

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
Roger M. Young, Circuit Judge

Appellate Case No. 2016-001170

WILLIAM B. HASKIN, JR., APPELLANT,

VS.

SAMUEL W. RHODES, JR., RHODES INVESTMENTS, INC.,
RHODES CONSULTING, LLC, AND TRACEY M. BOZZELLI, RESPONDENTS.

RECORD ON APPEAL – VOLUME I

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RECEIVED

FEB 22 2017

SC Court of Appeals

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STATE OF SOUTH CAROLINA,

) IN THE CIRCUIT COURT

COUNTY OF CHARLESTON

William B. Haskin, Jr.,

Plaintiff

vs.

Samuel W. Rhodes, Jr., et al.,

Defendant.

**MOTION AND ORDER FOR CASE ASSIGNMENT
TO THE BUSINESS COURT
PILOT PROGRAM**

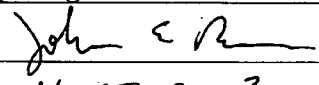
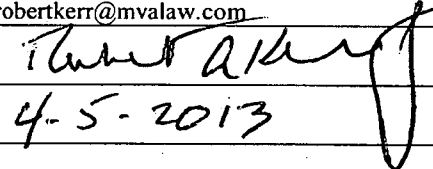
CASE NO. 2012-CP-10-6506

1. As counsel for a party who has appeared in this action, we move for an order of the Chief Justice assigning this case to the Business Court Pilot Program of the South Carolina Circuit Courts. We certify that as of the date of this Motion, no more than 180 days have passed since the commencement of this action. In addition, we certify that all parties have been notified of this request.

2. The principal claim or claims made in the above-referenced matter are made under the following Titles of the South Carolina Code and the matter is appropriate for assignment to the Business Court Pilot Program. (Note: Please check all that are applicable, and attach a description of the claims made in the above-referenced lawsuit.).

- ☒ Title 33—South Carolina Business Corporation Act of 1988;
☐ Title 35—South Carolina Uniform Securities Act of 2005;
☐ Title 36, Chapter 8—South Carolina Uniform Commercial Code: Investment Securities;
☐ Title 39, Chapter 3—Trade and Commerce: Trusts, Monopolies, and Restraints of Trade;
☐ Title 39, Chapter 8—Trade and Commerce: The South Carolina Trade Secrets Act;
☐ Title 39, Chapter 15—Trade and Commerce: Labels and Trademarks; or
☐ Other Appropriate Matter determined by the Chief Justice.

3. Insert name and contact information of moving party or parties:

Party:	Plaintiff	Party:	Defendants
Name:	John Rosen And Richard Rosen.	Name:	Robert Kerr, Jr.
Address:	151 Meeting Street, Suite 400	Address:	78 Wentworth Street
	Charleston, S.C. 29401		Charleston, S.C. 29401
Phone:	843-577-6726	Fax:	843-724-8036
Phone:		Phone:	843-579-7026
Fax:		Fax:	843-579-8704
Email:	jrosen@rrhlawfirm.com	Email:	robertkerr@mvalaw.com
Signature:		Signature:	
Date:	4-5-2013	Date:	4-5-2013

4. Indicate whether the non-moving party or parties ☒ consents, ☐ does not oppose, ☐ opposes; ☐ position on assignment is unknown.

Recommendation of the Business Court Judge:

☒ Recommends

☐ Declines to Recommend

Signature of Business Court Judge

Date

Assignment to the Business Court Pilot Program for

County is hereby ☒ ORDERED ☐

DENIED.

It is further ☒ ORDERED ☐ DENIED that exclusive jurisdiction over this case be assigned to the Honorable to hear and handle all pretrial motions and other matters pertaining to this case.

And it is SO ORDERED.

Jean Hofer Toal, Chief Justice

This 22nd day of May 2013
Columbia, South Carolina

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APR 25 2013

FILED
2013 JUN 19 PM 4:26
JULIE J. ARMSTRONG
CLERK OF COURT

Plaintiff alleges he is a joint venture partner with Defendants in several limited liability companies. Plaintiff further alleges that Defendant Samuel W. Rhodes, Jr. and the corporate Defendants controlled by him, have been a joint venture partner with Plaintiff for many years. He further alleges that the parties have formed various limited liability companies over the years which would acquire a parcel of raw land in a desirable location, and then would construct a house on the subject property for sale to a third party. Several of these joint venture projects are the subject of this litigation. Plaintiff alleges causes of action for: (1) Breach of Contract/Oral Operating Agreements/Covenant of Good Faith & Fair Dealing; (2) Unjust Enrichment/*Quantum Meruit*/Restitution; (3) Dissolution of one of the joint venture entities, Station 22 of Charleston, LLC; (4) Contribution; (5) Piercing the Veil; (6) Constructive Trust; and (7) an Accounting.

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
William B. Haskin, Jr.)
)
Plaintiffs,)
)
vs.)
)
Samuel W. Rhodes, Jr., Rhodes)
Investments, Inc., Rhodes)
Consulting, LLC and Tracey M.)
Bozzelli)
)
Defendants.)
)
_____)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-10-6506

ORDER OF JUDGMENT

FILED
2016 FEB -5 AM 11:58
JULIE J. ARMSTRONG
CLERK OF COURT

Presiding Judge:
Plaintiff's Attorney:
Defendants' Attorney:
Date of Trial:

Roger M. Young
John E. Rosen and Richard S. Rosen
Frank M. Cisa
November 16, 17, 18 and 19, 2015

The above case came before this Court for trial on November 16, 17, 18, and 19, 2015, during a term of the Court of Common Pleas for Charleston County. This case was originally on the jury trial roster, but the parties agreed that since several of the causes of actions asserted by the Plaintiff were to be decided by the Court, the entire case would be tried non jury.

The Plaintiff, William B. Haskin, Jr. ("Haskin") was represented by Richard S. Rosen and John E. Rosen and the Defendants, Samuel W. Rhodes, Jr. ("Rhodes"), Rhodes Investments, Inc. ("Rhodes Investment"), Rhodes Consulting, LLC ("Rhodes Consulting"); and Tracey M. Bozzelli ("Bozzelli") were represented by Frank M. Cisa.

BACKGROUND

Haskin and Rhodes had been friends since meeting in college in 1982. Over the past twenty (20) or so years, Haskin and Rhodes formed various limited liability companies with each

LLC acquiring an unimproved lot. They would then construct a house on the subject property for sale to a third party. The arrangement was profitable until the down turn in the economy in the latter part of 2007.

This dispute involves four (4) of the limited liability companies: 2624 Myrtle, LLC (2624 Myrtle); 2802 Middle Street, LLC (2802 Middle); Station 22 of Charleston, LLC (Station 22); and 1723 Middle Street-HR, LLC f/k/a 1723 Middle Street, LLC (1723 Middle).

The Plaintiff sued the Defendants for Breach of Contract, Unjust Enrichment/Quantum Meriut, Judicial Dissolution as to Station 22, Contribution, Piercing the Corporation Veil, Constructive Trust, Accounting, and an action to Set Aside a Fraudulent Conveyance from Rhodes to Bozzelli relative to 1723 Middle.

FINDINGS OF FACTS

Based upon the record in this action and the evidence produced at trial, this court makes the following facts:

1. At all times relevant to this action, Haskin was employed full time in the business of importing lumber products and distributing them for sale.
2. At all times relevant to this action, Rhodes was primarily engaged in the business of constructing single family homes.
3. 2624 Myrtle is a limited liability company organized under the laws of the State of Florida in 2006. The members of 2624 Myrtle at all times had been Haskin and Rhodes Investments. 2624 Myrtle was formed for the specific purpose of acquiring a lot located at 2624 Myrtle Avenue on Sullivan's Island, South Carolina and building a home on the property to be sold to a third party.



4. 2802 Middle is a limited liability company organized under the laws of the State of Florida in 2006. The members of 2802 Middle are Haskin and Rhodes Investments. 2802 Middle was formed for the specific purpose of acquiring a lot located at 2802 Middle Street, Sullivan's Island, South Carolina and building a home on the property to be sold to a third party.
5. Station 22 is a limited liability company, organized under the laws of the State of South Carolina in 2004. The members of Station 22 are Haskin, Rhodes Investments and Covington Property, Inc. Station 22 was formed for the specific purpose of acquiring a lot located at 22 Lafar Street, Daniel Island, South Carolina and building a home on the subject property to be sold to a third party.
6. 1723 Middle is a limited liability company organized under the laws of the State of Florida in 2007. Members of 1723 Middle were Haskin and Rhodes Investments. 1723 Middle was formed for the specific purpose of acquiring a lot located at 1723 Middle Street on Sullivan's Island, South Carolina and building a home on the subject property to be sold to a third party.
7. The structure of each project undertaken by 2624 Myrtle, 2802 Middle, 1723 Middle are virtually the same. Haskin secured the necessary financing to purchase the various lots, obtained a construction loan, and funded any shortfall during construction. Rhodes Investments' duties through the efforts of Rhodes were to construct and manage the projects on a day to day basis, hire all subcontractors, oversee the work, and pay all subcontractors. A separate checking account was opened for each of the limited liability companies into which money would be deposited and disbursed. Cancelled checks would be sent to Debbie

Eures, a bookkeeper for the companies. On the projects that were profitable, Haskin would first be reimbursed for the costs advanced and then the profits would be split equally between Haskin and Rhodes Investments.

8. The structure of Station 22 was also the same except, Covington Property, Inc., and Haskin obtained the construction loan and funded any shortfall during construction. Rhodes Investments through Rhodes constructed and managed the property on a day to day basis and hired and paid all subcontractors.
9. 2802 Middle, 2624 Myrtle and Station 22 did not make a profit. Due to the downturn in the economy, the properties owned by these three entities were either lost to foreclosure or lost money due to a short sale.
10. Between 2006 and 2011, Haskin made capital contributions to 2802 Middle Street of \$822,342.00 which he claimed as losses on his individual tax returns. From 2007 until 2011, Haskin made capital contributions to 2624 Myrtle totaling \$470,342.00 which he claimed as losses on his individual tax returns. From 2007 until 2010, Haskin made capital contributions to Station 22 in the amount of \$131,440.00 which he claimed as losses on his individual tax returns.
11. Between 2007 and 2010, Rhodes Investments made capital contributions to 2624 Myrtle in the amount of \$37,173.00 which Rhodes claimed as losses on his individual tax returns. Between 2007 and 2011, Rhodes Investments contributed capital to 2802 Middle Street in the amount of \$14,277.00 which Rhodes claimed as losses on his individual tax returns. Rhodes Investments did not make any capital contributions to Station 22. Capital contributions made by Rhodes



Investments to 2624 Myrtle and 2802 Middle were made at times when Haskins was out of town and not available to make contributions.

12. No signed Operating Agreements appear to exist for the various limited liability companies formed by Haskin and Rhodes Investments, with the exception of 2624 Bayonne, LLC. The Operating Agreement for 2624 Bayonne, LLC provides in article 3.2 that "No member shall be required to contribute additional capital to the Company." Article 6.3 provides that "Each Member shall look solely to the assets of the Company for the return of the Member's capital contribution, and if the Company's property remaining after payment or discharge of the debts and liabilities of the Company is insufficient to return the contributions of each Member, a Member shall have no recourse against any other Member(s)."
13. Unsigned Operating Agreements that mirror the signed Operating Agreement of 2624 Bayonne, LLC do exist for 2624 Myrtle and 2802 Middle. Both unsigned Operating Agreements contain the same language concerning capital contributions. The evidence shows these Operating Agreements were not signed because the bank financing which required signed agreements before closing was not used. Instead, Haskin financed these two projects drawing on an existing credit line on his primary residence.
14. An unsigned Operating Agreement also exists for Station 22. Rhodes Investments would not sign the Operating Agreement as it contained a provision for mandatory capital contributions. Rhodes Investments and Rhodes would also not sign on the construction loan that was obtained by Station 22 for the construction of the home at 22 Lafar Street.

15. All of the tax returns for 2802 Middle and 2624 Myrtle reflect that Haskin and Rhodes Investments were allocated losses based upon their respective capital contributions. Likewise, the tax returns for Station 22 reflect that losses were allocated based upon the capital contributions made by Haskin, Covington Property, Inc. and Rhodes Investments. All of the tax returns were signed by Haskin on behalf of the companies.
16. Neither Rhodes Investments or Rhodes ever agreed with Haskins to contribute towards losses. The first time that Haskins took the position that Rhodes Investments or Rhodes owed him for half of his losses on 2802 Middle, 2624 Myrtle and Station 22 was on November 3, 2011, as shown by the email from Haskin to Rhodes. Haskin, however, had sustained losses on 2802 Middle Street every year between 2006 and 2011; sustained losses for 2624 Myrtle each year between 2007 and 2011; and sustained losses for Station 22 for each year between 2007 and 2010.
17. Rhodes Investments contribution of capital was in the form of services performed through the effort of Rhodes in constructing various homes for the limited liability companies. Rhodes Investments and Rhodes were not paid any money to construct the homes. The evidence shows that a contractor typically charged twenty (20%) percent of the costs of construction of homes at the time the subject residences were constructed. Twenty (20%) percent of the cost of construction for projects done for 2624 Myrtle, 2802 Middle, and Station 22 totals approximately \$692,000.00. Haskin lost the money he invested in these projects and Rhodes Investments and Rhodes lost their time and effort in constructing the

residences over a period of twelve (12) to eighteen (18) months. Haskin was the investor and Rhodes Investments performed the work through the efforts of Rhodes.

18. Bozzelli is the Wife of Rhodes. Bozzelli had no involvement in the formation or operation of any of the limited liability companies formed by Haskin and Rhodes Investments.
19. The property owned by 1723 Middle was on the market for sale in 2008; however, it did not sell. As a result, Rhodes entered into an agreement to purchase 1723 Middle Street from 1723 Middle for the sum of \$2,157,900.00. The closing of the purchase occurred on September 12, 2008. At the time of the closing, the existing debt guaranteed by Haskin was paid. Rhodes and Bozzelli then moved into 1723 Middle Street, but continued to try and sell the residence. By deed dated March 30, 2009, Rhodes conveyed 1723 Middle Street to he and Bozzelli as joint tenants with rights of survivorship. Rhodes deeded the property pursuant to advice he had received relative to estate planning. On February 1, 2010 Rhodes then conveyed all of his interest in 1723 Middle Street to Bozzelli. Rhodes deeded his remaining interest in 1723 Middle Street to his wife as he could no longer afford to pay the mortgage on the residence and Bozzelli was not agreeable to making the payments unless the property was in her name. 1723 Middle Street was ultimately sold to a third party on December 9, 2011 with Bozzelli netting \$64,891.94 at closing. Bozzelli had, however, made contributions towards the mortgage and other expenses associated with 1723

Middle Street in the amount of approximately \$127,000.00. Rhodes and Bozzelli sustained a loss of \$520,575.00 relative to the sale of 1723 Middle Street.

20. After 1723 Middle Street was sold, Bozzelli then purchased a lot at 3029 Middle Street and obtained a construction loan for a house. The lot at 3029 Middle Street and the construction of the house were paid for solely by Bozzelli by using her liquid assets and obtaining loans. Neither Rhodes Investments or Rhodes contributed money for the acquisition or construction of 3029 Middle Street.
21. Rhodes Investments did not need capital to operate. All of the projects were funded by Haskin. Rhodes Investments always filed tax returns and reported any income received through the limited liability companies set up by Haskin and Rhodes Investments. Rhodes Investments had a checking account.
22. Haskin's contention that Rhodes agreed to pay him \$75,000.00 incident to the conveyance of 1723 Middle Street to Rhodes by 1723 Middle Street, LLC is not supported by the Agreement to Buy and Sell. Rhodes paid the purchase price referred to in the Agreement to Buy and Sell at closing.

CONCLUSIONS OF LAW

(Breach of Contract/Oral Operating Agreements)

Haskin has failed to prove by a preponderance of the evidence that the Defendants breached an agreement to contribute to losses sustained by Haskin relative to 2624 Myrtle, 2802 Middle, and Station 22. It is clear from the record that the only Defendant that was a Member of these limited liability companies was Rhodes Investments. Tax returns signed by Haskin for the various companies as well as the Operating Agreement show that Rhodes Investments was the Member.

The course of dealings between the parties does not support Haskin's contention that either Rhodes Investments or Rhodes agreed to contribute to Haskin's losses. Haskin acknowledged that he was the investor and that Rhodes Investments provided services for the construction of the various houses. Although Haskin sustained losses for a number of years relative to the three limited liability companies, he made no demand on Rhodes to contribute to losses until November of 2011.

The tax returns for the three (3) limited liability companies show that members of the companies were allocated losses based upon their capital contributions. The individual tax returns of Haskin also show that he claimed the losses on his returns. Jim Covington, owner of Covington Investments, Inc., also confirmed that there was no oral agreement concerning losses relative to Station 22 and that Rhodes refused to sign for the construction loan for the project. The services provided by Rhodes Investments and Rhodes were substantial and of very real value. The value of the construction services provided was approximately \$692,000.00. Both Rhodes and Haskin acknowledged that the projects took between 12 to 18 months to construct. They also agreed that neither Rhodes Investments, nor Rhodes received any compensation for the services provided.

(Unjust Enrichment /Quantum Meriut)

Haskin has failed to prove by a preponderance of the evidence that any of the Defendants have been unjustly enriched by him. Haskin performed his obligation to acquire financing for the projects and maintain the shortfalls during construction; however, Rhodes Investments and Rhodes provided substantial services relative to the construction of the homes. Rhodes Investments and Rhodes did not receive a benefit relative to the construction of the homes for



2802 Middle, 2624 Myrtle and Station 22. Rather, Rhodes Investments and Rhodes lost time and effort just as Haskin lost his investment.

Haskin has failed to prove by a preponderance of the evidence that Rhodes breached an agreement to pay him \$75,000.00. Haskin has also failed to prove that the conveyance of 1723 Middle Street to Rhodes conferred a benefit to Rhodes. In fact, Rhodes and Bozzelli sustained a loss on the sale of 1723 Middle Street in the amount of \$520,575.00.

(Judicial Dissolution as to Station 22)

At the time that Haskin filed his Amended Complaint he sought the judicial dissolution of Station 22. At the time of trial, the evidence shows that the only asset of Station 22, being the residence at 22 Lafar, had been lost to foreclosure. As a result, there is no asset left to liquidate.

(Contribution)

Haskins has failed to prove by a preponderance of the evidence that any of the Defendants agreed to or were required to contribute capital to fund the limited liability companies' losses.

(Piercing the Corporate Veil)

The Court has determined that the Defendants are not liable to the Plaintiff and therefore the issues concerning piercing the corporate veil are rendered moot.

(Constructive Trust)

"A constructive trust results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution. Fraud is an essential element, although it need not be actual Fraud." Lollis vs. Lollis, 291 S.C. 525, P.529; 364, S.E2d, 559, P. 561. Haskin has failed to prove by a preponderance of the evidence that any of the Defendants have engaged in fraud, bad faith, abuse of confidence or violated a fiduciary

duty. In fact, there is no evidence that either Rhodes Investments or Rhodes improperly used the money advanced by Haskin for the construction of the projects.

(Accounting)

Haskin seeks an Accounting relative to 2624 Myrtle, 2802 Middle and Station 22. The evidence presented shows, however, that an accounting has been done for each of these entities and that none of the entities currently own any assets.

(Fraudulent Action to Set Aside Conveyance Intended to Defraud Creditors)

In interpreting the Statute of Elizabeth, "this Court has held conveyances shall be set aside under two conditions: First, where there was valuable consideration and the transfer is made by the grantor with the actual intent to defraud; and, second, where a transfer is made without actual intent to defraud but without valuable consideration." Oskin v. Johnson, 400 S.C. 390, P. 397; 735, SE2d 459, P. 463.

"A clear and convincing evidentiary standard governs fraudulent conveyance claims brought under the Statute of Elizabeth." Oskin v. Johnson, 396; 463.

There is no evidence in the record of the value of 1723 Middle Street when Rhodes conveyed a one-half (½) interest to Bozzelli or when Rhodes conveyed his remaining interest to Bozzelli. Rhodes first conveyed a half interest to Bozzelli upon advice concerning estate planning. Rhodes then conveyed his remaining half interest to Bozzelli as Bozzelli agreed to pay the mortgage and other expenses related to 1723 Middle Street. The home at 1723 Middle Street was sold at a loss of \$520,575.00.

Haskin has failed to prove by clear and convincing evidence that Rhodes fraudulently conveyed his interest in 1723 Middle Street to Bozzelli.

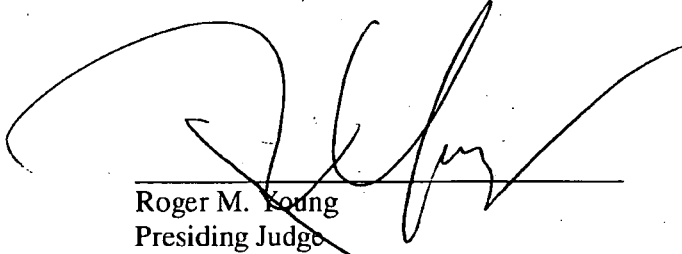
Since the Court denies any relief to the Plaintiff relative to his fraudulent conveyance claim, Haskin's claim against Bozzelli for the value of 3029 Middle Street is also denied.

THEREFORE, It is Ordered, Adjudged and Decreed;

1. That the Plaintiff, William B. Haskin, Jr.'s Complaint is hereby dismissed with costs awarded to the Defendants; and
2. That the Clerk of Court is hereby directed to cancel the Lis Pendens filed by the Plaintiff on November 8, 2013 against the property owned by Tracey M. Bozzelli located at 3029 Middle Street, known as lot 9, Block 12, Marshall Reservation.

AND IT IS SO ORDERED!

This ²⁴ day of February, 201 6
Charles, S.C.



Roger M. Young
Presiding Judge
Ninth Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

William B. Haskin Jr.

Plaintiff,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS
2012-CP-10-6506

**ORDER DENYING IN PART &
GRANTING IN PART PLAINTIFF'S
MOTION TO ALTER AND/OR AMEND
ORDER**

FILED
2016 APR 29 PM 3:33
JULIE J. ARMSTRONG
CLERK OF COURT

The above captioned case came before this Court for trial on November 16, 17, 18, and 19, 2015, during a term of the Court of Common Pleas for Charleston County. Following trial, the parties were permitted to submit post-trial briefs. This Court rendered an Order of Judgment filed on February 5, 2016 with the Charleston County Clerk of Court's Office. The matter presently before this Court is Plaintiff's Motion to Alter and/or Amend Order filed on February 19, 2016.

STANDARD OF REVIEW

"The power to open, modify or vacate a judgment is possessed solely by the court that rendered the judgment." Coleman v. Dunlap, 306 S.C. 491, 494; 413 S.E.2d 15, 17 (1992). A Rule 59(e) motion is the proper "vehicle to request the trial court 'alter or amend the judgment,'" and "to seek 'reconsideration' of issues and arguments." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 21; 361 S.E.2d 772, 778 (2004). The Fourth Circuit has held "that Rule 59(e) motions can be successful in only three situations: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Zinkand v. Brown, 478 F.3d 634, 637 (4th

ROA000015

Cir. 2007) (internal citations omitted). Based on the issues raised in plaintiff's motion, the only ground applicable to plaintiff's motion to reconsider is whether this Court must alter or amend its decision "to correct a clear error of law or prevent manifest injustice." Zinkand 478 F.3d at 637.

DISCUSSION

This Court's response to Plaintiff's Motion to Alter and/or Amend Order is as follows:

- (1) To rule on and to make specific findings of fact and/or conclusions of law as to what specific Florida or South Carolina laws apply to this case and to what issues they apply.

GRANTED IN PART.

Partnership:

"A 'partnership' is an association of two or more persons to carry on as co-owners a business for profit" S.C. Code Ann. § 33-41-210 (2006). A partnership does not require a written agreement and may be inferred from conduct. Halbersberg v. Berry, 302 S.C. 97, 101; 394 S.E.2d 7, 10 (Ct. App. 1990). To determine if a partnership exists, the following tests have been used: "(1) the sharing of profits and losses; (2) community of interest in capital or property; and (3) community of interest in control and management." Id. Additionally, subject to exceptions not relevant here, sharing of "the profits of a business is prima facie evidence that he is a partner of the business" S.C. Code Ann. § 33-41-220(4) (2006).

As this Court's Order of Judgment indicates, over the past twenty (20) years, the plaintiff, William Haskin Jr. ("Haskin"), and the defendant Samuel W. Rhodes Jr. ("Rhodes") had formed various limited liability companies. Order of Judgment at 1-2 Haskin v. Rhodes, (2012-CP-10-6506). Each LLC would purchase an unimproved lot, build a home on the lot, and sell the improved lot to a third party. Id. The Form 1065 tax returns presented to this Court indicate the filings were made on behalf of the various

LLCs. Id. at 6. The schedule k-1s presented to this Court indicate that the members of these LLCs were Haskin and Rhodes Investments, Inc. ("Rhodes Investments"). Both the signed and unsigned operating agreements for these various LLCs indicate the members to be Haskin and Rhodes Investments. Id. at 5.

There was no overall "partnership." Rather, there were a series of joint ventures that were undertaken in the form of LLCs.

LLCs:

South Carolina law provides that "the laws of the State or other jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its managers, members, and their transferees." S.C. Code Ann. § 33-44-1001 (2006). One LLC at issue in this case was organized under the laws of the State of South Carolina. Order of Judgment at 2-3 Haskin v. Rhodes, (2012-CP-10-6506). The remaining three LLCs at issue in this case were organized under the law of the State of Florida. Id.

Station 22, LLC:

As this Court's Order of Judgment indicates, Station 22 is an LLC organized under the laws of the State of South Carolina in 2004. Id. at 3. South Carolina law does not require an operating agreement to be in writing. S.C. Code Ann. § 33-44-103(a) (2004). As the official comments note "[c]ourse of dealing, course of performance and usage of trade are relevant to determine the meaning of the agreement" Id. cmt.

Based on the findings of fact explained in this Court's Order of Judgment, this Court found that the agreement between the parties regarding the business operations of Station 22, LLC did not include one in which Rhodes or Rhodes Investments would

contribute to losses sustained by Haskin. Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

2624 Myrtle, LLC & 2802 Middle, LLC:

As this Court's Order of Judgment indicates, 2624 Myrtle, LLC and 2802 Middle were organized under the laws of the State of Florida in 2006. Id. at 2-3.

The 2006 Florida Statutes provided that "all members of a limited liability company may enter into an operating agreement, which need not be in writing, to regulate the affairs of the limited liability company and the conduct of its business" Fla. Stat. § 608.423(1) (2006). However, "[a] promise by a member to contribute to the limited liability company is not enforceable unless it is set out in writing signed by the member." Id. § 608.4211(2). Additionally, "the members, managers, and managing members of a limited liability company are not liable, solely by reason of being a member or serving as a manager or managing member . . . for a debt, obligation, or liability of the limited liability company." Id. § 608.4227(1).

Based on the findings of fact explained in this Court's Order of Judgment, this Court found that the agreement between the parties regarding the business operations of 2624 Myrtle, LLC, and 2802 Middle, LLC did not include one in which Rhodes or Rhodes Investments would contribute to losses sustained by Haskin. Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (2) To hold that Defendant Rhodes' disclosures to his wife in the Prenuptial Agreement prove that he personally owned a fifty percent capital interest in the companies at issue, that those disclosures are consistent with the tax returns and Schedule k-1s and that Rhodes, being the owner of an undiluted fifty percent capital interest in the companies, is liable for his fifty percent share of the losses as well as the profits of those entities.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).



- (3) To rule on and to make findings of fact and conclusions of law as to whether or not a partnership existed between Plaintiff Haskin and Defendant Samuel Rhodes, Jr. under South Carolina law and hold that the Haskin-Rhodes partnership exists.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (4) To hold that the evidence proves that a partnership existed between Haskin and Rhodes in which they agreed, orally and/or through a course of dealing, to share profits and losses equally.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (5) To hold that the Operating Agreements for 2624 Bayonne, LLC, 2624 Myrtle, LLC, 2802 Middle, LLC and Station 22 of Charleston, LLC were not followed by the parties but were, in fact, disregarded as proven by the evidence.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (6) To hold that the evidence of course of dealing and acquiescence between Haskin and Rhodes proves that Haskin and Rhodes had an agreement to share profits and losses equally and that Rhodes breached that agreement.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (7) To correct erroneous factual findings and errors of law involving Plaintiff's action for an Accounting and to hold that Plaintiff is entitled to the amount of the disparity between the partner's capital accounts as determined by Plaintiff's expert.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (8) To hold that Plaintiff is entitled to the remedy of unjust enrichment/Quantum Meruit/Restitution as an alternative to a finding of breach of contract.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).



- (9) To hold that a fiduciary duty existed between Plaintiff Haskin and Defendant Samuel Rhodes, Jr. under South Carolina law and that Rhodes breached his fiduciary duty to Haskin.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (10) To hold that Plaintiff is entitled to the remedy of equitable contribution.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (11) To hold that the remedy of piercing the corporate veil of Rhodes Investments, Inc. is warranted in this case.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (12) To correct erroneous factual findings and errors of law involving Plaintiff's action to set aside a fraudulent conveyance and/or impose a constructive trust or attachment of proceeds and real property.

GRANTED IN PART.

This Court's Order of Judgment incorrectly placed the burden of proof on the plaintiff in this case involving a real property conveyance between two of the defendants, husband and wife, Samuel Rhodes and Tracey Bozzelli, respectfully. Order of Judgment Haskin v. Rhodes at 11-12, (2012-CP-10-6506). This Court strikes the entire section of its Order of Judgment entitled "(Fraudulent Action to Set Aside Conveyance Intended to Defraud Creditors)," and replaces as follows. Id.

"The Statute of Elizabeth 'does not limit its application to judgment creditors. Its protection also extends to other types of parties *defrauded* in connection with the conveyance of property.'" Judy v. Judy, 403 S.C. 203, 208; 742 S.E.2d 672, 675 (Cl. App. 2013) (emphasis added) (quoting Mathis v. Burton, 319 S.C. 261, 264; 460 S.E.2d

406, 408 (Ct. App. 1995)). This Court finds that based on the findings of fact and conclusions of law herein and in this Court's Order of Judgment, the defendants were not and are not indebted to the plaintiff Haskin for losses, contributions, or the sale of 1723 Middle Street. As such, Haskin, is not a judgment creditor of the defendants, nor has Haskin been defrauded by the conveyance of property between the defendants. Therefore, the Statute of Elizabeth is inapplicable.

- (13) To hold that Defendants are not entitled to an award of costs.

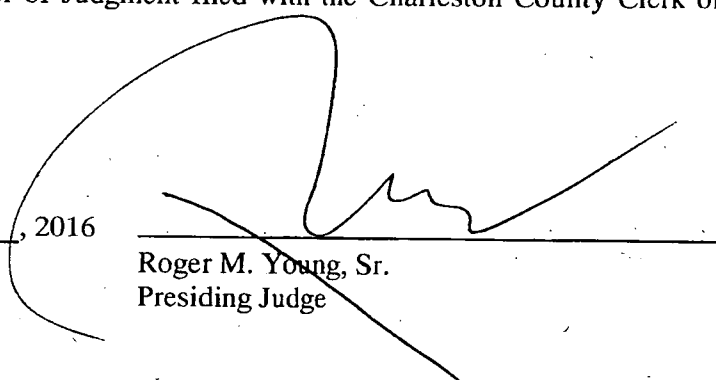
DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

CONCLUSION

This Court having considered the arguments, supporting documents, and based on same, this Order Amends this Court's Order of Judgment filed with the Charleston County Clerk of Courts on February 5, 2016.

AND IT IS SO ORDERED.

This ____ day of 4/28, 2016
Charleston, South Carolina



Roger M. Young, Sr.
Presiding Judge

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

William B. Haskin, Jr.,

Plaintiff,

vs.

Samuel W. Rhodes, Jr., Rhodes
Investments, Inc., and Rhodes Consulting,
LLC,

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2012-CP-10- 6504

SUMMONS

(Jury Trial Demanded)

FILED
2012 OCT -5 AM 10:47
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Complaint upon the subscribers, Rosen, Rosen & Hagood, LLC, at their offices at 151 Meeting Street, Suite 400, Post Office Box 893, Charleston, South Carolina 29402, within thirty (30) days of the date of the service hereof, exclusive of the day of such service.

FURTHER, YOU ARE HEREBY GIVEN NOTICE that, if you fail to appear and defend and fail to answer the Complaint as required by this Summons within thirty (30) days after the date of service hereof, judgment by default will be rendered against you for the relief demanded in the Complaint.

ROSEN, ROSEN & HAGOOD, LLC

By: John E. Rosen

Richard S. Rosen
John E. Rosen
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726 (o)
(843) 724-8036 (f)
rsrosen@rrhlawfirm.com
jrosen@rrhlawfirm.com

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina:
October 5, 2012

ROA000022

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2012-CP-10- 6504

William B. Haskin, Jr.,

Plaintiff,

vs.

Samuel W. Rhodes, Jr., Rhodes
Investments, Inc., and Rhodes Consulting,
LLC,

Defendants.

COMPLAINT
(Jury Trial Demanded)

FILED
2012 OCT -5 AM 10:47
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

The Plaintiff, complaining of the Defendants named herein, hereby alleges and states as follows:

PARTIES

1. At all times pertinent herein, Plaintiff, William B. Haskin, Jr. (hereinafter "Haskin") is and was an adult citizen and resident of the County of Charleston, State of South Carolina.

2. At all times pertinent herein, Defendant Samuel W. Rhodes, Jr. (hereinafter "Rhodes") is and was an adult citizen and resident of the County of Charleston, State of South Carolina.

3. Defendant Rhodes Investments, Inc. (hereinafter "Rhodes Investments") was incorporated by Rhodes to shield himself from liability from Plaintiff and other creditors, and is and was the alter ego of Rhodes in doing and/or transacting business in Charleston County and Berkeley County, State of South Carolina, as described herein.

ROA000023

4. Defendant Rhodes Consulting, LLC (hereinafter "Rhodes Consulting") is a limited liability company formed by Rhodes to shield himself from liability from Plaintiff and other creditors, and is and was the alter ego of Rhodes in doing and/or transacting business in Charleston County and Berkeley County, State of South Carolina, as described herein.

JURISDICTION AND VENUE

5. All of the Defendants, either themselves individually or through their agents, servants, and/or employees, are residents of or conduct business in Charleston County, State of South Carolina.

6. The causes of action in this matter arose from business dealings by and among the Plaintiff and the Defendants in Charleston County and Berkeley County, State of South Carolina.

7. The Charleston County Court of Common Pleas is the proper venue for this action.

ALLEGATIONS OF FACT

8. Heretofore, Plaintiff Haskin and Defendant Rhodes agreed to enter into a joint venture for the purpose of developing certain real estate and pursuant to that agreement formed or caused to be formed various companies.

9. Plaintiff Haskin and Defendant Rhodes have had a long standing relationship in which they consistently and repeatedly over the last twenty or so years, formed various limited liability companies, which would acquire a parcel of raw land in a desirable location, and then would construct a house on the subject property for sale to a third party.

10. In the early nineteen nineties, Haskin and Rhodes together owned a restaurant on Sullivan's Island which Rhodes operated and for which Haskin secured the financing and funded its operations. Plaintiff Haskin and Defendant Rhodes split the profits and losses from this

venture equally until they sold it in the mid nineteen nineties.

11. Soon thereafter, Haskin and Rhodes began development activities on Sullivan's Island, South Carolina, where they acquired and developed 2914 Marshall Boulevard, 29 I'on Avenue, 1723 Middle Street, 18 I'on Avenue, 2802 Middle Street, 2624 Myrtle Avenue, 2624 Bayonne Street, 1908 Middle Street, and 1914 Middle Street.

12. The structure of each of these joint ventures was virtually the same; customarily Haskin would secure the necessary financing to purchase the desired parcel, obtain a construction loan, and fund any shortfall during construction. Rhodes' duties included, but were not limited to constructing and managing the project on a day-to-day basis, paying all subcontractors, and keeping the proper accounting records. Once the project was completed and sold to a third party, Haskin would first be reimbursed for the costs he advanced and then the parties split the profits equally. Mr. Haskin was never shown an accounting by Rhodes. This was the parties' *modus operandi* and course of dealing.

13. From 1994 until November 4, 2011, Haskin and Rhodes repeated this process many times over, with Haskin investing millions of dollars and Rhodes never investing any funds, in various pieces of raw land, building houses on those parcels, reimbursing Haskin for his investment of money, and then earning a substantial profit on the sale of the home to a third party.

14. Four such projects, the one to acquire and develop 2624 Myrtle Avenue Sullivan's Island, South Carolina, known as 2624 Myrtle Avenue, LLC ("2624 Myrtle"), the one to acquire and develop 2802 Middle Street Sullivan's Island, South Carolina, known as 2802 Middle Street, LLC ("2802 Middle"), and 1723 Middle Street, Sullivan's Island, South Carolina 29451 known as 1723 Middle Street-HR, LLC (formerly 1723 Middle Street, LLC) ("1723

Middle”) and the one to acquire and develop 22 Lafar Avenue, Daniel Island, South Carolina, known as Station 22 of Charleston, LLC (“Station 22”) are the subject of this lawsuit.

2624 MYRTLE AVENUE

15. On April 24, 2008, Haskin and Rhodes formed 2624 Myrtle, LLC, a Florida limited liability company, for the purpose of acquiring and developing the property located at 2624 Myrtle Avenue, Sullivan’s Island, South Carolina 29482.

16. Upon information and belief, no operating agreement was ever executed by the parties governing their relationship in 2624 Myrtle. While a draft operating agreement dated August 15, 2006 (the “Draft 2624 Myrtle Operating Agreement”) exists, upon information and belief, it was never executed.

17. The Draft 2624 Myrtle Operating Agreement contemplated that both Haskin and Rhodes were individually “Class A” shareholders, with each owning one half percent (0.5%) of the “Membership Units”. Haskin, in his individual capacity, and Rhodes Investments, in which Rhodes was the sole shareholder, were to be the only “Class B” shareholders, each owning forty nine and one half percent (49.5%) of the “Membership Units”. Haskin and Rhodes were and remain the active managers of the company along with Michael E. Gratz, the company’s accountant.

18. Rhodes was personally a member and manager of the various companies described herein, (except for Station 22 where Rhodes Consulting was a member and whose sole member was Rhodes) and channeled distributions from his active participation in these companies through Rhodes Investments as indicated on his Form K-1’s even though Rhodes Investments was not a member of the company. Rhodes Investments is merely a shell corporation of Defendant Rhodes through which he channels his earnings from the various

projects and companies described herein and its existence should be ignored for the reasons hereinafter set forth.

19. 2624 Myrtle purchased its primary asset, the property at 2624 Myrtle Avenue for One Million Two Hundred and Fifty Thousand and No/100 Dollars (\$1,250,000.00) on September 19, 2006 for which Plaintiff, as was customary, secured the necessary financing from Atlantic Bank & Trust to acquire the property, Haskin's equity line from Regions Bank was utilized to fund construction and Rhodes constructed the improvements thereon (the "2624 Myrtle Property").

20. On November 3, 2011, 2624 Myrtle finally sold the 2624 Myrtle Property to Robert and Sonya Richardson for One Million Six Hundred Thousand and No/100 Dollars (\$1,600,000.00). After closing costs, three (3) years of taxes (\$60,000.00), insurance (\$30,000.00), punch list items (\$10,000.00), interest of \$8,500.00 per month for thirty six (36) months totaling \$282,000.00, the company had invested a total of Two Million Nine Hundred Thousand and No/100 Dollars (\$2,900,000.00) in the 2624 Myrtle Property.

21. The net proceeds from the sale totaled One Million Four Hundred and Sixty Six Thousand and No/100 Dollars (\$1,466,000.00). The result of this project was a loss of approximately One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00), all of which has been borne by Haskin, one half of which is the responsibility of Defendant Rhodes.

22. Haskin and Rhodes operated 2624 Myrtle pursuant to and in accordance with their agreement to share profits and losses equally, with Haskin providing the financial support and Rhodes constructing the contemplated improvements (the "2624 Myrtle Oral Agreement"). The loss of approximately One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00) resulted in an obligation of Defendant Rhodes to account for his proportionate share of the loss.

23. Defendant Rhodes (and to the extent also liable Rhodes Investments) are responsible for one half of the total loss to 2802 Middle, or Seven Hundred Thousand and No/100 Dollars (\$700,000.00).

2802 MIDDLE STREET

24. On February 20, 2006, Haskin and Rhodes formed 2802 Middle, a Florida limited liability company, for the purpose of acquiring and developing the property located at 2802 Middle Street, Sullivan's Island, South Carolina 29482.

25. Upon information and belief, no operating agreement was ever executed by the parties governing their relationship in 2802 Middle. While a draft operating agreement dated February 20, 2006 (the "Draft 2802 Middle Operating Agreement") exists, upon information and belief, it was never executed.

26. The Draft 2802 Middle Operating Agreement contemplated that both Haskin and Rhodes were individually "Class A" shareholders with each owning one half percent (0.5%) of the "Membership Units". Haskin, in his individual capacity, and Rhodes Investments, in which Rhodes was the sole shareholder, were to be the only "Class B" shareholders, each owning forty nine and one half percent (49.5%) of the "Membership Units". Rhodes received any and all distributions from 2802 Middle Street through Rhodes Investments, as reflected in his K-1's for 2006, 2007, 2008, 2009, and 2010.

27. 2802 Middle purchased its primary asset, the property at 2802 Middle Street for One Million Three Hundred and Forty Five Thousand and No/100 Dollars (\$1,345,000.00) on March 3, 2006 for which Plaintiff, as was customary, secured the necessary financing (from Tidelands Bank and First Citizens Bank and Trust Company, Inc.) to acquire the property and fund construction and Rhodes constructed the improvements thereon (the "2802 Middle

Property”).

28. Plaintiff and Defendant tried to sell 2802 Middle for many months to no avail. On October 12, 2011, 2802 Middle finally sold the 2802 Middle Property to James and Julie Paquette for One Million Seven Hundred and Fifty Thousand and No/100 Dollars (\$1,750,000.00). After closing costs, which included a three percent (3%) commission, \$32,500 Tidelands Bank required the company to pay in exchange for waiving the deficiency on the short sale, plus other typical closing costs, all of which Haskin paid out of pocket, the net proceeds from the sale totaled One Million Six Hundred and Fifty Thousand and No/100 Dollars \$1,650,000.00. 2802 Middle had tried to sell the 2802 Middle Property for over three (3) years to cover the promissory note to Tidelands Bank and over that period the company incurred costs of over \$100,000.00 in taxes and insurance. The result of this speculative project was that the company lost approximately One Million and No/100 Dollars (\$1,000,000.00), all of which was funded by Haskin.

29. Haskin and Rhodes operated 2802 Middle pursuant to and in accordance with their agreement to share profits and losses equally, with Haskin providing the financial support and Rhodes constructing the contemplated improvements (the “2802 Middle Oral Agreement”). The result of this project was a loss of approximately One Million and No/100 Dollars (\$1,000,000.00), all of which has been borne by Haskin and one half of which is the responsibility of Defendant Rhodes.

30. Defendants Rhodes (and Rhodes Investments) are responsible to Haskin for one half of the total loss to 2802 Middle, or Five Hundred Thousand and No/100 Dollars (\$500,000.00).

22 LAFAR AVENUE

31. Haskin and Rhodes also entered into a failed partnership that is currently in foreclosure known as Station 22 of Charleston, LLC ("Station 22"; 2624 Myrtle, 2802 Middle, 1723 Middle and Station 22 are sometimes referred to collectively herein as the "Companies"), which sought to acquire and construct a home for sale at 22 Lafar Avenue, Daniel Island, 29492 (the "22 Lafar Property").

32. Station 22 was an LLC between Rhodes, Haskin and Mr. James Covington, Sr., with Haskin and Covington each owning thirty three and three tenths percent (33.3%) ownership interest and Rhodes owning a thirty three and four tenths percent (33.4%) ownership interest in the company. Haskin and Covington took title to the 22 Lafar Property and then conveyed it to Station 22.

33. Upon information and belief, no operating agreement was ever executed by the parties governing their relationship in Station 22. While a draft operating agreement dated September 28, 2004 (the "Draft Station 22 Operating Agreement") exists, upon information and belief, it was never executed.

34. Haskin, Rhodes and Covington entered into an oral operating agreement (the "Station 22 Oral Agreement") under which the three agreed to share profits and losses equally. Covington and Haskin acquired the necessary financing for the construction loan and Rhodes constructed the improvements thereon.

35. Station 22 owes One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) to Regions Bank for the 22 Lafar Property. Foreclosure is currently being pursued as the bank declined to enter into a proposed deed in lieu of foreclosure transaction with Station 22.

36. Station 22 will result in a substantial loss to Haskin, and though the exact amount remains to be determined upon sale of the property at the pending foreclosure sale, Plaintiff estimates the total loss at Six Hundred and No/100 Thousand Dollars (\$600,000.00).

37. Defendants Rhodes and Rhodes Consulting are responsible for approximately one third of the loss incurred by Station 22. Rhodes has paid no portion of the loss he is obligated to pay, even after demand was made upon him.

1723 MIDDLE STREET

38. On March 30, 2007, Haskin and Rhodes formed 1723 Middle Street, LLC, now called 1723 Middle Street-HR, LLC, ("1723 Middle") a Florida limited liability company, for the purpose of acquiring and developing the property located at 1723 Middle Street, Sullivan's Island, South Carolina 29482.

39. Upon information and belief, no operating agreement was ever executed by the parties governing their relationship in 1723 Middle.

40. 1723 Middle purchased its primary asset, the property at 1723 Middle Street for One Million Fifty Thousand Dollars (\$1,050,000.00) in 2007 for which Plaintiff, as was customary, secured the necessary financing (from Regions Bank) to acquire the property and fund construction and Rhodes constructed the improvements thereon (the "1723 Middle Property").

41. Haskin and Rhodes operated 1723 Middle pursuant to and in accordance with their agreement to share profits and losses equally, with Haskin providing the financial support and Rhodes constructing the contemplated improvements (the "1723 Middle Oral Agreement"; the 2624 Myrtle Oral Agreement, the 2802 Middle Oral Agreement, the Station 22 Oral Agreement and 1723 Middle Oral Agreement are sometimes referred to collectively hereinafter

as the "Oral Agreements").

42. Plaintiff Haskin and Defendant Rhodes entered into another agreement which allowed Rhodes to purchase Plaintiff's interest in the project for Seventy Five Thousand and No/100 Dollars (\$75,000.00).

43. Defendant Rhodes desired to move into 1723 Middle as his own personal residence and Plaintiff agreed to sell his interest to Defendant Rhodes. Haskin and Rhodes agreed to set off the cost of Rhodes building a new roof on Plaintiff's primary residence.

44. Defendant Rhodes caused a new roof to be placed on Plaintiff's residence located at 2864 Brownell Avenue, Sullivan's Island, S.C., which value the Plaintiff and Defendant agreed was Ten Thousand and No/100 Dollars (\$10,000.00).

45. Plaintiff is entitled to the Sixty Five Thousand and No/100 Dollars (\$65,000.00) still owed to Plaintiff pursuant to this agreement between Plaintiff and Defendant Rhodes.

FOR A FIRST CAUSE OF ACTION

(Breach of Contract/Oral Operating Agreements/ Covenant of Good Faith & Fair Dealing)
(As to 2624 Myrtle, 2802 Middle Street, Station 22 and 1723 Middle)

46. Plaintiff repeats and reiterates the allegations of paragraphs 1 through 45 of the Complaint as if restated verbatim herein.

47. Haskin and Rhodes entered into the 2624 Myrtle Oral Agreement, the 2802 Middle Oral Agreement, the 1723 Middle Oral Agreement, the Station 22 Oral Agreement (as to Covington and Rhodes Consulting), as well as various contracts and agreements as described herein-above involving the acquisition, construction, development and resale of 2624 Myrtle Avenue, 2802 Middle Street, 1723 Middle, Street and 22 Lafar with the intention of sharing profits and losses equally as was their agreement, custom, habit and course of dealing.

48. The contracts and agreements contain mutually dependent promises, covenants and obligations by and between Haskin, Rhodes, 2624 Myrtle, 2802 Middle Street, Station 22 (as to Covington and Rhodes Consulting), 1723 Middle and their members. Each party's performance of his/her/its promises and obligations under the terms of the contracts and agreements is a condition precedent to that party's enforcement of the terms and provisions of the contracts and agreements.

49. Pursuant to the above-referenced promises, assurances, representations, understandings, and agreements, Haskin arranged for, personally guaranteed (as did Covington as to Station 22) and pledged real property to obtain the required acquisition financing from Tidelands Bank and First Citizens Bank and Trust Company, Inc. as to 2802 Middle, Regions as to 2624 Myrtle and 1723 Middle, (and T.D. Bank, N.A. as to Station 22) including, but not limited to arranging and paying for ancillary costs such as real estate appraisals, surveys, inspections, real estate commissions, taxes, insurance and other related charges, with an expectation of compensation therefore or benefit therefrom with the understanding that he would be reimbursed and that if necessary Rhodes would share the cost.

50. The above-referenced contracts include an express and/or implied covenant of good faith and fair dealing requiring the Defendants to act in all respects in good faith toward the Plaintiff, to do nothing to deprive the Plaintiff of the benefits of the contractual relationships, and to give the Plaintiff full cooperation in the performance of the obligations under the contracts.

51. Notwithstanding the above-referenced contracts and agreements, and the full and complete performance on the part of Haskin (and Covington as to Station 22), Rhodes (and Rhodes Investments and Rhodes Consulting) have materially breached the terms and provisions of the parties' contracts and/or the express or implied covenant of good faith and fair dealing by,

inter alia, failing and/or refusing to contribute to the losses incurred in 2624 Myrtle Avenue, 2802 Middle Street, and Station 22 and by Haskin personally, by failing and/or refusing to indemnify Haskin or the Companies for their pro rata share of the losses sustained, and failure to make any efforts to live up to their agreements with Haskin as to the Companies, including but not limited to the agreement to share profits and losses equally resulting from the foregoing enterprises.

52. As a direct and proximate result of the Defendants' breaches of the parties' contracts and/or the express or implied covenants of good faith and fair dealing, Haskin has been damaged by the failure of Defendants to contribute or indemnify Haskin for losses he incurred in connection with 2624 Myrtle Avenue and 2802 Middle Street or Haskin and Covington as to Station 22; by Defendants failing and/or refusing to provide Haskin the benefit of the 2624 Myrtle Oral Agreement, the 2802 Middle Oral Agreement, the 1723 Middle Oral Agreement or the Station 22 Oral Agreement; by Defendants failing and/or refusing to reimburse Haskin for his out-of-pocket expenses related to accomplishing the acquisition and development of the 2624 Myrtle Property, the 2802 Middle Property, or the 22 Lafar Property; and Plaintiff has incurred additional interest expenses under the loans for the foregoing properties; carrying costs of the properties; the loss of value of the underlying assets; the time and expense wasted in efforts to avoid a foreclosure or even greater losses on the development of the foregoing properties; loss of revenue and/or profits, and injury to reputation, business goodwill, and loss of professional standing.

53. Haskin is entitled to compensation from Defendants for his actual, compensatory, consequential, special, and incidental damages, together with prejudgment interest at the rate of 8.75% per annum pursuant to S.C. Code Ann. § 34-31-20(A), and costs and expenses incurred in

bringing this action, all in an amount to be determined by the trier of fact.

FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment/*Quantum Meruit*/Restitution)

54. Plaintiff repeats and reiterates the allegations of paragraphs 1 through 53 of the Complaint as if restated verbatim herein.

55. As described above, Haskin arranged for, personally guaranteed and pledged real property to obtain the required acquisition financing from Tideland Bank and First Citizens Bank and Trust Company, Inc. as to 2802 Middle, T.D Bank as to 2624 Myrtle, and Regions Bank as to 22 Lafar and 1723 Middle, including, but not limited to arranging and paying for carrying costs, as well as ancillary costs such as real estate appraisals, surveys, inspections, real estate commissions and other related charges, with an expectation of compensation therefore or benefit therefrom.

56. Haskin fully performed his obligations to acquire financing, purchase the lots, maintain the shortfalls during construction and generally handle the financing of the various projects through their eventual sale to third parties.

57. Haskin thereby conferred a valuable benefit upon the Defendants which they have realized and continue to realize.

58. Haskin is entitled to the value of the money, time and expense invested for the benefit of Rhodes, including but not limited to payments Haskin made of the shortfall owed to the various banks upon the completion of the short sales, totaling over One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00), conveyance of 1723 Middle to Rhodes for Seventy Five Thousand and No/100 Dollars (\$75,000.00), which Defendant Rhodes has not paid, as well as provision of other funds and services provided by or performed by Haskin.

59. Defendants' retention of the benefit of Haskin's payment of Defendants' portion

of the shortfall to the various banks, totaling over One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00), Plaintiff's conveyance of 1723 Middle to Rhodes for Seventy Five Thousand and No/100 Dollars (\$75,000.00), for which Defendant Rhodes has not paid, and failure to compensate Haskin for Haskin's contributions on Rhodes' behalf to the various losses described herein, including payment of \$10,500 in repairs to the 2624 Myrtle Property to facilitate its short sale and the \$32,500 paid to First Citizens to facilitate the short sale of 2802 Middle Property and alleviate 2802 Middle of the burden of carrying the distressed project, would be unjust.

60. Haskin has demanded that the Defendants pay the reasonable value of the above-mentioned payoffs and other valuable benefits, but Defendants have refused, and continue to refuse, to pay reasonable value to Haskin for the benefit conferred and which Defendants received.

61. There is now justly due and owing to Haskin from Defendants the value of the above-mentioned payments, payoffs and other valuable benefits, contracts and services provided or performed by Haskin and restitution of Defendants share of all cash, capital, and/or funding that Haskin contributed on Defendants' behalf towards the various Companies in amounts to be determined by the trier of fact.

FOR A THIRD CAUSE OF ACTION
(Judicial Dissolution as to Station 22)

62. Plaintiff repeats and reiterates the allegations of paragraphs 1 through 61 of the Complaint as if restated verbatim herein.

63. As to Station 22, a South Carolina limited liability company, Section 33-44-801(4)(a)-(c) and (e) of the South Carolina Uniform Limited Liability Company Act authorizes the dissolution and winding up of a limited liability company upon the application of a member

and a judicial decree that: (a) the economic purpose of the company is likely to be unreasonably frustrated; (b) another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member; (c) it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement; or (e) the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner. Additionally, a court has discretion to dissolve a company when the company has a very poor financial record that is not likely to improve.

64. Because of the loss of the 22 Lafar Property and its pending foreclosure, the economic purpose of the company is likely to be unreasonably frustrated. As discussed *supra*, the 22 Lafar Property, the primary asset of the company, has been in foreclosure since 2011. In addition, Defendant Rhodes (and Rhodes Consulting) has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with Rhodes (or Rhodes Consulting).

65. Rhodes (and Rhodes Consulting) has for two (2) years and continuing to the present, breached and will continue to breach his duties of good faith, fair dealing and loyalty owed to Haskin as evidenced by his willful failure to contribute toward any losses of Station 22 or any effort or contribution to prevent the foreclosure of 22 Lafar, the company's primary asset.

66. The parties can no longer work together in Station 22 in a constructive manner and the dissolution of Station 22 is in the best interests of all of the parties.

67. Because of the conduct of Rhodes (and Rhodes Consulting), the business of the company can only be carried on at a loss and the circumstances as they are render dissolution and liquidation of the partnership property the only equitable and reasonable option at this time.

68. By virtue of the above, Haskin petitions for the dissolution of Station 22 and submits that such dissolution is warranted pursuant to Section 33-44-801(4)(a)-(c) and (e) of the South Carolina Uniform Limited Liability Company Act.

69. Plaintiff is entitled to an Order of this Court judicially dissolving Station 22 of Charleston, LLC, requiring the winding up, liquidation and accounting of of Station 22's business and affairs and the immediate sale of its assets, if any.

FOR A FOURTH CAUSE OF ACTION
(Contribution)
(As to 2624 Myrtle, 2802 Middle and Station 22)

70. Plaintiff repeats and reiterates the allegations of paragraphs 1 through 69 of the Complaint as if restated verbatim herein.

71. On or about January 12, 2012, Haskin, through his legal counsel, made written demand upon Samuel W. Rhodes, Jr. for payment of Rhodes' proportionate share of all of the limited liability company obligations and liabilities as previously set forth herein, all of which were still outstanding and which totaled approximately One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00) through present; and in particular that he pay to Haskin the following: (a) \$700,000.00, or one half of the total loss of approximately One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00) on the sale of the 2624 Myrtle Property on November 3, 2011, which loss has been to date fully absorbed by Haskin; (b) \$500,000.00, or one half of the total loss of approximately One Million and No/100 Dollars (\$1,000,000.00) on the sale of the 2802 Middle Property on October 12, 2011, which loss has been to date fully

absorbed by Haskin; and (c) approximately \$200,000.00, or one third of the total loss of approximately Six Hundred Thousand and No/100 Dollars (\$600,000.00) on the pending foreclosure of the 22 Lafar Property.

72. Samuel Rhodes Jr.'s proportionate share of the above referenced obligations and liabilities, totals over One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00) plus interest at the rate of 8.75% per annum pursuant to S.C. Code Ann. § 34-31-20(A), and costs and expenses incurred in bringing this action, all in an amount to be determined by the trier of fact.

73. Although demand for same has been made to and received by Defendant Samuel W. Rhodes, Jr., he has failed and/or refused to contribute or pay his proportionate share of the 2624 Myrtle, 2820 Middle or Station 22 obligations and liabilities as above-referenced and no part of the approximately One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00) (or any interest thereon) has been paid by Samuel W. Rhodes, Jr.

74. Samuel W. Rhodes, Jr.'s proportionate share of these company obligations and liabilities above-referenced is a debt now justly due and owing by Defendants Samuel W. Rhodes, Jr., Rhodes Investments and Rhodes Consulting to William B. Haskin, Jr.

75. By virtue of the above, Defendants Samuel W. Rhodes, Jr., Rhodes Investments and Rhodes Consulting are indebted to William B. Haskin, Jr. in the sum of approximately One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00) plus interest at the rate of 8.75% per annum pursuant to S.C. Code Ann. § 34-31-20(A), and costs and expenses incurred in bringing this action, all in an amount to be determined by the trier of fact. This amount is now due, owing and unpaid by Defendants to William B. Haskin, Jr.

FOR A FIFTH CAUSE OF ACTION
(Piercing the Corporate Veil)

76. Plaintiff repeats and reiterates the allegations of paragraphs 1 through 75 of the Complaint as if restated verbatim herein.

77. In connection with the joint venture between Plaintiff and Defendant, Plaintiff was forced to expend substantial sums of money for the benefit of the Defendants.

78. The identity of the corporate Defendants, Rhodes Investments, Inc. and Rhodes Consulting, LLC should be ignored by the Court, the corporate shields pierced, and individual liability imposed on the individual Defendant Rhodes inasmuch as the corporation and limited liability company set up by Rhodes to participate in the various Companies with Plaintiff were shell corporations and LLCs without any assets whatsoever, totally owned, controlled and dominated by Defendant Rhodes, and were, in fact, the alter egos of Rhodes. These corporations and limited liability companies were undercapitalized, failed to observe corporate formalities and had no existence in fact other than to serve as a shield for Defendant Rhodes in his dealings with Plaintiff and others.

79. Plaintiff is entitled to judgment against Defendant Rhodes individually for any and all amounts which may be found to be due and owing to Plaintiff in such amounts as are determined by the trier of fact.

FOR A SIXTH CAUSE OF ACTION
(Constructive Trust)

80. Plaintiff repeats and reiterates the allegations of paragraphs 1 through 79 of the Complaint as if restated verbatim herein.

81. Defendant Haskin has wrongfully failed to reimburse Haskin for all of the above referenced losses incurred in the Haskin and Rhodes joint venture.

82. Rhodes has violated the Oral Agreements, his duties of good faith and fair dealing and his duties owed to Plaintiff by failing to honor the joint venture agreement, reimburse, contribute or otherwise pay off Rhodes' debt owed to Haskin.

83. Defendant willfully breached the Oral Agreements by failing and/or refusing to contribute to the losses incurred in 2624 Myrtle Avenue, 2802 Middle Street, and Station 22 and by Haskin personally, by failing and/or refusing to indemnify Haskin or the Companies for their pro rata share of the losses sustained, and failure to make any efforts to live up to their agreements with Haskin as to the Companies and the joint venture, including but not limited to the agreement to share profits and losses equally resulting from the foregoing enterprises.

84. Defendant has been unjustly enriched by his willful misconduct which resulted in Rhodes being indebted to Haskin for the losses Haskin advanced on Rhodes behalf with expectation of full repayment pursuant to their agreement.

85. Haskin is entitled in equity to reimbursement of the funds Haskin advanced on Rhodes' behalf with expectations of full repayment pursuant to their agreement.

86. The facts and circumstances outlined hereinabove give rise to a constructive trust with Defendants bound to act as trustees of any funds owed to Haskin for the foregoing indebtedness alleged herein and assets of Haskin in Defendants possession or control.

87. This Court should find that there exists a constructive trust in favor of Plaintiff as beneficiary of any funds or assets Defendants have retained of the various LLC's described herein or owe to Plaintiff and such funds and/or assets should be impressed with this constructive trust and transferred to the Plaintiff for payment of the indebtedness Defendant owes to Plaintiff.

FOR A SEVENTH CAUSE OF ACTION

(Accounting)

88. Plaintiff repeats and reiterates the allegations of paragraphs 1 through 87 of the Complaint as if restated verbatim herein.

89. While Plaintiff has provided the requisite financing to acquire, own, improve, finance, manage, sell, lease, exchange, and/or otherwise dispose of the subject properties, Rhodes was responsible for constructing the improvements to the subject properties and handling the books and records associated with the construction projects, including but not limited to payment of labor costs to subcontractors, payments for materials, licenses and other related expenses, and for accounting to his joint venture partner, Plaintiff Haskin.

90. Plaintiff is entitled to a proper accounting of all contracts, funds, assets, property, and/or business of 2624 Myrtle, 2802 Middle and Station 22 which he, Rhodes Investments, or Rhodes Consulting received by virtue of the above-referenced conduct.

91. By means of the above acts as set forth hereinabove, the Defendants are required to account to Plaintiff for any assets, cash, or real estate of Plaintiff or the LLC's that Defendants acquired in contravention of the rights of the Plaintiff.

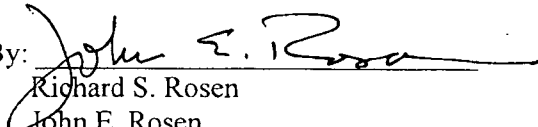
92. All of the assets of the Plaintiff acquired by the Defendants are in equity and good conscience impressed with a trust in favor of the Plaintiff.

93. Haskin is entitled to an Order of this Court requiring and directing Rhodes to account for all of the Defendants' actions in connection with 2624 Myrtle, 2802 Middle, 1723 Middle and Station 22 and to pay over to Plaintiff such amounts and/or assets that are found to be due and owing to Plaintiff.

WHEREFORE, Plaintiff William B. Haskin, Jr. prays that the Court enter its Order grant the following relief: (1) awarding Plaintiff judgment against the Defendant for his actual, incidental, consequential, special, and punitive damages as shown by the evidence; (2) compelling Defendants to provide restitution to Plaintiff of amounts advanced by Plaintiff on behalf of Defendants; (3) requiring that Station 22 be judicially dissolved and requiring the winding up and liquidation of its business and affairs and the immediate sale of its assets, if any; (4) compelling Defendants to account for any and all assets of the Companies or Plaintiff and pay over to Plaintiff such amounts and/or assets as are found to be those of Plaintiff in the possession of Defendants; (5) piercing the corporate veil of Rhodes' above-referenced corporate entities, disregarding their separate existence, and awarding judgment against Defendant Rhodes individually; (6) awarding Plaintiff his pre-judgment and post-judgment interest as provided by law; (7) imposing a constructive trust on any assets held by Defendants for the benefit of Plaintiff; (8) awarding Plaintiff his costs and disbursements of this action; and (9) granting to the Plaintiff such other legal and equitable relief as this Court shall deem just and proper.

ROSEN, ROSEN & HAGOOD, LLC

By:


Richard S. Rosen

John E. Rosen

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Charleston, South Carolina
October 5, 2012.

ATTORNEYS FOR PLAINTIFF

A JURY TRIAL IS DEMANDED AS TO ALL ISSUES SO TRIABLE

COUNTY OF CHARLESTON

William B. Haskin, Jr.,

Plaintiff,

VS.

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

Defendants.

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2012-CP-10-6506

AMENDED SUMMONS

2013 JUL 25 PM 2: 03
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED and required to answer the Amended Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your Answer to said Amended Complaint upon the subscribers, Rosen, Rosen & Hagood, LLC, at their offices at 151 Meeting Street, Suite 400, Post Office Box 893, Charleston, South Carolina 29402, within fifteen (15) days of the date of the service hereof, exclusive of the day of such service.

FURTHER, YOU ARE HEREBY GIVEN NOTICE that, if you fail to appear and defend and fail to answer the Amended Complaint as required by this Summons within fifteen (15) days after the date of service hereof, judgment by default will be rendered against you for the relief demanded in the Amended Complaint.

ROSEN, ROSEN & HAGOOD, LLC

By:

Richard S. Rosen

John E. Rosen

151 Meeting Street, Suite 400

Charleston, SC 29401

(843) 577-6726 (o)

(843) 724-8036 (f)

ATTORNEYS FOR PLAINTIFF

Charleston, South Carolina
July 25, 2013

ROA000044

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2012-CP-10-6506

William B. Haskin, Jr.,

Plaintiff,

vs.

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

Defendants.

AMENDED COMPLAINT
(Jury Trial Demanded)

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2013 JUL 25 PM 2:03

FILED

The Plaintiff, complaining of the Defendants named herein, hereby alleges and states as follows:

PARTIES

1. At all times pertinent herein, Plaintiff, William B. Haskin, Jr. (hereinafter "Haskin") is and was an adult citizen and resident of the County of Charleston, State of South Carolina.

2. At all times pertinent herein, Defendant Samuel W. Rhodes, Jr. (hereinafter "Rhodes") is and was an adult citizen and resident of the County of Charleston, State of South Carolina.

3. Defendant Rhodes Investments, Inc. (hereinafter "Rhodes Investments") was incorporated by Rhodes to shield himself from liability from Plaintiff and other creditors, and is and was the alter ego of Rhodes in doing and/or transacting business in Charleston County and Berkeley County, State of South Carolina, as described herein.

ROA000045

4. Defendant Rhodes Consulting, LLC (hereinafter "Rhodes Consulting") is a limited liability company formed by Rhodes to shield himself from liability from Plaintiff and other creditors, and is and was the alter ego of Rhodes in doing and/or transacting business in Charleston County and Berkeley County, State of South Carolina, as described herein.

5. At all times pertinent herein, Defendant Tracey M. Bozzelli (hereinafter "Bozzelli") is and was an adult citizen and resident of the County of Charleston, State of South Carolina.

JURISDICTION AND VENUE

6. All of the Defendants, either themselves individually or through their agents, servants, and/or employees, are residents of or conduct business in Charleston County, State of South Carolina.

7. The causes of action in this matter arose from business dealings by and among the Plaintiff and the Defendants in Charleston County and Berkeley County, State of South Carolina.

8. The Charleston County Court of Common Pleas is the proper venue for this action.

ALLEGATIONS OF FACT

9. Heretofore, Plaintiff Haskin and Defendant Rhodes agreed to enter into a joint venture for the purpose of developing certain real estate and pursuant to that agreement formed or caused to be formed various companies.

10. Plaintiff Haskin and Defendant Rhodes have had a long standing relationship in which they consistently and repeatedly over the last twenty or so years, formed various limited liability companies, which would acquire a parcel of raw land in a desirable location, and then would construct a house on the subject property for sale to a third party.

11. In the early nineteen nineties, Haskin and Rhodes together owned a restaurant on Sullivan's Island which Rhodes operated and for which Haskin secured the financing and funded its operations. Plaintiff Haskin and Defendant Rhodes split the profits and losses from this venture equally until they sold it in the mid nineteen nineties.

12. Soon thereafter, Haskin and Rhodes began development activities on Sullivan's Island, South Carolina, where they acquired and developed 2914 Marshall Boulevard, 29 I'on Avenue, 1723 Middle Street, 18 I'on Avenue, 2802 Middle Street, 2624 Myrtle Avenue, 2624 Bayonne Street, 1908 Middle Street, and 1914 Middle Street.

13. The structure of each of these joint ventures was virtually the same; customarily Haskin would secure the necessary financing to purchase the desired parcel, obtain a construction loan, and fund any shortfall during construction. Rhodes' duties included, but were not limited to constructing and managing the project on a day-to-day basis, paying all subcontractors, and keeping the proper accounting records. Once the project was completed and sold to a third party, Haskin would first be reimbursed for the costs he advanced and then the parties split the profits equally. Mr. Haskin was never shown an accounting by Rhodes. This was the parties' *modus operandi* and course of dealing.

14. From 1994 until November 4, 2011, Haskin and Rhodes repeated this process many times over, with Haskin investing millions of dollars and Rhodes never investing any funds, in various pieces of raw land, building houses on those parcels, reimbursing Haskin for his investment of money, and then earning a substantial profit on the sale of the home to a third party.

15. Four such projects, the one to acquire and develop 2624 Myrtle Avenue Sullivan's Island, South Carolina, known as 2624 Myrtle Avenue, LLC ("2624 Myrtle"), the one

to acquire and develop 2802 Middle Street Sullivan's Island, South Carolina, known as 2802 Middle Street, LLC ("2802 Middle"), and 1723 Middle Street, Sullivan's Island, South Carolina 29451 known as 1723 Middle Street-HR, LLC (formerly 1723 Middle Street, LLC) ("1723 Middle") and the one to acquire and develop 22 Lafar Avenue, Daniel Island, South Carolina, known as Station 22 of Charleston, LLC ("Station 22") are the subject of this lawsuit.

2624 MYRTLE AVENUE

16. On April 24, 2008, Haskin and Rhodes formed 2624 Myrtle, LLC, a Florida limited liability company, for the purpose of acquiring and developing the property located at 2624 Myrtle Avenue, Sullivan's Island, South Carolina 29482.

17. Upon information and belief, no operating agreement was ever executed by the parties governing their relationship in 2624 Myrtle. While a draft operating agreement dated August 15, 2006 (the "Draft 2624 Myrtle Operating Agreement") exists, upon information and belief, it was never executed.

18. The Draft 2624 Myrtle Operating Agreement contemplated that both Haskin and Rhodes were individually "Class A" shareholders, with each owning one half percent (0.5%) of the "Membership Units". Haskin, in his individual capacity, and Rhodes Investments, in which Rhodes was the sole shareholder, were to be the only "Class B" shareholders, each owning forty nine and one half percent (49.5%) of the "Membership Units". Haskin and Rhodes were and remain the active managers of the company along with Michael E. Gratz, the company's accountant.

19. Rhodes was personally a member and manager of the various companies described herein, (except for Station 22 where Rhodes Consulting was a member and whose sole member was Rhodes) and channeled distributions from his active participation in these

companies through Rhodes Investments as indicated on his Form K-1's even though Rhodes Investments was not a member of the company. Rhodes Investments is merely a shell corporation of Defendant Rhodes through which he channels his earnings from the various projects and companies described herein and its existence should be ignored for the reasons hereinafter set forth.

20. 2624 Myrtle purchased its primary asset, the property at 2624 Myrtle Avenue for One Million Two Hundred and Fifty Thousand and No/100 Dollars (\$1,250,000.00) on September 19, 2006 for which Plaintiff, as was customary, secured the necessary financing from Atlantic Bank & Trust to acquire the property, Haskin's equity line from Regions Bank was utilized to fund construction and Rhodes constructed the improvements thereon (the "2624 Myrtle Property").

21. On November 3, 2011, 2624 Myrtle finally sold the 2624 Myrtle Property to Robert and Sonya Richardson for One Million Six Hundred Thousand and No/100 Dollars (\$1,600,000.00). After closing costs, three (3) years of taxes (\$60,000.00), insurance (\$30,000.00), punch list items (\$10,000.00), interest of \$8,500.00 per month for thirty six (36) months totaling \$282,000.00, the company had invested a total of Two Million Nine Hundred Thousand and No/100 Dollars (\$2,900,000.00) in the 2624 Myrtle Property.

22. The net proceeds from the sale totaled One Million Four Hundred and Sixty Six Thousand and No/100 Dollars (\$1,466,000.00). The result of this project was a loss of approximately One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00), all of which has been borne by Haskin, one half of which is the responsibility of Defendant Rhodes.

23. Haskin and Rhodes operated 2624 Myrtle pursuant to and in accordance with their agreement to share profits and losses equally, with Haskin providing the financial support and

Rhodes constructing the contemplated improvements (the "2624 Myrtle Oral Agreement"). The loss of approximately One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00) resulted in an obligation of Defendant Rhodes to account for his proportionate share of the loss.

24. Defendant Rhodes (and to the extent also liable Rhodes Investments) are responsible for one half of the total loss to 2802 Middle, or Seven Hundred Thousand and No/100 Dollars (\$700,000.00).

2802 MIDDLE STREET

25. On February 20, 2006, Haskin and Rhodes formed 2802 Middle, a Florida limited liability company, for the purpose of acquiring and developing the property located at 2802 Middle Street, Sullivan's Island, South Carolina 29482.

26. Upon information and belief, no operating agreement was ever executed by the parties governing their relationship in 2802 Middle. While a draft operating agreement dated February 20, 2006 (the "Draft 2802 Middle Operating Agreement") exists, upon information and belief, it was never executed.

27. The Draft 2802 Middle Operating Agreement contemplated that both Haskin and Rhodes were individually "Class A" shareholders with each owning one half percent (0.5%) of the "Membership Units". Haskin, in his individual capacity, and Rhodes Investments, in which Rhodes was the sole shareholder, were to be the only "Class B" shareholders, each owning forty nine and one half percent (49.5%) of the "Membership Units". Rhodes received any and all distributions from 2802 Middle Street through Rhodes Investments, as reflected in his K-1's for 2006, 2007, 2008, 2009, and 2010.

28. 2802 Middle purchased its primary asset, the property at 2802 Middle Street for One Million Three Hundred and Forty Five Thousand and No/100 Dollars (\$1,345,000.00) on

March 3, 2006 for which Plaintiff, as was customary, secured the necessary financing (from Tidelands Bank and First Citizens Bank and Trust Company, Inc.) to acquire the property and fund construction and Rhodes constructed the improvements thereon (the "2802 Middle Property").

29. Plaintiff and Defendant tried to sell 2802 Middle for many months to no avail. On October 12, 2011, 2802 Middle finally sold the 2802 Middle Property to James and Julie Paquette for One Million Seven Hundred and Fifty Thousand and No/100 Dollars (\$1,750,000.00). After closing costs, which included a three percent (3%) commission, \$32,500 Tidelands Bank required the company to pay in exchange for waiving the deficiency on the short sale, plus other typical closing costs, all of which Haskin paid out of pocket, the net proceeds from the sale totaled One Million Six Hundred and Fifty Thousand and No/100 Dollars \$1,650,000.00. 2802 Middle had tried to sell the 2802 Middle Property for over three (3) years to cover the promissory note to Tidelands Bank and over that period the company incurred costs of over \$100,000.00 in taxes and insurance. The result of this speculative project was that the company lost approximately One Million and No/100 Dollars (\$1,000,000.00), all of which was funded by Haskin.

30. Haskin and Rhodes operated 2802 Middle pursuant to and in accordance with their agreement to share profits and losses equally, with Haskin providing the financial support and Rhodes constructing the contemplated improvements (the "2802 Middle Oral Agreement"). The result of this project was a loss of approximately One Million and No/100 Dollars (\$1,000,000.00), all of which has been borne by Haskin and one half of which is the responsibility of Defendant Rhodes.

31. Defendants Rhodes (and Rhodes Investments) are responsible to Haskin for one

half of the total loss to 2802 Middle, or Five Hundred Thousand and No/100 Dollars (\$500,000.00).

22 LAFAR AVENUE

32. Haskin and Rhodes also entered into a failed partnership that is currently in foreclosure known as Station 22 of Charleston, LLC ("Station 22"; 2624 Myrtle, 2802 Middle, 1723 Middle and Station 22 are sometimes referred to collectively herein as the "Companies"), which sought to acquire and construct a home for sale at 22 Lafar Avenue, Daniel Island, 29492 (the "22 Lafar Property").

33. Station 22 was an LLC between Rhodes, Haskin and Mr. James Covington, Sr., with Haskin and Covington each owning thirty three and three tenths percent (33.3%) ownership interest and Rhodes owning a thirty three and four tenths percent (33.4%) ownership interest in the company. Haskin and Covington took title to the 22 Lafar Property and then conveyed it to Station 22.

34. Upon information and belief, no operating agreement was ever executed by the parties governing their relationship in Station 22. While a draft operating agreement dated September 28, 2004 (the "Draft Station 22 Operating Agreement") exists, upon information and belief, it was never executed.

35. Haskin, Rhodes and Covington entered into an oral operating agreement (the "Station 22 Oral Agreement") under which the three agreed to share profits and losses equally. Covington and Haskin acquired the necessary financing for the construction loan and Rhodes constructed the improvements thereon.

36. Station 22 owes One Million Five Hundred Thousand and No/100 Dollars (\$1,500,000.00) to Regions Bank for the 22 Lafar Property. Foreclosure is currently being

pursued as the bank declined to enter into a proposed deed in lieu of foreclosure transaction with Station 22.

37. Station 22 will result in a substantial loss to Haskin, and though the exact amount remains to be determined upon sale of the property at the pending foreclosure sale, Plaintiff estimates the total loss at Six Hundred and No/100 Thousand Dollars (\$600,000.00).

38. Defendants Rhodes and Rhodes Consulting are responsible for approximately one third of the loss incurred by Station 22. Rhodes has paid no portion of the loss he is obligated to pay, even after demand was made upon him.

1723 MIDDLE STREET

39. On March 30, 2007, Haskin and Rhodes formed 1723 Middle Street, LLC, now called 1723 Middle Street-HR, LLC, ("1723 Middle") a Florida limited liability company, for the purpose of acquiring and developing the property located at 1723 Middle Street, Sullivan's Island, South Carolina 29482.

40. Upon information and belief, no operating agreement was ever executed by the parties governing their relationship in 1723 Middle.

41. 1723 Middle purchased its primary asset, the property at 1723 Middle Street for One Million Fifty Thousand Dollars (\$1,050,000.00) in 2007 for which Plaintiff, as was customary, secured the necessary financing (from Regions Bank) to acquire the property and fund construction and Rhodes constructed the improvements thereon (the "1723 Middle Property").

42. Haskin and Rhodes operated 1723 Middle pursuant to and in accordance with their agreement to share profits and losses equally, with Haskin providing the financial support and Rhodes constructing the contemplated improvements (the "1723 Middle Oral Agreement";

the 2624 Myrtle Oral Agreement, the 2802 Middle Oral Agreement, the Station 22 Oral Agreement and 1723 Middle Oral Agreement are sometimes referred to collectively hereinafter as the "Oral Agreements").

43. Plaintiff Haskin and Defendant Rhodes entered into another agreement which allowed Rhodes to purchase Plaintiff's interest in the project for Seventy Five Thousand and No/100 Dollars (\$75,000.00).

44. Defendant Rhodes desired to move into 1723 Middle as his own personal residence and Plaintiff agreed to sell his interest to Defendant Rhodes. Haskin and Rhodes agreed to set off the cost of Rhodes building a new roof on Plaintiff's primary residence.

45. Defendant Rhodes caused a new roof to be placed on Plaintiff's residence located at 2864 Brownell Avenue, Sullivan's Island, S.C., which value the Plaintiff and Defendant agreed was Ten Thousand and No/100 Dollars (\$10,000.00).

46. Plaintiff is entitled to the Sixty Five Thousand and No/100 Dollars (\$65,000.00) still owed to Plaintiff pursuant to this agreement between Plaintiff and Defendant Rhodes.

FOR A FIRST CAUSE OF ACTION

(Breach of Contract/Oral Operating Agreements/ Covenant of Good Faith & Fair Dealing)
(As to 2624 Myrtle, 2802 Middle Street, Station 22 and 1723 Middle)

47. Plaintiff repeats and reiterates the allegations of paragraphs 1 through 46 of the Complaint as if restated verbatim herein.

48. Haskin and Rhodes entered into the 2624 Myrtle Oral Agreement, the 2802 Middle Oral Agreement, the 1723 Middle Oral Agreement, the Station 22 Oral Agreement (as to Covington and Rhodes Consulting), as well as various contracts and agreements as described herein-above involving the acquisition, construction, development and resale of 2624 Myrtle

Avenue, 2802 Middle Street, 1723 Middle Street and 22 Lafar with the intention of sharing profits and losses equally as was their agreement, custom, habit and course of dealing.

49. The contracts and agreements contain mutually dependent promises, covenants and obligations by and between Haskin, Rhodes, 2624 Myrtle, 2802 Middle Street, Station 22 (as to Covington and Rhodes Consulting), 1723 Middle and their members. Each party's performance of his/her/its promises and obligations under the terms of the contracts and agreements is a condition precedent to that party's enforcement of the terms and provisions of the contracts and agreements.

50. Pursuant to the above-referenced promises, assurances, representations, understandings, and agreements, Haskin arranged for, personally guaranteed (as did Covington as to Station 22) and pledged real property to obtain the required acquisition financing from Tideland Bank and First Citizens Bank and Trust Company, Inc. as to 2802 Middle, Regions as to 2624 Myrtle and 1723 Middle, (and T.D. Bank, N.A. as to Station 22) including, but not limited to arranging and paying for ancillary costs such as real estate appraisals, surveys, inspections, real estate commissions, taxes, insurance and other related charges, with an expectation of compensation therefore or benefit therefrom with the understanding that he would be reimbursed and that if necessary Rhodes would share the cost.

51. The above-referenced contracts include an express and/or implied covenant of good faith and fair dealing requiring the Defendants to act in all respects in good faith toward the Plaintiff, to do nothing to deprive the Plaintiff of the benefits of the contractual relationships, and to give the Plaintiff full cooperation in the performance of the obligations under the contracts.

52. Notwithstanding the above-referenced contracts and agreements, and the full and complete performance on the part of Haskin (and Covington as to Station 22), Rhodes (and

Rhodes Investments and Rhodes Consulting) have materially breached the terms and provisions of the parties' contracts and/or the express or implied covenant of good faith and fair dealing by, *inter alia*, failing and/or refusing to contribute to the losses incurred in 2624 Myrtle Avenue, 2802 Middle Street, and Station 22 and by Haskin personally, by failing and/or refusing to indemnify Haskin or the Companies for their pro rata share of the losses sustained, and failure to make any efforts to live up to their agreements with Haskin as to the Companies, including but not limited to the agreement to share profits and losses equally resulting from the foregoing enterprises.

53. As a direct and proximate result of the Defendants' breaches of the parties' contracts and/or the express or implied covenants of good faith and fair dealing, Haskin has been damaged by the failure of Defendants to contribute or indemnify Haskin for losses he incurred in connection with 2624 Myrtle Avenue and 2802 Middle Street or Haskin and Covington as to Station 22; by Defendants failing and/or refusing to provide Haskin the benefit of the 2624 Myrtle Oral Agreement, the 2802 Middle Oral Agreement, the 1723 Middle Oral Agreement or the Station 22 Oral Agreement; by Defendants failing and/or refusing to reimburse Haskin for his out-of-pocket expenses related to accomplishing the acquisition and development of the 2624 Myrtle Property, the 2802 Middle Property, or the 22 Lafar Property; and Plaintiff has incurred additional interest expenses under the loans for the foregoing properties; carrying costs of the properties; the loss of value of the underlying assets; the time and expense wasted in efforts to avoid a foreclosure or even greater losses on the development of the foregoing properties; loss of revenue and/or profits, and injury to reputation, business goodwill, and loss of professional standing.

54. Haskin is entitled to compensation from Defendants for his actual, compensatory,

consequential, special, and incidental damages, together with prejudgment interest at the rate of 8.75% per annum pursuant to S.C. Code Ann. § 34-31-20(A), and costs and expenses incurred in bringing this action, all in an amount to be determined by the trier of fact.

FOR A SECOND CAUSE OF ACTION
(Unjust Enrichment/*Quantum Meruit*/Restitution)

55. Plaintiff repeats and reiterates the allegations of paragraphs 1 through 54 of the Complaint as if restated verbatim herein.

56. As described above, Haskin arranged for, personally guaranteed and pledged real property to obtain the required acquisition financing from Tideland Bank and First Citizens Bank and Trust Company, Inc. as to 2802 Middle, T.D Bank as to 2624 Myrtle, and Regions Bank as to 22 Lafar and 1723 Middle, including, but not limited to arranging and paying for carrying costs, as well as ancillary costs such as real estate appraisals, surveys, inspections, real estate commissions and other related charges, with an expectation of compensation therefore or benefit therefrom.

57. Haskin fully performed his obligations to acquire financing, purchase the lots, maintain the shortfalls during construction and generally handle the financing of the various projects through their eventual sale to third parties.

58. Haskin thereby conferred a valuable benefit upon the Defendants which they have realized and continue to realize.

59. Haskin is entitled to the value of the money, time and expense invested for the benefit of Rhodes, including but not limited to payments Haskin made of the shortfall owed to the various banks upon the completion of the short sales, totaling over One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00), conveyance of 1723 Middle to Rhodes for Seventy Five Thousand and No/100 Dollars (\$75,000.00), which Defendant Rhodes has not

paid, as well as provision of other funds and services provided by or performed by Haskin.

60. Defendants' retention of the benefit of Haskin's payment of Defendants' portion of the shortfall to the various banks, totaling over One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00), Plaintiff's conveyance of 1723 Middle to Rhodes for Seventy Five Thousand and No/100 Dollars (\$75,000.00), for which Defendant Rhodes has not paid, and failure to compensate Haskin for Haskin's contributions on Rhodes' behalf to the various losses described herein, including payment of \$10,500 in repairs to the 2624 Myrtle Property to facilitate its short sale and the \$32,500 paid to First Citizens to facilitate the short sale of 2802 Middle Property and alleviate 2802 Middle of the burden of carrying the distressed project, would be unjust.

61. Haskin has demanded that the Defendants pay the reasonable value of the above-mentioned payoffs and other valuable benefits, but Defendants have refused, and continue to refuse, to pay reasonable value to Haskin for the benefit conferred and which Defendants received.

62. There is now justly due and owing to Haskin from Defendants the value of the above-mentioned payments, payoffs and other valuable benefits, contracts and services provided or performed by Haskin and restitution of Defendants share of all cash, capital, and/or funding that Haskin contributed on Defendants' behalf towards the various Companies in amounts to be determined by the trier of fact.

FOR A THIRD CAUSE OF ACTION
(Judicial Dissolution as to Station 22)

63. Plaintiff repeats and reiterates the allegations of paragraphs 1 through 63 of the Complaint as if restated verbatim herein.

64. As to Station 22, a South Carolina limited liability company, Section 33-44-

801(4)(a)-(c) and (e) of the South Carolina Uniform Limited Liability Company Act authorizes the dissolution and winding up of a limited liability company upon the application of a member and a judicial decree that: (a) the economic purpose of the company is likely to be unreasonably frustrated; (b) another member has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with that member; (c) it is not otherwise reasonably practicable to carry on the company's business in conformity with the articles of organization and the operating agreement; or (e) the managers or members in control of the company have acted, are acting, or will act in a manner that is unlawful, oppressive, fraudulent, or unfairly prejudicial to the petitioner. Additionally, a court has discretion to dissolve a company when the company has a very poor financial record that is not likely to improve.

65. Because of the loss of the 22 Lafar Property and its pending foreclosure, the economic purpose of the company is likely to be unreasonably frustrated. As discussed *supra*, the 22 Lafar Property, the primary asset of the company, has been in foreclosure since 2011. In addition, Defendant Rhodes (and Rhodes Consulting) has engaged in conduct relating to the company's business that makes it not reasonably practicable to carry on the company's business with Rhodes (or Rhodes Consulting).

66. Rhodes (and Rhodes Consulting) has for two (2) years and continuing to the present, breached and will continue to breach his duties of good faith, fair dealing and loyalty owed to Haskin as evidenced by his willful failure to contribute toward any losses of Station 22 or any effort or contribution to prevent the foreclosure of 22 Lafar, the company's primary asset.

67. The parties can no longer work together in Station 22 in a constructive manner and the dissolution of Station 22 is in the best interests of all of the parties.

68. Because of the conduct of Rhodes (and Rhodes Consulting), the business of the company can only be carried on at a loss and the circumstances as they are render dissolution and liquidation of the partnership property the only equitable and reasonable option at this time.

69. By virtue of the above, Haskin petitions for the dissolution of Station 22 and submits that such dissolution is warranted pursuant to Section 33-44-801(4)(a)-(c) and (e) of the South Carolina Uniform Limited Liability Company Act.

70. Plaintiff is entitled to an Order of this Court judicially dissolving Station 22 of Charleston, LLC, requiring the winding up, liquidation and accounting of of Station 22's business and affairs and the immediate sale of its assets, if any.

FOR A FOURTH CAUSE OF ACTION

(Contribution)

(As to 2624 Myrtle, 2802 Middle and Station 22)

71. Plaintiff repeats and reiterates the allegations of paragraphs 1 through 70 of the Complaint as if restated verbatim herein.

72. On or about January 12, 2012, Haskin, through his legal counsel, made written demand upon Samuel W. Rhodes, Jr. for payment of Rhodes' proportionate share of all of the limited liability company obligations and liabilities as previously set forth herein, all of which were still outstanding and which totaled approximately One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00) through present; and in particular that he pay to Haskin the following: (a) \$700,000.00, or one half of the total loss of approximately One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00) on the sale of the 2624 Myrtle Property on November 3, 2011, which loss has been to date fully absorbed by Haskin; (b) \$500,000.00, or one half of the total loss of approximately One Million and No/100 Dollars (\$1,000,000.00) on the sale of the 2802 Middle Property on October 12, 2011, which loss has been to date fully

absorbed by Haskin; and (c) approximately \$200,000.00, or one third of the total loss of approximately Six Hundred Thousand and No/100 Dollars (\$600,000.00) on the pending foreclosure of the 22 Lafar Property.

73. Samuel Rhodes Jr.'s proportionate share of the above referenced obligations and liabilities, totals over One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00) plus interest at the rate of 8.75% per annum pursuant to S.C. Code Ann. § 34-31-20(A), and costs and expenses incurred in bringing this action, all in an amount to be determined by the trier of fact.

74. Although demand for same has been made to and received by Defendant Samuel W. Rhodes, Jr., he has failed and/or refused to contribute or pay his proportionate share of the 2624 Myrtle, 2820 Middle or Station 22 obligations and liabilities as above-referenced and no part of the approximately One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00) (or any interest thereon) has been paid by Samuel W. Rhodes, Jr.

75. Samuel W. Rhodes, Jr.'s proportionate share of these company obligations and liabilities above-referenced is a debt now justly due and owing by Defendants Samuel W. Rhodes, Jr., Rhodes Investments and Rhodes Consulting to William B. Haskin, Jr.

76. By virtue of the above, Defendants Samuel W. Rhodes, Jr., Rhodes Investments and Rhodes Consulting are indebted to William B. Haskin, Jr. in the sum of approximately One Million Four Hundred Thousand and No/100 Dollars (\$1,400,000.00) plus interest at the rate of 8.75% per annum pursuant to S.C. Code Ann. § 34-31-20(A), and costs and expenses incurred in bringing this action, all in an amount to be determined by the trier of fact. This amount is now due, owing and unpaid by Defendants to William B. Haskin, Jr.

FOR A FIFTH CAUSE OF ACTION
(Piercing the Corporate Veil)

77. Plaintiff repeats and reiterates the allegations of paragraphs 1 through 76 of the Complaint as if restated verbatim herein.

78. In connection with the joint venture between Plaintiff and Defendant, Plaintiff was forced to expend substantial sums of money for the benefit of the Defendants.

79. The identity of the corporate Defendants, Rhodes Investments, Inc. and Rhodes Consulting, LLC should be ignored by the Court, the corporate shields pierced, and individual liability imposed on the individual Defendant Rhodes inasmuch as the corporation and limited liability company set up by Rhodes to participate in the various Companies with Plaintiff were shell corporations and LLCs without any assets whatsoever, totally owned, controlled and dominated by Defendant Rhodes, and were, in fact, the alter egos of Rhodes. These corporations and limited liability companies were undercapitalized, failed to observe corporate formalities and had no existence in fact other than to serve as a shield for Defendant Rhodes in his dealings with Plaintiff and others.

80. Defendant Rhodes utilized these sham companies to shield himself from the liabilities resulting from his actions as a licensed residential homebuilder and as a developer/seller of residential homes in and around Berkeley, Charleston and Dorchester Counties as well as officer and owner of the corporate Defendants. Plaintiff is entitled to judgment against Defendant Rhodes individually for any and all amounts which may be found to be due and owing to Plaintiff in such amounts as are determined by the trier of fact.

FOR A SIXTH CAUSE OF ACTION
(Constructive Trust)

81. Plaintiff repeats and reiterates the allegations of paragraphs 1 through 80 of the Complaint as if restated verbatim herein.

82. Defendant Haskin has wrongfully failed to reimburse Haskin for all of the above referenced losses incurred in the Haskin and Rhodes joint venture.

83. Rhodes has violated the Oral Agreements, his duties of good faith and fair dealing and his duties owed to Plaintiff by failing to honor the joint venture agreement, reimburse, contribute or otherwise pay off Rhodes' debt owed to Haskin.

84. Defendant willfully breached the Oral Agreements by failing and/or refusing to contribute to the losses incurred in 2624 Myrtle Avenue, 2802 Middle Street, and Station 22 and by Haskin personally, by failing and/or refusing to indemnify Haskin or the Companies for their pro rata share of the losses sustained, and failure to make any efforts to live up to their agreements with Haskin as to the Companies and the joint venture, including but not limited to the agreement to share profits and losses equally resulting from the foregoing enterprises.

85. Defendant has been unjustly enriched by his willful misconduct which resulted in Rhodes being indebted to Haskin for the losses Haskin advanced on Rhodes behalf with expectation of full repayment pursuant to their agreement.

86. Haskin is entitled in equity to reimbursement of the funds Haskin advanced on Rhodes' behalf with expectations of full repayment pursuant to their agreement.

87. The facts and circumstances outlined hereinabove give rise to a constructive trust with Defendants bound to act as trustees of any funds owed to Haskin for the foregoing indebtedness alleged herein and assets of Haskin in Defendants possession or control.

88. This Court should find that there exists a constructive trust in favor of Plaintiff as beneficiary of any funds or assets Defendants have retained of the various LLC's described herein or owe to Plaintiff and such funds and/or assets should be impressed with this constructive trust and transferred to the Plaintiff for payment of the indebtedness Defendant owes to Plaintiff.

FOR A SEVENTH CAUSE OF ACTION
(Accounting)

89. Plaintiff repeats and reiterates the allegations of paragraphs 1 through 88 of the Complaint as if restated verbatim herein.

90. While Plaintiff has provided the requisite financing to acquire, own, improve, finance, manage, sell, lease, exchange, and/or otherwise dispose of the subject properties, Rhodes was responsible for constructing the improvements to the subject properties and handling the books and records associated with the construction projects, including but not limited to payment of labor costs to subcontractors, payments for materials, licenses and other related expenses, and for accounting to his joint venture partner, Plaintiff Haskin.

91. Plaintiff is entitled to a proper accounting of all contracts, funds, assets, property, and/or business of 2624 Myrtle, 2802 Middle and Station 22 which he, Rhodes Investments, or Rhodes Consulting received by virtue of the above-referenced conduct.

92. By means of the above acts as set forth hereinabove, the Defendants are required to account to Plaintiff for any assets, cash, or real estate of Plaintiff or the LLC's that Defendants acquired in contravention of the rights of the Plaintiff.

93. All of the assets of the Plaintiff acquired by the Defendants are in equity and good conscience impressed with a trust in favor of the Plaintiff.

94. Haskin is entitled to an Order of this Court requiring and directing Rhodes to account for all of the Defendants' actions in connection with 2624 Myrtle, 2802 Middle, 1723

Middle and Station.22 and to pay over to Plaintiff such amounts and/or assets that are found to be due and owing to Plaintiff.

FOR AN EIGHTH CAUSE OF ACTION

(Action to Set Aside Conveyance Intended to Defraud Creditors – Statute
of Elizabeth against Defendants Rhodes and Bozzelli)

95. Plaintiff repeats and reiterates the allegations of paragraphs 1 through 94 of the Complaint as if restated verbatim herein.

96. Defendant Rhodes conveyed title to 1723 Middle in 2009 to himself and his wife, Tracey M. Bozzelli, in 2009 as joint tenants with right of survivorship. This deed is recorded in Book 0044 at Page 962 in the RMC Office for Charleston County, a copy of which is attached hereto and incorporated by this reference as **Exhibit “A”**.

97. Defendant Rhodes entered into the Oral Contracts with the Plaintiff which defined the parties’ respective rights and obligations with respect to the acquisition, development and eventual disposition of the properties of the Companies to third parties. By reason of the Oral Contracts, and other duties and obligations owed by Defendant Rhodes to Plaintiff, Defendant Rhodes is now indebted to the Plaintiff as described herein-above.

98. With knowledge of these rights and obligations and the indebtedness that arose from Defendant Rhodes to Plaintiff, as well as other creditors, Defendant Rhodes conveyed his interest in his home located at 1723 Middle Street, Sullivan’s Island, South Carolina 29455 on February 1, 2010 for five dollars (\$5.00) to his wife, Tracy M. Bozzelli. Defendant Bozzelli became the sole one hundred percent (100%) owner of 1723 Middle for the enrichment of Defendant Rhodes as well as his wife Defendant Bozzelli, and to defraud the Plaintiff and other creditors. This deed is recorded in Book 0105 at Page 192 in the RMC Office for Charleston County, a copy of which is attached hereto and incorporated by this reference as **Exhibit “B”**.

99. Defendants Rhodes and Bozzelli knew that Defendant Rhodes owed and would owe Plaintiff contribution for the indebtedness owed to Plaintiff (and other creditors) due to Rhodes' membership in the Companies and as more fully described in the agreements with Plaintiff as alleged hereinabove.

100. After Defendant Rhodes conveyed his interest in 1723 Middle to his wife, Tracy M. Bozzelli, Defendants Rhodes and Bozzelli continued to benefit from residing at 1723 Middle. On December 9, 2011, Defendants sold 1723 Middle to Nathan and Carla Hughey for One Million Seven Hundred and Ten Thousand and No/100 Dollars (\$1,710,000.00). This deed of the sale of 1723 Middle is recorded in Book 0222 at Page 099 in the RMC Office for Charleston County, a copy of which is attached hereto and incorporated by this reference as **Exhibit "C"**.

101. Defendants Rhodes and Bozzelli profited on the sale of 1723 Middle and on March 12, 2012 reinvested the proceeds in 3029 Middle Street, Sullivan's Island, South Carolina ("3029 Middle"). This deed is recorded in Book 0239 at Page 305 in the RMC Office for Charleston County, a copy of which is attached hereto and incorporated by this reference as **Exhibit "D"**.

102. Defendant Bozzelli paid Four Hundred and Sixty Thousand Dollars and No/100 Dollars (\$460,000.00) for 3029 Middle. Subsequently, Defendants constructed a new luxury home at 3029 Middle in which they now reside. The cost to construct the home on 3029 Middle is unknown, but upon information and belief, the value of the residence is now estimated to be well over One Million Four Hundred Thousand Dollars (\$1,400,000.00).

103. The transfer, conveyance, or assignment of Defendant Rhodes' interest in 1723 Middle to Defendant Bozzelli was made without receiving sufficient consideration and with the deliberate intent and for the purpose to defraud, delay and hinder the Plaintiff and other creditors,

for the purpose of placing 1723 Middle beyond the reach of Rhodes' creditors and specifically to avoid his obligations to the Plaintiff. By conveying his interest in 1723 Middle to Defendant Bozzelli, selling it to a third party, and then reinvesting the proceeds in 3029 Middle, Defendants Rhodes and Bozzelli acted and are acting in a self-serving manner and in disregard of the Plaintiff's rights and Defendants' obligations to Plaintiff. Defendants Rhodes and Bozzelli effected, accepted and received the transfer, conveyance or assignment of 1723 Middle with a fraudulent intent and for fraudulent purposes. Defendants Rhodes and Bozzelli have continued to defraud Plaintiff and Defendant Rhodes' other creditors by their purchase of 3029 Middle with proceeds from the sale of 1723 Middle.

104. As a result of the transfer, conveyance or assignment of Defendant Rhodes' undivided one-half interest in 1723 Middle to Defendant Tracy Bozzelli, and reinvestment of the proceeds from its sale in 3029 Middle, where Defendants currently reside, Defendant Rhodes claims not to have sufficient assets to fulfill Rhodes' obligations to the Plaintiff. Defendant Rhodes failed to retain sufficient assets to pay the indebtedness to Plaintiff in full.

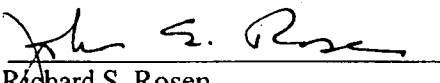
105. As a result, Defendant Rhodes' conveyance, transfer, surrender or assignment of his interest in 1723 Middle to Defendant Bozzelli and the reinvestment of the proceeds from its sale in 3029 Middle, should be set aside and annulled as fraudulent and taken to be clearly and utterly void and of no effect pursuant to S.C. Code Ann. § 27-23-10; all other fraudulent conveyances by Defendant Rhodes or Bozzelli that are discovered should be avoided; an attachment or other provisional remedy should be granted on 3029 Middle as well as any other fraudulently conveyed property; and an injunction against further disposition of any property by Defendants be imposed.

106. Plaintiff is entitled to judgment against the Defendants for the value of 3029 Middle and other fraudulently conveyed property, if any, based on the current market value of 3029 Middle and any other fraudulently conveyed property; up to and including any and all amounts necessary to satisfy Plaintiff's claim in the instant proceeding.

WHEREFORE, Plaintiff William B. Haskin, Jr. prays that the Court enter its Order grant the following relief: (1) awarding Plaintiff judgment against the Defendant for his actual, incidental, consequential, special, and punitive damages as shown by the evidence; (2) compelling Defendants to provide restitution to Plaintiff of amounts advanced by Plaintiff on behalf of Defendants; (3) requiring that Station 22 be judicially dissolved and requiring the winding up and liquidation of its business and affairs and the immediate sale of its assets, if any; (4) compelling Defendants to account for any and all assets of the Companies or Plaintiff and pay over to Plaintiff such amounts and/or assets as are found to be those of Plaintiff in the possession of one or more Defendants; (5) piercing the corporate veil of Rhodes' above-referenced corporate entities, disregarding their separate existence, and awarding judgment against Defendant Rhodes individually; (6) declaring that the conveyance, transfer, surrender or assignment of 1723 Middle to Defendant Bozzelli (and subsequent reinvestment of the proceeds from its sale in 3029 Middle) should be set aside and annulled as fraudulent and taken to be clearly and utterly void and of no effect pursuant to S.C. Code Ann. § 27-23-10; that all other fraudulent conveyances by Defendants discovered should be avoided; an attachment or other provisional remedy should be granted on 3029 Middle as well as any other property discovered to have been fraudulently conveyed by Defendants; and that an injunction against further disposition of any property including 3029 Middle by Defendants be imposed; Plaintiff be awarded judgment against the Defendants for the value of 3029 Middle and other fraudulently

conveyed property, if any, based on the current market value of 3029 Middle and any other such fraudulently conveyed property, up to and including any and all amounts necessary to satisfy Plaintiff's claim in the instant proceeding; (7) awarding Plaintiff his pre-judgment and post-judgment interest as provided by law; (8) imposing a constructive trust on any assets held by Defendants for the benefit of Plaintiff; (9) awarding Plaintiff his costs and disbursements of this action; and (10) granting to the Plaintiff such other legal and equitable relief as this Court shall deem just and proper.

ROSEN, ROSEN & HAGOOD, LLC

By: 
Richard S. Rosen
John E. Rosen
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726 (o)
(843) 724-8036 (f)
rsrosen@rrhlawfirm.com
jrosen@rrhlawfirm.com

Charleston, South Carolina
July 25, 2013

ATTORNEYS FOR PLAINTIFF

A JURY TRIAL IS DEMANDED AS TO ALL ISSUES SO TRIABLE

RHODES RE 13594

STATE OF SOUTH CAROLINA } WARRANTY DEED
COUNTY OF CHARLESTON } (JOINT TENANTS)

WHEREAS, Samuel W. Rhodes, Jr. is the owner of the below described property; and
WHEREAS, Samuel W. Rhodes, Jr. is desirous of creating the relationship of joint tenants, with
rights of survivorship with his wife, Tracey Bozzelli;

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS, That

I, Samuel W. Rhodes, Jr.
(hereinafter whether singular or plural the "Grantor")

in the State aforesaid, for and in consideration of the sum of FIVE AND NO/100--- (\$5.00)
DOLLARS plus other valuable consideration to the Grantor in hand paid at and before the sealing
of these presents by

Samuel W. Rhodes, Jr. (husband) and Tracey Bozzelli (wife)
(hereinafter whether singular or plural the "Grantee")

in the state aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and
released, and by these presents does grant, bargain sell and release, subject to the easements,
restrictions, reservations and conditions ('Exceptions') set forth below, unto the said

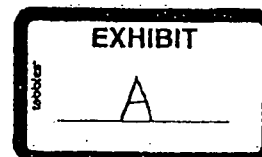
Samuel W. Rhodes, Jr. and Tracey Bozzelli, as joint tenants,
with rights of survivorship, and not as tenants in common.

the following described property:

ALL that lot, piece, parcel of land, situate, lying and being on Sullivan's Island, Charleston County,
South Carolina, shown and designated as Lot 10, Area "B", Ft. Moultrie on a plat entitled "Revised
Subdivision Area "B", Fort Moultrie, Sullivan's Island, Charleston County, S.C." by J.B. Weston,
Reg L.S. and C.E., dated April 19, 1955 and recorded in the RMC Office for Charleston County on
May 11, 1955 in Plat Book K, at Page 1.

BUTTING AND BOUNDING AND MEASURING AND CONTAINING AS FOLLOWS: To the
North on Central Avenue one hundred and fifteen (115) feet, to the East on an unnamed Street one
hundred twenty-two and 8/10 (122.8') feet, to the South on Lot 17, Area "B" one hundred twenty-
three and 4/10 (123.4') feet, and to the West on Lot 11, Area "B" one hundred twenty-nine and 9/10
(129.9') feet. Be all the said dimensions a little more or less, all of which by reference to the said plat
will more fully and at large appear.

SUBJECT TO RESTRICTIONS AND EASEMENTS OF RECORD, MORTGAGE RECORDED
BOOK 0044 at PAGE 960, AND THE MORTGAGE FROM SAMUEL W. RHODES, JR.
TO WACHOVIA BANK, NA, DATED OCTOBER 3, 2008 AND RECORDED IN BOOK 0013
AT PAGE 943, AFORESAID RECORDS.



ROA000070

Being the same property conveyed to the grantor herein by deed of 1723 Middle Street-HR, LLC, a Florida limited liability company dated and recorded in Book 0009 at Page 609 in the RMC Office for Charleston County.

TMS # 523-08-00-032

Grantee's Address: 1723 Middle St Sullivan's Island SC 29442

Together with all and singular, the rights, members, hereditaments, and appurtenances to the said premises belonging or in anywise incident or appertaining.

To Have and To Hold all and singular the premises before mentioned unto the said Grantee, Samuel W. Rhodes, Jr. and Tracey Bozzelli, as joint tenants, with rights of survivorship, and not as tenants in common, their heirs and assigns forever.

And the Grantor does hereby bind himself and his Heirs, Executors and Administrators, to warrant and forever defend all and singular the said premises unto the said Grantee and the Grantee's Heirs and Assigns, against the Grantor his Heirs and assigns, and any person or persons whomsoever lawfully claiming or to claim the same, or any part thereof.

WITNESS the Hand and Seal of the Grantor this 30 day of March in the year of our Lord two thousand nine and in the two hundred and thirty-third year of the Sovereignty and Independence of the United States of America.

Signed, Scaled and delivered
in the presence of:

[Signature]
Witness #1

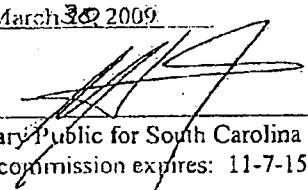
[Signature]
Samuel W. Rhodes, Jr.

[Signature]
Witness #2

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

The within instrument was acknowledged before me by its maker.

SWORN to before me
March 30 2009



Notary Public for South Carolina
My commission expires: 11-7-15

RNC BK 0044 Pg 962 : pg 3 ^

ROA000072

STATE OF SOUTH CAROLINA }
COUNTY OF CHARLESTON }

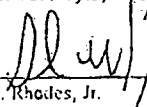
AFFIDAVIT

Date of Transfer of Title
March 30, 2009

RMC Bk 0044 Pg 962 : pg 4

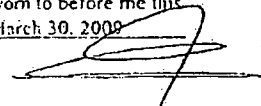
PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred BY Samuel W. Rhodes, Jr. TO Samuel W. Rhodes, Jr. and Tracey Bozzelli ON March 30, 2009.
3. Check one of the following: The DEED is
 - (a) subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) XX EXEMPT from the deed recording fee because (exemptions 1-12) (If exempt, please skip item 4-6, and go to item 7 of this affidavit.) #4 adding wife to title
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$.
 - (b) The fee is computed on the fair market value of the realty which is \$.
 - (c) The fee is computed on the fair market value of the realty as established for property tax purposes which is \$.
5. Check YES or NO XX to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is \$.
6. The DEED Recording Fee is computed based on the following:
 - (a) \$ the amount listed in item 4 above.
 - LESS (b) \$ the amount listed in item 5 above (no amount place zero).
 - TOTAL (c) \$ Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: GRANTOR
8. Check if property other than Real Property is being transferred on this Deed.
9. DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT: Estate of Deceased CASE NUMBER Personally appeared before me the undersigned attorney who, being duly sworn, certified that s/he is licensed to practice law in the State of South Carolina; that s/he has prepared the Deed of Distribution for the Personal Rep. in the Estate of deceased and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.
10. I understand that a person required to furnish this affidavit who wilfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.



Samuel W. Rhodes, Jr.
(Grantor, Grantee, or Legal Representative connected with this transaction)

Sworn to before me this
March 30, 2009



Notary Public for South Carolina
My Commission Expires: 11-7-15

ROA000073

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



Filed By:

DODDS & HENNESSY, L.L.P.,
ATTORNEYS AT LAW
P.O. BOX 298
CHARLESTON SC 29402

RECORDED		
Date:	April 1, 2009	
Time:	1:45:52 PM	
Book	Page	DocType
0044	952	Deed
Charlie Lybrand, Register Charleston County, SC		

MAKER:

RHODES SAMUEL JR

Note:

RECIPIENT:

RHODES SAMUEL JR AL

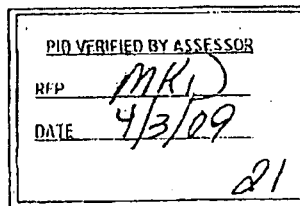
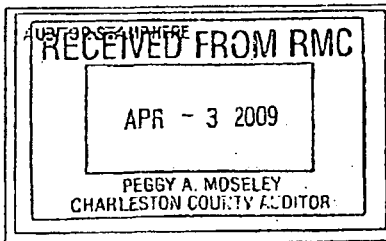
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State Fee	<EXEMPT>
County Fee	<EXEMPT>
Extra Pages	\$ -
Postage	\$ -
Chattel	\$ -
TOTAL	\$ 10.00

DRAWER	Drawer 2
CLERK	SLW



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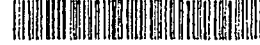
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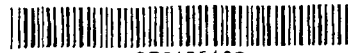


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STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)



BP0105192

DEED

RMC-06 0105 pg 192 : pg 1

KNOW ALL MEN BY THESE PRESENTS, that I, Samuel W. Rhodes, Jr., hereinafter referred to as "Grantor", for and in consideration of Five Dollars (\$5.00) in hand paid at and before the sealing and delivery of these presents by my wife, Tracey Bozzelli, hereinafter referred to as "Grantee", the receipt of which is hereby acknowledged, hereby grant, release and forever convey unto the said Grantee, all my right, title and interest in the following described property to-wit:

ALL that lot, piece, parcel of land, together with the improvements thereon, situate lying and being on Sullivan's island, Charleston County, South Carolina, shown and designated as Lot 10, Area "B", Ft. Moultrie on a plat entitled "Revised Subdivision Area "B", Fort Moultrie, Sullivan's Island, Charleston County, S.C." by J.B. Weston, Reg L.S. and C.E., dated April 19, 1955 and recorded in the RMC Office for Charleston County on May 11, 1995 and recorded in the RMC Office for Charleston County on May 11, 1955 in Plat Book K, at Page 1.

BUTTING AND BOUNDING AND MEASURING AND CONTAINING AS FOLLOWS: To the North on Central Avenue on hundred and fifteen (115') feet; to the East on an unnamed Street one hundred twenty-two and 8/10 (122.8'), to the South on Lot 17, Area "B" one hundred twenty-three and 4/10 (123.4') feet, and to the West on Lot 11, Area "B" one hundred twenty-nine and 9/10 (129.9') feet. Be all the said dimensions a little more or less, all of which by reference to the said plat will more fully and at large appear:

Being the same property conveyed to the Grantor herein by Deed of 1723 Middle Street-HR, LLC, a Florida limited liability company recorded in Book 0009 at Page 609 in the RMC Office for Charleston County and further having been conveyed by the Grantor herein to the Grantee herein as Join Tenant by Deed dated March 30, 2009 and recorded in the RMC Office for Charleston County in Book 0044, at Page 962.

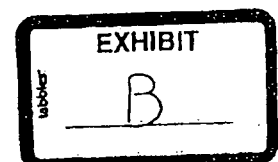
TMS #: 523-08-00-032

Address of the Grantee:

Tracey Bozzelli
1723 Middle Street
Sullivan's Island, South Carolina 29482

Together with all and singular, the rights, members, hereditaments, and appurtenances to the said premises belonging or in anywise incident or appertaining.

(1)



ROA000075

RMC 5K 0105 Pg.192 : Pg 2

TO HAVE AND TO HOLD, all and singular the said Premises before mentioned unto the said Grantee, Tracey Bozzelli, her heirs and assigns forever - so that neither the said Grantor, Samuel W. Rhodes, Jr., his heirs and/or assigns, nor any other persons claiming under them, shall at any time hereafter by any way or means have, claim or demand any right or title to the aforesaid premises or appurtenances, or any part or parcel thereof, forever.

And, Grantor does hereby bind himself and his heirs and/or assigns, to warrant and forever defend all and singular the said Grantee and the Grantee's heirs and assigns, against the Grantor and the Grantor's heirs and/or assigns and against every person whomsoever lawfully claiming, or to claim, the same or any part thereof.

WITNESS my Hand and Seals, this 1 day of February in the year of our Lord Two Thousand and Ten and in the Two Hundred and Thirty-fourth year of the Sovereignty of the United States of America.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

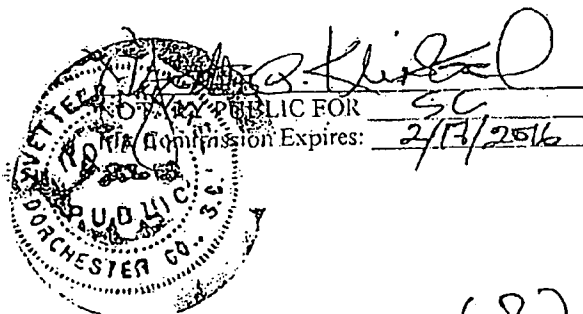
X [Signature]
Witness # 1

X [Signature]
Samuel W. Rhodes, Jr.

[Signature]
Witness # 2

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON

The foregoing instrument was acknowledged before me by Samuel W. Rhodes, Jr., on February 1st, 2009.



(2)

ROA000076

STATE OF SOUTH CAROLINA)

Date of Transfer of Title

COUNTY OF CHARLESTON)

AFFIDAVIT (Closing Date) February 1, 2010

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

- I have read the information on this Affidavit and I understand such information.
- The property is being transferred by Samuel W. Rhodes Jr., as Guardian to Tracey Bozzelli contemporaneously herewith.
- Check one of the following: The Deed is:

(A)		Subject to deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(B)		Subject to deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
(C)	X	EXEMPT from the deed recording fee because (Exemption Number 1) transfer of property to family member or under \$100.00.

- Check one of the following if either item 3(A) or item 3(B) above has been checked.

(A)		The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of:
(B)		The fee is computed on the fair market value of the realty which is \$0.00.
(C)		The fee is computed on the fair market value of the realty as established for property tax purposes which is \$0.00.

- Check Yes ☐ or No ☒ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement or realty after the transfer. If "Yes," the amount of the outstanding balance of this lien or encumbrance is \$0.00.
- The deed recording fee is computed as follows:

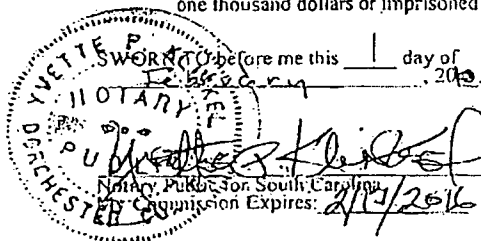
(A)	\$0.00	The amount listed in Item 4 above.
(B)	\$0.00	The amount listed in Item 5 above (no amount, place zero).
(C)	\$0.00	Subtract line 6(B) from line 6(A) and place result here.

- As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: ATTORNEY.

- Check if Property other than Real Property is being transferred on this Deed.
(A) ☐ Mobile Home
(B) ☐ Other

- DEED OF DISTRIBUTION-ATTORNEY'S AFFIDAVIT: Estate of _____ Personally appeared before me the deceased CASE NUMBER: _____ undersigned attorney, who being duly sworn, certified that (s)he is licensed to practice law in the State of South Carolina; that (s)he has prepared the Deed of Distribution for the Personal Rep. In the Estate of _____ deceased and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.

- I understand that a person required to furnish this Affidavit who willfully furnishes a false or fraudulent Affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.



Signed

Grantor, Grantee, or Attorney that prepared this form

JEFFREY T. SPELL
Type or Print Name here

(Seal)

ROA000077

RECORDER'S PAGE

NOTE: This page MUST remain with the original document



Filed By:

COUNTER CUSTOMER
TRACEY BOZZELLI
1723 MIDDLE ST
SULLIVANS ISLAND SC 29482

MAKER:

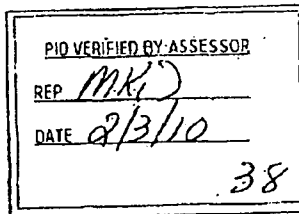
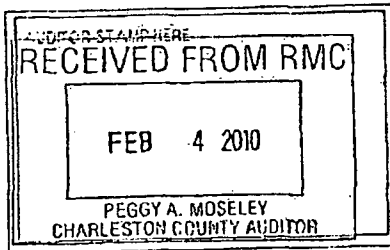
RHODES SAMUEL W JR

RECIPIENT:

BOZZELLI TRACEY

Original Book:

Original Page:



RECORDED

Date: February 1, 2010
Time: 4:00:10 PM

Book	Page	DocType
0105	192	Deed

Charlie Lybrand, Register
Charleston County, SC

of Pages: 4

Recording Fee	\$ 10.00
State Fee	<EXEMPT>
County Fee	<EXEMPT>
Extra Pages	\$ -
Postage	\$ -
Chattel	\$ -
TOTAL	\$ 10.00

DRAWER 2
CLERK SLW



0105
Book



192
Page



02/01/2010
Recorded Date



4
Pgs



Original Book



Original Page



0
Doc Type



16:00:10
Recorded Time



BP0222099

RMC BK 0222 Pg 099 : pg 1 •

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

TITLE TO REAL ESTATE

KNOW ALL MEN BY THESE PRESENTS, that I, **TRACEY BOZZELLI**, in the State aforesaid, County aforesaid, for and in consideration of the sum of **ONE MILLION SEVEN HUNDRED TEN THOUSAND AND 00/100 DOLLARS (\$1,710,000.00)** to me in hand paid of and before the sealing of these presents by **DANIEL NATHAN HUGHEY AND CARLA WEBSTER HUGHEY**, in the State aforesaid, County aforesaid (the receipt whereof is hereby acknowledged) have granted, bargained, sold and released, and by these Presents do grant, bargain, sell and release unto said **DANIEL NATHAN HUGHEY AND CARLA WEBSTER HUGHEY**, their heirs and assigns, the below described property, to wit:

All that lot, piece or parcel of land, together with the buildings and improvements thereon, situate, lying and being on Sullivan's Island, Charleston County, South Carolina, shown and designated as Lot 10, Area "B", Ft. Moultrie on a plat entitled "Revised Subdivision Area "B", Ft. Moultrie, Sullivan's Island, Charleston County, SC" by JB Weston, REG, LS and CE, dated April 19, 1955, and recorded in the RMC Office for Charleston County on May 11, 1955, in Plat Book K at Page 1.

BUTTING AND BOUNDING AND MEASURING AND CONTAINING AS FOLLOWS: To the North on Central Avenue one hundred and fifteen (115') feet, to the East on an unnamed Street one hundred twenty-two and 8/10 (122.8') feet, to the South on Lot 17 Area "B", one hundred twenty-three and 4/10 (123.4') feet, and to the West on Lot 11 Area "B" one hundred twenty-nine and 9/10 (129.9') feet. Be all the said dimensions a little more or less, all of which, by reference to the said plat will more fully and at large appear.

Being the same property conveyed to Tracey Bozzelli by deed of Samuel W. Rhodes, Jr. dated 2-1-10 and recorded in Book 0105, Page 192; and further by deed of Samuel W. Rhodes, Jr. dated 3-30-2009 and recorded in Book 0044, Page 962, in the Office of the RMC for Charleston County, South Carolina.

TMS Number: 523-08-00-032



ROA000079

RMC BK 0222 Pg 099 : pg 2 *

Grantee's Address: 1723 Middle Street
Sullivan's Island, SC 29482

TOGETHER with all and singular, the rights, Members, Hereditaments and Appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto DANIEL NATHAN HUGHEY AND CARLA WEBSTER HUGHEY, their heirs and assigns forever.

AND TRACEY BOZELLI does bind herself and her heirs and assigns, to warrant and forever defend, all and singular, the said Premises unto the said DANIEL NATHAN HUGHEY AND CARLA WEBSTER HUGHEY, and their heirs and assigns, against the Grantor and the Grantor's heirs and assigns and against every person whomsoever lawfully claiming, or to claim the same, or any part thereof.

WITNESS my hand and seal this 9 day of December in the year of our Lord two thousand eleven and in the two hundred and thirty-sixth year of the Sovereignty and Independence of the United States.

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:

Renee Castro
[Signature]

Tracey Bozelli by Self her attorney-in-fact
TRACEY BOZELLI
2

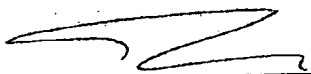
ROA000080

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

PERSONALLY appeared before me the undersigned witness and made oath that (s)he saw the within named **TRACEY BOZELLI** sign the within Deed, and, deliver the same, and that (s)he with the other witness, witnessed the execution thereof.

Renis Castro

SWORN to before me this
9 day of December, 2011.



Notary Public For South Carolina
My Commission Expires: 9-5-12

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

AFFIDAVIT

Date of Transfer of Title
Closing Date 12/09/11

RMC BK 0222 Pg 099 : pg 4

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property is being transferred BY **TRACEY BOZZELL** TO **DANIEL NATHAN HUGHEY AND CARLA WEBSTER HUGHEY**, ON 12/09/11.
3. Check one of the following: **THE DEED IS**
(a) ☒ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
(b) ☐ subject to the deed recording fee as a transfer between a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
(c) ☐ EXEMPT from the deed recording fee because (Exemption #). Explanation, if required: (if exempt, skip items 4-6 and go to item 7 of this affidavit).
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
(a) ☒ The fee is computed on the consideration paid or to be paid money or money's worth in the amount of \$1,710,000.00.
(b) ☐ The fee is computed on the fair market value of the realty which is \$_____.
(c) ☐ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$_____.
5. Check YES ☐ or NO ☐ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is \$_____.
6. The DEED Recording Fee is computed as follows:
(a) \$1,710,000.00 the amount listed in item 4 above.
(b) _____ the amount listed in item 5 above (no amount place zero)
(c) \$1,710,000.00 Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: THE Attorney.
8. Check if Property other than Real Property is being transferred on this Deed.
(a) _____ Mobile Home
(b) _____ Other
9. DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT: Estate of _____, deceased, CASE NUMBER _____. Personally appeared before me the undersigned attorney who, being duly sworn, certified that (s)he is licensed to practice law in the State of South Carolina; that (s)he has prepared the Deed of Distribution for the Personal Rep. in the Estate of _____, deceased, and that the grantees therein are correct and conform to the estate file for the above named decedent.
10. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty to a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.

Sworn to before me this 12
day of December, 2011.

[Signature]
Notary Public for South Carolina
My Commission Expires: 11-15-2014

[Signature]
Grantor, Grantee, or Attorney that Prepared this form

Taso H. Chakeris
Type of Print Name Here

11 132 HUGHEY

ROA000082

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



Filed By:
CHAKERIS LAW FIRM
231 CALHOUN ST.
CHARLESTON SC 29401

RECORDED		
Date:	December 12, 2011	
Time:	11:31:12 AM	
Book	Page	DocType
0222	099	Deed
Charlie Lybrand, Register Charleston County, SC		

MAKER:
BOZZELLI TRACEY

Note:

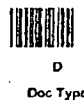
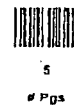
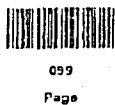
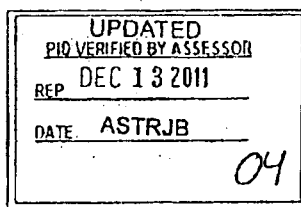
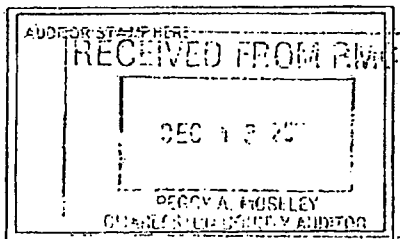
RECIPIENT:
HUGHEY DANIEL N AL

Original Book: Original Page:

of Pages: 5

Recording Fee	\$ 10.00
Slate Fee	\$ 4,446.00
County Fee	\$ 1,881.00
Extra Pages	\$ -
Postage	\$ -
Chattel	\$ -
TOTAL	\$ 6,337.00

DRAWER 4
CLERK LRR



BOZZELLI RE 14777

RMC BK 0239 Pg 305 : pg 1

STATE OF SOUTH CAROLINA }
COUNTY OF CHARLESTON }
WARRANTY DEED



BP0239305

NOW THEREFORE KNOW ALL MEN BY THESE PRESENTS, That

Harrelson-Brown Development, LLC a/k/a Harrellson-Brown Development, LLC, a South Carolina limited liability company
(hereinafter whether singular or plural the "Grantor")

in the State aforesaid, for and in consideration of the sum of FIVE AND NO/100--- (\$5.00) DOLLARS plus other valuable consideration to the Grantor in hand paid at and before the sealing of these presents by

Tracey M. Bozzelli
(hereinafter whether singular or plural the "Grantee")

in the state aforesaid, the receipt whereof is hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain sell and release, subject to the easements, restrictions, reservations and conditions ('Exceptions') set forth below, unto the said

Tracey M. Bozzelli

the following described property:

ALL of that lot, piece or parcel of land, situate, lying and being on Sullivan's Island, Charleston County, State of South Carolina, shown and designated as Lot 9, Block 12, Marshall Reservation, on a plat of said Subdivision by J.O'Hear Sanders, Jr., dated June, 1951, and recorded in the RMC Office for Charleston County in Plat Book H, at Page 90.

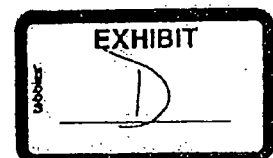
BUTTING AND BOUNDING AND MEASURING AND CONTAINING on the Northwest in front on Middle Street one hundred (100') feet; to the Northeast on Lot 8, Block 12, one hundred forty-five (145') feet; to the Southeast on Lot 6, Block 12, one hundred (100') feet and to the Southwest on Lot 10, Block 12, one hundred forty-five (145') feet.

SUBJECT TO RESTRICTIONS AND EASEMENTS OF RECORD.

Being the same property conveyed to Harrellson-Brown Development, LLC, a South Carolina limited liability company by deed of Edna Joye Lear dated August 30, 2005 and recorded in Book L551 at Page 376 in the RMC Office for Charleston County.

TMS # 529-12-00-011

Grantee's Address: 2019 Middle St. Sullivan's Island SC 29982



ROA000084

Together with all and singular, the rights, members, hereditaments, and appurtenances to the said premises belonging or in anywise incident or appertaining.

To Have and To Hold all and singular the premises before mentioned unto the said Grantee, Tracey M. Bozzelli, her heirs and assigns forever.

And the Grantor does hereby bind itself and its Successors and Assigns, to warrant and forever defend all and singular the said premises unto the said Grantee and the Grantee's Heirs and Assigns, against the Grantor its successors and assigns, and any person or persons whomsoever lawfully claiming or to claim the same, or any part thereof.

WITNESS the Hand and Seal of the Grantor this 12 day of March in the year of our Lord two thousand twelve and in the two hundred and thirty-sixth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and delivered
in the presence of:

Renee Franklin
Witness #1

Harrelson-Brown Development, LLC a/k/a
Harrellson-Brown Development, LLC, a
South Carolina limited liability company

James D. Harrelson, Jr.
By: James D. Harrelson, Jr.
Its: Member/Manager

Shirley Miller Lull
Witness #2

STATE OF SOUTH CAROLINA)
COUNTY OF SUMTER)

The within instrument was acknowledged before me by its maker.

SWORN to before me
March 12, 2012

Renee Franklin
Notary Public for South Carolina
My commission expires: 10-18-14

STATE OF SOUTH CAROLINA]
COUNTY OF CHARLESTON]

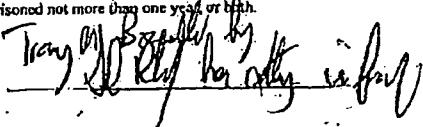
AFFIDAVIT

Date of Transfer of Title
(Closing Date) March 13, 2012

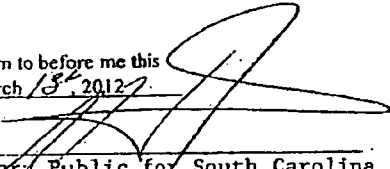
RMC BK 0239 Pg 305 : Pg 3 *

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred BY Harrellson-Brown Development, LLC a/k/a Harrellson-Brown Development, LLC, a South Carolina limited liability company TO Tracey M. Bozzelli ON March 13, 2012.
3. Check one of the following: The DEED is
 - (a) XX subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) ___ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
 - (c) ___ EXEMPT from the deed recording fee because (exemptions 1-12) (If exempt, please skip item 4-6, and go to item 7 of this affidavit.)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - (a) XX The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$ 460,000.00.
 - (b) ___ The fee is computed on the fair market value of the realty which is \$ _____.
 - (c) ___ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ _____.
5. Check YES ___ or NO XX to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If "YES," the amount of the outstanding balance of this lien or encumbrance is \$ _____.
6. The DEED Recording Fee is computed based on the following:
 - (a) \$ 460,000.00 the amount listed in item 4 above.
 - LESS (b) \$ the amount listed in item 5 above (no amount place zero).
 - TOTAL (c) \$ 460,000.00 Subtract Line 6(b) from Line 6(a) and place the result.
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: GRANTOR
8. Check if property other than Real Property is being transferred on this Deed.
9. DEED OF DISTRIBUTION - ATTORNEY'S AFFIDAVIT: Estate of _____ Deceased CASE NUMBER _____ Personally appeared before me the undersigned attorney who, being duly sworn, certified that s/he is licensed to practice law in the State of South Carolina; that s/he has prepared the Deed of Distribution for the Personal Rep. in the Estate of _____ deceased and that the grantee(s) therein are correct and conform to the estate file for the above named decedent.
10. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year or both.


(Grantor, Grantee, or Legal Representative connected with this transaction)

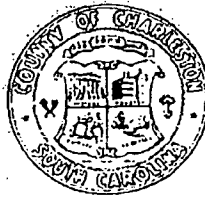
Sworn to before me this
March 13, 2012.


Notary Public for South Carolina
MY commission expires: 7-11-15

ROA000086

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



Filed By:

DODDS & HENNESSY, L.L.P.
ATTORNEYS AT LAW
P.O. BOX 298
CHARLESTON SC 29402

RECORDED

Date: March 15, 2012

Time: 12:41:57 PM

Book	Page	DocType
0239	305	Deed

Charlie Lybrand, Register
Charleston County, SC

MAKER:

HARRELSON-BROWN AL

Note:

RECIPIENT:

BOZZELLI TRACEY M

of Pages: 4

Recording Fee	\$ 10.00
State Fee	\$ 1,196.00
County Fee	\$ 506.00
Extra Pages	\$ -
Postage	\$ -
Chattel	\$ -
TOTAL	\$ 1,712.00

Original Book:

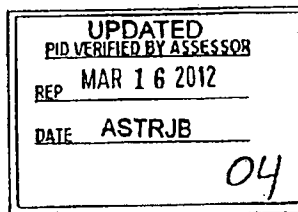
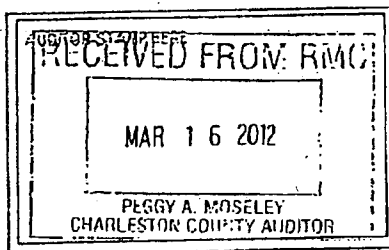
Original Page:

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Drawer 4

CLERK

LRR



0239
Book



305
Page



03/15/2012
Recorded Date



4
Pgs



Original Book



Original Page



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Doc Type



12:41:57
Recorded Time

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-10-6506

William B. Haskins, Jr.)
)
Plaintiffs,)

vs.)

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

Defendants.)

ANSWER OF THE DEFENDANT
TO AMENDED COMPLAINT

BY



JULIE J. ARMSTRONG
CLERK OF COURT

2013 AUG 30 AM 11:38

FILED

Defendants, answering the Amended Complaint of Plaintiff, allege and say:

1. They deny each and every allegation of Plaintiff's Amended Complaint not specifically admitted hereafter.
2. They admit the allegations of Paragraphs 1 and 2.
3. Answering Paragraph 3, they admit so much of the Paragraph as alleges Defendant Rhodes Investment Inc. was incorporated by Rhodes and deny any further allegations of the paragraph.
4. Answering Paragraph 4, they admit so much of the Paragraph as alleges Defendant Rhodes Consulting, LLC is a limited liability company and deny the remaining allegations of the Paragraph.
5. Defendant Rhodes Consulting, LLC is a limited liability company and deny the remaining allegations of the Paragraph.
6. They admit the allegations of Paragraphs 5 and 6.

7. Answering Paragraph 7, to the extent any causes of action are viable in the Complaint, they admit that they would have arisen in Charleston County and Berkeley County, State of South Carolina.

8. They admit the allegations of Paragraph 8.

9. Answering Paragraph 9 they admit so much of the Paragraph as alleges that Plaintiff Haskin and Defendant Rhodes have developed certain real estate together and deny the further allegations of the Paragraph.

9. Answering Paragraph 10 they admit so much of the Paragraph as alleges that Plaintiff Haskins and Defendant Rhodes have a longstanding relationship and that they have engaged in the business of constructing speculative housing.

10. Answering Paragraph 11, they lack sufficient information to admit or deny allegations concerning the operation of a restaurant two decades ago and therefore deny same.

11. Answering Paragraph 12, they admit some of the parties developed property on Sullivan's Island, SC.

12. Answering the allegations of Paragraph 13 they admit Plaintiff secured financing for speculative building, Defendant Rhodes managed construction project and on some projects profits were split after any loans were paid in full. They deny any remaining allegations of the Paragraph.

13. Answering Paragraph 14, they admit some of the parties were involved in speculative building, and deny the remaining allegations.

14. Answering Paragraph 15, the Amended Complaint speaks for itself.

15. They admit Paragraph 16 and 17 upon information and belief.

16. Answering Paragraph 18, the document referred to therein speaks for itself and

Defendants crave reference thereto and deny any allegations inconsistent with said document.

17. They deny Paragraph 19.

18. Answering Paragraph 20, they admit that 2624 purchased the asset, and that Rhodes constructed the improvements, and lack sufficient information to form an opinion as to the remaining allegations and therefore deny same.

19. Answering Paragraph 21, they admit the property was sold but lack sufficient information to form an opinion as to the remaining allegations and therefore deny same.

20. Answering Paragraph 22, they admit, upon information and belief, the amount of the net proceeds from the sale of 2624 Myrtle but deny the remaining allegations in said Paragraph.

21. They deny the allegations of Paragraphs 23 and 24.

22. They admit the allegations of Paragraphs 25 and 26 upon information and belief.

23. Answering Paragraph 27, they allege that the document speaks for itself and crave reference to document described therein and deny any allegations inconsistent with said document.

24. Answering Paragraph 28, they admit that 2802 purchased the asset, and that Rhodes constructed the improvements, and lack sufficient information to form an opinion as to the remaining allegations and therefore deny same.

25. Answering Paragraph 29 they admit so much of the Paragraph as alleges that 2802 Middle sold in October 2011 and lacks sufficient information to form an opinion as to the remaining allegations of the Paragraph and therefore deny same.

26. They deny the allegations of Paragraphs 30 and 31.

27. Answering Paragraph 32, they admit Rhodes was involved in Station 22 of Charleston, LLC which was formed for the purpose of speculative building on Daniel Island but deny

the remaining allegations.

28. They admit the allegations of Paragraph 33, upon information and belief.

29. They admit the allegations of Paragraph 34, upon information and belief.

30. Answering Paragraph 35, they admit that Rhodes provided the day to day management of the construction and that Haskin acquired the financing, however, the remaining allegations are denied.

31. They lack sufficient information to for an opinion as to the allegations in Paragraph 36 and 37 and therefore denies same.

32. They deny Paragraph 38.

33. They admit, upon information and belief, the allegations of Paragraphs 39, 40 and 41.

34. They deny the allegations of Paragraphs 42, 43, 44, 45, and 46.

AS TO THE FIRST CAUSE OF ACTION

(Breach of Contract)

35. Answering the allegations in Paragraph 47, they reallege each and every answer set forth above as if set forth fully herein.

36. They deny the allegations in Paragraphs 48 and 49.

37. Answering Paragraph 50, they admit, upon information and belief, that Plaintiff arranged for financing for the properties listed therein but lack sufficient information to admit or deny what other costs or expenses Plaintiff may have incurred and deny the remaining allegations of the Paragraph.

38. The allegations contained in paragraph 51 are denied.

39. They deny the allegations in Paragraphs 52, 53, and 54.

AS TO THE SECOND CAUSE OF ACTION

(Unjust Enrichment/Quantum Meruit/Restitution)

40. Answering Paragraph 55, they reallege each and every answer set forth above as if set forth fully herein.

41. Answering Paragraph 56, they admit, upon information and belief, that Plaintiff arranged for financing from the lenders and for the properties referred to therein but lack sufficient information to form an opinion as to the remaining allegations in the Paragraph 56 and therefore denies same.

42. Answering Paragraph 57, they lack sufficient information to form an opinion as to the allegations of the Paragraph 57 and therefore deny same.

43. They deny the allegations in Paragraphs 58, 59 and 60.

44. They deny the allegations contained in paragraph 61.

45. They deny the allegations in Paragraph 62.

AS TO THE THIRD CAUSE OF ACTION

(Judicial Dissolution of Station 22)

46. Answering Paragraph 63, they reallege each and every answer set forth above as if set forth fully herein.

47. Answering Paragraph 64, there are no factual allegations to which a response is required.

48. Answering Paragraph 65 they admit that the economic purpose of the company has been frustrated but deny the remaining allegations of the Paragraph.

49. They deny the allegations in Paragraph 66.

50. They admit Paragraph 67, upon information and belief.

51. Answering Paragraph 68, they deny that the conduct of Rhodes or Rhodes Consulting has caused any loss.

52. They deny the allegations contained in paragraphs 69 and 70.

AS TO THE FOURTH CAUSE OF ACTION

(Contribution)

53. Answering Paragraph 71, they reallege each and every answer set forth above as if set forth fully herein.

54. Answering Paragraph 72 they admit a demand has been made but deny the remaining allegations.

55. They deny the allegations in Paragraph 73.

56. Answering Paragraph 74 they deny that any proportionate share of losses is due and payable by these Defendants

57. They deny the allegations in Paragraphs 75 and 76.

AS TO THE FIFTH CAUSE OF ACTION

(Piercing the Corporate Veil)

58. Answering Paragraph 77, they reallege each and every answer set forth above as if set forth fully herein.

59. They deny the allegations in Paragraphs 78, 79, and 80.

AS TO THE SIXTH CAUSE OF ACTION

(Constructive Trust)

60. Answering Paragraph 81, they reallege each and every answer set forth above as if

set forth fully here.

61. They deny the allegations in Paragraphs 82, 83, 84, 85, 86, 87, and 88.

AS TO THE SEVENTH CAUSE OF ACTION

(Accounting)

62. Answering Paragraph 89, they reallege each and every answer set forth above as if set forth fully here.

63. Answering Paragraph 90, they generally admit the roles played by the parties but deny the characterization of the Plaintiff as a "joint venture partner."

64. The Defendants deny the allegations contained in paragraphs 91, 92, 93, 94 and 95.

65. Answering Paragraph 95, they reallege each and every answer set forth above as fully set forth herein.

66. The Defendants admit the allegations contained in paragraph 96.

67. The Defendants deny the allegations contained in paragraphs 97, 98, 99, 100, 101, 102, 103, 104, 105 and 106.

FIRST AFFIRMATIVE DEFENSE

(Failure to State a Claim)

68. Further answering said Complaint, and as and for a further defense thereto, Defendants allege that the Complaint, and each and every allegation therein, fails to state a claim against them upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6), SCRCF.

SECOND AFFIRMATIVE DEFENSE

(Intervening Acts)

69. Further answering said Complaint, and as and for a further defense thereto, Defendants allege that any damages allegedly sustained by the Plaintiff, which are denied, were solely caused by acts or omissions of parties or persons other than Defendants, over whom Defendants had no control, which acts or omissions constitute the intervening and superseding cause of Plaintiff's alleged damages, if any, which are denied, and bar Plaintiff's claims against Defendants.

THIRD AFFIRMATIVE DEFENSE

(Sole Negligence of Others)

70. Further answering said Complaint, and as and for a further defense thereto, they allege that Plaintiff's claims against them are barred because any damages allegedly suffered by the Plaintiff, which are denied, were solely due to and caused by the negligence, recklessness, carelessness, willfulness, and/or wantonness of parties, persons, or entities other than Defendants, over whom Defendants had no control.

FOURTH AFFIRMATIVE DEFENSE

(Failure to Mitigate Damages)

71. Further answering said Complaint, and as and for a further defense thereto, Defendants allege that Plaintiff's claims are barred in whole or in part because he has failed to mitigate his damages.

FIFTH AFFIRMATIVE DEFENSE

(Unclean Hands)

72. Further answering said Complaint, and as and for a further defense thereto, Defendants allege that Plaintiff's claims are barred in whole or in part by his unclean hands.

SIXTH AFFIRMATIVE DEFENSE

(Waiver and Estoppel)

73. Further answering said Complaint, and as and for a further defense thereto, Defendants allege that Plaintiff's claims are barred by the doctrines of waiver and estoppel.

SEVENTH AFFIRMATIVE DEFENSE

(Statute of Frauds)

74. Further answering said Complaint, and as and for a further defense thereto, Defendants allege that Plaintiff's claims are barred by the applicable statute of frauds.

EIGHTH AFFIRMATIVE DEFENSE

(Statute of Limitations)

75. Further answering said Complaint, and as and for a further defense thereto, Defendants allege that Plaintiff's claims are barred by the applicable statutes of limitation.

NINTH AFFIRMATIVE DEFENSE

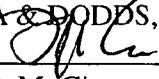
(Laches)

76. Further answering said Complaint, and as and for a further defense thereto, Defendants allege that Plaintiff's claims are barred by the doctrine of laches.

WHEREFORE, having fully answered the Complaint of Plaintiff, Defendants pray that the same be dismissed, with costs, and for such further relief as is just and proper.

(SIGNATURE ON FOLLOWING PAGE)

CISA & DODDS, LLP


Frank M. Cisa

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Mt. Pleasant, SC 29464

(843) 881-6530

Attorneys for the Defendants

This ¹¹29 day of August, 2013
Mt. Pleasant, SC

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

) IN THE COURT OF COMMON PLEAS
) FOR THE NINTH JUDICIAL CIRCUIT
) CASE NO. 2012-CP-10-6506

William B. Haskin, Jr.,

Plaintiff,

vs.

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

Defendants.

**PLAINTIFF'S MOTION TO ALTER
AND/OR AMEND ORDER**

FILED
2016 FEB 19 AM 11:03
JULIE J. ANDERSON
CLERK OF COURT

TO THE DEFENDANTS ABOVE-NAMED:

PLEASE TAKE NOTICE that, pursuant to SCRCP 59(c), the Plaintiff William B. Haskin, Jr., through his undersigned attorneys, hereby moves the Court for an Order altering and/or amending the Order of Judge Roger Young, Jr. filed on February 5, 2016 and received by the Plaintiff on February 10, 2016 (copy attached hereto as "Exhibit A"), as follows:

- (1) **To rule on and to make specific findings of fact and/or conclusions of law as to what specific Florida or South Carolina laws apply to this case and to what issues they apply.**

In disposing of Plaintiff's claims in this case, the Court's February 5, 2016 Order does not make any findings of fact or conclusions of law as to which state's laws apply to the case and to what causes of action and/or specific issues they apply. The arguments involved in the case involve, *inter alia*, South Carolina and Florida statutory and common law partnership, limited liability company, contract, and corporate issues as well as equitable claims and defenses. There are no findings of fact or conclusions of law as to what specific Florida or South Carolina law

applies to this case, despite extensive arguments between the parties about applicable law in the trial.

Plaintiff respectfully requests the Court to alter and/or amend its Order to find that South Carolina law applies to all issues in this case or alternatively, that as set forth herein, application of Florida law results in the same findings sought by Plaintiff, namely that Rhodes and Haskin individually agreed to share profits and losses of the partnership's projects equally.

- (2) To hold that Defendant Rhodes' disclosures to his wife in the Prenuptial Agreement prove that he personally owned a fifty percent capital interest in the companies at issue, that those disclosures are consistent with the tax returns and Schedule k-1s and that Rhodes, being the owner of an undiluted fifty percent capital interest in the companies, is liable for his fifty percent share of the losses as well as the profits of those entities.

The Court's February 5, 2016 Order overlooks and does not make any findings of fact or conclusions of law regarding the Prenuptial Agreement of Defendants' Rhodes and Bozzelli. In the Prenuptial Agreement entered into between Rhodes and Tracey Bozzelli on March 3, 2008, Rhodes disclosed that he personally owned 50% of 2802 Middle Street, 2624 Myrtle Avenue, and 1723 Middle Street, and was obligated for 50% of the debt on those properties. Pl.'s Tr. Ex. 1. The agreement went on to list the fair market value of each property with an asterisk above each amount as well as the amount of debt on the property. *Id.* There was a special notation that Rhodes was responsible for 50% of the debt on these properties which totaled Three Million, Three Hundred and Ninety Thousand Dollars (\$3,390,000). *Id.* The disclosure reveals that Rhodes was also responsible for over Two Million dollars in debt on two other projects Mr. Haskin was not involved in. *Id.*

Mr. Livingston testified that the tax returns and K-1s for these entities reflect that Rhodes held an ownership, or "capital" interest of fifty percent in each company, which is consistent with what Mr. Rhodes told his future wife in his Prenuptial Agreement, namely, that Mr. Rhodes was a

50/50 partner owning one half (1/2) the value of the assets and liable for one half of the debt. TT 33: 19-25; 34:1-13; 45:4 – 46: 4 (Livingston); see also Pl.'s Tr. Ex. 1. None of Mr. Rhodes' capital percentages in any of these entities was ever diluted and his ownership remained the same for the entities throughout their existence. TT 34:11-25; 35:1-25 (Livingston). "Mr. Rhodes and Mr. Haskin each had a 50 percent ownership in the net asset value of these entities throughout the time they existed." Id. at 35:23-25. If the parties had not agreed to share profits and losses equally, Mr. Rhodes would have been diluted and Mr. Rhodes was never diluted. TT 34: 21-25; 35:1-25 (Livingston).

For the foregoing reasons, Plaintiff respectfully requests the Court to alter and/or amend its Order to find that Defendant Rhodes' disclosures to his wife in the Prenuptial Agreement prove that he personally owned a fifty percent capital interest in the companies at issue, that those disclosures are consistent with the tax returns and Schedule k-1s and that Rhodes, being the owner of a undiluted fifty percent capital interest in the companies, is liable for his fifty percent share of the losses as well as the profits of those entities.

- (3) To rule on and to make findings of fact and conclusions of law as to whether or not a partnership existed between Plaintiff Haskin and Defendant Samuel Rhodes, Jr. under South Carolina law and hold that the Haskin-Rhodes partnership exists.

The Order holds that "[o]ver the past twenty or so years, Haskin and Rhodes formed various limited liability companies with each LLC acquiring an unimproved lot. They would construct a house on the subject property for sale to third party. The arrangement was profitable until the downturn." See Order p. 1. There is no other discussion of the partnership issue in the Order. Plaintiff respectfully submits the Court overlooked facts and law indicating that a partnership between Haskin and Rhodes existed and never ruled on the issue.

In the early 1990s, Haskin and Rhodes together owned a restaurant on Sullivan's Island called Sullivan's which Rhodes operated and for which Haskin secured the financing and funded its operations. Haskin and Rhodes split the profits and losses from this venture equally until they sold it in the mid-1990s. Soon thereafter, Haskin and Rhodes began development activities on Sullivan's Island and Isle of Palms, South Carolina, where, over a period of time, they acquired and developed properties located at:

1. Ensign Court, Isle of Palms;
2. 2914 Marshall Boulevard, Sullivan's Island;
3. 29 I'on Avenue, Sullivan's Island;
4. 18 I'on Ave, Sullivan's Island;
5. 1723 Middle Street, Sullivan's Island;
6. 2802 Middle, Sullivan's Island;
7. 2624 Myrtle Ave., Sullivan's Island;
8. 2624 Bayonne, Sullivan's Island;
9. 1908 Middle, Sullivan's Island;
10. 1914 Middle, Sullivan's Island;
11. 22 Lafar Avenue, Daniel Island;
12. 2851 I'on Avenue, Sullivan's Island; and
13. 46th / 49th Avenue, Isle of Palms.

The structure of each of these joint ventures was virtually the same; Haskin would secure the necessary financing to purchase the desired parcel, obtain a construction loan, and fund any shortfall during construction and after all loan draws were exhausted, out of his own pocket until the house was sold. TT 6:21-25; 14:22-15:21; 18:2-4; 21:23-22:5 (Haskin), See App. 1. Rhodes'

duties included, but were not limited to, constructing and managing the project on a day-to-day basis, hiring and paying all subcontractors. TT 7:1-4 (Haskin); TT 35: 4-11 (Rhodes), See App. 2; (Rhodes Dep., 96:1-6, Oct. 13, 2015.) Rhodes would always handle the checkbook. TT 9:20-24 (Haskin). He would also send monthly cancelled checks to Debbie Eures, the company bookkeeper. TT 47:10-14 (Haskin). Once the project was completed and sold to a third party, Haskin would first be reimbursed for the costs he advanced and then the parties split the profits equally. TT 5:5; 5:14-19; 6:5-6; 6:21-25; 7: 8-12; 11: 21-23; 12:14-15; 13: 17-19; 14:3-5; 15:2-3; 20-21; 16:15-16; 20:8-10; 21:4-5; 21:14-17; 25:15-16; 31:1-3;14-16; 32:13-16 (Haskin). This was the parties' *modus operandi* and course of dealing. Id. Rhodes and Haskin agree they had an oral agreement for each project they undertook. TT 5:20-21; 7:15-16; 10:3-5 (Haskin); TT 34: 18- 35: 3 (Rhodes).

From 1994 until November 4, 2011, Haskin and Rhodes repeated this process many times over, with Haskin securing the financing for millions of dollars in various pieces of raw land, building houses on those parcels, reimbursing Haskin for his investment of money, and then earning, and splitting equally, a substantial profit on the sale of the home to a third party. Id. Rhodes did not invest any significant funds.

Examples of Haskin and Rhodes's successful projects are 2624 Bayonne, LLC, 1908 Middle Street, LLC, and 1914 Middle Street, LLC. TT 7:14-8:7 (Livingston), See App. 3; TT 11:9-23; 13:10-14:16 (Haskin). The tax returns for these entities reflect a pattern of acquiring property, building on that property and selling it for a profit. Livingston Aff. ¶ 12. The property located at 2624 Bayonne Street was sold on June 20, 2007 for \$3,720,000. The tax returns reported a gain on the sale of approximately \$287,000. TT 8:18-19 (Livingston). The property located at 1908 Middle Street was sold on July 10, 2007, for \$3,000,000 with a reported gain of approximately \$568,000.

TT 9:14-18 (Livingston). The property located at 1914 Middle Street was sold on August 16, 2007, for \$3,050,000 with a reported gain of approximately \$386,000. TT 10:8-12 (Livingston). In every case, the proceeds from the sales of the above referenced properties were used to repay the outstanding indebtedness of the particular LLC, repay the members for their contributed capital, and the remaining profits were disbursed to Haskin and Rhodes Investments. TT 8:22 - 10:21 (Livingston); TT 5: 1-5; 6:21-25; 7:8-12 (Haskin).

This lawsuit arises out the parties' disagreement about the sharing of the partnership losses sustained on 2802 Middle, 2624 Myrtle and 22 Lafar and whether Mr. Rhodes owes Mr. Haskin \$75,000.00 pursuant to their oral agreement regarding Mr. Rhodes and Tracey Bozzelli's purchase of 1723 Middle Street for their personal residence in late 2008. The Order holds that the evidence does not support Haskin's contention that Rhodes agreed to pay him \$75,000.00 upon sale of 1723 Middle Street. See Order p. 10. However, the Court makes no findings of fact as to this issue and ignores Rhodes' testimony in which he admits that he agreed to pay Haskin 75,000.00, but only according to Rhodes, if the property sold for a profit.

Haskin funded the \$1.6 million dollars in capital needs as a result of losses on the three projects at issue. Rhodes contends he is not liable to Haskin for his share of the funding because, he says, there was a verbal agreement that he would not have to contribute. Rhodes contends a conversation took place at Poe's Tavern with Bozzelli and Reese that supports his position. There is no evidence supporting his contention, and the witnesses he identified – Tracey Bozzelli and Tim Reese – do not support Rhodes' version of events. In fact, Rhodes entered into a prenuptial agreement with Tracey Bozzelli, after the alleged conversation took place with Reese and Bozzelli, in which Rhodes listed all of these debts as fifty percent his responsibility.

Furthermore, contrary to testimony offered by Mr. Rhodes at trial, the financial records of the companies, including tax returns, demonstrate that Rhodes contributed to capital from time-to-time. The Court's Order erroneously finds that "[c]apital contributions made by Rhodes Investments to 2624 Myrtle and 2802 Middle were made at times when Haskins [sic] was out of town and not available to make contributions". See Order p.p. 4-5. Mr. Rhodes testified contrary to this finding in the Court's Order. Rhodes testified that he wasn't sure whether Haskin was out of town or not when he made these contributions. Rhodes contributed approximately \$54,000 to the projects at issue over a period of a few years for carrying costs such as utilities, insurance, repairs, and other costs. TT 29: 24- 18 (Livingston).

Rhodes never objected to any of the funding of these losses or advancement of such funding on his behalf. TT 17:24-18:4; 27:14-28:4 (Haskin). In his deposition, Mr. Rhodes testified that he contributed capital because Mr. Haskin was out of town and that "we had to do something before we lost the house". (Rhodes Dep. 23:21- 24:19). *Later in his deposition, Mr. Rhodes testified that he didn't know why he contributed capital to these projects and surmised that Mr. Haskin may have been out of town but that that he wasn't sure.* (Rhodes Dep., 115:22-116:2)(emphasis added). Rhodes testified at trial that he had a conversation with Mr. Haskin about putting money in to pay the bills. TT 24: 5-9 (Rhodes), See App. 4. Mr. Haskin testified that Rhodes contributed capital arbitrarily. TT 23:1-4 (Haskin). Plaintiff's expert, Richard T. Livingston, a certified public accountant and certified fraud examiner at Dixon Hughes Goodman, testified:

Q. In all these projects we just discussed, how did the parties, Mr. Rhodes and Mr. Haskin, share the profits?

A. The profits were allocated between the parties to provide for ending capital balances that agreed, essentially, to repay contributions, account for the withdrawals. So, essentially, it was to account for an even division of the ending capital accounts that were created.

Q. So on these successful projects, Mr. Rhodes took home how much money in a two-month period?

A. Well, the sale of these three properties occurred between June, July, and August of 2007. **The reported distributions to Mr. Rhodes during that time period were approximately \$771,000. Some of that was a return of capital he had contributed at the outset of about \$63,000, so it would really be the difference, but during 2007, when most of that occurred, he received distributions in that period of about \$687,000.**

TT 10: 13- 11:7 (Livingston) (emphasis added).

Rhodes admits in his deposition that an oral agreement exists whereby Haskin would secure the necessary financing to purchase the desired parcel, obtain a construction loan, and fund any shortfall during construction. TT 35: 4-10 (Rhodes); (Rhodes Dep. 94:11-25; 95: 1-25, Oct. 13, 2015.) Rhodes also agrees that there was a verbal agreement between him and Haskin as to their joint venture. *Id.* at 36:20-24; 42:24-43:4; 47:1-11; 60: 18-24. The various projects were customarily titled in the name of an LLC at the suggestion of Michael Gratz, the parties' business tax preparer located in Florida. Mr. Haskin received his fifty percent ownership interest for acquiring the financing and handling the financial aspects of the projects. TT 74:13-75:4 (Haskin). Rhodes received a fifty percent ownership in the business for agreeing to build the house and oversee construction until it was completed. TT 75: 5-8 (Haskin). Rhodes was never due any money for constructing the homes in question. TT 75: 9-13 (Haskin). Mr. Rhodes would share in the profits if there were profits and losses if there were losses. TT 75: 14-19 (Haskin).

For the forgoing reasons, Plaintiff respectfully submits the Court's Order errs in failing to find that Plaintiff Haskin and Defendant Samuel Rhodes, Jr. were partners. The Order should be altered or amended to find that the Haskin-Rhodes were partners.

(4) To hold that the evidence proves that a partnership existed between Haskin and Rhodes in which they agreed, orally and/or through a course of dealing, to share profits and losses equally.

a. The Haskin Rhodes partnership agreement was an oral agreement to share profits and losses equally.

Plaintiff submits that the Court's Order erred in its rulings as to whether or not an oral agreement existed between Haskin and Rhodes to share partnership profits and losses equally. The Order holds only that "Neither Rhodes Investments or Rhodes ever agreed with Haskins [sic] to contribute towards losses" and ignores evidence to the contrary. See Order p. 6. Richard Livingston testified that there was nothing in writing that indicated that Haskin agreed to pay for all of the losses on any project. TT 29: 19-23 (Livingston). Haskin testified that he and Rhodes would share profits and losses equally. TT 5: 14-21 (Haskin).

The Court's Order also incorrectly holds that "Jim Covington, owner of Covington Investments, Inc. also confirmed that there was no oral agreement concerning losses relative to Station 22 and that Rhodes *refused* to sign for the construction loan project." See Order p. 9 (emphasis added). In fact, Covington, a real estate agent with Agent Owned Real Estate, testified at trial that Rhodes did not sign the note and did not know why. TT 20: 24- 21: 3 (Covington). The Order incorrectly attributes testimony to Covington that Rhodes "refused" to sign to the note when in fact Covington didn't know what the reason was, only that Rhodes did not sign it.

The testimony of Covington and Rhodes is not consistent as to whether or not an agreement was discussed as to how they would share profits and losses. Mr. Rhodes testified in his deposition that he never had discussions with Mr. Covington about any arrangement as to how the business

for 22 Lafar Avenue would be handled. (Rhodes Dep. 72:18-20; 73:14-16). However, Mr. Rhodes testified that their arrangement was “understood” even though it was never discussed and Rhodes had never done a project with Mr. Covington before 22 Lafar. Id.; (Rhodes Dep., 72:5 – 20). Covington has never sought repayment from Defendant Rhodes for the funding he provided for carrying costs for the project at 22 Lafar on behalf of Mr. Rhodes. TT 21:20-25 (Covington), See App. 8.

Mr. Covington did not even know how much of a percentage ownership he or Covington Properties had in Station 22 of Charleston, LLC. TT 20: 11-14 (Covington) (Q: And what interest did Covington Properties, Inc. own in Station 22? Did you own 50 percent, a third, or --? A: I don't know how it was structured”). Mr. Covington's entity, Covington Properties, Inc. is a one third (1/3) member of Station 22 of Charleston, LLC, the entity in which title was held for 22 Lafar Avenue, Daniel Island. TT 71:25-72:3. (Livingston). When asked why he had not sought repayment from Mr. Rhodes, Mr. Covington testified he “did not have a number”. TT 21: 23-25 (Covington). Mr. Covington also did not know how much he had contributed to the carrying costs of the project, stating that he would “have to talk to [his] accountant”. TT 21:12-19 (Covington). Mr. Covington and Mr. Haskin secured the financing for 22 Lafar. TT 20:15-25 (Covington).

Mr. Rhodes tried to create an inference based on the fact that Mr. Covington has not sought repayment of the funds he advanced on Rhodes' behalf for Station 22. Mr. Rhodes admitted in his deposition that Mr. Covington was the listing agent for 22 Lafar Avenue and made a commission on its sale to Station 22 of Charleston, LLC. (Rhodes Dep. 69:10 - 70:8, Oct. 13, 2015.) In his deposition, when asked how many times 3029 Middle Street had been listed for sale, Mr. Rhodes admitted that it had been on and off of the market several times. (Rhodes Dep. 258:19-25; 259: 1-9, Oct. 13, 2015.) **Mr. Rhodes admitted that Mr. Covington was the listing agent for the sale**

of 3029 Middle Street the times that it was on the market. (Rhodes Dep. 255:3-15, Oct. 13, 2015.) (emphasis added).

Mr. Rhodes also testified that Mr. Covington and Mr. Haskin approached him to build another project in which they did not want to bring him in on as a partner, but instead just as a builder and to pay him a fee. TT 26:25- 27:5 (Rhodes). Mr. Rhodes was paid a fee of approximately \$100,000 to build that project. TT 27: 8-10 (Rhodes). Unlike the deals in which Mr. Rhodes was a partner, Rhodes was not liable on this project for losses since he was only the builder and not an equity partner.

The recession began at the end of 2007 and early 2008. Construction of the home at 2802 Middle Street was completed in late 2007. Construction of the homes at 2624 Myrtle Avenue and 22 Lafar Avenue were completed in 2008. Mr. Haskin and Mr. Rhodes were unable to sell 2802 Middle Street or 2624 Myrtle Avenue until 2011. Mr. Haskin, Mr. Rhodes and Mr. Covington were never able to sell 22 Lafar, which resulted in a deed in lieu of foreclosure being accepted by the bank in 2013.

Mr. Haskin testified that before the beginning of each of these projects, he and Mr. Rhodes had a meeting at Mr. Haskin's office located at 2913 Middle Street in which Mr. Haskin agreed to fund the carrying costs of these projects –debt service, maintenance, taxes, insurance, utilities and related costs – including Mr. Rhodes' portion, until the properties sold and that Mr. Rhodes agreed to repay Mr. Haskin his one half (1/2) share of the losses to Mr. Haskin upon the sale or disposition of the respective properties. TT 15:4-21; 17:11-23; 19:16-23; 22:3-17; 23:7-12 (Haskin).

Mr. Rhodes now denies the agreement between the parties was that they would share all losses and profits equally or that the meetings described by Mr. Haskin took place. TT 47: 16- 47: 3 (Rhodes). Rhodes contends there was a verbal agreement which provided he was never

responsible for losses. (Rhodes Dep., 39: 13-18; 49: 12-24). Mr. Rhodes admitted that this alleged arrangement is nowhere in writing. (Rhodes Dep., 39: 20-22). Mr. Rhodes further testified that the basis for his version of the agreement with Mr. Haskin is based on "common knowledge, common sense". (Rhodes Dep., 39: 23-25).

Mr. Rhodes contends that he and Mr. Haskin had a conversation at Poe's Tavern in which he alleges that Mr. Haskin told him that he would not be responsible for any losses. Id.; (Rhodes Dep., 49:12-21). In her deposition, Ms. Bozzelli testified that she was not aware of the parties' arrangement regarding Sully's restaurant but that she had 30 to 40 conversations with Mr. Haskin about their arrangement, which was Haskin provided the financing and Rhodes built the houses. TT 3:23- 4:24 (Bozzelli), See App. 5. Ms. Bozzelli admitted that she didn't pay much attention to the details of their arrangement beyond that. TT 4:10- 5:6 (Bozzelli). At trial, Ms. Bozzelli added to her testimony to include an allegation that she knew that Mr. Haskin was responsible for getting the loans, paying back the money and that it was her impression that Mr. Haskin was responsible for paying back all of the fees. TT 2:20- 3:5 (Bozzelli). Mr. Rhodes contends that Mr. Haskin told him that "he had nothing to lose but time." (Rhodes Dep., 51: 3-7); TT 45: 2-3 (Rhodes). There is no evidence in the record to support this contention.

Mr. Rhodes contends that Tim Reese, a real estate agent and his wife, Tracey Bozzelli, were present for this alleged conversation. (Rhodes Dep., 50:6 - 51:20) Neither his wife, Ms. Bozzelli, nor Mr. Reese support this story. Rhodes elicited testimony at trial from Mr. Reese that lots Haskin and Rhodes were considering purchasing at 2802 Middle and 2624 Myrtle were overpriced. TT 30: 17 - 32:13 (Reese), See App. 6. Nevertheless, Rhodes proceeded to build houses on these lots, which everyone agrees was his responsibility under the parties' oral agreement.

The Court's Order erroneously finds that "Haskin lost the money he invested in these projects and Rhodes Investments and Rhodes lost their time and effort in constructing the residences over a period of twelve (12) to eighteen (18) months. Haskin was the investor and Rhodes Investments performed the work through the efforts of Rhodes." See Order p.p. 6-7. The Court's finding is incorrect in that Haskin testified that he was the "investor" in Sully's Restaurant and that out of the profits of the restaurant, he would get paid back his initial capital first, and then all profits and losses would be split equally.

Neither Tim Reese nor Tracey Bozzelli ever testified at trial to hearing Bill Haskin make the statement to the effect that "all Mr. Rhodes had to lose was time" or that Rhodes would not have to share in losses as well as profits. Reese did not testify at all about this alleged conversation and admitted that he didn't know anything about Rhodes and Haskin's business relationship. TT 32:11- 14; 33: 22-25 (Reese). Neither Reese nor Bozzelli testified that they had any understanding of how Rhodes and Haskin would split profits and losses. TT 32:11- 14; 33: 22-25 (Reese); Id. (Bozzelli). Mr. Rhodes' claim that Mr. Haskin said to him, "all you have to lose is time" is unsubstantiated by the record.

For 2008 through 2011, Mr. Haskin funded approximately One Million Five Hundred Thousand Dollars (\$1,500,000.00) in carrying costs for 2802 Middle Street, 2624 Myrtle and 22 Lafar Avenue. TT, 12: 25; 13: 1-2, 26: 15-17 (Livingston)

Mr. Haskin, from 2006 to 2011, contributed Eight Hundred and Thirty Seven Thousand (\$837,000.00) to the carrying costs of 2820 Middle Street; and Mr. Rhodes showed a contributed capital of Fifteen Thousand Dollars (\$15,000.00). TT 12: 13-16 (Livingston); See also Pl.'s Tr. Ex. 60. For 2624 Myrtle, Mr. Haskin contributed approximately Five Hundred and Five Thousand

Dollars (\$505,000.00) in his capital account, and Mr. Rhodes contributed Thirty Five Thousand Dollars (\$35,000.00) through his capital account. Id. at 12:17-19.

Station 22 actually had three members, Mr. Haskin, Mr. Rhodes, and Mr. Covington, and their respective contributions through their capital accounts are One Hundred and Sixty One Thousand Three Hundred and Eighty Four Dollars (\$161,384.00) for Mr. Haskin, Three Thousand Five Hundred and No/100 Dollars (\$3,500.00) for Mr. Rhodes and One Hundred and Twenty Two Thousand One Hundred and Seven and No/100 Dollars (\$122,107.00) for Mr. Covington Id. at 12:21-24; See Pl.'s Tr. Ex. 60. Mr. Haskin funded One Hundred and Sixty One Thousand Three Hundred and Eighty Four Dollars (\$161, 384.00) of those carrying costs. Id.

Before this lawsuit was initiated, Mr. Rhodes never disputed the fact that he owed Mr. Haskin over 1.3 million dollars. TT 39:23-25; 41:11-13 (Haskin). Mr. Rhodes testified that the reason he never objected during the course of this discussion via email was that he was "taken aback" and "caught off guard" by Mr. Haskin's demand for repayment of over 1.3 million dollars for his share of the losses on these projects. TT 30:4-18 (Rhodes), See App. 4. Mr. Haskin's complaint was filed a year later on December 26, 2012. When asked at trial whether the first time he denied liability for the losses claimed by Mr. Haskin was in his answer to the complaint in this case, Mr. Rhodes responded: "That may be right, I'm not sure." TT 37:13-15 (Rhodes), App. 2; TT 41:14-16 (Haskin).

On November 3, 2011, Mr. Haskin emailed Mr. Rhodes and informed him that they had successfully closed on the sale of 2624 Myrtle and had paid off First Citizens Bank for the first mortgage. See Pl.'s Tr. Ex. 68-A. Mr. Rhodes had signed a personal guarantee, guaranteeing over \$900,000.00 in debt on this property. (Rhodes Dep., 125: 12-25; 126: 1-25.) Mr. Haskin wrote to Mr. Rhodes:

I need to meet with you at your convenience to discuss how I am to be paid back on the money you owe me for your primary residence, the loss from the commercial loan on 2802 Middle Street and 2624 Myrtle and your share of the loss on 22 Lafar. I can come over to your house, you can come to my office, or we can meet somewhere like Starbucks. I look forward to hearing from you.

Thank you,
Bill.

See Pl.'s Tr. Ex. 68-A.

Mr. Rhodes' primary residence at the time of the above email was 1723 Middle Street. Mr. Rhodes responded by email of November 8, 2011 in which he states, "Can meet you tomorrow at 12 at Sullivans. Thanks, Sammy". See Tr. Ex. 68-B. Mr. Haskin responds within minutes, "See you then". Id. Mr. Haskin and Mr. Rhodes held the meeting on November 9, 2011 at Sullivans Restaurant, Mr. Rhodes' establishment. The meeting was cordial and Mr. Rhodes said that he wanted to consult with his attorney. TT 39:3-15 (Haskin). Following up the next day, November 10, 2011, Mr. Haskin sends Mr. Rhodes the following email with the subject line: "Debt owed on 1723 Middle, 2624 Myrtle, 2802 Middle, and 22 Lafar":

Sammy,

Thanks for meeting with me.

Please speak with Rob and let me know how much detail you want on the costing. I can hire an accountant and have him or her coordinate with me, Mike, Molly, and Atlantic Bank now First Citizens Bank, and end up sending you a very detailed accounting of the properties. I think in reality that is unnecessary and costly for me to do and for Rob to have to go through, verify, ask a lot of questions thus billing you. I think I can detail numbers that you will not dispute and we can take it from there. If you want more detail please speak with Rob and you send me what you will need - thanks...

See Pl.'s Tr. Ex. 68-C.

Rob Kerr was Mr. Rhodes' attorney at the time. Mr. Haskin went on to detail the carrying costs associated with each property, the amount of money he funded to pay for those costs (as well as Mr. Covington) and what Mr. Rhodes share of those costs would be. Mr. Haskin detailed the losses incurred on these projects:

1723 Middle. You agreed to pay me 75k to buy out this spec home at cost and move in and make it your personal residence. You put a new roof on my house and I believe that cost was 10k. That leaves a balance of 65k...

2624 Myrtle-- sold for \$1,600,000.00. The net at closing was \$1,466,000.

Three years ago we had 2.5 million in the property. That was the lot, construction costs, interest payments, taxes and insurance. The lot was \$1,250,000 and 5250.00 sq. ft. + interest during construction is going to get you to that 2.5 number.

20k per year taxes = 60k
10k per year insurance = 30k
10k- 3 months ago to finish the punch list .

interest of 58,500 per month for 36 months = \$282,000
so in round numbers we had 2.9 million in the house

Again round numbers, we netted 1.5 million leaving a loss of 1.4 million divided by 2 = 700K

Sammy I am fine with you forwarding this e-mail to Rob Kerr. I can provide the closing HUD, he can look up the taxes, he can figure the interest carry, and you can confirm to him the sq. footage building cost at the time.

On 2802 Middle

We sold it for \$1,750,000
The net was a 3.5% commission and Tideland made me pay them 532,500 plus other normal closing costs, we are looking at a net of \$1,650,000.00.

If you remember our costs were almost the same. The lots were priced almost the same and the building costs were the same.

So that brings us to that \$2,500,000.00 number 3 years ago. I was able to rent the property to cover the bank note. The outside costs over those 3 years were taxes and insurance which were 100k Total.

That brings the cost to \$2,600,000.00 and a net of 1.6 million for a loss of 1 million divided by 2 or 500k.

22 Lafar-- That loss is hard to quantify yet as it is in foreclosure. Here is my best estimate

**1.5 million owed
will sell at auction for 800k??**

Jim and I have 150k per person in the house.

So that divided by 3 would be 100k per person.

So 100k for sure and 1/3rd of 700k, the difference in the note and the auction price if the bank comes after us.

To recap

2624 Myrtle -loss of 700k

2802 Middle loss of 500k

your house 65k

22 lafar 100k for sure

\$1,365,000.00

Sammy, I am sure I left some things out and the actual numbers are more than this but I believe these numbers are close...

I am open to an agreement on a lump sum payment or a structured payment over time or a combination of the two as long as I have proper guarantees in place from you.

Thank you,

Bill

Pl.'s Tr. Ex. 68-C. (emphasis added).

On November 15, 2011, Mr. Haskin followed up with Mr. Rhodes to see what he and his attorney needed to confirm the information he provided to Mr. Rhodes detailing the losses on the subject properties. ("Sammy, [h]ave you had a chance to meet with Rob and come up with a game plan? Thanks, Bill") See Pl.'s Tr. Ex. 68-D. Mr. Rhodes responds ten minutes later, "Not yet, will call you when we meet...Thanks"). On December 5, 2011, almost three weeks later, Mr. Haskin again inquires about the status of the review with Rob Kerr. ("Sammy, where are we on this, tks, Bill") See Pl.'s Tr. Ex. 68-E. Mr. Rhodes responds an hour later, "Rob is making a list of questions for you. I should get it today and forward to you. Thanks Sammy". Id. The next day, Mr. Rhodes informs Mr. Haskin that Rob Kerr wants to see the operating agreements for the LLCs because Rob isn't familiar with Florida law and what the forgiveness on debt was with the bank. See Pl.'s Tr. Ex. 68-F. Mr. Haskin confirms receipt of the email on December 8, 2011. See Pl.'s Tr. Ex. 68-G.

In the Prenuptial Agreement entered into between Rhodes and Tracey Bozzelli on March 3, 2008, Rhodes disclosed that he personally owned 50% of 2802 Middle Street, 2624 Myrtle Avenue, and 1723 Middle Street, and was obligated for 50% of the debt on those properties. Pl.'s Tr. Ex. 1. The agreement went on to list the fair market value of each property with an asterisk above each amount as well as the amount of debt on the property. Id. There was a special notation that Rhodes was responsible for 50% of the debt on these properties which totaled Three Million, Three Hundred and Ninety Thousand Dollars (\$3,390,000). Id. Rhodes was also responsible for over Two Million dollars in debt on two other projects Mr. Haskin was not involved in. Id.

Sammy Rhodes contends he never agreed to a 50/50 arrangement in which he was responsible for losses as well as gains.

Mr. Rhodes admitted in his deposition to lying to Bank of America about who owned 1723 Middle Street and about his financial wherewithal. Mr. Rhodes testified:

Q Let's look at this letter you wrote in January of 2012 --

A Okay.

Q Exhibit 33. You said to Merrill Lynch or Bank of America, "The last home I built was featured in Better Homes and Gardens twice as well as the Pottery Barn magazine. This was our personal home for three years that we sold for \$1,710,000 last month."

Is that correct?

A Where are you reading?

Q Middle of the first paragraph."

A Yes.

Q All right. Do you agree you said that?

A Yes.

Q Then down -- skip a paragraph. There's a paragraph that says, "My wife and I currently have around \$700,000 invested with Merrill Lynch as well as about \$160,000 in Bank of America. We expect to deposit in the next two weeks another \$80,000. We both have good credit scores and owe very little money to anyone."

Q Is that correct?

A That is correct, yes.

Q The information you told Merrill Lynch or Bank of America was correct?

A Well, I do have a good credit score, and I guess when I said I don't owe any money to anyone, I guess I had a judgment against me at that time.

Q You had two?

A Yeah.

Q And it was true, as you said in the first paragraph, that the home you sold to the Hugheys was your "personal home for three years that we sold for \$1,710,000 last month"?

That was true, too, wasn't it?

A We didn't sell that home, no. No. Tracey sold that home.

Q That's not what you told the bank here, is it?

A Well, this -- this -- this document was written because I was upset and hastily. Are you representing this bank?

Q What you told the bank in January 2012 was that that was your personal home for three years that "we," meaning you and your wife, "sold for \$1,710,000 last month." That's what you told Bank of America and Merrill Lynch in January of 2012.

A That was incorrect.

Q But --

A It was incorrect. I told them a falsehood.

Rhodes Dep., 217: 19 - 219:1-24. (emphasis added).

When Tracey Bozzelli was asked what the arrangement between her husband and Mr. Haskin was with regards to how profits and losses would be shared between them, Ms. Bozzelli testified:

- Q Have you had conversations in the past with your husband Sammy Rhodes, and the business relationship he had with Bill Haskin?
- A Both.
- Q And could you tell us what their arrangement was?
- A Very clearly, their arrangement was they built houses together. Bill was the investor. He was responsible for getting the loans, paying back the money. Sammy was responsible for doing all the man hours.
- Q Is it true it was your understanding that Bill Haskin would provide the financing?
- A I was under the impression that Bill got the financing and was responsible for paying back 100 percent of all the fees that he had to acquire as part of the financing, yes.
- Q Do you recall I asked you that same question – or John Rosen actually asked you that same question at your deposition?
- A Yes, and I answered it the same way.
- Q Well, let's just see if you did. Your deposition was November 4, 2015. Do we have that deposition?
- Ms. Bozzelli, I'm handing you a copy of your deposition, and I'm going to read to you the question that was asked that day, and I'll ask you to read the answer. Is that okay?
- A Sure.
- Q So let's go to page 21, line 22, and the question that was asked you that day was:
- Were you privy to any conversations that they had, Mr. Rhodes and Mr. Haskin --
- A What line are you on, sir?

- Q. Page 21, line 22.
- A. Okay.
- Q. The question was: Okay. Were you privy to any conversations that they had, Mr. Rhodes and Mr. Haskin, about their business dealings in general?
- What was your answer?
- A. My answer was: Other -- not about Sully's, you mean? Just about the housing?
- Q. Yeah.
- A. Yes, definitely.
- Q. **And what conversations do you remember?**
- A. **I probably had 30 or 40 conversations with Bill about their arrangement, which is he provides the financing and Sammy builds the houses.**
- Q. All right. So at that time your answer was he provided the financing and Sammy -
- A. Provides the financing, yes, exactly what I just stated.
- Q. And the next question: **Was that the extent of it in your mind?**
- What was your answer?
- A. Well, I mean, he talked about it a lot, but that was the way -- that's a summary of how he would always describe it, their business arrangement, to everything.
- Q. The question was: So it was your understanding that he would provide the financing?
- A. Absolutely.
- Q. Well, I see your answer here says: Uh-huh.
- A. Uh-huh.
- Q. Okay? And the question was: Your husband would build houses?

A. Yes.

Q. And then the next question, two lines down, is:

Then you probably didn't pay much attention to it other than that, did you?

A. No.

TT 2:13-5:6 (Bozzelli) (emphasis added).

When asked about any projects her husband did with Mr. Haskin or the projects at issue in this case, Ms. Bozzelli admitted to not knowing any specifics about her husband's arrangement with Mr. Haskin. Ms. Bozzelli did not testify to what Mr. Rhodes said in his deposition she would. (See Rhodes Dep., 49: 12 - 52:12). When asked if she knew that Rhodes was a member of 2802 Middle in addition to being the builder, Ms. Bozzelli testified that she didn't know that and was surprised. TT 15: 1- 12 (Bozzelli). Ms. Bozzelli also testified that she didn't review her joint tax returns so that she wouldn't know if Mr. Rhodes had submitted K-1s to be filed with their joint returns. TT 15: 13-16:13 (Bozzelli).

b. The Court erred in ignoring uncontroverted testimony of Richard T. Livingston, CPA/CFF, CFE, CVA that the Form 1065 Partnership Tax Returns and Schedule K-1s reflect the fact that Haskin and Rhodes' agreement was that they share profits and losses equally.

The Court's Order never addresses any of the uncontroverted testimony of Richard Livingston that the entities' Form 1065 Partnership Tax Returns and Schedule K-1s reflect the fact that Haskin and Rhodes' agreement was that they share profits and losses equally. Each entity had its own Form 1065 Partnership Tax Return for all relevant years. Haskin and Rhodes disregarded the existence of these entities and operated between themselves as joint venturers based on their oral agreement to share profits and losses equally. The tax returns of the entities clearly demonstrate that Mr. Rhodes was a full partner or member responsible for capital losses and entitled to profits when they existed.

Plaintiff's expert, Richard T. Livingston, CPA/CFF, CFE, CVA, testified that there is nothing in writing that would indicate that Haskin agreed to pay for all of the losses. TT 29:19-23 (Livingston)(Q: "Have you seen any evidence that Mr. Haskin agreed to pay for all the losses on any project?"; A: Any evidence? The only—I guess Mr. Rhodes has testified that that was the agreement, but I've not see anything in writing that would indicate that.") Mr. Livingston testified that if Defendant Rhodes only held a profits interest in the projects at issue in this case – 2802 Middle Street, 2624 Myrtle, and 22 Lafar Avenue, that the K-1s for each project from inception of those projects would reflect a capital interest for Rhodes and/or Rhodes Investments, Inc. of zero percent (0%). TT 33: 1-18 (Livingston). Mr. Livingston testified:

Q. So during that period, someone had to fund these carrying costs you just talked about; is that right?

A. Yeah, and I think it's important to note it goes back to the capital percentage. As Mr. Haskin is funding the debt, paying the expenses of the asset, decreasing the debt, the capital percentage of Mr. Rhodes does not change during that time. So say he's paying down the debt. The value of that capital percentage is going up. It never changed over time, so Mr. Rhodes is getting the benefit of Mr. Haskin supporting and maintaining the assets and servicing the debt but still maintains his 50 percent capital percentage in the LLCs.

If this was truly, I just get profits, the K-1s would show profits 100 percent, losses zero percent, capital zero percent. That's all the risk I have in this, is I'm going to put some time in and get some money out of it.

That's not what the K-1s showed during this time period. The losses are allocated based on who funded them. Mr. Rhodes helped to contribute to those losses during that time period, to fund those losses, and he got to take them on his tax return, and he also continued to have

50 percent of the capital allocated to him and reported that also on his prenuptial, that 50 percent of the fair market value minus the asset.

TT 45:4 – 46: 4 (Livingston) (emphasis added); see also Rev. Proc. 93-27, 1993-2 CB 343, App. 7.

It is clear from the record in this case that Mr. Rhodes and Mr. Haskin each had a 50% ownership in the net asset value of these projects. TT 35: 21-25 (Livingston). The Form 1065 Partnership Tax Returns for 2802 Middle, LLC and 2624 Myrtle, LLC for 2006-2011, reflect that Rhodes Investments, Inc. always held a fifty percent (50%) capital interest in 2802 Middle Street and 2624 Myrtle Avenue. Plaintiff always held the other fifty percent (50%) capital interest in those entities. The tax returns for Station 22 of Charleston, LLC (22 Lafar Avenue) for 2006-2011, reflect that Defendant Rhodes always held a thirty three and one third percent (33 1/3%) capital interest in 22 Lafar Avenue while Plaintiff and Covington Properties each held a thirty three and one third percent (33 1/3%) capital interest.

Mr. Rhodes' capital percentage interest never changed in 2624 Myrtle and 2802 Middle from 50% and 33 1/3% in Station 22. TT 33:9-18; TT 45:4- 46: 4 (Livingston). Mr. Rhodes testified that he only held a profits interest, having never agreed to share equally in profits and losses in the projects. TT 23:13-20 (Rhodes). Mr. Livingston testified that Mr. Rhodes held a capital interest and a profits interest. TT 45:4 – 46:4 (Livingston). A capital interest is an interest that would give the holder a share of the proceeds if the partnership's assets were sold at fair market value and then the proceeds were distributed in a complete liquidation of the partnership. Rev. Proc. 93-27, 1993-2 CB 343, See App. 7. A profits interest is a partnership interest other than a capital interest. Id. Mr. Livingston testified in his explanation of a K-1 that the capital percentage

represents a partners' percentage in the undivided value of the assets of the entity. TT 32: 17-19 (Livingston)

Mr. Haskin and Mr. Rhodes, held a fifty percent interest in the fair market value of the assets minus the liabilities that the partner has an interest in. TT 33: 6-18 (Livingston). "Exactly what the capital percentage shows on each K-1 is how much of the undivided interest in the assets and liabilities that that partner owns." TT 34: 11-13 (Livingston). Mr. Livingston testified:

So, for instance, it's a real estate holding company. It's 50 percent. What that signifies is the fair market value of the assets minus the liabilities that that partner has an interest in 50 percent of that value. So for someone that does -- that's what you look at for how much of the capital do they own in that entity. That's what that capital percentage shows each time and what it represents.

TT 32: 20 – 33:5 (Livingston); see also Rev. Proc. 93-27, 1993-2 CB 343.

Mr. Livingston testified that this ownership is consistent with what Mr. Rhodes told his future wife in his Prenuptial Agreement with Tracey Bozzelli dated March 3, 2008, namely, that Mr. Rhodes was a 50/50 partner owning one half (1/2) the value of the assets and liable for one half of the debt. TT 33: 19-25; 34:1-13; 45:4 – 46: 4 (Livingston); see also Pl.'s Tr. Ex. 1. None of Mr. Rhodes' capital percentages in any of these entities was ever diluted and his ownership remained the same for the entities throughout their existence. TT 34:11-25; 35:1-25 (Livingston). "Mr. Rhodes and Mr. Haskin each had a 50 percent ownership in the net asset value of these entities throughout the time they existed." Id. at 35:23-25. If the parties had not agreed to share profits and losses equally, Mr. Rhodes would have been diluted and Mr. Rhodes was never diluted. TT 34: 21-25; 35:1-25 (Livingston).

In all of the projects Mr. Livingston reviewed, the tax returns reflect the losses were allocated to partners or members who actually contributed to and lost money. TT 31: 21-24 (Livingston). "...[e]ach year the percentage of the losses allocated to each partner changes, which you would expect, because each year individuals are contributing different amounts, so that percentage changes in accordance with -- to allocate the loss in accordance with their contributions." TT 32: 2-6 (Livingston). Losses are nothing that a partner or investor wants. TT 32: 7- 10 (Livingston).

Mr. Rhodes admitted at trial and in his deposition that the allocation of losses for tax purposes for all of these projects was done based upon which member funded the loss for each year. TT 35: 22-36: 1 (Rhodes); see also (Rhodes Dep. 148: 13-16). Defendants' expert, Ellie Thomas, never proffered any opinions in this case except that he agreed with Mr. Livingston's calculations and that the losses were in fact allocated to the partner that funded the loss.

For the forgoing reasons, Plaintiff respectfully submits the Court's Order erred in failing to find that Plaintiff Haskin and Defendant Samuel Rhodes, Jr. had an agreement to share profits and losses equally. The Order should be altered or amended to find that that the Haskin-Rhodes partnership existed in which they agreed to share profits and losses of the partnership equally.

(5) To hold that the Operating Agreements for 2624 Bayonne, LLC, 2624 Myrtle, LLC, 2802 Middle, LLC and Station 22 of Charleston, LLC were not followed by the parties but were, in fact, disregarded as proven by the evidence.

The Court's Order does not make any conclusions of law as to whether or not the foregoing operating agreements were followed by the parties or to what extent. The Order makes findings of fact as to the *existence* of the operating agreements but not as to whether they were valid, binding or enforceable. See Order p. 5. The Court's Order does acknowledge that there are no signed operating agreements for any of the projects at issue in this case. See Order p. 5. The Court does

not address the fact that the operating agreements for 2624 Myrtle, LLC and 2802 Middle, LLC are drafts of Florida operating agreements while the one for Station 22 of Charleston, LLC is a South Carolina form. The Court does not address the origin of these draft operating agreements at all. The Court's Order erroneously finds that "[a]n unsigned Operating Agreement also exists for Station 22. Rhodes Investments would not sign the Operating Agreement as it contained a provision for mandatory capital contributions." See Order, p. 5. The evidence does not support this finding. The reason why the Station 22 operating agreement is unsigned is unknown to all of the parties.

The Court's Order does not address the fact that the Bayonne operating agreement was not followed by the parties in any way. For example, Haskin was entitled to a six percent preferred return but did not take one. Haskin was entitled to a preferred return of six percent (6%) once the property sold. However, Haskin never sought nor received a preferred return. *Id.*; TT 69: 2-24 (Livingston); TT 12:3-19 (Haskin). In fact, when the 2624 Bayonne property was sold in 2007, a larger percentage of gain was allocated to Mr. Rhodes, thereby allowing Mr. Rhodes to take a larger distribution than Mr. Haskin and to provide for equal ending capital accounts between the two members.

Mr. Livingston testified that he interviewed Michael Gratz and had several conversations with him as part of his investigation in this case. TT 6:19-24 (Livingston). Michael Gratz prepared the operating agreement for 2624 Bayonne, a project that was very profitable for Haskin and Rhodes. 2624 Bayonne, LLC was a project that was not at issue in this case. Mr. Livingston testified about the origin of the signed operating agreement for 2624 Bayonne, LLC and the unsigned operating agreements for 2802 Middle and 2624 Myrtle. TT 68:8 Mr. Livingston testified:

A: Your Honor, in speaking with Mr. Gratz, I asked how did these operating agreements come into existence? Where did they come from? And he stated that in preparing -- in setting up the LLCs in Florida that he had gone to his file and found LLC agreements that that were used -- that he had that were used in Florida, put the names on here, and forwarded them on to Mr. Haskin. He says he was not asked to do it. He was doing it as part of trying to help them set up the LLC, and that was his explanation as to why these agreements were even -- why they even exist at this point in time. He was the author of these agreements, the CPA in Florida, and he just pulled these as templates for the parties as ones he dealt with.

Q. So based on your review of these documents, these operating agreements, and your testimony, do you believe that the parties followed those agreements, those operating agreements?

A. Well, from an accounting standpoint, the only one that is signed is 2624 Bayonne, and it doesn't appear to have been followed. The other two are unsigned, and it doesn't appear those two were signed.

Q Could you give us an example in the Bayonne instance which tells you why it wasn't followed?

A. Well, probably the most significant example is the calling of a preferential return for the members for the capital investment in the company of 6 percent of the average daily balance of that net capital investment, and for the monies that were put in by Mr. Haskin and Mr. Rhodes, there was no calculation of preferred return on those investments.

Q. So Mr. Haskin did not take a preferred return in 2624 Bayonne; is that right?

A. No, he did not.

Q. And did these other unsigned operating agreements provide for a preferred return?

A. Well, they're all mirror images of each other. They're exact copies. Just the names are changed.

Q. On 2624 Myrtle and 2802 Middle Street, did Mr. Haskin take a preferred return?

A. I didn't see any evidence of it, no.

Q. So he shared profits and losses 50/50 with Mr. Rhodes, correct?

A. After the -- **I testified the reimbursement of the initial contribution until the financing could be obtained and then to even out the capital accounts. So yes, it's 50/50, but it's not 300,000 and 150,000 goes to each partner. It's to first reimburse the initial capital contribution and the division of it.**

TT 68:8 -70:7 (Livingston).

Of the fourteen projects that the parties completed, only one, 2624 Bayonne, which is not at issue here, has a signed operating agreement, and that agreement was not followed. *Id.*; TT 68:23-70:12 (Livingston); TT 12:3-19; 30:7-11 (Haskin). Mr. Rhodes did not even have a copy of the signed Bayonne Operating Agreement until counsel for Haskin sent it to him in discovery in this case. (Rhodes Dep., 21: 14-15.) (emphasis added). Neither Mr. Haskin nor Mr. Rhodes remembers why they signed that operating agreement. Rhodes Dep., 42:20- 48:9; 12:16-19; 31:17-24 (Haskin). Mr. Rhodes changed his testimony at trial by claiming he had an attorney review the Bayonne operating agreement before he signed it. TT 46: 4-13 (Rhodes). Despite these attempts made at trial that Rhodes had an attorney review the Bayonne operating agreement prior to signing it, no evidence exists in the record that this occurred. Mr. Rhodes also speculated at trial about the reason the operating agreements were not signed. TT 46: 18-24 (Rhodes).

The operating agreement for Station 22 of Charleston, LLC that was never signed was not prepared by Michael Gratz. It is different than the other unsigned operating agreements for 2624 Myrtle and 2802 Middle. When asked about this operating agreement in his deposition, Mr. Rhodes stated: "That's -- that's not one I care for. This is a totally different operating agreement from the three I asked for." (Rhodes Dep., 27: 4-6.)

Rhodes has argued that the Bayonne operating agreement reflects the parties' twenty yearlong verbal agreement, and that the allocation of profits and losses in the Form 1065 Partnership Tax Returns for these projects reflect the parties' oral agreement. (Rhodes Dep., 20:13 - 21:21). The parties had been doing business together for 10 years prior to the Bayonne project. Rhodes relies on this one operating agreement, notwithstanding upwards of fourteen projects done together, including 22 Lafar, which had a very different operating agreement and was also never signed, to contend that he is not required to repay Haskin for funds Haskin advanced on Rhodes' behalf. Rhodes Dep., 27:1-28:14; 73: 11-13. None of the projects at issue in this case have signed operating agreements or any other written agreements. TT 67:7-19 (Livingston); TT 31:17-24 (Haskin); TT 46:14-16 (Rhodes); (Rhodes Dep., 35:6-12; 42: 24- 43:3; 43:11-45:1).

The lot at 2624 Myrtle Avenue was acquired in April of 2008. Haskin and Rhodes entered into joint ventures on Sully's restaurant in the 1990s and thirteen real estate projects thereafter: (1) Ensign Court, Isle of Palms; (2) 2914 Marshall Boulevard, Sullivan's Island; (3) 29 I'on Avenue, Sullivan's Island; (4) 18 I'on Ave, Sullivan's Island; (5) 1723 Middle Street, Sullivan's Island; (6) 2802 Middle, Sullivan's Island; (7) 2624 Myrtle Ave., Sullivan's Island; (8) 2624 Bayonne, Sullivan's Island; (9) 1908 Middle, Sullivan's Island; (10) 1914 Middle, Sullivan's Island; (11) 22 Lafar Avenue, Daniel Island; (12) 2851 I'on Avenue, Sullivan's Island; and (13) 46th or 49th

Avenue, Isle of Palms. Only one signed operating agreement exists and the parties never followed it.

For the forgoing reasons, Plaintiff respectfully submits the Court should alter and/or amend its Order to find that the Operating Agreements for 2624 Bayonne, LLC, 2624 Myrtle, LLC, 2802 Middle, LLC or Station 22 of Charleston, LLC were not followed by the parties and were, in fact, disregarded as proven by the evidence.

(6) To hold that the evidence of course of dealing and acquiescence between Haskin and Rhodes proves that Haskin and Rhodes had an agreement to share profits and losses equally and that Rhodes breached that agreement.

The Court's Order erroneously finds in its conclusions of law that "the course of dealings between the parties does not support Haskin's contention that either Rhodes Investments or Rhodes agreed to contribute to Haskin's losses". See Order p. 9. The Court makes no findings of fact as to the issue of course of dealing between the parties. As detailed herein, the parties conducted themselves as partners and agreed to share in profits and losses equally. Rhodes breached that agreement.

A contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct. Roberts v. Gaskins, 327 S.C. 478, 486 S.E.2d 771, 773 (Ct. App. 1997). Also, conduct manifesting assent constitutes acceptance and acceptance may be inferred from conduct. Laidlaw Environmental Svcs. (TOC), Inc. v. Honeywell, Inc., 966 F.Supp. 1401, 1409 (D.S.C. 1996). The elements of a breach of contract claim are: (1) a binding contract entered into by the parties; (2) breach or unjustifiable failure to perform the contract; and (3) damage suffered by the plaintiff as a direct and proximate cause of the breach. Fuller v. Eastern Fire & Casualty Ins. Co., 240 S.C. 75, 124 S.E.2d 602, 610 (1962).

The same rules of law apply to joint adventure and partnership. Few v. Few, 239 S.C. 321, 122 S.E.2d 829 (1961). In fact, relations among joint venturers are governed by partnership law. Tiger, Inc. v. Fisher Agro, Inc., 301 S.C. 229, 238, 391 S.E.2d 538, 543 (1989). Mr. Haskin and Mr. Rhodes operated as a series of joint ventures in South Carolina as South Carolina residents on South Carolina real estate projects. Mr. Rhodes' conduct manifested the intent to share profits and losses equally. Mr. Rhodes never objected to Mr. Haskin funding, out of his own pocket, all of the carrying costs in this case until he filed his answer to the complaint a year after he was emailed by Mr. Haskin to discuss repayment of his one half share of the carrying costs. TT 17:13-18:4; 22:15-17; 21:23-22:17 (Haskin).

A joint enterprise exists where there are two or more persons united in the joint prosecution of a common purpose under such circumstances that each has authority, express or implied, to act for all in respect to the control of the means and the agencies employed to execute such common purpose. Peoples Fed. Sav. & Loan Ass'n v. Myrtle Beach Golf & Yacht Club, 310 S.C. 132, 147, 425 S.E.2d 764, 774 (Ct. App. 1992) (citing Long v. Carolina Baking Co., 190 S.C. 367, 3 S.E.2d 46 (1939)). Further, in order to constitute a joint enterprise, there must be a common purpose and community of interest in the object of the enterprise and an equal right to direct and control the conduct of each other with respect thereto. Id. (citing Spradley v. Houser, 247 S.C. 208, 146 S.E.2d 621 (1966)).

A court must first look to the joint venture agreement between the parties. Id. A partnership agreement can rest in parol and a partnership can be found to exist by implication from the parties' conduct. Beck v. Clarkson, 300 S.C. 293, 387 S.E.2d 681 (Ct. App. 1989); Corley v. Ott, 326 S.C. 89, 92, 485 S.E.2d 97, 99 (1997). Likewise, as long as all the elements of a joint venture are present, an oral agreement may be valid and effective as a writing is not indispensable to the

creation of a joint venture. 28 S.C. Jur. Partnerships and Joint Ventures § 100; 46 Am. Jur. 2d, Joint Ventures § 11.

In the present case, Mr. Haskin and Mr. Rhodes operated as joint venture partners in a series of joint ventures over a long period of time. As a result of that relationship, they owe each other fiduciary duties, each having reposed trust and confidence in the other. Plaintiff and Defendant Rhodes agree that they have an oral agreement whereby Haskin would arrange the financing, handle all out of pocket cost until the first construction loan draw, Rhodes would construct the home on the property and handle the day to day management of the project; that in every case, the proceeds from the sales of the above referenced properties would be and were used to repay the outstanding indebtedness of the particular LLC, repay the members for their contributed capital, and the remaining profits were disbursed equally to Plaintiff and Rhodes Investments, Inc. TT 8:22 - 10:21 (Livingston); TT 5:1-5; 6:21-25; 7:8-12 (Haskin); TT 34: 18-35:16 (Rhodes).

The fact that the parties' accountant registered limited liability companies on his own initiative does not change the underlying relationship between Haskin and Rhodes, nor does it make the limited liability acts of Florida or South Carolina applicable to this matter. They agreed that as between them, they would operate as partners. *Id.* These two friends formed a partnership on Sullivan's Island to develop properties in and around Isle of Palms and Sullivan's Island, South Carolina. "[W]hen the parties to a joint venture agreement, in forming a corporation to carry out one or more of its objectives, intend to reserve certain rights *inter sese* under their agreement, which do not interfere with or restrict the management of the affairs of the corporation, its exercise of corporate powers, or the rights of third parties doing business with it, these rights being extrinsic to the corporate entity and its operations, such joint venture agreement may be enforced. Sagamore

Corp. v. Diamond W. Energy Corp., 806 F.2d 373, 378 (2d Cir. 1986). The Second Circuit reasoned that:

“[t]here is little logical reason why individuals cannot be ‘partners *inter sese* and a corporation as to the rest of the world,’ so long as the rights of third parties such as creditors are not involved.” *Arditi v. Dubitzsky*, *supra*, 354 F.2d at 486. When third parties may be adversely affected by exercise of rights under the partnership agreement, however, those rights will not be enforced. *Fromkin v. Merrall Realty, Inc.*, 15 A.D.2d 919, 225 N.Y.S.2d 632 (1962). **Thus a complete merger of a joint venture into corporate form, which legally supplants the venture, does not occur when the parties retain rights under the venture agreement that are not in conflict with the corporation's functioning, such as when the corporation is a mere “adjunct of a joint venture,”** *Fromkin v. Merrall Realty, Inc.*, *supra*, 15 A.D.2d at 920, 225 N.Y.S.2d at 635, or the retained rights are “independent of and extrinsic to the corporate entity,” *Shapolsky v. Shapolsky*, *supra*, 53 Misc.2d at 833–34, 279 N.Y.S.2d at 751. As was recognized even before *Weisman*, such an agreement “runs along side of the path of the corporation” without being merged into it. *Manacher v. Central Coal Co.*, 284 A.D. 380, 385, 131 N.Y.S.2d 671, 676 (1954), *aff'd*, 308 N.Y. 784, 125 N.E.2d 431 (1955).

Id. at 379 (emphasis added).

In Richbell Info. Servs., Inc. v. Jupiter Partners, L.P., 309 A.D.2d 288, 299–300, 765 N.Y.S.2d 575, 585 (2003), the Court reasoned further that the parties need not reserve any rights in order to maintain their underlying relationship when operating in a corporate form:

While case law exists standing for the proposition that a joint venture ceases to exist when the parties form a corporation to carry out one or more of its objectives (*see Sagamore Corp. v. Diamond West Energy Corp.*, 806 F.2d 373), the language in *Sagamore* that the parties must have “reserved” certain rights, *inter se*, in order for the joint venture to continue to exist, appears unnecessarily restrictive, serving no prophylactic or remedial purpose. We view as a better approach that of the Third Department in *Blank v. Blank*, 222 A.D.2d 851, 852–853, 634 N.Y.S.2d 886, which noted the lack of “a compelling reason to preclude individuals from acting as partners between themselves and as a corporation to the rest of the world” where the rights of third parties, such as creditors, are not involved, and the parties' rights under the partnership agreement

(here, the joint venture) are "not in conflict" with the corporation's functioning. **We conclude that the reasonable rule is to make the governing concern whether the parties' rights as joint venturers are in conflict with the corporation's functioning, rather than whether they expressly provided for a reservation of rights in the corporate governance documents.**

Id. (emphasis added).

The evidence supports the conclusion that as a result of their oral partnership agreement, Rhodes owes Haskin Seven Hundred and Seventy Seven Thousand Sixty Two and No/100 Dollars (\$777,062.00) for his share of the cost incurred in carrying the properties at issue at a loss. Rhodes also owes Three Hundred and Eighty Four Thousand Five Hundred and Three and No/100 Dollars (\$384,503.00) in prejudgment interest at the legal rate as required by S.C. Code Ann. § 34-31-20(A), for a total of One Million One Hundred and Sixty One Thousand Five Hundred and Sixty Five and No/100 Dollars (\$1,161,565.00). TT 16:6-18:20 (Livingston); See also Pl.'s Tr. Ex. 61.

Id. S.C. Code Ann. § 33-41-510 (1976), as amended, requires:

(1) each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property, and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied. Except as provided in Section 33-41-370(B), **each partner shall contribute toward the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits;**

Mr. Rhodes' capital percentage of 50% in 2802 Middle Street and 2624 Myrtle Avenue reflects the fact that he is an equal partner in those projects, thereby being responsible for one half the losses in addition to enjoying any profits that might have been generated. See TT 45:4 – 46: 4 (Livingston); see also Rev. Proc. 93-27, 1993-2 CB 343, App. 7. Likewise, Mr. Rhodes' 33 1/3 percentage capital interest in Station 22 of Charleston, LLC reflects his share of the profit and losses at 33 1/3 percent. Accordingly, Rhodes is required by South Carolina law to make Haskin

whole for the money he advanced on Rhodes' behalf to cover the carrying costs of the above described projects.

Even assuming that the limited liability acts of the jurisdictions in which the various LLCs were formed, either South Carolina or Florida, govern this dispute, the Court should reach the same conclusion, namely that Defendant Rhodes is liable in the amount of Seven Hundred and Seventy Seven Thousand Sixty Two and No/100 Dollars (\$777,062.00) for Rhodes' share of the cost incurred in carrying the properties at issue at a loss; Three Hundred and Eighty Four Thousand Five Hundred and Three and No/100 Dollars (\$384,503.00) in prejudgment interest as calculated by Plaintiff's expert at the legal rate as required by S.C. Code Ann. § 34-31-20(A); for a total of One Million One Hundred and Sixty One Thousand Five Hundred and Sixty Five and No/100 Dollars (\$1,161,565.00). *Id.* The agreement breached was the parties' partnership agreement and the damages were sustained by Haskin, individually, and not any of the LLCs. The losses that were incurred from the parties' joint ventures were not "losses" attributable to the LLCs. This is not an action in which the LLCs, or their members, are seeking "contribution", as defined in the LLC acts, from Rhodes to the LLCs. Rather, Haskin, individually, is seeking damages for Rhodes' failure to honor their verbal agreement to split the losses just as they had, personally, split the profits. *Id.*

Application of the LLC laws would not alter the fact that the parties' oral agreement is enforceable or that profits and losses are to be allocated pursuant to that agreement. See S.C. Code Ann. § 33-44-103; Fla. Sta. § 608.423(1) (2012)¹ (both providing "all members of a limited liability company may enter into an operating agreement, **which need not be in writing**, to

¹ The citations to Florida law are to Florida's former Limited Liability Company Act, which was replaced in its entirety by a revised act. However, the revised act, at Fla. Stat. Ann. § 605.1108, clarifies that it only applies to LLCs formed on or after January 1, 2014. Moreover, its "Savings Clause" statute, Fla. Stat. Ann. § 605.1106, mandates that the former act would continue to apply to LLCs formed pursuant to the same.

regulate the affairs of the company and the conduct of its business, and to govern relations among the members, managers, and company”); See also Fla. Stat. Ann. § 608.4261 (“[t]he profits and losses of the limited liability company shall be allocated among the members in the manner provided in the articles of organization or the operating agreement”).

As noted above, Haskin is not alleging that Rhodes is required to make a “contribution” to the LLCs. See Fla. Stat. Ann. § 608.402(7) (defining “contribution” as “any cash, property, or services rendered or a promissory note or other obligation to contribute cash or property or to perform services, **which a person contributes to the limited liability company** as a member”); S.C. Code Ann. § 33-44-401 (“A contribution of a member of a limited liability company may consist of tangible or intangible property or other benefit to the company, including money, promissory notes, services performed, or other agreements to contribute cash or property, or contracts for services to be performed.”).

Fla. Stat. Ann. § 608.4211(2) does not apply to this case. It provides that promises by a member to contribute to a company must be in writing to be enforceable. Even if Haskin was seeking to enforce an oral agreement by Rhodes to “contribute” to the LLCs, this statute would not render that agreement unenforceable. This is because the “part performance” exception, which is most commonly seen in the context of the Statute of Frauds, has been specifically recognized as also being applicable to this statute’s writing requirement. See Capone v. Estate of Ison, No. 06-80945-CIV, 2007 WL 7144356, at *2 (S.D. Fla. May 29, 2007) (concluding that an LLC member’s oral promise to contribute to the LLC is enforceable where part performance has occurred); Gerry v. Antonio, 409 So. 2d 1181, 1183 (Fla. Dist. Ct. App. 1982) (“When an oral contract has been fully performed by one party, the statute of frauds may not be employed as a defense.”); See also W. B. D., Inc. v. Howard Johnson Co., 382 So.2d 1323 (1980).

The Bayonne Operating Agreement

Out of fourteen projects, only the 2624 Bayonne operating was signed. Even if the Court views the Bayonne operating agreement as valid, it is clear from the parties' course of conduct that they did not follow that agreement. *Id.* One feature of that Bayonne operating agreement was that Haskin *would have received* a preferred return of six percent (6%) once the property sold. Haskin never sought nor received a preferred return. *Id.*; TT 69: 2-24 (Livingston); TT 12:3-19 (Haskin). In fact, when the 2624 Bayonne property was sold in 2007, a larger percentage of gain was allocated to Mr. Rhodes, thereby allowing Mr. Rhodes to take a larger distribution than Mr. Haskin and to provide for equal ending capital accounts between the two members.

In Florida, a written agreement may be modified by the subsequent conduct or course of dealing of the parties. Rhodes v. BLP Associates, Inc., 944 So.2d 527 (2006); See also St. Joe Corp. v. McIver, 875 So.2d 375, 382 (Fla.2004); Gallagher v. Dupont, 918 So.2d 342, 347 (Fla. 5th DCA 2005); White v. Ocean Bay Marina, Inc., 778 So.2d 412 (Fla. 3rd DCA 2001); Franklin Life Ins. Co. v. Davy, 753 So.2d 581, 586 (Fla. 1st DCA 1999); Beach Higher Power Corp. v. Granados, 717 So.2d 563, 565 (Fla. 3rd DCA 1998).

It has also been held that a contract can be modified even where the written contract specifically prohibits amendment or modification unless it is in writing and signed by the parties. See White, 778 So.2d at 412 (Fla. 3rd DCA 2001); Beach Higher, 717 So.2d at 563; Linear Corp. v. Standard Hardware Co., 423 So.2d 966 (Fla. 1st DCA 1983); Pan American Eng'g Co. v. Poncho's Constr. Co., 387 So.2d 1052 (Fla. 5th DCA 1980).

The Court should find that though the Bayonne Operating agreement was executed, it was of no effect because the parties conducted themselves in accordance with their oral agreement as detailed herein, not in accordance with the provisions of that agreement. Even if the Bayonne

Operating agreement was followed in any degree, which it was not, the parties modified its terms by their course of conduct to the point it was never controlling.

For the forgoing reasons, Plaintiff respectfully submits the Court's Order errs in holding that "[t]he course of dealings between the parties does not support Haskin's contention that either Rhodes investments or Rhodes agreed to contribute to Haskin's losses." The Order should be altered or amended to find that Plaintiff Haskin and Defendant Rhodes agreed to share profits and losses equally as partners based on the evidence of their conduct.

(7) To correct erroneous factual findings and errors of law involving Plaintiff's action for an Accounting and to hold that Plaintiff is entitled to the amount of the disparity between the partner's capital accounts as determined by Plaintiff's expert.

Plaintiff respectfully submits the Court's Order erred in holding that Plaintiff failed to show he is entitled to recovery under an accounting cause of action. The Court's Order does not fully address the remedy requested except to say that "[t]he evidence presented shows, however, that an accounting has been done for each of these entities and that none of the entities currently owns any assets." See Order p. 11. The Court's Order does not address the substance of the relief sought.

An accounting action between partners is an equitable action. Accordingly, the court reviews the facts and makes findings based upon its view of the preponderance of the evidence. Lawson v. Rogers, 312 S.C. 492, 495, 435 S.E.2d 853, 855 (1993)(citing Townes Associates Ltd. v. City of Greenville, 266 S.C. 81, 221 S.E.2d 773 (1976)). Mr. Haskin is entitled to the equitable remedy of accounting, which requires "an adjustment of the accounts of the parties and a rendering of a judgment for the balance ascertained to be due." Historic Charleston Holdings, LLC v. Mallon, 381 S.C. 417, 427, 673 S.E.2d 448, 453 (2009)(citing 1 Am.Jur.2d *Accounts and Accounting* § 52 (2005)).

Plaintiff respectfully requests this Court to alter or amend its prior Order to find that based on all of the evidence adduced at trial, Mr. Haskin advanced Rhodes' share of the carrying costs of the projects at issue and is liable for the necessary adjustment of their respective capital accounts. Mr. Livingston calculated the amount of the disparity in capital accounts to be in the amount of Seven Hundred and Seventy Seven Thousand Sixty Two and No/100 Dollars (\$777,062.00) for Rhodes' share of the cost incurred in carrying the properties at issue at a loss. He calculated Three Hundred and Eighty Four Thousand Five Hundred and Three and No/100 Dollars (\$384,503.00) in prejudgment interest at the legal rate as required by S.C. Code Ann. § 34-31-20(A); for a total of One Million One Hundred and Sixty One Thousand Five Hundred and Sixty Five and No/100 Dollars (\$1,161,565.00).

(8) To hold that Plaintiff is entitled to the remedy of unjust enrichment/Quantum Meruit/Restitution as an alternative to a finding of breach of contract.

Plaintiff respectfully submits the Court's Order erred in holding that Plaintiff failed to show he is entitled to recovery under a theory of *quantum meruit* as an alternative to a finding that Rhodes breached the parties' oral agreement to share profits and losses equally.

Quantum meruit is an equitable doctrine allowing recovery for unjust enrichment. Columbia Wholesale Co., Inc. v. Scudder May N.V., 312 S.C. 259, 440 S.E.2d 129 (1994). The term *quantum meruit* has come to mean a cause of action based on the theory the defendant has received a benefit the retention of which would be unjust if not paid for. Webb v. First Federal Savings & Loan Ass'n of Anderson, 300 S.C. 507, 388 S.E.2d 823, 827 (Ct. App. 1989). The elements of *quantum meruit*/unjust enrichment are: (1) benefit conferred by plaintiff upon the defendant; (2) realization of that benefit by the defendant; and (3) retention of the benefit by the defendant under circumstances that make it inequitable for him to retain it without paying its value. Myrtle Beach Hosp., Inc. v. City of Myrtle Beach, 341 S.C. 1, 8-9, 532 S.E.2d 868, 872 (2000).

Actions in *quantum meruit* are based on the absence of a contract, however, a plaintiff may recover under *quantum meruit* where the defendant denies the existence of the contract or only some terms of the contract are agreed upon. See Blanton v. Friedberg, 819 F.2d 489, 492 (4th Cir. 1987); See also Gantt v. Morgan, 199 S.C. 138, 18 S.E.2d 672 (1942) (evidence of implied contract or *quantum meruit* could be introduced in action brought on contract lacking specific amount of compensation).

In this case, Defendant Rhodes agrees that there was an oral contract but denies that the contract provides that Plaintiff and Defendant agreed to share profits and losses equally. Based on this assertion alone, Plaintiff has a proper claim for *quantum meruit* in this matter for the funds he advanced out of pocket on Rhodes' behalf to carry the various projects at issue in this case. As proven at trial, Plaintiff conferred an extraordinary amount of monetary benefit on Defendant Rhodes and the projects at issue. Mr. Haskin has not been repaid for the advancements he made on Defendant Rhodes' behalf. Defendant Rhodes has unjustifiably retained the value of money paid by Mr. Haskin and it is clearly inequitable for Rhodes to retain this benefit without payment to Mr. Haskin.

For the foregoing reasons, Plaintiff respectfully submits the Court's Order erred in denying Plaintiff's request for relief under a theory of *quantum meruit*. Therefore, Mr. Haskin is entitled in *quantum meruit* to return of the benefits provided to Rhodes in this matter of Seven Hundred and Seventy Seven Thousand Sixty Two and No/100 Dollars (\$777,062.00) for Rhodes' share of the cost incurred in carrying the properties at issue at a loss, and Three Hundred and Eighty Four Thousand Five Hundred and Three and No/100 Dollars (\$384,503.00) in prejudgment interest at the legal rate as required by S.C. Code Ann. § 34-31-20(A), for a total of One Million One Hundred and Sixty One Thousand Five Hundred and Sixty Five and No/100 Dollars (\$1,161,565.00).

(9) To hold that a fiduciary duty existed between Plaintiff Haskin and Defendant Samuel Rhodes, Jr. under South Carolina law and that Rhodes breached his fiduciary duty to Haskin.

Counsel for Mr. Haskin made a motion during the trial to conform the pleadings to the evidence in this case and sought to add a cause of action for breach of fiduciary duty. Rule 15(b), SCRPC, allows for amendments of pleadings to conform to the evidence presented at trial. It provides in pertinent part: "When issues not raised by the pleadings are tried by express or implied consent of the parties, they shall be treated in all respects as if they had been raised in the pleadings." Rule 15(b), SCRPC. The decision whether to allow the amendment of pleadings to conform to the evidence is left to the sound discretion of the trial court. Dunbar v. Carlson, 341 S.C. 261 (2000) (citing Kelly v. South Carolina Farm Bureau Mut. Ins. Co., 316 S.C. 319, 323, 450 S.E.2d 59, 61 (Ct.App.1994). Amendments should be allowed if no prejudice occurs to the opposing party. Rule 15(b), SCRPC; Soil & Material Eng'rs, Inc. v. Folly Assoc., 293 S.C. 498, 501, 361 S.E.2d 779, 781 (Ct.App.1987).

The parties, through counsel, consented to the motion during the trial. The Court's Order does not address fiduciary duty at all. See Order. The evidence relevant to the breach of fiduciary duty claim was adduced at trial and was also the same evidence relevant to other causes of action. Defendant Rhodes breached his fiduciary duties to Mr. Haskin. The Haskin-Rhodes partnership by its very nature includes a fiduciary duty between the two partners. "[P]artners are treated as fiduciaries each to the other and [the court] characterizes their relationship as one of mutual trust and confidence, imposing upon them the usual trust requirements of loyalty, good faith and fair dealing. Few v. Few, 239 S.C. 321, 122 S.E.2d 829, 836 (1961)(citing Whitman v. Bowden, 27 S.C. 53, 2 S.E. 630; Price v. Middleton, 75 S.C. 105, 112, 55 S.E. 156, 159; and Badder v. Saleeby,

131 S.C. 101, 126 S.E. 438, 440 (1924)); See also Kuznik v. Bees Ferry Associates, 342 S.C. 579, 598, 538 S.E.2d 15, 25 (Ct. App. 2000).

“The law holds each member of a partnership to the highest degree of good faith in his dealings with reference to any matter which concerns the business of the common engagement, and each partner, being the agent of the firm, must be held to the same accountability as other trustees, in all matters which affect the common interest.” Lawson v. Rogers, 312 S.C. 492, 498-99, 435 S.E.2d 853, 857 (1993) (citing Edwards v. Johnson, 90 S.C. 90, 72 S.E. 638 (1911)); see also S.C. Code Ann. § 33-41-540 (1990). A fiduciary relationship imposes “the duty of the finest loyalty[,] ... [n]ot honesty alone, but the punctilio of an honor the most sensitive.” Kuznik v. Bees Ferry Assocs., 342 S.C. 579, 597, 538 S.E.2d 15, 24 (Ct. App. 2000) (quoting Meinhard v. Salmon, 249 N.Y. 458, 164 N.E. 545 (1928)).

The evidence adduced at trial supports the conclusion that Mr. Rhodes failed to act in good faith or deal fairly with Mr. Haskin regarding repayment of his debt to Mr. Haskin by, *inter alia*, (1) denying the existence of his obligation to repay Mr. Haskin for his one half share of the carrying costs on the projects at issue once they were sold, (2) making fraudulent transfers of his ownership interest in 1723 Middle Street to his wife in order to avoid creditors, including Mr. Haskin (TT 32:3-7 (Rhodes)); (3) transferring \$183,000.00 of the equity in 1723 Middle Street to fund a new construction company, Rhodes Residential Builders, LLC, in which he was the sole member, to the exclusion of Mr. Haskin; (4) siphoning all of the money out of Rhodes Investments, Inc. when he knew over 6 million dollars in debt existed on the projects he was a partner in. TT 42: 18- 43:5 (Livingston) (“so essentially all of the distributions from the various LLCs either went to Mr. Rhodes personally or quickly passed through the S corp. to Mr. Rhodes personally.”); and (6) failing to fund Rhodes Investments, Inc., the company he claims is a *bona fide* corporation as well

as the member in the projects at issue in this case. TT 29:15-18; 32:25-34:13 (Rhodes). Mr. Rhodes' actions constitute breaches of the duty of loyalty as well of good faith and fair dealing. When faced with the option of either funding his commitment to his partner, Mr. Haskin, or ignoring such commitment to seek profit for himself alone, Mr. Rhodes chose the latter.

Of note, the South Carolina LLC Act is inapplicable here. Even assuming the Court applied South Carolina LLC law to the facts of this case, which it does not, the result would be the same. Station 22 of Charleston, LLC had no signed operating agreement. S.C. Code Ann. § 33-44-409(a) states that "[t]he only fiduciary duties a member owes to a member-managed company and its other members are the duty of loyalty and the duty of care." S.C. Code Ann. § 33-44-409 (d) states that "A member shall discharge the duties to a member-managed company and its other members under this chapter or under the operating agreement and exercise any rights consistently with the obligation of good faith and fair dealing."

Florida's prior Limited Liability Company Act in effect at all relevant times is likewise inapplicable. There is no evidence that supports that the parties followed any portion of the operating agreement for 2624 Bayonne, much less the unsigned operating agreements for 2624 Myrtle and 2802 Middle. However, if it did, Defendant Rhodes would still be found to have breached his fiduciary duties to Mr. Haskin. Rhodes is listed *individually* as a manager of 2624 Bayonne in that operating agreement as well as in the unsigned agreements for 2624 Myrtle and 2802 Middle. See Bayonne Operating Agreement, Section 8.1. Rhodes is *individually* listed on the Florida Secretary of State website as a manager of 2624 Bayonne as well. He is not listed as manager on the Florida Secretary of State website on 2802 Middle or 2624 Myrtle, two of the projects at issue in this case. This is further evidence that these operating agreements were not followed.

Fla Stat. Ann. § 608.4225(1) requires that each manager and managing member owes a duty of loyalty as well as due care to the company and the members. Fla Stat. Ann. § 608.4225 (c) provides that each managing member or manager shall discharge their duties and exercise of any rights consistent with the obligation of good faith and fair dealing. An operating agreement cannot eliminate the duty of loyalty or good faith and fair dealing under s. 608.4225. See Fla Stat. Ann. §§ 608. 423(2)(b) and (2)(d); See also FN 1, *infra*.

Mr. Rhodes breached his fiduciary duties to Mr. Haskin and award damages in the amount of Seven Hundred and Seventy Seven Thousand Sixty Two and No/100 Dollars (\$777,062.00) for Rhodes' share of the cost incurred in carrying the properties at issue at a loss, Three Hundred and Eighty Four Thousand Five Hundred and Three and No/100 Dollars (\$384,503.00) in prejudgment interest at the legal rate as required by S.C. Code Ann. § 34-31-20(A), for a total of One Million One Hundred and Sixty One Thousand Five Hundred and Sixty Five and No/100 Dollars (\$1,161,565.00).

By taking the actions discussed above, the Plaintiff respectfully requests the Court to alter or amend its Order to find Mr. Rhodes would still be liable for breaches of fiduciary duty under Florida LLC law if it were applied in this case.

(10) To hold that Plaintiff is entitled to the remedy of equitable contribution.

Plaintiff respectfully submits the Court's Order erred in holding that Plaintiff failed to show he is entitled to recovery under a theory of equitable contribution. The Order also does not address under what applicable law Plaintiff has failed to prove that he is entitled to contribution.

In South Carolina, "[t]o establish the right of contribution, the plaintiff must sh[o]w that his payment has removed a common bur[d]en from the shoulders of himself and the defendant, and that they are each benefited by it. Dumit v. Holtzman, No. 2012-UP-636, 2012 WL 10864188,

at *1 (S.C. Ct. App. Dec. 5, 2012) (citing Screven v. Joyner, 10 S.C. Eq. 252, 260 (S.C. App. L. & Eq. 1833). Unlike in Dumit, there is no operating agreement prohibiting contribution in the case at bar.

As discussed previously, S.C. Code Ann. § 33-41-510 (1976), as amended requires that:

(1) each partner shall be repaid his contributions, whether by way of capital or advances to the partnership property, and share equally in the profits and surplus remaining after all liabilities, including those to partners, are satisfied. Except as provided in Section 33-41-370(B), **each partner shall contribute toward the losses, whether of capital or otherwise, sustained by the partnership according to his share in the profits;**

Rhodes is required both by South Carolina partnership law, common law and in equity to make Haskin whole for the money he advanced to Rhodes to cover the carrying costs of the above described projects.

The Court should reach the same result under Florida law. Under Florida law, when a person pays more than his or her share of an obligation, the law provides that person the remedy of contribution to obtain payment of the other obligors' share of the obligation. Desrosiers v. Russell, 660 So.2d 396, 398 (Fla. 2d DCA 1995). Equitable contribution exists to prevent one joint obligor from being required to pay more than his share of a common burden, or to prevent one obligor from being unjustly benefitted or enriched at the expense of another. Lopez v. Lopez, 90 So.2d 456, 458 (Fla.1956). Parties share a common liability and may be subject to equitable contribution if they are either co-obligors or joint tortfeasors, and parties are co-obligors if they are jointly liable or jointly and severally liable on an obligation. Helmet House Corporation v. Stoddard, 861 So.2d 1178, 1180 (4th DCA 2003). U.S. Fid. & Guar. Co. v. Liberty Surplus Ins. Corp., No. 606CV-1180-ORL-31UAM, 2007 WL 3275307, at *2 (M.D. Fla. Oct. 31, 2007).

For the foregoing reasons, Plaintiff respectfully requests the Court to alter and/or amend its Order to find that Mr. Rhodes is required by Florida law to make Mr. Haskin whole for the money he advanced to Mr. Rhodes to cover the carrying costs of the above described projects.

(11) To hold that the remedy of piercing the corporate veil of Rhodes Investments, Inc. is warranted in this case.

Plaintiff respectfully submits the Court's Order erred in holding that Plaintiff failed to show he is entitled to pierce the corporate veil of Rhodes Investments, Inc.

The identity of the corporate Defendant, Rhodes Investments, Inc., should be ignored by the Court, the corporate shield pierced, and individual liability imposed on Defendant Rhodes personally. The corporation, set up by Rhodes at the suggestion of his tax preparer, L. Carl Dupree, to participate in the various Companies with Plaintiff, is a shell corporation without any significant assets, is totally owned, controlled and dominated by Defendant Rhodes, and was and continues to be, in fact, "merely a façade" of Mr. Rhodes.

In a sole shareholder subchapter S corporation like Rhodes Investments, South Carolina courts place heightened importance on the factors of undercapitalization, siphoning of funds, and whether or not the corporation was merely a façade of the defendant. Hunting v. Elders, 359 S.C. 217, 597 S.E.2d 803 (Ct. App. 2004); Dumas v. InfoSafe Corp., 320 S.C. 188, 463 S.E.2d 641 (Ct. App. 1995).

Rhodes Investments, Inc., is owned 100 percent by Mr. Rhodes. TT 36: 11-13 (Livingston). Rhodes Investments, Inc., was formed at the suggestion of Carl Dupree so that Rhodes could minimize his payroll tax liability and for personal liability protection. 36: 14- 37:11 (Livingston); TT 29: 15-18 (Rhodes). Mr. Rhodes undercapitalized Rhodes Investments, Inc. with a mere Five Hundred Dollars (\$500.00) when he incorporated Rhodes Investments. TT 37: 12-15 (Livingston).

Mr. Livingston noted that he never saw any expense for any insurance for Rhodes Investments, Inc. TT 37: 16-20 (Livingston).

Mr. Rhodes deposited the majority of funds of Rhodes Investments, Inc. in his personal bank account, even though an account for Rhodes Investments, Inc. existed. TT 50: 12-16 (Livingston). Any distributions placed into Rhodes Investments, Inc. were quickly disbursed to Mr. Rhodes personally. TT 42: 23- 43:5; 50: 21- 25 (Livingston).

Mr. Rhodes did not even know as late as October 13, 2015, the day of his deposition, that Rhodes Investments, Inc. was a corporation, not an LLC. (Rhodes Dep., 49: 1-6) In its first year, Rhodes Investments, Inc. owned an interest in Pon on Sullivans Island, LLC, a project which made two distributions totaling \$326,000, which funds were not deposited in the bank account of Rhodes Investments, Inc. TT 37:21-38:10 (Livingston). Despite his tax preparer, Carl Dupree's admonitions to properly deposit its distributions to Rhodes Investments, Inc.'s bank account and follow corporate formalities in treating the corporation as separate and distinct from himself, Mr. Rhodes nevertheless continued to ignore the existence of Rhodes Investments, Inc. by depositing funds of Rhodes Investments into his personal bank account, paying expenses out of his personal bank account rather than that of Rhodes Investments, and failing to pay himself a reasonable salary. TT 39:5- 41:4 (Livingston); see also Pl.'s Tr. Ex. 52. Carl Dupree admonished Mr. Rhodes for failing to pay himself a salary and explains the issues associated with not paying payroll taxes as he should. TT 40:5 - 41: 23 (Livingston). Rhodes should have paid himself a reasonable salary as the President of the corporation and its sole shareholder. Id.

In Hunting v. Elders, supra, the South Carolina Court of Appeals addressed the issue of whether to pierce the corporate veil of Elmyer Enterprises, a statutory close corporation taxed as an "S" corporation, in order to attach personal liability to William Elders, the corporation's

dominant shareholder and alleged alter ego. The defendant argued that, because his company was a statutory close corporation and had elected S corporation status, he should have the benefit of the less stringent rules regarding corporate formalities in the court's determination of whether to uphold the piercing of the corporate veil. Id.

In that case, a motorist was severely injured when she was hit by a drunk driver who was served alcohol at Elder's bar despite his apparent intoxication. Id. In order to determine whether to pierce the corporate veil and attach personal liability to Elders, the court applied the two-part test set forth in Sturkie v. Sifly, 280 S.C. 453, 313 S.E.2d 404 (Ct. App. 1984). Hunting, 359 S.C. at 224, 597 S.E.2d at 806. The Sturkie test, and its subsequent application in Hunting, has been consistently upheld by South Carolina courts with few modifications. Elders operated two bars under his corporation Elmyer Enterprises. In reviewing the circumstances, the court found that normal business records (showing cash receipts, cash expenses, sales, inventory or profit and loss statements) were absent and that Elmyer Enterprises was "grossly undercapitalized" because the initial capitalization was only \$2,000, and capitalization did not increase over time despite significant growth in business. The court noted the testimony of an expert witness that the initial investment was grossly deficient for the purposes of operating a bar, given the inherent risks associated with the business. The court found also that the defendant had "siphoned off" between \$400,000 and \$800,000 from the business over a three-year period. Additionally, corporate records were insufficient to provide dividend information, and the corporation's profits could not be accounted for. All of these factors, taken in combination with the fact that the corporation was grossly undercapitalized, led the court to conclude that the corporation was the alter ego of the defendant, and that the corporate veil should be pierced. Id.

The first prong of the two-part Sturkie test is an eight factor analysis, although it is commonly referred to as the “observance of corporate formalities.” Hunting, 359 S.C. at 224, 359 S.E.2d at 807. The eight factors the court must first consider are:

- (1) whether the corporation was grossly undercapitalized;
- (2) failure to observe corporate formalities;
- (3) non-payment of dividends;
- (4) insolvency of debtor corporation at the time;
- (5) siphoning of funds of the corporation by the dominant stockholder;
- (6) non-functioning of other officers or other directors;
- (7) absence of corporate records; and
- (8) the fact that the corporation was merely a façade for the operations of the

dominant stockholder. Id.

The court in Hunting acknowledged that a decision to pierce the corporate veil “must involve a number of the eight factors, but need not involve them all.” Id. It remains unclear the weight that should be given to each factor. Id. at 225, 359 S.E.2d at 807. While the ability to organize and operate as a statutory close corporation under state corporate law has greatly impacted the importance of some of the eight factors, South Carolina courts have clearly articulated that fewer than all factors are necessary in order to pierce the corporate veil. See, e.g., Hunting, supra; Dumas, supra; Cumberland Wood Products, Inc. v. Bennett, 308 S.C. 268, 417 S.E.2d 617 (Ct. App. 1992).

Despite the lack of clarity from the South Carolina courts concerning the weight of each factor or the necessity of any particular factor, the courts have strongly established that certain factors take on lessened or heightened importance in the case of a statutory close corporation and

in the case of a corporation that has elected S-status for federal income tax purposes. First, as a matter of statutory law, “[t]he failure of a statutory close corporation to observe the usual corporate formalities or requirements relating to the exercise of its corporate powers or management of its business and affairs is not a ground for imposing personal liability on the shareholders for liabilities of the corporation.” S.C. Code Ann. §33-18-250 (2001). The Official Comment to §33-18-250 notes that the statute does not prevent a court from piercing the corporate veil of a statutory close corporation; rather, *it precludes liability merely on the grounds that the corporation is a statutory close corporation.* Id.

The second prong of the two-part Sturkie test requires “an element of injustice or fundamental unfairness if the acts of the corporation be not regarded as the acts of the individuals.” Hunting, 359 S.C. at 228, 597 S.E.2d at 809. The fundamental unfairness part of the test requires the plaintiff to prove two additional elements: (1) the defendant was aware of the plaintiff’s claim against the corporation, and (2) defendant subsequently acted in a self-serving manner with regard to property of the corporation and in disregard of the plaintiff’s claim against the corporation. Id.

Under the second prong of the Sturkie test, the Hunting court found that Elders continued to act in a self-serving and unfair manner by siphoning large sums of money and by shifting assets and stock to shield his interest in the corporation despite his knowledge of the plaintiff’s claims against the corporation. Id.

In a number of subsequent cases the court has continuously upheld the application of the Sturkie test to determine when the corporate entity will be disregarded. In Mid-South Mgmt. Co. Inc. v. Sherwood Dev. Corp., 374 S.C. 588, 649 S.E.2d 135, the court applied the Sturkie test and ultimately held that Sherwood’s parent companies were not liable to pay Sherwood’s portion of a judgment against Sherwood. (Ct. App. 2007). In applying the Sturkie test, the court noted that

the “heart of piercing the corporate veil lies in proving the second prong of the Sturkie test, which requires a showing of fundamental unfairness in recognizing the corporate entity.” Id. at 599, 649 S.E.2d at 141.

The court in Mid-South also clarified the knowledge requirement of the first element of the “fundamental unfairness” prong. Id. Defendant is treated as aware of plaintiff’s claim against the corporation “if he has notice of facts which, if pursued with due diligence, would lead to knowledge of the claim.” Id. (citing Hunting, 359 S.C. at 229, 597 S.E.2d at 809). In Mid-South the court ultimately determined that the evidence was insufficient to establish that Sherwood or its parent companies acted in any self-serving manner or that any injustice or fundamental unfairness would result from recognizing Sherwood’s corporate status. Mid-South, 374 S.C. at 502, 649 S.E.2d at 143.

Later cases citing Hunting also apply the Sturkie test as it was applied in Hunting. See, e.g., Sofi Classics S.A. De C.V. v. Hurowitz, 444 F.Supp.2d 231 (S.D.N.Y. 2006)(applying South Carolina law to analysis of corporate veil piercing); Bowen v. Regional Auto Mall, 2005 WL 4827278 (S.C. Com. Pl. 2005)(applying two-part Sturkie test to corporate veil piercing of close corporation)(citing Hunting regarding diminished weight to be given certain Sturkie factors when analyzing corporate veil piercing of close corporation). South Carolina courts have repeatedly affirmed the two-part test set forth in Sturkie and applied in Hunting as the applicable analysis for determining whether or not to pierce the corporate veil.

Based on the foregoing, Plaintiff respectfully requests this Court alter or amend its prior Order to find that: (1) Rhodes Investments Inc. was undercapitalized for the level of risk it had taken on in the real estate development business; (2) Mr. Rhodes siphoned the funds of Rhodes Investments, Inc. for his own personal use as soon as he received them when he knew over six

million dollars in debt existed on the projects he was a partner in. TT 42: 18- 43:5 (Livingston) (“so essentially all of the distributions from the various LLCs either went to Mr. Rhodes personally or quickly passed through the S corp to Mr. Rhodes personally”); (3) Rhodes failed to maintain any, much less sufficient insurance for the risks involved; (4) Mr. Rhodes failed to pay himself a reasonable salary and thereby failed to pay payroll taxes; (5) Mr. Rhodes failed to keep corporate books and records in the ordinary course of business; and (6) Mr. Rhodes treated the corporation as his alter ego, as merely an extension of his personal affairs, a “mere façade” of Mr. Rhodes.

Plaintiff respectfully requests this Court to alter or amend its prior Order to find that “fundamental unfairness” would result to Mr. Haskin if the corporate form of Rhodes Investments, Inc. is allowed to stand. Mr. Rhodes knew of Mr. Haskin’s claim as early as 2008 when he realized that the projects were not selling. *Id.* Mr. Rhodes had “notice of facts which, if pursued with due diligence, would lead to knowledge of the claim.” *Id.* He continued to act in a self-serving manner with regard to property of the corporation and in disregard of the Haskin’s claim against the corporation as the testimony of Mr. Livingston and Mr. Haskin makes clear. *Id.*

(12) **To correct erroneous factual findings and errors of law involving Plaintiff’s action to set aside a fraudulent conveyance and/or impose a constructive trust or attachment of proceeds and real property.**

Plaintiff respectfully submits the Court’s Order erred in holding that Plaintiff failed to show he is entitled to recovery under a theory of fraudulent conveyance under the Statute of Elizabeth or that a constructive trust is warranted in this case.

The Court applied the improper standard set forth in Oskin v. Johnson and ignored the relationship between Rhodes and Bozzelli in finding that Rhodes did not fraudulently convey his interest in 1723 Middle Street to her. The Statute of Elizabeth in South Carolina provides, in relevant part: “Every ... conveyance of land ... made to or for any intent or purpose to delay, hinder,

or defraud creditors and others of their just and lawful actions ... must be deemed ... to be clearly and utterly void ..." S.C. Code Ann. § 27-23-10, et seq., (1976).

The standard from Gardner v. Kirvin, 184 S.C. 37, 191 S.E. 814, 816 (1937), should have been applied to the present case. Where transfers to members of the family are attacked either upon the ground of actual fraud or on account of their voluntary character, the law imposes the burden on the transferee to establish both a valuable consideration and the *bona fides* of the transaction by clear and convincing testimony. Gardner v. Kirven, 184 S.C. 37, 191 S.E. 814, 816 (1937); see also First Union Nat. Bank of N. Carolina v. Smith, 314 S.C. 459, 461, 445 S.E.2d 457, 458 (Ct. App. 1994). (emphasis added)

Ms. Bozzelli has failed to meet that high burden. It was Mr. Livingston's opinion that the consideration for the transfer of 1723 Middle Street to Ms. Bozzelli was inadequate. TT 59:21-60:4 (Livingston). Ms. Bozzelli did not begin making payments of the mortgage on 1723 Middle until after June, 2010, at the earliest. TT 60: 8-12 (Livingston). The completion of title transfer happened months before and initially she received a one half interest as early as March 1, 2009. Id. Throughout 2009, Mr. Rhodes withdrew equity from the home. He conveyed all of his interest to Ms. Bozzelli on February 1, 2010. Rhodes continued to withdraw funds after 1723 Middle was titled in Bozzelli's name only. This fact further supports the conclusion that these transfers were not *bona fide* transactions.

The Court erred in its find that "Rhodes deeded the property pursuant to advice he received relative to estate planning. " See Order p. 7. Ms. Bozzelli's testimony as to the timing of advice received by her financial advisor and attorney do not support the Court's conclusions that these transfers were supported by valuable consideration as part of a *bona fide* transaction. Ms. Bozzelli testified that the advice she received about taking title to 1723 Middle Street was given to her by

her lawyer several years prior when she entered into her prenuptial agreement. TT 13: 6-14 (Bozzelli). Mr. Rhodes testified in contradiction of his wife's testimony, saying that he and his wife "were approached" by their financial advisor about the title transfers. TT 37: 3-6 (Rhodes). Ms. Bozzelli also testified that she had no knowledge of the two judgments entered against her husband in excess of two million dollars, one of which was entered within three days of the transfer of title to her and the other within five days. TT 12: 10-13:1. Ms. Bozzelli never called her attorney, Mary Murray nor Mary Condon Moore, her financial advisor, to testify at trial. Likewise, Rhodes never called any witnesses to support the Court's finding that the transfer was done as part of an estate plan.

The Plaintiff respectfully requests this Court to alter or amend its prior Order to find that the conveyance by Rhodes of his interest in 1723 Middle Street to Bozzelli was fraudulent. The Court should also make a finding that Ms. Bozzelli's testimony is not credible that she had no knowledge of the existence of these two judgments, having received title to the property within days of those judgments being entered against her husband.

Mr. Rhodes knew of Mr. Haskin's claim as early as 2008 when he realized that the projects were not selling. Id. Mr. Rhodes testified that he didn't know about the debt to Mr. Haskin until the email of November 3, 2011 in which Mr. Haskin sought repayment of the money he advanced for carrying costs of the projects on Rhodes' behalf. TT 24:21-25 (Rhodes), App. 4. Under the Statute of Elizabeth, conveyances may be set aside by creditors existing at the time of the transfer and by subsequent creditors. Mathis v. Burton, 319 S.C. 261, 460 S.E.2d 406, 408 (Ct. App. 1995). So, even assuming Rhodes did not know of Haskin's claims until 2011, which is not credible, Haskin would nevertheless be entitled to set aside the transfers at issue as a subsequent creditor.

“An action to set aside a transfer of land as fraudulent pursuant to the Statute of Elizabeth is an action in equity.” Albertson v. Robinson, 371, S.C. 311, 315, 638 S.E.2d 81, 83 (Ct. App. 2006). Our supreme court has specifically held, based on the statute’s express language, the Statute of Elizabeth “does not limit its application to judgment creditors. Rather, its protection extends to other types of parties” affected by the conveyance or transfer. Lebovitz v. Mudd, 293 S.C. 49, 52, 358 S.E.2d 698, 700 (1987). Likewise, the Statute of Elizabeth is not restricted to fraudulent conveyance of real property. Rather, by its terms, it applies to gifts, grants, alienations, bargains, transfers, and conveyances of lands, tenements, or hereditaments, goods and chattels, any lease, rent, commons, or other profit or charge out of the foregoing, by writing or otherwise, and every bond, suit, judgment, and execution which is made or done for any intent to delay, hinder or defraud creditors. S.C. Code Ann. § 27-23-10(A); see also Black’s Law Dictionary (10th ed. 2014) (defining “bond” as “[a]n obligation; a promise”; “[a] written promise to pay money or do some act if certain circumstances occur or a certain time elapses”).

Plaintiff seeks the imposition of a constructive trust and one is warranted here. Rhodes’ conveyance of his interest in 1723 Middle Street (Rhodes’ sole valuable asset at the time) to his wife, Defendant Tracey Bozzelli, was a fraudulent conveyance under S.C. Code Ann. § 27-23-10(A). Typically, a conveyance found to be fraudulent must be set aside and declared void. S.C. Code Ann. § 27-23-10(A). However, because 1723 Middle Street has since been sold to a third party, the appropriate remedy is the imposition of a constructive trust over the identifiable and traceable proceeds of that sale. The evidence has established that those proceeds were reinvested in 3029 Middle Street. TT 61:17-24; 61:17-24; 62:1-63:7 (Livingston); TT 12: 16-22 (Strickland). Thus, a constructive trust is imposed upon 3029 Middle Street for the benefit of Mr. Haskin and repayment of amounts owed pursuant to this order.

An action to declare a constructive trust is one in equity and this court has jurisdiction to find facts in accordance with its own view of the preponderance of the evidence. Lollis v. Lollis, 291 S.C. 525, 354 S.E.2d 559 (1987). In order to establish a constructive trust, the evidence must be clear, definite and unequivocal. Id. A constructive trust arises whenever circumstances under which property was acquired make it inequitable that it be retained by the one holding legal title. These circumstances include fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution. Id.; Hendrix v. Hendrix, 299 S.C. 233, 235, 383 S.E.2d 468, 469 (Ct. App. 1989).

Further, Rhodes' transfer of over \$840,000 of equity from 1723 Middle, from the line of credit he had that was secured by the property, was fraudulent and that a constructive trust should be imposed on the identifiable assets so transferred. Cited above, the Statute of Elizabeth specifically addresses "every bond...made for any intent or purpose to delay, hinder, or defraud creditors."

Rhodes transferred One Hundred and Eighty Three Thousand and No/100 Dollars (\$183,000.00) from the line of credit on 1723 Middle to his newly-formed company, Rhodes Residential Builders, LLC, the company used to construct the house in which Rhodes and Bozzelli now reside at 3029 Middle Street.

Plaintiff respectfully request this Court to alter or amend its prior Order to find that a constructive trust is warranted in this case and that Rhodes exercised bad faith and abused the confidence Mr. Haskin had in him as a joint venture partner by making this transfer to his new company when he had knowledge that he and Rhodes Investments, Inc. owed enormous amounts of money for carrying costs associated with the projects at issue in this case.

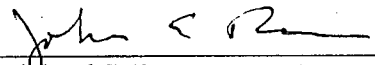
(13) To hold that Defendants are not entitled to an award of costs.

The Order should be altered or amended to find that Plaintiff has satisfied the requirements for the issuance of an Order altering and amending the order as stated above.

This Motion is supported by the pleadings, affidavits, legal memoranda, documents of record, arguments of counsel, and any other matter presented at any hearing on this Motion.

WHEREFORE, Plaintiff respectfully moves this Court for an Order altering and/or amending the Order filed on February 5, 2016 in the manner set forth hereinabove, and for such other and further relief as this Court may deem just and proper.

ROSEN, ROSEN & HAGOOD, LLC

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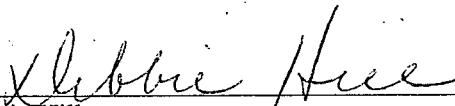
ATTORNEYS FOR PLAINTIFF
WILLIAM B. HASKIN, JR.

Charleston, South Carolina
February 19, 2016.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 19 day of February, 2016, a true and correct copy of **Plaintiff's Motion to Alter and/or Amend** was placed in an envelope in the United States mail with sufficient first-class postage affixed thereto and addressed to the following addressee(s):

Frank Cisa
Cisa & Dodds, LLC
858 Lowcountry Blvd, Suite 101
Mt. Pleasant, S.C. 29464


Debbie Hill

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

William B. Haskin, Jr.)

Plaintiffs,)

vs.)

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

Defendants.)

IN THE COURT OF COMMON PLEAS

NINTH JUDICIAL CIRCUIT

CASE NO.: 2012-CP-10-6506

ORDER OF JUDGMENT

2016 FEB -5 AM 11:58
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Presiding Judge:
Plaintiff's Attorney:
Defendants' Attorney:
Date of Trial:

Roger M. Young
John E. Rosen and Richard S. Rosen
Frank M. Cisa
November 16, 17, 18 and 19, 2015

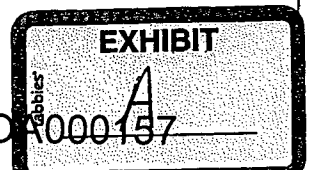
The above case came before this Court for trial on November 16, 17, 18, and 19, 2015, during a term of the Court of Common Pleas for Charleston County. This case was originally on the jury trial roster, but the parties agreed that since several of the causes of actions asserted by the Plaintiff were to be decided by the Court, the entire case would be tried non jury.

The Plaintiff, William B. Haskin, Jr. ("Haskin") was represented by Richard S. Rosen and John E. Rosen and the Defendants, Samuel W. Rhodes, Jr. ("Rhodes"), Rhodes Investments, Inc. ("Rhodes Investment"), Rhodes Consulting, LLC ("Rhodes Consulting"); and Tracey M. Bozzelli ("Bozzelli") were represented by Frank M. Cisa.

BACKGROUND

Haskin and Rhodes had been friends since meeting in college in 1982. Over the past twenty (20) or so years, Haskin and Rhodes formed various limited liability companies with each

R



LLC acquiring an unimproved lot. They would then construct a house on the subject property for sale to a third party. The arrangement was profitable until the down turn in the economy in the latter part of 2007.

This dispute involves four (4) of the limited liability companies: 2624 Myrtle, LLC (2624 Myrtle); 2802 Middle Street, LLC (2802 Middle); Station 22 of Charleston, LLC (Station 22); and 1723 Middle Street-HR, LLC f/k/a 1723 Middle Street, LLC (1723 Middle).

The Plaintiff sued the Defendants for Breach of Contract, Unjust Enrichment/Quantum Meruit, Judicial Dissolution as to Station 22, Contribution, Piercing the Corporation Veil, Constructive Trust, Accounting, and an action to Set Aside a Fraudulent Conveyance from Rhodes to Bozzelli relative to 1723 Middle.

FINDINGS OF FACTS

Based upon the record in this action and the evidence produced at trial, this court makes the following facts:

1. At all times relevant to this action, Haskin was employed full time in the business of importing lumber products and distributing them for sale.
2. At all times relevant to this action, Rhodes was primarily engaged in the business of constructing single family homes.
3. 2624 Myrtle is a limited liability company organized under the laws of the State of Florida in 2006. The members of 2624 Myrtle at all times had been Haskin and Rhodes Investments. 2624 Myrtle was formed for the specific purpose of acquiring a lot located at 2624 Myrtle Avenue on Sullivan's Island, South Carolina and building a home on the property to be sold to a third party.

4. 2802 Middle is a limited liability company organized under the laws of the State of Florida in 2006. The members of 2802 Middle are Haskin and Rhodes Investments. 2802 Middle was formed for the specific purpose of acquiring a lot located at 2802 Middle Street, Sullivan's Island, South Carolina and building a home on the property to be sold to a third party.
5. Station 22 is a limited liability company, organized under the laws of the State of South Carolina in 2004. The members of Station 22 are Haskin, Rhodes Investments and Covington Property, Inc. Station 22 was formed for the specific purpose of acquiring a lot located at 22 Lafar Street, Daniel Island, South Carolina and building a home on the subject property to be sold to a third party.
6. 1723 Middle is a limited liability company organized under the laws of the State of Florida in 2007. Members of 1723 Middle were Haskin and Rhodes Investments. 1723 Middle was formed for the specific purpose of acquiring a lot located at 1723 Middle Street on Sullivan's Island, South Carolina and building a home on the subject property to be sold to a third party.
7. The structure of each project undertaken by 2624 Myrtle, 2802 Middle, 1723 Middle are virtually the same. Haskin secured the necessary financing to purchase the various lots, obtained a construction loan, and funded any shortfall during construction. Rhodes Investments' duties through the efforts of Rhodes were to construct and manage the projects on a day to day basis, hire all subcontractors, oversee the work, and pay all subcontractors. A separate checking account was opened for each of the limited liability companies into which money would be deposited and disbursed. Cancelled checks would be sent to Debbie

Eures, a bookkeeper for the companies. On the projects that were profitable, Haskin would first be reimbursed for the costs advanced and then the profits would be split equally between Haskin and Rhodes Investments.

8. The structure of Station 22 was also the same except, Covington Property, Inc., and Haskin obtained the construction loan and funded any shortfall during construction. Rhodes Investments through Rhodes constructed and managed the property on a day to day basis and hired and paid all subcontractors.
9. 2802 Middle, 2624 Myrtle and Station 22 did not make a profit. Due to the downturn in the economy, the properties owned by these three entities were either lost to foreclosure or lost money due to a short sale.
10. Between 2006 and 2011, Haskin made capital contributions to 2802 Middle Street of \$822,342.00 which he claimed as losses on his individual tax returns. From 2007 until 2011, Haskin made capital contributions to 2624 Myrtle totaling \$470,342.00 which he claimed as losses on his individual tax returns. From 2007 until 2010, Haskin made capital contributions to Station 22 in the amount of \$131,440.00 which he claimed as losses on his individual tax returns.
11. Between 2007 and 2010, Rhodes Investments made capital contributions to 2624 Myrtle in the amount of \$37,173.00 which Rhodes claimed as losses on his individual tax returns. Between 2007 and 2011, Rhodes Investments contributed capital to 2802 Middle Street in the amount of \$14,277.00 which Rhodes claimed as losses on his individual tax returns. Rhodes Investments did not make any capital contributions to Station 22. Capital contributions made by Rhodes

Investments to 2624 Myrtle and 2802 Middle were made at times when Haskins was out of town and not available to make contributions.

12. No signed Operating Agreements appear to exist for the various limited liability companies formed by Haskin and Rhodes Investments, with the exception of 2624 Bayonne, LLC. The Operating Agreement for 2624 Bayonne, LLC provides in article 3.2 that "No member shall be required to contribute additional capital to the Company." Article 6.3 provides that "Each Member shall look solely to the assets of the Company for the return of the Member's capital contribution, and if the Company's property remaining after payment or discharge of the debts and liabilities of the Company is insufficient to return the contributions of each Member, a Member shall have no recourse against any other Member(s)."
13. Unsigned Operating Agreements that mirror the signed Operating Agreement of 2624 Bayonne, LLC do exist for 2624 Myrtle and 2802 Middle. Both unsigned Operating Agreements contain the same language concerning capital contributions. The evidence shows these Operating Agreements were not signed because the bank financing which required signed agreements before closing was not used. Instead, Haskin financed these two projects drawing on an existing credit line on his primary residence.
14. An unsigned Operating Agreement also exists for Station 22. Rhodes Investments would not sign the Operating Agreement as it contained a provision for mandatory capital contributions. Rhodes Investments and Rhodes would also not sign on the construction loan that was obtained by Station 22 for the construction of the home at 22 Lafar Street.

15. All of the tax returns for 2802 Middle and 2624 Myrtle reflect that Haskin and Rhodes Investments were allocated losses based upon their respective capital contributions. Likewise, the tax returns for Station 22 reflect that losses were allocated based upon the capital contributions made by Haskin, Covington Property, Inc. and Rhodes Investments. All of the tax returns were signed by Haskin on behalf of the companies.
16. Neither Rhodes Investments or Rhodes ever agreed with Haskins to contribute towards losses. The first time that Haskins took the position that Rhodes Investments or Rhodes owed him for half of his losses on 2802 Middle, 2624 Myrtle and Station 22 was on November 3, 2011, as shown by the email from Haskin to Rhodes. Haskin, however, had sustained losses on 2802 Middle Street every year between 2006 and 2011; sustained losses for 2624 Myrtle each year between 2007 and 2011; and sustained losses for Station 22 for each year between 2007 and 2010.
17. Rhodes Investments contribution of capital was in the form of services performed through the effort of Rhodes in constructing various homes for the limited liability companies. Rhodes Investments and Rhodes were not paid any money to construct the homes. The evidence shows that a contractor typically charged twenty (20%) percent of the costs of construction of homes at the time the subject residences were constructed. Twenty (20%) percent of the cost of construction for projects done for 2624 Myrtle, 2802 Middle, and Station 22 totals approximately \$692,000.00. Haskin lost the money he invested in these projects and Rhodes Investments and Rhodes lost their time and effort in constructing the

residences over a period of twelve (12) to eighteen (18) months. Haskin was the investor and Rhodes Investments performed the work through the efforts of Rhodes.

18. Bozzelli is the Wife of Rhodes. Bozzelli had no involvement in the formation or operation of any of the limited liability companies formed by Haskin and Rhodes Investments.
19. The property owned by 1723 Middle was on the market for sale in 2008; however, it did not sell. As a result, Rhodes entered into an agreement to purchase 1723 Middle Street from 1723 Middle for the sum of \$2,157,900.00. The closing of the purchase occurred on September 12, 2008. At the time of the closing, the existing debt guaranteed by Haskin was paid. Rhodes and Bozzelli then moved into 1723 Middle Street, but continued to try and sell the residence. By deed dated March 30, 2009, Rhodes conveyed 1723 Middle Street to he and Bozzelli as joint tenants with rights of survivorship. Rhodes deeded the property pursuant to advice he had received relative to estate planning. On February 1, 2010 Rhodes then conveyed all of his interest in 1723 Middle Street to Bozzelli. Rhodes deeded his remaining interest in 1723 Middle Street to his wife as he could no longer afford to pay the mortgage on the residence and Bozzelli was not agreeable to making the payments unless the property was in her name. 1723 Middle Street was ultimately sold to a third party on December 9, 2011 with Bozzelli netting \$64,891.94 at closing. Bozzelli had, however, made contributions towards the mortgage and other expenses associated with 1723

A handwritten signature, possibly reading 'B', is written in black ink.

Middle Street in the amount of approximately \$127,000.00. Rhodes and Bozzelli sustained a loss of \$520,575.00 relative to the sale of 1723 Middle Street.

20. After 1723 Middle Street was sold, Bozzelli then purchased a lot at 3029 Middle Street and obtained a construction loan for a house. The lot at 3029 Middle Street and the construction of the house were paid for solely by Bozzelli by using her liquid assets and obtaining loans. Neither Rhodes Investments or Rhodes contributed money for the acquisition or construction of 3029 Middle Street.
21. Rhodes Investments did not need capital to operate. All of the projects were funded by Haskin. Rhodes Investments always filed tax returns and reported any income received through the limited liability companies set up by Haskin and Rhodes Investments. Rhodes Investments had a checking account.
22. Haskin's contention that Rhodes agreed to pay him \$75,000.00 incident to the conveyance of 1723 Middle Street to Rhodes by 1723 Middle Street, LLC is not supported by the Agreement to Buy and Sell. Rhodes paid the purchase price referred to in the Agreement to Buy and Sell at closing.

CONCLUSIONS OF LAW

(Breach of Contract/Oral Operating Agreements)

Haskin has failed to prove by a preponderance of the evidence that the Defendants breached an agreement to contribute to losses sustained by Haskin relative to 2624 Myrtle, 2802 Middle, and Station 22. It is clear from the record that the only Defendant that was a Member of these limited liability companies was Rhodes Investments. Tax returns signed by Haskin for the various companies as well as the Operating Agreement show that Rhodes Investments was the Member.

The course of dealings between the parties does not support Haskin's contention that either Rhodes Investments or Rhodes agreed to contribute to Haskin's losses. Haskin acknowledged that he was the investor and that Rhodes Investments provided services for the construction of the various houses. Although Haskin sustained losses for a number of years relative to the three limited liability companies, he made no demand on Rhodes to contribute to losses until November of 2011.

The tax returns for the three (3) limited liability companies show that members of the companies were allocated losses based upon their capital contributions. The individual tax returns of Haskin also show that he claimed the losses on his returns. Jim Covington, owner of Covington Investments, Inc., also confirmed that there was no oral agreement concerning losses relative to Station 22 and that Rhodes refused to sign for the construction loan for the project. The services provided by Rhodes Investments and Rhodes were substantial and of very real value. The value of the construction services provided was approximately \$692,000.00. Both Rhodes and Haskin acknowledged that the projects took between 12 to 18 months to construct. They also agreed that neither Rhodes Investments, nor Rhodes received any compensation for the services provided.

(Unjust Enrichment /Quantum Meruit)

Haskin has failed to prove by a preponderance of the evidence that any of the Defendants have been unjustly enriched by him. Haskin performed his obligation to acquire financing for the projects and maintain the shortfalls during construction; however, Rhodes Investments and Rhodes provided substantial services relative to the construction of the homes. Rhodes Investments and Rhodes did not receive a benefit relative to the construction of the homes for

2802 Middle, 2624 Myrtle and Station 22. Rather, Rhodes Investments and Rhodes lost time and effort just as Haskin lost his investment.

Haskin has failed to prove by a preponderance of the evidence that Rhodes breached an agreement to pay him \$75,000.00. Haskin has also failed to prove that the conveyance of 1723 Middle Street to Rhodes conferred a benefit to Rhodes. In fact, Rhodes and Bozzelli sustained a loss on the sale of 1723 Middle Street in the amount of \$520,575.00.

(Judicial Dissolution as to Station 22)

At the time that Haskin filed his Amended Complaint he sought the judicial dissolution of Station 22. At the time of trial, the evidence shows that the only asset of Station 22, being the residence at 22 Lafar, had been lost to foreclosure. As a result, there is no asset left to liquidate.

(Contribution)

Haskins has failed to prove by a preponderance of the evidence that any of the Defendants agreed to or were required to contribute capital to fund the limited liability companies' losses.

(Piercing the Corporate Veil)

The Court has determined that the Defendants are not liable to the Plaintiff and therefore the issues concerning piercing the corporate veil are rendered moot.

(Constructive Trust)

"A constructive trust results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution. Fraud is an essential element, although it need not be actual Fraud." Lollis vs. Lollis, 291 S.C. 525, P.529; 364, S.E2d, 559, P. 561. Haskin has failed to prove by a preponderance of the evidence that any of the Defendants have engaged in fraud, bad faith, abuse of confidence or violated a fiduciary

duty. In fact, there is no evidence that either Rhodes Investments or Rhodes improperly used the money advanced by Haskin for the construction of the projects.

(Accounting)

Haskin seeks an Accounting relative to 2624 Myrtle, 2802 Middle and Station 22. The evidence presented shows, however, that an accounting has been done for each of these entities and that none of the entities currently own any assets.

(Fraudulent Action to Set Aside Conveyance Intended to Defraud Creditors)

In interpreting the Statute of Elizabeth, "this Court has held conveyances shall be set aside under two conditions: First, where there was valuable consideration and the transfer is made by the grantor with the actual intent to defraud; and, second, where a transfer is made without actual intent to defraud but without valuable consideration." Oskin v. Johnson, 400 S.C. 390, P. 397; 735, SE2d 459, P. 463.

"A clear and convincing evidentiary standard governs fraudulent conveyance claims brought under the Statute of Elizabeth." Oskin v. Johnson, 396; 463.

There is no evidence in the record of the value of 1723 Middle Street when Rhodes conveyed a one-half (1/2) interest to Bozzelli or when Rhodes conveyed his remaining interest to Bozzelli. Rhodes first conveyed a half interest to Bozzelli upon advice concerning estate planning. Rhodes then conveyed his remaining half interest to Bozzelli as Bozzelli agreed to pay the mortgage and other expenses related to 1723 Middle Street. The home at 1723 Middle Street was sold at a loss of \$520,575.00.

Haskin has failed to prove by clear and convincing evidence that Rhodes fraudulently conveyed his interest in 1723 Middle Street to Bozzelli.

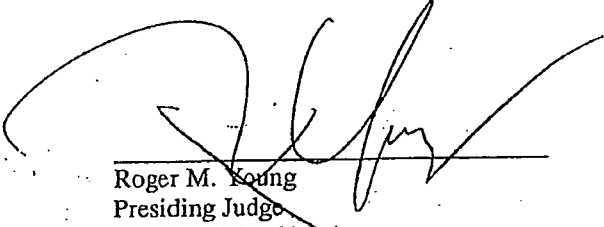
Since the Court denies any relief to the Plaintiff relative to his fraudulent conveyance claim, Haskin's claim against Bozzelli for the value of 3029 Middle Street is also denied.

THEREFORE, It is Ordered, Adjudged and Decreed;

1. That the Plaintiff, William B. Haskin, Jr.'s Complaint is hereby dismissed with costs awarded to the Defendants; and
2. That the Clerk of Court is hereby directed to cancel the Lis Pendens filed by the Plaintiff on November 8, 2013 against the property owned by Tracey M. Bozzelli located at 3029 Middle Street, known as lot 9, Block 12, Marshall Reservation.

AND IT IS SO ORDERED!

This 9th day of February, 2016
Charleston, S.C.



Roger M. Young
Presiding Judge
Ninth Judicial Circuit

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Roger M. Young, Sr., Circuit Court Judge

Case No. 2012-CP-10-06506

FILED
2016 MAY 31 PM 3:31
JULIE J. ARMSTRONG
CLERK OF COURT

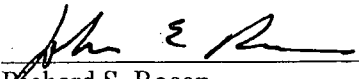
William B. Haskin, Jr., ... Appellant,

vs.

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

NOTICE OF APPEAL

William B. Haskin, Jr. appeals the Order of the Honorable Roger M. Young, Sr. dated February 5, 2016 rendering judgment in favor of Defendants Samuel W. Rhodes, Jr., Rhodes Investments, Inc., Rhodes Consulting, LLC and Tracey M. Bozzelli. Appellant received written notice of this order on February 10, 2016. Appellant timely filed a Motion to Alter or Amend Order on February 19, 2016, which was denied by the Court by Order dated April 28, 2016, and filed on April 29, 2016. Appellant received a copy of this Order on May 2, 2016.


Richard S. Rosen
John E. Rosen
ROSEN, ROSEN & HAGOOD, LLC
151 Meeting Street, Suite 400
Charleston, SC 29401
(843) 577-6726

ATTORNEYS FOR APPELLANT

Charleston, South Carolina
May 31, 2016

Other Counsel of Record:

Frank M. Cisa, Esquire
858 Lowcountry Boulevard, Suite 101
Mount Pleasant, South Carolina 29464
(843) 881-6530
Attorney for Respondents

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
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FILED
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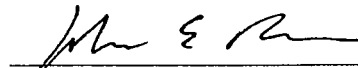
PROOF OF SERVICE

I do hereby certify that I have served all counsel in this action with a copy of the document herein below specified by mailing a copy of the same by United States mail, postage prepaid, to the following address:

Document: **NOTICE OF APPEAL**

Counsel Served:

Frank M. Cisa, Esquire (by U.S. Mail)
858 Lowcountry Boulevard, Suite 101
Mount Pleasant, South Carolina 29464
(843) 881-6530



Richard S. Rosen

John E. Rosen

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151 Meeting Street, Suite 400

Charleston, South Carolina 29401

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ATTORNEYS FOR APPELLANT

Charleston, South Carolina
May 31, 2016

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
William B. Haskin, Jr.)
)
Plaintiffs,)
)
vs.)
)
Samuel W. Rhodes, Jr., Rhodes)
Investments, Inc., Rhodes)
Consulting, LLC and Tracey M.)
Bozzelli)
)
Defendants.)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CASE NO.: 2012-CP-10-6506

ORDER OF JUDGMENT

2016 FEB -5 AM 11:58
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

Presiding Judge:
Plaintiff's Attorney:
Defendants' Attorney:
Date of Trial:

Roger M. Young
John E. Rosen and Richard S. Rosen
Frank M. Cisa
November 16, 17, 18 and 19, 2015

The above case came before this Court for trial on November 16, 17, 18, and 19, 2015, during a term of the Court of Common Pleas for Charleston County. This case was originally on the jury trial roster, but the parties agreed that since several of the causes of actions asserted by the Plaintiff were to be decided by the Court, the entire case would be tried non jury.

The Plaintiff, William B. Haskin, Jr. ("Haskin") was represented by Richard S. Rosen and John E. Rosen and the Defendants, Samuel W. Rhodes, Jr. ("Rhodes"), Rhodes Investments, Inc. ("Rhodes Investment"), Rhodes Consulting, LLC ("Rhodes Consulting"); and Tracey M. Bozzelli ("Bozzelli") were represented by Frank M. Cisa.

BACKGROUND

Haskin and Rhodes had been friends since meeting in college in 1982. Over the past twenty (20) or so years, Haskin and Rhodes formed various limited liability companies with each

LLC acquiring an unimproved lot. They would then construct a house on the subject property for sale to a third party. The arrangement was profitable until the down turn in the economy in the latter part of 2007.

This dispute involves four (4) of the limited liability companies: 2624 Myrtle, LLC (2624 Myrtle); 2802 Middle Street, LLC (2802 Middle); Station 22 of Charleston, LLC (Station 22); and 1723 Middle Street-HR, LLC f/k/a 1723 Middle Street, LLC (1723 Middle).

The Plaintiff sued the Defendants for Breach of Contract, Unjust Enrichment/Quantum Meruit, Judicial Dissolution as to Station 22, Contribution, Piercing the Corporation Veil, Constructive Trust, Accounting, and an action to Set Aside a Fraudulent Conveyance from Rhodes to Bozzelli relative to 1723 Middle.

FINDINGS OF FACTS

Based upon the record in this action and the evidence produced at trial, this court makes the following facts:

1. At all times relevant to this action, Haskin was employed full time in the business of importing lumber products and distributing them for sale.
2. At all times relevant to this action, Rhodes was primarily engaged in the business of constructing single family homes.
3. 2624 Myrtle is a limited liability company organized under the laws of the State of Florida in 2006. The members of 2624 Myrtle at all times had been Haskin and Rhodes Investments. 2624 Myrtle was formed for the specific purpose of acquiring a lot located at 2624 Myrtle Avenue on Sullivan's Island, South Carolina and building a home on the property to be sold to a third party.

4. 2802 Middle is a limited liability company organized under the laws of the State of Florida in 2006. The members of 2802 Middle are Haskin and Rhodes Investments. 2802 Middle was formed for the specific purpose of acquiring a lot located at 2802 Middle Street, Sullivan's Island, South Carolina and building a home on the property to be sold to a third party.
5. Station 22 is a limited liability company, organized under the laws of the State of South Carolina in 2004. The members of Station 22 are Haskin, Rhodes Investments and Covington Property, Inc. Station 22 was formed for the specific purpose of acquiring a lot located at 22 Lafar Street, Daniel Island, South Carolina and building a home on the subject property to be sold to a third party.
6. 1723 Middle is a limited liability company organized under the laws of the State of Florida in 2007. Members of 1723 Middle were Haskin and Rhodes Investments. 1723 Middle was formed for the specific purpose of acquiring a lot located at 1723 Middle Street on Sullivan's Island, South Carolina and building a home on the subject property to be sold to a third party.
7. The structure of each project undertaken by 2624 Myrtle, 2802 Middle, 1723 Middle are virtually the same. Haskin secured the necessary financing to purchase the various lots, obtained a construction loan, and funded any shortfall during construction. Rhodes Investments' duties through the efforts of Rhodes were to construct and manage the projects on a day to day basis, hire all subcontractors, oversee the work, and pay all subcontractors. A separate checking account was opened for each of the limited liability companies into which money would be deposited and disbursed. Cancelled checks would be sent to Debbie

Eures, a bookkeeper for the companies. On the projects that were profitable, Haskin would first be reimbursed for the costs advanced and then the profits would be split equally between Haskin and Rhodes Investments.

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9. 2802 Middle, 2624 Myrtle and Station 22 did not make a profit. Due to the downturn in the economy, the properties owned by these three entities were either lost to foreclosure or lost money due to a short sale.
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Investments to 2624 Myrtle and 2802 Middle were made at times when Haskins was out of town and not available to make contributions.

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16. Neither Rhodes Investments or Rhodes ever agreed with Haskins to contribute towards losses. The first time that Haskins took the position that Rhodes Investments or Rhodes owed him for half of his losses on 2802 Middle, 2624 Myrtle and Station 22 was on November 3, 2011, as shown by the email from Haskin to Rhodes. Haskin, however, had sustained losses on 2802 Middle Street every year between 2006 and 2011; sustained losses for 2624 Myrtle each year between 2007 and 2011; and sustained losses for Station 22 for each year between 2007 and 2010.
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Middle Street in the amount of approximately \$127,000.00. Rhodes and Bozzelli sustained a loss of \$520,575.00 relative to the sale of 1723 Middle Street.

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CONCLUSIONS OF LAW

(Breach of Contract/Oral Operating Agreements)

Haskin has failed to prove by a preponderance of the evidence that the Defendants breached an agreement to contribute to losses sustained by Haskin relative to 2624 Myrtle, 2802 Middle, and Station 22. It is clear from the record that the only Defendant that was a Member of these limited liability companies was Rhodes Investments. Tax returns signed by Haskin for the various companies as well as the Operating Agreement show that Rhodes Investments was the Member.

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(Judicial Dissolution as to Station 22)

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(Piercing the Corporate Veil)

The Court has determined that the Defendants are not liable to the Plaintiff and therefore the issues concerning piercing the corporate veil are rendered moot.

(Constructive Trust)

"A constructive trust results from fraud, bad faith, abuse of confidence, or violation of a fiduciary duty which gives rise to an obligation in equity to make restitution. Fraud is an essential element, although it need not be actual Fraud." Lollis vs. Lollis, 291 S.C. 525, P.529; 364, S.E2d, 559, P. 561. Haskin has failed to prove by a preponderance of the evidence that any of the Defendants have engaged in fraud, bad faith, abuse of confidence or violated a fiduciary

duty. In fact, there is no evidence that either Rhodes Investments or Rhodes improperly used the money advanced by Haskin for the construction of the projects.

(Accounting)

Haskin seeks an Accounting relative to 2624 Myrtle, 2802 Middle and Station 22. The evidence presented shows, however, that an accounting has been done for each of these entities and that none of the entities currently own any assets.

(Fraudulent Action to Set Aside Conveyance Intended to Defraud Creditors)

In interpreting the Statute of Elizabeth, "this Court has held conveyances shall be set aside under two conditions: First, where there was valuable consideration and the transfer is made by the grantor with the actual intent to defraud; and, second, where a transfer is made without actual intent to defraud but without valuable consideration." Oskin v. Johnson, 400 S.C. 390, P. 397; 735, SE2d 459, P.463.

"A clear and convincing evidentiary standard governs fraudulent conveyance claims brought under the Statute of Elizabeth." Oskin v. Johnson, 396; 463.

There is no evidence in the record of the value of 1723 Middle Street when Rhodes conveyed a one-half (½) interest to Bozzelli or when Rhodes conveyed his remaining interest to Bozzelli. Rhodes first conveyed a half interest to Bozzelli upon advice concerning estate planning. Rhodes then conveyed his remaining half interest to Bozzelli as Bozzelli agreed to pay the mortgage and other expenses related to 1723 Middle Street. The home at 1723 Middle Street was sold at a loss of \$520,575.00.

Haskin has failed to prove by clear and convincing evidence that Rhodes fraudulently conveyed his interest in 1723 Middle Street to Bozzelli.

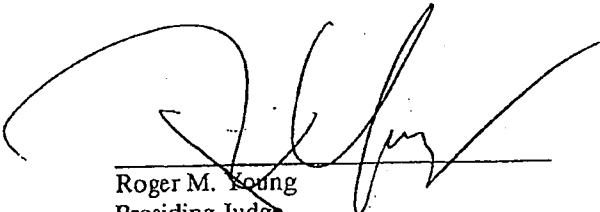
Since the Court denies any relief to the Plaintiff relative to his fraudulent conveyance claim, Haskin's claim against Bozzelli for the value of 3029 Middle Street is also denied.

THEREFORE, It is Ordered, Adjudged and Decreed;

1. That the Plaintiff, William B. Haskin, Jr.'s Complaint is hereby dismissed with costs awarded to the Defendants; and
2. That the Clerk of Court is hereby directed to cancel the Lis Pendens filed by the Plaintiff on November 8, 2013 against the property owned by Tracey M. Bozzelli located at 3029 Middle Street, known as lot 9, Block 12, Marshall Reservation.

AND IT IS SO ORDERED!

This 24 day of February, 2016
Anderson, S.C.



Roger M. Young
Presiding Judge
Ninth Judicial Circuit

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

William B. Haskin Jr.

Plaintiff,

v.

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

Defendants.

IN THE COURT OF COMMON PLEAS
2012-CP-10-6506

**ORDER DENYING IN PART &
GRANTING IN PART PLAINTIFF'S
MOTION TO ALTER AND/OR AMEND
ORDER**

FILED
2016 APR 29 PM 3:33
JULIE J. ARMSTRONG
CLERK OF COURT

The above captioned case came before this Court for trial on November 16, 17, 18, and 19, 2015, during a term of the Court of Common Pleas for Charleston County. Following trial, the parties were permitted to submit post-trial briefs. This Court rendered an Order of Judgment filed on February 5, 2016 with the Charleston County Clerk of Court's Office. The matter presently before this Court is Plaintiff's Motion to Alter and/or Amend Order filed on February 19, 2016.

STANDARD OF REVIEW

"The power to open, modify or vacate a judgment is possessed solely by the court that rendered the judgment." Coleman v. Dunlap, 306 S.C. 491, 494; 413 S.E.2d 15, 17 (1992). A Rule 59(e) motion is the proper "vehicle to request the trial court 'alter or amend the judgment,'" and "to seek 'reconsideration' of issues and arguments." Elam v. South Carolina Dept. of Transp., 361 S.C. 9, 21; 361 S.E.2d 772, 778 (2004). The Fourth Circuit has held "that Rule 59(e) motions can be successful in only three situations: (1) to accommodate an intervening change in controlling law; (2) to account for new evidence not available at trial; or (3) to correct a clear error of law or prevent manifest injustice." Zinkand v. Brown, 478 F.3d 634, 637 (4th

Cir. 2007) (internal citations omitted). Based on the issues raised in plaintiff's motion, the only ground applicable to plaintiff's motion to reconsider is whether this Court must alter or amend its decision "to correct a clear error of law or prevent manifest injustice." Zinkand 478 F.3d at 637.

DISCUSSION

This Court's response to Plaintiff's Motion to Alter and/or Amend Order is as follows:

- (1) To rule on and to make specific findings of fact and/or conclusions of law as to what specific Florida or South Carolina laws apply to this case and to what issues they apply.

GRANTED IN PART.

Partnership:

"A 'partnership' is an association of two or more persons to carry on as co-owners a business for profit" S.C. Code Ann. § 33-41-210 (2006). A partnership does not require a written agreement and may be inferred from conduct. Halbersberg v. Berry, 302 S.C. 97, 101; 394 S.E.2d 7, 10 (Ct. App. 1990). To determine if a partnership exists, the following tests have been used: "(1) the sharing of profits and losses; (2) community of interest in capital or property; and (3) community of interest in control and management." Id. Additionally, subject to exceptions not relevant here, sharing of "the profits of a business is prima facie evidence that he is a partner of the business" S.C. Code Ann. § 33-41-220(4) (2006).

As this Court's Order of Judgment indicates, over the past twenty (20) years, the plaintiff, William Haskin Jr. ("Haskin"), and the defendant Samuel W. Rhodes Jr. ("Rhodes") had formed various limited liability companies. Order of Judgment at 1-2 Haskin v. Rhodes, (2012-CP-10-6506). Each LLC would purchase an unimproved lot, build a home on the lot, and sell the improved lot to a third party. Id. The Form 1065 tax returns presented to this Court indicate the filings were made on behalf of the various



LLCs. Id. at 6. The schedule k-1s presented to this Court indicate that the members of these LLCs were Haskin and Rhodes Investments, Inc. ("Rhodes Investments"). Both the signed and unsigned operating agreements for these various LLCs indicate the members to be Haskin and Rhodes Investments. Id. at 5.

There was no overall "partnership." Rather, there were a series of joint ventures that were undertaken in the form of LLCs.

LLCs:

South Carolina law provides that "the laws of the State or other jurisdiction under which a foreign limited liability company is organized govern its organization and internal affairs and the liability of its managers, members, and their transferees." S.C. Code Ann. § 33-44-1001 (2006). One LLC at issue in this case was organized under the laws of the State of South Carolina. Order of Judgment at 2-3 Haskin v. Rhodes, (2012-CP-10-6506). The remaining three LLCs at issue in this case were organized under the law of the State of Florida. Id.

Station 22, LLC:

As this Court's Order of Judgment indicates, Station 22 is an LLC organized under the laws of the State of South Carolina in 2004. Id. at 3. South Carolina law does not require an operating agreement to be in writing. S.C. Code Ann. § 33-44-103(a) (2004). As the official comments note "[c]ourse of dealing, course of performance and usage of trade are relevant to determine the meaning of the agreement" Id. cmt.

Based on the findings of fact explained in this Court's Order of Judgment, this Court found that the agreement between the parties regarding the business operations of Station 22, LLC did not include one in which Rhodes or Rhodes Investments would



contribute to losses sustained by Haskin. Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

2624 Myrtle, LLC & 2802 Middle, LLC:

As this Court's Order of Judgment indicates, 2624 Myrtle, LLC and 2802 Middle were organized under the laws of the State of Florida in 2006. Id. at 2-3.

The 2006 Florida Statutes provided that "all members of a limited liability company may enter into an operating agreement, which need not be in writing, to regulate the affairs of the limited liability company and the conduct of its business" Fla. Stat. § 608.423(1) (2006). However, "[a] promise by a member to contribute to the limited liability company is not enforceable unless it is set out in writing signed by the member." Id. § 608.4211(2). Additionally, "the members, managers, and managing members of a limited liability company are not liable, solely by reason of being a member or serving as a manager or managing member . . . for a debt, obligation, or liability of the limited liability company." Id. § 608.4227(1).

Based on the findings of fact explained in this Court's Order of Judgment, this Court found that the agreement between the parties regarding the business operations of 2624 Myrtle, LLC, and 2802 Middle, LLC did not include one in which Rhodes or Rhodes Investments would contribute to losses sustained by Haskin. Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (2) To hold that Defendant Rhodes' disclosures to his wife in the Prenuptial Agreement prove that he personally owned a fifty percent capital interest in the companies at issue, that those disclosures are consistent with the tax returns and Schedule k-1s and that Rhodes, being the owner of an undiluted fifty percent capital interest in the companies, is liable for his fifty percent share of the losses as well as the profits of those entities.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).



- (3) To rule on and to make findings of fact and conclusions of law as to whether or not a partnership existed between Plaintiff Haskin and Defendant Samuel Rhodes, Jr. under South Carolina law and hold that the Haskin-Rhodes partnership exists.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (4) To hold that the evidence proves that a partnership existed between Haskin and Rhodes in which they agreed, orally and/or through a course of dealing, to share profits and losses equally.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (5) To hold that the Operating Agreements for 2624 Bayonne, LLC, 2624 Myrtle, LLC, 2802 Middle, LLC and Station 22 of Charleston, LLC were not followed by the parties but were, in fact, disregarded as proven by the evidence.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (6) To hold that the evidence of course of dealing and acquiescence between Haskin and Rhodes proves that Haskin and Rhodes had an agreement to share profits and losses equally and that Rhodes breached that agreement.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (7) To correct erroneous factual findings and errors of law involving Plaintiff's action for an Accounting and to hold that Plaintiff is entitled to the amount of the disparity between the partner's capital accounts as determined by Plaintiff's expert.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (8) To hold that Plaintiff is entitled to the remedy of unjust enrichment/Quantum Meruit/Restitution as an alternative to a finding of breach of contract.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (9) To hold that a fiduciary duty existed between Plaintiff Haskin and Defendant Samuel Rhodes, Jr. under South Carolina law and that Rhodes breached his fiduciary duty to Haskin.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (10) To hold that Plaintiff is entitled to the remedy of equitable contribution.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (11) To hold that the remedy of piercing the corporate veil of Rhodes Investments, Inc. is warranted in this case.

DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

- (12) To correct erroneous factual findings and errors of law involving Plaintiff's action to set aside a fraudulent conveyance and/or impose a constructive trust or attachment of proceeds and real property.

GRANTED IN PART.

This Court's Order of Judgment incorrectly placed the burden of proof on the plaintiff in this case involving a real property conveyance between two of the defendants, husband and wife, Samuel Rhodes and Tracey Bozzelli, respectfully. Order of Judgment Haskin v. Rhodes at 11-12, (2012-CP-10-6506). This Court strikes the entire section of its Order of Judgment entitled "(Fraudulent Action to Set Aside Conveyance Intended to Defraud Creditors)," and replaces as follows. Id.

"The Statute of Elizabeth 'does not limit its application to judgment creditors. Its protection also extends to other types of parties *defrauded* in connection with the conveyance of property.'" Judy v. Judy, 403 S.C. 203, 208; 742 S.E.2d 672, 675 (Ct. App. 2013) (emphasis added) (quoting Mathis v. Burton, 319 S.C. 261, 264; 460 S.E.2d



406, 408 (Ct. App. 1995)). This Court finds that based on the findings of fact and conclusions of law herein and in this Court's Order of Judgment, the defendants were not and are not indebted to the plaintiff Haskin for losses, contributions, or the sale of 1723 Middle Street. As such, Haskin, is not a judgment creditor of the defendants, nor has Haskin been defrauded by the conveyance of property between the defendants. Therefore, the Statute of Elizabeth is inapplicable.

- (13) To hold that Defendants are not entitled to an award of costs.

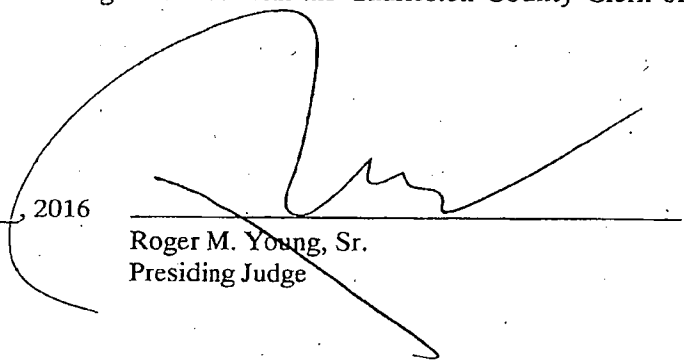
DENIED. See Discussion herein and Order of Judgment Haskin v. Rhodes, (2012-CP-10-6506).

CONCLUSION

This Court having considered the arguments, supporting documents, and based on same, this Order Amends this Court's Order of Judgment filed with the Charleston County Clerk of Courts on February 5, 2016.

AND IT IS SO ORDERED.

This _____ day of 4/28, 2016
Charleston, South Carolina



Roger M. Young, Sr.
Presiding Judge

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

William B. Haskin, Jr.,

Plaintiff,

vs.

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

Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2012-CP-10-6506

AFFIDAVIT OF
RICHARD T. LIVINGSTON, CPA/CFF, CFE, CVA

FILED

JAN 30 2015

JULIE J. ARMSTRONG
CLERK, C.P. & G.S.

PERSONALLY appeared before me Richard T. Livingston, CPA/CFF, CFE, CVA, who,
being duly sworn, deposes and states:

1. I am a Certified Public Accountant licensed by the State of South Carolina and the State of North Carolina.
2. I currently serve as a Director with the firm of Dixon Hughes Goodman, LLP in the Charleston, South Carolina office located at 525 East Bay Street, Charleston, South Carolina. My *curriculum vitae*, including education, professional experience and a listing of cases in which I have testified as an expert at trial or by deposition within the last 5 years is attached as Appendix A to this affidavit.
3. I was engaged by the law firm of Rosen, Rosen & Hagood, LLC to evaluate certain financial transactions of the parties to this matter and related entities.
4. A summary of the documents I have reviewed in this matter is attached as Appendix B to this affidavit.

ROA000192

5. My conclusions and opinions, and the basis for my conclusions and opinions, follow in this affidavit and are based on the information available to me as of the date of this affidavit.

Introduction and Background

6. Rhodes Investments, Inc. ("Rhodes Investments") is an IRS Subchapter S corporation organized under the laws of the State of South Carolina in July 2004. The sole shareholder of Rhodes Investments is believed at all times to have been Samuel "Sammy" W. Rhodes, Jr. ("Rhodes").
7. 2802 Middle Street, LLC ("2802 Middle") is a limited liability company organized under the laws of the State of Florida in February 2006. The members of 2802 Middle at all times are believed to have been William "Bill" Haskin ("Haskin") and Rhodes Investments. 2802 Middle was formed for the specific purpose of acquiring a lot located at 2802 Middle Street in Sullivan's Island, South Carolina and building a custom home on the property to be sold at a profit. The principal business activity/product or service of 2802 Middle is identified as real estate development.
8. 2624 Myrtle, LLC ("2624 Myrtle") is a limited liability company organized under the laws of the State of Florida in August 2006. The members of 2624 Myrtle at all times are believed to have been Haskin and Rhodes Investments. 2624 Myrtle was formed for the specific purpose of acquiring a lot located at 2624 Myrtle Avenue in Sullivan's Island, South Carolina and building a custom home on the property to be sold at a profit. The principal business activity/product or service of 2624 Myrtle is identified as real estate development.
9. Station 22 of Charleston, LLC ("Station 22") is a limited liability company organized

under the laws of the State of South Carolina in September 2004. The members of Station 22 at all times are believed to have been Haskin, Rhodes Investments, and Covington Property, Inc. Station 22 was formed for the specific purpose of acquiring a lot located at 22 Laffar Street in Daniel Island, South Carolina and building a custom home on the property to be sold at a profit. The principal business activity/product or service of Station 22 is identified as real estate development.

10. Haskin and Rhodes had a history of acquiring property, developing that property, and then selling it for a profit. In order to facilitate these transactions, separate LLCs would be formed.
11. The members of the LLCs would primarily be Haskin and Rhodes Investments. Examples of such are 2624 Bayonne, LLC, 1908 Middle Street, LLC, and 1914 Middle Street, LLC.
12. The IRS income tax returns for the above mentioned entities show a pattern of acquiring property, building on that property, and selling it for a profit.
13. The property located at 2624 Bayonne Street was sold on June 20, 2007 for \$ [REDACTED] with a reported gain of [REDACTED]. (Exhibit 1)
14. The property located at 1908 Middle Street was sold on July 10, 2007 for [REDACTED] with a reported gain of [REDACTED]. (Exhibit 2)
15. The property located at 1914 Middle Street was sold on August 16, 2007 for [REDACTED] with a reported gain of [REDACTED]. (Exhibit 3)
16. In all instances, the proceeds from the sales of the above referenced properties were used to repay the outstanding indebtedness of the LLC, repay the members for their contributed capital, and the remaining profits were disbursed to Haskin and Rhodes

Investments.

Rhodes Investments, Inc.

17. As previously noted in this affidavit, Rhodes Investments was incorporated in July 2004 and Rhodes is the sole shareholder.

18. The reason for the incorporation of this entity was identified in an e-mail from Rhodes'

[REDACTED]

follows (Exhibit 4):

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

19. [REDACTED] responded on May 1, 2004, stating, [REDACTED]

[REDACTED] (Exhibit 4)

20. Rhodes Investments was initially capitalized with [REDACTED]. No additional capital contributions were made.

21. I was unable to identify any expenses incurred by Rhodes Investments for insurance coverage.

22. Between July 2004 and December 2004, Rhodes Investments held an interest in the entity Pon on Sullivans Island, LLC. During this time period, distributions were made to Rhodes Investments from this entity totaling [REDACTED]

23. None of these funds were deposited into the account of Rhodes Investments.

24. In conjunction with the completion of the [REDACTED]
communicated with Rhodes [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

25. Even after this communication, Rhodes continued to disregard the entity by making investments directly to the various LLCs, paying expenses directly for the benefit of Rhodes Investments, and receiving distributions directly from the various LLCs.
26. In addition, Rhodes never paid himself a salary from Rhodes Investments even though he was the sole shareholder and officer.
27. Instead, Rhodes received all of the funds directly from the various LLCs, bypassing Rhodes Investments, or withdrew the funds that were deposited into Rhodes Investments as distributions.
28. By failing to pay himself a reasonable salary, Rhodes did not pay any of the applicable payroll taxes on his earnings.
29. Between 2004 and 2007, distributions of approximately [REDACTED] were reported from the various LLCs to Rhodes Investments.
30. Approximately [REDACTED] of these distributions was reported as being deposited into the bank account of Rhodes Investments.

31. Of this amount, approximately [REDACTED] was distributed to Rhodes and [REDACTED] was contributed to the LLCs.
32. As of the end of 2007, Rhodes Investments reported the following assets, liabilities, and equity:

	As of 12/31/2007
Cash	\$ [REDACTED]
Investments in LLCs	[REDACTED]
Total Assets	\$ [REDACTED]
Liabilities	\$ -
Capital Stock	[REDACTED]
Retained Earnings	[REDACTED]
Total Liabilities & Equity	\$ [REDACTED]

33. During 2007, construction was completed on the homes located at 2802 Middle Street and 22 Lafar Street. Construction on 2624 Myrtle Avenue was completed in early 2008.
34. The combined reported debt incurred on the construction of these custom homes at the end of 2007 was approximately [REDACTED].
35. The economic recession that officially began in December 2007 severely affected the real estate market, and the parties were not able to sell the properties in the time frame or at the values they had anticipated.
36. The LLCs had no income producing activities. As a result, the parties would have to fund the carrying costs associated with the properties (debt service, taxes, utilities, maintenance, etc.) until the properties could be sold.

37. During the time period 2008 – 2011, Haskin contributed approximately [REDACTED] to fund the LLCs.
38. During this same time period, contributions of approximately [REDACTED] were recorded as being made by Rhodes.
39. All of these contributions were made directly by Rhodes and not Rhodes Investments.
40. The excess funding of these costs by Haskin is discussed elsewhere in this affidavit.
41. During 2008, Rhodes continued to withdraw funds from Rhodes Investments. By the end of 2008, the balance of the cash account had been reduced from approximately [REDACTED] to [REDACTED] (Exhibit 6)
42. In January 2009, Rhodes withdrew [REDACTED], reducing the balance of the cash account of Rhodes Investments to exactly [REDACTED].
43. With the exception of bank fees, no additional activity has occurred in this account through January 2014.
44. Between 2010 and 2013, the operating expenses of Rhodes Investments have been paid directly by Rhodes and were reported by Mr. Dupree on the books of Rhodes Investments as a loan from Rhodes.
45. It does not appear books and records for Rhodes Investments were maintained in the ordinary course of business.
46. Based on the documents provided, it appears at the end of each calendar year, Mr. Dupree would endeavor to obtain the bank statements for Rhodes Investments, the expenses paid directly by Rhodes for the benefit of Rhodes Investments, and the tax returns of the various LLCs that Rhodes Investments was reported as being a member in.

47. From this information, Mr. Dupree would attempt to reconstruct the financial activity and prepare an income tax return for Rhodes Investments.
48. On April 1, 2009, another IRS Subchapter S corporation was formed; being Rhodes Residential Builders, LLC ("Rhodes Residential") with Rhodes as the sole shareholder. Rhodes Residential appears to have become the primary operating entity for Rhodes.
49. Between May 27, 2009 and October 29, 2009, Rhodes deposited [REDACTED] of personal funds into Rhodes Residential. (Exhibit 7)

Excess Funding by Haskin

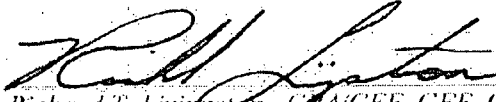
50. As previously noted, the members of 2802 Middle and 2624 Myrtle were Rhodes Investments and Haskin.
51. According to the income tax returns of these entities, between 2006 and 2011, Haskin contributed [REDACTED] and Rhodes Investments contributed [REDACTED] (Exhibit 8)
52. Approximately 88% of the contributions made by Haskin were made after December 2007, compared to 82% for Rhodes Investments after December 2007.
53. If the contributions to cover the losses had been made equally, then Haskin has advanced [REDACTED] of Rhodes' share of the contributions to cover the losses.
54. Also, as previously noted the members of Station 22 of Charleston, LLC were Haskin, Rhodes Investments, and Covington Property, Inc. (an unrelated third party).
55. According to the income tax returns of these entities, between 2006 and 2011, Haskin contributed [REDACTED], and Rhodes Investments contributed [REDACTED], and Covington Property contributed [REDACTED] (Exhibit 9)

56. Approximately 51% of the contributions made by Haskin were made after December 2007, 100% of those made by Rhodes Investments, and 67% of those of made by Covington Property.
57. If the contributions to cover the losses had been made equally, then Haskin has advanced [REDACTED] of Rhodes' share of the contributions to cover the losses.

Opinions & Basis

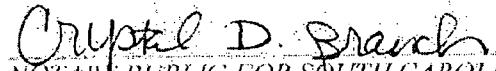
58. The entity Rhodes Investments appears to have been established for the sole purpose of providing additional liability protection to Rhodes individually and to be used as a vehicle to minimize Rhodes' self-employment taxes.
59. From its inception, it does not appear any real consideration was given to the existence of the entity by Rhodes.
60. Rhodes Investments was initially capitalized with a [REDACTED] investment and no additional capital was contributed, and it does not appear sufficient capital was maintained to satisfy the liabilities of Rhodes Investments in the ordinary course of business.
61. Funds due Rhodes Investments were routinely received directly by Rhodes and, as anticipated by Mr. Dupree, the funds that were deposited into Rhodes Investments were then distributed for the benefit of Rhodes.
62. Based on the income tax returns provided to date, it appears Haskin has advanced [REDACTED] of Rhodes' share of the contributions to cover the losses of 2802 Middle, 2624 Myrtle, and Station 22.

FURTHER AFFIANT SAITH NOT!



Richard T. Livingston, CPA/CFF, CFE, CVA

SWORN to before me this
22nd day of January 2015



NOTARY PUBLIC FOR SOUTH CAROLINA

11

ROA000202

Affidavit of Richard Livingston, CPA/CFF, CFE, CVA

The following Exhibits have been filed for "In Camera Review Only" in accordance with the parties Consent Confidentiality Order filed July 19, 2013:

- Exhibit 1 -** Form 1065 – 2624 Bayonne, LLC
Year 2007
- Exhibit 2 -** Form 1065 – 1908 Middle Street, LLC
Year 2007
- Exhibit 3 -** Form 1065 – 1914 Middle Street, LLC
Year 2007
- Exhibit 4 -** Emails between Billy Hennessy and Carl Dupree regarding Rhodes Investments, Inc.
- Exhibit 5 -** Memo from Carl Dupree to Sam Rhodes regarding conducting business as Rhodes Investments
- Exhibit 6 -** Rhodes Investments, Inc. cash account balance at the end of 2008
- Exhibit 7 -** Rhodes' deposits of personal funds into Rhodes Residential
- Exhibit 8 -** Form 1065 – 2802 Middle Street, LLC
Years 2006 – 2011

Form 1065 – 2624 Myrtle, LLC
Years 2007 – 2011
- Exhibit 9 -** Form 1065 – Station 22 of Charleston, LLC
Years 2007 – 2010

Island, South Carolina, where we acquired and developed 2914 Marshall Boulevard, 29 P'on Avenue, 1723 Middle Street, 18 P'on Avenue, 2802 Middle Street, 2624 Myrtle Avenue, 2624 Bayonne Street, 1908 Middle Street, and 1914 Middle Street. We formed the following entities to own and manage the above referenced projects:

- i. Rhodes-Haskin Development Company, Inc., a South Carolina corporation, as to 2914 Marshall Boulevard and a few previously on Isle of Palms;
- ii. 29th P'on, LLC, a South Carolina limited liability company;
- iii. 1723 Middle Street-HR, LLC, a South Carolina limited liability company;
- iv. 2802 Middle Street, LLC, a Florida limited liability company;
- v. 2624 Myrtle Avenue, LLC, a Florida limited liability company;
- vi. 2624 Bayonne, LLC, a Florida limited liability company;
- vii. 1908 Middle, LLC, a Florida limited liability company;
- viii. P'on Sullivan's Island, LLC, a Florida limited liability company; and
- ix. 1914 Middle Street, LLC, a Florida limited liability company.

6. The structure of each of these joint ventures was virtually the same; I would secure the necessary financing to purchase the desired parcel, obtain a construction loan, and fund any shortfall during construction. Sammy Rhodes' duties included, but were not limited to constructing and managing the project on a day-to-day basis and paying all subcontractors. He would also send monthly cancelled checks to Debbie Eures, our bookkeeper, to post. Once the project was completed and sold to a third party, I would first be reimbursed for the costs I advanced and then we split the profits equally. This was our *modus operandi* and course of dealing.

7. From 1994 until November 4, 2011, Sammy Rhodes and I repeated this process

many times over, with myself investing millions of dollars and Sammy Rhodes never investing any significant funds, in various pieces of raw land, building houses on those parcels, reimbursing myself for my investment of money, and then earning a substantial profit on the sale of the home to a third party.

8. The members of the various companies would primarily be me and Sammy Rhodes/Rhodes Investments.

9. Six of the above projects were successful projects in that the money for which they were sold exceeded the expenses and financing costs associated with the given project.

10. Examples of such successful projects are 2624 Bayonne, LLC, 1908 Middle Street, LLC, and 1914 Middle Street, LLC.

11. The property located at 2624 Bayonne Street was sold on June 20, 2007 for [REDACTED] [REDACTED]. A copy of this tax return is attached as **Exhibit 1** hereto; see also Affidavit of Richard T. Livingston, CPA/CFF, CFE, CVA, dated January 22, 2015, ¶ 13, Exhibit 1.

12. The property located at 1908 Middle Street was sold on July 10, 2007 for [REDACTED]. A copy of this return is attached as **Exhibit 2** hereto; see also Livingston Affidavit, ¶ 14, Exhibit 2.

13. The property located at 1914 Middle Street was sold on August 16, 2007 for [REDACTED]. A copy of this return is attached as **Exhibit 3** hereto; see also Livingston Affidavit, ¶ 15, Exhibit 3.

14. In every case, we would take the proceeds from the sales of the above referenced properties to repay the outstanding indebtedness of the particular LLC, repay the members for their contributed capital, and the remaining profits were disbursed to me and Rhodes

Investments. See also Livingston Affidavit, ¶ 16.

15. Four projects, the one to acquire and develop 2624 Myrtle Avenue Sullivan's Island, South Carolina, known as 2624 Myrtle Avenue, LLC ("2624 Myrtle"), the one to acquire and develop 2802 Middle Street Sullivan's Island, South Carolina, known as 2802 Middle Street, LLC ("2802 Middle"), and 1723 Middle Street, Sullivan's Island, South Carolina 29451 known as 1723 Middle Street-HR, LLC (formerly 1723 Middle Street, LLC) ("1723 Middle") and the one to acquire and develop 22 Lafar Avenue, Daniel Island, South Carolina, known as Station 22 of Charleston, LLC ("Station 22") are the subject of this lawsuit.

16. We never executed any operating agreements for any of these projects to my knowledge, although several drafts were circulated amongst us. Upon review of the Defendants' Answer to my Amended Complaint, I noticed that Sammy Rhodes admitted this fact. It was always our agreement that we would share profits and losses equally.

17. We completed construction on the homes located at 2802 Middle Street and 22 Lafar Street in 2007. Construction on 2624 Myrtle Avenue was completed in early 2008. The combined reported debt incurred on the construction of these custom homes at the end of 2007 was approximately [REDACTED].

18. Due to the severe economic recession that began in December 2007, we were not able to sell the properties in the time frame or at the prices we had anticipated.

19. We would have to fund the carrying costs associated with the properties until the properties could be sold. These carrying cost included debt service, taxes, utilities, maintenance, and similar expenses. See also Livingston Affidavit, ¶ 36.

20. During the time period 2008 — 2011, I contributed approximately [REDACTED] to fund these companies. During this same time period, Sammy Rhodes contributed approximately

██████████, which contributions he made personally and not through Rhodes Investments, Inc.

21. The years of tax returns and other documentation bear out the fact that Sammy Rhodes and I always shared losses equally. Attached hereto as **Exhibit 4** are the Form 1065 Partnership Tax Returns for 2802 Middle, LLC and 2624 Myrtle, LLC for the relevant time periods, 2006-2011. A review of these returns reveals that I was an equal partner with Samuel Rhodes, Jr. in these companies. For example, if you review Schedule B-1, page 6 of the 2624 Myrtle 2010 and 2011 tax return, it reveals that Rhodes Investments, Inc. is a fifty percent (50%) owner in the company and I am a fifty percent (50%) owner, with each of us responsible for a "Maximum Percentage Owned in Profit, Loss or Capital" of 50.00 %. See Exhibit 5. The same is true for 2802 Middle Street. If you review Schedule B-1, page 7 of the 2802 Middle 2010 tax return, it reveals that Rhodes Investments, Inc. is a fifty percent (50%) owner in the company and I am a fifty percent (50%) owner, with each of us responsible for a "Maximum Percentage Owned in Profit, Loss or Capital" of 50.00 %. See Exhibit 6. For Station 22, one need only look at the various Schedule K-1's for 2007 included in its tax returns that list myself, Jim Covington and Rhodes Investments as one third (1/3) partners. See Exhibit 7.

22. Our company, 2624 Myrtle purchased the property at 2624 Myrtle Avenue for ██████████ on September 19, 2006. I secured the necessary financing from Atlantic Bank & Trust to acquire the property, my equity line from Regions Bank was utilized to fund construction and Sammy Rhodes constructed the improvements thereon (the "2624 Myrtle Property").

23. On November 3, 2011, 2624 Myrtle finally sold the 2624 Myrtle Property to Robert and Sonya Richardson for ██████████

██████████ After closing costs, three (3) years of taxes ██████████ insurance

████████ punch list items █████████, interest of █████████ per month for █████████ months totaling █████████ the company had invested a total of █████████ in the 2624 Myrtle Property.

24. The net proceeds from the sale totaled █████████. The result of this project was a loss of approximately █████████.

25. Our company, 2802 Middle purchased the property at 2802 Middle Street for █████████ on March 3, 2006 for which I, as was customary, secured the necessary financing (from Tidelands Bank and First Citizens Bank and Trust Company, Inc.) to acquire the property and fund construction and Sammy Rhodes constructed the improvements thereon.

26. We tried to sell 2802 Middle for many months to no avail. On October 12, 2011, 2802 Middle finally sold the 2802 Middle Property to James and Julie Paquette for █████████. Closing costs included █████████, a payment of █████████ which payment I made out-of-pocket, as well as other typical closing costs.

27. The net proceeds from the sale totaled █████████. 2802 Middle had tried to sell the 2802 Middle Property for over three (3) years to █████████ and over that period the company incurred costs of over █████████ all of which I

handled personally. The result of this speculative project was that the company lost approximately [REDACTED].

28. Sammy Rhodes and I operated 2802 Middle pursuant to and in accordance with our agreement to share profits and losses equally, with me providing the financial support and Rhodes constructing the new homes and improvements.

29. Our company, Station 22 of Charleston, LLC ("Station 22") was an LLC between myself, Samuel Rhodes, and Covington Property, Inc., a company wholly owned by Mr. James Covington, Sr. Covington Property and I each own a thirty three and three tenths percent (33.3%) ownership interest and Sammy Rhodes owns a thirty three and four tenths percent (33.4%) ownership interest in the company. Sammy Rhodes admitted this in his Answer to my Amended Complaint. Jim Covington and I took title to the 22 Lafar Property and then conveyed it to Station 22.

30. We never executed an operating agreement to govern our relationship in Station 22. While a draft operating agreement dated September 28, 2004 exists, it was never executed to my knowledge. Sammy Rhodes also admitted this fact in his Answer to my Amended Complaint. We all agreed to share profits and losses equally between the three of us. Covington and Haskin acquired the necessary financing for the construction loan and Rhodes constructed the improvements thereon. The Station 22 partnership tax returns for 2007-2011 make our arrangement abundantly clear. See Livingston Affidavit, Exhibit 9.

31. We tried to sell 22 Lafar for many months but were unable to secure a buyer. As a result, Regions Bank commenced foreclosure proceedings on the property. During this time, I funded half of the carrying costs and expenses associated with Station 22's ownership as did Jim Covington, with the understanding that I, Jim Covington and Samuel Rhodes would be

responsible for each of our one third (1/3) share of these losses.

32. Station 22 entered into a deed-in-lieu of foreclosure with Regions Bank on March 25, 2013, which deed was recorded on July 30, 2013 at Book R Vol. 10280 page 205 in the Register of Deeds for Berkeley County. I paid [REDACTED] out-of-pocket for carrying costs and expenses on this property, [REDACTED] of which is owed to me by Sammy Rhodes.

33. As soon as construction was complete on 2802 Middle and 2624 Myrtle, Defendant Rhodes and I discussed my funding the carrying costs on the projects and that he agreed he was responsible for his share of the losses. I had the same conversations with Sammy Rhodes and Jim Covington as to Station 22 -- that the three of us would share the losses equally one third each. Both Jim and I advanced a portion of Sammy's share of these losses.

34. During the time period 2008 — 2011, I contributed approximately [REDACTED] to fund 2802 Middle and 2624 Myrtle. During this same time period, Samuel Rhodes made contributions of approximately [REDACTED].

35. As reflected in the income tax returns of 2624 Myrtle and 2802 Middle, between 2006 and 2011, I contributed \$[REDACTED] and Rhodes Investments contributed [REDACTED]. See Livingston Affidavit, ¶ 51, Exhibit 8.

36. If the contributions to cover the losses had been made equally as they should have been, then I advanced [REDACTED] of Rhodes' share of the contributions to cover the losses associated with these projects.

37. As to Station 22, between 2006 and 2011, I contributed [REDACTED] and Rhodes

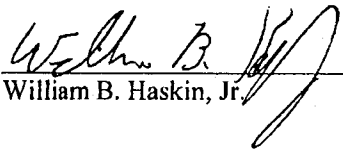
Investments contributed [REDACTED], and Covington Property contributed [REDACTED] to Station 22. See Livingston Affidavit, ¶ 55, Exhibit 9.

38. I advanced [REDACTED] of Rhodes' share of the contributions to cover the losses for Station 22.

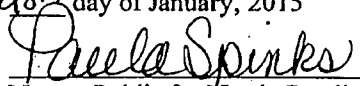
39. According to Richard Livingston of Dixon Hughes Goodman, Defendant Rhodes owes me [REDACTED]
[REDACTED] in out-of-pocket costs for his share of the losses which I advanced to the Companies on Rhodes' behalf. See Livingston Affidavit, ¶ 62.

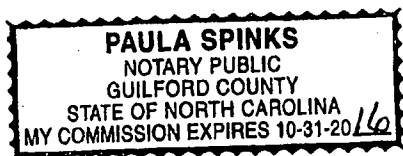
40. As Mr. Livingston's affidavit reflects, Sammy Rhodes is responsible for [REDACTED] of the shortfall as to 2802 Middle and 2624 Myrtle, and [REDACTED] as to Station 22, for a total of [REDACTED] that I advanced on his behalf. See Livingston Affidavit, ¶¶ 53, 62.

FURTHER AFFIANT SAYETH NOT.


William B. Haskin, Jr.

SWORN to before me this
28th day of January, 2015


Notary Public for North Carolina
My commission expires: 10/31/2016



Affidavit of William B. Haskin, Jr.

The following Exhibits have been filed for "In Camera Review Only" in accordance with the parties Consent Confidentiality Order filed July 19, 2013:

Exhibit 1 - Form 1065 – 2624 Bayonne, LLC
Year 2007

Exhibit 2 - Form 1065 – 1908 Middle Street, LLC
Year 2007

Exhibit 3 - Form 1065 – 1914 Middle Street, LLC
Year 2007

Exhibit 4 - Form 1065 – 2802 Middle Street, LLC
Years 2006 – 2011

Form 1065 – 2624 Myrtle, LLC
Years 2007 – 2011

Form 1065 – Station 22 of Charleston, LLC
Years 2007 – 2010

Exhibit 5 - Schedule B-1 – 2624 Myrtle, LLC
2010 and 2011

Exhibit 6 - Schedule B-1 – 2802 Middle Street, LLC
2010

Exhibit 7 - Schedule K-1 – Station 22 of Charleston, LLC
Year 2007
William B. Haskin, Jr.
Rhodes Investments, Inc.
Covington Property, Inc.

IN THE COURT OF COMMON PLEASE
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO. 2012-CP-10-6506

Plaintiff,

VS.

Defendants.

**SUPPLEMENTAL AFFIDAVIT OF
RICHARD T. LIVINGSTON, CPA/CFF, CFE, CVA**

FILED
2015 APR 16 PM 3:55
JULIE J. ARMSTRONG
CLERK OF COURT

1. I am a Certified Public Accountant licensed by the State of South Carolina and the State of North Carolina. ;
2. I currently serve as a Director with the firm of Dixon Hughes Goodman, LLP in the Charleston, South Carolina office located at 525 East Bay Street, Charleston, South Carolina. My *curriculum vitae*, including education, professional experience and a listing of cases in which I have testified as an expert at trial or by deposition within the last 5 years is attached as Appendix A to this affidavit.
3. I was engaged by the law firm of Rosen, Rosen & Hagood, LLC to evaluate certain financial transactions of the parties to this matter and related entities.
4. My conclusions and opinions, and the basis for my conclusions and opinions, follow in this affidavit and are based on the information available to me as of the date of this

ROA000214

affidavit.

Introduction and Background

5. Rhodes Investments, Inc. ("Rhodes Investments") is an IRS Subchapter S corporation incorporated under the laws of the State of South Carolina in July 2004. The sole shareholder of Rhodes Investments is believed at all times to have been Samuel "Sammy" W. Rhodes, Jr. ("Rhodes").
6. 2802 Middle Street, LLC ("2802 Middle") is a limited liability company organized under the laws of the State of Florida in February 2006. The members of 2802 Middle at all times are believed to have been William "Bill" Haskin ("Haskin") and Rhodes Investments. 2802 Middle was formed for the specific purpose of acquiring a lot located at 2802 Middle Street in Sullivan's Island, South Carolina and building a custom home on the property to be sold at a profit. The principal business activity/product or service of 2802 Middle is identified as real estate development.
7. 2624 Myrtle, LLC ("2624 Myrtle") is a limited liability company organized under the laws of the State of Florida in August 2006. The members of 2624 Myrtle at all times are believed to have been Haskin and Rhodes Investments. 2624 Myrtle was formed for the specific purpose of acquiring a lot located at 2624 Myrtle Avenue in Sullivan's Island, South Carolina and building a custom home on the property to be sold at a profit. The principal business activity/product or service of 2624 Myrtle is identified as real estate development.
8. Station 22 of Charleston, LLC ("Station 22") is a limited liability company organized under the laws of the State of South Carolina in September 2004. The members of Station 22 at all times are believed to have been Haskin, Rhodes Investments, and

Covington Property, Inc. Station 22 was formed for the specific purpose of acquiring a lot located at 22 Lafar Street in Daniel Island, South Carolina and building a custom home on the property to be sold at a profit. The principal business activity/product or service of Station 22 is identified as real estate development.

9. Haskin and Rhodes had a history of acquiring property, developing that property, and then selling it for a profit. In order to facilitate these transactions, separate LLCs would be formed.
10. The members of the LLCs would primarily be Haskin and Rhodes Investments. Examples of such are 2624 Bayonne, LLC, 1908 Middle Street, LLC, and 1914 Middle Street, LLC.
11. The IRS income tax returns for the above mentioned entities show a pattern of acquiring property, building on that property, and selling it for a profit.
12. The property located at 2624 Bayonne Street was sold on June 20, 2007 for \$3,720,000 with a reported gain of \$286,986.
13. The property located at 1908 Middle Street was sold on July 10, 2007 for \$3,000,000 with a reported gain of \$567,817.
14. The property located at 1914 Middle Street was sold on August 16, 2007 for \$3,050,000 with a reported gain of \$385,876.
15. In all instances, the proceeds from the sales of the above referenced properties were used to repay the outstanding indebtedness of the LLC, repay the members for their contributed capital, and the remaining profits were disbursed to Haskin and Rhodes Investments.

Operating Agreements

16. No signed operating agreements appear to exist for the various LLC's formed by Haskin and Rhodes, with the exception of 2624 Bayonne, LLC.
17. Even though an operating agreement was signed for 2624 Bayonne, LLC, it does not appear Haskin or Rhodes followed the agreement.
18. The operating agreement stated that no additional capital contributions were required to be made beyond the initial contributions.
19. Rhodes and Haskin each contributed approximately \$50,000 in 2006.
20. Rhodes and Haskin each made additional capital contributions in 2007 of \$6,000 and \$107,664, respectively.
21. The operating agreement also provided for the calculation of a preferential return account equal to 6% of the average daily balance of each Member's Net Capital Investment.
22. Even though Haskin contributed 73% of the capital, no preferential return was provided to Haskin.
23. In fact, when the property was sold in 2007, a larger percentage of the gain was allocated to Rhodes, thereby allowing Rhodes to take a larger distribution and to provide for equal ending capital accounts between the two members.
24. Unsigned operating agreements that mirror the signed operating agreement of 2624 Bayonne, LLC do exist for 2624 Myrtle, LLC and 2802 Middle, LLC.
25. Even though these unsigned operating agreements have the same language regarding additional capital contributions, both Rhodes and Haskin continued to contribute after the initial funding of these LLCs.
26. After the initial capital contributions, Haskin made additional capital contributions of

approximately \$1.2 million and Rhodes made approximately \$50,000 of additional capital contributions.

27. Again, no Preferential Return Account was calculated for the excess funding by Haskin, and none is claimed in the calculation of damages.
28. From an accounting standpoint, it does not appear the Members followed the language of the signed or unsigned operating agreements when conducting their business.

Allocation of Losses on Schedule K-1s

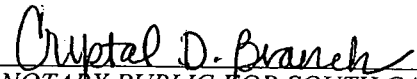
29. The three entities that are the subject of this litigation are "flow through entities" whereby the profits or losses are reported on the respective member's personal income tax returns.
30. This reporting is done through Schedule K-1.
31. Schedule K-1 reports an allocation percentage each year for profit, loss, and capital.
32. It is Haskin's testimony that profit and losses were to be shared equally between Rhodes and Haskin.
33. The Schedule K-1s do not always allocate the losses equally between Haskin and Rhodes.
34. The allocation of losses for tax purposes was done based upon which member funded the loss each year, which is allowable and not uncommon.
35. For instance, Haskin was allocated 100% of the loss in 2008 of 2802 Middle Street, LLC because he contributed 100% of the capital in 2008.
36. In 2009, Rhodes contributed approximately 3% of the capital and was allocated approximately 3% of the loss.
37. In 2010, Haskin contributed 100% of the capital and was allocated 100% of the loss.
38. In 2010, Haskin contributed approximately \$400,000 to 2802 Middle Street, LLC and Rhodes did not make any contributions.

39. Had Rhodes contributed \$200,000 of the \$400,000 in 2010, Haskin would have been allocated 50% of the loss and Rhodes would have been allocated 50% of the loss.
40. The fact that Haskin was allocated and deducted losses he was forced to fund does not contradict his testimony that these costs were to have been shared equally.
41. Even though the profit and loss percentages were changed each year on the K-1s, the evenly shared capital percentages were not. This provides further indication Haskin's excess contributions were not done with the expectation of diluting Rhodes' capital percentage, but that Haskin was funding the shortfall on behalf of Rhodes.

FURTHER AFFIANT SAITH NOT!


Richard T. Livingston, CPA/CFF, CFE, CVA

SWORN to before me this
15th day of April 2015


NOTARY PUBLIC FOR SOUTH CAROLINA

Appendix A

RICHARD T. LIVINGSTON, CPA/CFF, CFE, CVA ***CURRICULUM VITAE***

EDUCATION: The Citadel Military College of South Carolina
Charleston, South Carolina
B.S. Accounting & Business Administration, 2000

**LICENSES &
ACCREDITATIONS:** Certified Public Accountant (CPA), Licensed in SC and NC
Certified in Financial Forensics (CFF)
Certified Fraud Examiner (CFE)
Certified Valuation Analyst (CVA)
Private Investigator, Licensed in South Carolina

ASSOCIATIONS: Member: South Carolina Association of CPAs (SCACPA)
Member: North Carolina Association of CPAs (NCACPA)
Member: American Institute of Certified Public Accountants
Member: Association of Certified Fraud Examiners (ACFE)
Member: National Association of Certified Valuators and Analysts

**PROFESSIONAL
EXPERIENCE:** **Director:** Dixon Hughes Goodman LLP
Public Accounting Practice
Charleston, South Carolina, 2001 – Present

Staff Accountant: McLain, Moise & Associates, PC
Public Accounting Practice
Charleston, SC, 2000 – 2001

**COMMITTEES
AND BOARDS:** Board of Directors – Pinewood Preparatory Academy, 2012 - Present
Young CPAs Leadership Cabinet – South Carolina Association of CPAs,
2009
Board of Directors / Treasurer – Dee Norton Low Country Children's Center,
2009 – 2012
Board of Directors – The Next Child Fund, 2009 – 2012
Stewardship Committee Chair – Old Fort Baptist Church, 2007 – 2012
Board of Directors / Treasurer – Community Impact for Christ, 2011 -
Present
Board of Directors – March of Dimes, South Carolina Chapter, Low Country
Division, 2009
Board of Directors / Treasurer – Briarwood Civic Association, 2006 – 2008

RICHARD T. LIVINGSTON, CPA/CFF, CFE, CVA

Depositions and Testimony

Trask v. Trask – Forensic accounting for partnership dispute. Beaufort County Master-In-Equity Court, South Carolina, March 2006.

Trask and Trask vs. J.D. Shirley, LLC, Shirley, Bell, and Trask – Forensic accounting and accounting standards litigation. Beaufort County, South Carolina, May 2007, August 2007.

Jones vs. Gressette, and Sunset Grille, Inc. – Forensic accounting for shareholder dispute. United States District Court, District of South Carolina, Charleston Division, May 2008

Ferguson-Majors v. Majors – Forensic accounting services related to marital dissolution. Charleston County Family Court, South Carolina, Ninth Judicial Circuit, September 2008.

State of South Carolina v. Albert J. Salmon, Jr. – Forensic accounting services for criminal tax evasion. South Carolina General Sessions Court, Charleston County, December 2008.

Brandriff, et al. vs. Dataw Island Owners' Association, Inc., et al. – Forensic accounting services for homeowner association litigation. United States District Court, District of South Carolina, Beaufort Division, May 2009.

Glaze vs. Trademark Properties, Inc., and Davis – Forensic accounting services for independent contractor compensation dispute. South Carolina Court of Common Pleas, Charleston County, July 2009.

Walker, Trustee under the Last Will and Testament of Margaret P. Matthews vs. Them Furniture Company, Inc., Tileston, Powell, Powell, and Jordan – Forensic accounting services for shareholder dispute. South Carolina Court of Common Pleas, Charleston County, January 2010.

Godowns v. Brush Construction, Inc. – Forensic accounting services for construction dispute. South Carolina Court of Common Pleas, Charleston County, April 2010, May 2013

Beeson v. Beeson – Forensic accounting services related to bankruptcy hearing. United States Bankruptcy Court, District of South Carolina, Spartanburg Division, July 2010.

Fortson and Fortson v. Quality Haulers, Inc., Brown, and Brown – Forensic accounting services for personal injury case. South Carolina Court of Common Pleas, Spartanburg County, October 2010.

Deyermund v. Zeisler – Forensic accounting services related to marital dissolution. Beaufort County Family Court, South Carolina, Fourteenth Judicial Circuit, May 2011.

Palmetto Orthodontics & TMJ, PA vs. Keith W. Wickizer d/b/a Wickizer Orthodontics – Forensic accounting services for independent contractor dispute. South Carolina Court of Common Pleas, Ninth Judicial Circuit, Charleston County, August 2011.

Grand Jury – Forensic accounting services. United States District Court, Middle District of Georgia, September 2011

Godowns v. Brush – Forensic accounting services related to construction litigation. United States Bankruptcy Court, District of South Carolina, October 2011.

North Carolina Credit Union Division v. Greater Kinston Credit Union – Forensic accounting services related to credit union investigation. North Carolina Credit Union Division, Administrative Hearing, March 2012.

Beeson v. Beeson – Forensic accounting services related to marital dissolution. Anderson County Family Court, South Carolina, Tenth Judicial Circuit, October 2012.

State of South Carolina v. Elizabeth Limehouse Griffith – Forensic accounting services for breach of trust. South Carolina General Sessions Court, Charleston County, November 2012.

Frank Gordon, Jr. as Attorney-in-Fact for Dorothy Gordon vs. Jessie B. Atkinson Individually, and as Personal Representative of the Estate of Effie D. Drews; Donld W. Lancaster; and Shirrese Brockington as Special Administrator of the Estate of Rudolph Robert Drews – Forensic accounting services for collection of judgment. South Carolina Court of Common Pleas, Ninth Judicial Circuit, Charleston County, June 2013.

St. Stephen Family Dentistry, LLC v. Linda Gregg and Douglas Allen Kaufman – Forensic accounting services for employee embezzlement. South Carolina Court of Common Pleas, Berkeley County, October 2013.

Dyce vs. South Carolina ENT, Allergy & Sleep Medicine, P.A. and Puchalski – Forensic accounting services for shareholder dispute. South Carolina Court of Common Pleas, Kershaw County, November 2013.

McKinley, Cooper & Company, LLC vs. J. Todd Highsmith, Shane Highsmith, and Highsmith & Highsmith, LLC – Forensic accounting services for dissociation of former employees. South Carolina Court of Common Pleas, Greenville County, November 2014, December 2014

Cecilia Kinast Salas v. Patricia Kinast a/k/a Patty Kinast – Forensic accounting services for diminution of estate. United States District Court, Southern District of Florida, Miami Division, January 2015.

Anne Seay-Jones v. Willard Merlin Jones – Court appointed Sequestrator for dissolution of marriage. Charleston County Family Court, South Carolina, Ninth Judicial Circuit, February 2015.

William Reed, et al. vs. Big Water Resort, LLC, et al. – Forensic accounting for class action. United States District Court, District of South Carolina, Charleston Division, March 2015.

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

VIDEOTAPE DEPOSITION OF SAMUEL W. RHODES, JR.

WILLIAM B. HASKIN, JR.,

Plaintiff,

vs.

Case No. 2012-CP-10-6506

SAMUEL W. RHODES, JR.,
RHODES INVESTMENTS, INC.,
RHODES CONSULTING, LLC, and
TRACEY M. BOZZELLI,

Defendants.

DEPONENT: SAMUEL W. RHODES, JR.

DATE: OCTOBER 13, 2015

TIME: 9:43 AM

LOCATION: ROSEN HAGOOD, LLC
CHARLESTON, SOUTH CAROLINA

REPORTED BY: JULIE K. LYLE, RPR/RMR/CRR
Registered Merit Reporter
Certified Realtime Reporter

CLARK & ASSOCIATES, INC.
P.O. Box 73129
Charleston, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM

1 to that project?

2 A I've already answered that
3 question.

4 Q Can you answer it again?

5 A Sure. I would build the home,
6 provide the sweat equity, and Bill would
7 provide the financing and be responsible for
8 the money.

9 Q Are you familiar with any document,
10 any writing anywhere that outlines that
11 agreement?

12 A On that property, no.

13 Q Are you familiar with any document
14 that outlines any of your agreements with
15 Bill Haskin?

16 A Yes.

17 Q What documents are you talking
18 about?

19 A The operating agreement for 2624
20 Bayonne. The operating agreement for 2802
21 Middle Street. The operating agreement for
22 2624 Myrtle.

23 Q All right. Let's go over those
24 again. 2624 Bayonne?

25 A Bayonne.

1 Q What's the next one?

2 A 2802 Middle Street. 2624 Myrtle.

3 Q Two of these properties have the
4 address of 2624, Bayonne and Myrtle?

5 A Yes, sir.

6 Q They're both 2624?

7 A Yes.

8 Q And the other one is 2802?

9 A Middle Street.

10 Q Middle?

11 A Yeah.

12 Q Okay. And what documents are there
13 related to those entities?

14 A The operating agreements that you
15 provided us.

16 Q Are those signed?

17 A One of them is signed.

18 Q Do those documents outline the
19 agreement on all the houses you did with Bill
20 Haskin?

21 A I think they do.

22 Q Were you in another business with
23 Mr. Haskin other than the real estate
24 business?

25 A Yes, I was.

1 A Ensign Court is a house that we
2 built on Isle of Palms.

3 Q That's the first deal?

4 A Either that was the first deal or
5 like 49th Avenue was the first deal. I can't
6 remember. We did two homes real close
7 together on Isle of Palms. I can't remember
8 which one was first.

9 Q All right. It's your testimony
10 that, on these real estate deals, the
11 construction of houses, that Mr. Haskin would
12 arrange the financing and you would supervise
13 the construction; is that correct?

14 A That's correct, yes.

15 Q Okay. Did you ever contribute any
16 capital?

17 A Yes, I did.

18 Q Okay. You contributed capital to
19 projects with Mr. Haskin?

20 A Yes.

21 Q Why did you contribute capital if
22 you were not a partner?

23 A Several reasons. A couple reasons.
24 The first reason was Bill was out of town.
25 We had bills to pay, so I had to loan the LLC

1 some money until Bill got back in town to
2 repay me.

3 And finally, the reason I gave
4 money to the LLC is Bill overextended
5 himself, and we had to do something before we
6 lost the house.

7 Q You had to do something or you
8 would lose the house?

9 A Yes.

10 Q So did that contribution come about
11 as a result of a conversation you had?

12 A Yes.

13 Q With who?

14 A With Mr. Haskin.

15 Q And what project are you talking
16 about?

17 A The 2624 Myrtle.

18 Q Tell me about the conversation you
19 had with Mr. Haskin.

20 A And also 351 Rhoden Island Drive.

21 Bill came to me and said he
22 overextended himself and he had all his cash
23 in this property and he didn't have money to
24 pay the bills..

25 Q Did he ask you to put money in?

1 Q Mr. Rhodes, I'm handing you the
2 operating agreement for Station 22 of
3 Charleston, LLC.

4 A That's -- that's not one I care
5 for. This is a totally different operating
6 agreement from the three I asked for.

7 Q Is that not the same as the three
8 you asked for?

9 A No, it's different.

10 Q Okay. And how is it different?

11 A Because this has three partners,
12 and it's totally -- it's drawn up totally
13 different from the other one. This does not
14 list Samuel W. Rhodes anywhere in this
15 operating agreement.

16 Q Okay.

17 A The other two -- the other three
18 do.

19 Q Is one of your entities listed in
20 here?

21 A Yes, it is.

22 Q Which entity is that?

23 A Rhodes Investments, I believe.

24 Q So other than the fact that Rhodes
25 Investments is listed as a one-third owner,

1 what's the difference between this agreement
2 and the others?

3 A You can read them and see the
4 difference.

5 Q Do you know the difference?

6 A Yes, I do.

7 Q Can you tell me?

8 A Yes. This has three owners. The
9 other two have four owners. It has two A
10 class members, two B class members.

11 Q What's the relevance of the A and B
12 class members?

13 A It's spelled out in the operating
14 agreement.

15 Q Can you tell me what it means?

16 A Yes. If you hand me the operating
17 agreement, I can read it to you.

18 Q I just gave you Exhibit 2.

19 A This is not the one I'm looking
20 for.

21 Q Okay. What is the one you're
22 looking for?

23 A 2624 Myrtle, 2624 Bayonne, 2802
24 Middle Street.

25 Q Mr. Rhodes, I'm handing to you

1 Myrtle, do you have any other document that
2 you contend sets forth the agreement on
3 profits and losses between you and
4 Mr. Haskin?

5 A No.

6 Q Do you know if any of these
7 operating agreements that you've seen were
8 ever signed by you and Mr. Haskin?

9 A 2624 Bayonne was signed by me and
10 Mr. Haskin.

11 Q Is that the only one?

12 A Yes.

13 Q Okay. After Ensign Court, what was
14 the next project you-all did together?

15 A We did two on the Isle of Palms. I
16 can't remember the address. It was like 46
17 or 48th Avenue, or something like that. We
18 did a house over there.

19 Q What was the arrangement between
20 you and Mr. Haskin on that project?

21 A I would build the home, and Bill
22 would provide the money.

23 Q And is there any document that says
24 that?

25 A No.

1 Q Did you control the company
2 checkbook for all these projects?

3 A Yes, I did.

4 Q You disbursed all the money?

5 A Yes, I did.

6 Q You managed the project on every
7 case?

8 A Yes.

9 Q And you paid the subs in every
10 case?

11 A Yes, sir.

12 Q You contributed capital, you told
13 me, twice?

14 A Yes, sir, I did.

15 Q Two different projects?

16 A Yes.

17 Q Did you do it more than that?

18 A I'm not sure. I don't think so.

19 That's all I remember.

20 Q So it looks like, based on what
21 we've seen so far, the agreement between you
22 and Mr. Haskin was a verbal agreement.

23 Do you agree?

24 A Yes.

25 Q And that's true of every project

1 A Yes.

2 Q And then you guys would complete
3 the project and sell it to a third party?

4 A Correct.

5 Q That was the plan --

6 A Yes.

7 Q -- right?

8 And then when that happened, the
9 idea was you would pay off the bank and split
10 the profits and losses?

11 A No.

12 Q What was the plan?

13 A The plan was to split the profits,
14 and Bill would be responsible for the losses.

15 Q All right. So it's your testimony
16 that you only agreed to share in the profits,
17 and you expected Mr. Haskin to be responsible
18 for all the losses?

19 A Yes.

20 Q And that agreement is nowhere in
21 writing?

22 A That is correct.

23 Q What evidence do you rely on for
24 that position?

25 A Common knowledge, common sense.

1 A There's more to it than what you're
2 saying.

3 Q Well, what more to it is there?

4 A The sweat equity part. Everything.
5 You're just -- you're trying to simplify it,
6 and there's more than that. Building a home
7 takes a year.

8 Q Well, you're telling me you were
9 responsible for building the home, correct?

10 A Yes.

11 Q And you're telling me Mr. Haskin
12 was responsible for arranging the financing?

13 A That's correct.

14 Q Correct?

15 Would you not call that a
16 partnership?

17 MR. CISA: Object to the form
18 of the question.

19 A I call it a business.

20 Q Okay. And we don't have any
21 written agreement other than one on 2624
22 Bayonne, correct?

23 A Yes.

24 Q So everything else is an oral
25 agreement between you and Mr. Haskin, a

1 verbal agreement?

2 A Yes. But these -- these operating
3 agreements were there. They just were never
4 signed. They were distributed.

5 Q What does that mean to you, they
6 were distributed?

7 A They were -- these two operating
8 agreements were in seven days of each other,
9 so why wouldn't -- why would he expect to do
10 one one way and one the other way?

11 Q Well, why didn't you sign these
12 agreements?

13 A His -- Bill was in charge of all
14 that.

15 Q You didn't sign the agreements?

16 A Right.

17 Q And Mr. Haskin didn't sign the
18 agreements, correct?

19 A Bill's accountant and Bill's
20 attorney was responsible for doing all that.
21 I didn't have -- I didn't have anything to do
22 with that.

23 Q Let me ask you to answer my
24 question, if you would.

25 A Sure.

1 Q You didn't sign these agreements,
2 did you?

3 A No.

4 Q And Mr. Haskin didn't sign these
5 agreements?

6 A That's correct.

7 Q All right. So if you don't have a
8 partnership, what business relationship do
9 you have with each other?

10 MR. CISA: Object to the
11 form --

12 A We had an agreement.

13 MR. CISA: Object to the form
14 of the question.

15 Q You had an agreement?

16 A Yes.

17 Q And it was a verbal agreement?

18 A It was stipulated in these
19 operating agreements.

20 Q All right.

21 A Everybody knew about this. Bill's
22 accountant typed these things up. I didn't
23 type these things.

24 Q Right. And you didn't sign these
25 things?

1 A Right.

2 Q Why didn't you sign them?

3 A It wasn't made available for me to
4 sign.

5 Q When did you first get them?

6 A I -- they were just passed around,
7 but they usually are done before closing. I
8 don't think a closing can happen before the
9 operating agreement is signed. I don't know
10 how it was --

11 Q Are you telling me, during the time
12 period when you were building these houses,
13 that you didn't have these operating
14 agreements?

15 A Yes. The operating agreements were
16 out there. We signed that one in February of
17 2006, and this one here is dated February of
18 2006 also.

19 Q What do you mean by -- when you say
20 these agreements were out there?

21 A They were provided to us, but we
22 never sat down and signed them.

23 Q Why didn't you sign them?

24 A Ask Bill.

25 Q I'm asking you.

1 A Because they -- the attorney never
2 came to me and said, We're going to closing;
3 let's sign it. That's what usually happens
4 to me. I'm a home builder, and I'm a
5 restaurant owner. I'm not, you know --

6 Q How many homes have you built?

7 A 25 or so.

8 Q How many restaurants have you
9 owned?

10 A Probably four or five.

11 Q How many other businesses have you
12 been in?

13 A I think that's it.

14 Q All right. So 40 businesses
15 perhaps?

16 A Yes.

17 Q You know about limited liability
18 companies, don't you?

19 A Yes, I do.

20 Q You've been in several?

21 A Yes.

22 Q You know what a partnership is?

23 A Yes.

24 Q So I'm asking you, why didn't you
25 sign the operating agreement?

1 A They weren't provided to me to
2 sign. They just sat down --

3 Q And you didn't need them to do
4 these -- these projects?

5 A It was understood.

6 Q The agreement was understood?

7 A The agreement was understood.

8 Q Between you and Mr. Haskin?

9 A Yes.

10 Q This verbal agreement?

11 A Yes.

12 Q But you didn't have the operating
13 agreement when you started construction on
14 these houses?

15 A Yes, we did.

16 Q I thought you just told me you
17 didn't; it wasn't provided to you?

18 A No. I said they were produced at
19 the same time.

20 Q You just told me a few minutes ago
21 they weren't provided.

22 MR. CISA: Object to the form
23 of the question.

24 A I said they weren't provided at a
25 closing, is what I said.

1 Q And you didn't have them when you
2 started construction either, did you?

3 A Yes, we did.

4 Q You did?

5 A Yes.

6 Q All right. Then why didn't you
7 sign it if you had them?

8 A I cannot open an LLC without an
9 operating agreement, is my understanding.

10 Q Okay. And what difference does
11 that make?

12 A So before any construction would
13 happen, we'd always open an LLC, so we
14 definitely had the operating agreement before
15 we started construction.

16 Q All right. Then you agree that
17 this was supposed to be an LLC; all these
18 entities were supposed to be LLCs?

19 A They are. They were set up as
20 LLCs.

21 Q Okay. And who is the member of the
22 LLC?

23 A I'm a member of Rhodes Investments,
24 which is an LLC, which was a member of every
25 other LLC that we built homes.

1 Q And who formed Rhodes, LLC, Rhodes
2 Investments?

3 A Billy Hennessy.

4 Q Is it Rhodes, LLC, or Rhodes
5 Investments, LLC?

6 A Rhodes Investments, LLC.

7 Q And why did Mr. Hennessy form that
8 company?

9 A For tax purposes and for liability
10 purposes. The same reason everybody else
11 forms an LLC.

12 Q Did you and Mr. Haskin ever have a
13 conversation in which he stated to you that
14 you would not be responsible for losses?

15 A Yes.

16 Q Where did that conversation take
17 place?

18 A That conversation took place on
19 Sullivans Island.

20 Q Where?

21 A At Poe's Tavern.

22 Q When was that?

23 A It was before we started the 2802
24 Middle Street house.

25 Q Before 2802?

1 A Yes.

2 Q What year was that?

3 A The operating agreement was in
4 2006, so imagine it was around there. I
5 don't know the exact date. I'm sorry.

6 Q And who were parties to that
7 conversation?

8 A Tracey Bozelli and Tim Reese.

9 Q That's your wife?

10 A Yes.

11 Q And who is Tim Reese?

12 A Tim Reese is the real estate agent
13 we used a lot on -- on a lot of our
14 properties.

15 Q And tell me who said what during
16 that conversation.

17 A Tim Reese approached us and told us
18 that we should not buy the property at 2802
19 Middle Street, that we were paying too much
20 and he felt like we were going to lose money.

21 Q And why was that conversation
22 taking place with Tim Reese?

23 A Because we used to talk about all
24 our properties with Tim Reese, everybody,
25 so --

1 Q Okay. And what else was said in
2 that conversation?

3 A I told Bill that I didn't feel
4 comfortable moving forward with the property,
5 that I didn't want him to lose any money, and
6 he said he had plenty of money, not to worry
7 about it; all I had to lose was time.

8 Q Now, was that before or after you
9 had an agreement to build the house on there?

10 A That was before the agreement to
11 build the house.

12 Q Was that before you acquired the
13 property?

14 A That was when we were in -- trying
15 to acquire the property.

16 Q You hadn't closed on the real
17 estate yet?

18 A That's correct.

19 Q Was anyone else there?

20 A No.

21 Q Were you married to Tracey at the
22 time?

23 A No.

24 Q When were you married?

25 A 2008.

1 A I believed it to be that way, and
2 it was that way.

3 Q You believed it to be that way and,
4 therefore, you thought that the reason the
5 losses were attributed to Mr. Haskin is
6 because you had an agreement that you
7 wouldn't share in losses?

8 A That's correct.

9 Q But you never talked to the person
10 who prepared that tax return?

11 A The same person that prepared those
12 tax returns prepared that -- this operating
13 agreement.

14 Q My question for you is, you never
15 talked to the person?

16 A No, I didn't. I've answered that
17 three times.

18 Q So you just assumed that because
19 the tax returns showed losses going to
20 Mr. Haskin, that that was done because you
21 and Mr. Haskin, according to you, had a
22 verbal agreement that you didn't have to pay
23 for the losses?

24 A That's correct.

25 Q We'll get to that.

1 of Charleston, LLC?

2 A William B. Haskin, Jr.; Covington
3 Properties, Incorporated; Rhodes Investments,
4 Incorporated.

5 Q Okay. Is that agreement that I've
6 handed you, Exhibit 2, signed?

7 A No.

8 Q Do you have a signed copy anywhere?

9 A No, I don't.

10 Q Did you and Mr. Haskin and
11 Mr. Covington discuss how the business of the
12 company was going to be conducted?

13 A No.

14 Q You had no discussion about sharing
15 profits and losses?

16 A No.

17 Q You just agreed to build a house?

18 A Yes.

19 Q And talk about it later?

20 A No, it was understood.

21 Q Well, I thought I just asked you
22 whether there were any conversations about
23 how --

24 A There was no conversations.

25 Q If there were no conversations, how

1 did you know what you were going to get out
2 of the deal?

3 A Well, Mr. Covington was the real
4 estate agent on this property and received a
5 commission on this. I was the builder. I
6 never got anything -- I never got a fee for
7 paying -- building the home, so it was
8 understood I did sweat equity in this.

9 Q And what do you base your opinion
10 it was understood on? I mean, what are the
11 facts on which you rely to say that was the
12 arrangement? If you had no conversation with
13 Mr. Covington or Mr. Haskin, where did your
14 understanding come from?

15 A It would be just like me calling
16 you and asking you to open an attorney -- let
17 me fund an attorney's office. Bill and Jim
18 knew nothing about building a home. I built
19 the home.

20 Why would I be responsible for the
21 money and the warranty work and building a
22 home and -- and the money aspect? It doesn't
23 make any sense. That would be stupid. I
24 could do properties on my own.

25 Q You did build a house with money

1 "be responsible for the money," where did you
2 get that understanding?

3 A As I told you, that's -- that was
4 what it was.

5 Q Well, I've asked you to tell me
6 what conversations you had, and you said you
7 didn't have any, correct?

8 A That's correct.

9 Q So if you didn't have any
10 conversations, what did you rely on?

11 A That's the way we were -- we were
12 doing business.

13 Q What other business had you done?

14 A Houses before this.

15 Q Had you done houses before this
16 with Mr. Covington?

17 A No.

18 Q Did you discuss with Mr. Covington
19 what the arrangement was going to be?

20 A No.

21 Q Why didn't you go obtain the
22 financing yourself?

23 A I wouldn't have built this house by
24 myself.

25 Q Why not?

1 A Because it -- the only way I would
2 have done it is if somebody else would have
3 been responsible for the money. It was not a
4 project I would have done on Daniel Island.

5 Q So it's your position that you
6 shared in the profits equally but that Bill
7 Haskin assumed all the downside?

8 A That's correct.

9 Q All the losses?

10 A That's correct.

11 Q But you never signed the operating
12 agreement?

13 A That's correct.

14 Q And you never had a conversation
15 with Mr. Covington about that arrangement?

16 A That's correct.

17 (Exhibit No. 3 was marked for
18 identification.)

19 Q Let's look at Exhibit 3, which is a
20 tax return.

21 Mr. Rhodes, I'm going to hand to
22 you Exhibit 3, which is the partner's K-1 and
23 other documents for some of these projects.

24 A Okay.

25 Q I guess this is a combined exhibit.

1 THE WITNESS: I need to go to
2 the restroom.

3 MR. ROSEN: Why don't we take
4 a -- a break.

5 MR. CISA: Sounds good.

6 VIDEO TECHNICIAN: Going off
7 the record at 11:08 p.m. -- a.m.

8 (A recess was taken.)

9 VIDEO TECHNICIAN: We're back
10 on the record at 11:21 a.m.

11 Q Mr. Rhodes, let me hand you a copy
12 of Exhibit 42, which is your affidavit that
13 you filed in this case.

14 A Okay.

15 Q Do you remember filing that
16 affidavit?

17 A Yes, I do.

18 Q Can you look at paragraph 5 of that
19 document.

20 A (Witness complied.)

21 Q You refer to "The agreement with
22 William B. Haskin, Jr., was."

23 Can you read the rest of that?

24 A "Was that Mr. Haskin would secure
25 the necessary finance to purchase the desired

1 parcels, obtain construction loans, and fund
2 any shortfalls during the construction.

3 "My duties, though, were limited to
4 constructing and managing the project on a
5 day-to-day basis and paying all
6 subcontractors in funds secured by William B.
7 Haskin.

8 "All the projects were completed
9 and sold to third parties. Mr. Haskin would
10 be reimbursed for any costs advanced and then
11 the profits would be divided between William
12 B. Haskin, Jr., and Rhodes Investments."

13 Q Tell me what that agreement is and
14 where it is.

15 A I think we've already touched that
16 like four or five times today.

17 Q Is there any place where that
18 agreement exists?

19 A No, except for the operating
20 agreement on 2624 Bayonne that's signed.

21 Q Is there an agreement in writing
22 that says what you say in this paragraph?

23 A No.

24 Q Is there a letter that supports it?

25 A No.

1 Q You say that your duties were
2 limited to constructing and managing the
3 projects on a day-to-day basis and paying all
4 subs with funds secured by Mr. Haskin. Is
5 that correct?

6 A That's correct.

7 Q And is there any document that
8 supports that?

9 A No.

10 Q You then state that when the
11 projects were completed and sold to third
12 parties, Mr. Haskin would be reimbursed for
13 any costs he advanced, and then the profits
14 would be divided between William B. Haskin,
15 Jr., and Rhodes Investments, Inc.

16 Was Mr. Haskin reimbursed for any
17 costs he advanced on your behalf?

18 A He never advanced anything on my
19 behalf. He advanced it on the LLC behalf.

20 Q You or your company was a member of
21 the LLC?

22 A That's correct.

23 Q Correct?

24 A Yes.

25 Q Usually 50 percent, right?

1 Schedule K-1?

2 A Yes.

3 Q Right?

4 And is that Section J on partner's
5 share of profit, loss, and capital indicating
6 that Rhodes Investments had 49.5 percent of
7 the profit, ending that year in 50 percent?

8 A Yes.

9 Q Do you know why that is?

10 A It looks like because I put some
11 capital in.

12 Q And then loss beginning at
13 zero percent and ending at 10.87 percent?

14 A Yes.

15 Q And then capital indicating
16 49.5 percent and ending at 50 percent?

17 A That's correct.

18 Q And under L it shows that Rhodes
19 Investments, Inc., your LLC, contributed
20 capital of \$4,930?

21 A Yes.

22 Q If you were not a partner with
23 Mr. Haskin and liable for losses, why would
24 you be contributing capital during that year?

25 A I told you before, Bill was either

1 out of town or -- I'm not sure.

2 Q At the end of this document at page
3 213, the next-to-the-last page, I think,
4 there's a summary of other deductions for
5 insurance, utilities, professional fees,
6 maintenance expenses.

7 Do you know what those are for?

8 A I would imagine insurance was to
9 pay a homeowner's insurance. Utility was
10 keep the power on. Professional fees, I'm
11 not sure what that was. Maintenance expense,
12 I have no idea.

13 Q Okay. And then it shows at the
14 bottom the asset worth, it looks like at the
15 beginning of the tax year, 2,515,942. Same
16 at the end. Is that correct?

17 A Yes.

18 Q Did you-all sell that house
19 eventually?

20 A Bill sold the house. I didn't.

21 Q Okay. And you say he sold it. You
22 didn't -- what does that mean?

23 A I was never asked about anything,
24 listing price or who to list it with or
25 anything. Nobody ever contacted me about

1 reflect changes in profit and loss for tax
2 purposes?

3 A Yes.

4 Q Is it true that when you
5 contributed capital, as we've seen several
6 times, that you contributed it from your
7 personal checking account?

8 A I think so, yes.

9 (Exhibit No. 6 was marked for
10 identification.)

11 Q Do you have Exhibit 6?

12 Mr. Rhodes, I'm handing to you a
13 copy of a commercial guarantee agreement
14 which is labeled Exhibit 6.

15 Do you remember this document?

16 A Yes, I do.

17 Q And what is it?

18 A Bill approached me and told me that
19 he had ran out of money and all the money was
20 tied up on 2624 Myrtle. It was a completed
21 house, and he says if he didn't come up with
22 any more money, that the bank was going to
23 take it away.

24 So he -- he went to Atlanta Bank &
25 Trust to get a loan, and they told him, since

1 I was a member of an LLC that showed up as
2 one of the members of an LLC that had
3 interest in this house, that he could not
4 borrow money unless I signed for it.

5 Q All right. Did you sign for it?

6 A Yes, I did, with the guarantee from
7 Bill that it would be paid first with
8 proceeds from the sale of the house, as in
9 the first mortgage. There was no other
10 mortgage on this house.

11 Q Was that agreement in writing?

12 A No. I do have an e-mail from Bill
13 telling me that he came through with his --
14 what he promised.

15 Q Have you produced that e-mail to
16 us?

17 A Yes.

18 Q So in reliance on Mr. Haskin
19 telling you, you signed this agreement?

20 A Yes.

21 Q And you guaranteed to be
22 responsible?

23 A Yes.

24 Q For how much money?

25 A I don't remember.

1 A That's correct.

2 Q And if you turn over a couple
3 pages, you'll see the K-1 for Rhodes
4 Investments indicating zero percent of the
5 loss?

6 A Yes.

7 Q And nothing contributed towards
8 capital during that year?

9 A That's correct.

10 Q Okay. Do you know why those tax
11 returns had the tax basis checked?

12 A No, I don't.

13 Q Do you agree that the allocation of
14 losses for tax purposes was done based upon
15 which member funded the loss for each year?

16 A Yes.

17 MR. ROSEN: Let's take a
18 break.

19 VIDEO TECHNICIAN: Going off
20 the record at 12:26 p.m.

21 (A lunch break was taken.)

22 VIDEO TECHNICIAN: We're on
23 the record at 1:27 p.m.

24 (Exhibit No. 9 was marked for
25 identification.)

1 a profit?

2 A No.

3 Q Was Jim Covington the agent who
4 listed it?

5 A I -- yes, I believe so. That
6 sounds right.

7 Q Who was he with?

8 A Agent-owned.

9 Q Did he get any offers?

10 A No.

11 Q Did you take it off the market?

12 A Yes. Been in the home for three
13 years.

14 Q Is it currently for sale?

15 A No.

16 (Exhibit No. 44 was marked for
17 identification.)

18 Q Let me show you Exhibit 44.

19 A Okay.

20 Q Which appears to be an internal
21 Merrill Lynch document.

22 A Okay.

23 Q There's one note here under Seeman,
24 on the team players, on 2/14/2013. Seeman
25 says on January 30th, 2013, "Advised client

1 occupied with borrower's husband, who was not
2 on the loan, approved as the general
3 contractor. The borrower signed an owner
4 occupancy affidavit affirming this would be
5 their primary residence."

6 Was that true?

7 A You just showed me where Tracey
8 signed that, yes.

9 Q Okay. What -- what changed after
10 she told the bank that she intended for that
11 to be her residence?

12 A I'm not sure.

13 Q It says, "Based on statement to CTP
14 department posted in notes on 1/16, the
15 borrower had every intention of selling this
16 property once complete."

17 Was that true?

18 A Evidently not. We're still there.

19 Q But you did try to sell it?

20 A Yeah, we did try to sell it. We
21 had it listed but not actively trying to sell
22 it.

23 Q Did you put it back on the market
24 with Mr. Covington?

25 A Yes, we did.

1 Q When was that?

2 A I'm not sure.

3 Q It's on the market now?

4 A No.

5 Q It's off again?

6 A Yes.

7 Q So it's been on and off the market
8 twice?

9 A Yes.

10 Q There's a statement by Seeman on
11 January 16, 2013. It says he "Spoke with
12 builder husband, Sam Rhodes. He confirmed
13 the property is listed for sale. His
14 response was that they" -- quote, "they put
15 all of their homes up for sale but don't
16 actively market them. If someone wants to
17 offer them more than the house is worth, they
18 will sell it."

19 Is that a statement you made to the
20 bank?

21 A I'm not sure.

22 Q If you'll turn over to a statement,
23 it looks like April 6th, 2012. It starts off
24 with Gilmore, C. at the top.

25 A Does this go backwards?

IN THE COURT OF COMMON PLEAS
FOR THE STATE OF SOUTH CAROLINA
CHARLESTON COUNTY

DEPOSITION OF TRACEY BOZELLI

WILLIAM B. HASKIN, JR.,

Plaintiff,

vs.

Case No. 2012-CP-10-6506

SAMUEL W. RHODES, JR.,
RHODES INVESTMENTS, INC.,
RHODES CONSULTING, LLC, and
TRACEY M. BOZZELLI,

Defendants.

DEPONENT: TRACEY BOZELLI

DATE: NOVEMBER 4, 2015

TIME: 10:07 AM

LOCATION: ROSEN HAGOOD, LLC
CHARLESTON, SOUTH CAROLINA

REPORTED BY: JULIE K. LYLE, RPR/RMR/CRR
Registered Merit Reporter
Certified Realtime Reporter

CLARK & ASSOCIATES, INC.
P.O. Box 73129
Charleston, SC 29415
843-762-6294
WWW.CLARK-ASSOCIATES.COM

1 A No, no, no.

2 Q I'm sorry. That's what you need to
3 do.

4 A Yeah.

5 Q So nothing to Rhodes Residential
6 Builders?

7 A No.

8 Q No amounts?

9 A No.

10 Q Let's move on to the nature of the
11 deal at hand here, which is with Mr. Haskin.

12 How long have you known Bill
13 Haskin?

14 A I've known him probably a day less
15 than I've known my husband, so since 2005.

16 Q Okay. And what was your
17 understanding of the arrangement that
18 Mr. Haskin and your husband, Mr. Rhodes, had
19 with regards to Sully's Restaurant, if any?

20 A I never really talked with him
21 about Sully's Restaurant.

22 Q Okay. Were you privy to any
23 conversations that they had, Mr. Rhodes and
24 Mr. Haskin, about their business dealings in
25 general?

1 A Other -- not about Sully's, you
2 mean? Just about the housing?

3 Q Yeah.

4 A Yes, definitely.

5 Q And what conversations do you
6 remember?

7 A Probably had 30 or 40 conversations
8 with Bill about their arrangement, which is
9 he provides the financing and Sammy builds
10 the houses.

11 Q Okay. That was kind of the extent
12 of it in your mind?

13 A Well, I mean, he talked about it a
14 lot, but that was the -- that's a summary of
15 how he would always describe it, their
16 business arrangement.

17 Q Okay. So it was your understanding
18 that he would provide the financing?

19 A Uh-huh.

20 Q Your husband would build the
21 houses?

22 A Yes.

23 Q Okay.

24 A Yep.

25 Q And then you probably didn't pay

1 much attention to it other than that, did
2 you?

3 A No.

4 Q Okay. Were there other people
5 present at any time when you had these
6 discussions?

7 A Lots of people. I mean, we were
8 usually with groups of people. So, yes,
9 definitely.

10 Q Okay. Do you remember any specific
11 occasions or --

12 A Probably all of our friends, which
13 would be our real estate agents. I would say
14 so Jim Covington, Tim Reese were two real
15 estate agents who we definitely were friends
16 with, and they also used them in business.

17 Ray Waldrup, which was another
18 friend of all of ours too -- I think they're
19 all still friends -- is another individual.
20 Probably would be the ones I would state.

21 Q You mentioned Jimmy Ray Waldrup.
22 Are you friends with Jimmy Ray and his wife?

23 A Yeah.

24 Q You-all are pretty good friends?

25 A Yes. Yep. I think he and Bill are

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON 2012-CP-10-6506

WILLIAM B. HASKIN, JR.,	)	
	)	
Plaintiff,	)	EXCERPT OF RECORD
	)	
-vs-	)	November 16 & 17, 2015
	)	
SAMUEL RHODES, JR.,	)	Charleston, South Carolina
RHODES INVESTMENTS, INC.	)	
and RHODES CONSULTING, LLC,	)	
and TRACEY M. BOZZELLI,	)	
	)	
Defendants.	)	

B E F O R E:

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

A P P E A R A N C E S:

John E. Rosen, Esquire
Richard S. Rosen, Esquire
Attorneys for the Plaintiff

Frank Cisa, Esquire
Attorney for the Defendants

Amanda K. Haffenden, RPR, CRR
Ninth Circuit Court Reporter

ROA000263

1 (The following is an excerpt from the
2 above-captioned nonjury trial):

3 (November 18, 2015.)

4 MR. JOHN ROSEN: We call the plaintiff,
5 Mr. Haskin.

6 WILLIAM HASKIN,
7 having been first duly sworn,
8 was examined and testified as follows:

9 DIRECT EXAMINATION

10 BY MR. JOHN ROSEN:

11 Q. Mr. Haskin, good morning.

12 A. Good morning.

13 Q. Please state your name for the record.

14 A. William Haskin.

15 Q. And how old are you?

16 A. I'm 51.

17 Q. Are you married?

18 A. Yes, sir.

19 Q. How many children do you have?

20 A. We have one son, ninth grader, 14 years old.

21 Q. What is his name?

22 A. Ben.

23 Q. How long have you lived on Sullivan's Island?

24 A. I moved in in March of 2000.

25 Q. What was the address?

1 A. Yes, sir. It was -- to open the restaurant was
2 going to cost \$60,000. I was to put up 60,000. Out of
3 the profits of the restaurant, I would get paid back the
4 60,000 first, and then all profits and losses would be
5 split equal.

6 Q. And what were Mr. Rhodes's responsibilities
7 vis-a-vis the restaurant?

8 A. Sammy hired the staff. He hired the management.
9 He was in the restaurant business. He got the restaurant
10 off the ground.

11 Q. So he was the one that had known how to operate a
12 restaurant?

13 A. Absolutely. I was an investor.

14 Q. And you said that you and Mr. Rhodes had an
15 agreement about how you would share profits and losses
16 from Sully's restaurant?

17 A. Yes, sir.

18 Q. What was that agreement?

19 A. Our profits and losses were shared equally.

20 Q. Was that a written agreement?

21 A. No, sir. It was oral.

22 Q. What happened to the restaurant that you bought?

23 A. I would say 1995, 1996, we were approached by a
24 broker to buy the restaurant. We really didn't have much
25 interest in it, and then we got a letter, registered

1 letter in the mail from a buyer with a price tag that we
2 thought was attractive and we sold the restaurant.

3 Q. Did you make a profit?

4 A. Yes, sir, we did.

5 Q. How did you and Mr. Rhodes split that profit?

6 A. We split it 50/50.

7 Q. As to the real estate development activities that
8 are at issue in this litigation, when did that begin, if
9 you recall?

10 A. I'm going back a long way, but I would say we
11 probably bought the lot on the Isle of Palms six months
12 to a year after we closed on the restaurant.

13 Q. And what was the name of that project, do you
14 remember?

15 A. It was on Ensign Court on the Isle of Palms, and I
16 want to say it was 5 Ensign Court, but I'm not sure of
17 the number.

18 Q. So for this project, your first real estate
19 endeavor with Mr. Rhodes, Ensign Court, do you recall
20 what your roles and responsibilities were, yours and his?

21 A. Yes, sir. I was to secure financing from the
22 bank. I was to fund any shortfall until the first draw.
23 I was to fund the project throughout anything in excess
24 of the bank draw, and then when the house was sold, we
25 would split any profits or losses equally.

1 Q. And Mr. Rhodes, what were his responsibilities?

2 A. Mr. Rhodes' responsibilities were hiring the subs,
3 paying the subcontractors, meeting with inspectors for
4 draws; in general overseeing the project.

5 Q. And what role did you have in finding that lot,
6 Ensign Court, that you --

7 A. I recall Sammy found that lot.

8 Q. And you said you had an agreement, and what was
9 the agreement about the profits and losses for Ensign
10 Court?

11 A. After the house was sold, any profits or losses
12 would be split equally.

13 Q. Was that agreement anywhere in writing?

14 A. No, sir. It was not.

15 Q. So it was a verbal agreement?

16 A. That's correct.

17 Q. You had deals with other partners, including
18 Mr. Rhodes, that had the same sharing of profits and
19 losses; is that right?

20 A. That's correct, yes, sir.

21 Q. And in those other projects, what were
22 Mr. Rhodes's responsibilities generally?

23 A. In general, they were the same as I just
24 mentioned. Sammy would hire the subs. He would meet
25 with the building inspectors for the draws. He would

1 oversee the project from the beginning to finish.

2 Q. And did Mr. Rhodes handle the checkbook?

3 A. He did.

4 Q. And you trusted him with handling the company's
5 checkbook?

6 A. Sammy was my best friend. I trusted him
7 completely.

8 Q. And so your role in those other deals would be to
9 secure the financing, and Mr. Rhodes would handle the
10 construction, correct?

11 A. That's correct, yes, sir.

12 Q. And you contribute any other capital other than
13 the loan to build the houses that we're talking about?
14 On the projects.

15 A. The projects, yes. If we were out of draw money
16 and the bank wouldn't lend any more money, then I had to
17 finance it or cover the note until the project was sold.

18 Q. Where did the money use to finance these projects
19 come from?

20 A. From my income at Patriot Timber Products.

21 Q. So it was your wages.

22 A. Yes, sir.

23 Q. And how many hours a week do you think you worked
24 at Patriot Timber?

25 A. When I was in my 20's with my overseas assignments

1 and everything, I was probably working 60, 70 hours a
2 week.

3 Q. And you mentioned when you and Mr. Rhodes would
4 settle up on a project. Could you tell us when that was.

5 A. In general, rule of thumb, we would wait ten days
6 to two weeks after the closing HUD, after the closing,
7 see what additional expenses came in, and then we would
8 settle up with the exception, usually, of 15 to 20,000
9 that we would hold back for call backs.

10 Q. And what was your next project after Ensign Court,
11 if you can recall?

12 A. It was a house on Isle of Palms, either 46 or 49th
13 Avenue.

14 Q. And what was your arrangement with Mr. Rhodes with
15 that project?

16 A. It was identical to Ensign Court.

17 Q. So you secured the financing?

18 A. Yes, sir. I secured the financing. Sammy oversaw
19 the construction.

20 Q. And Mr. Rhodes controlled the company checkbook?

21 A. At all times, yes, sir.

22 Q. And Mr. Rhodes always handle the checkbook and all
23 the projects that Mr. Rhodes participated in?

24 A. Yes, sir, he did.

25 Q. And his responsibilities were to build the house,

1 manage the subs as you just discussed?

2 A. That's correct.

3 Q. So would it be fair to say you and Mr. Rhodes had
4 an oral agreement? Is there a writing anywhere?

5 A. No, sir. There's no written agreement.

6 Q. Who was present when you and Mr. Rhodes discussed
7 how you would handle profits and losses in this
8 partnership?

9 A. Me and Mr. Rhodes.

10 Q. So you understand that you would cover the
11 financing and cover the capital needs until the first
12 construction draw, correct?

13 A. That's correct.

14 Q. How did you and Mr. Rhodes customarily market the
15 property that you were working on at any given time?

16 A. Like most everybody else. We would find a
17 realtor, usually when the house was two to three months
18 before completion, put it on the market, and eventually
19 sell it.

20 Q. And so what did you and Mr. Rhodes do when the
21 house was sold again?

22 A. House was sold, there was a profit on the house,
23 we would wait 10 to 14 days to see what additional
24 expenses would come in, pay bills that had not been paid
25 up until then. Usually withhold 15 to \$20,000 for

1 callbacks from who ever we sold the house to, and then
2 split the balance, the remaining balance, 50/50.

3 Q. Let's talk about the deals that went well, and I
4 think there were several; is that right?

5 A. Yes, sir.

6 Q. How many do you think there were, if you can
7 recall, that were profitable deals?

8 A. Profitable? Eight or nine, probably.

9 Q. Let's talk about one in particular that I think
10 happened way back in 2006, 2624 Bayonne. Is that the one
11 that happened back in 2006? Do you recall that project?

12 A. Yes, sir.

13 Q. What did you and Mr. Rhodes sell that project for?

14 A. I don't have the figure in front of me, but that
15 was probably the most expensive house we sold. It was, I
16 think, \$3.7 million.

17 Q. You made a handsome profit?

18 A. Yes, sir, we did.

19 Q. Mr. Rhodes made a handsome profit?

20 A. Yes, sir.

21 Q. And you and Mr. Rhodes split the profits 50/50; is
22 that correct?

23 A. That's correct.

24 Q. Do you recall how much money Mr. Rhodes made on
25 that project?

1 A. I don't. I think it was mentioned yesterday, but
2 I don't recall the amount.

3 Q. Were you aware that there was an operating
4 agreement for 2624 Bayonne that provided for a
5 preferential payment to you of 6 percent of net capital
6 investment?

7 A. No, sir, I was not.

8 Q. Did you take the 6 percent preferential payment?

9 A. No, sir, I did not.

10 Q. Have you ever taken a 6 percent preferential
11 payment on any of these deals?

12 A. No, sir, I have not.

13 Q. Why didn't you?

14 A. Because the agreement I had with Sammy Rhodes was
15 we would split all profits and losses equally.

16 Q. Can you tell us why you signed that operating
17 agreement?

18 A. I don't know why I signed it. I could speculate,
19 but to be honest, I do not know.

20 MR. JOHN ROSEN: Your Honor, I believe you
21 already have Exhibit 66.

22 BY MR. JOHN ROSEN:

23 Q. Do you recognize the houses and addresses on that
24 document, Mr. Haskin?

25 A. Yes, sir, I do.

1 Q. Can you tell us what it says.

2 A. It's the sale date of each property, the sales
3 price, the profit, and Mr. Rhodes's distribution.

4 Q. Can you tell us how much in distributions
5 Mr. Rhodes received from those three projects?

6 A. Doing quick math, it's about \$700,000.

7 Q. And you made the same amount in profit; is that
8 right?

9 A. Yes, sir.

10 Q. Okay. When did you and Mr. Rhodes do the project
11 in 1908 Middle Street, do you recall?

12 A. I think it was somewhere around 2006, but I'm not
13 sure of the firm date.

14 Q. Do you recall whether or not you and Mr. Rhodes
15 made a profit on that deal?

16 A. On 1908? Yes, sir.

17 Q. How do you know you and Mr. Rhodes split the
18 profits on that deal at 1908 Middle Street?

19 A. We split them right down the middle 50/50.

20 Q. Do you recall how much you made on that
21 arrangement, 1908 Middle Street?

22 A. \$278,900.

23 Q. And moving on to another project you and
24 Mr. Rhodes constructed, 1914 Middle Street?

25 A. Yes, sir.

1 Q. Did you and Mr. Rhodes make a profit in that deal?

2 A. We did.

3 Q. How did you and Mr. Rhodes split the profits in
4 1914 Middle Street?

5 A. We split them equally, 50/50.

6 Q. Do you recall how much you and Mr. Rhodes made on
7 1914 Middle Street?

8 A. 1914 Middle Street, Mr. Rhodes and I made
9 \$220,000 -- \$220,041, excuse me.

10 Q. At what point did you and Mr. Rhodes settle up on
11 the house you built at 1914 Middle Street?

12 A. I don't recall the exact date, but our modus
13 operandi was to wait a couple weeks and settle up.

14 Q. On all three of these projects, how much in total
15 distributions did Mr. Rhodes make, if you can remember?

16 A. Approximately \$700,000.

17 Q. I want to discuss with you 2802 Middle Street,
18 which is one of the properties that is the subject of
19 this action. Who are the partners apt 2802 Middle
20 Street?

21 A. Myself, Sammy Rhodes, and one of his entities.

22 Q. What was the arrangement with Mr. Rhodes with
23 regard to 2802 Middle Street?

24 A. I would secure financing. I would pay out of
25 pocket costs until we received the first draw. I would

1 continue to pay after all draws were exhausted until the
2 house was sold, and then we were to split profits and
3 losses equally, 50/50.

4 Q. Did you and Mr. Rhodes discuss how the business of
5 the company was going to be conducted?

6 A. Yes, sir, we did.

7 Q. Do you recall when or where these discussions took
8 place?

9 A. I can recall where. Our meetings were at my
10 office at 913 Middle Street on Sullivan's Island. It was
11 convenient for both of us. Sammy's had Sullivan's
12 restaurant, and it was right down the road.

13 Q. Do you recall who was present in that meeting?

14 A. It was just me and Mr. Rhodes.

15 Q. Do you recall what was discussed at those
16 meetings, or at that meeting?

17 A. In general, yes. We went over what I just
18 discussed, that I would secure financing, Mr. Rhodes
19 would build the house, and I went over with Sammy that if
20 we have a profit, that's great. We split it equally. If
21 we had losses, he was responsible for 50 percent.

22 Q. Why didn't you build the house on these deals?

23 A. I had no knowledge of how to build a house.

24 Q. But you did have knowledge about arranging for
25 financing.

1 A. That's correct, yes, sir.

2 Q. And how did you have knowledge about arranging
3 financing?

4 A. Well, through the years at my company, I was
5 fortunate enough to move up. My income increased. I
6 increased my personal financial statement, and through
7 that I was able to secure financing from the banks.

8 Q. Did you and Mr. Rhodes ever agree to a written
9 operating agreement for 2802 Middle Street?

10 A. No, sir.

11 Q. Did you have an arrangement with Mr. Rhodes as far
12 as profits and losses?

13 A. Yes, sir.

14 Q. And that was what?

15 A. Our arrangement with profits and losses is we
16 split all profits and losses equally.

17 Q. Do you recall how long it took to construct a
18 house at 2802 Middle Street?

19 A. I don't. In general, these houses took 12 to 15
20 months from start to finish.

21 Q. Did it sell when it was completed or nearly
22 complete?

23 A. 2802 Middle?

24 Q. Yes, sir.

25 A. No, sir.

1 Q. What happened after that, after the construction
2 was completed?

3 A. Well, I think, as it was referred to yesterday,
4 you had the Great Recession. Real estate values
5 plummeted. I had to continue paying the mortgage, the
6 taxes, the insurance for upwards of three years until I
7 was finally able to get the bank to acquiesce to take
8 less than what we owed them.

9 Q. And it took three years?

10 A. Approximately, yes, sir.

11 Q. And how did you and Mr. Rhodes handle these
12 carrying costs in that three-year period?

13 A. During that three-year period I handled all the
14 carrying costs.

15 Q. And you ever discuss that situation with
16 Mr. Rhodes?

17 A. Yes, sir, I did. At this time, we knew that this
18 property and a few other properties were upside down. I
19 told Sammy that I would carry the properties until they
20 were sold and then we would have to settle up on the
21 losses.

22 Q. What was his response to that discussion?

23 A. He said he understood and agreed to it.

24 Q. Did Mr. Rhodes ever object to you paying these
25 carrying costs on his behalf and on behalf of yourself?

1 A. No, sir, he did not.

2 Q. And you put in the carrying costs out of your own
3 pocket; is that correct?

4 A. That's correct, sir.

5 Q. Do you recall how much you put in, roughly, if you
6 can remember?

7 A. I'm sure there is a record of it somewhere, but
8 no, sir, not right offhand.

9 MR. JOHN ROSEN: Your Honor, this is already
10 in evidence, if you want to refer to it.

11 BY MR. JOHN ROSEN:

12 Q. Mr. Haskin, do you recognize any of these numbers
13 or projects on this document, summary of funding source?

14 A. Yes, sir.

15 Q. Can you tell us what you put into the 2802 Middle
16 Street, these carrying costs we're talking about?

17 A. Yes, sir. It looks like those carrying costs were
18 from 2006 through 2011.

19 Q. Can you tell us what the total amount of that was.

20 A. I'm trying with my eyes, but \$837,417.

21 Q. And did you have to repay that money?

22 A. No, sir.

23 Q. And 2620 Myrtle, LLC, could you tell us what that
24 is shown there?

25 A. 505,495.

1 Q. And for Station 22 of Charleston?

2 A. 161,000 -- it looks like 184, 384.

3 Q. 380. And what is the total there?

4 A. \$1,504,296.

5 Q. And would you agree that Mr. Rhodes put in some

6 carrying costs but not very much; is that right?

7 A. He put in some, but it was a fraction.

8 Q. And you explained earlier that 2802 Middle Street

9 you sold at a short sale; is that right?

10 A. That's correct, yes, sir.

11 Q. Could you explain what a short sale is.

12 A. Not in detail, but the bank knew that the property

13 was not going to sell for what we had in it. They agreed

14 to an amount less than what we owed, and then they sent

15 me a K-1 and additional income for the difference.

16 Q. And so after that short sale, did you ever try to

17 settle up with Mr. Rhodes over the house that you and he

18 built at 2802 Middle Street?

19 A. I told Mr. Rhodes that -- at the same time 2624

20 Myrtle was upside down, and I said when we sold both of

21 them, then I would come to him and we would settle up.

22 Q. And he agreed.

23 A. Yes, sir.

24 Q. Did Mr. Rhodes ever pay you for your share of the

25 losses that you advanced on his behalf?

1 A. No, sir, he didn't.

2 Q. 2624 Myrtle Avenue, could you tell us who the
3 partners were in that project?

4 A. 2624 Myrtle was myself and Sammy or one of his
5 entities.

6 Q. And what was the arrangement between you and
7 Mr. Rhodes between 2624 Myrtle Avenue?

8 A. Just like the majority of everything we built, I
9 secured financing. Sammy oversaw the construction of the
10 house, and we were to split profits and losses equally.

11 Q. Do you recall when and where these discussions
12 took place?

13 A. Yes, sir. Right before we would get the draw, we
14 would get approved house plans. Sammy would come over to
15 my office at 2913 Middle, and we would discuss the
16 project.

17 Q. And who was present at that meeting?

18 A. Always it was me and Sammy.

19 Q. And so for 2624 Myrtle was the same arrangement
20 where you would arrange the financing and he would build
21 the house; is that correct?

22 A. That's correct, yes, sir.

23 Q. And did you and Mr. Rhodes ever agree to a written
24 operating agreement for 2624 Myrtle?

25 A. No, sir, we did not.

1 Q. Did you have an arrangement with Mr. Rhodes as far
2 as profits and losses were concerned for 2624 Myrtle?

3 A. Yes, sir.

4 Q. And what was that arrangement?

5 A. That we would split all profits and losses
6 equally.

7 Q. Do you recall how long it took to construct the
8 home at 2624 Myrtle?

9 A. I do not, but I would think it would be 12 to 15
10 months. That was average.

11 Q. Did 2624 Myrtle sell when it was completed or
12 nearly complete?

13 A. No, sir.

14 Q. What happened after construction was completed?

15 A. It was the same as 2802 Middle. As I recall, it
16 was almost three years I had to carry it, the mortgage
17 with the bank, insurance, upkeep, taxes.

18 Q. How long did it take to sell it, if you can
19 recall?

20 A. I think both these houses closed within a couple
21 months of each other in 2011, so probably three years or
22 longer.

23 Q. You mentioned carrying costs. Can you tell us
24 what those were again.

25 A. Yes, sir. I had the mortgage with the bank every

1 month. I had insurance, property taxes, and then any
2 upkeep.

3 Q. And you agreed to fund these losses out of pocket;
4 is that correct?

5 A. I did, yes, sir.

6 Q. And did you ever discuss the situation with
7 Mr. Rhodes?

8 A. Yes, sir.

9 Q. What was discussed?

10 A. That we would wait until both those houses were
11 sold. We both knew there was a loss, and then we would
12 settle up on the losses at that time.

13 Q. Mr. Rhodes's response to this was what?

14 A. He said he understood and agreed.

15 Q. Did Mr. Rhodes ever object to you paying these
16 carrying costs?

17 A. No, sir, he did not.

18 Q. And did the funds to pay 2624 Myrtle carrying
19 costs come from your wages as well at Patriot Timber?

20 A. Yes, sir. That's my only other source of income.

21 Q. And did Mr. Rhodes put in any money for these
22 carrying costs?

23 A. He might have put in a fractional amount, but for
24 the most part, no. I believe most of his contributions
25 were before things went south.

1 Q. Do you know why he might put in these
2 contributions at that time?

3 A. They were arbitrary. He would come to me and say,
4 I put some money in.

5 Q. Would he tell you why?

6 A. No, he did not.

7 Q. So you covered Mr. Rhodes's portion of the
8 carrying costs; is that correct?

9 A. That's correct.

10 Q. Did Mr. Rhodes agree to pay you back the money you
11 advanced him for these out-of-pocket expenditures?

12 A. Yes, he did.

13 Q. What happened to the property at 2624 Myrtle
14 Avenue?

15 A. Same thing. We sold it as a short sale. The bank
16 agreed to a price that was less than what was owed them,
17 and then I was sent a K-1 charging me the income
18 difference.

19 Q. Did you ever try to settle up with Mr. Rhodes for
20 these moneys that you advanced on his behalf for 2624
21 Myrtle?

22 A. I did.

23 Q. When was that?

24 A. I believe it was in March of 2011.

25 Q. Did Mr. Rhodes ever pay you for his share of the

1 Q. Do you recall when and where you had discussions
2 as to who was going to do what with 22 Lafar Avenue?

3 A. I do know Jim came over to my office at 2913
4 Middle Street several times with Sammy, so I would assume
5 it occurred there.

6 Q. And you think -- who was present, do you recall?

7 A. Me, Sammy, and Mr. Covington.

8 Q. Did you, Mr. Covington, and Mr. Rhodes ever agree
9 to a written operating agreement for that project?

10 A. No, sir.

11 Q. Did you have an arrangement with Mr. Rhodes and
12 Mr. Covington with regards to profits and losses?

13 A. Yes, sir.

14 Q. What was it?

15 A. We would split all profits and losses one-third,
16 one-third, one-third.

17 Q. Do you recall how long it took to construct the
18 house at 22 Lafar Avenue?

19 A. That house took a lot longer than the other ones.
20 If I recall, there were problems. It was on Daniel
21 Island, and there were problems with the review board. I
22 think it was over a year before we got the permit to
23 start construction, so that house probably took
24 two-and-a-half years to construct.

25 Q. Did you and Mr. Covington and Mr. Rhodes sell that

1 property when it was completed or nearly complete?

2 A. No, sir, we did not.

3 Q. What happened?

4 A. That property, we rented the property. We could
5 not sell it, and eventually we received a deed in lieu
6 from the bank.

7 Q. Could you explain what a deed in lieu is.

8 A. I hope I don't butcher this, but a deed in lieu is
9 when the bank agrees to a lesser price and agrees not to
10 go against you for the difference.

11 Q. And before you and the other partners got a deed
12 in lieu of foreclosure -- is that what it is, deed in
13 lieu of foreclosure?

14 A. Yes, I guess so.

15 Q. Before you were able to negotiate that deed in
16 lieu of foreclosure, how did you and Mr. Covington and
17 Mr. Rhodes handle these carrying costs?

18 A. To my knowledge, Mr. Rhodes put in nothing, and
19 Mr. Covington and I split the carrying costs.

20 Q. And for approximately how long do you think that
21 period was once you and Mr. Covington --

22 A. It was about the same time period as the other,
23 probably three years.

24 Q. So it took three years to get the property taken
25 back from the bank, I guess.

1 A. Yes, sir, or somewhere along those lines.

2 Q. And were the carrying costs for 22 Lafar the same
3 as the other projects we discussed?

4 A. Yes, sir.

5 Q. Mortgage, utilities, were any of these projects
6 income producing projects, to your knowledge?

7 A. Not net income producing. We rented a couple of
8 them, but it didn't cover the expenses.

9 Q. In funding these carrying costs, you and
10 Mr. Covington agreed to fund the carrying costs for the
11 partnership or on behalf as well as for Mr. Rhodes; is
12 that correct?

13 A. Yes, sir.

14 Q. Did you ever have discussions with Mr. Rhodes
15 about these carrying costs for 22 Lafar Avenue?

16 A. I did.

17 Q. And what did you discuss with Mr. Rhodes?

18 A. Same as the other two projects that went sour,
19 that we were going to lose money on this project, and
20 when it was eventually sold, we were going to have to
21 settle up with the losses.

22 Q. What was his response?

23 A. He said he understood and agreed.

24 Q. Did Mr. Rhodes ever object to you paying carrying
25 costs in 22 Lafar Avenue?

- 1 A. Never.
- 2 Q. Did you pay the money for funding these carrying
3 costs for you or for your job at Patriot Timber Products?
- 4 A. That's correct, yes, sir.
- 5 Q. Do you recall how much in carrying costs you
6 provided personally out of your own pocket?
- 7 A. I think Lafar was somewhere around \$160,000.
- 8 Q. Mr. Covington, did he share in these costs?
- 9 A. Yes, sir, he did.
- 10 Q. Did Mr. Rhodes put in any money for carrying costs
11 for 22 Lafar?
- 12 A. Not to my knowledge, no, sir.
- 13 Q. So you and Mr. Covington covered Mr. Rhodes's
14 portion of the carrying costs, correct?
- 15 A. Yes, sir.
- 16 Q. Did you ever try to settle up with Mr. Rhodes with
17 regard to the money you paid on his behalf for the
18 carrying costs for 22 Lafar Avenue?
- 19 A. Yes, sir. At the time when I met with Mr. Rhodes,
20 I was setting up 2802 Middle and 2624 Myrtle, we knew we
21 had a loss on 22 Lafar, but it had not yet sold. So I
22 notified him of the loss, but we did not know the amount
23 at that time.
- 24 Q. Do you recall when that was?
- 25 A. 2012, maybe.

1 Q. Did Mr. Rhodes ever pay you for these moneys that
2 you advanced on his behalf?

3 A. No, sir, he did not.

4 Q. To your knowledge, did Mr. Rhodes ever pay
5 Mr. Covington for the money he paid for the carrying
6 costs on his behalf?

7 A. I have no knowledge of whether he paid
8 Mr. Covington or not.

9 MR. JOHN ROSEN: Your Honor, this is
10 Plaintiff's Exhibit 71.

11 BY MR. JOHN ROSEN:

12 Q. Mr. Haskin, could you tell us what that is.

13 A. This is a list of projects that Mr. Rhodes and I
14 did together.

15 Q. And over what period of time did you and Mr.
16 Rhodes do these 14 projects?

17 A. Well, Sully's restaurant was the first one, and,
18 again, I think that was 1990 or 1991. The last projects
19 Mr. Rhodes and I did together were completed, I believe,
20 some time in 2008.

21 Q. Was there a signed agreement for Ensign Court or
22 Sully's restaurant?

23 A. No, sir, there was not.

24 Q. For 2914 Marshall Boulevard?

25 A. No, sir.

1 Q. How about 29 Ion Avenue?

2 A. No, sir.

3 Q. 18 Ion Avenue?

4 A. No, sir.

5 Q. 1723 Middle Street?

6 A. No, sir.

7 Q. Were there any written operating agreements or
8 signed agreements of any kind other than for 2624 Bayonne
9 in this 20-year period?

10 A. To my knowledge, 2624 Bayonne was the only signed
11 operating agreement.

12 Q. And 2851 Ion was different from the other deals in
13 the fact that it was a lot; is that correct?

14 A. May have that address wrong, but I purchased a lot
15 on Sullivan's Island that Sammy found for me, and it was
16 such a crazy time. I closed on the lot on Friday, and a
17 realtor had come to me with a price that was above what I
18 paid for the lot, and I sold it the following Monday.

19 Q. And was the lot in your name?

20 A. Yes, sir.

21 Q. And what did you do with profits from that lot
22 sale?

23 A. Even though it was in my name, I gave Sammy half
24 the profits.

25 Q. Why would you give him half the profits?

1 A. Sammy was my partner. He was my best friend. We
2 were doing projects together. We were supposed to split
3 all profits and losses equally.

4 Q. What did Mr. Rhodes do to assist you in closing
5 that transaction, if anything?

6 A. Sammy found the lot and notified me of it, but as
7 far as any financial help in closing, there was none.

8 Q. And the lot was in your name only?

9 A. Yes, sir.

10 Q. And you voluntarily gave him half the profits on
11 the sale?

12 A. That's correct.

13 Q. And why would you do that?

14 A. Again, Sammy was my partner. He found the lot,
15 and I agreed with Sammy in deals that we did to split all
16 profits and losses equally.

17 Q. Do you recall how many of these projects that
18 we're looking at in Exhibit 71 had a written agreement at
19 any time?

20 A. Sir, the only one I recall a written agreement was
21 2624 Bayonne.

22 Q. And you don't recall why you signed that operating
23 agreement.

24 A. No, sir, I don't.

25 Q. In all the projects listed, when would you and Mr.

1 Rhodes settle up on the profits and losses?

2 A. As a typical role, ten days, 14 days, sometimes
3 three weeks afterwards. We would wait for all of the
4 bills to come in, and then we would settle up.

5 Q. How did the 1723 Middle Street project begin?

6 A. Like the other projects. I secured financing and
7 Sammy was building the house.

8 Q. And who were the partners at 1723 Middle Street?

9 A. It was myself, Sammy Rhodes, or one of his
10 entities.

11 Q. What was the arrangement between you and
12 Mr. Rhodes?

13 A. I would secure financing. I would pay any
14 shortfall until the first draw. I would fund the project
15 in excess of bank draws until the house was sold. Then
16 we would split profits and losses equally.

17 Q. So this project was handled the same way as all
18 the other projects were handled?

19 A. Yes, sir.

20 Q. When the house was finished, who did you and
21 Mr. Rhodes sell the property to?

22 A. Sammy came to me a couple months -- or before the
23 house was finished and said that his wife wanted to move
24 into a smaller house and would I be willing to sell that
25 house to him and his wife.

1 Myrtle, and your share of the loss on 22 Lafar.

2 Q. And can you tell us what this is, 68-B.

3 A. This is a response from Mr. Rhodes asking if I
4 could come by his restaurant, which is Sullivan's
5 restaurant, at 12:00.

6 Q. And did that meeting take place?

7 A. Yes. I responded, See you then and I did meet
8 him.

9 Q. Plaintiff's Exhibit 68-C, can you identify that
10 for us, Mr. Haskin.

11 A. Yes, sir. This was an e-mail I sent to Sammy
12 after we met. It outlines the losses on properties in
13 question. Sammy had said that he needed to speak with
14 his attorney. His attorney may have some questions as
15 far as the accounting and the cost.

16 Q. Can you identify that for us, please, sir.

17 A. This is a follow-up to the previous e-mail that I
18 sent asking if he had met with Rob, that was Rob Kerr,
19 his attorney at the time, and Sammy responded and said
20 they had not met yet.

21 Q. What was the date in this e-mail exchange?

22 A. November 15, 2011.

23 Q. And did Mr. Rhodes deny he owed you money in this
24 e-mail?

25 A. Never, no, sir.

1 Honor. The e-mails speak for themselves. His
2 impressions are speculative.

3 THE COURT: Sustained.

4 BY MR. JOHN ROSEN:

5 Q. Mr. Haskin, what is the exhibit I just handed you,
6 Exhibit 68-G?

7 A. This is a follow-up to the previous e-mail sent by
8 me, or sent by Sammy, wanting to be sure I got the last
9 e-mail that Rob Kerr needed for my accountant, Mike
10 Gratz, and I responded that I did.

11 Q. In that first meeting that you had with
12 Mr. Rhodes, he never denied that he owed you the money?

13 A. No, sir, he did not.

14 Q. And when did he first deny that he owed you the
15 money in this case?

16 A. When I filed the lawsuit against him.

17 Q. When did you discover Mr. Rhodes had conveyed his
18 entire interest in 1723 Middle Street to his wife,
19 Tracey?

20 A. I did not discover that until the lawsuit and we
21 had discovery.

22 Q. And when did you discover that Mr. Rhodes had
23 pulled over \$800,000 in equity from his home, 1723 Middle
24 Street?

25 A. During the lawsuit process.

1 enter all these?

2 MR. JOHN ROSEN: Yes, Your Honor. We would
3 like to enter all these into evidence. I'll give you the
4 originals at this time. There is one of them.

5 THE COURT: Mr. Haskin, while we're on the
6 break, you can't talk to anybody, including your lawyer.

7 THE WITNESS: I understand. Yes, sir.

8 (Plaintiff's Exhibits 68-A through G and
9 Exhibit 71 were marked for identification and admitted
10 into evidence.)

11 (Recess taken.)

12 THE COURT: Mr. Cisa, are you ready to begin
13 your cross?

14 MR. CISA: I am. Thank you.

15 CROSS-EXAMINATION

16 BY MR. CISA:

17 Q. Good morning, Mr. Haskin.

18 A. Good morning.

19 Q. You said you work for Patriot Wood Products?

20 A. Patriot Timber Products.

21 Q. You were working there in the 2006-2007 time
22 frame?

23 A. That's correct.

24 Q. What were your duties and responsibilities for
25 Patriot Wood Products in 2006 and 2007?

1 A. I was purchasing lumber. I was purchasing
2 plywood. I was negotiating freight rates with container
3 companies, and I was doing some sales.

4 Q. Was that a full-time position in 2006 and 2007?

5 A. Yes, sir, it was.

6 Q. How many hours a week were you working?

7 A. At that time, probably about 50 hours a week.

8 Q. Did you go out of town on occasions?

9 A. By that time, never more than three or four days
10 at a time.

11 Q. How often did you go out of town for three or four
12 days at a time?

13 A. My office is in Greensboro, North Carolina, so I
14 would leave on Monday and I would come back on Friday.

15 Q. You testified that your part of the agreement with
16 2802 Middle and 2624 Myrtle and Station 22 of Charleston
17 was to provide financing, correct?

18 A. That's correct.

19 Q. And also fund any shortfalls during construction?

20 A. Yes, sir.

21 Q. Pay interest, things of that nature, correct?

22 A. Correct.

23 Q. Where did the financing come from for 2802 Middle?
24 Is that an equity line on your house?

25 A. 2802 Middle, that was a commercial line.

1 Q. A commercial line?

2 A. Yes, sir.

3 Q. Secured by what?

4 A. Secured by properties that I owned.

5 Q. Okay. So you had a blanket mortgage on properties
6 you owned?

7 A. I had a commercial line. It was secured by
8 properties that I owned free and clear, yes, sir.

9 Q. How much was that commercial line?

10 A. I believe it was \$3 million.

11 Q. So to come up with the financing on 2802 Middle
12 Street to acquire the lot and fund the construction, fund
13 the shortfall, you just wrote checks off your equity
14 line, correct, commercial line?

15 A. I'm not sure if 2802 was fully funded by the
16 commercial line or not.

17 Q. How about 2624 Myrtle? How was that funded?

18 A. That could have been partially by the commercial
19 line or it could have been from a bank loan. I'm not
20 sure.

21 Q. Okay. But did you have -- did you have financing
22 in place before you purchased 2802 Middle with your
23 commercial line?

24 A. I'm not sure if I had the commercial line before
25 or after.

1 Q. All right. Other than going out and getting
2 financing, either through your commercial line or going
3 and getting a construction loan, did you have any other
4 role relative to these three projects?

5 A. None financing related, no, sir.

6 Q. So what you did is you came up with the money, you
7 came up with the financing. You signed on it personally,
8 correct?

9 A. Yes, sir.

10 Q. And then Sammy Rhodes or Rhodes Investments did
11 everything else, correct?

12 A. Correct.

13 Q. You hired the subcontractors, correct?

14 A. Yes, sir, that's correct.

15 Q. You supervised the subcontractors?

16 A. Yes, sir.

17 Q. You made sure the work was done properly, correct?

18 A. Yes, sir.

19 Q. And y'all set up a separate checking account for
20 each of these three entities, 2802 Middle, 2624 Myrtle,
21 and Station 22, correct?

22 A. That's my recollection, yes, sir.

23 Q. And Sammy Rhodes -- you would deposit money
24 into -- write checks to 2802 Middle Street, 2624 Myrtle,
25 and Station 22, and those checks would be deposited into

1 the accounts, correct?

2 A. Either that or sometimes we would either fund it
3 from my commercial line.

4 Q. But the money would be funded into these
5 particular LLCs, limited liability companies, correct?

6 A. Yes, sir?

7 Q. And Sammy Rhodes would be the one that wrote the
8 checks and paid the bills, correct?

9 A. That's correct.

10 Q. And then Sammy Rhodes would turn those check
11 records over to a bookkeeper, correct?

12 A. That's correct.

13 Q. Debbie Juris?

14 A. Yes, that's correct.

15 Q. And she would put it into some kind of a spread
16 sheet, and that would be sent down to Mike Gratz?

17 A. I think she put it in a general larger and sent it
18 to Mike Gratz, that's correct.

19 Q. So Sammy Rhodes did everything relative to the
20 construction of the project with you providing the
21 financing?

22 A. Yes, sir.

23 Q. Okay. How much time did you spend getting the
24 financing for 2802 Middle Street, LLC? Was it just a
25 matter of going to a bank and making a loan application?

1 Q. That property wasn't owned by you, it was owned by
2 1723 Middle, LLC, correct?

3 A. Of which I was a member, yes, sir.

4 Q. You were a member, and Rhodes Investments, Inc.
5 was a member, correct?

6 A. Sammy or his entities, sure.

7 Q. But you didn't own the property; it was owned by a
8 limited liability company?

9 A. I didn't own it personally, that's correct.

10 Q. You introduced into evidence an e-mail dated
11 November 3, 2011 as Exhibit 68-A. Let me show that to
12 you; is that correct?

13 A. Yes, sir. I think we already went over this
14 e-mail.

15 Q. That's the e-mail you sent to Sammy Rhodes.

16 A. That's correct.

17 Q. Where you said, I want to meet and discuss losses,
18 right?

19 A. That's correct, yes, sir.

20 Q. So the first time that you made any demand upon
21 Sammy Rhodes to discuss losses was November 3rd, 2011,
22 correct?

23 A. That's correct.

24 Q. Okay. But you were incurring losses for 2802
25 Middle Street that started in 2006, didn't it?

1 A. We did not know that we were going to lose money
2 on 2624 Myrtle or 2802 Middle until 2008. Those numbers
3 reflect the 2006-2007 out-of-pocket contributions.

4 Q. Okay. These were losses you claimed on your
5 personal tax return?

6 A. I don't know if they're designated as losses, but
7 those were monies I put the projects. How my accountant
8 treated it, I don't know.

9 Q. So you knew in 2008 that the property was upside
10 down?

11 A. That's correct, yes, sir.

12 Q. Okay. And in 2008, when you knew the property was
13 upside down, you had already paid about \$250,000 in
14 losses, correct?

15 A. Out-of-pocket expenses of about \$250,000.

16 Q. In 2008, did you go to Sammy Rhodes and say, Write
17 me a check for \$125,000?

18 A. No, sir. I think I already discussed that. I
19 went to Sammy, and I said when both these properties were
20 sold, we would settle up on the losses.

21 Q. Let me ask it this way: All these losses, when
22 they were incurred in 2006, 2007, 2008, did you provide
23 an accounting to Sammy Rhodes?

24 A. Not to my knowledge, no, sir.

25 Q. You didn't?

1 A. No, sir.

2 Q. Did you ever provide an accounting to Sammy Rhodes
3 of what the losses were?

4 A. Not to my knowledge, no, sir.

5 Q. And your testimony is that you divided losses
6 equally, correct?

7 A. That's what we are supposed to do, yes, sir.

8 Q. But the tax returns that you signed on behalf of
9 all three of these entities show different, don't they?

10 A. I'm not sure what they show. I just know our
11 agreement.

12 Q. Well, the tax returns show that you took the
13 majority of the losses, almost 100 percent, every year;
14 isn't that correct?

15 A. I don't know what they show. I think I just said
16 that.

17 Q. You were here yesterday, weren't you?

18 A. Yes, sir.

19 Q. You were listening, weren't you?

20 A. I was trying to, yes.

21 Q. And you understand that you took the majority of
22 all the losses, every year, for these LLCs.

23 A. I know I took what legal deductions I had for
24 moneys put in during those years.

25 Q. And you know when you signed the tax returns for

1 Q. Mr. Haskin, you signed all these tax returns,
2 right?

3 A. Yes, sir.

4 Q. Did you look at them?

5 A. I relied on my accountant who I think is very
6 good. I'm not an accountant. Looking at tax returns, I
7 wouldn't know anything about them.

8 Q. That's not my question.

9 A. Right.

10 Q. My question was, you signed the tax returns. Did
11 you look at them before you signed them?

12 A. Probably not, no, sir.

13 Q. Okay. You just signed them. You didn't look at
14 them at all?

15 A. You know, my recollection is if I looked at them,
16 I didn't do it in depth.

17 Q. Okay. Station 22 of Charleston, LLC, the members
18 were William Haskin, Rhodes Investments, Inc., and
19 Covington Property, Inc.; isn't that correct?

20 A. Again, it was Jim Covington or whatever entity he
21 used, Sammy or whatever entity he used, and myself.

22 Q. You understand, sir, that when a limited liability
23 company names a member, such as Rhodes Investments, Inc.,
24 that's a member of that limited liability company?

25 A. I'm really not familiar with it.

1 Q. He didn't sign a note because he said he was
2 building the house, putting his time and effort to do
3 that; isn't that correct?

4 A. No, sir. He never told me that.

5 Q. Well, are you aware of any money that 2802 Middle
6 Street paid to Sammy Rhodes to spend 12 to 15 months
7 building that house?

8 A. He wasn't due any money to build that house.

9 Q. Not my question.

10 A. Okay.

11 Q. Are you aware of any money that 2802 Middle Street
12 paid to Sammy Rhodes or Rhodes Investments, Inc. to build
13 the house at 2802 Middle?

14 A. I am not aware of it.

15 Q. How about 2624 Myrtle? Are you aware of any money
16 that 2624 Myrtle, LLC paid to Sammy Rhodes or Rhodes
17 Investments, Inc. to spend that 12 or 15 months building
18 that house?

19 A. No, sir. I'm not aware of it.

20 Q. Are you aware of any money that Station 22 of
21 Charleston, LLC paid to Sammy Rhodes or Rhodes
22 Investments for that two years that he spent building
23 that house?

24 A. No, sir. I'm not aware of any.

25 Q. But you say you could hire a contractor to build a

1 house, maybe you could do it for 10 percent, but you
2 could at least get it for 20 percent of the cost,
3 correct?

4 A. That's correct.

5 Q. Okay. Let's look at that for a second. This is a
6 chart that I think was done by your expert,
7 Mr. Livingston. Do you remember that?

8 A. Yes, sir, I believe so.

9 Q. What he's showing is 2624 Bayonne sold for
10 \$3,720,000?

11 A. Yes, sir.

12 Q. Then he showed what distribution was made to
13 Mr. Rhodes, or Rhodes Investments -- was actually made to
14 Rhodes Investments, Inc.; is that correct?

15 A. It just says distribution to Rhodes.

16 Q. Okay. And for 2624 Bayonne, the distribution to
17 Rhodes was \$210,576, correct?

18 A. Yes, sir.

19 Q. Construction costs for 2624 Bayonne were
20 \$1,130,000; is that correct?

21 A. I don't know.

22 Q. Does that sound right?

23 A. Bayonne? Bayonne was -- yeah, I mean, it sounds
24 reasonable, but I don't know the amount.

25 Q. Okay. And if the construction costs were

1 A. I do not know.

2 Q. How about Station 22 of Charleston? Were the
3 construction costs over \$1 million for that project?

4 A. I do not know.

5 Q. In any event, Rhodes Investments, Inc. and
6 Mr. Rhodes didn't get anything out of any of these three
7 projects, correct?

8 A. That's my knowledge, yes, sir.

9 Q. And you paid the carrying costs and got the
10 financing because that was your agreement with Rhodes
11 Investments and Sammy Rhodes; isn't that correct?

12 A. Yes, sir.

13 Q. And you acknowledge, don't you, sir, that it
14 wasn't Sammy Rhodes's responsibility to get the financing
15 and fund these projects; that was your responsibility?

16 A. That's correct.

17 Q. And I acknowledge that Rhodes Investments, Inc.
18 didn't need any money because you were providing the
19 money; isn't that correct?

20 A. I didn't acknowledge anything to Rhodes
21 Investments, Inc. My responsibilities were to secure the
22 financing and pay any costs outside the bank draws until
23 the house was sold.

24 Q. Well, let me ask it this way: Do you acknowledge
25 Rhodes Investments, Inc. or Sammy Rhodes didn't need

1 money to construct these houses because you were
2 providing the money, the financing, and the shortfall?

3 A. I think that's fair, yes, sir.

4 Q. Okay. You knew when these homes were constructed,
5 2802 Middle, 2624 Myrtle, and Station 22, that the market
6 had fell.

7 A. No, sir.

8 Q. You didn't know that?

9 A. Well, when we started these projects, the market
10 was very high.

11 Q. When they were completed.

12 A. Oh, yes, sir. When they were completed, or some
13 time shortly after, it was obvious that the market had
14 dropped; yes, sir.

15 Q. Okay. You knew at the end of 2007, 2008, that the
16 market was collapsing. You were trying to sell these
17 properties, correct?

18 A. As to the date, it might have been the end of
19 2008, but some time around that time period, yes, sir, we
20 knew the markets were collapsing.

21 Q. And you help market these properties?

22 A. Yes, sir.

23 Q. Did you help market these properties for sale?

24 A. No, sir.

25 Q. You did not?

1 A. No, sir.

2 Q. Who marketed them for sale?

3 A. I'm trying to recall. We had realtors. I believe
4 Ashley Haynes marketed 2802 Middle, 2624 Myrtle, and I
5 think Jim Covington had the listing on Station 22.

6 Q. 2802 Middle, that was a short sale?

7 A. Yes, sir.

8 Q. Who made the decision to do the short sale for the
9 amount of the money it was done for?

10 A. The bank. They told me either I had to pay the
11 balance or take the short sale, and they were going to
12 send me a K-1 for the difference.

13 Q. Okay. So your bank told you you needed to sign
14 the contract, so you signed it.

15 A. Yes, sir.

16 Q. That same thing with 2624 Myrtle?

17 A. Yes, sir.

18 Q. You didn't see a contract until you signed it?

19 A. They gave me an option. They called the note and
20 said you either pay what's owed or we will accept a short
21 sale, but this is the way it's going to work.

22 Q. And Station 22 of Charleston you said was a deed
23 in lieu of foreclosure?

24 A. Yes, sir. We rented that house for two or three
25 years and made payments while we were renting it and

1 finally obtained the deed in lieu, and I want to say that
2 house was -- they had to foreclose on it to do the deed
3 in lieu, but we eventually did get a deed in lieu.

4 MR. CISA: I don't have anything further.
5 Thank you, Mr. Haskin.

6 THE WITNESS: Thank you, sir.

7 THE COURT: Redirect?

8 REDIRECT EXAMINATION

9 BY MR. JOHN ROSEN:

10 Q. Mr. Haskin, going back to your testimony with
11 regards to the acquisition of these lots for these
12 projects, did Mr. Rhodes agree that you would acquire
13 these lots on behalf of the partnership?

14 A. Yes, sir.

15 Q. Did he agree to build the houses on those lots?

16 A. Yes, sir.

17 Q. On behalf of the partnership?

18 A. Yes.

19 Q. He never objected to you acquiring these lots on
20 behalf of the partnership?

21 A. Never.

22 Q. Was he in favor, in fact, of you acquiring these
23 lots on behalf of the partnership?

24 A. Absolutely.

25 Q. Did Mr. Rhodes have complete knowledge of your

1 acquisition of lots on behalf of the partnerships at
2 issue?

3 A. Absolutely, yes, sir.

4 Q. Moving to 2624 Myrtle Avenue, you recall that
5 project?

6 A. Yes, sir.

7 Q. Did Mr. Rhodes sign a personal guarantee on a bank
8 loan for that project?

9 A. Yes, sir, he did.

10 Q. Why did he do that, do you know?

11 A. I don't want to speak for Mr. Rhodes. I can only
12 attest that he signed the bank guarantee.

13 Q. In all of these projects, you agreed to acquire
14 the financing. He agreed to build the houses, and what
15 did you get in exchange for agreeing to acquire the
16 financing?

17 A. Nothing.

18 Q. Did you get an interest in the entity at issue?

19 A. Oh, yes.

20 Q. Did you get an ownership interest?

21 A. Yes.

22 Q. How much of an ownership interest did you get?

23 A. 50 percent, except for Station 22, which was a
24 third.

25 Q. So 2802 Middle Street, you got a 50 percent

1 interest in 2802 Middle Street for agreeing to acquire
2 the financing and doing the financial side?

3 A. Yes, sir. That was my role for my 50 percent,
4 yes, sir.

5 Q. And what did Mr. Rhodes agree to do in order to
6 get his 50 percent ownership interest in the business?

7 A. He was to build the house, oversee construction
8 until the end.

9 Q. So other than the 50 percent interest that
10 Mr. Rhodes earned by agreeing to construct the home in
11 all these cases, was he ever due any money for building
12 these houses?

13 A. No, sir, not one penny.

14 Q. So he shared in the profits if he made a profit,
15 correct?

16 A. That's correct.

17 Q. He agreed to share in the losses if there were
18 losses?

19 A. That's correct, yes, sir.

20 Q. As to construction costs on these various
21 projects, we talked a lot about those a minute ago. Who
22 paid for the construction costs on these projects? How
23 were they paid for?

24 A. Well, when we first got a project, there was a lag
25 between the first bank draw, once we got bank approval,

1 Q. What was Sammy Rhodes or Rhodes Investments,
2 Inc.'s role in Station 22, LLC?

3 A. Repeat the question.

4 Q. What was Rhodes Investments, Inc.'s role in --

5 A. He built the house.

6 Q. So Sammy Rhodes built the house?

7 A. Correct.

8 Q. Did Sammy Rhodes put in sweat equity?

9 A. Yes.

10 Q. Okay. All right.

11 MR. CISA: I have no further questions.
12 Thank you very much. Please answer any questions these
13 guys might have.

14 MR. RICHARD ROSEN: We have no questions,
15 Judge.

16 (Whereupon, the excerpt was concluded.)

17 - - - - -

18 (The following is an excerpt from the
19 above-captioned nonjury trial):

20 MR. CISA: Call Sammy Rhodes, Your Honor.

21 SAMUEL RHODES,

22 having been first duly sworn,

23 was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. CISA:

1 Q. Mr. Rhodes, how old are you, sir?

2 A. I'm 53.

3 Q. What do you do for a living?

4 A. I own a residential home building company, Rhodes
5 Residential Builders, and I own Sullivan's Restaurant.

6 Q. You know Bill Haskin?

7 A. Yes.

8 Q. Did you ever agree with Bill Haskin -- relative to
9 these LLCs we're talking about, 2802 Middle, 2624 Middle,
10 and Station 22 of Charleston, did you ever agree that
11 your company or you would be liable for losses?

12 A. No.

13 Q. Did you ever have a conversation with Mr. Haskin
14 before you started 2802 Middle Street that y'all would
15 share equally in the profits and losses?

16 A. No.

17 Q. How about 2624 Myrtle?

18 A. No.

19 Q. How about Station 22 of Charleston, LLC?

20 A. No.

21 Q. Were you obligated on any of the indebtedness
22 relative to these three entities?

23 A. No, I was not.

24 Q. Okay. Did you claim any losses that Mr. Haskin
25 contributed to these LLCs on your tax returns?

1 A. No, I did not.

2 Q. Now, you did -- Rhodes Investments, Inc. did make
3 some capital contributions. Do you remember what those
4 were for?

5 A. It was a few times Bill was out of town and there
6 was some bills that needed to be paid, and he asked me to
7 put money in and pay the bills.

8 Q. And that's what you did?

9 A. That's exactly what I did.

10 Q. At any time in 2006 did Bill Haskin make a demand
11 on you to pay him back for half of his contributions?

12 A. No, sir.

13 Q. How about 2007?

14 A. No, sir.

15 Q. How about in 2008?

16 A. No, sir.

17 Q. How about 2009?

18 A. No, sir.

19 Q. How about 2010?

20 A. No, sir.

21 Q. So the first time Mr. Haskin made a claim against
22 you, was that on November 3, 2011 when you got that
23 e-mail?

24 A. Yes. That was the first time he told me I owed
25 him money.

1 Q. Is that the first time he ever said you owed him
2 money?

3 A. Yes, it was.

4 Q. I'm going to jump around a little bit, but I just
5 want to cover a few points.

6 What did you contribute to 2802 Middle, 2624, and
7 Station 22 of Charleston?

8 A. I built nice custom homes on all three of those
9 lots.

10 Q. Did Mr. Haskin help you build those homes?

11 A. No, he did not.

12 Q. Did Mr. Covington help you build those homes?

13 A. No, he did not.

14 Q. How long did it take you to build this house at
15 2802 Middle?

16 A. Probably 12, 14 months.

17 Q. How about 2624?

18 A. Twelve to fourteen months.

19 Q. How about Station 22?

20 A. Eighteen months.

21 Q. Had you engaged in any business deal with
22 Mr. Haskin where you agreed to sign on loans or be
23 responsible for losses?

24 A. Yes, I did.

25 Q. Okay. What type of projects?

1 A. We did two homes on Daniel Island, and our
2 partnership at that time -- we were partnering with
3 another builder, so I was not going to be the contractor,
4 so I agreed to sign on a note because I was not the
5 contractor.

6 Q. Was the builder Buffington Homes?

7 A. Yes, it was.

8 Q. So that was a situation where you didn't build
9 those houses?

10 A. That's correct.

11 Q. And you did agree to sign the loans for those two
12 properties?

13 A. Yes, sir.

14 Q. Was there any other time where you agreed to sign
15 on the loans relative to --

16 A. We bought a commercial building on Daniel Island,
17 and I signed on that loan also.

18 Q. Did you build that building?

19 A. No, I did not.

20 Q. Who built that building?

21 A. I'm not sure.

22 Q. Was there an existing building?

23 A. Yes. One more time.

24 Q. What other time?

25 A. Jim and Bill approached of me and said that they

1 didn't want to bring me on as a partner. Would I build
2 them a custom home on Isle of Palms, and I agreed to do
3 it for a fee.

4 Q. All right. As a builder?

5 A. As a builder.

6 Q. But you weren't obligated on those loans, correct?

7 A. Correct.

8 Q. What kind of fee did they pay you, do you
9 remember?

10 A. I believe it was around 100,000.

11 Q. At the time these homes were being built, if you
12 were going to do it for a fee, what kind of fee would you
13 have done it for?

14 A. 20 percent.

15 Q. 20 percent of what?

16 A. Total cost of construction.

17 Q. All right. Let me show you a sheet. Is this the
18 sheet you prepared to refresh your recollection about the
19 cost of the construction?

20 A. Yes, it is.

21 Q. All right. Can you tell me what the cost of
22 construction was for 2802 Middle Street?

23 A. 2802 Middle Street cost approximately \$1,150,000
24 to build.

25 Q. What would 20 percent of that cost fee total?

1 A. \$230,000.

2 Q. How about for 2624 Myrtle?

3 A. 2624 Myrtle costs approximately \$1,330,000.

4 Q. What would have been a 20 percent fee on that?

5 A. \$266,000.

6 Q. How about Station 22 of Charleston?

7 A. Station 22 of Charleston construction costs were
8 around \$980,000.

9 Q. And that would have been -- 20 percent of that
10 would have been what?

11 A. \$196,000.

12 Q. All right. Now, there is another exhibit that was
13 prepared by Mr. Livingston. Did Rhodes Investments, Inc.
14 or you construct the residence at 2624 Bayonne?

15 A. Yes, I did.

16 Q. What were the construction costs on that house?

17 A. 2624 Bayonne, it says \$1,130,000.

18 Q. And what would 20 percent of that be?

19 A. \$226,000.

20 Q. And you got 210,576?

21 A. Correct.

22 Q. Or Rhodes Investments, Inc. did?

23 A. Yes.

24 Q. How about 1908 Middle?

25 A. 1908 Middle cost \$1,450,000.

1 Q. What's 20 percent of that?

2 A. \$290,000.

3 Q. And Rhodes Investments, Inc. got \$278,900?

4 A. That's correct.

5 Q. How about 1914 Middle?

6 A. 1914 cost 1,395,000.

7 Q. What is 20 percent of that?

8 A. \$279,000.

9 Q. And Rhodes Investments, Inc. got \$222,041?

10 A. That's correct.

11 Q. Okay. Rhodes Investments, Inc., was it a member
12 in these three LLCs, 2802 Middle Street, 2624 Myrtle, and
13 Station 22 of Charleston?

14 A. Yes, it was.

15 Q. Why did you incorporate the business to be the
16 member?

17 A. My attorney instructed me to do that way for
18 protection from liability.

19 Q. At any time did you ever agree to be responsible
20 for any of the debt or financing or carry on any of these
21 LLCs?

22 A. No, I did not.

23 Q. When Bill came to you or sent you that e-mail, did
24 you meet with him when he said they wanted to talk to you
25 about the losses on these three projects?

1 A. I met with him after they sent me the e-mail, yes.

2 Q. What was the subject of conversation, do you
3 remember?

4 A. He approached me and gave me this long list of
5 money that he said I owed him, and I was totally taken
6 aback. I had no idea that he thought I owed him money.

7 Q. At that time were y'all best friends, or close
8 friends?

9 A. We were friends, yes, yes.

10 Q. Were you -- how long had y'all been friends?

11 A. Since 1982.

12 Q. Did you tell Bill Haskin you didn't owe him any
13 money?

14 A. I did not tell him that at first because I didn't
15 know how to approach this. I called an attorney right
16 away and told him what was going on. I didn't know what
17 to say because here was Bill telling me I owed him all
18 this money, and it just caught me off guard.

19 Q. All right. They asked you, somebody, if you
20 signed a personal guarantee on 2624 Myrtle for the loan.
21 Do you remember that?

22 A. Yes, I do.

23 Q. Can you explain to Judge Young what the
24 circumstances were as far as that loan?

25 A. Yes. 2624 Myrtle was 90 percent complete, and

1 the LLC into your personal account, you needed to deposit
2 them in the Rhodes Investments, Inc.?

3 A. Yes, I did.

4 Q. And after he told you that, is that what you did?

5 A. That's what I started doing.

6 Q. Rhodes Investments, Inc. report all of its income
7 on its tax returns?

8 A. All of the proceeds from the sale of all these
9 properties ran through Rhodes Investments, Inc. on the
10 K-1, and they were taxed at ordinary income and not
11 capital gains, so I did pay correct taxes as supported by
12 Bill's expert attorney -- or the expert witness
13 yesterday.

14 Q. Was Mr. Gratz your accountant or was it Bill's
15 accountant?

16 A. Mr. Gratz was Bill's accountant, and I imagine he
17 was our business accountant. I don't know how that would
18 affect me.

19 Q. Did you have dealings with Mr. Gratz?

20 A. Occasionally he would come in and ask me questions
21 or call and ask me questions, but that was it.

22 Q. Did you sign the tax returns for any of these
23 entities?

24 A. No, I did not.

25 Q. Did you handle a checkbook for any of these

1 entities?

2 A. I did handle a checkbook.

3 Q. Did each of these entities have a separate
4 checking account?

5 A. Yes, they did.

6 Q. And did Bill Haskin, when you made a contribution,
7 write a check to the entity and you deposit it into the
8 account?

9 A. Yes.

10 Q. And then you would pay bills?

11 A. Yes.

12 Q. Did Rhodes Investments, Inc. or you receive any
13 money for constructing these houses?

14 A. No. I never received a penny for constructing
15 these homes.

16 Q. Do you remember that -- did you purchase 1723
17 Middle Street from 1723 Middle Street, LLC?

18 A. Yes, I did.

19 Q. And that was -- you made that purchase in 2008; is
20 that correct?

21 A. Yes.

22 Q. Is do you recall what you paid for it?

23 A. \$2,157,000, I believe the number is.

24 Q. And you put about \$1.5 million in cash into that?

25 A. I sure did, yes.

1 Tracey Bozzelli as joint tenants with right of
2 survivorship?

3 A. We were approached by our financial advisor that
4 that was the correct thing to do in case something
5 happened to me or something happened the house would
6 belong to Tracey, so that's why we did that.

7 Q. At the time you transferred 1723 Middle, your half
8 interest to Tracey in March of 2009, was there any equity
9 in the property?

10 A. No, there was no equity in the property.

11 Q. When did y'all move in? Did you move in shortly
12 after you purchased it?

13 A. Yes, we did.

14 Q. In 2008?

15 A. Yes.

16 Q. Did you put it on the market for sale as soon as
17 you moved in?

18 A. We did put it on the market for sale.

19 Q. And you hadn't been able to sell it between the
20 time you moved in in 2008 and when you deeded a half
21 interest to your wife in March of 2009, correct?

22 A. I think Mr. Reese had it for sale for three years,
23 yes. We could not sell it.

24 Q. You put an equity line on the house?

25 A. Yes, I did.

1 Q. For how much?

2 A. I believe 250,000.

3 Q. Why did you do that?

4 A. I was totally out of money. I had no money to pay
5 my taxes. I had income taxes due. I was still paying a
6 mortgage payment at that time, and the mortgage payment
7 on that house was almost 10 grand a month. The taxes on
8 that house were, like, 11,000 a year. The flood
9 insurance was astronomical. It was just -- I had no
10 money. I was living off the money I had invested in that
11 house.

12 Q. Were you just taking some of your equity out of
13 the house by doing that?

14 A. Exactly.

15 Q. Did you transfer \$183,000 to Rhodes Investments,
16 do you remember?

17 A. I do not remember.

18 Q. Okay. There came a time when you transferred the
19 other half interest to your wife in February of 2010. Do
20 you remember that?

21 A. Yes.

22 Q. Why did you transfer that other half interest to
23 your wife in February 2010?

24 A. I approached Tracey when I was almost out of
25 money. My equity line was almost down to zero, and I

1 said, Tracey, I can no longer pay all the bills. You're
2 going to have to step in and start paying the bills, or
3 we're going to lose the house.

4 And she told me that her attorney advised her if
5 she is going to start paying the bills the house needed
6 to be in her name.

7 Q. Did it matter to you?

8 A. No, it didn't matter to me.

9 Q. If Tracey hadn't paid the bills, what would have
10 happened to the house?

11 A. We would have lost the house.

12 Q. To foreclosure?

13 A. Yes.

14 Q. At the time you conveyed the other half interest
15 in 1723 Middle to Tracey in February of 2010, did it have
16 any equity in it?

17 A. No equity.

18 Q. So you bought it in 2008 for \$2,157,000 some odd
19 dollars?

20 A. Yes.

21 Q. Did you have the property on the market the entire
22 time until it was sold?

23 A. Yes.

24 Q. And it was ultimately sold in December of 2011,
25 correct?

1 A. Yes.

2 Q. By your wife, Tracey, correct?

3 A. Tracey sold the house, yes.

4 Q. Had Tracey made all the payments of the house and
5 paid all the bills, the taxes and insurance, since she
6 was deeded the remaining one half interest in February of
7 2010?

8 A. We pulled the Bates statements, and at the point
9 that we sold the house, she had put \$122,000 for paying
10 bills for that house at the point when we sold it. So
11 yes, she had taken over all the bills, all the taxes, the
12 insurance, the power bill, everything.

13 Q. Did you lose money on that house?

14 A. Yes.

15 Q. How much?

16 A. I lost 522,000, and Tracey lost over 60,000.

17 Q. So when Tracey sold it, she got a net proceed of
18 about \$65,000?

19 A. That's correct.

20 Q. And after it was sold, where did y'all go?

21 A. We went to a rental house.

22 Q. Okay. Did there come a time when Tracey wanted to
23 buy a lot at 3029 Middle?

24 A. Yes.

25 Q. Who found the lot?

1 A. Tracey and I went looking for the lot. She picked
2 out the lot. I didn't actually want to be on that end of
3 the island, but she did, so she picked the lot.

4 Q. Who decided what she was going to offer for the
5 lot?

6 A. Tracey did.

7 Q. Did she ask you to put together a contract and try
8 to make the deal work?

9 A. Yes.

10 Q. And what was the purpose of her buying a lot, do
11 you know?

12 A. So we could construct a home to move into.

13 Q. Now, did you help Tracey with getting financing
14 for the lot?

15 A. Did I help her get the financing?

16 Q. Yes.

17 A. No, I did not help her. She went through her own
18 personal bank.

19 Q. Okay. Did you pay any money toward -- you,
20 yourself, pay any money toward the acquisition of the lot
21 at 3029 Middle?

22 A. No, I did not.

23 Q. Did you help Tracey get financing to construct a
24 house on the lot?

25 A. No, I did not.

1 A. No. I had no idea Bill thought I owed him money.

2 Q. Did you convey your interest in 1723 Middle Street
3 to your wife to defraud creditors?

4 A. No, I did not.

5 Q. Do you remember a discussion with Tim Reese about
6 purchasing 2802 Middle and 2624 Myrtle?

7 A. I remember distinctly, yes.

8 Q. Did it happen at Poe's?

9 A. It happened at Poe's yes.

10 Q. Was your wife with you?

11 A. Tracey was there.

12 Q. Did he tell you, Y'all should not spend over \$1
13 million for those two lots?

14 A. He gave us advice not to buy the lot for over a
15 million bucks, yes.

16 Q. Did you have any conversations with Bill Haskin
17 about buying those lots?

18 A. Yes, I did.

19 Q. What was the substance of the conversation?

20 A. I approached Bill after that, and I said, Bill,
21 you're my best friend. I don't want you to lose any
22 money. Tim thinks the lots are, like, 30,000 overpriced.
23 I don't want you to lose money. I don't -- you know, I
24 don't think it's a good deal that we move forward with
25 this.

1 Q. How did he respond?

2 A. Bill told me that he had plenty of money, and all
3 I had to lose was my time, so I agreed to do the
4 projects.

5 Q. These contributions that Rhodes Investments, Inc.
6 made to these three LLCs, are those arbitrary
7 contributions?

8 A. Yes.

9 Q. What were they for?

10 A. Expenses that were incurred.

11 Q. Why did Rhodes Investments make them?

12 A. Because Bill was out of town and bills needed to
13 be paid.

14 Q. Have you ever done a transaction or a business
15 deal whereby you were the builder and you also agreed to
16 pay one half of any losses when you were the builder?

17 A. No.

18 Q. And you mentioned in your deposition that you
19 entered into an agreement to build a couple houses now,
20 correct?

21 A. I'm in two agreements right now to do the same
22 thing, yes.

23 Q. Do you agree to assume losses?

24 A. No. I took the operating agreement before I
25 signed it to my attorney and assured it, just like I

1 showed him the operating agreements that Bill provided
2 me.

3 Q. Let me ask you about that, if I can find it.

4 The operating agreement that was executed was for
5 2624 Bayonne, LLC; is that correct?

6 A. Yes, sir.

7 Q. Before you signed that, did you take that
8 operating agreement to your attorney?

9 A. I took this to Billy Hennessy and had him look it
10 over; yes, I did.

11 Q. And after he looked it over, you signed it,
12 correct?

13 A. Yes.

14 Q. The other two operating agreements for 2802 Middle
15 and 2624 Myrtle are not signed; is that correct?

16 A. That's correct.

17 Q. Do you know why they were not signed?

18 A. I think it has to do with Bill switching the
19 financing to some kind of equity line out of his house.
20 It was under my understanding was when you get a loan,
21 you have to have an operating agreement, which 2624
22 represents, but I think Bill switched the financing with
23 putting in personal money out of his house, and that's
24 why these never got signed.

25 But they were provided to us, and Bill

1 acknowledged that in his pretrial statement.

2 Q. Okay. So did you get the operating agreements for
3 2624 Myrtle and 2802 Middle before you started the
4 projects?

5 A. Yes, we did.

6 Q. Are they basically the same as one signed for 2624
7 Bayonne?

8 A. They're exactly the same. In fact, the one that
9 is signed is dated February 26, 2006; the next one is
10 February 20, 2006, which is seven days apart; and the
11 third one is August the 15th, 2006, which is six months
12 later.

13 Q. All right. Do those operating agreements require
14 members to contribute capital?

15 A. No.

16 Q. Did you ever tell Bill Haskin that you understood
17 you were going to pay him one half of the losses relative
18 to these three LLCs?

19 A. I never said that. In fact -- could I keep going
20 with my answer?

21 Q. Yeah, go ahead.

22 A. Bill's testimony was that we had a meeting before
23 every project to discuss this, and Mr. Covington had
24 testimony earlier where no meeting took place, and he was
25 a member of one of these projects, so that was totally

1 DIRECT EXAMINATION

2 BY MR. CISA:

3 Q. Mr. Rhodes, how old are you, sir?

4 A. I'm 53.

5 Q. What do you do for a living?

6 A. I own a residential home building company, Rhodes
7 Residential Builders, and I own Sullivan's Restaurant.

8 Q. You know Bill Haskin?

9 A. Yes.

10 Q. Did you ever agree with Bill Haskin -- relative to
11 these LLCs we're talking about, 2802 Middle, 2624 Middle,
12 and Station 22 of Charleston, did you ever agree that
13 your company or you would be liable for losses?

14 A. No.

15 Q. Did you ever have a conversation with Mr. Haskin
16 before you started 2802 Middle Street that y'all would
17 share equally in the profits and losses?

18 A. No.

19 Q. How about 2624 Myrtle?

20 A. No.

21 Q. How about Station 22 of Charleston, LLC?

22 A. No.

23 Q. Were you obligated on any of the indebtedness
24 relative to these three entities?

25 A. No, I was not.

1 assumption that Sammy was the guy building and Bill was
2 the financier.

3 MR. RICHARD ROSEN: That's all I got, Your
4 Honor.

5 THE COURT: Redirect?

6 MR. CISA: None, Your Honor.

7 THE COURT: You're free to go.

8 (Whereupon, the excerpt was concluded.)

9 - - - - -

10 (The following is an excerpt from the
11 above-captioned nonjury trial):

12 (November 16, 2015.)

13 SAMUEL RHODES,

14 having been previously duly sworn,
15 was examined and testified as follows:

16 CROSS-EXAMINATION

17 BY MR. RICHARD ROSEN:

18 Q. You agree you and Bill Haskin had a verbal
19 agreement?

20 A. A verbal agreement?

21 Q. Yes, sir.

22 A. Yes.

23 Q. Okay. And the verbal agreement was that y'all
24 were going to do projects and you were going to do the
25 construction and Bill was going to provide the financing

1 to get the project built; isn't that right?

2 A. And Bill was going to be responsible for paying
3 any debt on the projects too, yes.

4 Q. Let me ask you this: Do you agree your agreement
5 was that Mr. Haskin would secure the necessary finance to
6 purchase desired parcels, obtain construction loans, and
7 fund any shortfalls during construction, and your job
8 would be to construct or manage the project on a
9 day-to-day basis, pay all the subcontractors and the
10 funds secured by Mr. Haskin?

11 A. Yes, but not limited to everything you said.

12 Q. Well, do you disagree with the affidavit you filed
13 in this case, your Exhibit 42? That's what you said in
14 your affidavit. Do you now disagree with that?

15 A. No, I don't disagree with it. You can read down
16 on my affidavit. You can see what else it says.

17 Q. Do you agree the allocation of losses for tax
18 purposes was done based upon which member funded the loss
19 each year?

20 A. That was the agreement, that Bill would get all
21 the tax write-offs. I was fine with that.

22 Q. Well, I'm not asking whether Bill got the
23 write-offs, I'm asking if you agree that the allocation
24 of losses for tax purposes was done based upon which
25 member funded the loss for each year?

1 A. Yes.

2 Q. This year, or a couple years ago, Bill sent you an
3 e-mail, correct?

4 A. Correct.

5 Q. And asked you to meet with him.

6 A. Yes, he did.

7 Q. Do you have 68-A in front of you?

8 A. No, I don't.

9 Q. Is this it?

10 Do you agree Bill Haskin sent you an e-mail on
11 November 3, 2011 at 5:45, saying, We closed on 2624
12 Myrtle today. I'm sure you are as happy as I am we both
13 paid our note off to FCD on the first. I need to meet
14 with you at your convenience to discuss how I am to be
15 paid back on the money you owe me for your primary
16 residence, the loss on the commercial loan of 2802 Middle
17 and 2624 Myrtle, and your share of the loss on 22 Lafar.

18 And then you responded to that. Look at 68-B. Do
19 you agree that Bill Haskin sent you an e-mail?

20 A. Yes.

21 Q. In 2011? Then on 68-B, you responded by saying
22 you can meet him tomorrow at Sullivan's at 12:00,
23 correct?

24 A. That's correct.

25 Q. And Bill said he would see you then.

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON 2012-CP-10-6506

WILLIAM B. HASKIN, JR.,	)	
	)	
Plaintiff,	)	EXCERPT OF RECORD
	)	
-vs-	)	November 17, 2015
	)	
SAMUEL W. RHODES, JR.,	)	Charleston, South Carolina
RHODES INVESTMENTS, INC.	)	
and RHODES CONSULTING, LLC,	)	
and TRACEY M. BOZZELLI,	)	
	)	
Defendants.	)	

B E F O R E:

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

A P P E A R A N C E S:

John E. Rosen, Esquire
Richard S. Rosen, Esquire
Attorneys for the Plaintiff

Frank Cisa, Esquire
Attorney for the Defendants

DIRECT EXAMINATION OF RICHARD LIVINGSTON

Amanda K. Haffenden, RPR, CRR
Ninth Circuit Court Reporter

ROA000335

1 (The following is an excerpt from the
2 above-captioned nonjury trial):

3 (November 17, 2015.)

4 MR. JOHN ROSEN: Your Honor, we would like to
5 call Richard Livingston live.

6 THE COURT: All right.

7 RICHARD LIVINGSTON,

8 having been first duly sworn,
9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. JOHN ROSEN:

12 Q. Good morning, Mr. Livingston. Can you tell us
13 your age.

14 A. My age? Thirty-seven.

15 Q. Where do you live?

16 A. Summerville, South Carolina.

17 Q. And what do you do for a living?

18 A. I'm a CPA with Dixon Hughes Goodman here in
19 Charleston.

20 Q. Can you give us your educational background.

21 A. I graduated from the Citadel here in Charleston,
22 and that's my college education. I also have various
23 licenses and designations that I've gotten since then.

24 Q. And your current job?

25 A. Currently a director with our forensics group with

1 A. Yes. I've read the deposition transcripts of
2 Mr. Haskin, Rhodes and Ms. Bozzelli.

3 Q. Any other information that we didn't cover?

4 A. I think I hit the large areas. There may be some
5 specific items that are within those files; for instance,
6 the loan files, hundreds of pages long; the production
7 from the CPA is 1,000 pages, so there's just a lot of
8 documents in there.

9 THE DEFENDANT: I can't hear Mr. Rosen when
10 he asks questions.

11 MR. JOHN ROSEN: I'll try to speak up.

12 THE DEFENDANT: Thank you.

13 MR. JOHN ROSEN: You're welcome.

14 Your Honor, this is Plaintiff's Exhibit 66.
15 Will you look at that for us, Mr. Livingston.

16 Your Honor, here is one for you to follow
17 along as well. It's an exhibit.

18 BY MR. JOHN ROSEN:

19 Q. Can you identify that document, sir.

20 A. Yes. This is a schedule that I prepared.

21 Q. There were several deals in this partnership that
22 went well; is that correct?

23 A. Well, there are -- I looked at the three -- I call
24 them deals, three pieces of -- building of three spec
25 houses, and -- well, six of them.

1 Three went well, and that would be these here, and
2 three didn't go well, and that would be the ones that I
3 guess are the source of this litigation.

4 Q. Can you list the deals that went well, or the
5 projects, rather, transactions?

6 A. Yeah. These here on the schedule, 2624 Bayonne,
7 1908 Middle Street, and 1914 Middle Street.

8 Q. Let's start with the first one, 2624 Bayonne; is
9 that correct?

10 A. Yes.

11 Q. When did Mr. Haskin and Mr. Rhodes do that
12 project, 2624 Bayonne, on Sullivan's Island?

13 A. I believe it from early 2006 to mid-'07.

14 Q. Do you know what they sold it for?

15 A. Yes. That's the gross sales price on this
16 schedule is approximately \$3.7 million.

17 Q. And do you know what profit they made?

18 A. The tax returns reported a gain on the sale of
19 approximately 287,000.

20 Q. How did the parties, Mr. Rhodes and Mr. Haskin,
21 split the profits from 2624 Bayonne?

22 A. Well, the way the profits were split, they were
23 allocated between Mr. Haskin and Mr. Rhodes in such a
24 manner as to provide for the return of contributing
25 capital and less the withdrawals to have an even ending

1 capital account for each party.

2 So they're not -- they didn't take the gain from
3 it and split it 50/50. It was split so that the
4 investments that were made were repaid, and then the
5 balance there would allow for equal ending capital
6 accounts.

7 Q. So they shared in the profits. They shared how
8 much each?

9 A. It looks like roughly 160,00 of the gain was
10 allocated to Mr. Rhodes, and 127 of the gain was
11 allocated to Mr. Haskin to account for an even ending
12 capital account, but the actual, you know, cash
13 distributions, of course, are different than the gain.

14 Q. Okay. Let's move on to 1908 Middle Street. Could
15 you tell us what they sold that property for?

16 A. It was sold for \$3 million.

17 Q. Do you know the profit they made?

18 A. The tax return reported a gain of approximately
19 \$568,000.

20 Q. How did Mr. Rhodes and Mr. Haskin split those
21 profits?

22 A. The allocation of the profits for that property,
23 1908 Middle, approximately 49 percent was allocated to
24 Mr. Rhodes, or 279,000; and approximately 51 percent was
25 allocated to Mr. Haskin, about 289,000; and, again,

1 that's the allocation of the gain. There were also, you
2 know, of course, distributions of those funds.

3 Q. What about 1914 Middle Street? When did they sell
4 that home?

5 A. The actual sale date, I believe, was some time in
6 '07. I don't know the exact date. I want to say some
7 time in August '07.

8 Q. And what was the profit that Mr. Rhodes and
9 Mr. Haskin made on the sale of 1914 Middle Street?

10 A. 1914 Middle they sold for approximately \$3 million
11 and made a gain, reported a gain, of approximately
12 \$386,000.

13 Q. In all these projects we just discussed, how did
14 the parties, Mr. Rhodes and Mr. Haskin, share the
15 profits?

16 A. The profits were allocated between the parties to
17 provide for ending capital balances that agreed,
18 essentially, to repay contributions, account for the
19 withdrawals. So, essentially, it was to account for an
20 even division of the ending capital accounts that were
21 created.

22 Q. So on these successful projects, Mr. Rhodes took
23 home how much money in a two-month period?

24 A. Well, the sale of these three properties occurred
25 between June, July, and August of 2007. The reported

1 distributions to Mr. Rhodes during that time period were
2 approximately \$771,000.

3 Some of that was a return of capital he had
4 contributed at the outset of about \$63,000, so it would
5 really be the difference, but during 2007, when most of
6 that occurred, he received distributions in that period
7 of about \$687,000.

8 Q. How much money did Mr. Haskin put into these
9 successful deals in total?

10 A. I believe Mr. Haskin's return show contributions
11 of approximately \$668,000.

12 Q. And how much money did Mr. Rhodes put in?

13 A. 63,000.

14 Q. Were Mr. Haskin and Mr. Rhodes successful in
15 building every project that they did and selling it for a
16 profit?

17 A. Well, I believe they were successful in building
18 every home. They built at least six here, it looks like.
19 Selling it for a profit, no. There were three I guess
20 that are the source of this litigation that were not sold
21 for a profit.

22 Q. Which projects were you referring to that were not
23 successful?

24 A. 2802 Middle Street, 2624 Myrtle, and 22 Lafar,
25 which is -- the entity associated with that is Station 22

1 of Charleston, LLC.

2 MR. JOHN ROSEN: Your Honor, I would like to
3 hand you Plaintiff's Exhibit 60.

4 BY MR. JOHN ROSEN:

5 Q. Can you identify this, Mr. Livingston?

6 A. Yes. It's a schedule that I prepared.

7 Q. And pursuant to the projects, have you been able
8 to determine how much money was contributed by each
9 partner or member?

10 A. Well, what this schedule shows, Your Honor, is the
11 actual capital contributions by each member by year for
12 the various projects.

13 So in the second column there, 2802 Middle Street,
14 LLC, that first block, Mr. Haskin, from 2006 to 2011,
15 contributed \$837,000; and Mr. Rhodes showed a contributed
16 capital of \$15,000.

17 For the next entity, 2624, Mr. Haskin contributed
18 approximately \$505,000 in his capital account, and
19 Mr. Rhodes contributed \$35,000 through his capital
20 account.

21 Station 22 actually had three members, Mr. Haskin,
22 Mr. Rhodes, and Mr. Covington, and again, their
23 respective contributions through their capital accounts
24 are there.

25 So in total, Mr. Haskin, over this time period for

1 these three entities, contributed approximately \$1.5
2 million in capital.

3 Q. For each of these projects that wasn't successful,
4 2802 Middle Street, 2624 Myrtle, and Station 22, can you
5 tell us what they sold the properties for?

6 A. 2802 Middle was sold for, I believe, \$1.7, \$1.8
7 million, somewhere in there. The next project, 2624
8 Myrtle, I believe it sold for \$1.6 million; and I believe
9 Station 22, 22 Lafar, was a deed in lieu back to the
10 bank.

11 Q. What was the loss of the partnership at issue here
12 incurred on these sales of these homes?

13 A. Well, for 2802 Middle Street and 2624 Myrtle, in
14 both of those, they appear to be short sales, Your Honor,
15 so the bank took back and there's debt forgiveness on
16 these. So the actual loss overall on these is what had
17 been contributed to the LLCs by the members to fund the
18 costs.

19 So the property was built. Debt was obtained.
20 The property was sold; wasn't enough to cover the debt,
21 and there was debt forgiveness on there. So the actual
22 sale of the property didn't result in a physical loss,
23 it's all of the capital that was contributed for the
24 expenses associated with it from '06 to 2011, but that is
25 shown as a loss on the tax returns.

1 A. No. Again, the profits were essentially allocated
2 50/50, and they were done so by adjusting that profit
3 percentage to account for even ending capital accounts at
4 the end of the period.

5 Q. And what about the losses lines, those deals?

6 A. Well, overall, they were profitable, but 2624
7 Bayonne did have losses in the first year that it was in
8 existence. In 2006, it had about \$10,000 of losses when
9 it was starting up, and those losses were allocated 50
10 percent to Mr. Haskin and 50 percent to Mr. Rhodes, and
11 they matched in that each contributed about 50 percent of
12 the capital that year.

13 Q. Let's review the projects that Mr. Haskin funded
14 out of his own pocket.

15 Again, how much did Mr. Haskin found out of pocket
16 for these three projects, the ones that went poorly?

17 A. Approximately \$1.5 million.

18 Q. How much did Mr. Rhodes fund out of his own
19 pocket?

20 A. \$54,000.

21 Q. Did you review all of the available tax returns?

22 A. Yes.

23 Q. Were the losses allocated 50/50?

24 A. No. The losses on those three projects were not
25 allocated 50/50.

1 Q. How were they allocated and why?

2 A. Well, of course, they were allocated to the
3 individual that funded the loss.

4 Q. Can you explain that a little more, why that was
5 the case? Is that common?

6 A. For instance, in 2009, on 2624 Myrtle, Your Honor,
7 Mr. Haskin contributed \$213,000, and Mr. Rhodes
8 contributed \$25,000. So Mr. Haskin contributed
9 approximately 89 percent of the capital that year to fund
10 the loss, and in 2009, Mr. Rhodes contributed
11 approximately 11 percent of that to fund the loss.

12 The loss was allocated to them, \$213,000 to
13 Mr. Haskin, and Mr. Rhodes was allocated a loss of
14 approximately 26,000. That again was 89 percent of the
15 loss to Mr. Haskin and approximately 11 percent of the
16 loss to Mr. Rhodes, so the loss was allocated in
17 proportion to who funded the loss that year, who put the
18 money in.

19 The following year, in 2010, there was total
20 contributions by Mr. Haskin and Mr. Rhodes. Mr. Haskin
21 put in almost 200,000; Mr. Rhodes put in approximately
22 \$10,000.

23 Again, the loss was allocated. That was
24 approximately a 95 to 5 percent split. Mr. Haskin was
25 allocated 95 percent of the loss for tax purposes, and

1 Mr. Rhodes was allocated approximately 5 percent, or
2 \$10,000 of the loss, for tax purposes.

3 So in the years that Mr. Haskin contributed 100
4 percent of the funds to cover the losses, Mr. Haskin
5 allocated 100 percent of that loss for his taxes.

6 Q. And which property was that for again,
7 Mr. Livingston?

8 A. I was specifically looking at 2624 Myrtle, but
9 it's the same for -- if we look at 2802 Middle.

10 Q. Can you tell us about that.

11 A. Yeah. So in 2802 Middle, Mr. Haskin, in '08,
12 funded 100 percent of the capital. He was allocated 100
13 percent of the loss.

14 In 2009, Mr. Rhodes contributed about 3 percent of
15 the capital and was allocated about 3 percent of the
16 loss, and Mr. Rhodes, the remaining -- I mean,
17 Mr. Haskin, the remaining 97 percent he funded, so he was
18 allocated the loss for tax purposes.

19 And in the following year, in 2010, Mr. Haskin
20 contributed all of the capital, and he was allocated all
21 of the loss.

22 Q. So the reason they allocated the losses this way
23 is because it was the partner that funds the loss out of
24 his own pocket, with real dollars; is that correct?

25 A. Correct..

1 Q. Have you seen any agreement between Samuel Rhodes
2 and Bill Haskin about how the loss would be allocated
3 from the agreement?

4 A. The only three I've seen, Your Honor, are three
5 operating agreements: One for 2624 Bayonne; one for 2802
6 Middle; and one for 2624 Myrtle. For all the other
7 entities, I've not seen any operating agreements.

8 Q. Okay. Have you seen an agreement that says how
9 they're going to allocate losses?

10 A. Well, the -- one of those operating agreements is
11 signed. The other two are not, but they're essentially
12 mirror images of each other. But they do talk about the
13 allocation of profit and losses, but that's the only
14 thing I've seen related to that.

15 Q. And none of those agreements were signed?

16 A. One of them was, 2624 Bayonne, but that was one of
17 the deals that went well, so that's not one of the deals
18 here.

19 Q. Have you seen any evidence that Mr. Haskin agreed
20 to pay for all the losses on any project?

21 A. Any evidence? The only -- I guess Mr. Rhodes has
22 testified that that was the agreement, but I've not seen
23 anything in writing that would indicate that.

24 Q. Earlier you testified that Mr. Rhodes contributed
25 to the losses; is that right, for some of these projects?

1 Q. Generally, in the absence of any other agreement,
2 where would the losses normally be allocated?

3 A. First, for allocation of losses, if I were doing a
4 tax return, I would look toward the agreement, but absent
5 an agreement, those losses normally are allocated to the
6 individual that funds loss.

7 Q. And when you refer to agreement, it could be an
8 oral agreement?

9 A. I believe partnerships, LLCs, are allowed to have
10 oral agreements.

11 Q. Were losses allocated to Mr. Rhodes when he made a
12 contribution?

13 A. Yes, as I pointed out on the deals that we were
14 looking at here.

15 Q. And were losses allocated to Mr. Haskin when he
16 made a contribution?

17 A. Yes.

18 Q. As to 22 Lafar, were losses allocated to
19 Mr. Covington when he made a contribution?

20 A. Yes.

21 Q. In all cases you reviewed, the tax returns reflect
22 the losses were allocated to partners or members who
23 actually contributed and lost money; is that right?

24 A. Overall, yes.

25 Q. What do the tax return tell us about how losses

1 were allocated?

2 A. Well, each year the percentage changes, which you
3 would expect because each year individuals are
4 contributing different amounts, so that percentage
5 changes in accordance with -- to allocate the loss in
6 accordance with their contributions.

7 Q. Are losses, in your experience, something that a
8 partner or an investor would want?

9 A. That they want? I have not seen anyone say they
10 want to go into business to lose money.

11 Q. Let's talk about the capital entry in the K-1s.
12 You talked about profit and loss. What does the capital
13 line in the K-1 signify?

14 A. So on a K-1, Your Honor, you have three
15 percentages that show up: You have the profit and loss
16 percentages, and then you have a line that says capital.
17 What that capital percentage represents is your
18 percentage in the undivided value of the assets of the
19 entity.

20 So, for instance, it's a real estate holding
21 company. It's 50 percent. What that signifies is the
22 fair market value of the assets minus the liabilities
23 that that partner has an interest in 50 percent of that
24 value. So for someone that does -- that's what you look
25 at for how much of the capital do they own in that

1 entity. That's what that capital percentage shows each
2 time and what it represents.

3 Q. You just told us that a partner's share of the
4 assets, does that include liabilities?

5 A. The net assets.

6 Q. Net assets. Thank you. Through all these
7 projects we've been talking about, do the capital line
8 remain the same for each partner?

9 A. We're referring to these three deals?

10 Q. Yes, and in the past.

11 A. For the three good deals, yes; and for the three
12 good deals, yes. It was always 50 percent.

13 Q. So the percentage between the ownership of the
14 companies never changed and/or the partnership interest?

15 A. I never saw a K-1 where the capital percentage for
16 Mr. Rhodes or Mr. Haskin was never more than a combined
17 50 percent, and I've never seen one that showed any
18 different.

19 Q. Have you seen the prenuptial agreement between the
20 defendant Rhodes and Ms. Bozzelli in this case?

21 A. Yes.

22 Q. In it you may recall Mr. Rhodes represents in his
23 holdings for real estate that he owns 50 percent of the
24 assets minus his 50 percent ownership of the debt in the
25 various companies.

1 Is that schedule consistent with the way these
2 allocations were made on the K-1s?

3 A. Can you repeat that?

4 Q. Mr. Rhodes represents in his prenuptial agreement
5 with regards to real estate that he owns 50 percent of
6 these companies at issue and he owns 50 percent of the
7 fair market value, less 50 percent of the debt, and the
8 question is, are the K-1s that you just referred to and
9 we discussed consistent with his schedule as listed in
10 this prenuptial agreement?

11 A. Yes. Exactly what the capital percentage shows on
12 each K-1 is how much of the undivided interest in the
13 assets and liabilities that that partner owns.

14 So if I had K-1s that showed that I had a 50
15 percent capital interest in an LLC, I would expect a
16 financial statement, personal financial statement or
17 something, to show that I had the value of 50 percent of
18 the assets minus the liabilities. Whether that is, you
19 know, negative or positive depends on the assets and
20 liabilities, but I would expect it to be reflected.

21 Q. What would you expect to happen to the capital
22 line in this case, in these partnerships we're talking
23 about, if Mr. Rhodes and Mr. Haskin had not agreed to
24 share profits and losses equally?

25 A. I'm sorry, if they had not?

1 Q. If they had not.

2 A. Well, when they formed the entity, then the
3 capital is the same, and as time goes out and the losses
4 continue to accumulate and one member is funding them,
5 you would expect him to, in some way, receive some
6 benefit for that through the capital and that the other
7 individual's capital percentage would go down because
8 they're not participating in that.

9 A word for that is dilution of, so that is what
10 you would expect to see. If I'm going to pay all the
11 costs and fund it over time and it's going to be a
12 continuing loss, you would expect that net asset value to
13 shift over to the person that secured it.

14 Q. Have you ever seen any of the capital percentages
15 for Mr. Rhodes in any of these deals we've been talking
16 about be diluted?

17 A. I believe, as I testified, all of the
18 K-1s throughout all of these time periods for all of
19 these entities always list the capital for the two
20 members at 50/50.

21 Q. What does it tell you that the capital percentage
22 never changed?

23 A. Well, it tells me that Mr. Rhodes and Mr. Haskin
24 each had a 50 percent ownership in the net asset value of
25 these entities throughout the time they existed.

1 they had a loss. The income from the rentals was not
2 sufficient to fund the carrying costs, service the debt,
3 utilities, everything that needs to be done to the house.

4 Q. So during that period, someone had to fund these
5 carrying costs you just talked about; is that right?

6 A. Yeah, and I think it's important to note it goes
7 back to the capital percentage. As Mr. Haskin is funding
8 the debt, paying the expenses of the asset, decreasing
9 the debt, the capital percentage of Mr. Rhodes does not
10 change during that time.

11 So say he's paying down the debt. The value of
12 that capital percentage is going up. It never changed
13 over time, so Mr. Rhodes is getting the benefit of
14 Mr. Haskin supporting and maintaining the assets and
15 servicing the debt but still maintains his 50 percent
16 capital percentage in the LLCs.

17 If this was truly, I just get profits, the K-1s
18 would show profits 100 percent, losses zero percent,
19 capital zero percent. That's all the risk I have in
20 this, is I'm going to put some time in and get some money
21 out of it.

22 That's not what the K-1s showed during this time
23 period. The losses are allocated based on who funded
24 them. Mr. Rhodes helped to contribute to those losses
25 during that time period, to fund those losses, and he got

1 to take them on his tax return, and he also continued to
2 have 50 percent of the capital allocated to him and
3 reported that also on his prenuptial, that 50 percent of
4 the fair market value minus the asset.

5 Q. So during this period of 2008 to 2011, how much
6 money did Mr. Haskin put in to fund these carrying costs?

7 A. It was roughly the 1.5 million.

8 Q. And during the same period, how much did
9 Mr. Rhodes personally put in?

10 A. I believe it's about \$54,000.

11 Q. And that is illustrated on the exhibit here we
12 have, which is the summary of the funding sources?

13 A. Yes.

14 Q. You discussed that Rhodes Investments had \$94,000
15 in cash at the end of '07; is that correct?

16 A. Yes.

17 Q. What did Mr. Rhodes do with the \$94,000 in 2008?

18 A. Well, by the end of January 2008, all but maybe
19 \$10,000 of it was taken out, and the remaining \$10,000
20 was taken out within the first week of February, which I
21 believe left the balance of around \$400 in the bank
22 account, which sat there for some period of time before
23 it was drawn out and reduced the account to, I think,
24 \$20.

25 Q. Do you have any idea why they would reduce it to

1 Q. So doesn't this disbursement that we're talking
2 about, this 140,000, was that a cost to build the house?

3 A. No. That's not a cost to build the house.

4 Q. And did Rhodes Residential Builders, LLC make a
5 profit on the house that was built at 3029 Middle Street?

6 A. Well, they received at least \$145,000 more in
7 funds from the bank on the construction line than they
8 show as costs for building the house, and they wrote a
9 check for \$140,000 from those funds back to Ms. Bozzelli,
10 recorded as an expense of building the house.

11 Q. The money that remains in Rhodes Residential
12 Builders, has that been recognized for tax purposes, or
13 has any accounting ever been done with that?

14 A. The books show a credit for the house of about
15 \$45,000. It's sitting on the balance sheet. It hasn't
16 been moved to the income statement as of the end of -- as
17 of the 2013 tax return.

18 Q. Have you seen any attempts to amend that return?

19 A. I have not been provided with any amended returns.

20 Q. Mr. Livingston, you're aware that some operating
21 agreements exist for some of these entities that we're
22 talking about?

23 A. I'm aware of the three, I guess, written operating
24 agreements.

25 Q. And the oral agreement at issue, I guess, correct?

1 A. Correct.

2 Q. And then can you tell us what you think the
3 significance is of those operating agreements?

4 A. The significance is -- and this is where I would
5 look for -- to understand the agreements between the
6 parties, is I would look to whatever that agreement is.

7 Q. And in this case, the only one that is signed is
8 the one for 2624 Bayonne; is that correct?

9 A. That's correct.

10 Q. What about for the other companies? None of those
11 were signed, right?

12 A. The other two, 2802 Middle and 2624 Myrtle, I have
13 not seen signed copies of those.

14 Q. What about Station 22 of Charleston, or 22 Lafar
15 Avenue, the address?

16 A. I have not seen one.

17 Q. Signed or unsigned?

18 A. I don't believe I've seen a physical copy, a
19 written operating agreement.

20 Q. Do you know why these operating agreements exist?

21 A. Well, in speaking with Mr. Gratz, I asked that
22 question, of how these operating agreements came to be,
23 and he stated that in setting up the LLCs --

24 MR. CISA: Your Honor, I would object to the
25 hearsay.

1 MR. JOHN ROSEN: Your Honor, I think under
2 Rule 608, the rules of evidence, he's allowed to testify
3 as to his investigation and what he's done to prepare for
4 this -- for his testimony.

5 THE COURT: 608? It's more like 703.

6 MR. JOHN ROSEN: 703, sorry, Your Honor.

7 THE COURT: Go ahead.

8 THE WITNESS: Your Honor, in speaking with
9 Mr. Gratz, I asked how did these operating agreements
10 come into existence? Where did they come from?

11 And he stated that in preparing -- in setting
12 up the LLCs in Florida that he had gone to his file and
13 found LLC agreements that that were used -- that he had
14 that were used in Florida, put the names on here, and
15 forwarded them on to Mr. Haskin.

16 He says he was not asked to do it. He was
17 doing it as part of trying to help them set up the LLC,
18 and that was his explanation as to why these agreements
19 were even -- why they even exist at this point in time.
20 He was the author of these agreements, the CPA in
21 Florida, and he just pulled these as templates for the
22 parties as ones he dealt with.

23 Q. So based on your review of these documents, these
24 operating agreements, and your testimony, do you believe
25 that the parties followed those agreements, those

1 operating agreements?

2 A. Well, from an accounting standpoint, the only one
3 that is signed is 2624 Bayonne, and it doesn't appear to
4 have been followed. The other two are unsigned, and it
5 doesn't appear those two were signed.

6 Q. Could you give us an example in the Bayonne
7 instance which tells you why it wasn't followed?

8 A. Well, probably the most significant example is the
9 calling of a preferential return for the members for the
10 capital investment in the company of 6 percent of the
11 average daily balance of that net capital investment, and
12 for the monies that were put in by Mr. Haskin and
13 Mr. Rhodes, there was no calculation of preferred return
14 on those investments.

15 Q. So Mr. Haskin did not take a preferred return in
16 2624 Bayonne; is that right?

17 A. No, he did not.

18 Q. And did these other unsigned operating agreements
19 provide for a preferred return?

20 A. Well, they're all mirror images of each other.
21 They're exact copies. Just the names are changed.

22 Q. On 2624 Myrtle and 2802 Middle Street, did Mr.
23 Haskin take a preferred return?

24 A. I didn't see any evidence of it, no.

25 Q. So he shared profits and losses 50/50 with Mr.

1 Rhodes, correct?

2 A. After the -- I testified the reimbursement of the
3 initial contribution until the financing could be
4 obtained and then to even out the capital accounts.

5 So yes, it's 50/50, but it's not 300,000 and
6 150,000 goes to each partner. It's to first reimburse
7 the initial capital contribution and the division of it.

8 Q. And how did the parties treat profits in all these
9 dealings that we've been discussing today, 2624 Myrtle --
10 the six companies at issue?

11 A. The three that went well, I testified how those
12 were divided. The other three did not have profits.

13 Q. So when they did have profits, the parties treated
14 those how?

15 A. Again, the reimbursement of the contribution and
16 the allocation of the gain in accordance to even ending
17 capital accounts.

18 Q. And based on your review of documents and
19 depositions in this case, how should losses be allocated?

20 A. I'm sorry. Could you say that again?

21 Q. Based on your testimony and -- excuse me, your
22 review of the documents and depositions in this case, how
23 should the losses be allocated between the parties?

24 A. Absent anything in writing that says how they
25 should be done, it is not uncommon for the party that

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON 2012-CP-10-6506

WILLIAM B. HASKIN, JR.,	)	
	)	
Plaintiff,	)	TRANSCRIPT OF PROCEEDINGS
	)	
-vs-	)	November 17-19, 2015
	)	
SAMUEL RHODES, JR.,	)	Charleston, South Carolina
RHODES INVESTMENTS, INC.	)	
and RHODES CONSULTING, LLC,	)	
and TRACEY M. BOZZELLI,	)	
	)	
Defendants.	)	

B E F O R E:

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

A P P E A R A N C E S:

John E. Rosen, Esquire
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Frank Cisa, Esquire
Attorney for the Defendants

Amanda K. Haffenden, RPR, CRR
Ninth Circuit Court Reporter

ROA000360

1 (The following is excerpted from the
2 above-captioned non-jury trial.)

3 (November 17, 2016.)

4 RICHARD LIVINGSTON,
5 having been previously duly sworn,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 THE COURT: All right. I'll remind you
9 you're still under oath. Mr. Cisa, are you ready?

10 MR. CISA: Yes, sir.

11 CROSS-EXAMINATION

12 BY MR. CISA:

13 Q. Good afternoon, Mr. Livingston. You testified
14 earlier that you were hired by Rosen Rosen & Hagood to
15 help Mr. Haskin with this case?

16 A. Yes.

17 Q. And how do you charge for your services?

18 A. By the hour.

19 Q. What is your hourly rate?

20 A. The firm bills for my time, I believe at \$350 an
21 hour.

22 Q. Is it the same for in court as out of court?

23 A. Yes.

24 Q. Do you know how much money you've charged to the
25 Rosen law firm so far for your help with Bill Haskin?

1 A. Approximately 25,000.

2 Q. You remember you filed some affidavits or you
3 signed some affidavits for the Rosen law firm?

4 A. Yes.

5 Q. Do you remember that?

6 A. Yes.

7 Q. Based upon your review of all the documents you've
8 previously testified to, is it fair to say that your
9 investigation showed that Rhodes Investments is a
10 subchapter S corporation organized under the laws of the
11 State of South Carolina in 2004?

12 A. Yes.

13 Q. Is it fair to say is that based on your
14 investigation that Samuel W. Rhodes, Jr. is the sole
15 shareholder of Rhodes Investment Rhodes Investments,
16 Inc.?

17 A. Yes.

18 Q. Is it fair to say 2802 Middle Street, LLC is a
19 limited liability company organized under the laws of the
20 state of Florida?

21 A. Yes.

22 Q. And it was organized in 2006, correct?

23 A. That sounds right.

24 Q. And you understand Mr. Michael Gratz is the one
25 that filed these articles of incorporation; is that

1 correct?

2 A. That's my understanding, yes.

3 Q. You understand that Mr. Michael Gratz is a friend
4 of Mr. Haskin?

5 A. I don't know if they're friends or not. I know
6 he's their accountant. I don't know their personal
7 relationship.

8 Q. You know Michael Gratz is Bill Haskin's
9 accountant, right?

10 A. Yes.

11 Q. And based upon your investigation, the members of
12 2802 Middle Street were William, Bill Haskin, and Rhodes
13 Investments, Inc.; is that correct?

14 A. Yes.

15 Q. And it's fair to say based upon your investigation
16 that 2624 Myrtle, LLC was a limited liability company
17 organized under the laws of the state of Florida?

18 A. Yes.

19 Q. And it was organized in 2006, correct?

20 A. That sounds right.

21 Q. Okay. And is it fair to say that based upon your
22 investigation that the members of 2624 Myrtle, LLC were
23 William Haskin and Rhodes Investments, Inc.?

24 A. Yes.

25 Q. Is it also fair to say that based upon your

1 investigation that Station 22 of Charleston, LLC is a
2 limited liability company organized under the laws of the
3 state of South Carolina?

4 A. Yes.

5 Q. And it was organized in 2004, correct?

6 A. That sounds right, yes.

7 Q. Is it also fair to say that based upon your
8 investigation that the members of Station 22 of
9 Charleston LLC were William Haskin, Rhodes Investments,
10 Inc., and Covington Properties, Inc.?

11 A. I believe -- I'd have to look back, but I believe
12 at some point in time before it became Rhodes
13 Investments, Inc. it might have been Mr. Rhodes
14 individually as one of those members, but I would have to
15 look back at the tax returns.

16 Q. Well, let's do this: Let me show you a copy of
17 your affidavit. That is dated January 22, 2015. Got it?
18 I want you to refer to paragraph nine of your affidavit.
19 Could you read paragraph nine of your affidavit.

20 A. Yeah. The members of Station 22 at all times have
21 been Haskin, Rhodes Investments, and Covington
22 Properties, Inc.

23 Q. Okie. At least in January 2015 you were of the
24 opinion based upon your investigation that the members of
25 Station 22 of Charleston were William Haskin, Rhodes

1 Investments, Inc., and Covington Properties, Inc.,
2 correct?

3 A. Correct.

4 Q. So when you were testifying earlier on direct
5 examination and you said Jim Covington was a partner,
6 that's not really correct, is it?

7 A. Through his entity, Covington Properties, Inc.

8 Q. The member of Station 22 of Charleston was
9 Covington Property, Inc., correct?

10 A. That's correct.

11 Q. Which is a South Carolina corporation?

12 A. Yes.

13 Q. Not James Covington or Jim Covington, correct?

14 A. Correct.

15 Q. And the member -- all three of these entities were
16 Rhodes investments, Inc., correct?

17 A. Correct.

18 Q. South Carolina corporation?

19 A. Correct.

20 Q. Not Sammy Rhodes, correct?

21 A. Correct.

22 Q. Now, I want to follow up on a question that Judge
23 Young was trying to ask you, or asked you. You
24 understand at least Station 22 of Charleston was -- is a
25 limited liability company pursuant to the uniform limited

1 liability company act as promulgated in this state. Do
2 you understand that?

3 A. From the what? I'm sorry.

4 Q. Uniform limited liability company act?

5 A. Yes.

6 Q. Okay. And this is not a partnership, it's a
7 limited liability company?

8 A. That's correct.

9 Q. It's taxed as a partnership because it's a
10 distinct part of the entity, correct, from a tax
11 standpoint?

12 A. That's correct. It's likely to be taxed as a
13 partnership.

14 Q. Okay. And people are in organized limited
15 liability companies primarily to insulate themselves from
16 principal liability; isn't that correct?

17 A. That's one of the main reasons, yes.

18 Q. That's the main reason, isn't it?

19 A. For liability protection, yes, and depending on
20 how they decide to be taxed, then it becomes the tax
21 issues associated with it. They can be taxed as a
22 partnership or a corporation.

23 Q. And in this particular case, these three limited
24 liability companies being 2802 Middle, 2624 Myrtle, and
25 Station 22 of Charleston were organized to acquire lots

1 and build a house and put that house in the stream of
2 commerce, correct, by sale?

3 A. Yes.

4 Q. So it's important to organize them as a limited
5 liability company to try to insulate people from
6 liability, correct?

7 A. It was smart to, yes.

8 Q. Okay. Now, are you aware of any statute under the
9 uniform limited liability company act as promulgated by
10 the legislature for the State of South Carolina whereby a
11 member of a limited liability company is required to make
12 a capital contribution to that limited liability company
13 absent an agreement?

14 A. If you had the statute, I'll be glad to look at
15 it. I know there is a section that deals with, I
16 believe, contributions and liabilities associated with
17 it.

18 Q. Well, if somebody had to make a capital
19 contribution to a limited liability company, that doesn't
20 insulate them from liability, does it?

21 A. If they have to make --

22 Q. Yes.

23 A. The issue is from liability from outside parties.

24 Q. Well, let me ask the question again. Maybe your
25 answer is you don't know. Are you aware of any statute

1 three companies that Rhodes Investment, Inc. was
2 obligated on any loan relative to 2802 Middle, 2624
3 Myrtle, or Station 22 of Charleston?

4 A. I have not seen where it guaranteed any of the
5 debt on that, no.

6 Q. So Rhodes Investments, Inc. never signed on to be
7 liable for any of the debt on any of these three projects
8 we're here about; isn't that correct?

9 A. I have not seen where it signed on any debt, no.

10 Q. As we sit here today, you don't have any evidence
11 that Rhodes Investments, Inc. signed on for any liability
12 associated with 2802 Middle, 2624 Myrtle, or Station 22
13 of Charleston, correct?

14 A. Signing on the debt with the bank? No, I do not.

15 Q. Okay. And the way it worked, Mr. Haskin, you
16 previously testified, contributed capital to the
17 various -- these three LLCs to fund the projects,
18 correct?

19 A. No. Mr. Rhodes and Mr. Haskin contributed capital
20 at various points in time.

21 Q. In your affidavits, you said Mr. Rhodes I think
22 contributed 1.5 million; is that right?

23 A. I'm sorry. Say that again.

24 Q. You say in your affidavit, I misspoke, in your
25 affidavit, didn't you say that Mr. Haskin contributed

1 \$1,260,000 to these LLCs?

2 A. What page are you on?

3 Q. I'm on page eight.

4 A. Eight?

5 Q. Yes, paragraph 37.

6 A. Yes. That's during the time period 2008 through
7 2011, \$1,260,000.

8 Q. And during that same time, Rhodes Investments
9 contributed \$49,000?

10 A. That's correct.

11 Q. And you said you read in his deposition where
12 Mr. Rhodes says that sometimes Mr. Haskin was out of town
13 and he would contribute money to pay bills?

14 A. That's correct.

15 Q. Okay. So is it fair to say Mr. Haskin during this
16 time contributed the vast majority of any money to these
17 three LLCs?

18 A. Yes, he did.

19 Q. Okay. Now, if the agreement between Mr. Haskin
20 and Rhodes Investments, Inc. was that he would fund these
21 projects out of his pocket, and Rhodes Investments, Inc.
22 would simply share in profits, if there was a profit, but
23 wouldn't be responsible for loss, Rhodes Investments,
24 Inc. wouldn't need any capital, would it?

25 A. If they're not responsible for the loss, Rhodes

1 Investments, Inc. is a member in the LLC.

2 Q. I understand.

3 A. Okay. But Rhodes Investments, Inc. has a 50
4 percent capital interest in the LLC. When it was set up,
5 Mr. Haskin was going to provide some initial money before
6 the loan kicked in. That's my understanding of the
7 agreement. He was going to work with the banks, get the
8 financing, deal with the business side of it, of the
9 accounting. For that he got a 50 percent capital
10 interest. Mr. Rhodes was going to do the construction of
11 the property, build the property. For that he got a 50
12 percent capital interest, which is an interest in the
13 assets and liabilities of the company.

14 So that is where Rhodes Investments, Inc. has a
15 capital interest in those entities, which have assets and
16 debt. Does that make him, Rhodes Investments, Inc.
17 liable for it? That's a question for the Court. That's
18 a legal conclusion.

19 Q. Let me ask the question again because you haven't
20 answered my question. My question was, if the agreement
21 between Rhodes Investments, Inc. and Bill Haskin was that
22 he was going to fund everything and get loans needed for
23 the projects and Rhodes Investments, Inc. was not going
24 to share in any losses, all they were going to do was
25 build the houses, would there be a need for Rhodes

1 Q. And then you can see how much Mr. Haskin put in
2 for 2802 Middle to total \$837,417, correct?

3 A. That's correct.

4 Q. And Rhodes Investments put in \$15,075?

5 A. That's correct.

6 Q. And Mr. Haskin claimed all of this \$837,417 as a
7 loss, correct, through 2802 Middle Street, LLC?

8 A. That's correct.

9 Q. He claimed -- he claimed 100 percent of the losses
10 for 2802 Middle Street, LLC in 2006, correct?

11 A. 2802 Middle, the loss was \$256. He did claim
12 that, 100 percent, and he contributed 100 percent of the
13 capital that year.

14 Q. In 2007, he claimed 78.6 percent of the losses,
15 correct?

16 A. I haven't done the percentage. I can do that for
17 you real quick. 78.76 percent, yes.

18 Q. 78.76 percent, correct?

19 A. Correct.

20 Q. Let me show you the tax returns. I thought y'all
21 were going to put them in, but you didn't. Are these the
22 tax returns for 2802 Middle Street, LLC for the years
23 2006 through, I believe, 2011?

24 A. It appears to be, yes.

25 Q. And are these the tax returns that you used to do

1 your analysis of this case for Mr. Haskin? And these are
2 the tax returns that you used to answer the question I
3 gave you a second ago about the percentage of loss that
4 he took, Mr. Haskin took?

5 A. Yes.

6 MR. CISA: Your Honor, I would ask these
7 documents be introduced collectively as Defendant's
8 Exhibit 1.

9 THE COURT: Any objection?

10 MR. JOHN ROSEN: May we get a copy of it? No
11 objection.

12 THE COURT: It's admitted.

13 (Defendant's Exhibit No. 1 was marked for
14 identification and admitted into evidence.)

15 BY MR. CISA:

16 Q. You used Defendant's Exhibit 1, which are the tax
17 returns for 2802 Middle Street, LLC in formulating your
18 opinions in this case, correct?

19 A. Yes.

20 Q. All right. Now, back to what I was asking you, we
21 established in 2006 for 2802 Middle Street Mr. Haskin
22 took 100 percent of the losses; in 2007, he took 78.76
23 percent. That's the same percent you got, correct?

24 A. Yes.

25 Q. And then in 2008, Mr. Haskin again took 100

1 percent of the losses.

2 A. In 2008, he took 100 percent of the losses, yes.

3 Q. In 2009, he took 97.06 percent of the losses; is
4 that correct?

5 A. Yes.

6 Q. And in 2010, Mr. Haskin took 100 percent of the
7 losses; is that correct?

8 A. Yes.

9 Q. And in 2011, what I got off the tax return, is he
10 took 103 percent of the losses; is that right?

11 A. That appeared to be a complete return. It's just
12 schedules, parts of the return.

13 Q. What did you have in your records? What percent
14 of the losses did he take in 2011?

15 A. He was allocated more to adjust for -- 78 percent
16 resolved, a little more would have been allocated to
17 Mr. Rhodes with 10,200 some odd dollars, so they
18 allocated income to correct that in 2011, so he did give
19 100 percent of the contribution, so that's why the
20 number's a little skewed in 2011.

21 Q. So in 2011, Mr. Haskin took 100 percent of the
22 loss relative to 2802 Middle Street, correct?

23 A. Yes, he did.

24 Q. So if you look at the tax returns, it appears
25 Mr. Haskin was taking all the losses for 2802 Middle

1 A. It appears 'to keep the asset in existence, service
2 the debt, keep it out of foreclosure.

3 Q. All these losses were taken by Mr. Haskin, 505,495
4 for 2624 Myrtle, correct?

5 A. Yes, and Mr. Rhodes took the losses for his 35.

6 Q. Let me show you the tax returns for 2624 Myrtle
7 for 2007 through 2011. Are these the tax returns that
8 you reviewed relative to doing your analysis?

9 A. Yes.

10 Q. All right.

11 MR. CISA: Your Honor, I would ask that be
12 introduced as Defendant's Exhibit No. 2.

13 THE COURT: Any objection?

14 MR. JOHN ROSEN: No objection.

15 THE COURT: Admitted.

16 (Defendant's Exhibit No. 2 was marked for
17 identification and admitted into evidence.)

18 BY MR. CISA:

19 Q. Make sure I got this straight, Mr. Livingston.
20 What I've marked as Defendant's Exhibit 2 are the tax
21 returns for 2622 Myrtle, LLC which corresponds with your
22 exhibit number -- I think 60 that shows the losses that
23 Mr. Haskin took for 2624 Myrtle, correct?

24 A. Those are the contributions he made to fund the
25 losses, yes.

1 Q. And the contributions he made to fund the losses
2 he claimed as losses on his individual tax returns,
3 correct?

4 A. When they were allocated to him, yes.

5 Q. And they were allocated to him yearly, correct?

6 A. They were allocated -- I mean, it's not each year
7 every one of those corresponds, but it was allocated when
8 the losses occurred, yes.

9 Q. Let me ask you this question: On the return for
10 2624 Myrtle, LLC for the year 2007, doesn't it show that
11 Mr. Haskin was allocated \$11,750 in loss?

12 A. No. He was allocated \$31,347. In total he was
13 allocated \$505,495. There is time between when you put
14 money in and when you spend money.

15 Q. What does this number represent, \$11,750?

16 A. That is his capital contribution.

17 Q. That's what he put in?

18 A. Yes.

19 Q. And that's what he would claim was a loss on his
20 personal tax return?

21 A. Not necessarily in that year. Some of them you
22 put in 50,000 and it covers 50,000 of expense and they
23 match. Some years there's a timing difference. Say you
24 put the money in December but you don't write the check
25 until January. There could be differences, but overall,

1 those moneys that he put in he did take as losses on his
2 tax returns.

3 Q. Okay. So it's fair to say he took \$505,495 worth
4 of losses on his personal tax returns?

5 A. He was allocated on his K-1s, yes.

6 Q. The answer is yes?

7 A. Yes. They flowed through him, yes.

8 Q. Okay. Now, on 2624 Myrtle, LLC, for the year
9 2007, did Mr. Haskin take 92.61 of the loss?

10 A. What was your number again?

11 Q. 92.61 percent for 2624 Myrtle.

12 A. I'm getting a slightly different number. Let me
13 check the tax return. On the tax return in 2007 he did,
14 but in 2008, there was an adjustment to that between the
15 beginning and ending balances from '07 to '08, so the
16 actual number that I have is about 87 percent once that
17 adjustment was accounted for.

18 Q. Okay. But just looking at the 2007 return for
19 2624 Myrtle, was Mr. Haskin allocated 92.61 percent of
20 the loss, just looking at the 2007 return?

21 A. Looking at the 2007 return, yes.

22 Q. And looking at the 2008 return for 2624 Myrtle
23 Avenue, was Mr. Haskin allocated 100 percent of the loss?

24 A. Yes.

25 Q. And looking at the 2009 tax return for 2624

1 Myrtle, wasn't Mr. Haskin allocated 89.13 percent of the
2 loss?

3 A. He was.

4 Q. And in 2010, wasn't Mr. Haskin allocated 95.15
5 percent of the loss?

6 A. Yes, and, again, he's allocated those percentages.
7 Mr. Rhodes has allocated the difference. That gets you
8 to 100 percent, and that corresponds with the moneys they
9 put in.

10 Q. And in 2011, Mr. Haskin was allocated 100 percent
11 of the loss for 2624 Myrtle, correct?

12 A. I'm sorry. In what year?

13 Q. 2011.

14 A. In 2011, I believe it's actually a gain because of
15 the forgiveness of debt, but he was allocated 97.5
16 percent.

17 Q. Looking at your chart, in 2011 Mr. Haskin put in
18 \$75,396, correct?

19 A. Yes.

20 Q. And in 2011, Rhodes Investments put in zero.

21 A. That's correct.

22 Q. So Mr. Haskin in 2011 for 2624 Myrtle put in all
23 the contributions, correct?

24 A. He put in all the contributions for the costs that
25 existed before they closed it out in '11.

1 Q. And all of these numbers for 2802, all these are
2 capital contributions, correct?

3 A. They are.

4 Q. Okay. So for 2802 Middle Street, Mr. Haskin made
5 \$837,417 in capital contributions?

6 A. That's correct.

7 Q. And for 2624 Myrtle, Mr. Haskin made \$505,495 in
8 capital contributions, correct?

9 A. That's correct.

10 Q. Okay. Do you know why Mr. Haskin made all these
11 capital contributions for 2624 Myrtle if that wasn't the
12 agreement of the parties?

13 A. Again, my understanding was to service the asset,
14 keep it viable and service the debt.

15 Q. Okay. Doesn't this reflect the capital
16 contributions made by Mr. Haskin and by Mr. Rhodes --
17 doesn't this reflect the agreement of the parties was,
18 looking at the tax returns, that Mr. Haskin would fund
19 the losses on this project?

20 A. I don't believe so, no. I believe it shows he did
21 fund the losses and he was allocated the losses for his
22 tax return.

23 Q. Do you admit that the analysis shows that he did,
24 in fact, fund the losses, correct?

25 A. Yes.

1 Q. But you say that doesn't support an agreement
2 where he was required to fund the losses; is that
3 correct?

4 A. Again, Mr. Rhodes funded the losses during those
5 time periods, and he said it was from when Mr. Haskin was
6 out of town. Mr. Haskin said that was not the agreement,
7 that Mr. Rhodes didn't have the money and he had to put
8 the money in.

9 Q. Do you see any documents that indicate there was
10 any demand on 2624 Myrtle from Mr. Haskin to Mr. Rhodes?

11 A. As I testified, I don't have any demand documents
12 in my file.

13 Q. Then we got Station 22 of Charleston, LLC,
14 correct?

15 A. Correct.

16 Q. And that was a limited liability company of who
17 the members were, William Haskin, Rhodes Investments,
18 Inc., and Covington Properties, Inc., correct?

19 A. That's correct.

20 Q. And they all had one-third interest as far as the
21 profits, according to the tax returns, correct?

22 A. I would have to look at every K-1, but that sounds
23 right.

24 Q. I want to show you the tax returns for Station 22
25 of Charleston, LLC, and I believe the only ones I was

1 furnished with were 2007, 2008, 2009 and 2010.

2 A. There are copies of K-1s in the tax documents
3 supplied by Mr. Dupre that go back to '04 with the K-1s.

4 Q. That's all I've got for this. Are those some of
5 the tax returns you reviewed for Station 22 of Charleston
6 for -- I got 2007, 2008, 2008 and 2010.

7 A. Appear to be, yes.

8 MR. CISA: Your Honor, I would ask these be
9 introduced into evidence as Defendant's Exhibit 3.

10 MR. JOHN ROSEN: No objection.

11 THE COURT: Admitted.

12 (Defendant's Exhibit No. 3 was marked for
13 identification and admitted into evidence.)

14 BY MR. CISA:

15 Q. You only show Station 22 of Charleston -- yeah,
16 you did. You showed a column for Mr. Covington also,
17 didn't you?

18 A. That's correct.

19 Q. Okay. So what you're showing is that Mr. Haskin
20 made contributions of capital to Station 22 between 2007
21 and 2011 of \$161,384; correct?

22 A. That's correct.

23 Q. And you're showing that Rhodes Investments made a
24 capital contribution of \$3,500 on December -- for
25 December of -- for 2009, correct?

1 A. That's correct.

2 Q. All right. Do you recall when you reviewed Mr.
3 Rhodes's deposition, he said this \$3,500 was money left
4 in the account that he wrote a check to Bill Haskin and
5 Jim Covington? Do you remember reading that?

6 A. I don't recall that specifically.

7 Q. But in any event, Mr. Covington during the same
8 period of time between 2007 and 2000, I guess, 10
9 contributed 122,207?

10 A. That's correct.

11 Q. Now, all these numbers came from the tax returns
12 for Station 22 of Charleston, LLC that we've marked as
13 Defendant's Exhibit 3, correct?

14 A. The tax returns or the K-1s attached to it if
15 they're all here, yes, they should be.

16 Q. If you're looking at the tax returns for Station
17 22 of Charleston, LLC and trying to determine what the
18 agreement was between the members, doesn't it appear that
19 Mr. Haskin and Mr. Covington were paying all the losses
20 for Station 22 of Charleston except for that \$3,500
21 payment made by Rhodes Investments, Inc.?

22 A. Yes. It shows what they contributed to fund the
23 loss, yes.

24 Q. So if you were just looking at the tax returns,
25 you would be of the opinion that the parties' agreement

1 was that Mr. Haskin and Mr. Covington were responsible
2 for the losses of Station 22; isn't that correct?

3 A. No. The tax returns showed they paid it. It
4 doesn't show what the agreement was between the parties.

5 Q. All right. Well, let's look at the allocation of
6 loss for Station 22 of Charleston, LLC. Based upon your
7 review of the tax returns, does it appear that Mr. Haskin
8 was allocated 57.82 percent of the losses for Station 22
9 for the year 2007?

10 A. 57.82?

11 Q. Is that correct?

12 A. Yes.

13 Q. Okay. And for that same year, Rhodes Investments
14 was allocated .12 percent of the losses, correct?

15 A. Yes.

16 Q. And Covington Properties, Inc. was allocated 42.06
17 percent of the losses for 2007.

18 A. Yes.

19 Q. Then in 2007, Mr. Haskin was allocated 50 percent
20 of the losses for Station 22 of Charleston; is that
21 correct?

22 A. Yes.

23 Q. And Rhodes Investments was allocated zero percent
24 of the losses for Station 22 for 2008, correct?

25 A. Correct.

1 Q. And Covington Properties, Inc. was allocated 50
2 percent of the losses in 2008 for Station 22 of
3 Charleston?

4 A. That's correct.

5 Q. And then for 2009, Mr. Haskin was allocated 56.91
6 percent of the losses; is that correct?

7 A. 56.91 percent.

8 Q. And in 2009, Rhodes Investments was allocated zero
9 percent of the losses for Station 22?

10 A. That's correct.

11 Q. And in 2009, Covington Properties, Inc. was
12 allocated 43.09 percent of the losses, correct?

13 A. Yes.

14 Q. Okay. Let's go to 2010. Do the tax returns for
15 Station 22 of Charleston, LLC for 2010 indicate
16 Mr. Haskin was allocated 50 percent of the losses in
17 2010?

18 A. Yes.

19 Q. Do the tax returns indicate that Rhodes
20 Investments, Inc. was allocated zero percent of the
21 losses for in 2010 for Station 22?

22 A. Yes.

23 Q. Does the tax returns show Covington Properties,
24 Inc. was allocated 50 percent of the losses for Station
25 22 in 2010?

1 from my conversations with him, would put some money in
2 until the financing was available, would help to obtain
3 the financing, would deal with the business side of it,
4 would deal with the accounting side of it, and Mr. Rhodes
5 would deal with the building of the house.

6 For that, they were each given a 50 percent
7 capital in the LLC itself, the assets and liabilities
8 that ties to -- when you look at Mr. Rhodes's prenup, he
9 lists half of the value of the house and half the value
10 of the debt. They're each getting a 50 percent capital
11 investment.

12 The actual costs then associated with that capital
13 investment, the carrying costs associated with having
14 that capital, that asset has cost, that asset has debt
15 associated with it that you have a 50 percent capital
16 interest in has to be serviced, and that's what these
17 contributions represent, is the servicing of that.

18 So I just want to be clear on why not giving
19 credit for sweat equity, the sweat equity is in their
20 capital ownerships. They each own 50 percent of it.
21 Mr. Rhodes didn't have to put in any money to get that 50
22 percent ownership in the LLC. This is the carrying costs
23 associated with that ownership over that period of time
24 when things didn't work out, and so to give some credit
25 against this 1.5 million for sweat equity would be to say

1 that his -- what they decided at the outset for his sweat
2 equity, 50 percent capital is now worth that plus
3 700,000, that it wasn't enough at the time.

4 He was compensated for his sweat equity by 50
5 percent capital, Mr. Haskin was compensated for his by 50
6 percent capital, and from there, money was borrowed,
7 house was built, and then there are carrying costs
8 associated with that capital. And they each have a 50
9 percent interest in that capital, so as Mr. Haskin pays
10 down the debt, services the asset, Mr. Rhodes's 50
11 percent capital in that benefits because the debt goes
12 down.

13 He has a 50 percent interest in that debt, in the
14 capital. He has 50 percent interest in the fair market
15 value. That's where his sweat equity comes in. It's not
16 correct to adjust this for any type of sweat equity, and
17 that's what I'm saying. You can't just adjust it. The
18 IRS doesn't recognize that I just put in sweat equity for
19 no reason. It doesn't just happen. In order for that to
20 be recognized, there has to be income reported for
21 that -- I mean, the IRS treats it as if you did a service
22 for it and you're getting something for it.

23 You can't get something for nothing and not pay
24 tax on it, a capital interest. If it was sweat equity
25 after that, there would be income reported, and the

1 capital interest would go up.

2 THE COURT: So if he would have gotten a fee
3 for constructing the house, he would have had to pay
4 taxes on that fee, but it wouldn't have raised his
5 capital account at all, correct?

6 THE WITNESS: Your Honor, if it's a true
7 sweat equity arrangement, he would have provided a
8 service to the LLC to get his interest. There would have
9 been a reporting of that. He would have paid taxes on
10 it, and they would have contributed to the LLC.

11 That's the accounting issues with that. The
12 equity wouldn't just go up for no reason in it. You have
13 to perform a service. You have to perform what's called
14 sweat equity to get sweat equity credit, but it has to be
15 at fair market value. You have to pay income tax on it.
16 You can't just have an interest just go up in an LLC. So
17 the fact that they have 50 percent capital equally in the
18 assets and debt of the LLC reported on their K-1s and
19 reported on his prenuptial, that's where the sweat equity
20 comes in.

21 They each get 50/50. It was a 50/50
22 partnership. The servicing of that debt after the fact
23 is what's at issue.

24 THE COURT: Well, that may answer what I was
25 going to ask you. We were talking earlier about there

1 read to you says for limited liability companies, members
2 can put in cash, they can put in property, or they can
3 put in services, right?

4 A. Yes.

5 Q. And you agree with that, correct?

6 A. Oh, I agree with that, yes.

7 Q. And in this particular case Rhodes Investments
8 through Sammy Rhodes put in services, built a house, for
9 the LLC, correct?

10 A. Yes.

11 Q. And Mr. Haskin put up his financial statement to
12 get loans and then contributed money to the shortfall and
13 to keep everything going; isn't that correct?

14 A. He did make those contributions, yes.

15 Q. And Mr. Rhodes lost all of his effort for a year
16 to build a house, but he got paid zero for it; isn't that
17 right?

18 A. He got a 50 percent capital interest in it. That
19 interest went to zero. So to say he was compensated for
20 it, paid for it, is incorrect. The fact that it does not
21 exist, has no value today, doesn't mean that he was not
22 compensated.

23 Q. Well, Mr. Livingston, tell me how much Mr. Rhodes
24 or Rhodes Investments, Inc. was paid for taking 12 months
25 of their time to build 2802 Middle? How much was he

1 paid? How much money? What benefit did he get?

2 A. Well, if I can see his prenuptial agreement where
3 he listed the fair market value of the house minus half
4 the debt, that comes up with a number, that's pretty
5 close to it then.

6 Q. I'm not asking you that. I'm asking you how much
7 money this LLC, 2802 Middle Street, LLC, how much money
8 this LLC paid Rhodes Investments, Inc. or Sammy Rhodes
9 for building this house? How much money?

10 A. No physical cash was paid. It was --

11 Q. Zero?

12 A. -- an interest in the LLC.

13 MR. JOHN ROSEN: Objection. Asked and
14 answered.

15 THE COURT: Let him finish.

16 BY MR. CISA:

17 Q. He was paid zero, wasn't he?

18 A. There was zero cash paid for that. He was given a
19 50 percent capital interest in the LLC.

20 Q. Which is worth zero, right?

21 A. At this point in time it is, but at that point in
22 time, it was not worth zero.

23 Q. So Mr. Rhodes or Rhodes Investments, Inc. risked
24 their services in building this house, correct? That was
25 a risk. They're betting on a profit for this house,

1 right?

2 A. Yes, it's a risk. That's the whole point of a
3 partnership: We're sharing in the risk.

4 Q. And they lost because the house didn't make any
5 money, did it? These three houses didn't make any money?

6 A. The fair market value of the property dropped
7 below the debt. It was upside down, and then it had to
8 be carried during that period of time until it was sold.

9 Q. Mr. Haskin put up risk because he got the
10 financing and he funded the contributions; isn't that
11 correct?

12 A. He put up risk because he got the financing, yes,
13 and he did other services for it, and that accounts for
14 their 50/50 capital.

15 Q. He got the financing, and he funded the
16 contributions shortfalls, didn't he?

17 A. He did fund them, yes.

18 Q. And that was at risk too, wasn't it?

19 A. But that did not increase his 50 percent capital
20 allocation. It stays 50/50 during that time.

21 Q. I don't care about that.

22 A. That's what is important about this. He did not
23 dilute -- he took on -- they each got their interest for
24 what they were going to do and the risk they were taking
25 at the outset of this. They got their 50/50 capital in

1 the entity. They have 50 percent of the net value of the
2 assets and the liabilities. That is shown on the
3 financial statement for the prenup, that concept and how
4 that plays out.

5 If Mr. Haskin had filled out a bank loan at that
6 time, I'm sure he would report the same values. That
7 issue is separate and apart from the funding of the
8 obligations of that capital until it was sold.

9 Q. Mr. Livingston, when Mr. Haskin dumped \$837,000
10 into 2802 Middle, he put that money at risk, didn't he?
11 Yes or no.

12 A. Yes, he put it at risk, and it also benefitted
13 Mr. Rhodes by paying down the debt and preserving the
14 asset.

15 Q. And he lost it, just like Mr. Rhodes's company
16 lost everything for their effort in building the house;
17 isn't that correct?

18 A. They both lost their effort in the decline. Mr.
19 Haskin lost more because he lost physical dollars because
20 of servicing the asset and carrying the asset.

21 Q. Let me ask you this question: If 2802 Middle
22 Street, LLC had hired Mr. Rhodes to build a house at 20
23 percent of the cost and paid Mr. Rhodes 20 percent of the
24 cost, some \$200,000, that would have been income from
25 Mr. Rhodes, correct?

1 A. Yes. It would have been --

2 Q. And he would have reported it.

3 A. Yes.

4 Q. But he didn't get that \$200,000. He lost it when
5 the house didn't make a profit; isn't that correct?

6 A. He got a 50 capital interest in that house, which
7 had value minus half the debt, which had net equity,
8 which is reported on his prenuptial. He got something
9 worth value. The value of that asset went away, so he
10 did not get the money. It lost value, and that is not
11 anybody's control.

12 Q. You also remembered that you signed a supplemental
13 affidavit for Mr. Rosen, remember that?

14 A. Yes.

15 Q. April 15, 2015, remember that?

16 A. Yes. I don't have a copy in front of me. I got
17 it. Go ahead.

18 Q. You got it?

19 A. I think so.

20 Q. Okay. Now, you were asked a question about the
21 operating agreements on direct examination. Do you
22 remember that?

23 A. Yes.

24 Q. And you looked at the operating agreements for
25 2624 Bayonne and the operating agreements that were

1 unsigned for 2802 Middle and 2624 Myrtle to understand --
2 for an understanding of the agreement of the parties,
3 right?

4 A. I looked at it as one of the sources, yeah.

5 Q. To the understanding of the parties, correct?

6 A. Yes, and as I inquired of Mr. Gratz about the
7 existence of these I testified to that, but of course
8 they were operating agreements in existence, I did look
9 at them.

10 Q. And there was one signed operating agreement, 2624
11 Bayonne, LLC, correct?

12 A. Correct.

13 Q. And is that a copy of the operating agreement? It
14 appears to be.

15 A. Okay.

16 Q. And is that something you reviewed relative to
17 your analysis in this case?

18 A. Yes.

19 MR. CISA: I would ask that this be
20 introduced as Defendant's Exhibit 5.

21 MR. JOHN ROSEN: Frank, what is the exhibit?
22 Is it the operating agreement?

23 MR. CISA: It's the operating agreement for
24 Bayonne. Your Honor, is Exhibit 5 admitted? I'm seeking
25 to introduce it.

1 THE COURT: No objection? It's admitted.

2 (Defendant's Exhibit No. 5 was marked for
3 identification and admitted into evidence.)

4 BY MR. CISA:

5 Q. Now, looking at the operating agreement that was
6 signed -- first of all, the members of 2624 Bayonne, LLC
7 were William Haskin and Rhodes Investments, Inc.; is that
8 correct?

9 A. Yes.

10 Q. Now, looking at the operating agreement that was
11 listed with regard to 2624 Bayonne, first of all, what is
12 the date on it?

13 A. It says adopted February 27th, 2008.

14 Q. Okay. Was that about the same time that 2802
15 Middle Street, LLC and 2624 Myrtle, LLC were started?

16 A. Which ones? I'm sorry.

17 Q. 2802 Middle Street, LLC and 2624 Myrtle, LLC were
18 started, February 2006?

19 A. 2802 Middle looks like it was organized in
20 February 2006, and 2624 Myrtle was organized sometime in
21 August of 2006.

22 Q. Okay. Now, you're familiar with operating
23 agreements, correct?

24 A. Yes.

25 Q. Okay. And, generally speaking, an operating

1 agreement is executed between members of the limited
2 liability company and set forth the duties and
3 responsibility of the members, is that correct, among
4 other things?

5 A. I believe that's an accurate description of it.

6 Q. Okay. Now, looking at the operating agreement
7 we've had marked as Defendant's Exhibit 5, on page two --
8 tell me when you get there.

9 A. Yes, sir.

10 Q. Is Article 3 entitled capital structure,
11 contributions to capital, and capital accounts, on page
12 two?

13 A. Yes.

14 Q. Will you read 3.2?

15 A. 3.2, additional capital contributions: No member
16 shall be required to contribute additional capital to the
17 company.

18 Q. Okay. So the operating agreement for 2624
19 Bayonne, LLC that was signed by William Haskin and Rhodes
20 Investments, Inc. states that no member shall be required
21 to contribute additional capital; is that right?

22 A. That's what it says, yes.

23 Q. That means you can't make a member contribute
24 additional capital, correct?

25 A. I believe that's what it says, yes.

1 by Mr. Haskin.

2 Q. And this operating agreement that you looked at to
3 gain an understanding of the agreement of the parties
4 says members aren't required to make capital
5 contributions, right?

6 A. That's what 3.3 says, yes.

7 Q. And that's consistent with Mr. Rhodes's version of
8 the agreement and understanding; it isn't it, sir?

9 A. That he was not required to -- that he was not
10 responsible for losses, I believe is what he said.

11 Q. Aren't you are talking about he is responsible for
12 half the contributions made by Mr. Haskin? Isn't that
13 what you're talking about?

14 A. Yes, the carrying costs associated with it.

15 Q. I understand these were losses, as it turned out.
16 I mean, it didn't have to be a loss, but there was no
17 money made on the sale of the property, right?

18 A. Correct.

19 Q. So these contributions turned into losses, but
20 they're still contributions to capital, correct?

21 A. They are.

22 Q. So Article 3.2 is consistent with Mr. Rhodes's
23 version of the agreement, is it not, sir?

24 A. Article 3.2 is the signed one for 2624 Bayonne is.
25 I do not have any signed operating agreements for those

1 entities there.

2 Q. I'll ask about those in a minute. Let's now turn
3 to page 11 of Defendant's Exhibit 5. You see where it
4 says 6.3, liquidation?

5 A. Yes.

6 Q. When 2802 Middle Street, LLC was sold by short
7 sale, their only asset being the house constructed at
8 2802 Middle Street, LLC, that's a liquidation, isn't it?
9 They liquidated all their assets?

10 A. Say that again. When they sold it?

11 Q. Yes.

12 A. An actual liquidation is when you physically
13 terminate the company and do away with it, but they did
14 sell pretty much their main asset and deal with their
15 main liability.

16 Q. Well, I mean, it's not pretty much their main
17 asset, it's their only asset, right?

18 A. For 2802 Middle?

19 Q. Yeah, the house.

20 A. Yeah.

21 Q. And the same with 2624 Myrtle. It's the only
22 asset when it was sold, that effectively -- they
23 effectively liquidate their company; isn't that correct?

24 A. I think these are Florida LLCs. I remember seeing
25 that be kept open for five years, which might be a

1 Florida statute, so I don't know if the actual
2 liquidation of that -- I agree with you.

3 They sold their main asset. They paid off their
4 debt. There's really nothing left of the company at that
5 point. The actual termination of the company is what
6 liquidation really means. The company can go on existing
7 with very few assets or debt, so I don't know exactly
8 when for this agreement liquidation actually the line
9 hits, but I agree with you, they sold pretty much
10 everything at one point.

11 Q. Well, look at page 6.3(a) on page ten. Under it,
12 it says: Liquidation: In the event of termination of
13 the company, the manager will wind up the affairs of the
14 company, shall sell all of the company assets as promptly
15 as is consistent with obtaining the fair value thereof,
16 and shall apply and distribute the proceeds of
17 liquidation in the following order of priority.

18 Isn't this agreement talking about a liquidation
19 occurring when you sell all of the company assets?

20 A. That's what happens at liquidation, yes.

21 Q. Okay. So let's turn to page 11. You see this
22 paragraph 6(b)?

23 A. Yes.

24 Q. Does it state that: Each member shall look solely
25 to the assets of the company for the return of the

1 I am responsible, whether there's recourse or not. The
2 only thing I ever heard Mr. Rhodes say is, I was not
3 responsible for the losses.

4 Q. I understand, but we're talking about the
5 procedure that you utilized to try to figure out from a
6 forensic accounting what the agreement of the parties
7 were, and you indicated, sir, did you not, that you
8 looked at the operating agreements to try to glean an
9 understanding of what their agreement was, correct?

10 A. Yes, and this is for 2624 Bayonne, LLC.

11 Q. You looked at the operating agreements to glean an
12 understanding, and you looked at the tax returns to glean
13 an understanding; is that correct?

14 A. Yes.

15 Q. Okay. And look at 6(c). Does it state that:
16 Upon the liquidation of the company, if any member has a
17 deficit balance in his capital account after giving
18 effect to all contributions, distributions, and
19 allocations for all taxable years, including such years
20 which liquidation occurs, that member shall have no
21 obligation to make any contributions to the capital of
22 the company with respect to such deficit, and such
23 deficit shall not be considered a debt owed to the
24 company or any other person or entity for any purpose
25 whatsoever.

1 Is that what it says?

2 A. That's what it says.

3 Q. So if Rhodes Investments, Inc. has a deficient
4 capital account at the end of the sale of all the assets,
5 he doesn't have any obligation to contribute anything;
6 isn't that correct?

7 A. It says members shall have no obligation to make
8 any contribution to the capital of the company with
9 respect to such deficit.

10 Q. Okay. Then look at the next paragraph, article 7,
11 rights and duties of members. It says, first paragraph
12 says: No member shall be obligated to make capital
13 contributions to the company except as provided in
14 Article 3. We've already talked about Article 3, and
15 then it says: No member shall have any personal
16 liability with respect to the liabilities or obligations
17 of the company; isn't that correct?

18 A. That's what it says, yes.

19 Q. Okay. So when you read this operating agreement,
20 you learned that members weren't required to make capital
21 contributions, number one, correct?

22 A. Yes. That's what it says.

23 Q. You learned that their agreement was -- is that
24 members can only look to the assets of the company if
25 they didn't get their capital contributions back,

1 correct?

2 A. That's what this says, yes.

3 Q. And you also learned that if they had a deficient
4 capital account, they don't have any personal liability
5 for that, correct?

6 A. That's what this says, yes.

7 Q. And then you said, well, I don't think they're
8 really following this because it calls for a 6 percent
9 preferred return to Mr. Haskin for his capital
10 contributions, right?

11 A. It does call for preferred return for his capital
12 contributions.

13 Q. And nobody got a preferred return for capital
14 contributions, right?

15 A. Correct.

16 Q. But Mr. Gratz incorporated this company.
17 Mr. Gratz prepared the operating agreement, and he also
18 prepared the tax returns, not only for these entities,
19 but also for Mr. Haskin, correct?

20 A. Yes.

21 Q. And he didn't put down a preferred return, right?

22 A. No, he did not.

23 Q. You also looked at the operating agreement for
24 2624 Myrtle, correct?

25 A. Yes. There is an unsigned for 2624 Myrtle and

1 2802 Middle Street.

2 Q. But you looked at it again, as you previously
3 testified, so you could get an understanding of the
4 agreement of the parties, correct?

5 A. Yes. It's an exact duplicate of the one we just
6 discussed.

7 MR. CISA: Your Honor, I would ask that this
8 be introduced as Defendant's Exhibit 6.

9 THE COURT: No objection?

10 MR. JOHN ROSEN: No objection. Just point
11 out that it is not signed, Your Honor.

12 (Defendant's Exhibit No. 6 was marked for
13 identification and admitted into evidence.)

14 THE COURT: I got it. Let me ask you, did
15 LLCs actually get filed with the secretary of state?

16 MR. CISA: The operating agreements don't.
17 The LLCs, you file articles of incorporation, just like
18 in a regular corporation, except there is a limited
19 liability company, but operating agreements are not
20 filed.

21 THE COURT: Okay. But actual documents with
22 the secretary of state did get filed on these various
23 things, or not?

24 MR. CISA: Judge, I know --

25 THE COURT: I thought you had to file

1 something with them.

2 MR. CISA: You do. Station 22 of Charleston,
3 LLC is a South Carolina company. It was filed with the
4 secretary of state.

5 THE COURT: Okay.

6 MR. CISA: These two were Florida limited
7 liability companies. They were filed with the state of
8 Florida.

9 THE COURT: Okay. So something did get
10 filed, it's just the operating agreements didn't get
11 signed on 2624 Myrtle.

12 MR. CISA: Well, what I'm saying is they got
13 filed, and we can show you what it is. It's articles of
14 organization. They got filed, but operating agreement
15 for limited liability company is not filed with public
16 record.

17 THE COURT: That's beyond what I'm asking,
18 but something did -- the articles of incorporation got
19 filed.

20 MR. CISA: Yes, sir.

21 THE COURT: Okay.

22 BY MR. CISA:

23 Q. Is it fair to say the operating agreement for 2624
24 Myrtle, LLC was not actually executed?

25 A. I have not seen a signed copy of it.

1 Q. I haven't either. And is the operating agreement
2 for 2624 Myrtle, LLC exactly the same as the operating
3 agreement for Bayonne that I have introduced as
4 Defendant's Exhibit 5?

5 A. Except for some dates and name changes, I believe
6 they are pretty much identical copies of each other.

7 Q. Did you use Defendant's Exhibit 6 to determine who
8 the members were of 2624 Myrtle, LLC as well as the tax
9 returns?

10 A. No, I did not use those to determine members. I
11 looked at the tax returns to determine who the members
12 were.

13 Q. You used Defendant's Exhibit 6 which is the
14 unsigned operating agreement of 2624 Myrtle to gain an
15 understanding of what the agreement of the parties were,
16 correct?

17 A. Yes. It was one source of information, yes.

18 Q. And as far as you know, this unsigned operating
19 agreement is the only thing in writing that really bears
20 on what the agreement between the parties was, correct?

21 A. It's the only -- only agreement I've seen in
22 writing, yes.

23 Q. Okay. And it contains the same provision, no
24 members required to make capital contribution?

25 A. Yes. That's my understanding.

1 Q. No members required to contribute on dissolution,
2 right?

3 A. Yes.

4 Q. Okay. I want to show you, Mr. Livingston, a copy
5 of the unsigned operating agreement for 2802 Middle
6 Street. Tell me if that's a copy of the unsigned
7 operating agreement, 2802 Middle Street, LLC?

8 A. Yes.

9 Q. And this is another document that you reviewed to
10 gain an understanding of what the agreement of the
11 parties were concerning these three LLCs, correct?

12 A. It was one thing I was provided, yes.

13 MR. CISA: Your Honor, I would ask this be
14 introduced into evidence as Defendant's Exhibit 7.

15 MR. JOHN ROSEN: No objection.

16 (Defendant's Exhibit No. 7 was marked for
17 identification and admitted into evidence.)

18 THE COURT: All right. Articles of
19 incorporation didn't get filed for this one in Florida?

20 MR. CISA: Yes, sir, and I can put those in
21 later, Judge. You'll see what I'm talking about.
22 They're actually on their exhibit list, but I don't think
23 they introduced it.

24 THE COURT: Okay.

25 BY MR. CISA:

1 Q. And, again, Exhibit 7 being the unsigned operating
2 agreement for 2802 Middle, is it pretty much the same
3 operating agreement that was signed for 2624 Bayonne,
4 LLC that we've discussed?

5 A. Yes, except names and dates.

6 Q. Same provision, that no member is required to make
7 capital contribution, et cetera?

8 A. I believe so, yes.

9 Q. So isn't it fair to say, Mr. Livingston, that the
10 three operating agreements being 2624 Bayonne, 2624
11 Myrtle, and 2802 Middle Street support Mr. Rhodes's
12 version of this oral agreement?

13 A. As I understand it, Mr. Rhodes's oral agreement
14 was that he only had an interest in the profits of it.
15 This does not contemplate the individual having -- Mr.
16 Rhodes just having through his entity Rhodes Investments
17 just an interest in the profits. This contemplates
18 capital interest, contributions, distributions against
19 that capital interest and preferred returns. I don't see
20 anything in this where it says Rhodes Investments, Inc.,
21 is just involved in this for whatever profit is
22 generated.

23 Q. But it is consistent with Rhodes Investments,
24 Inc.'s position and Mr. Rhodes's position that Rhodes
25 Investments, Inc. is not required to make a capital

1 contribution to any of these entities; isn't that
2 correct?

3 A. To that element, that's what it appears to say,
4 yes.

5 Q. And that's consistent with Mr. Rhodes's position;
6 isn't that correct?

7 A. I believe so, yes.

8 Q. I want to ask you a few questions about Exhibit
9 61, which is your calculation of pre-judgment interest.

10 MR. CISA: Judge, I don't know if you have a
11 copy or not. I'm going to ask him some questions about
12 Exhibit 61.

13 BY MR. CISA:

14 Q. Mr. Livingston, as I understand, this is the
15 calculation of your pre-judgment interest that you
16 contend Mr. Haskin, I guess, is entitled to?

17 A. No. If he is found to owe one half of the
18 contributions, this is my calculation of the interest on
19 those one halves.

20 Q. And did you prepare this Exhibit 61 in conjunction
21 with your conversations with Mr. Haskin?

22 A. No, I did not.

23 Q. Well, what caused you to prepare this, if it
24 wasn't based upon conversations you had with Mr. Haskin?

25 A. I was asked to prepare an exhibit to show the

STATE OF SOUTH CAROLINA COURT OF COMMON PLEAS
COUNTY OF CHARLESTON 2012-CP-10-6506

WILLIAM B. HASKIN, JR.,	)	
	)	
Plaintiff,	)	EXCERPT OF RECORD
	)	
-vs-	)	November 16 & 17, 2015
	)	
SAMUEL RHODES, JR.,	)	Charleston, South Carolina
RHODES INVESTMENTS, INC.	)	
and RHODES CONSULTING, LLC,	)	
and TRACEY M. BOZZELLI,	)	
	)	
Defendants.	)	

B E F O R E:

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

A P P E A R A N C E S:

John E. Rosen, Esquire
Richard S. Rosen, Esquire
Attorneys for the Plaintiff

Frank Cisa, Esquire
Attorney for the Defendants

Amanda K. Haffenden, RPR, CRR
Ninth Circuit Court Reporter

1 (The following is an excerpt from the
2 above-captioned nonjury trial):

3 (November 16, 2015.)

4 TRACEY BOZZELLI,

5 having been first duly sworn,
6 was examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. RICHARD ROSEN:

9 Q. State your full name, please.

10 A. Tracey Bozzelli.

11 Q. Who are you married to?

12 A. Samuel Walter Rhodes, Jr.

13 Q. Have you had conversations in the past with your
14 husband, Sammy Rhodes, and the business relationship he
15 had with Bill Haskin?

16 A. Some, yes.

17 Q. Did you have some conversation with him, Sammy
18 Rhodes, or with Bill?

19 A. Both.

20 Q. And could you tell us what their arrangement was.

21 A. Very clearly, their arrangement was they built
22 houses together. Bill was the investor. He was
23 responsible for getting the loans, paying back the money.
24 Sammy was responsible for doing all the man hours.

25 Q. Is it true it was your understanding that Bill

1 build houses?

2 A. Yes.

3 Q. And then the next question, two lines down, is:
4 Then you probably didn't pay much attention to it other
5 than that, did you?

6 A. No.

7 Q. You entered into a prenuptial agreement with
8 Mr. Rhodes before your marriage?

9 A. Correct.

10 Q. And let me hand you Exhibit 1. Your Honor, I have
11 a copy that's already marked as Exhibit 1.

12 Ms. Bozzelli, take a minute to look at that
13 document if you need to and tell me whether or not that
14 is your prenuptial agreement.

15 A. This is it.

16 Q. And that agreement includes information that Sammy
17 Rhodes gave to you in contemplation of entering into a
18 marriage.

19 A. Correct.

20 Q. And you also provided Samuel Rhodes information
21 about you in contemplation of entering into a marriage.

22 A. Correct. I think I gave it to a lawyer, but yes.

23 Q. And you trusted that your future husband, Sammy
24 Rhodes, would provide you with truthful and accurate
25 information.

1 Q. Okay. Did you know that after you got that deed
2 and supposedly you owned that whole house that your
3 husband withdrew \$900 in cash on a line of credit on the
4 house?

5 A. Excuse me. How much?

6 Q. \$900?

7 A. No.

8 Q. You were not aware of that?

9 A. No.

10 MR. RICHARD ROSEN: That's all the questions
11 I have.

12 THE WITNESS: Thank you.

13 (Whereupon, the excerpt was concluded.)

14 - - - - -

15 (The following is an excerpt from the
16 above-captioned nonjury trial):

17 (November 18, 2015.)

18 MR. CISA: Thank you, Your Honor. As we
19 discussed yesterday, I just have a short witness who's
20 going to be out of town but I want to call out of order.

21 I call Jim Covington.

22 JAMES COVINGTON,

23 having been first duly sworn,

24 was examined and testified as follows:

25 DIRECT EXAMINATION

1 BY MR. CISA:

2 Q. Mr. Covington, how old are you, sir?

3 A. Fifty-eight.

4 Q. What do you do for a living?

5 A. I'm a real estate agent.

6 Q. How long have you been a real estate agent?

7 A. Seventeen years.

8 Q. Do you know Bill Haskin?

9 A. I do.

10 Q. Do you know Sammy Rhodes?

11 A. I do.

12 Q. How long have you known Bill Haskin, do you
13 recall?

14 A. Twenty years.

15 Q. Have you done business with Bill Haskin?

16 A. Yes.

17 Q. How long have you known Samuel Rhodes?

18 A. Probably about 20 years.

19 Q. You've done business with Sammy Rhodes?

20 A. Yes, yes.

21 Q. Were you a member -- let me ask you this: Are you
22 familiar with a company called Covington Property, Inc.?

23 A. Yes, sir.

24 Q. Is that a corporation you own?

25 A. Yes, sir.

1 Q. You're the sole shareholder of that?

2 A. That's correct.

3 Q. Was Covington Property, Inc. a member of -- do you
4 see that, of Station 22 of Charleston, LLC?

5 A. Yes.

6 Q. And Station 22 of Charleston, LLC, did it acquire
7 a property known as 22 Lafar?

8 A. Yes.

9 Q. Where is that property located?

10 A. Daniel Island.

11 Q. All right. And what interest did Covington
12 Property, Inc. own in Station 22? Did you own 50
13 percent, a third, or --

14 A. I don't know how it was structured.

15 Q. Did Station 22 of Charleston, LLC have to obtain
16 financing on the lot it was going to purchase?

17 A. Yes, sir.

18 Q. And do you recall the bank you went to for
19 financing?

20 A. I do not.

21 Q. All right. Do you recall who signed the note at
22 the bank relative to the financing to build the house?

23 A. Mr. Haskin and I signed the note.

24 Q. Did Sammy Rhodes sign the note?

25 A. He did not.

1 Q. Did he refuse to sign the note?

2 A. I don't know why he didn't sign the note, but I
3 know he didn't sign the note.

4 Q. At that time or at any time, do you recall any
5 discussions between you and Sammy Rhodes and Bill Haskin
6 about who was going to -- who was going to pay losses?

7 A. Losses never came up.

8 Q. Was there ever any agreement about which members
9 were going to pay losses if there were losses relative to
10 this project?

11 A. There was no partnership agreement.

12 Q. This is something that has been put into evidence
13 and testified to, and what it shows, it shows Station 22
14 of Charleston, LLC, and it shows down here that Covington
15 Property, Inc. contributed over a number of years
16 \$122,107 toward losses or capital contributions.

17 Does that sound right?

18 A. I would have to talk to my accountant. I can't
19 verify that.

20 Q. Are you looking to Sammy Rhodes for reimbursement
21 of any losses?

22 A. No, sir.

23 Q. Why not?

24 A. I wouldn't know what number, if there -- I don't
25 have a number.

1 Q. What was Sammy Rhodes or Rhodes Investments,
2 Inc.'s role in Station 22, LLC?

3 A. Repeat the question.

4 Q. What was Rhodes Investments, Inc.'s role in --

5 A. He built the house.

6 Q. So Sammy Rhodes built the house?

7 A. Correct.

8 Q. Did Sammy Rhodes put in sweat equity?

9 A. Yes.

10 Q. Okay. All right.

11 MR. CISA: I have no further questions.

12 Thank you very much. Please answer any questions these
13 guys might have.

14 MR. RICHARD ROSEN: We have no questions,
15 Judge.

16 (Whereupon, the excerpt was concluded.)

17 - - - - -

18 (The following is an excerpt from the
19 above-captioned nonjury trial):

20 MR. CISA: Call Sammy Rhodes, Your Honor.

21 SAMUEL RHODES,

22 having been first duly sworn,

23 was examined and testified as follows:

24 DIRECT EXAMINATION

25 BY MR. CISA:

1 (The following is an excerpt from the
2 above-captioned nonjury trial):

3 (November 18, 2015.)

4 THE COURT: All right. Who's the next
5 witness?

6 MR. CISA: Tim Reese, Your Honor.

7 TIMOTHY REESE,

8 having been first duly sworn,
9 was examined and testified as follows:

10 DIRECT EXAMINATION

11 BY MR. CISA:

12 Q. Mr. Reese, where do you reside, sir?

13 A. I reside at 305 Station 20 on Sullivan's Island.

14 Q. How old are you?

15 A. Fifty-five.

16 Q. Do you know Bill Haskin?

17 A. I do.

18 Q. How long have you known Bill Haskin?

19 A. Probably since 2003, '04, that range.

20 Q. Do you know Sammy Rhodes?

21 A. I do.

22 Q. How long have you known Sammy?

23 A. Probably the same time frame.

24 Q. What do you do for a living?

25 A. I'm a real estate agent.

1 Q. How long have you been a real estate agent?

2 A. Full time, since about 2000.

3 Q. Where is your office?

4 A. Isle of Palms with Dunes Properties.

5 Q. Have you worked for Dunes Properties the entire
6 time you've sold real estate?

7 A. No, I've not.

8 Q. Have you dealt with property on Sullivan's Island
9 and Isle of Palms since you've been a realtor?

10 A. Very much so.

11 Q. Okay. Have you ever done work for Bill Haskin or
12 Sammy Rhodes?

13 A. Yes, I have.

14 Q. What type of work?

15 A. I represented them in the brokerage of their
16 properties.

17 Q. Okay. Do you recall having a discussion with Bill
18 Haskin and Sammy Rhodes concerning 2624 Myrtle and 2802
19 Middle Street?

20 A. I do.

21 Q. All right. Do you recall where the discussion
22 took place?

23 A. I think Tracey was there too. I think -- well, it
24 was at Poe's, right around the beginning -- January of
25 2006.

1 Q. And can you tell us what the conversation was?
2 What were y'all talking about?

3 A. We had put two properties at 1914 Middle. They
4 had just purchased that, that I represented them as the
5 buying agent on, and then they -- the property next door,
6 they had closed on that.

7 It wasn't on the market, but I put them in touch
8 with the owners who I knew because they lived two doors
9 down from me, that they wanted to sell the lot. So they
10 had just purchased those in I think it was July and
11 September of 2005, and they were going to start projects
12 on those two, which I assumed at the time I was going to
13 represent them as the listing agent when they were
14 completed.

15 And we were talking -- they were asking me about
16 another -- two other properties that had come on the
17 market and what I thought they were worth, and I
18 mentioned that probably --

19 Q. Were those properties 2802 Middle and 2624 Myrtle?

20 A. Correct. I think one was listed at the time for
21 \$1 million 395 or something like that, and the other one
22 was almost \$1 million 295, in that range, and they asked
23 me, What do you think about those?

24 And I said I wouldn't pay more than a million. I
25 would pay the similar price that you paid for the other

1 two.

2 Q. All right. Do you recall how much they paid for
3 2802 Middle?

4 A. I did write it down. 2802 Middle was sold in
5 March of 2006 for \$1 million 345.

6 Q. Okay.

7 A. And then 2624 was sold for \$1 million 250 in
8 September of 2006.

9 Q. And you told them not to pay over a million?

10 A. That was my opinion of the price points.

11 Q. Based upon your dealings with Sammy Rhodes and
12 Bill Haskin, what did you understand their business
13 relationship to be?

14 A. I didn't know anything about it formally. My
15 assumption was that Sammy was the builder, put the sweat
16 into the deals, and Bill was the financier, which I have
17 known, based on the other two purchases that went
18 through, his signature on the other two lots that I
19 represented them on.

20 Q. Did you ever have any conversations with Bill
21 Haskin about his financing these projects?

22 A. I do remember. Again, it's fairly vague, but I
23 remember, you know, something to the effect of Bill --
24 and you're moving here, because prior to that, the reason
25 I got involved, there was a property at 1851 Middle

1 Street that they had purchased in 2003 for 950, and they
2 were building a spec home on that. And I ended up
3 bringing them a buyer for \$2 million, and they had only
4 put, really, the foundation and started the first floor,
5 so in real estate terms, I served up a home run real
6 quick for them, and so that's when I brought the other
7 deals.

8 They had faith in me, but my dealings on the
9 signatures, from what I remember, I didn't pull the
10 contracts, but it was through Bill and at his office
11 downstairs, at his office on Middle Street, I remember
12 the comment was, you know, Keep looking for me and, you
13 know, don't worry. I've got a good line of credit, good
14 relationships with the banks, that kind of stuff, so --

15 MR. CISA: Thank you, sir. I don't have any
16 further questions. Please answer any questions these
17 gentlemen may have or Judge Young.

18 CROSS-EXAMINATION

19 BY MR. RICHARD ROSEN:

20 Q. Mr. Reese, we've met before?

21 A. Yes, sir.

22 Q. Were you aware of the intimate details of the
23 working relationship between Sammy Rhodes and Bill
24 Haskin?

25 A. No, not formally. Again, as I stated, it was my

1 assumption that Sammy was the guy building and Bill was
2 the financier.

3 MR. RICHARD ROSEN: That's all I got, Your
4 Honor.

5 THE COURT: Redirect?

6 MR. CISA: None, Your Honor.

7 THE COURT: You're free to go.

8 (Whereupon, the excerpt was concluded.)

9 - - - - -

10 (The following is an excerpt from the
11 above-captioned nonjury trial):

12 (November 16, 2015.)

13 SAMUEL RHODES,

14 having been previously duly sworn,
15 was examined and testified as follows:

16 CROSS-EXAMINATION

17 BY MR. RICHARD ROSEN:

18 Q. You agree you and Bill Haskin had a verbal
19 agreement?

20 A. A verbal agreement?

21 Q. Yes, sir.

22 A. Yes.

23 Q. Okay. And the verbal agreement was that y'all
24 were going to do projects and you were going to do the
25 construction and Bill was going to provide the financing

1 partnership. That's why partnerships are formed. One
2 person may have the skill, one person may have the
3 financing to make whatever they want to happen, happen.

4 Q. Talking about your calculation and pre-judgment
5 interest, I want to ask you if the parties had an
6 agreement and if the amounts at issue are due at the sale
7 of the home in question and it became due then, would
8 your interest in this number change?

9 A. Could you say that again?

10 Q. If the parties had an agreement whereby any moneys
11 that were contributed on their behalf was due upon the
12 sale of a home, would your pre-judgment calculation
13 change?

14 A. Yes.

15 MR. JOHN ROSEN: That's all I got, Your
16 Honor.

17 MR. CISA: Judge, I don't have anything
18 further unless you do.

19 THE COURT: You're free to go.

20 (Whereupon, the excerpt was concluded.)

21 - - - - -

22 (The following excerpt was from November 18,
23 2015.)

24 WILLIAM THOMAS,
25 having been first duly sworn,

1 was examined and testified as follows:

2 DIRECT EXAMINATION

3 BY MR. CISA:

4 Q. Mr. Thomas, where do you currently reside?

5 A. In Mount Pleasant, South Carolina.

6 Q. How old are you?

7 A. Fifty-five.

8 Q. Do you have an occupation or profession?

9 A. Yes.

10 Q. And what is that?

11 A. I am a CPA.

12 Q. Are you licensed as a certified public accountant
13 by the State of South Carolina?

14 A. Yes.

15 Q. How long have you been licensed?

16 A. Since 1986, I think.

17 Q. Where did you get your undergraduate degree?

18 A. The Citadel.

19 Q. Did you graduate from the Citadel with honors?

20 A. Yes.

21 Q. You indicated you are licensed certified public
22 accountant. Do you have any other professional
23 designations?

24 A. Yes. I am a CVA and a CFF.

25 Q. What is a CVA?

1 A. CVA is a certified valuation analyst.

2 Q. Okay. And what is a CFF?

3 A. Certified in financial forensics.

4 Q. Are you a member of any national associations?

5 A. Yes. I'm a member of the AICPA, which is the
6 American Institute of Certified Public Accountants, and
7 the NACVA, which is the National Association for
8 Valuation Analysts.

9 Q. Can you tell me what your work history has been.

10 A. Since when?

11 Q. Getting out of, I guess -- getting out of college,
12 I guess, after you got your CPA license.

13 A. Well, my first job, before and during the time I
14 got my license was with Ernst & Whinney, a firm that was
15 a big national firm, but I worked in their Spartanburg,
16 South Carolina office.

17 Q. How long did you work for Ernst & Whinney?

18 A. About two-and-a-half years.

19 Q. What type of clients did you do work for while you
20 were at Ernst & Whinney?

21 A. Primarily I was on the team that audited textile
22 mills, and I worked in the inventory component, primarily
23 inventory component of those audits.

24 Q. After you left Ernst & Whinney, what did you do?

25 A. For a period of time, I worked in automotive

1 retail. After leaving Ernst & Whinney, my brother and
2 I -- sort of went to work with him. He had a lot of car
3 dealerships that were clients, so I went to work for him
4 and actually ended up being on the payroll for the car
5 dealerships, so I was in automotive retail for several
6 years.

7 Q. How long did you working in payroll for car
8 dealerships?

9 A. It's been a long time. If I had to guess, I would
10 say four or five years.

11 Q. What did you do after that?

12 A. After that, I went into -- basically, went into
13 business for myself. I've had my brother, who's been a
14 partner of mine on and off, he's a CPA, and I was in a
15 firm with a guy called -- named Robert Burch out of
16 Camden, and my brother and I now have Thomas & Thomas, so
17 I have either been a sole proprietor or in a small firm
18 since that time.

19 Q. About how long have you been in a sole
20 proprietorship or small firm?

21 A. I would say since 1991 or some time in that time
22 range.

23 Q. And, primarily, what type of accounting services
24 do you provide to clients?

25 A. Currently?

1 Q. Uh-huh.

2 A. Currently we do support for litigation, so we help
3 attorneys in civil and criminal matters. We serve as
4 either an expert or we serve in a consulting capacity.
5 We help people buy and sell small businesses, and we help
6 people that have serious problems with the IRS and the
7 Department of Revenue, and I also do some income tax
8 returns, still prepare some income tax returns.

9 Q. Do you prepare tax returns for closely held
10 corporations?

11 A. Yes, sir.

12 Q. Do you perform tax returns for limited liability
13 companies?

14 A. Yes, sir.

15 Q. Do you engage in consulting?

16 A. Yes, sir.

17 Q. You said you offer support services for attorneys;
18 is that correct?

19 A. Yes, sir.

20 Q. About how long have you been doing that?

21 A. I would think over 20 years. I think it's been
22 that long.

23 Q. How many years have you assisted clients with
24 buying and selling small businesses?

25 A. I've pretty much been doing that since I left my

1 role as a controller -- well, actually, when I was a
2 controller, we looked at-- you know, we looked at deals,
3 so they weren't clients, they were, you know, my employer
4 for quite some time.

5 Q. Does that type of work involve analyzing tax
6 returns?

7 A. Yes.

8 Q. Have you ever served on any board of any agencies?

9 A. Yes. I've been on the board for the Patriot's
10 Point Development Authority, and I've also served as a
11 permanent proxy in the Charleston County Aviation
12 Authority.

13 Q. Have you ever been qualified as an expert in the
14 field of accounting?

15 A. Yes.

16 Q. By a Court?

17 A. Yes.

18 Q. Have you ever been qualified as an expert in
19 Circuit Court?

20 A. Yes.

21 Q. Have you been qualified as an expert in Family
22 Court?

23 A. Yes.

24 Q. Have you been recognized as an expert in forensic
25 accounting by the Circuit Court?

1 A. Yes.

2 Q. Do you provide service to plaintiffs as well as
3 defendants?

4 A. Yes, sir.

5 Q. Have you been recognized as an expert in
6 accounting in United States District Court?

7 A. Yes, sir.

8 MR. CISA: Your Honor, I would tender Mr.
9 Thomas in the field of accounting and forensic
10 accounting.

11 MR. RICHARD ROSEN: No objection.

12 THE COURT: So ordered.

13 BY MR. CISA:

14 Q. Mr. Thomas, who retained you relative to this
15 case?

16 A. You did.

17 Q. And what were you asked to do?

18 A. I was asked to look at a number of documents and
19 give you my opinion on what services I could provide to
20 you after I looked at those documents, the way the
21 engagement started.

22 Q. Okay. Did you review documents related to a
23 limited liability company organized in the state of
24 Florida known as 2802 Middle Street, LLC?

25 A. Yes, sir.

1 Q. What documents did you review?

2 A. For that entity, I looked at the tax returns. I
3 looked at the operating agreements. There may have been
4 some -- it's hard for me to remember exactly, but in some
5 of the files, there were some documents from the State of
6 Florida with the certification, for lack of a better
7 word, from their secretary of state, so those were the
8 primary documents I recall looking at.

9 Q. Did you look at the tax returns for 2624 Myrtle
10 and Station 22 of Charleston?

11 A. Yes.

12 Q. Did you understand that 2624 Myrtle is a Florida
13 limited liability company?

14 A. That's my understanding, yes.

15 Q. And what's your understanding about Station 22 of
16 Charleston? Was that formed in Florida or South
17 Carolina?

18 A. My understanding, it was formed in South Carolina.

19 Q. Okay. Did you look at the tax returns for the
20 various entities to extract what losses were claimed by
21 the various members?

22 A. Yes. I looked -- well, I looked at the returns
23 and did an analysis of the returns, sort of in total and
24 like I would do looking at any other, you know, small
25 company, and then I was asked a question of how were the

1 losses allocated? What did the K-1s say as to the
2 allocation of the losses, and how are the losses actually
3 allocated?

4 Q. Do you know who the members were of 2802 Middle
5 Street?

6 A. 2802 Middle was Mr. Haskin and Rhodes Investments,
7 LLC.

8 Q. Rhodes Investments LLC or Inc.?

9 A. Maybe Rhodes Investments, Inc. I'm sorry.

10 Q. How about 2624 Myrtle? Was it the same?

11 A. It was the same, yes.

12 Q. Do you remember who the members were of Station 22
13 of Charleston, LLC?

14 A. Yes. They were Mr. Haskin, Rhodes Investments,
15 and a company called Covington Properties, and I can't
16 remember if it was a corporation or an LLC.

17 Q. Okay. Let me show you this document and ask you
18 what this is.

19 A. This is a -- this is a five-page summary of the
20 analysis I performed on the entity 2802 Middle Street
21 LLC.

22 Q. All right. Was this information extracted from
23 the tax returns, the tax returns of 2802 Middle Street?

24 A. Yes, sir.

25 Q. Is it a summary of what's contained on those tax

1 returns?

2 A. Yes, sir.

3 Q. Okay.

4 MR. CISA: Your Honor, I would ask this be
5 introduced into evidence as Defendant's Exhibit 12.

6 MR. RICHARD ROSEN: No objection.

7 THE COURT: Admitted.

8 (Defendant's Exhibit No. 12 was marked for
9 identification and admitted into evidence.)

10 BY MR. CISA:

11 Q. Will you take a look at what's marked as
12 Defendant's Exhibit 12, and would you explain what you've
13 got here and what you don't.

14 A. Yes, sir. You want me to explain every page?

15 Q. Well, I don't want to spend a bunch of time. I
16 want to know about the losses, primarily. Would you just
17 kind of gloss over what you did.

18 A. Yes, sir. Well, what I did, starting on the first
19 page, I looked at the losses from the period 2006 to 2011
20 to see how they were actually taken on the K-1s, and if
21 you look at the next page, you will see that it is sort
22 of a summary by year.

23 The first line is the amount Haskin put in for the
24 year, meaning the contribution by Mr. Haskin for the
25 year, and then the next line is the amount Rhodes

1 Investments put in for the year.

2 Q. Okay. What do you have highlighted in blue?

3 A. What I have highlighted in blue is the actual loss
4 allocation as a percentage between Mr. Haskin and Rhodes
5 Investments year by year.

6 Q. All right. And what are you showing for the
7 years?

8 A. Okay. So for 2006, it was a \$256,000 loss, and
9 Mr. Haskin took the entire loss for the entire year on
10 the K-1 that was prepared for him.

11 On the year 2007, the loss was allocated 78.76
12 percent to Mr. Haskin and 21.24 percent for Rhodes
13 Investments, and that loss was \$95,272.

14 For the year 2008, the loss was allocated 100
15 percent to Mr. Haskin and zero percent to Rhodes
16 Investments, and that loss was 198,411.

17 For the year 2009, the loss was \$147,679, and it
18 was allocated 97.6 percent to Mr. Haskin, and 2.94
19 percent to Rhodes Investments.

20 For the year 2010, there was a loss of \$86,466,
21 and it was allocated 100 percent to Mr. Haskin and zero
22 to Rhodes Investments.

23 And then the final return, the loss on the K-1,
24 there is a loss, and then there is what appears to be a
25 profit, but I think it was to close out his capital

1 account, I'm not sure, but the loss at the company level,
2 according to the tax return, was \$323,630, and that's why
3 there's 103 percent to Mr. Haskin and 3 percent to
4 Mr. Rhodes because his was a gain, but, again, the amount
5 on Mr. Haskin was the lion's share of the loss.

6 Q. Now, incident to your evaluation and analysis of
7 the financial matters between Rhodes Investments, Inc.
8 and Mr. Haskin, did you have occasion to meet with Sammy
9 Rhodes?

10 A. Yes.

11 Q. What did you understand Sammy Rhodes's connection
12 to be to Rhodes Investments, Inc.?

13 A. He owned Rhodes Investments, Inc.

14 Q. Was he the sole shareholder?

15 A. Yes, sir.

16 Q. Did you talk with Sammy Rhodes about his
17 understanding of the arrangement between Rhodes
18 Investments, Inc. and Mr. Haskin?

19 A. Yes.

20 Q. And what were you told?

21 A. The way it was explained to me by Mr. Rhodes is
22 that he had the ability to build houses, and his company
23 became a member of an LLC and they had done this other
24 times, became a member of an LLC, where there was an
25 acquisition of a lot and then he oversaw the -- for lack

1 of a better word, he was the general contractor on the
2 construction of \$1 million plus beach house. And his
3 arrangement was that Mr. Haskin sometimes found the lot,
4 sometimes they found them together, but Mr. Haskin would
5 secure the financing or put his own money in to build a
6 house.

7 Mr. Rhodes would forgo what at the time I believe
8 was a 20 percent fee for a general contractor, and he
9 would forgo that on the front end or while the house was
10 actually being built, and the deal was that he would get
11 that in the form of whatever was half of what was left
12 over.

13 In other words, if the total cost associated with
14 building the house and buying the house was \$2 million
15 and they sold the house for \$2.5 million, then the \$2.5
16 million worth of proceeds would go to pay the \$2 million,
17 whether it be in the form of money Mr. Haskin put in or
18 the money Mr. Haskin arranged for the financing of, and
19 then that \$500,000 would be split between them, which, in
20 essence, would leave Mr. Rhodes with getting paid for his
21 effort, for lack of a better word, and that way -- so
22 that is how he would end up benefitting from the deal.

23 Q. Would the profit be split equally?

24 A. It is my understanding they would split the profit
25 equally, yes.

1 Q. Do the K-1's for 2802 Middle, 2624 Myrtle show
2 that the profits were to be split 50/50?

3 A. Does the K-1 section show that?

4 Q. Right.

5 A. On the K-1 section, there is a notation that says
6 that profits would be split 50/50, yes.

7 Q. What was your understanding about losses?

8 A. Well, the losses are addressed on the K-1s, and if
9 you'll look at the second page of this analysis I did on
10 2802 Middle, for example, if you look at the very bottom,
11 I have the loss allocation per form 1065, which is on
12 schedule K-1, section J, and they set these up where they
13 had small percentages for limited, and Rhodes Investments
14 was a general partner.

15 So that's why there are four entries down here,
16 but at the end of the day, if you look for the year 2006,
17 if you look at the tax return for the way the loss was
18 presented on the K-1 as to how it was going to be
19 allocated is Mr. Haskin was going to take 100 percent of
20 the loss and Rhodes Investment would end up with zero
21 percent of the loss, and if you look up above that in the
22 blue box, that's what happened.

23 Mr. Haskin took 100 percent and Rhodes Investments
24 got zero, and, of course, we're talking about \$256. If
25 you move to the next column where it's the year 2007, now

1 when you look down at the bottom for the allocation on
2 the K-1, Mr. Haskin is -- on the K-1 allocation it says
3 it's 50 percent and Rhodes Investments is 50 percent, but
4 if you look at what they did, it was 78.76 and 24.24.

5 If you move over to 2008, you look at the bottom,
6 again, it was supposed to be 50/50 -- well, not supposed
7 to be. I apologize. It says it's 50/50 on that section
8 of the K-1, and then when you look at what actually
9 happened, 100 percent of the loss was actually taken by
10 Mr. Haskin.

11 In 2009, the calculation was done on the face of
12 the K-1s that showed 97.06 to Haskin and 2.94 to Rhodes
13 Investments, and if you look up in the blue box that's
14 exactly what it was, 97.06 of the loss went to Mr. Haskin
15 and 2.94 went to Rhodes Investments.

16 Then you move to 2010 and it changes back on the
17 face of the return in the K-1, section J. It says 100
18 percent of the loss to Mr. Haskin, zero to Rhodes
19 Investments, and if you look up to what actually
20 happened, 100 percent of the loss went to Mr. Haskin,
21 zero to Rhodes Investments.

22 And then 2011, the final year, the very bottom,
23 the presentation is 100 percent to Mr. Haskin, zero to
24 Mr. Rhodes, and, as I said earlier, the lion's share went
25 to Mr. Haskin, except for this number that he cleared out

1 of his capital account.

2 Q. Can members of a limited liability company agree
3 to allocate profits 50/50?

4 A. I think that the members of an LLC that are taxed
5 as a partnership, because that's what happened here -- in
6 other words, an LLC is not an entity that -- there's not
7 an LLC form. In other words, an LLC is a vehicle that's
8 been created by the legislature, and it's what people
9 use. It's sort of like the vehicle of the day, if you
10 will. It used to be an S corp, but it has to be taxed.

11 If it has one member, it's a disregarded entity,
12 so it can't be a partnership. If it has two members, it
13 can be a partnership. It can be taxed, I'm pretty sure,
14 as a corporation. It can be taxed as an S corporation.
15 So this particular one is taxed as a partnership, so it
16 falls not to the LLC laws, per se, for tax, but it falls
17 to the partnership laws for tax.

18 Partners -- it's my understanding that partners
19 can agree to allocate any common losses. You know, they
20 can make an agreement to do, you know, whatever they want
21 to do with regard to the allocation.

22 Q. Okay. So the members of this LLC, 2802 Middle
23 Street, they could agree to allocate profits 50/50 and
24 losses 50/50, correct?

25 A. Again, sir, I think they can agree to whatever

1 they agree to.

2 Q. Including what I just said.

3 A. Yes.

4 Q. And in this particular case with 2802 Middle
5 Street, do the tax returns show that the two members in
6 2802 Middle Street allocated losses 50/50?

7 A. Well, again, what I'm trying to say is down in the
8 place where they sort of make the declaration, for lack
9 of a better word, so they make a declaration -- for
10 example, let's just look at 2008. The declaration on the
11 return when you look at the partnership percentage
12 section, which is, again, section J, it says that the
13 losses were going to be 50 percent to Haskin and 50
14 percent to Rhodes Investment, but if you look at what
15 they did on the K-1s, over on the right-hand-side on the
16 K-1 and what flows through to the 1040, for lack of a
17 better word, what matters, okay, well, 100 percent of the
18 loss went to Mr. Haskin.

19 Q. Okay. Do you know why the allocation at the
20 bottom of page two where you got 99 percent, zero
21 percent, 50 percent, 50 percent, do you know why that was
22 done that way? That's not the way it was done, was it?

23 A. Well, I wasn't there, and I had no input as to how
24 these returns were prepared, so all I can do is tell you
25 is that what is on the return and what is in the little

1 squares saying these are how the losses are going to be
2 allocated does not jibe with what actually happened again
3 over on the right-hand side of how the numbers were put
4 on the K-1 and further flowed to the 1040.

5 Q. Is it fair to say Mr. Haskin, for 2802 Middle
6 Street from 2006 to 2011, took the vast majority of all
7 the losses?

8 A. Well, if you go back to page one of this document,
9 over on the right-hand side, what I've done in the box is
10 I've summarized the loss for Mr. Haskin, and this is the
11 loss per the K-1, is \$837,417, and the loss attributed to
12 Rhodes Investments was \$14,277, so that would be 98.3
13 percent to Mr. Haskin and 1.7 percent to Rhodes
14 Investments.

15 Q. Does it appear, based upon your analysis of the
16 tax returns for 2802 Middle Street, that the parties
17 agreed to --

18 MR. RICHARD ROSEN: Objection, Your Honor.
19 Leading.

20 THE COURT: Overruled.

21 BY MR. CISA:

22 Q. -- evenly allocate losses between them?

23 A. I'm sorry. Could you repeat the question?

24 Q. Based upon your review of the tax returns for 2802
25 Middle, does it appear that the parties agreed to

1 allocate losses equally between them, based upon what you
2 saw in the tax returns?

3 A. On the tax returns, Mr. Cisa, I don't know what
4 they agreed to. I know what the tax returns say, and the
5 tax returns say that Mr. Haskin got 98.3 percent of the
6 losses that happened in this organization, 2802 Middle
7 Street. That's what happened.

8 Q. Okay.

9 A. Okay? So --

10 Q. All right. Now, did you do the same kind of
11 analysis for 2624 Myrtle?

12 A. Yes, sir.

13 Q. And is this the analysis that you did?

14 A. Yes, sir.

15 MR. CISA: Your Honor, I ask that this be
16 entered into evidence as Defendant's Exhibit No. 13.

17 (Defendant's Exhibit No. 13 was marked for
18 identification and admitted into evidence.)

19 BY MR. CISA:

20 Q. Will you walk us through what you did as far as
21 2624 Myrtle Avenue.

22 A. Yes, sir. Again, this is a five-page report which
23 looks at several items on the tax return for 2624 Myrtle
24 Avenue, LLC, and the summary page on the front of the
25 first page shows, again, the loss taken by Mr. Haskin as

1 a percentage, and that box is on the far right-hand side,
2 and the loss taken by Rhodes Investments as a percentage,
3 and it goes through the same analysis on the second page
4 of it where it shows from 2007 to 2011 the same scenario,
5 what was actually taken as a loss, and what was
6 displayed, for lack of a better word, on Schedule K-1
7 under Section J for schedule K-1s.

8 Q. Can you go through the years on 2007 and tell us
9 what Mr. Haskin claimed as far as a percentage of loss
10 from this company?

11 A. For 2007, it was 92.61 percent for Mr. Haskin, and
12 Rhodes Investments was 7.39 percent.

13 Q. 2008?

14 A. 2008 was 100 percent for Mr. Haskin.

15 Q. How about 2009?

16 A. It was 89.13 percent for Mr. Haskin, and 10.87
17 percent for Rhodes Investments.

18 Q. And 2010?

19 A. It was 95.15 for Mr. Haskin, and Rhodes
20 Investments was 4.85 percent.

21 Q. And then the final return showed what?

22 A. 100 percent for Mr. Haskin and Rhodes Investments,
23 zero.

24 Q. Okay. Did you do the same analysis again for
25 Station 22 of Charleston, LLC?

1 A. Yes, sir.

2 Q. I'm going to hand you a set of documents for
3 Station 22 of Charleston, LLC. Is that your analysis of
4 that company?

5 A. Yes, sir. This is the analysis of the return that
6 I had.

7 MR. CISA: Your Honor, I ask that this be
8 introduced as Defendant's Exhibit No. 14.

9 MR. RICHARD ROSEN: No objection.

10 THE COURT: Admitted.

11 (Defendant's Exhibit No. 14 was marked for
12 identification and admitted into evidence.)

13 BY MR. CISA:

14 Q. All right. Mr. Thomas, tell us what you did on
15 the first page.

16 A. First page, basically the same thing with the
17 addition of Covington Properties, so the years that I had
18 were 2007, and I needed 2011 and I also needed parts of
19 2012, so the company started in 2005. I didn't have '05
20 and '06, so this analysis is not exhaustive like the
21 other two are.

22 Q. So --

23 A. But to answer your question, I did the same thing,
24 where I looked at the losses that were taken by Mr.
25 Haskin, Rhodes Investments, and Covington Properties.

1 Q. And what were the losses taken by Mr. Haskin,
2 Rhodes Investments, and Covington Properties as shown on
3 the first page?

4 A. For the years that I had, it was Mr. Haskin,
5 \$207,995, which was 52.6 percent. Mr. Rhodes -- I mean,
6 Rhodes Investments was \$71, which didn't register as a
7 percentage, and Covington Properties, \$187,575, which was
8 47.4 percent of the losses.

9 Q. Okay. And looking at the second sheet, I take it
10 that you had tax returns for 2007, '08, '09, '10, a part
11 of '12 and part of '13?

12 A. Yes. If I remember correctly, I had tax returns
13 for '07, '08, '09, '10; I had the K-1s for '12, and I did
14 not have '11.

15 Q. All right. Does this show that Rhodes
16 Investments, Inc. doesn't take any losses relative to
17 station 22 of Charleston, LLC?

18 A. Yes. They took \$71 in 2007.

19 Q. Now, did you review Mr. Haskin's individual tax
20 returns incident to your analysis?

21 A. Yes, sir.

22 Q. I want to show you a document called partnership
23 and corporation activity 2006. Tell me what those
24 documents are.

25 A. This is an analysis of the years 2006 to 2011 of

1 the partnership and S corporation, flow-through items
2 that came from various entities to Mr. Haskin's personal
3 return, his form 1040.

4 Q. Okay. What is the -- and you've got the LLCs
5 highlighted that we're here about, 2802 and Station 22 of
6 Charleston?

7 A. Yes, sir, in yellow.

8 Q. That's for 2006?

9 A. Yes, sir.

10 Q. And I take it that 2624 Myrtle wasn't on his
11 return for 2006; is that correct?

12 A. Correct. I'm pretty sure it started in 2007.

13 Q. Okay. All right. What are you showing on the
14 first page of this document?

15 A. Well, this document shows several things. If you
16 follow the columns from the left-hand side, it shows the
17 name of the entity that is the investment for Mr. Haskin.
18 It shows whether it is a partnership or an S corp, and it
19 shows the federal ID number, and then there are columns
20 that separate passive loss, allowed passive loss, passive
21 income, active income, section 179 associated with the
22 entity and active income.

23 Q. Okay. What's the difference between passive loss
24 and active loss?

25 A. Well --

1 Q. How does that work?

2 A. Just by the title, going back to 1986, which was
3 the first major reform for passive losses in my lifetime,
4 basically people that were investing in real estate and
5 other things, they got their legs cut out from them from
6 the standpoint of the deductibility, so passive losses
7 went into this whole other category of being able to use
8 them, and there are a lot of rules, there are a lot of
9 stipulations on what's active and what's passive, so if
10 you have losses that are passive by the code, you may not
11 be able to use them to offset income.

12 For example, we have -- let's just use a simple
13 example of someone who works for a wage and makes
14 \$100,000. Okay? Let's say he makes 200,000, because I
15 think after a certain threshold, the passive losses kick
16 in for rental property. But if he makes a certain amount
17 of income and has a rental house, for example, then the
18 losses on that rental house may be suspended -- they may
19 not be able to be used to offset against his W-2 wages in
20 that year because he makes too much money, and then
21 that -- like I said, we call it -- it becomes suspended.

22 It doesn't become loss, it just becomes suspended
23 and you can't use it in that tax year. So if you follow
24 the same example for a rental house, you have the rental
25 house, it loses money, it loses money, it loses money,

1 and let's say five years later you sell it. Well, when
2 you sell the rental house, then when you dispose of the
3 activity, whatever the loss is at that point becomes
4 freed up, or unsuspended, and then you can take it in the
5 year that you liquidate the holding.

6 So in Mr. Haskin's world, he has -- I mean, you
7 know, I'm not going to say it's complex or complicated,
8 it's just he has a lot of them, so he has a lot of
9 entities. If you look at 2006 and he has all these
10 passive activities that he's a passive in and an investor
11 in -- I didn't do his tax returns, so I can't tell you.
12 All I can do is tell you what the return says, so he has
13 a bounty of passive activities, and he has one active
14 activity, and that is Patriot Timber Products
15 International, Inc., and from my understanding of what I
16 know about the facts of the case -- and I've read his
17 deposition. That's his job. So he owns a company that
18 he's active in, and it's a profitable company and he
19 gets -- I'm sure he gets a salary from them and he gets a
20 K-1 that shows the profits of the company.

21 So that is the 2006 presentation of his K-1
22 flow-throughs, if you will.

23 Q. Let me ask you this: He took a passive loss for
24 2802 Middle Street and a passive loss for Station 22 of
25 Charleston, correct?

1 A. Well, actually, yes, and that's why there are two
2 passive loss columns. The first one is the passive loss
3 and the second one is the allowed passive loss. So for
4 2802 Middle, you'll see that the loss was \$250 on one of
5 the lines, but the loss that was allowed was -- I'm
6 sorry. The passive loss was \$253. The allowed passive
7 loss was \$250, so even -- he didn't get to use all of it,
8 and, again, it's a pretty complicated calculation we have
9 to go through.

10 Q. Was it offset against passive income that he got
11 from 29 ION, LLC?

12 A. I'm sorry.

13 Q. Was it offset against this passive income that he
14 received from --

15 A. Yes. There was passive income in 29 ION, LLC,
16 yes, so the passive income column is offset with the
17 passive losses to a certain amount, and then in total, he
18 had unallowed passive losses of \$1,617 in 2006.

19 Q. Okay. Was it a dollar for dollar write-off?

20 A. Well, when you say a write-off, passive income can
21 be off-set with passive losses, but there again are rules
22 so it's not -- there are a lot of rules, and it's a, you
23 know, multi-page calculation, so I can't tell you
24 definitively.

25 Q. Going to 2007, did Mr. Haskin claim losses from

1 2802 Middle and Station 22 of Charleston?

2 A. Yes.

3 Q. And did he claim his active loss or passive loss?

4 A. 2802 went from passive into the active column, and
5 Station 22 of Charleston, LLC is passive.

6 Q. But he claimed the loss on his tax return,
7 correct?

8 A. Yes.

9 Q. How about -- what were you showing on the next
10 sheet, 2007?

11 A. It was two pages.

12 Q. Okay. I see. Because he also claimed 2624 Myrtle
13 as an active loss on his tax return?

14 A. Yes.

15 Q. And then for 2008 did he then claim all the losses
16 claimed by him for various LLCs on the tax return?

17 A. Yes.

18 Q. Same thing for 2009?

19 A. Yeah, and in 2008, they were claiming an active
20 loss.

21 Q. How did they go from passive loss to active loss?

22 A. Again, I wasn't doing his tax return so I don't
23 know what happened, but for a -- again, a lot of rules.
24 For a person to be active, they have to meet certain
25 thresholds certain requirements based upon, you know,

1 federal tax law.

2 One of those, for example, is working 500 hours or
3 more in an activity for a year can move you from being
4 passive to active. There are other rules that I can't
5 recite off the top of my head, so how he moved from
6 passive to active, I don't know.

7 Q. Okay. Well, when he moved to active loss, is that
8 offset against his active income from Patriot Timber?

9 A. Yes, yes.

10 Q. Okay. Did you do the same thing for 2009?

11 A. Yes. 2802 Middle Street, Station 22, and 2624
12 Myrtle are losses, and they're all in the active loss
13 category.

14 Q. How about 2010?

15 A. 2010, same three entities, they're active losses,
16 yes.

17 Q. And 2011 is the same?

18 A. 2011, there are -- yes, three entities still and
19 active loss.

20 MR. CISA: I ask this be introduced into
21 evidence as Defendant's Exhibit No. 15.

22 MR. RICHARD ROSEN: No objection.

23 THE COURT: Admitted.

24 (Defendant's Exhibit No. 15 was marked for
25 identification and admitted into evidence.)

1 BY MR. CISA:

2 Q. Mr. Thomas, this Exhibit No. 15 dealing with the
3 losses, does it confirm that Mr. Haskin took the losses
4 shown on the tax returns for the various limited
5 liability companies on his individual return?

6 A. Yes, sir. They don't match dollar for dollar.
7 There are a couple of exceptions, but for the most part,
8 I traced him from the LLC K-1s to his individual returns,
9 yes.

10 Q. I want to show you another document. Can you tell
11 me what this is.

12 A. Yes. This is a summary that I prepared from what
13 appears to be the activity of Patriot Timber Products
14 International, Inc. as they affect Mr. Haskin's tax
15 return for the years 2006 to 2011.

16 Q. What does it show?

17 A. Well, the first column for 2006 shows W-2 wages of
18 \$205,000, and I didn't have the W-2. And what I
19 basically did was looked at return and the return said
20 his wife was a homemaker, so I made the assumption she
21 didn't have a W-2. And then in his deposition, he said
22 the job he had was the same job he had for 20 something
23 years, so I put that number as wages from Patriot Timber
24 based upon what I just described.

25 And then there is interest income on schedule

1 B from Patriot Timber, and then the K-1s -- the income
2 from the K-1s that we already talked about that flow
3 through, that were flow-throughs, and ended up on
4 Schedule E of his form 1040.

5 Q. How much income did he have for 2006?

6 A. From Patriot Timber activities, \$1,496,252.

7 Q. How about for 2007, what income did he have from
8 Patriot Timber Products International, Inc.?

9 A. \$1,152,634.

10 Q. What about 2008?

11 A. \$978,663.

12 Q. How about 2009?

13 A. \$982,044.

14 Q. How about 2010?

15 A. \$955,251.

16 Q. How about 2011?

17 A. \$841,304.

18 MR. CISA: Okay. Your Honor, I would ask
19 this be introduced into evidence as Defendant's Exhibit
20 No. 16.

21 MR. RICHARD ROSEN: No objection.

22 THE COURT: It's admitted.

23 (Defendant's Exhibit No. 16 was marked for
24 identification and admitted into evidence.)

25 BY MR. CISA:

1 Q. Mr. Thomas, is this the income to which Mr. Haskin
2 would have applied losses from the various LLCs or
3 limited liability companies?

4 A. I'm sorry. Could you ask me that again?

5 Q. Yeah. Is this the income to which Mr. Haskin on
6 his individual tax return would have taken losses
7 generated by the three limited liability companies we're
8 talking about?

9 A. In certain years, those losses were offsets, if
10 you will, of ordinary income, yes.

11 Q. And does that generate a tax benefit?

12 A. Oh, yes.

13 Q. Can you tell me how it generates a tax benefit.
14 Give me an example.

15 A. Like I explained with the rental house, if you
16 have, for example, let's just look at the year on
17 Exhibit -- 15? Yeah. If you look at the year 2008 and
18 if the loss on 2802 Middle Street, which was close to
19 198 -- close to 200,000, if that had moved out of the
20 active column into the passive column, the passive loss
21 would have been suspended, wouldn't have been any passive
22 income, in all likelihood, and his taxable income for
23 2008 would have gone up.

24 If you look at the same thing for Station 22, it
25 was a \$53,083 active loss. If it got moved over,

1 suspended, same effect, and then if you looked at 2624
2 Myrtle where there was, again -- well, it was about
3 \$182,000 loss that was treated as active, moved over,
4 suspended, his taxable income for 2008 would have gone
5 up.

6 Q. All right. Well, let's take -- you said Middle
7 Street, you have about a \$200,000 active loss; is that
8 correct?

9 A. Yes.

10 Q. What does that mean when you take an active loss?
11 How much tax did he not have to pay?

12 A. It would depend on -- it would depend on a lot of
13 things, okay? So we would have to just use estimates
14 because there may be -- in his world, there may be other
15 things that become unsuspended. There may be itemized
16 deductions the he might be able to take now that other
17 things have happened, so I can't definitively tell you,
18 but if you use a rule of thumb, just take every \$100,000
19 of income that you don't pay taxes on, that first
20 \$100,000 figure, state and federal, 30 percent, that
21 would be a \$30,000 tax saving.

22 At certain points, you would move past the 30
23 percent. The federal rate, I think the maximum rate was
24 around 35 percent, so if you had 35 and 7, that would be
25 42, so if you just moved from 30 to 40, if you get to --

1 let's just say you get to the second \$100,000, or
2 \$300,0000, then you're probably talking about a \$40,000
3 tax, you know, benefit.

4 Q. Were you also asked to review the operating
5 agreements for -- are there any operating agreements in
6 that stack? Were you asked to review the operating
7 agreements for 2624 Bayonne, LLC and 2624 Myrtle, LLC and
8 2802 Middle Street, LLC?

9 A. Yes.

10 Q. Okay. And you understand the 2624 Bayonne
11 operating agreement was executed, but the other two were
12 not executed?

13 A. That's my understanding, yes.

14 Q. Are the operating agreements pretty much the same?

15 A. I haven't checked them page for page, but I've
16 been told and I have gone through them when they appear
17 to be the same, yes.

18 Q. These contributions made on this document right
19 here, are these contributions of capital that have been
20 made by Mr. Haskin?

21 A. They were put in the capital section of the K-1s,
22 yes. This is a capital contribution.

23 Q. And these were capital contributions made by
24 Mr. Covington relative to Station 22?

25 A. Best I recall, yes. They were in the capital

William B. Haskin, Jr. v. Samuel w. Rhodes, Jr., et al.
Summary of Funding Source

	<u>2802 Middle Street, LLC</u>	<u>2624 Myrtle, LLC</u>	<u>Station 22 of Charleston, LLC</u>	<u>Total</u>
Funding of Costs:				
Haskin				
2006	\$ 141,318	\$ -	\$ -	\$ 141,318
2007	11,656	11,750	79,277	102,683
2008	102,015	5,600	51,450	159,065
2009	137,973	212,989	657	351,619
2010	401,300	199,760	30,000	631,060
2011	43,155	75,396	-	118,551
	<u>\$ 837,417</u>	<u>\$ 505,495</u>	<u>\$ 161,384</u>	<u>\$ 1,504,296</u>
Rhodes				
2006	\$ -	\$ -	\$ -	\$ -
2007	10,000	-	-	10,000
2008	-	-	-	-
2009	5,075	24,976	3,500	33,551
2010	-	10,178	-	10,178
2011	-	-	-	-
	<u>\$ 15,075</u>	<u>\$ 35,154</u>	<u>\$ 3,500</u>	<u>\$ 53,729</u>
Covington				
2006			\$ -	\$ -
2007			40,000	40,000
2008			51,450	51,450
2009			657	657
2010			30,000	30,000
2011			-	-
			<u>\$ 122,107</u>	<u>\$ 122,107</u>

William B. Haskin, Jr. v. Samuel w. Rhodes, Jr., et al.
Calculation of Pre-Judgement Interest

<u>Date</u>	<u>2802 Middle Street, LLC</u>	<u>2624 Myrtle, LLC</u>	<u>Station 22 of Charleston, LLC</u>	<u>Total</u>	<u>Period</u>	<u>Interest</u>
12/31/2006	\$ 70,659	\$ -	\$ -	\$ 70,659	8.88	\$ 54,916
12/31/2007	828	5,875	39,518	46,221	7.88	31,878
12/31/2008	51,008	2,800	17,150	70,958	6.88	42,713
12/31/2009	66,449	94,007	(948)	159,508	5.88	82,059
12/31/2010	200,650	94,791	10,000	305,441	4.88	130,409
12/31/2011	21,578	37,698	-	59,276	3.88	20,121
	<u>\$ 411,171</u>	<u>\$ 235,171</u>	<u>\$ 65,720</u>	712,062		362,096
12/9/2011	1723 Middle Street (\$75,000 - \$10,000)			65,000	3.94	22,407
				<u>\$ 777,062</u>		<u>\$ 384,503</u>
Total with Interest						\$ 1,161,565

Rate 8.750%
Date of Trial 11/16/2015

ROA000455

From: Bill Haskin
To: Sammy Rhodes
Subject: closing on 2624 Myrtle
Date: Thursday, November 3, 2011 5:35:09 PM

Sammy

We closed on 2624 Myrtle today. I am sure you are happy as I that we both paid our note off to FCB on the first.

I need to meet with you at your convenience to discuss how I am to be paid back on the money you owe me for your primary residence, the loss from the commercial loan on 2802 Middle Street and 2624 Myrtle and your share of the loss on 22 Lafar.

I can come over to your house, you can come to my office, or we can meet somewhere like Starbucks.

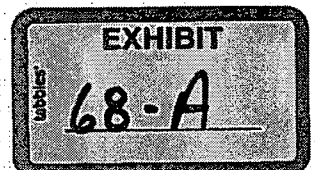
I look forward to hearing from you.

Thank you,

Bill

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ROA000456

From: Bill Haskin
Sent: Tuesday, November 08, 2011 5:00 PM
To: 'sam rhodes'
Subject: RE: meeting

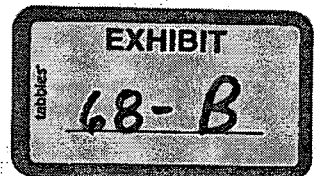
see you then

From: sam rhodes [mailto:samrhodes@hotmail.com]
Sent: Tuesday, November 08, 2011 4:53 PM
To: Bill Haskin
Subject: meeting

Hey Bill,

Can you meet tomorrow at 12 at Sullivans.

Sammy



ROA000457

From: Bill Haskin
To: saunrhodes@hotmail.com
Subject: debt owed on 1723 Middle, 2624 Myrtle, 2802 Middle, and 22 Lafar
Date: Thursday, November 10, 2011 11:38:34 AM

Sammy

Thanks for meeting with me .

Please speak with Rob and let me know how much detail you want on the costing. I can hire an accountant and have him or her coordinate with me, Mike, Molly, and Atlantic Bank now First Citizens Bank, and end up sending you a very detailed accounting of the properties. I think in reality that is unnecessary and costly for me to do and for Rob to have to go through ,verify, ask a lot of questions thus billing you . I think I can detail numbers that you will not dispute and we can take it from there. If you want more detail please speak with Rob and you send me what you will need.-- thanks.

2624 Myrtle-- sold for \$1,600,000.00 . The net at closing was \$1,466,000.

Three years ago we had 2.5 million in the property. That was the lot, construction costs, interest payments, taxes and Insurance. The lot was \$1,250,000 and \$250.00 sq. ft. + interest during construction is going to get you to that 2.5 number

20k per year taxes = 60k

10k per year insurance = 30k

10k- 3 months ago to finish the punch list .

interest of \$8,500 per month for 36 months = \$282,000

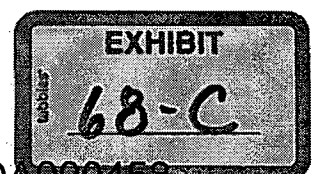
so in round numbers we had 2.9 million in the house.

Again round numbers, we netted 1.5 million leaving a loss of 1.4 million divided by 2 = 700K

Sammy I am fine with you forwarding this e-mail to Rob Kerr. I can provide the closing HUD, he can look up the taxes, he can figure the interest carry, and you can confirm to him the sq. footage building cost at the time.

On 2802 Middle

We sold it for \$1.750,000



ROA000458

The net was a 3.5% commission and Tidelands made me pay them \$32,500 plus other normal closing costs, we are looking at a net of \$1,650,000.00.

If you remember our costs were almost the same. The lots were priced almost the same and the building costs were the same.

So that brings us to that \$2,500,000.00 number 3 years ago. I was able to rent the property to cover the bank note. The outside costs over those 3 years were taxes and Insurance which were 100k total

That brings the cost to \$2,600,000.00 and a net of 1.6 million for a loss of 1 million divided by 2 or 500k.

1723 Middle. You agreed to pay me 75k to buy out this spec home at cost and move in and make it your personal residence. You put a new roof on my house and I believe that cost was 10k. That leaves a balance of 65k.

22 Lafar-- That loss is hard to quantify yet as it is in foreclosure.

Here is my best estimate

1.5 million owed

will sell at auction for 800k??

Jim and I have 150k per person in the house. So that divided by 3 would be 100k per person

So 100k for sure and 1/3rd of 700k, the difference in the note and the auction price if the bank comes after us.

To recap

2624 Myrtle --loss of 700k

2802 Middle loss of 500k

your house 65k

22 lafar 100k for sure

\$1,365,000.00

Sammy, I am sure I left some things out and the actual numbers are more than this but I believe these numbers are close

ROA000459

I am open to an agreement on a lump sum payment or a structured payment over time or a combination of the two as long as I have proper guarantees in place from you.

Thank you.

Bill

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ROA000460

From: sam rhodes [mailto:samrhodes@hotmail.com]
Sent: Tuesday, November 15, 2011 11:24 AM
To: Bill Haskin
Subject: RE: debt owed on 1723 Middle, 2624 Myrtle, 2802 Middle, and 22 Lafar

Not yet,

Will call you when we meet.

Thanks

Subject: FW: debt owed on 1723 Middle, 2624 Myrtle, 2802 Middle, and 22 Lafar
Date: Tue, 15 Nov 2011 11:15:52 -0500
From: bhaskin@patriottimber.com
To: samrhodes@hotmail.com

Sammy

Have you had a chance to meet with Rob and come up with a game plan?

tkc
Bill

Sammy

Thanks for meeting with me .

Please speak with Rob and let me know how much detail you want on the costing. I can hire an accountant and have him or her coordinate with me, Mike, Molly, and Atlantic Bank now First Citizens Bank; and end up sending you a very detailed accounting of the properties. I think in reality that is unnecessary and costly for me to do and for Rob to have to go through, verify, ask a lot of questions thus billing you . I think I can detail numbers that you will not dispute and we can take it from there. If you want more detail please speak with Rob and you send me what you will need.--thanks.

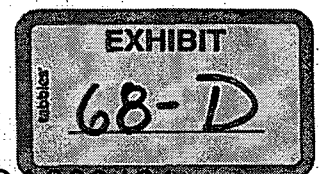
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20k per year taxes = 60k

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ROA000481

interest of \$8,500 per month for 36 months = \$282,000

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We sold it for \$1,750,000

The net was a 3.5% commission and Tideland's made me pay them \$32,500 plus other normal closing costs, we are looking at a net of \$1,650,000.00.

If you remember our costs were almost the same. The lots were priced almost the same and the building costs were the same.

So that brings us to that \$2,500,000.00 number 3 years ago. I was able to rent the property to cover the bank note. The outside costs over those 3 years were taxes and Insurance which were 100k total

That brings the cost to \$2,600,000.00 and a net of 1.6 million for a loss of 1 million divided by 2 or 500k.

1723 Middle. You agreed to pay me 75k to buy out this spec home at cost and move in and make it your personal residence. You put a new roof on my house and I believe that cost was 10k. That leaves a balance of 65k.

22 Lafar-- That loss is hard to quantify yet as it is in foreclosure.

Here is my best estimate

1.5 million owed

will sell at auction for 800k??

Jim and I have 150k per person in the house. So that divided by 3 would be 100k per person

So 100k for sure and 1/3rd of 700k, the difference in the note and the auction price if the bank comes after us.

To recap

2624 Myrtle --loss of 700k

2802 Middle loss of 500k

your house 65k

22 lafar 100k for sure

\$1,365,000.00

Sammy, I am sure I left some things out and the actual numbers are more than this but I believe these numbers are close

I am open to an agreement on a lump sum payment or a structured payment over time or a combination of the two as long as I have proper guarantees in place from you.

ROA000462

Thank you.

Bill

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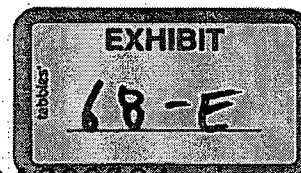
ROA000463

From: sam rhodes [mailto:samrhodes@hotmail.com]
Sent: Monday, December 05, 2011 11:08 AM
To: Bill Haskin
Subject: RE: Meeting with Rob Kerr on Friday.
Rob is making a list of questions for you. I should get it today and forward to you.

Thanks Sammy

Subject: Meeting with Rob Kerr on Friday.
Date: Mon, 5 Dec 2011 09:58:23 -0500
From: bhaskin@patriottimber.com
To: samrhodes@hotmail.com

Sammy
Where are we on this?
tk
Bill



ROA000464

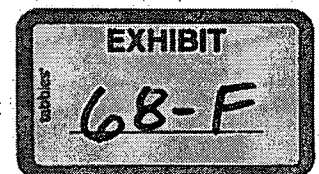
From: sam rhodes [mailto:samrhodes@hotmail.com]
Sent: Tuesday, December 06, 2011 10:24 AM
To: Bill Haskin
Subject: kerr

Hey Bill,

Rob is not familiar with how florida's LLC's are set up. Can you please have Mike e-mail me the operating agreements for each of the LLC's.

He also needs to know about the forgiveness of money the bank agreed to and how it applies to our LLC's.

Thanks Sammy



ROA000465

From: Bill Haskin
Sent: Thursday, December 08, 2011 8:45 AM
To: 'sam rhodes'
Subject: RE: kerr

I did. --tk

Bill

From: sam rhodes [mailto:samrhodes@hotmail.com]
Sent: Thursday, December 08, 2011 8:44 AM
To: Bill Haskin
Subject: kerr

Hey Bill,

I wanted to make sure you got my last e-mail on the info Rob needed from Mike.

Thanks Sammy



Form 1040

Department of the Treasury — Internal Revenue Service

U.S. Individual Income Tax Return 2006

(99) IRS Use Only — Do not write or staple in this space.

Label
(See instructions.)Use the
IRS label.
Otherwise,
please print
or type.Presidential
Election
Campaign

For the year Jan 1 - Dec 31, 2006, or other tax year beginning		, 2006, ending		, 20	
Your first name	MI	Last name			
William	B	Haskin, Jr			
If a joint return, spouse's first name		MI	Last name		
Elizabeth		E	Haskin		
Home address (number and street). If you have a P.O. box, see instructions.			Apartment no.		
2864 Brownell Avenue					
City, town or post office. If you have a foreign address, see instructions.			State	ZIP code	
Sullivan's Island			SC	29482	
Check here if you, or your spouse if filing jointly, want \$3 to go to this fund? (see instructions) ☐ You ☐ Spouse					

OMB No. 1545-0074

Your social security number

Spouse's social security number

You must enter your
social security
number(s) above.Checking a box below will not
change your tax or refund.

Filing Status

Check only
one box.

- 1 ☐ Single
- 2 ☒ Married filing jointly (even if only one had income)
- 3 ☐ Married filing separately. Enter spouse's SSN above & full name here
- 4 ☐ Head of household (with qualifying person). (See instructions.) If the qualifying person is a child but not your dependent, enter this child's name here
- 5 ☐ Qualifying widow(er) with dependent child (see instructions)

Exemptions

- 6a ☒ Yourself. If someone can claim you as a dependent, do not check box 6a
- b ☒ Spouse

Boxes checked
on 6a and 6b

2

c Dependents:

(1) First name	Last name	(2) Dependent's social security number	(3) Dependent's relationship to you	(4) ☒ If qualifying child for child tax credit (see instrs)	No. of children on 6c who: • lived with you • did not live with you due to divorce or separation (see instrs)
William B Haskin, III		654-10-6385	Son	☒	1
				☐	
				☐	
				☐	

If more than
four dependents,
see instructions.

d Total number of exemptions claimed

Add numbers
on lines
above

3

Income

Attach Form(s)
W-2 here. Also
attach Forms
W-2G and 1099-R
if tax was withheld.If you did not
get a W-2,
see instructions.Enclose, but do
not attach, any
payment. Also,
please use
Form 1040-V.

7 Wages, salaries, tips, etc. Attach Form(s) W-2	7	205,000.
8a Taxable interest. Attach Schedule B if required	8a	52,941.
b Tax-exempt interest. Do not include on line 8a	8b	
9a Ordinary dividends. Attach Schedule B if required	9a	326.
b Qualified dividends (see instrs)	9b	
10 Taxable refunds, credits, or offsets of state and local income taxes (see instructions)	10	
11 Alimony received	11	
12 Business income or (loss). Attach Schedule C or C-EZ	12	
13 Capital gain or (loss). Att Sch D if reqd. If not reqd, ck here	13	157,259.
14 Other gains or (losses). Attach Form 4797	14	
15a IRA distributions	15a	
b Taxable amount (see instrs)	15b	
16a Pensions and annuities	16a	
b Taxable amount (see instrs)	16b	
17 Rental real estate, royalties, partnerships, S corporations, trusts, etc. Attach Schedule E	17	1,251,252.
18 Farm income or (loss). Attach Schedule F	18	
19 Unemployment compensation	19	
20a Social security benefits	20a	
b Taxable amount (see instrs)	20b	
21 Other income	21	
22 Add the amounts in the far right column for lines 7 through 21. This is your total income.	22	1,666,778.

Adjusted
Gross
Income

23 Archer MSA deduction. Attach Form 8853	23	
24 Certain business expenses of reservists, performing artists, and fee-basis government officials. Attach Form 2106 or 2106-EZ	24	
25 Health savings account deduction. Attach Form 8889	25	
26 Moving expenses. Attach Form 3903	26	
27 One-half of self-employment tax. Attach Schedule SE	27	
28 Self-employed SEP, SIMPLE, and qualified plans	28	
29 Self-employed health insurance deduction (see instructions)	29	
30 Penalty on early withdrawal of savings	30	
31a Alimony paid b Recipient's SSN	31a	
32 IRA deduction (see instructions)	32	
33 Student loan interest deduction (see instructions)	33	
34 Jury duty pay you gave to your employer	34	
35 Domestic production activities deduction. Attach Form 8903	35	
36 Add lines 23 - 31a and 32 - 35	36	
37 Subtract line 36 from line 22. This is your adjusted gross income	37	1,666,778.

BAA For Disclosure, Privacy Act, and Paperwork Reduction Act Notice, see Instructions.

FDIA0112 11/07/06

Form 1040 (2006)

CONFIDENTIAL 202472
R0A000487

Tax and Credits

Standard Deduction for --

• People who checked any box on line 39a or 39b or who can be claimed as a dependent, see instructions.

• All others:

Single or Married filing separately, \$5,150

Married filing jointly or Qualifying widow(er), \$10,300

Head of household, \$7,650

38 Amount from line 37 (adjusted gross income)

39a Check ☐ You were born before January 2, 1942, ☐ Blind. ☐ Spouse was born before January 2, 1942, ☐ Blind. Total boxes checked ☐ 39a ☐ 39b

b If your spouse itemizes on a separate return, or you were a dual-status alien, see Instrs and ck here

40 Itemized deductions (from Schedule A) or your standard deduction (see left margin)

41 Subtract line 40 from line 38

42 If line 38 is over \$112,875, or you provided housing to a person displaced by Hurricane Katrina, see instructions. Otherwise, multiply \$3,300 by the total number of exemptions claimed on line 6d

43 Taxable income. Subtract line 42 from line 41.

If line 42 is more than line 41, enter -0-

44 Tax (see Instrs). Check if any tax is from: a ☐ Form(s) 8814 b ☐ Form 4972

45 Alternative minimum tax (see instructions). Attach Form 6251

46 Add lines 44 and 45

47 Foreign tax credit. Attach Form 1116 if required

48 Credit for child and dependent care expenses. Attach Form 2441

49 Credit for the elderly or the disabled. Attach Schedule R

50 Education credits. Attach Form 8863

51 Retirement savings contributions credit. Attach Form 8880

52 Residential energy credits. Attach Form 5695

53 Child tax credit (see instructions). Attach Form 8901 if required

54 Credits from: a ☐ Form 8396 b ☐ Form 8839 c ☐ Form 885955 Other credits. Check applicable box(es): a ☐ Form 3800b ☒ Form 8801 c ☐ Form

56 Add lines 47 through 55. These are your total credits

57 Subtract line 56 from line 46. If line 56 is more than line 45, enter -0-

58 Self-employment tax. Attach Schedule SE

59 Social security and Medicare tax on tip income not reported to employer. Attach Form 4137

60 Additional tax on IRAs, other qualified retirement plans, etc. Attach Form 5329 if required

61 Advance earned income credit payments from Form(s) W-2, box 9

62 Household employment taxes. Attach Schedule H

63 Add lines 57-62. This is your total tax

64 Federal income tax withheld from Forms W-2 and 1099

65 2006 estimated tax payments and amount applied from 2005 return

66a Earned income credit (EIC)

b Nontaxable combat pay election ☐ 66b

67 Excess social security and tier 1 RRTA tax withheld (see instructions)

68 Additional child tax credit. Attach Form 8812

69 Amount paid with request for extension to file (see instructions)

70 Payments from: a ☐ Form 2439 b ☐ Form 4136 c ☐ Form 8885

71 Credit for federal telephone excise tax paid. Attach Form 8913 if required

72 Add lines 64, 65, 66a, and 67 through 71.

These are your total payments

73 If line 72 is more than line 63, subtract line 63 from line 72. This is the amount you overpaid

74a Amount of line 73 you want refunded to you. If Form 8888 is attached, check here ☐ 74b

b Routing number

c Type: ☐ Checking ☐ Savings

d Account number

75 Amount of line 73 you want applied to your 2007 estimated tax

76 Amount you owe. Subtract line 72 from line 63. For details on how to pay, see instructions

77 Estimated tax penalty (see instructions)

Do you want to allow another person to discuss this return with the IRS (see instructions)? ☒ Yes. Complete the following. ☐ No

Designee's name

Phone no.

Personal identification number (PIN)

Under penalties of perjury, I declare that I have examined this return and accompanying schedules and statements, and to the best of my knowledge and belief, they are true, correct, and complete. Declaration of preparer (other than taxpayer) is based on all information of which preparer has any knowledge.

Your signature

Date

Your occupation

Daytime phone number

Spouse's signature. If a joint return, both must sign.

Date

Spouse's occupation

(843) 883-5166

Paid Preparer's Use Only

Preparer's signature

Date

Check if self-employed ☐

Preparer's SSN or PTIN

Firm's name (or yours if self-employed), address, and ZIP code

HG Tax Services, LLC

935 Harbour Bay Dr

Tampa

FL 33602

EIN 20-8610743

Phone no.

SCHEDULE A
(Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Name(s) shown on Form 1040

Itemized Deductions

► Attach to Form 1040.
► See Instructions for Schedule A (Form 1040).

OMB No. 1545-0074

2006

Attachment
Sequence No. 07

William B Haskin, Jr & Elizabeth E Haskin

Your social security number

Medical and Dental Expenses		Caution. Do not include expenses reimbursed or paid by others.			
1	Medical and dental expenses (see instructions)	1			
2	Enter amount from Form 1040, line 38	2			
3	Multiply line 2 by 7.5% (.075)	3			
4	Subtract line 3 from line 1. If line 3 is more than line 1, enter -0-	4			
Taxes You Paid		5	State and local income taxes	9,177.	
6	Real estate taxes (see instructions)	6		15,529.	
7	Personal property taxes	7			
8	Other taxes. List type and amount ►	8			
9	Add lines 5 through 8	9			24,706.
Interest You Paid		10	Home mtg interest and points reported to you on Form 1098	85,792.	
11	Home mortgage interest not reported to you on Form 1098. If paid to the person from whom you bought the home, see instructions and show that person's name, identifying number, and address ►	11			
12	Points not reported to you on Form 1098. See instrs for spl rules	12			
13	Investment interest. Attach Form 4952 if required. (See instrs.)	13		22,029.	
14	Add lines 10 through 13	14			107,821.
Gifts to Charity		15	Gifts by cash or check. If you made any gift of \$250 or more, see instrs	7,083.	
16	Other than by cash or check. If any gift of \$250 or more, see instructions. You must attach Form 8283 if over \$500	16			
17	Carryover from prior year	17			
18	Add lines 15 through 17	18			7,083.
Casualty and Theft Losses		19	Casualty or theft loss(es). Attach Form 4684. (See instructions.)		
Job Expenses and Certain Miscellaneous Deductions		20	Unreimbursed employee expenses — job travel, union dues, job education, etc. Attach Form 2106 or 2106-EZ if required. (See instructions.)		
21	Tax preparation fees	21			
22	Other expenses — investment, safe deposit box, etc. List type and amount ►	22			
23	Add lines 20 through 22	23		1,907.	
24	Enter amount from Form 1040, line 38	24		1,666,778.	
25	Multiply line 24 by 2% (.02)	25		33,336.	
26	Subtract line 25 from line 23. If line 25 is more than line 23, enter -0-	26			0.
Other Miscellaneous Deductions		27	Other — from list in the instructions. List type and amount ►		
Total Itemized Deductions		28	Is Form 1040, line 38, over \$150,500 (over \$75,250 if married filing separately)?		
			☐ No. Your deduction is not limited. Add the amounts in the far right column for lines 4 through 27. Also, enter this amount on Form 1040, line 40.		
			☒ Yes. Your deduction may be limited. See instructions for the amount to enter.		
		29	If you elect to itemize deductions even though they are less than your standard deduction, check here ►		
			Itemized Deductions Limited per IRC Sec. 68.		109,285.

BAA For Paperwork Reduction Act Notice, see Form 1040 Instructions.

FDIA0301 11/07/06

Schedule A (Form 1040) 2006

CONFIDENTIAL 1040-1002474

William B Haskin, Jr & Elizabeth E Haskin

Your social security number

Schedule B — Interest and Ordinary Dividends

Attachment
Sequence No. 08**Part I**
Interest(See instructions
for Form 1040,
line 8a.)Note. If you
received a Form
1099-INT, Form
1099-DIV, or
substitute statement
from a brokerage
firm, list the firm's
name as the payer
and enter the total
interest shown on
that form.

- 1 List name of payer. If any interest is from a seller-financed mortgage and the buyer used the property as a personal residence, see the instructions and list this interest first. Also, show that buyer's social security number and address

First CitizensPatriot Timber Products International, Inc.Pavilion Place, LLC

Amount

11,683.

40,000.

1,258.

- 2 Add the amounts on line 1

52,941.

- 3 Excludable interest on series EE and I U.S. savings bonds issued after 1989. Attach Form 8815

- 4 Subtract line 3 from line 2. Enter the result here and on Form 1040, line 8a

52,941.

Note. If line 4 is over \$1,500, you must complete Part III.

Part II
**Ordinary
Dividends**(See
instructions for
Form 1040,
line 9a.)Note. If you
received a Form
1099-DIV or
substitute statement
from a brokerage
firm, list the firm's
name as the payer
and enter the
ordinary dividends
shown on that form.

- 5 List name of payer

Fidelity Brokerage Services, LLC/National Financial Services, LLC

326.

- 6 Add the amounts on line 5. Enter the total here and on Form 1040, line 9a

326.

Note. If line 6 is over \$1,500, you must complete Part III.

Part III
**Foreign
Accounts
and
Trusts**(See
instructions.)

You must complete this part if you (a) had over \$1,500 of taxable interest or ordinary dividends; or (b) had a foreign account; or (c) received a distribution from, or were a grantor of, or a transferor to, a foreign trust.

Yes No

- 7a At any time during 2006, did you have an interest in or a signature or other authority over a financial account in a foreign country, such as a bank account, securities account, or other financial account? See instructions for exceptions and filing requirements for Form TD F 90-22.1

☐ ☐☐ ☒

- b If 'Yes,' enter the name of the foreign country

- 8 During 2006, did you receive a distribution from, or were you the grantor of, or transferor to, a foreign trust? If 'Yes,' you may have to file Form 3520. See instructions

☐ ☐☐ ☒

BAA For Paperwork Reduction Act Notice, see Form 1040 Instructions.

FDIA0401 06/14/06

Schedule B (Form 1040) 2006

CONFIDENTIAL/HASKIN-02475
ROA000470

SCHEDULE D
(Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Name(s) shown on Form 1040

Capital Gains and Losses

► Attach to Form 1040 or Form 1040NR. ► See instructions for Schedule D (Form 1040).
► Use Schedule D-1 to list additional transactions for lines 1 and 8.

OMB No. 1545-0074

2006

Attachment
Sequence No. **12**

William B Haskin, Jr & Elizabeth E Haskin

Your social security number

Part I Short-Term Capital Gains and Losses — Assets Held One Year or Less

(a) Description of property (Example: 100 shares XYZ Co)	(b) Date acquired (Mo, day, yr)	(c) Date sold (Mo, day, yr)	(d) Sales price (see instructions)	(e) Cost or other basis (see instructions)	(f) Gain or (loss) Subtract (e) from (d)
1					
2 Enter your short-term totals, if any, from Schedule D-1, line 2			2		
3 Total short-term sales price amounts. Add lines 1 and 2 in column (d)			3		
4 Short-term gain from Form 6252 and short-term gain or (loss) from Forms 4684, 6781, and 8824				4	
5 Net short-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1				5	
6 Short-term capital loss carryover. Enter the amount, if any, from line 10 of your Capital Loss Carryover Worksheet in the instructions				6	
7 Net short-term capital gain or (loss). Combine lines 1 through 6 in column (f)				7	

Part II Long-Term Capital Gains and Losses — Assets Held More Than One Year

(a) Description of property (Example: 100 shares XYZ Co)	(b) Date acquired (Mo, day, yr)	(c) Date sold (Mo, day, yr)	(d) Sales price (see instructions)	(e) Cost or other basis (see instructions)	(f) Gain or (loss) Subtract (e) from (d)
8 1453 Omni Boulevard	various	11/21/06	82,445.	51,590.	30,855.
9 Enter your long-term totals, if any, from Schedule D-1, line 9			9		
10 Total long-term sales price amounts. Add lines 8 and 9 in column (d)			10	82,445.	
11 Gain from Form 4797, Part I; long-term gain from Forms 2439 and 6252; and long-term gain or (loss) from Forms 4684, 6781, and 8824				11	
12 Net long-term gain or (loss) from partnerships, S corporations, estates, and trusts from Schedule(s) K-1				12	126,404.
13 Capital gain distributions. See instrs				13	
14 Long-term capital loss carryover. Enter the amount, if any, from line 15 of your Capital Loss Carryover Worksheet in the instructions				14	
15 Net long-term capital gain or (loss). Combine lines 8 through 14 in column (f). Then go to Part III on page 2				15	157,259.

BAA For Paperwork Reduction Act Notice, see Form 1040 or Form 1040NR instructions.

Schedule D (Form 1040) 2006

Part III Summary

16	Combine lines 7 and 15 and enter the result. If line 16 is a loss, skip lines 17 through 20, and go to line 21. If a gain, enter the gain on Form 1040, line 13, or Form 1040NR, line 14. Then go to line 17 below	16	157,259.
17	Are lines 15 and 16 both gains? ☒ Yes. Go to line 18. ☐ No. Skip lines 18 through 21, and go to line 22.		
18	Enter the amount, if any, from line 7 of the 28% Rate Gain Worksheet in the instructions	18	
19	Enter the amount, if any, from line 18 of the Unrecaptured Section 1250 Gain Worksheet in the instructions	19	
20	Are lines 18 and 19 both zero or blank? ☒ Yes. Complete Form 1040 through line 43, or Form 1040NR through line 40. Then complete the Qualified Dividends and Capital Gain Tax Worksheet in the Instructions for Form 1040 (or in the Instructions for Form 1040NR). Do not complete lines 21 and 22 below. ☐ No. Complete Form 1040 through line 43, or Form 1040NR through line 40. Then complete the Schedule D Tax Worksheet in the Instructions. Do not complete lines 21 and 22 below.		
21	If line 16 is a loss, enter here and on Form 1040, line 13, or Form 1040NR, line 14, the smaller of: - The loss on line 16 or (\$3,000), or if married filing separately, (\$1,500)	21	
Note. When figuring which amount is smaller, treat both amounts as positive numbers.			
22	Do you have qualified dividends on Form 1040, line 9b, or Form 1040NR, line 10b? ☐ Yes. Complete Form 1040 through line 43, or Form 1040NR through line 40. Then complete the Qualified Dividends and Capital Gain Tax Worksheet in the Instructions for Form 1040 (or in the Instructions for Form 1040NR). ☐ No. Complete the rest of Form 1040 or Form 1040NR.		

Schedule D (Form 1040) 2006

SCHEDULE E
(Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Supplemental Income and Loss
(From rental real estate, royalties, partnerships,
S corporations, estates, trusts, REMICs, etc)
▶ Attach to Form 1040, 1040NR, or Form 1041.
▶ See Instructions for Schedule E (Form 1040).

OMB No. 1545-0074

2006

Attachment
Sequence No. 13

Name(s) shown on return

William B Haskin, Jr & Elizabeth E Haskin

Your social security number

Part I **Income or Loss From Rental Real Estate and Royalties** Note. If you are in the business of renting personal property, use Schedule C or C-EZ (see instructions). Report farm rental income or loss from Form 4835 on page 2, line 40.

1 List the type and location of each rental real estate property:		2 For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of: • 14 days, or • 10% of the total days rented at fair rental value? (See instructions.)			Yes	No
A	Residential Real Estate Condominium - Garden City SC	A				X
B	Residential Rental Real Estate Condominium - Mt Pleasant, SC	B				X
C	Residential Real Estate Duplex - Surfside Beach, SC	C				X

Income:		Properties			Totals
		A	B	C	(Add columns A, B, and C.)
3 Rents received	3	4,050.	7,175.	37,566.	3 109,989.
4 Royalties received	4				4
Expenses:					
5 Advertising	5				
6 Auto and travel (see instructions)	6				
7 Cleaning and maintenance	7				
8 Commissions	8				
9 Insurance	9	418.	500.	5,319.	
10 Legal and other professional fees	10				
11 Management fees	11				
12 Mortgage interest paid to banks, etc (see instructions)	12				12 50,626.
13 Other interest	13				
14 Repairs	14			3,072.	
15 Supplies	15				
16 Taxes	16	1,710.	1,800.	4,726.	
17 Utilities	17	873.		6,507.	
18 Other (list) ▶	18				
HOA Fees		5,135.	3,768.	1,200.	
Rental Management Expense		697.	697.	697.	
Rental Expenses				112.	
19 Add lines 5 through 18	19	8,833.	6,765.	21,633.	19 122,543.
20 Depreciation expense or depletion (see instructions)	20	2,365.	2,921.	6,844.	20 44,733.
21 Total expenses. Add lines 19 and 20	21	11,198.	9,686.	28,477.	
22 Income or (loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or line 4 (royalties). If the result is a (loss), see instructions to find out if you must file Form 6198	22	-7,148.	-2,511.	9,089.	
23 Deductible rental real estate loss. Caution. Your rental real estate loss on line 22 may be limited. See instructions to find out if you must file Form 8582. Real estate professionals must complete line 43 on page 2	23	-7,061.	-2,480.		
24 Income. Add positive amounts shown on line 22. Do not include any losses	24				24 9,089.
25 Losses. Add royalty losses from line 22 and rental real estate losses from line 23. Enter total losses here	25				25 -65,566.
26 Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2	26				26 -56,477.

SCHEDULE E
(Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Name(s) shown on return

William B Haskin, Jr & Elizabeth E Haskin

Supplemental Income and Loss

(From rental real estate, royalties, partnerships,
S corporations, estates, trusts, REMICs, etc)

- ▶ Attach to Form 1040, 1040NR, or Form 1041.
▶ See Instructions for Schedule E (Form 1040).

OMB No. 1545-0074

2006

Attachment
Sequence No. **13**

Your social security number

Part I **Income or Loss From Rental Real Estate and Royalties** Note. If you are in the business of renting personal property, use Schedule C or C-EZ (see instructions). Report farm rental income or loss from Form 4835 on page 2, line 40.

1	List the type and location of each rental real estate property:	2	For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of: • 14 days, or • 10% of the total days rented at fair rental value? (See instructions.)	Yes	No
A	Non-Residential Rental Office - Sullivan's Island, SC				X
B	Residential Rental 1519 Marshgrass, Mt. Pleasant, SC				X
C	Residential - Rental 1502 Marshgrass Mt. Pleasant, SC				X

Income:		Properties			Totals
		A	B	C	(Add columns A, B, and C.)
3	Rents received	31,076.	8,337.	8,100.	3
4	Royalties received				4
Expenses:					
5	Advertising				
6	Auto and travel (see instructions)				
7	Cleaning and maintenance				
8	Commissions				
9	Insurance	7,000.	2,500.	2,500.	
10	Legal and other professional fees				
11	Management fees				
12	Mortgage interest paid to banks, etc (see instructions)	23,520.	8,599.	7,846.	12
13	Other interest				
14	Repairs				
15	Supplies				
16	Taxes	6,386.		1,411.	
17	Utilities	5,640.			
18	Other (list) ▶				
	HOA Fees		1,560.	1,560.	
	License Fees		55.	55.	
	Amortization			387.	
19	Add lines 5 through 18	42,546.	12,714.	13,759.	19
20	Depreciation expense or depletion (see instructions)		11,446.	9,739.	20
21	Total expenses. Add lines 19 and 20	42,546.	24,160.	23,498.	
22	Income or (loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or line 4 (royalties). If the result is a (loss), see instructions to find out if you must file Form 6198	-11,470.	-15,823.	-15,398.	
23	Deductible rental real estate loss. Caution. Your rental real estate loss on line 22 may be limited. See instructions to find out if you must file Form 8582. Real estate professionals must complete line 43 on page 2	-11,330.	-15,630.	-15,210.	
24	Income. Add positive amounts shown on line 22. Do not include any losses				24
25	Losses. Add royalty losses from line 22 and rental real estate losses from line 23. Enter total losses here				25
26	Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2				26

SCHEDULE E
(Form 1040)

Department of the Treasury
Internal Revenue Service (99)

Supplemental Income and Loss
(From rental real estate, royalties, partnerships,
S corporations, estates, trusts, REMICs, etc)
▶ Attach to Form 1040, 1040NR, or Form 1041.
▶ See Instructions for Schedule E (Form 1040).

OMB No. 1545-0074

2006

Attachment
Sequence No. 13

Name(s) shown on return

William B Haskin, Jr & Elizabeth E Haskin

Your social security number

Part I Income or Loss From Rental Real Estate and Royalties Note. If you are in the business of renting personal property, use Schedule C or C-EZ (see instructions). Report farm rental income or loss from Form 4835 on page 2, line 40.

1	List the type and location of each rental real estate property:	2	For each rental real estate property listed on line 1, did you or your family use it during the tax year for personal purposes for more than the greater of:	Yes	No
A	Residential - Rental		• 14 days, or		
	196 Mossy Oak Way, Mt. Pleasant SC		• 10% of the total days rented at fair rental value? (See instructions.)		X
B					
C					

Income:		Properties			Totals
		A	B	C	(Add columns A, B, and C.)
3	Rents received	13,685.			3
4	Royalties received				4
Expenses:					
5	Advertising				
6	Auto and travel (see instructions)				
7	Cleaning and maintenance				
8	Commissions				
9	Insurance	2,800.			
10	Legal and other professional fees				
11	Management fees				
12	Mortgage interest paid to banks, etc (see instructions)	10,661.			12
13	Other interest				
14	Repairs				
15	Supplies				
16	Taxes	1,840.			
17	Utilities				
18	Other (list) ▶				
	HOA Fees	350.			
	License Fee	160.			
	Amortization	482.			
19	Add lines 5 through 18	16,293.			19
20	Depreciation expense or depletion (see instructions)	11,418.			20
21	Total expenses. Add lines 19 and 20	27,711.			
22	Income or (loss) from rental real estate or royalty properties. Subtract line 21 from line 3 (rents) or line 4 (royalties). If the result is a (loss), see instructions to find out if you must file Form 6198	-14,026.			
23	Deductible rental real estate loss. Caution. Your rental real estate loss on line 22 may be limited. See instructions to find out if you must file Form 8582. Real estate professionals must complete line 43 on page 2	-13,855.			
24	Income. Add positive amounts shown on line 22. Do not include any losses				24
25	Losses. Add royalty losses from line 22 and rental real estate losses from line 23. Enter total losses here				25
26	Total rental real estate and royalty income or (loss). Combine lines 24 and 25. Enter the result here. If Parts II, III, IV, and line 40 on page 2 do not apply to you, also enter this amount on Form 1040, line 17, or Form 1040NR, line 18. Otherwise, include this amount in the total on line 41 on page 2				26

Name(s) shown on return. Do not enter name and social security number if shown on Page 1.

Your social security number

William B Haskin, Jr & Elizabeth E Haskin

Caution: The IRS compares amounts reported on your tax return with amounts shown on Schedule(s) K-1.

Part III Income or Loss From Partnerships and S Corporations

Note. If you report a loss from an at-risk activity for which any amount is not at risk, you must check the box in column (e) on line 28 and attach Form 6198. See instructions.

- 27 Are you reporting any loss not allowed in a prior year due to the at-risk or basis limitations, a prior year unallowed loss from a passive activity (if that loss was not reported on Form 8582), or unreimbursed partnership expenses? ☐ Yes ☒ No
If you answered "Yes," see instructions before completing this section.

28	(a) Name	(b) Enter P for partnership; S for S corporation	(c) Check if foreign partnership	(d) Employer identification number	(e) Check if any amount is not at risk
A	HG Properties SC, LLC	P		59-3444423	
B	29 I'On, LLC	P		26-0687641	
C	508 Ocean, LLC	P		77-0663485	
D	See Line 28 Information				

Passive Income and Loss		Nonpassive Income and Loss		
(f) Passive loss allowed (attach Form 8582 if required)	(g) Passive income from Schedule K-1	(h) Nonpassive loss from Schedule K-1	(i) Section 179 expense deduction from Form 4562	(j) Nonpassive income from Schedule K-1
A 40,719.				
B	187,291.			
C 27,837.				
D 62,258.			7,360.	1,258,612.
29a Totals	187,291.			1,258,612.
b Totals	130,814.		7,360.	
30 Add columns (g) and (j) of line 29a			30	1,445,903.
31 Add columns (f), (h), and (i) of line 29b			31	-138,174.
32 Total partnership and S corporation income or (loss). Combine lines 30 and 31. Enter the result here and include in the total on line 41 below			32	1,307,729.

Part IV Income or Loss From Estates and Trusts

33	(a) Name	(b) Employer ID no.
A		
B		

Passive Income and Loss		Nonpassive Income and Loss	
(c) Passive deduction or loss allowed (attach Form 8582 if required)	(d) Passive income from Schedule K-1	(e) Deduction or loss from Schedule K-1	(f) Other income from Schedule K-1
A			
B			
34a Totals			
b Totals			
35 Add columns (d) and (f) of line 34a		35	
36 Add columns (c) and (e) of line 34b		36	
37 Total estate and trust income or (loss). Combine lines 35 and 36. Enter the result here and include in the total on line 41 below		37	

Part V Income or Loss From Real Estate Mortgage Investment Conduits (REMICs) – Residual Holder

38	(a) Name	(b) Employer identification number	(c) Excess inclusion from Schedules Q, line 2c (see instructions)	(d) Taxable income (net loss) from Schedules Q, line 1b	(e) Income from Schedules Q, line 3b

39 Combine columns (d) and (e) only. Enter the result here and include in the total on line 41 below

Part V Summary

40 Net farm rental income or (loss) from Form 4835. Also, complete line 42 below	40	
41 Total income or (loss). Combine lines 26, 32, 37, 39, and 40. Enter the result here and on Form 1040, line 17, or Form 1040NR, line 18	41	1,251,252.
42 Reconciliation of farming and fishing income. Enter your gross farming and fishing income reported on Form 4835, line 7; Schedule K-1 (Form 1065), box 14, code B; Schedule K-1 (Form 1120S), box 17, code T; and Schedule K-1 (Form 1041), line 14, code F (see instructions)	42	
43 Reconciliation for real estate professionals. If you were a real estate professional (see instructions), enter the net income or (loss) you reported anywhere on Form 1040 or Form 1040NR from all rental real estate activities in which you materially participated under the passive activity loss rules	43	

Form **6251**Department of the Treasury
Internal Revenue Service (99)**Alternative Minimum Tax — Individuals**▶ See separate instructions.
▶ Attach to Form 1040 or Form 1040NR.

OMB No. 1545-0074

2006Attachment
Sequence No. 32

Name(s) shown on Form 1040 or Form 1040NR

Your social security number

William B Haskin, Jr & Elizabeth E Haskin**Part I Alternative Minimum Taxable Income** (See instructions for how to complete each line.)

1	If filing Schedule A (Form 1040), enter the amount from Form 1040, line 41 (minus any amount on Form 8914, line 6), and go to line 2. Otherwise, enter the amount from Form 1040, line 38 (minus any amount on Form 8914, line 6), and go to line 7. (If less than zero, enter as a negative amount.)	1	1,557,493.
2	Medical and dental. Enter the smaller of Schedule A (Form 1040), line 4 or 2-1/2% of Form 1040, line 38	2	0.
3	Taxes from Schedule A (Form 1040), line 9	3	24,706.
4	Enter the home mortgage interest adjustment, if any, from line 6 of the worksheet in the instructions	4	
5	Miscellaneous deductions from Schedule A (Form 1040), line 26	5	0.
6	If Form 1040, line 38, is over \$150,500 (over \$75,250 if married filing separately), enter the amount from line 11 of the Itemized Deductions Worksheet in the instructions for Schedule A (Form 1040)	6	-30,325.
7	Tax refund from Form 1040, line 10 or line 21	7	
8	Investment interest expense (difference between regular tax and AMT)	8	0.
9	Depletion (difference between regular tax and AMT)	9	
10	Net operating loss deduction from Form 1040, line 21. Enter as a positive amount	10	
11	Interest from specified private activity bonds exempt from the regular tax	11	
12	Qualified small business stock (7% of gain excluded under section 1202)	12	
13	Exercise of incentive stock options (excess of AMT income over regular tax income)	13	
14	Estates and trusts (amount from Schedule K-1 (Form 1041), box 12, code A)	14	
15	Electing large partnerships (amount from Schedule K-1 (Form 1065-B), box 6)	15	
16	Disposition of property (difference between AMT and regular tax gain or loss)	16	
17	Depreciation on assets placed in service after 1986 (difference between regular tax and AMT)	17	
18	Passive activities (difference between AMT and regular tax income or loss)	18	8,544.
19	Loss limitations (difference between AMT and regular tax income or loss)	19	
20	Circulation costs (difference between regular tax and AMT)	20	
21	Long-term contracts (difference between AMT and regular tax income)	21	
22	Mining costs (difference between regular tax and AMT)	22	
23	Research and experimental costs (difference between regular tax and AMT)	23	
24	Income from certain installment sales before January 1, 1987	24	
25	Intangible drilling costs preference	25	
26	Other adjustments, including income-based related adjustments	26	
27	Alternative tax net operating loss deduction	27	0.
28	Alternative minimum taxable income. Combine lines 1 through 27. (If married filing separately and line 28 is more than \$200,100, see instructions.)	28	1,560,418.

Part II Alternative Minimum Tax

29 Exemption. (If this form is for a child under age 18, see instructions.)

IF your filing status is...	AND line 28 is not over...	THEN enter on line 29...
Single or head of household	\$112,500	\$42,500
Married filing jointly or qualifying widow(er)	150,000	62,550
Married filing separately	75,000	31,275

If line 28 is over the amount shown above for your filing status, see instructions.

30	Subtract line 29 from line 28. If more than zero or you are filing Form 2555 or 2555-EZ, go to line 31. If zero or less and you are not filing Form 2555 or 2555-EZ, enter -0- on lines 33 and 35 and skip the rest of Part II	30	1,560,418.
31	• If you are filing Form 2555 or 2555-EZ, see instructions for the amount to enter. • If you reported capital gain distributions directly on Form 1040, line 13; you reported qualified dividends on Form 1040, line 9b; or you had a gain on both lines 15 and 16 of Schedule D (Form 1040) (as refigured for the AMT, if necessary), complete Part III on page 2 and enter the amount from line 55 here. • All others: If line 30 is \$175,000 or less (\$87,500 or less if married filing separately), multiply line 30 by 26% (.26). Otherwise, multiply line 30 by 28% (.28) and subtract \$3,500 (\$1,750 if married filing separately) from the result.	31	412,974.
32	Alternative minimum tax foreign tax credit (see instructions)	32	
33	Tentative minimum tax. Subtract line 32 from line 31	33	412,974.
34	Tax from Form 1040, line 44 (minus any tax from Form 4972 and any foreign tax credit from Form 1040, line 47). If you used Schedule J to figure your tax, the amount for line 44 of Form 1040 must be refigured without using Schedule J (see instructions)	34	485,766.
35	Alternative minimum tax. Subtract line 34 from line 33. If zero or less, enter -0-. Enter here and on Form 1040, line 45	35	0.

BAA For Paperwork Reduction Act Notice, see separate Instructions.

FDIA5312 12/22/06

Form 6251 (2006)

CONFIDENTIAL/HASKIN-02482
ROA000477

Part III Tax Computation Using Maximum Capital Gains Rates

36	Enter the amount from Form 6251, line 30	36	1,560,418.
37	Enter the amount from line 6 of the Qualified Dividends and Capital Gain Tax Worksheet in the instructions for Form 1040, line 44, or the amount from line 13 of the Schedule D Tax Worksheet in the instructions for Schedule D (Form 1040), whichever applies (as figured for the AMT, if necessary) (see instructions)	37	157,259.
38	Enter the amount from Schedule D (Form 1040), line 19 (as figured for the AMT, if necessary) (see instructions)	38	
39	If you did not complete a Schedule D Tax Worksheet for the regular tax or the AMT, enter the amount from line 37. Otherwise, add lines 37 and 38, and enter the smaller of that result or the amount from line 10 of the Schedule D Tax Worksheet (as figured for the AMT, if necessary)	39	157,259.
40	Enter the smaller of line 36 or line 39	40	157,259.
41	Subtract line 40 from line 36	41	1,403,159.
42	If line 41 is \$175,000 or less (\$87,500 or less if married filing separately), multiply line 41 by 26% (.26). Otherwise, multiply line 41 by 28% (.28) and subtract \$3,500 (\$1,750 if married filing separately) from the result	42	389,385.
43	Enter: \$61,300 if married filing jointly or qualifying widow(er), \$30,650 if single or married filing separately, or \$41,050 if head of household.	43	61,300.
44	Enter the amount from line 7 of the Qualified Dividends and Capital Gain Tax Worksheet in the instructions for Form 1040, line 44, or the amount from line 14 of the Schedule D Tax Worksheet in the instructions for Schedule D (Form 1040), whichever applies (as figured for the regular tax). If you did not complete either worksheet for the regular tax, enter -0-	44	1,396,934.
45	Subtract line 44 from line 43. If zero or less, enter -0-	45	0.
46	Enter the smaller of line 36 or line 37	46	157,259.
47	Enter the smaller of line 45 or line 46	47	0.
48	Multiply line 47 by 5% (.05)	48	0.
49	Subtract line 47 from line 46	49	157,259.
50	Multiply line 49 by 15% (.15)	50	23,589.
	If line 38 is zero or blank, skip lines 51 and 52 and go to line 53. Otherwise, go to line 51.		
51	Subtract line 46 from line 40	51	
52	Multiply line 51 by 25% (.25)	52	
53	Add lines 42, 48, 50, and 52	53	412,974.
54	If line 36 is \$175,000 or less (\$87,500 or less if married filing separately), multiply line 36 by 26% (.26). Otherwise, multiply line 36 by 28% (.28) and subtract \$3,500 (\$1,750 if married filing separately) from the result	54	433,417.
55	Enter the smaller of line 53 or line 54 here and on line 31	55	412,974.

Form 6251 (2006)

Form 4562

Depreciation and Amortization
(Including Information on Listed Property)

OMB No. 1545-0172

2006

Attachment
Sequence No. 67Department of the Treasury
Internal Revenue Service

▶ See separate instructions. ▶ Attach to your tax return.

Name(s) shown on return

William B Haskin, Jr & Elizabeth E Haskin

Identifying number

Business or activity to which this form relates

Section 179 Summary

Part I Election To Expense Certain Property Under Section 179

Note: If you have any listed property, complete Part V before you complete Part I.

1	Maximum amount. See the instructions for a higher limit for certain businesses	1	\$108,000.
2	Total cost of section 179 property placed in service (see instructions)	2	0.
3	Threshold cost of section 179 property before reduction in limitation	3	\$430,000.
4	Reduction in limitation. Subtract line 3 from line 2. If zero or less, enter -0-	4	0.
5	Dollar limitation for tax year. Subtract line 4 from line 1. If zero or less, enter -0-. If married filing separately, see instructions	5	108,000.
6	(a) Description of property from Schedule K-1	(b) Cost (business use only)	(c) Elected cost 7,360.
7	Listed property. Enter the amount from line 29	7	
8	Total elected cost of section 179 property. Add amounts in column (c), lines 6 and 7	8	7,360.
9	Tentative deduction. Enter the smaller of line 5 or line 8	9	7,360.
10	Carryover of disallowed deduction from line 13 of your 2005 Form 4562	10	0.
11	Business income limitation. Enter the smaller of business income (not less than zero) or line 5 (see instrs)	11	108,000.
12	Section 179 expense deduction. Add lines 9 and 10, but do not enter more than line 11	12	7,360.
13	Carryover of disallowed deduction to 2007. Add lines 9 and 10, less line 12	13	0.

Note: Do not use Part II or Part III below for listed property. Instead, use Part V.

Part II Special Depreciation Allowance and Other Depreciation (Do not include listed property.) (See instructions.)

14	Special allowance for qualified New York Liberty or Gulf Opportunity Zone property (other than listed property) placed in service during the tax year (see instructions)	14	
15	Property subject to section 168(f)(1) election	15	
16	Other depreciation (including ACRS)	16	

Part III MACRS Depreciation (Do not include listed property.) (See instructions.)

Section A

17	MACRS deductions for assets placed in service in tax years beginning before 2006	17	
18	If you are electing to group any assets placed in service during the tax year into one or more general asset accounts, check here		

Section B — Assets Placed in Service During 2006 Tax Year Using the General Depreciation System

(a) Classification of property	(b) Month and year placed in service	(c) Basis for depreciation (business/investment use only — see instructions)	(d) Recovery period	(e) Convention	(f) Method	(g) Depreciation deduction
19a 3-year property						
b 5-year property						
c 7-year property						
d 10-year property						
e 15-year property						
f 20-year property						
g 25-year property			25 yrs		S/L	
h Residential rental property			27.5 yrs	MM	S/L	
i Nonresidential real property			27.5 yrs	MM	S/L	
			39 yrs	MM	S/L	
				MM	S/L	

Section C — Assets Placed in Service During 2006 Tax Year Using the Alternative Depreciation System

20a Class life					S/L	
b 12-year			12 yrs		S/L	
c 40-year			40 yrs	MM	S/L	

Part IV Summary (see instructions)

21	Listed property. Enter amount from line 28	21	
22	Total. Add amounts from line 12, lines 14 through 17, lines 19 and 20 in column (g), and line 21. Enter here and on the appropriate lines of your return. Partnerships and S corporations — see instructions	22	
23	For assets shown above and placed in service during the current year, enter the portion of the basis attributable to section 263A costs	23	

BAA For Paperwork Reduction Act Notice, see separate instructions.

FDJZ0812 06/22/06

Form 4562 (2006)

CONFIDENTIAL HASKIN-02484
ROA000479

Form **8801****Credit for Prior Year Minimum Tax —
Individuals, Estates, and Trusts**

OMB No. 1545-1073

2006Attachment
Sequence No. **74**Department of the Treasury
Internal Revenue Service (99)

▶ See separate instructions. ▶ Attach to Form 1040, 1040NR, or 1041.

Name(s) shown on return

William B Haskin, Jr & Elizabeth E Haskin

Identifying number

Part I Net Minimum Tax on Exclusion Items

1	Combine lines 1, 6, and 10 of your 2005 Form 6251. Estates and trusts, see instructions	1	434,547.
2	Enter adjustments and preferences treated as exclusion items (see instructions)	2	92,393.
3	Minimum tax credit net operating loss deduction (see instructions)	3	
4	Combine lines 1, 2, and 3. If zero or less, enter -0- here and on line 15 and go to Part II. If more than \$191,000 and you were married filing separately for 2005, see instructions	4	526,940.
5	Enter: \$58,000 if married filing jointly or qualifying widow(er) for 2005; \$40,250 if single or head of household for 2005; or \$29,000 if married filing separately for 2005. Estates and trusts, enter \$22,500	5	58,000.
6	Enter: \$150,000 if married filing jointly or qualifying widow(er) for 2005; \$112,500 if single or head of household for 2005; or \$75,000 if married filing separately for 2005. Estates and trusts, enter \$75,000	6	150,000.
7	Subtract line 6 from line 4. If zero or less, enter -0- here and on line 8 and go to line 9	7	376,940.
8	Multiply line 7 by 25% (.25)	8	94,235.
9	Subtract line 8 from line 5. If zero or less, enter -0-. If this form is for a child under age 14, see instructions	9	0.
10	Subtract line 9 from line 4. If zero or less, enter -0- here and on line 15 and go to Part II. Form 1040NR filers, see instructions	10	526,940.
11	- If for 2005 you reported capital gain distributions directly on Form 1040, line 13; you reported qualified dividends on Form 1040, line 9b (Form 1041, line 2b(2)); or you had a gain on both lines 15 and 16 of Schedule D (Form 1040) (lines 14a and 15, column (2), of Schedule D (Form 1041)), complete Part III of Form 8801 and enter the amount from line 46 here. - All others: If line 10 is \$175,000 or less (\$87,500 or less if married filing separately for 2005), multiply line 10 by 26% (.26). Otherwise, multiply line 10 by 28% (.28) and subtract \$3,500 (\$1,750 if married filing separately for 2005) from the result.	11	131,439.
12	Minimum tax foreign tax credit on exclusion items (see instructions)	12	
13	Tentative minimum tax on exclusion items. Subtract line 12 from line 11	13	131,439.
14	Enter the amount from your 2005 Form 6251, line 34, or 2005 Form 1041, Schedule I, line 55	14	111,093.
15	Net minimum tax on exclusion items. Subtract line 14 from line 13. If zero or less, enter -0-	15	20,346.

Part II Minimum Tax Credit and Carryforward to 2007

16	Enter the amount from your 2005 Form 6251, line 35, or 2005 Form 1041, Schedule I, line 56	16	21,080.
17	Enter the amount from line 15 above	17	20,346.
18	Subtract line 17 from line 16. If less than zero, enter as a negative amount	18	734.
19	2005 minimum tax credit carryforward. Enter the amount from your 2005 Form 8801, line 26	19	
20	Enter the total of your 2005 unallowed nonconventional source fuel credit and 2005 unallowed qualified electric vehicle credit (see instructions)	20	
21	Combine lines 18, 19, and 20. If zero or less, stop here and see instructions	21	734.
22	Enter your 2006 regular income tax liability minus allowable credits (see instructions)	22	485,766.
23	Enter the amount from your 2006 Form 6251, line 33, or 2006 Form 1041, Schedule I, line 54	23	412,974.
24	Subtract line 23 from line 22. If zero or less, enter -0-	24	72,792.
25	Minimum tax credit. Enter the smaller of line 21 or line 24. Also enter this amount on your 2006 Form 1040, line 55; Form 1040NR, line 50; or Form 1041, Schedule G, line 2d	25	734.
26	Minimum tax credit carryforward to 2007. Subtract line 25 from line 21. Keep a record of this amount because you may use it in future years.	26	0.

BAA For Paperwork Reduction Act Notice, see separate instructions.

Form 8801 (2006)

Part III Tax Computation Using Maximum Capital Gains Rates

Caution. If you did not complete the 2005 Qualified Dividends and Capital Gain Tax Worksheet, the 2005 Schedule D Tax Worksheet, or Part V of the 2005 Schedule D (Form 1041), see the instructions before completing this part.

27	Enter the amount from Form 8801, line 10	27	526,940.
28	Enter the amount from line 6 of your 2005 Qualified Dividends and Capital Gain Tax Worksheet, the amount from line 13 of your 2005 Schedule D Tax Worksheet, or the amount from line 22 of the 2005 Schedule D (Form 1041), whichever applies.*	28	96,958.
If you figured your 2005 tax using the 2005 Qualified Dividends and Capital Gain Tax Worksheet, skip line 29 and enter the amount from line 28 on line 30. Otherwise, go to line 29.			
29	Enter the amount from line 19 of your 2005 Schedule D (Form 1040), or line 14b, column (2), of the 2005 Schedule D (Form 1041)	29	
30	Add lines 28 and 29, and enter the smaller of that result or the amount from line 10 of your 2005 Schedule D Tax Worksheet	30	96,958.
31	Enter the smaller of line 27 or line 30	31	96,958.
32	Subtract line 31 from line 27	32	429,982.
33	If line 32 is \$175,000 or less (\$87,500 or less if married filing separately for 2005), multiply line 32 by 26% (.26). Otherwise, multiply line 32 by 28% (.28) and subtract \$3,500 (\$1,750 if married filing separately for 2005) from the result	33	116,895.
34	Enter: • \$59,400 if married filing jointly or qualifying widow(er) for 2005, • \$29,700 if single or married filing separately for 2005, • \$39,800 if head of household for 2005, or • \$2,000 for an estate or trust	34	59,400.
35	Enter the amount from line 7 of your 2005 Qualified Dividends and Capital Gain Tax Worksheet, the amount from line 14 of your 2005 Schedule D Tax Worksheet, or the amount from line 23 of the 2005 Schedule D (Form 1041), whichever applies. If you did not complete either worksheet or Part V of the 2005 Schedule D (Form 1041), enter -0-	35	349,961.
36	Subtract line 35 from line 34. If zero or less, enter -0-	36	0.
37	Enter the smaller of line 27 or line 28	37	96,958.
38	Enter the smaller of line 36 or line 37	38	0.
39	Multiply line 38 by 5% (.05)	39	0.
40	Subtract line 38 from line 37	40	96,958.
41	Multiply line 40 by 15% (.15)	41	14,544.
If line 29 is zero or blank, skip lines 42 and 43 and go to line 44. Otherwise, go to line 42.			
42	Subtract line 37 from line 31	42	
43	Multiply line 42 by 25% (.25)	43	
44	Add lines 33, 39, 41, and 43	44	131,439.
45	If line 27 is \$175,000 or less (\$87,500 or less if married filing separately for 2005), multiply line 27 by 26% (.26). Otherwise, multiply line 27 by 28% (.28) and subtract \$3,500 (\$1,750 if married filing separately for 2005) from the result	45	144,043.
46	Enter the smaller of line 44 or line 45 here and on line 11	46	131,439.

* The 2005 Qualified Dividends and Capital Gain Tax Worksheet is in the 2005 Instructions for Form 1040. The 2005 Schedule D Tax Worksheet is in the 2005 Instructions for Schedule D (Form 1040) and 2005 Instructions for Form 1041.

Form 8801 (2006)

Form 8582

Passive Activity Loss Limitations

OMB No. 1545-1008

Department of the Treasury
Internal Revenue Service (99)▶ See separate instructions.
▶ Attach to Form 1040 or Form 1041.

2006

Attachment
Sequence No. 88

Name(s) shown on return

Identifying number

William B Haskin, Jr & Elizabeth E Haskin

Part I 2006 Passive Activity Loss

Caution: Complete Worksheets 1, 2, and 3 on page 2 before completing Part I.

Rental Real Estate Activities With Active Participation (For the definition of active participation see Special Allowance for Rental Real Estate Activities in the instructions.)

1 a Activities with net income (enter the amount from Worksheet 1, column (a))	1 a	9,089.		
b Activities with net loss (enter the amount from Worksheet 1, column (b))	1 b	-36,952.		
c Prior years unallowed losses (enter the amount from Worksheet 1, column (c))	1 c			
d Combine lines 1a, 1b, and 1c	1 d	-27,863.		
Commercial Revitalization Deductions From Rental Real Estate Activities				
2 a Commercial revitalization deductions from Worksheet 2, column (a)	2 a			
b Prior year unallowed commercial revitalization deductions from Worksheet 2, column (b)	2 b			
c Add lines 2a and 2b	2 c			
All Other Passive Activities				
3 a Activities with net income (enter the amount from Worksheet 3, column (a))	3 a	187,291.		
b Activities with net loss (enter the amount from Worksheet 3, column (b))	3 b	-161,855.		
c Prior years unallowed losses (enter the amount from Worksheet 3, column (c))	3 c			
d Combine lines 3a, 3b, and 3c	3 d	25,436.		
4 Combine lines 1d, 2c, and 3d. If the result is net income or zero, all losses are allowed, including any prior year unallowed losses entered on line 1c, 2b, or 3c. Do not complete Form 8582. Report the losses on the forms and schedules normally used	4	-2,427.		

- If line 4 is a loss and:
- Line 1d is a loss, go to Part II.
 - Line 2c is a loss (and line 1d is zero or more), skip Part II and go to Part III.
 - Line 3d is a loss (and lines 1d and 2c are zero or more), skip Parts II and III and go to line 15.

Caution: If your filing status is married filing separately and you lived with your spouse at any time during the year, do not complete Part II or Part III. Instead, go to line 15.

Part II Special Allowance for Rental Real Estate Activities With Active Participation

Note: Enter all numbers in Part II as positive amounts. See the instructions for an example.

5 Enter the smaller of the loss on line 1d or the loss on line 4	5	2,427.
6 Enter \$150,000. If married filing separately, see the instructions	6	150,000.
7 Enter modified adjusted gross income, but not less than zero (see instructions)	7	1,666,778.
Note: If line 7 is greater than or equal to line 6, skip lines 8 and 9, enter -0- on line 10. Otherwise, go to line 8.		
8 Subtract line 7 from line 6	8	
9 Multiply line 8 by 50% (.5). Do not enter more than \$25,000. If married filing separately, see instructions	9	
10 Enter the smaller of line 5 or line 9	10	0.

If line 2c is a loss, go to Part III. Otherwise, go to line 15.

Part III Special Allowance for Commercial Revitalization Deductions From Rental Real Estate Activities

Note: Enter all numbers in Part III as positive amounts. See the example for Part II in the instructions.

11 Enter \$25,000 reduced by the amount, if any, on line 10. If married filing separately, see instructions	11	
12 Enter the loss from line 4	12	
13 Reduce line 12 by the amount on line 10	13	
14 Enter the smallest of line 2c (treated as a positive amount), line 11, or line 13	14	

Part IV Total Losses Allowed

15 Add the income, if any, on lines 1a and 3a and enter the total	15	196,380.
16 Total losses allowed from all passive activities for 2006. Add lines 10, 14, and 15. See the instructions to find out how to report the losses on your tax return	16	196,380.

BAA For Paperwork Reduction Act Notice, see the Instructions.

Form 8582 (2006)

FDIZ1901 10/17/06

CONFIDENTIAL/HASKIN-02487
ROA000482

Caution: The worksheets must be filed with your tax return. Keep a copy for your records.

Worksheet 1 – For Form 8582, Lines 1a, 1b, and 1c (See instructions.)

Name of activity	Current year		Prior years	Overall gain or loss	
	(a) Net income (line 1a)	(b) Net loss (line 1b)	(c) Unallowed loss (line 1c)	(d) Gain	(e) Loss
Condominium – Garden City SC	0.	7,148.			7,148.
Condominium – Mt Pleasant, SC	0.	2,511.			2,511.
Duplux – Surfside Beach, SC	9,089.	0.		9,089.	
Office – Sullivan's Island, SC	0.	11,470.			11,470.
1519 Marshgrass, Mt. Pleasant, SC	0.	15,823.			15,823.
Total. Enter on Form 8582, lines 1a, 1b, and 1c	9,089.	36,952.			

Worksheet 2 – For Form 8582, Lines 2a and 2b (See instructions.)

Name of activity	(a) Current year deductions (line 2a)	(b) Prior year unallowed deductions (line 2b)	(c) Overall loss
Total. Enter on Form 8582, lines 2a and 2b			

Worksheet 3 – For Form 8582, Lines 3a, 3b, and 3c (See instructions.)

Name of activity	Current year		Prior years	Overall gain or loss	
	(a) Net income (line 3a)	(b) Net loss (line 3b)	(c) Unallowed loss (line 3c)	(d) Gain	(e) Loss
1502 Marshgrass Mt. Pleasant, SC	0.	15,398.			15,398.
196 Mossy Oak Way, Mt. Pleasant SC	0.	14,026.			14,026.
HG Properties SC, LLC	0.	41,222.			41,222.
29 I'On, LLC	187,291.	0.		187,291.	
See Passive Wkst 3	0.	91,209.			
Total. Enter on Form 8582, lines 3a, 3b, and 3c	187,291.	161,855.			

Worksheet 4 – Use this worksheet if an amount is shown on Form 8582, line 10 or 14 (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Ratio	(c) Special allowance	(d) Subtract column (c) from column (a)
Total			1.00		

Worksheet 5 – Allocation of Unallowed Losses (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Ratio	(c) Unallowed loss
Condominium – Garden City SC	E Ln 23	7,148.	0.03595447	87.
Condominium – Mt Pleasant, SC	E Ln 23	2,511.	0.01263034	31.
Office – Sullivan's Island, SC	E Ln 23	11,470.	0.05769415	140.
1519 Marshgrass, Mt. Pleasant, SC	E Ln 23	15,823.	0.07958975	193.
See Passive Wkst 5		161,855.		1,976.
Total		198,807.	1.00	2,427.

Worksheet 6 – Allowed Losses (See instructions.)

Name of activity	Form or schedule and line number to be reported on (see instructions)	(a) Loss	(b) Unallowed loss	(c) Allowed loss
Condominium - Garden City SC	E Ln 23	7,148.	87.	7,061.
Condominium - Mt Pleasant, SC	E Ln 23	2,511.	31.	2,480.
Office - Sullivan's Island, SC	E Ln 23	11,470.	140.	11,330.
1519 Marshgrass, Mt. Pleasant, SC	E Ln 23	15,823.	193.	15,630.
See Passive Wkst 6		161,855.	1,976.	159,879.
Total		198,807.	2,427.	196,380.

Worksheet 7 – Activities With Losses Reported on Two or More Forms or Schedules (See instructions.)

Name of Activity ...	(a)	(b)	(c) Ratio	(d) Unallowed loss	(e) Allowed loss
Form or schedule and line number to be reported on (see instructions)					
1 a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Form or schedule and line number to be reported on (see instructions)					
1 a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Form or schedule and line number to be reported on (see instructions)					
1 a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Form or schedule and line number to be reported on (see instructions)					
1 a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Total			1.00		

Name of Activity ...	(a)	(b)	(c) Ratio	(d) Unallowed loss	(e) Allowed loss
Form or schedule and line number to be reported on (see instructions)					
1 a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Form or schedule and line number to be reported on (see instructions)					
1 a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Form or schedule and line number to be reported on (see instructions)					
1 a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Form or schedule and line number to be reported on (see instructions)					
1 a Net loss plus prior year unallowed loss from form or schedule					
b Net income from form or schedule					
c Subtract line 1b from line 1a. If zero or less, enter -0-					
Total			1.00		

Schedule E, page 2
Line 28 Information

28	(a) Name	(b) P/S	(c) Foreign Partnership	(d) EIN	(e) Any amount is not at risk
D	1908 Middle Street, LLC	P		56-2556453	
E	1908 Middle Street, LLC	P		56-2556453	
F	1914 Middle Street, LLC	P		81-0676292	
G	1914 Middle Street, LLC	P		81-0676292	
H	2624 Bayonne, LLC	P		83-0449070	
I	2624 Bayonne, LLC	P		83-0449070	
J	2802 Middle Street, LLC	P		83-0449068	
K	2802 Middle Street, LLC	P		83-0449068	
L	HRF Investments, LLC	P		20-3147660	
M	Pavilion Place, LLC	P		26-0687672	
N	Station 22 of Charleston, LLC	P		26-1199642	
O	Patriot Timber Products, Int'l, Inc.	S		51-0329068	
P	Rhodes Haskin Development Company, Inc.	S		59-3562397	

Schedule E, page 2
Line 28 Income or Loss

Name	Passive Income and Loss		Nonpassive Income and Loss		
	(f) Loss Allowed K-1	(g) Income K-1	(h) Loss K-1	(i) Section 179	(j) Income K-1
D 1908 Middle					
E 1908 Middle	310.				
F 1914 Middle	51.				
G 1914 Middle	5,053.				
H 2624 Bayonn	49.				
I 2624 Bayonn	4,892.				
J 2802 Middle	3.				
K 2802 Middle	250.				
L HRF Investm	44.				
M Pavilion Pl	51,036.				
N Station 22	275.				
O Patriot Tim				7,360.	1,258,612.
P Rhodes Hask	295.				
Total	62,258.			7,360.	1,258,612.

Form 8582
Passive Wkst 3

Worksheet 3 -- For Form 8582, Lines 3a, 3b, and 3c

Name of Activity	Current Year		Prior Year (c) Unallowed Loss	Overall Gain or Loss	
	(a) Net Income	(b) Net Loss		(d) Gain	(e) Loss
508 Ocean, LLC	0.	28,181.			28,181.
1908 Middle Street, LLC	0.	0.		0.	
1908 Middle Street, LLC	0.	314.			314.
1914 Middle Street, LLC	0.	52.			52.

Form 8582
Passive Wkst 3

Continued

Worksheet 3 -- For Form 8582, Lines 3a, 3b, and 3c

Name of Activity	Current Year		Prior Year (c) Unallowed Loss	Overall Gain or Loss	
	(a) Net Income	(b) Net Loss		(d) Gain	(e) Loss
1914 Middle Street, LLC	0.	5,115.			5,115.
2624 Bayonne, LLC	0.	50.			50.
2624 Bayonne, LLC	0.	4,952.			4,952.
2802 Middle Street, LLC	0.	3.			3.
2802 Middle Street, LLC	0.	253.			253.
HRF Investments, LLC	0.	45.			45.
Pavilion Place, LLC	0.	51,667.			51,667.
Station 22 of Charleston,	0.	278.			278.
Rhodes Haskin Development	0.	299.			299.
Total	0.	91,209.			

Form 8582
Passive Wkst 5

Worksheet 5 -- Allocation of Unallowed Losses

Name of Activity	Form/Schedule and Line Number Reported On	(a) Loss	(b) Ratio	(c) Unallowed Loss
1502 Marshgrass Mt. Pleasant, SC	E Ln 23	15,398.	0.07745200	188.
196 Mossy Oak Way, Mt. Pleasant SC	E Ln 23	14,026.	0.07055084	171.
HG Properties SC, LLC	E Ln 28A	41,222.	0.20734682	503.
508 Ocean, LLC	E Ln 28C	28,181.	0.14175054	344.
1908 Middle Street, LLC	E Ln 28E	314.	0.00157942	4.
1914 Middle Street, LLC	E Ln 28F	52.	0.00026156	1.
1914 Middle Street, LLC	E Ln 28G	5,115.	0.02572847	62.
2624 Bayonne, LLC	E Ln 28H	50.	0.00025150	1.
2624 Bayonne, LLC	E Ln 28I	4,952.	0.02490858	60.
2802 Middle Street, LLC	E Ln 28J	3.	0.00001509	0.
2802 Middle Street, LLC	E Ln 28K	253.	0.00127259	3.
HRF Investments, LLC	E Ln 28L	45.	0.00022635	1.
Pavilion Place, LLC	E Ln 28M	51,667.	0.25988522	631.
Station 22 of Charleston, LLC	E Ln 28N	278.	0.00139834	3.
Rhodes Haskin Development Company,	E Ln 28P	299.	0.00150397	4.
Total		161,855.		1,976.

Form 8582
Passive Wkst 6

Worksheet 6 Allowed Losses

Name of Activity	Form/Schedule and Line Number Reported On	(a) Loss	(b) Unallowed Loss	(c) Allowed Loss
1502 Marshgrass Mt. Pleasant, SC	E Ln 23	15,398.	188.	15,210.
196 Mossy Oak Way, Mt. Pleasant SC	E Ln 23	14,026.	171.	13,855.
HG Properties SC, LLC	E Ln 28A	41,222.	503.	40,719.
508 Ocean, LLC	E Ln 28C	28,181.	344.	27,837.
1908 Middle Street, LLC	E Ln 28E	314.	4.	310.
1914 Middle Street, LLC	E Ln 28F	52.	1.	51.
1914 Middle Street, LLC	E Ln 28G	5,115.	62.	5,053.
2624 Bayonne, LLC	E Ln 28H	50.	1.	49.
2624 Bayonne, LLC	E Ln 28I	4,952.	60.	4,892.
2802 Middle Street, LLC	E Ln 28J	3.	0.	3.
2802 Middle Street, LLC	E Ln 28K	253.	3.	250.
HRE Investments, LLC	E Ln 28L	45.	1.	44.
Pavilion Place, LLC	E Ln 28M	51,667.	631.	51,036.
Station 22 of Charleston, LLC	E Ln 28N	278.	3.	275.
Rhodes Haskin Development Company, Inc.	E Ln 28P	299.	4.	295.
Total		<u>161,855.</u>	<u>1,976.</u>	<u>159,879.</u>