 2/28
Jacob Privette \$250.00
Two hundred and fifty dollars and 00 cents
First Palmetto
FOR: 2532719165 564612 /0000025000/

1114 03/01/07 \$250.00

DEFENDANT'S EXHIBIT 9
TIFFANY



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Simple Interest Calculator

Compound Interest means that you earn "interest on your interest", while Simple Interest means that you don't - your interest payments stay constant, at a fixed percentage of the original principal. First, a calculator to let you see the difference.

Inputs

Starting Principal: \$ 1,400.00

Years: 10

Annual Interest Rate: 10 %

Results

Future Value, using...
Simple Interest: \$ 2,800.00

~~Annually Compounded Interest:~~

The lesson is that compound interest is a better investment, which seems both obvious and moot - after all, bank accounts always pay compound interest anyway. Even a bond investment is really compound interest if you think about it: you get fixed coupons (that's simple interest) but you can invest them to get interest on them (ergo *compound* interest).

The situation where simple interest occurs naturally is when the principal doesn't change over time. This is true with an interest-only mortgage, for example, where your monthly payments only pay the interest on your loan, but don't pay down the loan itself.

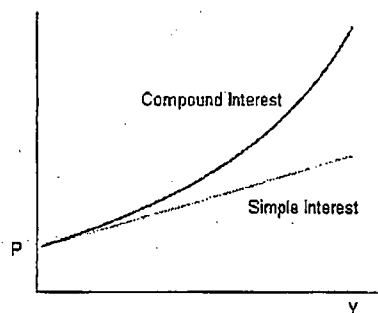
Simple Interest Formula

Lets say that P is your starting principal (spelled -pal and not -ple, because Your Money is Your Pal), r is the interest rate (expressed as a decimal), and Y is the number of years you invest. Then your future value will be:

$$P(1 + rY) \quad (\text{Simple Interest})$$

$$P(1 + r)^Y \quad (\text{Annually Compounded Interest})$$

Note the two formulas give the same answer for one year. After that, compound interest takes off.



Also See...

[Compound Interest Calculator](#)
[Roth IRA Limits](#)
[401\(k\) Calculator](#)
[Social Security](#)
[Tax Calculator](#)
[Tax Brackets](#)
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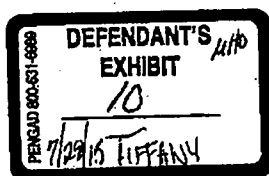


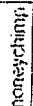
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Simple Interest Calculator

Compound Interest means that you earn "interest on your interest", while Simple Interest means that you don't - your interest payments stay constant, at a fixed percentage of the original principal. First, a calculator to let you see the difference.

Inputs

Starting Principal: \$ 4,900.00

Years: 10

Annual Interest Rate: 10 %

Calculate

Results

Future Value, using...

Simple Interest: \$ 9,800.00

Annually Compounded Interest: \$ ~~9,800.00~~

The lesson is that compound interest is a better investment, which seems both obvious and moot - after all, bank accounts always pay compound interest anyway. Even a bond investment is really compound interest if you think about it: you get fixed coupons (that's simple interest) but you can invest them to get interest on them (ergo *compound* interest).

The situation where simple interest occurs naturally is when the principal doesn't change over time. This is true with an interest-only mortgage, for example, where your monthly payments only pay the interest on your loan, but don't pay down the loan itself.

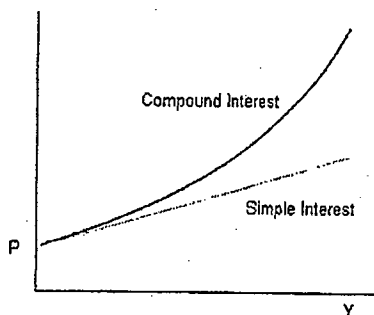
Simple Interest Formula

Lets say that P is your starting principal (spelled -pal and not -ple, because Your Money is Your Pal), r is the interest rate (expressed as a decimal), and Y is the number of years you invest. Then your future value will be:

$$P(1 + rY) \quad (\text{Simple Interest})$$

$$P(1 + r)^Y \quad (\text{Annually Compounded Interest})$$

Note the two formulas give the same answer for one year. After that, compound interest takes off.



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Also See...

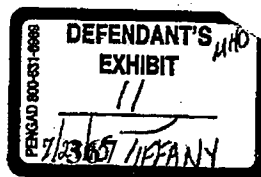
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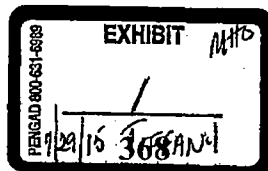
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Tiffany's Café & Bakery On Devine

<u>Year</u>	<u>Sales</u>	<u>Taxable Income</u>
2003	392,214	-29,365
2004	379,718	-9,194
2005	348,428	-11,311
2006	309,329	-19,671
2007	268,026	-10,868



STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF RICHLAND) C/A No.: 2008-CP-40-3076

Tiffany's Café & Bakery on Devine, Inc.,)

Plaintiff,)

vs.)

James S. Archer,)

Defendant,)

NOTICE OF DEPOSITION

RICHLAND COUNTY
FILED
2015 MAR -5 PM 4:23
JEANNETTE H. MCBRIDE
C.C.P. & G.S.

TO: CARLOS W. GIBBONS, JR., ATTORNEY FOR THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that pursuant to the provisions of Rule 30, South Carolina Rules of Civil Procedure, the deposition upon oral examination of James J. McMillian, President of Tiffany's Café & Bakery on Devine, Inc., will be taken on Tuesday, April 7, 2015, commencing at 10:00 o'clock a.m., at Ashley & Gibbons, 712 Calhoun Street, Suite B, Columbia, South Carolina, before an officer authorized by law to administer oaths. Said deposition shall continue from time to time until completed, including any adjournments thereof. You are invited to appear and to participate, as you deem proper.

THE LAW OFFICE OF S.R. ANDERSON

By: _____

S.R. Anderson
2008 Marion Street, Suite J
PO Box 12188
Columbia, SC 29211
(803) 252-2828
Attorney for the Plaintiff

Columbia, South Carolina
March 4, 2015

369

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF RICHLAND)

C/A No.: 2008-CP-40-3076

Tiffany's Café & Bakery on Devine, Inc.,)

Plaintiff,)

vs.)

James S. Archer,)

Defendant,)

CERTIFICATE OF SERVICE

RICHLAND COUNTY
FILED
2015 MAR -5 PM 4:23
JEANNETTE W. MCBRIDE
C.C.P. & G.S.

This is to certify that I mailed a true and correct copy of the below noted document(s) on March

4, 2015, to the parties listed below by the method noted:

Served By:

☒ US Mail

☐ Certified Mail, Return Receipt Requested

☐ Restricted Delivery

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☐ Electronic Mail (E-mail)

☐ Personal Service

Document(s) Being Served:

Notice of Deposition

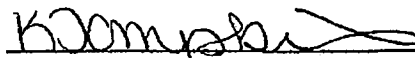
Party or Parties Being Served:

Carlos W. Gibbons, Jr., Esq.

Ashley & Gibbons, PA

712 Calhoun St., Ste. B

Columbia, SC 29201



Kimberly Tompkins

Paralegal to S.R. Anderson



ASHLEY & GIBBONS, P.A.

ATTORNEYS AT LAW

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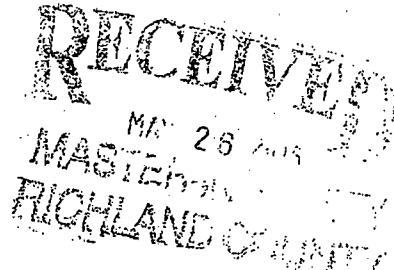
Carlos W. Gibbons, Jr.
Certified Circuit Court Mediator

Cathy

Reply to: Downtown Office
Writer's Direct Dial: 803.771.4488
Direct Fax: 803.736.7334
E-Mail: cgibbons@aglawsc.com

May 21, 2015

Richland County Master-In-Equity
ATTN: John Scott
P.O. Box 192
Columbia, SC 29202



RE: Request for Hearing;
Tiffany's Cafe' and Bakery on Devine, Inc. vs. James S. Archer;
2008-CP-40-3076

Dear John:

I would appreciate you scheduling the above-referenced action for a final hearing. I will need 3/4 of the day for this matter.

In order to avoid conflicts, I would ask that you contact my assistant, Cathy, before setting the date and time for a hearing.

Thanking you, I am,

Sincerely,

ASHLEY & GIBBONS, P.A.

Carlos W. Gibbons, Jr.

By: Carlos W. Gibbons, Jr.

CWGjr/csa
cc: S.R. Anderson, Esquire
James McMillian

IN THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
COURT OF COMMON PLEAS

Joseph M. Strickland, Master-in-Equity Judge

Case No. 2008- CP-40-03076

RECEIVED

MAY 02 2017

SC Court of Appeals

Tiffany's Café & Bakery on Devine, Inc.....Respondent,

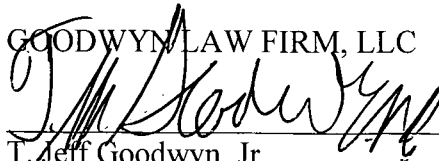
v.

James S. Archer.....Appellant.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that this Record on Appeal contains all materials proposed to be included by any of the parties and not any other material.

GOODWYN LAW FIRM, LLC



T. Jeff Goodwyn, Jr.

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May 2, 2017